

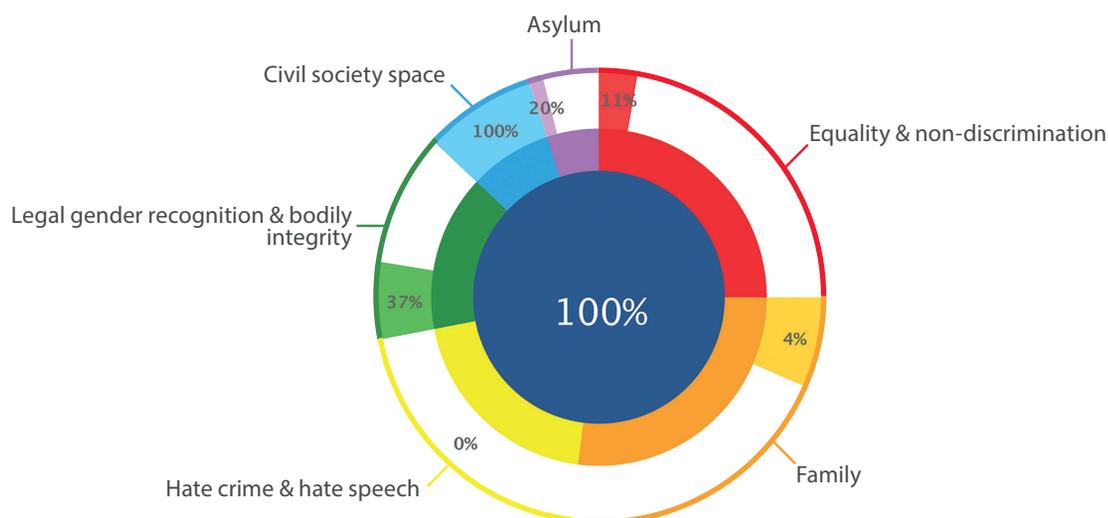
# Poland



Civil society experienced a turbulent year in Poland, with a foreboding sense that the work of LGBTI NGOs was being pressurised from all sides. The attacks were both literal and indirect. Offices where LGBTI activists work were targeted, on more than one occasion. The mandate of the independent official whose very job it is to defend human rights in the country was publicly questioned; the Ombudsman was still in office at the end of the year. Another possibility mooted by the ruling Law and Justice Party was a withdrawal from the Istanbul Convention, calling into question how seriously they prioritise dealing with gender-based violence. Whether or not LGBTI activists (and their fellow civil society partners) will be able to publicly demonstrate in the future was also unclear following the passage of a public assembly law that prioritises rallies of ‘national importance’. (This law was being assessed by the Constitutional Court at time of writing.) Questions were also raised over the future of NGO funding, as news of the prime minister’s proposal to create a centre to oversee civil society development emerged at the end of the year. Another frustration associated with this pressure on fundamental rights is that dealing with all these additional challenges stretches the resources of LGBTI NGOs, limiting the time they can spend on targeted advocacy. In spite of this atmosphere, LGBTI activists persisted – in particular strengthening links between the LGBTI and religious communities, providing support during court proceedings, and developing inclusive resources for schools.

For more information on developments in 2016, visit [www.rainbow-europe.org](http://www.rainbow-europe.org) where you can read the full country chapter.

# Legal and policy situation in **Poland** as of 31 December 2016



In order to improve the legal and policy situation of LGBTI people, ILGA-Europe recommend:

- ➔ Adopting legal measures to recognise and protect same-sex couples, such as civil unions or registered partnership.
- ➔ Introducing hate crime laws that explicitly cover all bias-motivated crimes based on sexual orientation, gender identity and sex characteristics.

## Access to goods and services

- LGBT Business Forum initiated legal proceedings against a Lodz printing company who refused to carry out their request, saying that "...we do not contribute to the promotion of LGBT movement in our work". Following the LGBT organisation's complaint, in February the Ombudsman recommended an investigation and police subsequently filed a motion to fine the company on 16 May. On 21 June, the Lodz-Widzew District Court fined the printers PLN 200 (EUR 45). The printers filed an appeal on 29 June and new court proceedings were required. Minister of Justice Zbigniew Ziobro (Solidarity Poland. SP; right-wing) issued a statement through the ministry's website on 26 July, saying that the court's decision to fine the printers was unfair. A prosecutor was appointed to the case by Minister Ziobro and the first hearing was held in December. The case had not concluded by the end of 2016 and a second hearing was due to be held on 17 January 2017.

## Bias-motivated speech

- At a press conference on 15 July, one day after the terrorist attacks in Nice, interior minister Mariusz Blaszczak (Law and Justice, PiS; right-wing) commented that this incident had happened because the European Union had failed to react adequately to the November 2015 attacks in Paris. He cited political correctness, multiculturalism and solidarity marches featuring flowers and rainbow colours. This reference was criticised by LGBT NGO Lambda Warszawa.

## Bias-motivated violence

- In March, the offices of two LGBTI NGOs were attacked in the city of Warsaw. A brick was thrown through the

windows of Lambda Warszawa's office during the night on 1-2 March. On 3 March, three men attempted to break into the Campaign against Homophobia (KPH) building while shouting homophobic insults. KPH staff called the police but the men left before officers arrived. The Polish Commissioner for Human Rights Adam Bodnar condemned the attacks and held a meeting with NGO representatives after the incident at KPH's office. On 10 March, the Helsinki Foundation for Human Rights reported that over 300 Polish NGOs had written to Prime Minister Beata Szydło (PiS) asking her to take action against the NGO attacks. Windows in the KPH office were broken in an attack on 23 April and again, in a similar incident, on 27 April.

- On 7 December Elżbieta Rafalska, Minister of Family, Labour and Social Policy, issued a statement highlighting the government's plans to withdraw from the Istanbul Convention on preventing and combating violence against women.

## Data collection

- 'Transgender youth in Polish schools' – the first comprehensive study in the country to examine how the education system enables trans children to live according to their gender identity – was released on 8 December. NGO Foundation Trans-Fuzja conducted interviews with directors of schools across Poland and the study revealed that while there are general systematic problems for trans students, that there are also good practice examples of schools that are supportive and understanding.

## Diversity

- During World Youth Day in July, a Warsaw-based organisation (Faith and Rainbow LGBT) organised a space for LGBT participants attending the event. The 'LGBT Pilgrim's Haven' was not part of the official Youth Day programme but was run in a café in Krakow. Jim Mulcahy, a pastor working in Ukraine (see **Russia**), was one of the speakers to address the group. During a private meeting with bishops during his visit to Poland for World Youth Day, Pope Benedict called gender identity initiatives a form of colonisation and reportedly said that "Today, in

schools they are teaching this to children -- to children! – that everyone can choose their gender”.

- The first social media campaign linking LGBTI organisations and representatives of Catholic backgrounds was launched by NGOs KPH, Faith and Rainbow, and Tolerado in September. The *Znakpokoju* campaign aims to highlight the fact that LGBT people are also present in faith communities. In October, campaign billboards were erected in 10 cities across the country.

## Education

- The first handbook for teachers, management and psychologists on the needs of trans students was published in September. NGO Foundation Trans-Fuzja compiled the handbook to assist teachers in supporting trans children and young people, as well as helping them to foster respect for diversity among students generally.
- In September, NGO Foundation Trans-Fuzja wrote to the Ministry of Science and Higher Learning to express concern at proposed changes to the Regulation on the documentation of the course of study. Under the proposal, after going through the legal gender recognition process, trans students would have to give diplomas and materials back to their education institution in order for them to be reissued in their name. At the end of 2016, Trans-Fuzja has received no response from the ministry.

## Equality and non-discrimination

- Commissioner for Human Rights Adam Bodnar presented his annual activity report at the Parliamentary Commission of Justice on 5 September. At the same time, several PiS MPs announced their intention to file a motion to dismiss the commissioner. Any motion would require the support of three-fifths of MPs to pass; the proposed motion had not been filed by the end of 2016. On 27 October, the International Ombudsman Institute published recommendations that urged the Polish parliament to support the office of the Commissioner for Human Rights.
- In September, the Supreme Administrative Court ruled that the interior ministry must re-examine the

application of a same-sex couple to purchase property together. A Polish citizen and his Chilean partner (who had entered a registered partnership in the UK) had asked the ministry for permission to buy the apartment in Szczecin. When purchasing property in border towns like Szczecin, people from outside Poland are asked to provide evidence of a connection to the country. The couple’s partnership was not accepted as evidence by the ministry and this decision was upheld by the Regional Administrative Court. The couple appealed and Judge Jacek Chlebny of the Supreme Administrative Court then ruled that ‘ties with Poland’ should not be defined as referring to marriages or partnerships between different-sex couples only.

- Fundamental human rights rights in Poland were discussed by MEPs during a debate in the European Parliament on 13 September. A resolution calling on the government to “...solve the country’s constitutional crisis” was adopted by 510 votes to 160; 29 MEPs abstained.

## Family

- The Supreme Court responded to a question from the Court’s own first president Małgorzata Gersdorf on 25 February, confirming that same-sex couples can refuse to testify against each other. Gersdorf had posed the question in an attempt to clarify the legal situation. The Court held that same-sex couples who are living in a de facto union cannot be called as witnesses in criminal proceedings against their partner.

## Freedom of assembly

- On 30 November, a public assembly bill successfully passed the first reading stage. The draft law, put forward by the ruling PiS party, would prioritise certain rallies of ‘national importance’ and prevent demonstrations being staged at the same time as events sanctioned by the authorities or the church, effectively banning counter-protests. The bill, which was criticised by NGOs and the Commissioner for Human Rights, was passed by parliament in December. President Andrzej Duda declined to sign the freedom of assembly bill on 29 December, sending it to the Constitutional Court for their adjudication.

## **Freedom of association**

- Prime Minister Beata Szydło (PiS) drafted a bill, proposing the creation of a National Centre for the Development of Civil Society. The plans were announced in late November and outlined intentions to centralise state funding for NGOs. Public consultation on the bill's contents was ongoing at the end of the year.

## **Legal gender recognition**

- The Warsaw Regional Court confirmed that a Polish trans woman, who had legally transitioned in Germany, did not have to obtain a medical evaluation and go through the usual civil court process to change personal documents. The woman had contacted LGBTI NGO Foundation Trans-Fuzja in 2015 when her local Polish registry office refused to amend her birth certificate. On 1 June, the court in Warsaw confirmed that the decision issued by the German courts should be recognised in Poland for the purposes of correcting a birth certificate.