

United Nations Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity

Country visit to Poland (18-29 November 2024)

End-of-mission statement

1. The United Nations Human Rights Council established the mandate of the UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity by resolution 32/2 in 2016 and renewed the mandate in 2019 and 2022. The mandate was established in recognition of the fact that in all regions of the world, discrimination and violence based on sexual orientation and gender identity are widespread and systemic, yet inadequately addressed. The purpose of a country visit is to identify and assess good practices as well as protection gaps, and to offer advice to States on how to remedy any instances or trends of violence and discrimination.
2. By invitation of the Government, I visited Poland from 18 to 29 November 2024 to assess the implementation of both national and international human rights standards in relation to protection against violence and discrimination based on sexual orientation and gender identity. During my visit I spent time in Warsaw, where I met with State officials and equality bodies at the national level, as well as in Krakow, Lublin, Wroclaw, and Poznan where I met with officials at the municipal and regional levels, except for Lublin where regional authorities did not make themselves available. I met with 130 individuals in total, including: 53 civil society representatives; 45 central-level authorities; 30 regional and municipal authorities; and 2 representatives of the national human rights institution. I thank the Government of Poland for inviting me and for the high level of cooperation in preparation for and during the visit. A great deal of work goes into an official visit of this nature, and I am particularly grateful to the Ministry of Foreign Affairs for coordinating State engagement at the national, regional and municipal levels. Many officials gave of their time and expertise, and engaged with candor on substantive issues related to sexual orientation and gender identity.
3. I had the immense privilege of meeting with many lesbian, gay, bisexual, trans, and other gender-diverse (LGBT) persons and representatives of civil society groups, including women's rights advocates, who provided me with detailed accounts of recent history, the current context, and future prospects in Poland with regard to rights protections based on sexual orientation and gender identity, by generously sharing both firsthand experiences and insightful analysis. Several experts also provided background information and contextualized the current situation for LGBT people in Poland within broader political change and regional geopolitics.
4. I would like to thank my colleagues at the UNHCR Representation in Poland for their hospitality, practical assistance and engagement, in their respective areas of expertise, with the issues under the purview of the office's mandate.

5. This end-of-mission statement will be followed by a full report including observations, conclusions and recommendations to the Government of Poland that will be presented to the UN Human Rights Council in June 2025.
6. I was grateful to be invited to Poland at a time of change and when the new Government has indicated a willingness to take steps to address significant protection gaps and bring domestic laws and policies more in line with international norms and standards. My visit takes place in the aftermath of a period in which the rights of LGBT people featured prominently as a political wedge issue, and are now partially addressed as a sign of change. Thus, my concluding observations focus on both symbol and substance in relation to the experiences of LGBT people, in their quest to be free from violence and discrimination.

National, regional and global context

7. I requested a visit to Poland at this time as the Government has taken initial steps to address the legacy of past human rights abuses and to take action to counteract violence and discrimination based on sexual orientation and gender identity. An openness to engagement at the national level as well as in international fora auger well for advancing human rights in Poland.
8. In December 2023, the Ministry of Justice issued a public apology to LGBT people for the way in which they had been previously maligned by State actors and public media. According to interviewees, this apology marked a watershed moment, signaling a break with the recent past and ushering in a new period in which there was a definitive decline in inflammatory public discourse, increased access to government officials for civil society groups, and the promise of much-needed legislative reform. Recent surveys also suggest a notable shift in public attitudes toward a range of social issues, including the human rights of LGBT people.
9. Notwithstanding this seismic shift away from hostile rhetoric directed by State authorities against LGBT people, Poland still lags in terms of legal protections, ranking last amongst European Union countries, and only 41 out of 45 in all of Europe, according to an annual report compiled by ILGA-Europe based on measurable criteria. Public officials at the national and local levels referred to those statistics during our meetings, highlighting how prominent those concerns are among many people in government and the diverse communities they serve. Currently, the Labour Code and the Anti-Discrimination Act prohibit workplace discrimination. In recent months some steps have been taken to address legislative gaps, by including “sexual orientation” amongst other additional provisions in the hate crime and hate speech provisions of the Polish Criminal Code, and by drafting a civil union bill. Yet, many civil society representatives expressed disappointment and frustration at the slow pace of change.

10. Opposition incubates resistance, as an interlocuter observed, and the LGBT movement grew in strength and stature during the period from 2015 to 2023, when both State and non-State actors (and public media) routinely vilified LGBT people. During my visit, individuals from civil society groups consistently referred to the proliferation of “LGBT-ideology free zones” and a statement by the president during the 2020 presidential campaign referencing LGBT people as “an ideology”, as symptomatic of this period. This was a time when approximately 100 local councils passed resolutions declaring “LGBT-ideology free zones”, which had no legal status but nevertheless sent a strong message to LGBT people that they were not welcome in their hometowns or society. As one individual in Krakow put it, the resolutions were essentially “a formal call to informal discrimination.” The symbolism reverberated across the country, bolstered by “Family Rights Charters”, some of which imposed discriminatory restrictions with material consequence, including limiting access to local government funding for LGBT groups or activities focused on protection of the human rights of LGBT persons. Faced with challenges from Poland’s national human rights institution, the Commissioner for Human Rights, as well as creative activism and the threat of funding cuts from the European Union, the “LGBT-ideology free zones” came to an end. Nonetheless, some of the residual effects of overt discrimination, in symbol and practice, endure to this day, including in mental health challenges experienced by affected individuals.
11. The “LGBT ideology-free zones” and the statement by the president encapsulate two distinctive elements, the role of high-level State actors in demonizing LGBT people and their undermining human rights and democratic norms, spearheaded by United Right Coalition dominated by the Law and Justice Party (PiS). In post-Soviet Poland “ideology” has a particularly negative resonance, reinforced in public discourse, including by high-ranking public figures who compared “LGBT ideology” to communism and Nazism. At this time, some cities provided a bulwark against overt, State-sponsored hostility towards LGBT people at the national and regional levels.
12. It was heartening that interviewees refer to this period in the past tense, and instead situated themselves in an uncertain yet hopeful present where significant steps can be taken by the Government to ensure a more equal future. Nevertheless, years of hostile rhetoric and discriminatory practice have left their mark and are a reminder of the urgent need for legal protection against discrimination and violence to prevent future recurrence.
13. This moment represents an opportunity shaped by political circumstance. The country faces overarching security concerns in the wake of the full-scale invasion of Ukraine by the Russian Federation. It is hosting large numbers of refugees from Ukraine and Belarus, including many LGBT people. The ruling coalition consisting of Civic Coalition (Koalicja Obywatelska), Third Way (Trzecia Droga) and the Left (Nowa Lewica) represents a spectrum of views on a range of social issues, including sexual orientation and gender identity. The Government should ensure that Poland meets its human rights obligations and assumes its rightful place as a rights-respecting nation within the European Union.

Safety and security

14. Based on official statistics alone, one would conclude that hate crimes based on sexual orientation and gender identity are rare in Poland. For example, only 11 cases were reported by the Ministry of Interior in 2022, yet civil society groups reported 47 instances to the OSCE Office for Democratic Institutions and Human Rights (ODIHR) during the same year. Two cases were reported in 2023. According to written submissions received in advance of my country visit, low official figures do not align with the lived experiences of LGBT people as documented in studies published by civil society groups, human rights institutions, and academic centers. According to an EU Fundamental Rights Agency survey conducted in 2019, some 15% of respondents reported physical or sexual violence in the five years prior to the survey, a higher incidence than other EU countries surveyed.
15. According to a representative of the national police services, the data gap can be explained because “sexual orientation” is not currently listed as a protected status in the relevant section of the Polish Criminal Code. A 2017 study by the Commissioner for Human Rights found that low levels of reporting were due to a fear of further discrimination and a lack of trust in law enforcement. Another factor is the cumbersome and expensive route to redress, as – in the absence of explicit protection in hate crime legislation – LGBT people are typically required to file a private complaint and bear the costs.
16. During my visit, on 26 November, the Council of Ministers adopted a draft bill proposing amendments to the Criminal Code. The bill would expand legal protections for bias-motivated crimes to include disability, age, gender and sexual orientation. “Gender identity” has been omitted from the revisions, but according to the Ministry of Justice, the draft proposal includes broad protections, under the rubric “in connection with sex” that would require gender identity to be considered under the ambit of “sex”.
17. Given the recent history of anti-LGBT rhetoric, expanded hate speech provisions will also be considered in the bill, while considering freedom of speech protections. Authorities I met with said that the focus is on preventive action to combat hate speech, including through public engagement and awareness campaigns, subsidized and supported at a local level.

Family

18. Same-sex partnerships are not legally recognized in Poland. Marriages and civil unions conducted abroad are not recognized, or registered. Two judgements from the European Court of Human Rights (ECtHR) give added impetus to a civil union bill that has been drafted by the Minister of Equality and made available for public comment. A 2023 judgement (*Przybyszewska and others v. Poland*) by the ECtHR found Poland to be in violation of Article 8 of the European Convention on Human Rights guaranteeing the right to private and family life. While a 2024 judgement (*Formela and others v. Poland*)

reinforced that Poland was under an obligation to institutionalize same-sex unions through legislative change.

19. According to the Department for Equal Treatment, Chancellery of the Prime Minister, the governmental civil union bill involves a labyrinth of necessary changes to align some 243 other pieces of related legislation. The draft law would serve to regulate legal issues including inheritance, taxation, visitation rights, and access to information about a partner's health. It does not make any provision for joint parent adoption, gives limited acknowledgement of joint parental responsibilities, and offers no protection for a non-biological parent in a same-sex couple, where one partner is the biological parent.
20. Children born abroad to same-sex couples face obstacles in obtaining basic documents, such as IDs or passports. Even if the documents are issued based on a foreign birth certificate – as children in this situation cannot obtain a Polish one – only the name of one parent is included, while the parenthood of the other same-sex parent is not recognized or acknowledged at all.

Legal gender recognition

21. A law that would have regulated legal gender recognition was passed in 2015 but was vetoed by the president. Presently, to attain legal gender recognition, transgender people are required to bring a legal action against their parents in terms of article 189 of the Code of Civil Procedure. Many courts require a medical opinion from a court-appointed expert, in addition to documentation from private medical practitioners. This situation has led to a piecemeal approach whereby transgender people try to access more accommodating courts, where judges are known to be knowledgeable and sympathetic.
22. I listened to trans people, and mothers of trans people who had firsthand experience of the protracted, expensive, and undignified administrative requirements firsthand, as well as a lawyer who represents several trans clients seeking legal gender recognition. When parents support their child, it is humiliating to have to sue them in court; when parents are opposed, it can make the procedure legally complicated and emotionally taxing. One of the most troubling stories I heard was of a trans woman who said: “I had to sue my own dad, but my mother passed away, so instead of being just my own dad as part of the case, the court assigned a guardian to represent my dead mother.” According to the lawyer her shortest legal gender recognition case was three weeks, while her longest, involving parents who were opposed, was five years. As a measure to address the delays, the Minister of Justice has taken steps to ensure that legal gender recognition cases are marked as urgent and prioritized when courts schedule upcoming cases for review. The Commissioner for Human Rights has issued guidance to judges including procedures that are more sensitive to the parent-child relationship during court appearances. These measures, while important, are stopgap solutions to a significant legislative gap that should be addressed to ensure an efficient, accessible and affordable procedure that respects privacy.

Health

23. Mental health challenges faced by LGBT people are related to sustained discrimination, instances of violence, or the threat of violence, as well as social ostracism and stigma, as reported by government officials, social service providers, civil society representatives, and individual LGBT people. Human rights defenders noted that hostile political rhetoric directed against LGBT people – referred to as a “hate campaign” – had ended, but the mental health consequences endure. This has led to some regional variation in experiences of violence and discrimination, with former “LGBT-ideology free zones” being hardest hit.
24. Social service providers and civil society groups providing emergency care for LGBT people also informed me of widespread mental health problems and suicide attempts. Children often face ostracism and bullying at home and school and are particularly vulnerable. City officials said that specialist mental health support for LGBT youth was inadequate.
25. Discrimination in health settings is related to other protection gaps. In the absence of legal relationship recognition, partners are sometimes left in legal limbo. A medical doctor and psychologist in Krakow shared a heart-rending example:

“I recently had a situation in a hospital where a partner of a deceased patient was not given the opportunity to say goodbye to his partner, which I do not think would have happened if it were not a same-sex relationship.”

26. The Ministry of Health noted that there were significant barriers for transgender people, insomuch as public funding is not always available for sex reassignment procedures and necessary medication. Other obstacles identified by the Ministry of Health include continuity of care following legal recognition of gender transition, and access to medical data. The Ministry of Health informed me that, having identified the above-mentioned problems, it is analyzing possible solutions aimed at resolving them.
27. The Office of the Ombudsman for Patients’ Rights noted that there were very few cases of discrimination complaints based on sexual orientation or gender identity, although noted these were likely underreported.

Housing

28. Discrimination in the home, at school and in the workplace creates conditions of economic precarity for some LGBT people. This is particularly apparent for transgender people and LGBT youth.
29. Civil society representatives highlighted the plight of teenagers who are turned out of their family homes due to their sexual orientation or gender identity. In these circumstances, teenagers cannot apply for private or public housing schemes, since they

cannot prove prior tenancy, which often results in being homeless or making temporary arrangements, such as living with friends.

30. A City Council member in Krakow said that vulnerability to family violence led LGBT people onto the streets and left them in need of safe shelters. In Warsaw, a group that provides temporary shelter for LGBT people noted that employment discrimination translated into difficulties in paying rent, amidst rising costs. Trans tenants are reportedly the most marginalized and excluded from the housing market and, alongside mental health challenges arising from social exclusion, often struggle to overcome the bureaucratic requirements to access housing.
31. Older same-sex couples face some unique challenges, such as the ability to take over a lease in the event of a partner's death which, in the absence of legal relationship recognition, requires the surviving spouse to prove before a court that they were a couple, to benefit from the tenant protection available to married heterosexual couples.

Education

32. According to government and city officials, as well as social service providers, civil society representatives and parents of LGBT youths, discrimination in schools as well as peer bullying, cyber bullying and violence are widespread and need to be urgently and effectively addressed, with adequate resources. The Ministry of National Education anticipates that a well-resourced peer mental health support program, scheduled for 2025, and implemented in coordination with psychologists and educators, will help to improve the school environment.
33. Civil society organizations expressed concern that that Polish schools currently lack anti-discrimination education, or adequate sexuality education. In a positive development, the Ministry of National Education reportedly plans to introduce a health education program as soon as September 2025, which will take a holistic approach to interpersonal relationships, problem solving, and aim to reduce stigma and promote tolerance.
34. The Law on Education also allows schools to partner with civil society groups who are well placed to provide specialized input. Such partnerships are reportedly very effective. An elected official in the City of Krakow highlighted the value of such partnerships:

“What I try to do myself is bring NGOs dealing with human rights into contact with headmasters and teachers. [...] It is important that we send this message that not only do NGOs do this, but so do we. Since there is lots of violence, this is very connected to the mental health situation.”
35. Another senior municipal official in Krakow said that LGBT children faced dire challenges in schools:

“What I’ve been seeing, especially after the last eight years that were very difficult in Poland, is that violence is on the rise. And also, peer violence is on the rise in schools. Among teenagers, adolescents, there are more suicide attempts and actual suicides. [...] These are a response to various social conditions, including being rejected as someone who is different.”

36. In Lublin, an educator and the parent of a trans student both said that teachers and school administrators were not receiving the training they need to provide adequate inclusion of and protection for LGBT students in the schools. The educator said: “When homophobia and transphobia happen, teachers are not trained on how to respond to discrimination.” The parent of a trans student added: “Unfortunately the schools are full of people who don’t have any knowledge about LGBT rights. Even if a child goes to school and has supportive parents, the school administrators and teachers still don’t listen to them.”

Employment

37. The Labour Code and the Anti-Discrimination Act protect against discrimination based on sexual orientation and gender identity in the workplace. Two court cases in 2020, one concerning sexual orientation and another gender identity, ruled in favor of the plaintiffs. One employee, who had complained of discrimination in the workplace and found remedy, said: “The system works, but it is not rosy.”
38. According to Poland’s labor inspectorate, out of 600 to 800 annual complaints over the last several years, only 3 to 6 complaints related to employment discrimination based on sexual orientation. Yet, according to academic research data, some 25% of LGBT employees felt it necessary to hide their identity at work, for fear of discrimination.
39. The Ministry of Family, Labour and Social Policy confirmed that employers must inform employees about labor law, including non-discrimination provisions, but there were reportedly no additional government efforts to raise awareness of sexual orientation as a prohibited ground of discrimination, to remedy apparent underreporting of workplace discrimination.
40. In response to these concerns, the Ministry of Family, Labour and Social Policy provided additional information that would help to raise awareness of discrimination in the workplace. In terms of the Labour Code, employers have an obligation to prevent discrimination in employment on the basis of, among other attributes, sexual orientation. The implementation of this obligation should involve refraining from discrimination, taking preventive measures, and responding promptly and appropriately to legitimate signals from employees that discrimination may have occurred. Although the provision is worded in general terms, it allows the employer to tailor preventive measures to the specifics of a particular establishment, such as conducting systematic training for employees or creating a quick and safe way for employees to inform the employer of irregularities observed or directly experienced by them.

Data gaps

41. As noted above, the draft amendments to the Criminal Code approved by the Council of Ministers on 26 November propose to expand the list of discriminatory grounds to include disability, age, sex and sexual orientation. This would help address the existing protection gap, and hence likely improve currently limited official data collection in relation to hate crimes based on sexual orientation or gender identity. In addition to a change in the Criminal Code, public awareness campaigns and ongoing training for law enforcement officials would facilitate more accurate data collection, by raising awareness about bias-motivated crime based on sexual orientation and gender identity, encouraging victims to report, and ensuring that they will receive an informed reception from law enforcement.
42. Similarly, while legal protection against discrimination in the workplace is enshrined in law, there is a gap between civil society reports on discrimination in employment and official statistics, that suggest little to no discrimination occurs at work, or in the recruitment process.

Conclusion

43. Poland is at a crossroads when it comes to protection against violence and discrimination based on sexual orientation and gender identity. The rights of LGBT people became symptomatic of a previous era in which they were cast as an undesirable, even dangerous “other”. This has had residual effects, and it will take time to restore a sense of safety and trust. Symbolic gestures have been important, including a public apology from the Government, but not enough. Many individuals, civil society groups and government officials expressed frustration at the slow pace of legislative change. Substantive steps signal a willingness to take steps towards a more equitable future, and to offer long-lasting protections that will not be susceptible to political whims. The approval by the Council of Ministers of a bill to expand the existing scope of hate crime provisions in the Criminal Code is a significant step. The Minister of Equality is currently overseeing the finalization of the civil union bill, and other legislative initiatives designed to close protection gaps.
44. A regional authority from the Lower Silesian Voivode said: “The Equality March has grown, and thousands of joyful young people participate. Change is palpable in society. Politicians are not keeping up.”
45. She captured the sense of optimism, frustration and expectation for change, that is the overarching impression of my visit.

Warsaw, 29 November 2024