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The Centre for Hate Studies

# Violence and hate speech against LGBTI people in Poland

Submission to the United Nations Independent Expert on  
Sexual Orientation and Gender Identity ahead of His  
Country Visit in Poland

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LGBTI stands for lesbian, gay, bisexual, transgender, and intersex. SOGIESC is an acronym for sexual orientation, gender identity and expression, and sex characteristics. These terms are used to encompass a broad range of identities and experiences related to sexual orientation and gender.

In this report, we use these acronyms to reflect the scope of the issues discussed. While the report aims to be inclusive, it also references other reports that may focus on specific groups within the LGBTI communities. This approach ensures that the diverse experiences and needs of all individuals within these communities are acknowledged and addressed.

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# Executive summary

This report provides a critical overview of state responses to violence and hate speech against LGBTI people in Poland, highlighting systemic legal and policy gaps, issues with law enforcement and judicial practices, and shortcomings in victim support services. It presents evidence of significant underreporting and underrecording of anti-LGBTI hate crimes and offers recommendations for the Polish government to address these issues.

## 1. Scale and nature of anti-LGBTI hate crimes and hate speech

Poland's official statistics on anti-LGBTI hate crimes are strikingly low compared to other European countries, with only 11 cases reported in 2022. However, civil society organisations' reports and victimisation surveys indicate that many victims do not come forward to the police, indicating severe underreporting and underrecording. This gap suggests that the official data does not accurately reflect the true scale of anti-LGBTI violence. While police collect data on hate crimes, these statistics are not publicly available, and the prosecution services and judiciary do not track anti-LGBTI hate crimes at all.

Surveys suggest that many LGBTI individuals in Poland refrain from reporting hate crimes due to a lack of trust in law enforcement, fear of discrimination, or belief that the police will not take action. Research shows that Poland has one of the highest rates of LGBTI individuals avoiding public displays of affection due to fear of violence, and many report feeling increasingly unsafe.

## 2. Legal gaps and inadequate policy responses

The Polish Criminal Code does not include sexual orientation, gender identity, gender expression, or sex characteristics as protected statuses for hate crimes or hate speech. Consequently, homophobic and transphobic bias motives are often ignored in legal proceedings. While racist and xenophobic hate crimes are prosecuted *ex officio*, LGBTI hate crimes typically require victims to file private complaints, placing an undue burden on them. This lack of legal recognition perpetuates a culture of impunity, allowing anti-LGBTI violence and hate speech to go unpunished.

Moreover, anti-LGBTI hate speech, including cases of incitement to hatred, discrimination, and violence, remains largely unaddressed by Polish law. Offensive and harmful rhetoric, whether online, in public spaces, or in the media, continues to escalate without legal repercussions. Incidents such as homophobic graffiti and hate-filled banners at public events have been documented but remain outside the scope of current hate speech legislation.

## 3. Law enforcement, judicial system, and victim support practices

Law enforcement agencies and the judiciary in Poland are inadequately prepared to handle anti-LGBTI hate crimes. While some police officers and prosecutors have undergone hate crime training, these programmes have not been formally evaluated, and their focus is predominantly on racist and xenophobic crimes. Victims of anti-LGBTI hate crimes often encounter officers and prosecutors who lack training and sensitivity towards

LGBTI issues, resulting in underreporting and insufficient legal recourse. Additionally, judges frequently fail to recognise homophobic and transphobic motives, even in cases with clear bias elements.

Victim support services in Poland are insufficient and fail to address the specific needs of LGBTI individuals. There are no state-funded victim support services specifically for LGBTI hate crime victims, leaving NGOs to fill the gap. However, these organisations face significant political and financial challenges, limiting their ability to provide adequate support. Without comprehensive legal and psychological assistance, many LGBTI victims are left without the resources they need to seek justice or recover from victimisation.

The report concludes with recommendations for the Polish Government, including amending the Criminal Code to include SOGIESC as protected characteristics, improving data collection, ensuring proper case handling by the police and judicial system, and providing adequate victim support for LGBTI individuals. These measures are essential to addressing the systemic failures that currently leave LGBTI individuals without equal protection under the law.

# 1 Scale and nature of hate crimes and hate speech against LGBTI individuals

## 1.1 Official statistics

### 1.1.1 Police statistics

The Police and the Ministry of Interior collect data on hate crimes following a working definition which includes an open catalogue of protected grounds. According to the definition,

Hate crime is:

a) any offence of a criminal nature, including offences against people and their property, in which a victim, place or other object of offence is selected because of their actual or alleged affiliation, relationship, belonging, membership or support for group defined in point b),

b) The group may be distinguished on the basis of characteristics common to its members such as actual or implied race, national or ethnic origin, language, colour, religion, sex, age, physical or mental disability, sexual orientation or other similar characteristics.<sup>1</sup>

Police statistics on anti-LGBTI hate crimes, captured pursuant to the above definition, are not made publicly available by the Government. The Ministry of Interior, however, reports hate crime data to the OSCE Office for Democratic Institutions and Human Rights (ODIHR), which publishes them on an annual basis as part of the OSCE Hate Crime Report on the website [www.hatecrime.osce.org/poland](http://www.hatecrime.osce.org/poland).

Based on data published by the OSCE, Poland records a very low number of anti-LGBTI hate crimes in comparison to other European countries. In 2022, Poland reported only 11 anti-LGBTI hate crime cases. In contrast, other European countries reported significantly higher numbers of anti-LGBTI hate crimes relative to their size, such as 1,422 in Germany,<sup>2</sup> 459 in Spain,<sup>3</sup> 116 in Finland,<sup>4</sup> 8 in Lithuania,<sup>5</sup> and 6 in Czechia.<sup>6</sup>

The figures recorded by the Police contrast with the hate crimes targeting LGBTI people reported by civil society to the OSCE during the same year, which were nearly five times higher (47 in total) than official statistics.

The low number of officially recorded cases, in the light of unofficial reports and in comparison with other countries, suggests that Poland's hate crime figures may not accurately reflect the true scale of anti-LGBTI violence. The difference between the above

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<sup>1</sup> Cited in Dorota Pudzianowska and others, 'Rasa, Pochodzenie Etniczne, Narodowe Oraz Wyznanie [Race, Ethnicity, Nationality and Religion]' in Dorota Pudzianowska and Jarosław Jagura (eds), *Równe traktowanie uczestników postępowań. Przewodnik dla sędziów i prokuratorów [Equal treatment of participants in proceedings. A guide for judges and prosecutors]* (RPO 2016) 101 <<http://www.hfhr.pl/przewodnik-rowne-traktowanie-uczestnikow-postepowan/>> accessed 2 May 2017.

<sup>2</sup> <https://hatecrime.osce.org/germany>

<sup>3</sup> <https://hatecrime.osce.org/spain>

<sup>4</sup> <https://hatecrime.osce.org/finland>

<sup>5</sup> <https://hatecrime.osce.org/lithuania>

<sup>6</sup> <https://hatecrime.osce.org/czech-republic>

figures can be attributed to both under-reporting (when victims do not report to the police) and under-recording (when the police do not record the bias motivation of the crime).

Poland does not recognise anti-LGBTI hate speech as a distinct legal category. As a result, even severe manifestations of homophobia or transphobia, such as public incitement to hatred, are not officially recorded, and no specific statistics are available on hate speech directed at LGBTI individuals.

### **1.1.2 Prosecution and judiciary data**

Unlike the Police and the Ministry of Interior, the prosecution services and the judiciary do not collect statistics on anti-LGBTI hate crimes which are prosecuted or sentenced. The Office of the Prosecutor General, which compiles information about the number of proceedings in cases of racist and xenophobic hate crimes, does not collect data on homophobic or transphobic hate crimes.<sup>7</sup> Similarly, the Ministry of Justice limits the scope of its monitoring of sentenced hate crime cases to the Criminal Code provisions on racism and xenophobia (see section 2).<sup>8</sup> Statistics on otherwise-motivated hate crimes are, therefore, not available. Consequently, because of this fragmentation and lack of shared methodology, statistics on hate crimes motivated by other factors, including sexual orientation and gender identity, are not available. As a result, despite the few cases reported by the Police, tracking the progression of anti-LGBTI hate crimes through the criminal justice system is extremely challenging, if not impossible.

### **1.1.3 Obstacles to official hate crime data collection**

The primary obstacle to obtaining reliable statistics on anti-LGBTI hate crimes in Poland is the absence of relevant provisions in the Criminal Code (see Section 2). A legal framework that recognises SOGIESC as protected characteristics or bias motivations would enable the automated flagging and tracking of such cases, similar to the process in place for racist and xenophobic crimes.

Moreover, evidence suggests that police officers lack the training and experience necessary to identify and categorise anti-LGBTI violence, leading to underrecording. Although Poland has engaged with organisations like ODIHR and the Fundamental Rights Agency to improve hate crime recording and data collection, these efforts have not yet translated into the ability of the Police, prosecution services, or judiciary to effectively capture data on anti-LGBTI hate crimes.

Greater transparency in publishing data, along with the adoption of a shared working definition of hate crime between the Police and all criminal justice agencies, would provide a more accurate and comprehensive understanding of hate crimes motivated by SOGIESC. This, in turn, would help improve responses to such violence.

Additionally, underreporting of SOGIESC-related hate crimes is exacerbated by mistrust of law enforcement and fears of further discrimination (see Section 1.2 below). Jointly, these issues have resulted in a significant gap between the lived experiences of LGBTI individuals and the official statistics.

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7 Response to FOI request. Prokuratura Krajowa, 'Pismo [Letter] PK I Ip 208.2021' (21 July 2021).

8 Response to FOI request. Ministerstwo Sprawiedliwości, 'Pismo [Letter] BK-IV.082.235.2021' (13 August 2021).

## 1.2 Other sources of data on anti-LGBTI violence and hate speech

### Prevalence of anti-LGBTI violence

Poland does not conduct surveys that would monitor the levels of anti-LGBTI violence. Studies published by civil society and human rights institutions indicate that violence against LGBTI people is a common occurrence in Poland.<sup>9</sup>

A study commissioned by the Commissioner for Human Rights in 2017 found that LGBT individuals in Poland face a disproportionate level of violence motivated by prejudice, including threats, physical assaults, and property damage. The report revealed that almost half of the homophobic and transphobic incidents involve either threats or physical attacks, making these some of the most common forms of prejudice-motivated violence experienced by LGBT individuals.<sup>10</sup>

According to the EU Fundamental Rights Agency survey, 15% of LGBTI respondents in Poland reported experiencing physical and/or sexual attacks in the five years preceding the survey. The reported rates are one of the highest rates among the EU countries surveyed with the EU average being 11%. In addition, 42% reported experiences of harassment due to being LGBTI in the past 12 months, which is higher than the EU average of 38%.<sup>11</sup>

### Reporting

A significant “dark figure” of unreported crimes exists among LGBTI individuals.

According to the Commissioner for Human Rights’ 2017 study, many victims of homophobic and transphobic violence do not report incidents to the authorities due to fears of further discrimination or a lack of trust in law enforcement.<sup>12</sup>

In the EU LGBTI survey, only 16% of LGBTI respondents in Poland reported their most recent physical or sexual attack to the police. This aligns with the broader trend across the EU, where reporting rates are generally low.<sup>13</sup>

### Impacts of violence, perceptions of safety and government responses

Poland’s LGBTI community faces high rates of stress, fear, and inadequate government response to hate speech and violence.

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<sup>9</sup> Anna Mazurczak and others, *Przestępstwa Motywowane Uprzedzeniami Względem Osób Starszych, Osób z Niepełnosprawnościami, Osób Homoseksualnych i Transpłciowych. Analiza i Zalecenia [Crimes Motivated by Prejudice against the Elderly, People with Disabilities, Homosexual and Transgender Persons. Analysis and Recommendations]* (Biuro Rzecznika Praw Obywatelskich 2017); Mikołaj Winiewski and Magdalena Świder (eds), *Sytuacja Społeczna Osób LGBTA w Polsce. Raport Za Lata 2019-2020 [Social Situation of LGBTA People in Poland. Report for 2019-2020]* (KPH and Lambda Warszawa 2021); FRA, ‘Survey Data Explorer: LGBTI Survey 2019’ (*European Union Agency for Fundamental Rights*, 12 May 2020) <<https://fra.europa.eu/en/publication/2020/eu-lgbti-survey-results>> accessed 18 May 2021.

<sup>10</sup> Mazurczak and others (n 9).

<sup>11</sup> FRA (n 9).

<sup>12</sup> Mazurczak and others (n 9).

<sup>13</sup> FRA (n 9).



According to the Commissioner for Human Rights' 2017 study, the psychological consequences for LGBT victims of hate crimes are significantly more severe compared to victims of similar crimes not motivated by prejudice. According to the report, victims of homophobic and transphobic violence show markedly higher levels of post-traumatic stress disorder (PTSD) symptoms. Specifically, 45% of LGBT individuals who experienced hate crimes exhibited PTSD symptoms, compared to 35% of victims of non-prejudice crimes. Furthermore, LGBT victims report lower levels of societal support and recognition for the harm they have suffered. This lack of societal acknowledgement further exacerbates the emotional and psychological impact, leaving many victims feeling isolated, marginalised, and unsupported.<sup>14</sup>

In the EU LGBTI survey, 58% of LGBTI respondents in Poland said that they always avoid holding hands in public with a same-sex partner for fear of being assaulted, threatened or harassed. This is the highest figure in all of the EU, with the EU average at 30%. 44% of LGBTI respondents in Poland are never open about their LGBTI status, and a further 29% are rarely open, which is also above the EU average. 44% of LGBTI respondents in Poland reported feeling that, in the past five years, prejudice and intolerance against LGBTI people increased a lot, with a further 24 saying it increased a little. Most respondents believe that the government's efforts to address prejudice and intolerance against LGBTI people are ineffective and that state responses to the safety needs of the LGBTI community are inadequate.<sup>15</sup>

### **Perceptions of anti-LGBTI hate speech**

A report by CBOS on a representative sample of residents of Poland from November 2019 found that nearly 60% of respondents had encountered hate speech, with 64% identifying that it often targeted sexual orientation. The majority (54%) reported encountering such speech on multiple occasions. Homophobic hate speech was most commonly encountered online (65%), followed by television (57%) and public spaces (45%). This highlights the pervasive nature of homophobic expressions in Poland, particularly in digital and media environments.<sup>16</sup>

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<sup>14</sup> Mazurczak and others (n 9).

<sup>15</sup> FRA (n 9).

<sup>16</sup> CBOS, 'Mowa nlenawiści Nr 139/2019 [Hate Speech 139/2019]'.

## 2 Legal gaps and inadequate policy responses

### 2.1 Hate crime laws

The Polish Criminal Code contains an aggravating circumstances provision and substantive provisions on hate crimes and hate speech, but these are limited to the protected characteristics of nationality, ethnicity, “race”, or political or religious beliefs.

More specifically, three articles of the Criminal Code are commonly referred to as “hate crime” provisions, even though the term “hate crime” is not legally defined in Poland. Article 256(1) bans the promotion of totalitarian regimes and the incitement of hatred based on race, national or ethnic origin, or religion. Article 119(1) prohibits the use of violence or threats based on national, ethnic, or racial origin, or political or religious beliefs. Article 257 criminalises violations of personal inviolability and public offences against an individual or group based on national, ethnic, or racial origin, or religious beliefs. The latter two provisions impose higher penalties for racially or religiously motivated crimes compared to other crimes. They also ensure that investigations are conducted *ex officio*, meaning they do not rely on a report or accusation by the victim. Additionally, the recently introduced Article 53(2a)(6) recognises crimes motivated by national, ethnic, racial, political, or religious affiliation as an aggravating circumstance.

Neither the current Criminal Code nor any other regulations require that hate crimes motivated by SOGIESC attract higher penalties. There is no obligation to treat bias based on SOGIESC as an aggravating circumstance when committing a crime, nor is there a requirement to prosecute all SOGIESC hate crimes *ex officio* (i.e., without the need for the victim to initiate proceedings).

As a result, SOGIESC hate crimes are often prosecuted under general criminal provisions. Some of these offences, such as verbal abuse (*zniewaga*) or slight injury (*lekki uszczerbek na zdrowiu*), require the victim to file a private criminal complaint. This places a significant burden on the victim, who must identify the offender, gather evidence, draft a private indictment, and pay a fee to initiate the proceedings. These private prosecutions coincide with some of the most common anti-LGBTI hate crimes reported in surveys and to civil society organisations (see Section 1). This situation creates a barrier to justice for victims, who may find the process too burdensome compared to the potential benefits of reporting the crime. This issue is especially severe for victims of repeated victimisation as well as victims without sufficient legal knowledge or financial resources to press charges against offenders.

Although, in theory, homophobic or transphobic bias may be considered at the sentencing stage according to general sentencing principles, this rarely occurs in practice. The government has used this possibility as an argument against recognising SOGIESC as protected characteristics in hate crime laws. However, leading NGOs report only a handful of cases where courts openly acknowledged homophobia as a bias motive. Even when bias is recognised during sentencing, it is unclear whether it results in a higher penalty compared to cases without bias.

The government has not implemented specific measures to ensure that existing laws are used effectively to recognise and address SOGIESC-based bias during sentencing. The Prosecutor General’s guidelines on prosecuting hate crimes, issued in 2014, focus on crimes motivated by national, ethnic, racial, political, or religious bias, leaving SOGIESC-motivated crimes largely unaddressed. This lack of targeted provisions limits prosecutors’

ability to prioritise and address hate crimes and hate speech against LGBTI individuals effectively.

By not including anti-LGBTI hate crimes within the scope of aggravating circumstances and not providing appropriate investigation and prosecution guidelines, Poland effectively renders homophobic and transphobic bias invisible in legal proceedings. The European Court of Human Rights has established that states must actively investigate and recognise discriminatory motives behind crimes to provide appropriate redress, protect victims, and fulfil their obligations under the European Convention on Human Rights. Failing to do so undermines the principle of equal protection under the law and ignores the specific harm caused by bias-motivated crimes against LGBTI individuals. This omission also contributes to a culture of impunity, signalling that the state does not take SOGIESC-based targeting seriously.<sup>17</sup>

#### **Case study: Homophobic assault by a minor<sup>18</sup>**

On 21 February 2023, a 13-year-old boy attacked a young man who was accompanied by his male partner in front of a public swimming pool in Warsaw. The boy struck the victim on the back of the head with a metal stick and fled the scene. The victim, bleeding from the attack, received first aid from two bystanders, who also called an ambulance. His partner, with the assistance of passers-by, apprehended the juvenile attacker and contacted the police. When questioned about his motive, the young person responded, "Because you are gay." The perpetrator's appearance suggested affiliation with the skinhead movement, as he was dressed in a bomber jacket, military boots, and suspenders. In addition to the stick, police also found a spring knife on him. It later emerged that the victim and his partner had been followed by the attacker and another individual (who fled after the attack) from Praga district to Mokotów district where the attack happened, via tram, including during a transfer at Dreszer Park.

The case involving the 13-year-old was referred to the Family Court, but the outcome was not made public. Although the victim lost consciousness several hours after the attack, a medical evaluation revealed no serious injuries. He chose not to file a private prosecution, explaining to the press, "Nothing like this has ever happened to me. I wouldn't want this boy to end up in a school or educational centre, trapped in a system he might never escape."

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<sup>17</sup> See, e.g., ECtHR, 'MC and AC v. Romania (12060/12)'.

<sup>18</sup> Never Again, 'The Brown Book (2023-2024)'.



*A gay man was bashed in the head with a metal stick by a 13-year-old perpetrator in Warsaw in 2024. Image provided by the victim and shared in the media.*

This case highlights significant gaps in Poland’s legal and policy framework regarding responses to anti-LGBTI violence. Despite the clear homophobic motivation, the absence of anti-LGBTI bias as an aggravating factor in hate crime laws meant that the attack was treated as a common crime. Furthermore, because certain offences like this require private prosecution, the burden fell on the victim to press charges, which he chose not to do. This lack of legal recognition for anti-LGBTI hate crimes leaves many such incidents inadequately addressed, contributing to underreporting and limited access to justice for victims.

## 2.2 Hate speech laws

In contrast to hate crimes, which may be prosecuted as general crimes even if the bias motive is not recognised, most instances of anti-LGBTI hate speech in Poland are not prosecutable. Hate speech is considered protected under freedom of speech unless explicitly banned by law, as in the case of Articles 256(1) and 257, which cover incitement to hatred and verbal abuse with a racist and xenophobic undertone. These offences cannot be applied to anti-LGBTI hate speech. As a result, most anti-LGBTI hate speech, including incitement to hatred, discrimination, and violence, remains unaddressed by law, leaving the LGBTI community without adequate protection or legal recourse.

The absence of legal recognition for anti-LGBTI hate speech means that harmful rhetoric—whether verbal, written, or online—often goes unaddressed by the legal system. This lack of monitoring and response creates an environment in which hate speech is implicitly tolerated, contributing to a wider climate of discrimination and exclusion against the LGBTI community.

### **Case studies**

Recent examples of hate-motivated behaviours that could constitute illegal hate speech under UN and Council of Europe’s standards, documented by the Never Again

Association<sup>19</sup> that are impossible or almost impossible to address using existing criminal law and policy frameworks in Poland include:

**Warsaw, 16 February 2023:** Homophobic stickers containing razor blades were affixed in public areas of Warsaw. These stickers, intended to harm those who tried to remove them, contained homophobic insults targeting the LGBTI community. The combination of hateful language and the potential for physical harm represents a serious threat. Such incidents may be seen as hate speech due to the content that incites hostility, and there is also a clear likelihood of harm, both physically and emotionally, due to the razor blades and the malicious messaging. Similar incidents happened in other towns throughout 2023 and 2024.



*Homophobic stickers with razor blades were discovered in public places in Warsaw in 2024. Machine-translated tweet <https://x.com/majakstasko/status/1758549991784640804>.*

**Wrocław, 16 February 2023:** A graffiti in the Szczepin neighbourhood carried anti-LGBTI messages such as “LGBT is evil” and “LGBT is blasphemy.” While non-violent, these expressions publicly denigrate and incite hostility against the LGBTI community. The content of the speech, when combined with the context of increasing public visibility and the persistence of such graffiti, perpetuates a climate of fear and marginalisation.

**Gdańsk, 1 April 2023:** During a football match, a homophobic banner was prominently displayed, using slurs like “sodomites” and falsely associating LGBTI people with paedophilia. The public nature of the display, paired with the derogatory content and its association with such a high-profile event, significantly increases the extent of the harm.

<sup>19</sup> *ibid.*

Such messages foster discrimination and violence against LGBTI individuals, and the lack of intervention from authorities further aggravates the impact.

## 2.3 Government not delivering on promises to change the law

Despite pledging to address the issue, Poland has consistently failed to amend its hate crime and hate speech laws to ensure equal protection for all groups, including LGBTI individuals.

International bodies, such as UN treaty organisations, the UN Human Rights Council, and the European Commission against Racism and Intolerance (ECRI), have recommended changes to include anti-LGBTI motivation as grounds for hate crimes and hate speech. In 2012, the Polish Government accepted recommendations from the UN Human Rights Council to amend the Criminal Code by recognising sexual orientation and other protected characteristics in hate crime laws, but it failed to deliver on this commitment.

In 2023, the government coalition agreement proposed recognising hate crime and hate speech against LGBTI people.<sup>20</sup> Following this, the Ministry of Justice published a draft amendment to the Criminal Code in March 2024, similar to previous bills submitted in prior years. The proposal was made available for public consultation in April 2024.<sup>21</sup>

The Centre for Hate Studies, along with Polish civil society organisations and other experts, criticised the draft amendments for not ensuring the effective prosecution of hate crimes and hate speech. While the amendments would expand protections to groups such as those targeted based on sexual orientation, gender identity, disability, and age, the experts argued that enforcement would remain ineffective. The Centre for Hate Studies argued that current mechanisms for addressing racist and xenophobic hate crimes are insufficient, and similar outcomes are expected for these newly included categories.

The critique also recommended introducing a statutory definition of hate crimes that includes crimes committed by association, presumption, and mixed motivations. It called for proportional punishment, making all hate crimes prosecutable *ex officio* (by public prosecution), and incorporating restorative justice mechanisms.

Additionally, the draft amendments do not align with international standards or recommendations from the Council of Europe and the European Commission, potentially requiring further reforms to ensure Polish legislation complies with EU and international requirements.

In May 2024, the Government published its response to the consultation, dismissing most concerns raised by civil society, including those from the Centre for Hate Studies. Since then, progress on the draft amendments has stalled.

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<sup>20</sup> <https://platforma.org/upload/document/203/attachments/433/UmowaKoalicyjna.pdf>

<sup>21</sup> <https://legislacja.rcl.gov.pl/projekt/12383506/katalog/13048131#13048131>

## 3 Law enforcement, criminal justice, and victim support practice

### 3.1 Law enforcement and criminal justice system

Poland was one of the first countries to participate in ODIHR's hate crime training programmes for police, leading to thousands of officers being trained. Alongside that, many prosecutors have also received hate crime training. However, neither the law enforcement nor prosecutor training programmes have undergone formal evaluation, leaving it unclear how effective they are in raising awareness of hate crimes or sensitising officers to the needs of LGBTI victims. An analysis of training curricula from the National School for Judges and Prosecutors suggests that the focus remains predominantly on racist and xenophobic crimes, particularly hate speech, with insufficient attention given to other bias motivations, such as those related to SOGIESC.<sup>22</sup>

Each regional police headquarters has a hate crime coordinator responsible for collecting hate crime data, but this role is added to their regular duties, which may include investigating such crimes. With only 17 coordinators across the country, they are insufficiently resourced to manage the hundreds of hate crimes reported annually, most of which involve racist or xenophobic bias. As a result, victims of anti-LGBTI hate crimes, if they do report, would typically encounter officers with little or no training on hate crimes or experience with LGBTI issues.

In the prosecution service, specially designated prosecutors handle hate crimes, but the official prosecutorial guidelines only cover racist and xenophobic crimes, which contributes to systemic neglect of LGBTI-related incidents at both the investigation and legal proceedings stages.

LGBTI victims frequently report negative experiences when interacting with the police, which is a key factor in underreporting hate crimes.<sup>23</sup> According to the most recent LGBTI survey by the EU Fundamental Rights Agency, 84% of respondents from Poland did not report the most recent experience of physical or sexual assault. The primary reasons for not reporting include a belief that the police would not or could not take action (38%), a lack of trust in the police (36%), and fear of a homophobic or transphobic reaction from the police (36%).<sup>24</sup>

Of the small number of anti-LGBTI hate crimes that are reported, only a fraction make it to court. In the HateNoMore survey, published in 2016, less than one in four cases (23.8%) reported to the police were referred to court. The research found that the homophobic or transphobic motivation of perpetrators is often overlooked at various stages of the justice process, from the initial police report to the court's justification for its judgments, even in cases where convictions are secured.<sup>25</sup>

This systemic failure denies LGBTI victims equal access to justice. Navigating the legal system successfully requires victims to have substantial resources—both personal and

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<sup>22</sup> Responses to FOI requests from the National School for Judges and Prosecutors KSSIP, 'List [Letter]' (20 July 2017); KSSIP, 'List [Letter]' (14 July 2021).

<sup>23</sup> Paulina Górska and others, *Raport o Polsce [Report on Poland]* (KPH 2016).

<sup>24</sup> FRA (n 9).

<sup>25</sup> Górska and others (n 23).

external—such as legal representation and emotional support. The HateNoMore study found that courts often appear to downplay the prejudicial nature of crimes, which frustrates victims.<sup>26</sup> NGOs, such as Campaign Against Homophobia (KPH), have observed that judges minimise or ignore the anti-LGBTI motives of crimes. This was, specifically, the case in an anti-gay street assault referred to the European Court of Human Rights as *Bednarek and others v. Poland* (58207/14),<sup>27</sup> currently pending at the ECtHR.

#### **Case study: Bednarek and others v. Poland**

The applicants, two Polish nationals, Stanisław Bednarek and Dawid Durejko, along with Ukrainian national Vyacheslav Melnyk (Bednarek's partner), were assaulted in Warsaw on 1 January 2013. The attack occurred while the couple were holding hands, and it involved physical violence and verbal homophobic abuse by three assailants, Pi.M., Pa.M., and A.M. Despite clear homophobic elements to the attack, the court convicted the attackers of battery and threats but did not find that the crime was motivated by homophobia. The attackers were sentenced to one year in prison (suspended for three years) and fined PLN 100 for each applicant.

The applicants filed a complaint with the European Court of Human Rights, arguing that Polish authorities failed to properly investigate and prosecute the case as homophobic violence. They claimed violations of Articles 3, 6, 13, and 14 of the European Convention on Human Rights, stating that the authorities had not recognised the homophobic motivation behind the attack and that Poland lacked adequate legal measures to combat hate crimes based on sexual orientation. Additionally, they argued that the fines and suspended sentences were disproportionately lenient.

According to the casefile, the domestic courts acknowledged the homophobic nature of the insults but concluded that the violence itself was not primarily motivated by homophobia, but rather an urge to teach the applicants a lesson for the comment which one of them had made. The applicants' complaint centres on this failure to treat the case as a hate crime motivated by sexual orientation.

One key issue is that police and prosecutors are reluctant to investigate potential SOGIESC-based bias during preliminary proceedings. They may view it as legally irrelevant or be concerned about infringing on the victim's privacy due to Poland's strict data protection laws. If the victim or their lawyer does not emphasise the bias motivation, it is unlikely to appear in the police report or bill of indictment. Additionally, at the sentencing level, there is evidence suggesting that some judges may be prejudiced towards LGBTI people or that they do not understand that prejudice based on SOGIESC may be a reason to assault someone, or that it may be seen as an aggravating circumstance.<sup>28</sup>

Relations between the LGBTI community and law enforcement have worsened in recent years, particularly following the rise of anti-LGBTI campaigns in 2018 and violent clashes with the police. A notable example occurred in 2020 when police violently dispersed a crowd protesting the arrest of non-binary activist Margot Szutowicz, detaining over 40 people. According to the National Mechanism for the Prevention of Torture, several detainees

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<sup>26</sup> *ibid.*

<sup>27</sup> <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-208500%22%5D%7D>

<sup>28</sup> Piotr Godzisz and Marta Rawluszko, 'Responding to Anti-LGBT Hate Crimes in Poland: One Step Forward, Two Steps Back?' in Piotr Godzisz and Giacomo Viggiani (eds), *Running Through Hurdles: Obstacles in the Access to Justice for Victims of Anti-LGBTI Hate Crimes* (Lambda Warsaw 2018) 228.



reported mistreatment, including being forced to undress for police searches, sometimes repeatedly, and a transgender woman was searched by a male officer despite declaring her gender. The National Mechanism for the Prevention of Torture concluded that these actions constituted humiliating and, in some cases, inhuman treatment.<sup>29</sup>

Despite these incidents, Polish authorities have not taken steps to improve relations with the LGBTI community. According to the European Commissioner for Human Rights, “[t]he Chief of Police did not consider that there was distrust between the police and members of the LGBTI community.”<sup>30</sup> No outreach campaigns have been conducted by public institutions to encourage LGBTI people to report hate crimes. LGBTI NGOs have attempted such campaigns, but their efforts are limited by funding and resources. More must be done by public authorities to increase the number of reported cases and improve access to justice for LGBTI individuals. Research on the level of trust in the police among different community groups, including LGBTI individuals, could help shed light on these issues, but no such studies have been commissioned.

### 3.2 Victim support

The issue of violence and hate speech directed against LGBTI individuals in Poland is compounded by the absence of comprehensive victim support systems that are both hate crime-informed and LGBTI-sensitive. While general support services exist for crime victims, they do not adequately address the specific needs of LGBTI individuals, particularly those who are victims of hate crimes.

Current legal regulations in Poland do not require police to refer victims of SOGIESC hate crimes to specialised support providers. There are no state-funded victim support services with training and experience to help SOGIESC hate crime victims.

This shortfall reflects broader systemic issues in Poland, where hate crimes and speech against LGBTI individuals are under-recognised and poorly addressed, as mentioned above. A critical factor contributing to the inadequacies in victim support for LGBTI people is the limited recognition of SOGIESC hate crimes and hate speech in Poland. This omission restricts the capacity to develop a hate crime-informed approach to supporting victims. Without legal recognition of hate violence targeting LGBTI individuals, the system fails to offer tailored legal, psychological, and emotional assistance that would address the specific harms these victims endure.

The absence of LGBTI-sensitive victim support services is a major gap in Poland’s victim support system. Victims of violence or hate crimes often encounter services that are not equipped to address their specific needs as LGBTI individuals. This includes a lack of personnel trained in providing LGBTI-sensitive psychological support or legal assistance, which can lead to further trauma during the help-seeking process. This has to be considered together with evidence that shows that LGBTI victims of violence often experience

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<sup>29</sup> RPO, ‘Nie Tylko Poniżające Traktowanie... Końcowy Raport KMPT o Zatrzymaniach 7 Sierpnia w Warszawie. Są Konkretnie Zalecenia Dla MSWiA i Policji [Not Only Degrading Treatment... Final Report of the NMPT on the Arrests on August 7 in Warsaw. There Are Specific Recommendations for the Ministry of Interior and Administration and the Police]’ <<https://bip.brpo.gov.pl/pl/content/nie-tylko-ponizajace-traktowanie-koncowy-raport-kmpt-o-zatrzymaniach-7-sierpnia-w-warszawie>> accessed 9 September 2024.

<sup>30</sup> Commissioner for Human Rights, ‘Memorandum on the Stigmatisation of LGBTI People in Poland’ <<https://rm.coe.int/memorandum-on-the-stigmatisation-of-lgbti-people-in-poland/1680a08b8e>> accessed 10 November 2021.

discriminatory attitudes when dealing with law enforcement or other public services, as highlighted in the previous section. Insensitive questioning, coupled with a general lack of understanding of the issues facing LGBTI individuals, deters victims from seeking support. A lack of state-provided LGBTI-specific shelters and counselling services further exacerbates the problem. As a result, many LGBTI victims of hate are left without access to safe spaces where they can receive the understanding and support they need.

Given the inadequacies in state-provided support, civil society organisations have stepped in to fill the gap. NGOs like, for example, Lambda Warsaw<sup>31</sup> offer vital services such as hotlines, counselling, and legal support for LGBTI victims of violence. These organisations also play an essential role in advocating for LGBTI rights and pushing for legal reforms that would result in more inclusive victim support systems. However, relying only on NGOs is not a sustainable solution. Many of these organisations operate on limited resources, often depending on volunteers, and face political hostility. NGOs supporting LGBTI people and rights advancement in Poland have reported funding cuts and bureaucratic restrictions due to a political climate often antagonistic toward LGBTI issues. This limits the reach and effectiveness of these civil society groups, leaving significant portions of the LGBTI population without access to support.

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<sup>31</sup> Lambda Warsaw. (2024). Wsparcie [Support]. Available from: <https://lambdawarszawa.org/> [Accessed 13/10/2024]

## **4 Recommendations for the Polish Government**

### **Recommendations for improving data collection**

1. Introduce legal provisions in the Criminal Code that explicitly recognise sexual orientation, gender identity, gender expression, and sex characteristics as protected characteristics for hate crimes and hate speech. This would ensure more comprehensive data collection by enabling the proper recording and prosecution of anti-LGBTI hate crimes.
2. Implement a shared definition of hate crimes between the police, prosecution services, and judiciary to ensure consistent tracking of SOGIESC-motivated hate crimes. This should include mandatory recording of bias motivations at all stages of the criminal justice process, ensuring uniform data collection across institutions.
3. Make police and criminal justice data on anti-LGBTI hate crimes publicly available, providing accurate and comprehensive statistics, thus allowing for better tracking of trends in anti-LGBTI violence.

### **Recommendations for improving the legal and policy framework**

4. Amend the Criminal Code to include SOGIESC as protected characteristics for hate crimes, ensuring that homophobic and transphobic violence is investigated, prosecuted, and sentenced on par with racist and xenophobic hate crimes.
5. Amend the Criminal Code to criminalise hate speech targeting LGBTI individuals, including incitement to hatred, discrimination, and violence.
6. Require that homophobic and transphobic motivations be treated as aggravating circumstances in sentencing, leading to stricter penalties for offenders.
7. Ensure that all hate crimes motivated by SOGIESC are prosecuted ex officio without requiring the victim to file a private complaint.
8. Amend prosecutorial guidelines to explicitly cover SOGIESC-based hate crimes, ensuring that these crimes are thoroughly investigated and prosecuted.
9. Incorporate restorative justice practices into the legal framework for hate crimes, allowing for mediation and resolution between victims and offenders where appropriate.

### **Recommendations for improving law enforcement, judiciary, and victim support practices**

10. Ensure that training curricula for police, prosecutors, and judges effectively cover LGBTI-related issues, including the identification of anti-LGBTI hate crimes and hate speech, as well as support for victims. Regular reviews and evaluations of the content and delivery of these trainings should be conducted.
11. Support civil society organisations with funding and resources to provide essential services and advocacy for LGBTI victims. Ensure that state-funded victim support services are tailored to the specific needs of LGBTI hate crime victims, including legal and psychological assistance.
12. Partner with civil society organisations to run nationwide campaigns encouraging victims of SOGIESC hate crimes to come forward safely. These campaigns should

aim to rebuild trust between the LGBTI community and law enforcement, specifically addressing fears of discrimination and further victimisation when reporting crimes.

## **5 About the Centre for Hate Studies**

The Centre for Hate Studies (CHS) is a leading research centre based at the University of Leicester in the United Kingdom. It focuses on the study of hate, prejudice, and targeted hostility across various social and political contexts. The CHS engages in cutting-edge research and works with policymakers, public sector agencies, and civil society to develop evidence-based approaches to understanding and tackling hate crimes. The Centre's work spans a wide range of topics, including hate crime legislation, policing and monitoring hate crime, extremism, victim support, the impacts of hate crimes on communities, and interventions that promote tolerance and social cohesion. The Centre often collaborates with international organisations and other academic institutions to address issues related to hate and extremism on a global scale. It also provides training, resources, and consultancy services to enhance the capabilities of professionals working in areas such as law enforcement, education, and community safety, ensuring that these stakeholders are better equipped to respond to hate-related incidents.



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