





## SUBMISSION TO THE UNIVERSAL PERIODIC REVIEW (FOURTH CYCLE) POLAND

### OTHER STAKEHOLDERS REPORT

Joint submission of Polish civil society representing lesbian, gay, bisexual and transgender persons (LGBT) consisting of 7 Polish non-governmental organizations.

Name of organization + logo	Address + website	Date of establishment	Region	Description
<p><u>Main submitting organisation:</u></p> <p>Kampania Przeciw Homofobii - KPH            (Campaign Against Homophobia)</p>  <p><b>kampania przeciw homofobii</b></p>	<p>Aleje Jerozolimskie            99/40            02-001 Warsaw            Poland</p> <p><a href="https://kph.org.pl/">https://kph.org.pl/</a></p>	2001	Poland: countrywide	<p>Campaign Against Homophobia is an organization focused on counteracting violence and discrimination on the grounds of sexual orientation, gender identity, sex characteristics and gender expression. The organisation supports LGBTIQ+ persons and their relatives through political, social, and legal advocacy work, developing educational programs, and building alliances for the promotion of LGBTIQ+ civil and human rights.</p>
<p>Federation Signs of Equality</p>	<p>ul. Czyżówka 43            30-526 Kraków            Poland</p> <p><a href="https://znakirownosci.org.pl/signs-of-equality">https://znakirownosci.org.pl/signs-of-equality</a></p>	2016	Poland: Małopolska (the Lesser Poland region), Silesia	<p>First Polish federation which brings together ten organisations that work for the LGBTQ+ community. The member organisations run various initiatives, from sport and health-related ones, through legal representation and assistance, to cultural and artistic events. Since June 2019, Signs of Equality also runs the first LGBTQ+ Community Centre DOM EQ in Cracow - a safe space which is accessible, inclusive and open both for LGBTQ+ people and for their current and future allies. Signs of Equality provides legal aid, psychological support, support groups (f. ex. for parents, transgender people, women, foreigners, young people) and community building activities.</p>

<p>Trans-Fuzja Foundation</p>	<p>Ul. Noakowskiego 10/66 00-666 Warsaw Poland</p> <p><a href="https://www.transfuzja.org/strona-glowna">https://www.transfuzja.org/strona-glowna</a></p>	<p>2008</p>	<p>Poland: countrywide</p>	<p>Trans-Fuzja Foundation is the first trans organisation in Poland. Trans-Fuzja was founded in 2008 with a goal of supporting transgender (including non-binary and gender-nonconforming) people in Poland and improving their social situation, legal and living conditions.</p> <p>Four main areas of the Foundation's work are advocacy at national and international level, support activities (counselling, support groups and consultations, social support and legal aid), education, research and promoting the culture.</p>
<p>Miłość Nie Wyklucza (Love Does Not Exclude)</p>  <p>miłość nie wyklucza STOWARZYSZENIE</p>	<p>Ul. Wspólna 61/102, 00-687 Warszawa</p> <p><a href="https://mnw.org/pl/">https://mnw.org/pl/</a></p>	<p>2009</p>	<p>Poland: countrywide</p>	<p>Love Does Not Exclude Association — Stowarzyszenie Miłość Nie Wyklucza - is a national non-governmental organisation committed to introducing marriage equality in Poland. Our goal is to ensure the right to marry for all, regardless of their sexual orientation and gender identity.</p>
<p>LAMBDA WARSZAWA</p> 	<p>Ul. Żurawia 24a/4 00-515 Warsaw Poland</p> <p><a href="http://lambdawarszawa.org/">http://lambdawarszawa.org/</a></p>	<p>1997</p>	<p>Poland: countrywide</p>	<p>Lambda Warszawa has been active in supporting and creating a space necessary to create a positive identity of the LGBTQI+ community in Poland since 1997. Its mission is to offer independent, professional and expert support in crisis. Lambda Warszawa runs wide-scale assistance activities, supporting persons who have been going through hardships due to their sexual orientation and gender identity as well as those experiencing violence and discrimination on this basis and who need professional support. Lambda Warszawa also carries out activities aiming at supporting organisations, public institutions and companies to implement equality policies, performs antidiscrimination trainings and workshops, as well as takes part in LGBTQI+ community events.</p>

<p>Stowarzyszenie na rzecz osób LGBT Tolerado</p>	<p>Ul. Miszewskiego 17/105, 80-239 Gdańsk</p> <p><a href="https://tolerado.org/">https://tolerado.org/</a></p>	<p>2012</p>	<p>Poland: Pomerania, countrywide</p>	<p>Tolerado is a Polish non-governmental organisation which focuses its activities on supporting LGBT+ people harmed by systemic homophobia, offering them legal and psychological support. An important part of its efforts is advocacy work at the local government level by working together with officials and other NGOs to develop municipal policies, standards of conduct and good anti discriminatory practices. Since 2019, Tolerado has been pursuing legal cases against organisers of homophobic actions targeting the LGBT+ community.</p>
<p>Helsinki Fundacja Praw Człowieka, Helsinki Foundation for Human Rights (HFHR)</p> 	<p>Wiejska 16 00-490 Warsaw Poland</p> <p><a href="http://www.hfhr.pl/en">www.hfhr.pl/en</a></p>	<p>1989</p>	<p>Poland: countrywide</p>	<p>Helsinki Foundation for Human Rights (HFHR) is a non-governmental organisation established in 1989 and based in Warsaw, Poland. HFHR is one of the largest and most experienced non-governmental organisations operating in the field of human rights in Eastern and Central Europe. Since 2007, HFHR has a consultative status with the United Nations Economic and Social Council (ECOSOC). HFHR's objective is the protection and promotion of human rights.</p>

### **Executive summary:**

This joint submission covers the issue of protection from discrimination based on sexual orientation, gender identity, sex characteristics and gender expression in Poland in the years 2017-2022 in areas of equality and non-discrimination, rule of law crisis impacting human rights of LGBT+ people, fundamental freedom and the right to participate in public and political life, as well as a right to private/family life. The Polish civil society submitting this report would like to highlight that the level of non-equality and discrimination has significantly increased in Poland during the review period. In addition, there are pieces of evidence showing that the human rights protection system has been undermined and challenged by public authorities at different levels, leading to a significant deterioration in protection of LGBT+ community rights and freedoms.

### **I. Equality and non-discrimination**

## 1.1. Follow-up to recommendations made to Poland during the previous cycle of UPR in 2016.

Poland received 8 recommendations to amend the legislation in order to criminalise hate crimes against LGBT+ persons (i.a. recommendations 120.43, 120.44, 120.45, 120.46, 120.58, 120.72, 120.73, 120.74) and 2 general anti-discriminatory recommendations related to LGBT+ community (120.50.2, 120.71).

Despite the fact that all of the above mentioned recommendations related to ensuring legal protection from discrimination, hate speech and hate crimes motivated by homophobia and transphobia have been supported by Polish government, none of them have been implemented. Moreover, a regressive trend towards a further dismantling of legal protection of LGBT+ people has been observed.

The Polish legal system (incl. penal code and anti-discrimination law) does not ensure an effective protection from discrimination, hate speech and hate crimes motivated by homophobia and transphobia. Penal Code penalises hate speech and hate crime (art. 119, art. 256 §1 and art.257 of the Penal Code), however only on the grounds of nationality, ethnic, racial and religious beliefs or lack of religious beliefs. Recommendations regarding strengthening legal protection from discrimination have still not been implemented. The Act of December 3rd 2010 on the implementation of certain provisions of European Union law related to equal treatment - so-called antidiscrimination bill - does not protect from discrimination on grounds of sexual orientation and gender identity in access to education, higher education, goods and services, health care, housing and social security.

In addition the Polish Constitutional Court has delivered in 2019 a [judgement](#) (K16/17) which has undermined the protection against discrimination in equal access to services by finding part of art. 138 of Petty Offences' Code as unconstitutional.

In this context, it is also important to underline that during the current review period the representatives of government, high officials of the ruling party and other public figures were regularly using hate speech as a tool in their political campaigns and public discourse in order to maintain power. This - in turn - has influenced the systemic growth of homo and transphobic sentiments in Polish society.

## 1.2. State-sponsored homo and transphobia

The anti-LGBT+ hate campaign has been initiated by the leader of the ruling Law and Justice party (PiS) Jarosław Kaczyński on April 17th, 2018 when he announced during the local elections campaign, that "no homosexual marriages will occur; we will wait peacefully for the European Union countries to sober up". According to the Helsinki Foundation for Human Rights [report](#), the issue of LGBT+ was the most polarising subject of the public debate during the election time in 2019. Moreover, the anti LGBT+ campaign has increased with the involvement of public authorities (e.g. Ministry of Education, Ministry of Justice), representatives of Catholic Church (Polish Episcopate), as well as public TV and right-wing journalists and since then it remains a serious issue. On July 17th 2019, a distribution of free stickers bearing the text "LGBT-free Zone" was announced by countrywide weekly

newspaper *Gazeta Polska* which planned to attach the sticker to the next issue of the magazine. On October 10th 2019 a documentary was aired on public TV ahead of the Sunday election, entitled “LGBT Invasion”. The documentary presented highly discriminatory content and claimed that LGBT+ organizations and volunteers are paid by foreign NGOs thus making of them “foreign agents”.

In 2020 the Ministry of Justice [sponsored](#) articles in the weekly paper *Do Rzeczy*, stating that LGBT+ rights movements are like Soviet-era communism. A few weeks later, President Andrzej Duda [said](#) that “the LGBT ideology” was more destructive than communism and the chief of his presidential campaign - Joachim Brudziński - [stated on Twitter](#) that “Poland is the most beautiful without LGBT”. Archbishop Marek Jędraszewski from Cracow made similar statements and warned of the “rainbow plague”.

Only in 2021: the Deputy Minister of Justice Michał Romanowski, [called](#) the wedding ceremony of a gay couple in Bydgoszcz “clownery” that should be stopped; in April, chairman of PiS Jarosław Kaczyński said in an interview that Poland “must resist LGBT ideas” that are “weakening the West” and “against all common sense”; in June, the Minister of Education and Science Przemysław Czarnek [called](#) the Rainbow Pride an “offence to morality” and said it “will not be accepted as it is not in Hungary and other civilised countries”, referring to human rights as “idiocy” in another occasion. Minister Czarnek also [stated](#) that Poland should follow in Hungary’s footsteps and “should copy these regulations on Polish soil in their entirety!”. He also [added](#) that “satisfying sexual desire in a way different from the accepted norm is called perversion and deviation”. In September 2021, Minister of Justice Zbigniew Ziobro [called](#) the infringement procedure launched by the European Commission “blackmail” and “economic terrorism”.

At the beginning of 2022, an email leak from the high government officials [confirmed](#) that the state-sponsored hate campaign was well-thought and the government was intentionally and actively inciting hate and antagonism towards LGBT+ community, going as far as recruiting celebrities eager to participate in anti-LGBT public campaign.

The incumbent Plenipotentiary for Equal Treatment, Anna Schmidt, since her appointment for this position has not taken any actions to protect or support LGBT+ community. On the contrary, she voted in the Polish Parliament in favour of new homophobic legislation known under the name “STOP LGBT”. The Plenipotentiary cannot be seen as an independent, reliable and trustful national human rights institution for the LGBT+ community to seek help and justice.

### **1.3. Rise of anti-LGBT sentiments among Polish society**

Hateful rethorics spread by Polish officials resonates with a growing acceptance for discrimination and violations of human rights of LGBT+ persons resulting in a rise of bias-motivated hate speech and violence. Only in 2021, several hate crimes have been committed.

In February 2021, a gay couple holding hands [was attacked](#) in Warsaw: the aggressor stabbed one of them with a knife shouting “don’t do this in front of the kids!”. In March 2021, an LGBT+ sports team was attacked in Gdansk by a violent group. Two people were

hospitalised. On the Independence Day on 11th of November 2021, two flats with rainbow flags in their windows [were attacked](#) - one with an air gun and one with a brick. One person was injured. At the nationalist Independence March on the same day, rainbow flags were put in a fire and some of the March participants carried homophobic banners (same as in 2020).

KPH's last year report highlighted that the rate of physical violence increased since 2017 (despite lockdowns in 2020 and 2021) and that only 2.5% of hate crimes victims reported the incident to the police<sup>1</sup>. The results of a survey<sup>2</sup> published in November 2020 by Fundacja Równość.org.pl, show that LGBT+-phobic attacks have increased in the last six months in the city of Krakow, with 61% of surveyed LGBT+ people experiencing verbal violence.

Trucks with homophobic banners and audio slogans comparing homosexuality to pedophilia have begun driving in public spaces since 2019 as a part of a countrywide campaign. Whereas in some cases trucks have been stopped by LGBT+ activists and their allies, in other instances the trucks were protected by the police. In 2020, a court in Wrocław ruled that this campaign was protected by freedom of speech, and was "informative and educational".

#### **1.4. Recommendations:**

1. In the upcoming two years - to amend the Criminal Code modifying the art. 119 § 1, 256 § 1 and art. 257 by adding sexual orientation and gender identity as protected grounds of discrimination.
2. Properly investigate and prosecute hate crimes/hate speech motivated by discrimination on the grounds of sexual orientation, gender identity and sex characteristics by the police and prosecutor's office.
3. To amend the Act on Equal Treatment to prohibit discrimination comprehensively including sexual orientation, gender identity and sex characteristics in all spheres and sectors, including education, health care, social protection and housing.
4. To immediately refrain from smear campaigns and other forms of harassment against LGBT+ community, representatives of civil society, journalists and judges, especially in the context of upcoming Parliament and local elections next year.
5. For the Plenipotentiary for Equal Treatment to take actions in order to protect and represent the LGBT+ community.

## **II. Rule of law crisis impacting human rights of LGBT+ people.**

### **2.1. Follow-up on recommendations made to Poland during the previous cycle of UPR in 2016:**

In the previous UPR cycle Poland received six recommendations related to the justice system and rule of law (i.a. recommendations no. 120.88, 120.94, 120.98, 120.99, 120.100, 120.101). Despite the fact that all of them were supported by the government, none of them

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<sup>1</sup> Campaign Against Homophobia, Centre for Research on Prejudice at the University of Warsaw and Lambda Warszawa: "The social situation of LGBT+ people in Poland in the years 2019-2020", available at: [https://kph.org.pl/wp-content/uploads/2021/12/Raport\\_Duzy\\_Digital-1.pdf](https://kph.org.pl/wp-content/uploads/2021/12/Raport_Duzy_Digital-1.pdf)

<sup>2</sup> Fundacja Równość.org.pl, "Dyskryminowani/e. Sytuacja osób LGBTQIA w Krakowie", 2020, available at: <https://rownosc.org.pl/ponad-63-osob-lgbtqia-w-krakowie-doswiadczylo-dyskryminacji-wyniki-pierwszego-badania-sytuacji-osob-lgbtqia/>

have been implemented. Further backsliding of the rule of law in Poland takes place. Systemic violations of the rule of law have directly affected the human rights of LGBT+ people and their defenders. LGBT+ community has been regularly under attack by the government and law enforcement officials, in line with the ruling party's agenda. Poland systematically refuses to comply with judgments of the ECtHR and CJEU, including landmark rulings on human rights of LGBT+ persons.

## 2.2. Interference in the judicial process

The Ministry for Justice has been interfering with court cases related to LGBT+ people and used his position of power, as well as new legal instruments introduced during this review period to influence the court decisions. On March 2nd 2021, three activists, facing trial for 'offending religious feelings' for painting a rainbow halo over an image of the Virgin Mary in 2019, were dismissed of charges by Judge Agnieszka Warchoń (see more under 3.3. *Freedom of expression*). However, an appeal was launched against the judgement by the prosecutor's office, and the defendants were acquitted on January 12th 2022. Despite this verdict being final, the prosecutor's office has announced the intent to use the cassation appeal.

In April 2021, Zbigniew Ziobro filed an extraordinary complaint<sup>3</sup> to the Supreme Court's Chamber of Extraordinary Control and Public Affairs (one of the new chambers of the Supreme Court created in 2018 and composed by judges appointed by the NCJ, a politically captured organ that does not meet the criteria of independence) regarding another court ruling from 2020 that established discrimination on grounds of gender identity in the case of a trans woman, Joanna Żelek. Miss Żelek interpreted the appeal as a politically motivated act to discourage people from fighting injustice. It is important to highlight, that in case *Dolińska-Ficek and Ozimek v. Poland* ([49868/19 and 57511/19](#)), the ECtHR has confirmed breaches in appointment of judges to the above Supreme Court's Chamber of Extraordinary Control and Public Affairs due to lack of independence of National Council of the Judiciary from legislature and executive.

In a judgement released on September 16th 2021 on the case of *X. v Poland*, the European Court of Human Rights found that refusing a mother custody of her child because of her sexual orientation is discriminatory and violates her right to private life. Minister for Justice Zbigniew Ziobro acting as the Prosecutor General requested the revocation of parental rights of the trans man.

Deputy Justice Minister Marcin Romanowski, frequently publicly announces his disagreement with court decisions involving LGBT+ topics. For example, in October 2021 he publicly stated that the Supreme Administrative Court's decisions to request a review of resolutions against LGBT ideology issued by regional governments (see more under 3.2. *So-called "LGBT-free zones"*) are politically motivated, and that such declarations „oppose the absurd, inhuman, irrational neo-Marxist ideology brought from the West”. He also publicly opposed the verdict of the Court of Ostrołęka in January 2022 which dismissed the LGBT+ activists - authors of [Atlas of Hate](#) from one of the SLAPP trials, saying that the court was being „ideological”. Minister Romanowski also publicly attacked the verdict of a German court from August 2021 which fined a Polish theologian for homophobia and incitement to

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<sup>3</sup> The extraordinary complaint is a legal instrument introduced in December 2017 which allows a limited group of public authorities (e.g. Prosecutor General) to appeal any final court verdict at any time.

hatred.

### **2.3. Obstruction of access to justice for LGBT+ people**

On August 7th the District Court in Warsaw announced an arrest warrant for a queer activist, Margot Szutowicz, accused of damaging a truck with anti-abortion banners. Many people gathered in front of Campaign Against Homophobia's office in Warsaw where the activist was at that time and later demonstrated on the streets of the capital city in her defence. In the end Margot was arrested in Krakowskie Przedmieście near the Warsaw Old Town and locked in an unmarked police car. As a response, people sat around it, trying to block its way out. Events of August 7-8th known as "Rainbow Night" resulted in violent arrests of nearly 50 of LGBT+ protestors.

On January 27th 2022, during a court hearing of a person who was illegally and unjustifiably detained during that time, a police officer testified that police had been given the order to "detain all LGBT-labelled people, regardless of how they behaved", proving a politicised motivation of the arrests and the breach of LGBT+ people rights to public assemble. The Polish Ombudsman published a [report](#) after investigating the arrests of August 7-8th 2020, which identified degrading treatment, bordering on inhumane treatment in some cases.

Investigations of anti-LGBT hate crime cases is frequently insufficient in Poland, often related to bias among the police and prosecutor's office. For example, in 2021 the prosecution refused to investigate a case of homophobia in which an off-duty policeman pushed an old woman on the main street in Warsaw, while the policeman's son spat on that lady for holding a rainbow flag. In addition the prosecutor's office dropped the investigation into a homophobic attack which took place in Gdansk in March 2021 and lead to two people being hospitalised. In May 2021, a police handbook from Legionowo Police School was found pathologising LGBT+ community and lists them alongside drug addiction.

The former Ombudsman, Adam Bodnar, filed 9 complaints to different Regional Administrative Courts about the anti-LGBT resolutions and Family Charters adopted by Polish regional governments (see more under *3.2. So-called "LGBT-free zones"*). Some courts refused to take any actions on those cases, and so Bodnar turned to the Supreme Court which, in every case, ordered the regional courts to further examine the cases. The fact that the refusal of the regional courts to initiate cases on this topic is not an isolated issue, but has happened repeatedly, shows the systemic nature of the obstruction of access to justice for LGBT+ people. If we bring this together with the aforementioned examples of political interference in the judicial process regarding LGBT+ cases, this situation is compounded even further.

### **2.4. LGBT+ human rights defenders targeted with Strategic Lawsuits Against Public Participation (SLAPP)**

The use of SLAPPs against LGBT+ people and activists has become increasingly common in Poland. For example, the authors of the Atlas of Hate, an online map launched in 2019 that tracks which municipalities have adopted anti-LGBT resolutions, are facing 7 court cases. The regional authorities (municipals) represented by far-right organisation Ordo Iuris have accused the LGBT+ activists of infringement of personal rights of those municipalities as well as claimed reputational damages. So far Atlas of Hate won its first case in December



2021.

Activist Bart Staszewski, who conducted the photo action “LGBT-free zones in Poland”, which consisted of placing a board with the multilingual inscription “LGBT-free zone” under the official road signs with the name of the city which adopted anti-LGBT resolutions and later publishing photos with such signs in his social media, has faced more than 20 police investigations related to road traffic offenses (including misuse of road signs and misdemeanour for placing a sign in a place not intended for it). Up to the submission date, 4 of such cases ended up in court, where Bart Staszewski won 3 of them and one was dismissed. Despite the above, he currently faces 3 court cases (for infringement of personal rights) from municipalities represented by the Polish League against Defamation and another case from right-wing website Życie Stolicy represented by Ordo Iuris. In November 2021, UN Special Rapporteurs wrote about his cases to the Polish government. In all of these cases the activist is charged with defamation for sharing facts about the organisations and participation in public life, and is still waiting for the trials to start.

Activist Linus Lewandowski has also been targeted with SLAPPs. He has faced 23 offence cases from 2020-2021 for his active participation in protests related to LGBT+ rights, women’s rights, democracy and rule of law (e.g. protest against the Disciplinary Chamber of the Supreme Court). 9 cases have been dismissed by the courts, one case found him guilty without fine, one case he won, and there are 11 cases still pending (in one case the police lost the files). He considers the actions of the public authorities such as police and prosecutor’s office to be repression related to his activism. Linus and other street protestors who are frequently arrested and/or charged for taking part in demonstrations, have filed a complaint to the International Criminal Tribunal in the Hague arguing there is systemic misuse of criminal law to suppress protests.

Given the high costs, professional and personal burdens related to the above cases, and the fact that so far none of the activists have been sentenced for their activities related to defending human rights of LGBT+ people, it shall be concluded that such cases are designed to silence, intimidate and stop LGBT+ activists and community from pursuing their activism, and fight for human rights and equality.

## 2.5.

### Recommendations:

We recommend the Polish government to:

1. Immediately implement CJEU and ECtHR rulings, especially in the areas concerning human rights of LGBT+ people.
2. Immediately implement all decisions of the CJEU and ECtHR, including in relation to the functioning of the judiciary system in Poland, especially when it comes to suspending the activities of the Disciplinary Chamber of the Supreme Court as well as Chamber of Extraordinary Control and Public Affairs and restoring full independence to the National Council of the Judiciary.
3. Immediately take legislative actions to reintroduce in the Polish legal system basic international human rights standards revoked by the Constitutional Tribunal, in particular those that infringe on international human rights standards.
4. Abandon the practice of refusing to implement and/or comply with judgments of CJEU and ECtHR, and - in particular - cease the practice of bringing cases before the Polish Constitutional Tribunal concerning the conformity of ratified international

treaties with the Polish Constitution.

5. Remove from the legal system the institution of extraordinary complaints, which only serves the Minister of Justice to interfere in judicial decisions.
6. Ensure that the offices of the Minister for Justice and Prosecutor General are performed by two separated individuals, who would respect human rights of LGBT+ people.
7. Refrain from using Strategic Lawsuits Against Public Participation as a way to impede the work of human rights defenders, activists, academics and other stakeholders in protecting human rights and fundamental freedoms.
8. Act against any form of harassment, threats, or attacks against human rights defenders (HRDs), including personal attacks, smear campaigns, police violence, arbitrary detention, and judicial harassment.

### **III. Fundamental freedoms and the right to participate in public and political life**

#### **3.1. Follow-up on recommendations made to Poland during the previous cycle of UPR in 2016.**

Poland received three recommendations concerning fundamental freedoms ((i.a. recommendations no. 120.109, 120.113, 120.108.1) but none of them has been implemented. Further deterioration of civil liberties has been observed, including limitations on freedom of expression, freedom of assembly and obstructions in public participation, attacks and threats against civil society actors and human rights defenders.

#### **3.2. So-called “LGBT-free zones”**

In the years 2019-2020, over 80 local governments had declared that they are “against LGBT ideology” or voted for the Family Rights Charter with discriminatory provisions against LGBT+ persons, initiated by the far-right organization called Ordo Iuris. In 2020, this number has further increased to 94 (with the overall number of the resolutions ascending to 101), meaning that one third of Poland stood against LGBT+ community.

The so-called anti-LGBT resolutions call for the rejection of “LGBT ideology”. The Family Rights Charters do not explicitly mention LGBT+ people, but call for protection of traditional families in all local policies, initiatives and funding, including explicitly calling for the exclusion of projects which undermine the constitutional identity of marriage as a “union between a man and a woman” (thereby excluding funding of LGBT+ related initiatives and organisations).

The “traditional family” is defined as a (married) union between a man and a woman and their biological children. By calling for municipalities to only focus on these kind of families, the Charters call for the discrimination of all other forms of families, including single parent families, patchwork families and LGBT+ families. It is a violation of Art. 71 and Art. 18 of the Constitution of the Republic of Poland.

Throughout the 2019-2021, the Human Rights Ombudsman has issued nine complaints to administrative courts regarding adoption of anti-LGBT resolutions by local governments. So far, in seven cases the courts repealed the resolutions agreeing with the arguments of the

Ombudsman that they have real and not only symbolic impact on the lives of LGBT+ persons, excluding them from local communities. Their discriminatory character has been confirmed as they - among others - "unlawfully interfere with the rights and freedoms of individuals" and "violates civil rights, including the right to protection of honor and good name, freedom of expression, the right to education and learning". According to the [latest ruling](#) from March 29th 2022 concerning Niebylec county, the court found that the local resolution was adopted without legal basis and it exceeded the scope of competences of the municipality (Article 6 of the Act on Municipal Self-Government) and the scope of powers of the municipal council (Article 18 of the Act on Municipal Self-Government). Moreover, it stated that the Niebylec resolution interfered with the rights and freedoms of individuals, and in particular of persons from the LGBT+ community, violating their dignity (Article 30 of the Polish Constitution) and the right to private life (Article 47 of the Polish Constitution). It has also restricted the right to freedom of expression (Article 54 of the Polish Constitution) and the right of parents to raise their children in accordance with their beliefs (Article 48 of the Polish Constitution).

According to the KPH's latest report, LGBT+ people living in areas where anti-LGBT resolutions were adopted were more likely to have suicidal thoughts than the ones living in other parts of the country.<sup>4</sup>

### 3.2. Freedom of assembly

Throughout the years 2019-2021 numerous local pride march organisers were encountering problems with organising the prides as many of the local city councils were trying to ban them. However, the local court rulings defended the right to public assembly for LGBT+ persons and the prides could be successfully held. The discriminatory rhetoric and hate speech against and the systematic discrimination of the LGBT+ community both on the central and local level has led to dangerous situations and violation of right to public assembly by the LGBT+ community in 2019 during [the Pride March in Białystok](#) or in Lublin, where counter manifestants brought home made bombs but were caught by the police before using them.

In October 2021, during the first reading in the Parliament 235 MPs voted in favour of the "STOP LGBT" draft bill, including 17 government ministers and deputy-ministers, of whom the Minister of Justice, Plenipotentiary for Equal Treatment, Minister of Education and Minister of Family and Social Policy. Thus, the draft law has been further proceeded and is currently under the review of the parliamentary Committee on Administration and Home Affairs. The draft bill is an amendment to the Law on Assemblies and certain other laws, and aims at banning pride marches and stopping "questioning of marriage as a union between a man and a woman". Earlier in October the draft bill had received a positive opinion from the Supreme Court, despite the fact that it would effectively ban all gatherings related to the LGBT+ community – and will result in a gross violation of their right to freedom of assembly.

### 3.3. Freedom of expression

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<sup>4</sup> Campaign Against Homophobia, Centre for Research on Prejudice at the University of Warsaw and Lambda Warszawa: "The social situation of LGBT+ people in Poland in the years 2019-2020", available at: [https://kph.org.pl/wp-content/uploads/2021/12/Raport\\_Duzy\\_Digital-1.pdf](https://kph.org.pl/wp-content/uploads/2021/12/Raport_Duzy_Digital-1.pdf)

Elżbieta Podleśna, Joanna Gzyra-Iskandar and Anna Prus are activists, who tried to raise awareness about a homophobic display at a local church in Płock, which framed LGBT+ people as sinners. The activists have modified Poland's most famous image of the Holy Mary by painting her a rainbow halo and putting stickers and posters with this image in front of the church. Elżbieta Podleśna was arrested at 6 am and all the activists faced trial for offending religious feelings for the so-called Rainbow Mary (based on art. 196 of the Criminal Code). They were acquitted in the first and a second appeal trial but expect to face a cassation appeal by the prosecutor's office as mentioned before.

In the meantime, throughout 2021, the Ministry of Justice has been working on an NGO regulation, which would include provisions to place further reporting requirements on NGOs receiving funding from abroad, including from international institutions, and to label themselves as "foreign-supported NGO". As a part of Education Law reform (known as Lex Czarnek) which has been adopted by the Polish Parliament but finally vetoed by the President, lists of NGOs which are fighting for human rights have been drawn up, including LGBT+ organisations, and marked as "harmful to children". The purpose of those lists was to forbid any activities or human rights campaigns organised by such NGOs in public schools. These acts are a clear indication of the government gearing up its smear campaign not only against LGBT+ people, but progressive civil society in general.

### **3.4.**

### **Recommendations:**

We recommend the Polish government to:

1. Ensure an immediate repeal of resolutions "against LGBT ideology" and Family Rights Charters.
2. Stop further proceeding with legislative proposals that deteriorate civic space, human rights and rule of law, in particular the 'Stop LGBT+ bill'(no.1607).
3. Ensure all laws and local government projects affecting civic space are prepared through transparent and participatory policy-making, involving NGOs representatives, and explicitly including anti discriminatory activities and measures to advance equality and LGBT+ rights.
4. Amend the Article 196 of the Criminal Code (provision of "offending religious beliefs") in order to ensure the respect of the freedom of opinion and expression as enshrined in international human rights law.

## **IV. Private/family life**

### **4.1. Follow-up on recommendations made to Poland during the previous cycle of UPR in 2016.**

Despite the fact, that the recommendations related to recognition of the legal status of the same-sex couples by introducing the same-sex civil partnership or marriage have not been supported by the Government (i.a. recommendations no. 120.77.2., 120.76.2., 120.75.) we strongly recommend adoption of legislation in this respect. Lack of recognition of same sex couples leads to discrimination and day-to-day problems of such couples (e.g. household management, access to medical information, inheritance, taxes). Statement of the Polish Government that the Polish Constitution in art. 18 prohibits the same sex marriages is

incorrect and not supported by jurisprudence. The Polish Constitution provides special protection for the marriage defined as a union between woman and man, but this does not prohibit admission of the same sex marriages.

As part of his presidential election campaign in 2020, Polish President Andrzej Duda publicly signed the Family Charter where - among others - he commits to defend the institution of marriage (which equals to no acceptance for same-sex marriages), not giving his acceptance for adoption of children by same-sex couples, and protecting children and the family from so-called “LGBT ideology”, which he described as a foreign “ideology” worse than communism, and which he vowed to legally ban in public institutions.

In March 2021, the Minister of Justice and Prosecutor General Zbigniew Ziobro, announced a draft law that would ban adoption by same-sex couples and place strict scrutiny over single applicants, to make sure they are not actually in a same-sex relationship. In June 2021, the Deputy Minister of Justice talked about plans to ban legal gender recognition.

40 civil society organisations turned to the Central Statistical Office (CSO) in April 2021, concerned that the periodic census does not recognise same-sex marriages conducted abroad, or allow trans and non-binary people to indicate their true gender. Those providing “false” information according to the Office, including on gender, could be held criminally liable. The CSO answered in July 2021, affirming that same-sex marriages will be indirectly recognised in the survey, but provided a negative answer on the issue of gender identity.

Same-sex couples still face systemic problems with issuing PESEL (Polish registration number), passports or transcription of birth certificates for children who have same sex parents, born outside of Poland (eg. Wiktor’s Zawada [case](#)) resulting in e.g. violations of their right to freedom of movement across the borders and national affiliation or transgender parents not being recognised on their biological children’s birth certificates.

Despite the governmental majority’s openly negative approach to families that don’t meet the specific requirements mentioned in section 3.2 – “traditional family” seen as a married union between a man and a woman and their biological children - Polish society proved to be much more open to accept the diversity of family life. Same-sex couples with or without children, grandparents with grandchildren, single parents, non-registered mixed-sex couples with or without children – they are all considered a family by 58% to 95% of the Polish society<sup>5</sup>.

#### 4.2.

#### Recommendations:

We recommend the Polish Parliament to:

1. Adopt legislation recognising the institution of same-sex marriage and civil partnership available to same-sex couples.
2. Recognise two same-sex parents while issuing official PESEL number or passports for their children as well as accepting transcriptions of birth certificates for children born outside Poland.

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<sup>5</sup> Love Does Not Exclude, “We are family. Attitudes towards LGBT+ families in Poland”, 2021 [https://mnw.org.pl/app/uploads/2021/12/Jeste%20my-Rodzina%20Co-my%20Polacy-i-Polki-o-rodzinach-os%C3%B3b-LGBT\\_Raport-z-bada%C5%84\\_Mi%C5%82o%C5%9B%C4%87-Nie-Wykluczaj%202021.pdf](https://mnw.org.pl/app/uploads/2021/12/Jeste%20my-Rodzina%20Co-my%20Polacy-i-Polki-o-rodzinach-os%C3%B3b-LGBT_Raport-z-bada%C5%84_Mi%C5%82o%C5%9B%C4%87-Nie-Wykluczaj%202021.pdf)