

The Current Situation and Protection of the LGBTQ+ Population in Poland

—A Policy Paper from the Perspective of Human Security

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ABSTRACT

The following paper deals with the situation of the LGBTQ+ population in Poland from the perspective of human security in order to debate possible future policies. The final goal is to give a policy recommendation that improves the situation and solves problems the LGBTQ+ community in Poland is facing, and that at the same time seems bearable and even desirable to the two actors concerned, i.e., the LGBTQ+ community and the current Polish government. To do so, this paper first explains the current situation of the LGBTQ+ community in Poland by analysing its current legal status, the currently implemented policies, and the behaviour of government politicians. Additionally, the impact of the current situation on LGBTQ+ people is examined to gain a better understanding of the issue to be solved. In the next step, three different policy options are introduced together with their positive and negative consequences as well as an estimation on how likely each of them is to be implemented as can be expected from the probable reaction of each actor. In the last step, the author gives his policy recommendation that is beneficial and practicable at the same time for both actors: namely, the compromise of protecting LGBTQ+ people legally from hate crimes and promoting tolerance as fellow citizens, without granting them full equality. Although this might not be the desired effect for the LGBTQ+ community, it would mean an increase in personal security for LGBTQ+ people and a possible double victory for the conservative current Polish government.

Introduction: Background and Problem Statement

Human security is a wide concept that aims to shift the focus of security from inter-state relations and conflicts to the dangers that people encounter, often in their own countries, without a foreign attack. This includes economic security, food security, health security, personal security, political security, and others.¹ Thus, the situation of LGBTQ+² people constitutes a part of human security as in many countries they face prosecution and penalties for their sexual orientation, as already pointed out by Makofane et al. (2014) in their paper on homophobic legislation and its impact on human security in Africa.³

In this paper, the situation of LGBTQ+ people in Poland will be studied. While the situation of Polish LGBTQ+ people is undoubtedly better than in the 76 countries that have criminal laws that penalise same-sex sexuality, Poland has been ranked as the most homophobic and transphobic country of the EU for the second year in a row. This has a great impact on the lives of LGBTQ+ people in the country as can be seen, for example, in reports about gay couples who were attacked with a knife when holding hands in public.⁴ LGBTQ+ people in Poland are not only not allowed to marry or to adopt children, the Polish government systematically excludes these people from the society and in so doing encourages more radical and violent homophobia. Thus, the current situation and policies in Poland pose a threat to the personal security of LGBTQ+ individuals and, without a change in policy, the possibility of an escalation in violence is imminent.

The following chapter therefore analyses therefore in detail the different policies undertaken by the Polish government, the reasons behind those policies, and their impact. After that, possible policy options will be introduced together with an analysis on how these options serve the objectives and their positive and negative consequences. Based on the findings of the previous chapters, the author concludes with his recommendation along with the reasons why this option is considered the best. It is necessary to say, however, that not all aspects of the situation of LGBTQ+ people in Poland can be analysed in detail due to the scope of this paper.

¹ Nieberg, Thorsten (01.06.2013), "Human Security", *Bundesamt für politische Bildung* (<https://www.bpb.de/gesellschaft/migration/kurzdossiers/164896/human-security>, last access date: 14.01.2022).

² There are different terms to include different types of sexual and gender minorities. Without any intention to discriminate against any group, the author in this paper consistently uses the term "LGBTQ+" as it is the term he has heard most. The author hopes to include everyone by doing so.

³ Makofane, Keletso, Jack Beck, Micah Lubensky and George Ayala (2014), "Homophobic Legislation and Its Impact on Human Security," *African Security Review* 23, 2, pp. 186–195.

⁴ Kościński, Paweł (18.05.2021), "Poland Ranks EU's Most Homophobic and Transphobic Country for the Second Year in a Row," *Gazeta Wyborcza* (<https://wyborcza.pl/7,173236,27099112,poland-ranks-eu-s-most-homophobic-and-transphobic-country-for.html>, last access date: 14.01.2022).

Analysis of the Current Policy and Objectives for Policy Change

As stated above, Poland is currently ranked the least friendly country for LGBTQ+ people in the EU. Poland's best rated area of compliance with LGBTQ+ protection standards is freedom of association, while the lowest rated areas are protection against hate crimes, the right to respect for family life, and protection against discrimination.⁵ But what is the current situation of LGBTQ+ people in Poland and what are the current legal policies held by the Polish government and by local governments?

First of all, the Constitution of the Republic of Poland and the international laws in force in the country prohibit any kind of discrimination on the grounds of sexual orientation or gender identity. At the same time, the Equal Treatment Act, which enables claims against discrimination, does not expressly prohibit discrimination based on sexual orientation. Therefore, there is not only a gap between the law and the Polish Constitution but many LGBTQ+ people encounter difficulties in trying to present their cause in courts.⁶

Concerning the right to life, safety, and protection against violence (prejudice-motivated crimes and hate speech), the Polish legal system does not require law enforcement to establish the homo-, bi- or transphobic motive of a perpetrator when a crime is committed based on the victim's sexual orientation or gender identity. Consequently, the reality is law enforcement officials turning a blind eye to hate crimes against LGBTQ+ people. At the same time, hate speech and verbal abuse of LGBTQ+ persons is only a hate crime in Poland if it is aimed directly at a specific person, and does not apply in the case of groups or minorities as a whole. In this case, offenses *may* be applicable as an offense of displaying "indecent" words. Actual court rulings in Poland often grant legal protection to homophobic statements as they "are covered by freedom of speech".⁷

Poland does not allow same-sex couples to get married nor does it provide any institutionalised form of partnership despite the European Court of Human Rights ruling that the lack of such regulations violates the European Convention on Human Rights. Also, Poland does not recognise same-sex marriages from abroad and does not issue certificates for its citizens enabling them to marry a person of the same sex abroad. Parentage by same-sex couples is also prohibited and children of Polish same-sex couples are denied their Polish citizenship.⁸

Although actions of politicians are not policies in the strict meaning of the word, they have a huge impact on the situation of LGBTQ+ people in the country concerned, and sometimes do actually invoke policies. Therefore, a short summary of the most recent political atmosphere in Poland follows.

At the end of the presidential campaign in 2018, the ruling party, Prawo i Sprawiedliwość (PiS, Law

⁵ The Commissioner for Human Rights (CHR) of Poland (2019), "The Legal Situation of Non-heterosexual and Transgender Persons in Poland – International Standards for the Protection of LGBT Persons' Human Rights and Compliance therewith from the Perspective of the Commissioner for Human Rights" (https://bip.brpo.gov.pl/sites/default/files/Raport_synthesist_LGBT_legal_situation.pdf, last access date: 14.01.2022), p. 4.

⁶ Ibid., pp. 8–9.

⁷ Ibid., pp. 10–11.

⁸ Ibid., pp. 15–17.

and Justice) and its candidate for president, Andrzej Duda, started a hate campaign against the LGBTQ+ community in Poland that resulted in the issue becoming dominant during the election and afterwards. The President stated that LGBTQ+ people were “not people, but an ideology”. Poland’s Minister of Education, Przemysław Czarnek, attacked LGBTQ+ people even further by saying, “Let us defend the family against this kind of corruption, deprivation, absolutely immoral behaviour, let us defend us against the LGBT+ ideology and finish listening to this idiocy about human rights or equality. These people are not equal to normal people, let’s end this discussion.”⁹

This hate campaign resulted in one third of Poland’s local governments declaring themselves “LGBT-free zones” (see graph 1) in 2020, and only some of these reversed their decision after the EU declared it would stop funding for such cities and municipalities.¹⁰

But what impact do such policies and actions have? According to a survey conducted in 2020 by the city of Cracow, Poland’s second largest city, 61.8% of non-heterosexual people experienced discrimination including verbal abuse (59%) and sometimes violent abuse (13%). In the case of transgender people, 80.6% percent experienced discrimination (80% verbal abuse and 22% physical abuse).¹¹

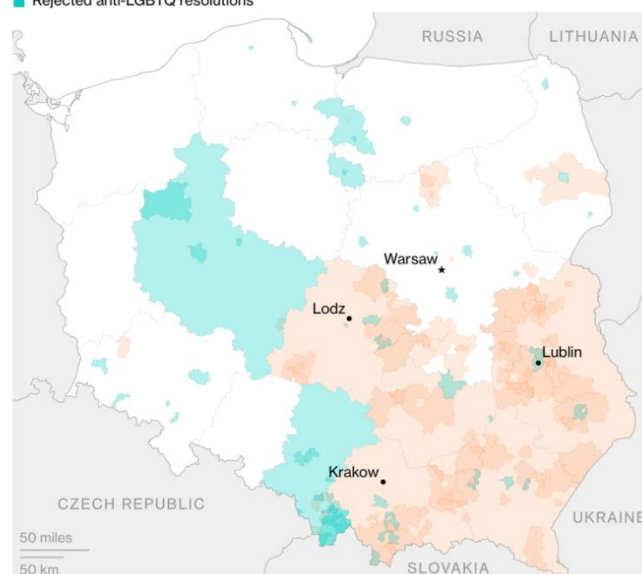
Additionally, LGBTQ+ people in Poland experience a rise in depression. In 2020, 44% of LGBTQ+ people reported experiencing depression, up from 28% back in 2017.¹² The following data is a little older, but as the situation has not improved over these years, some numbers are relevant to mention. In 2016, about 71% of LGBTQ+ people in Poland hid their sexuality at their workplace. Furthermore, less than 4% of LGBTQ+ people who experienced violence reported it to the police and 69.4% of LGBTQ+ youth had suicidal thoughts.¹³

Graph 1

Discriminating

Regions passing measures to ostracize the LGBTQ community

- Self-declared “Free from LGBTQ Ideology” or with resolutions against LGBTQ people
- Rejected anti-LGBTQ resolutions



Source of Graph 1: Strzelecki, Marek and Dorota Bartyzel (22.11.2020): “Where Your Sexuality Can Make You Enemy of the State”, *Bloomberg* (<https://www.bloomberg.com/news/features/2020-11-22/lgbtq-news-homosexuality-makes-you-enemy-of-state-in-poland>, last access date: 14.01.2022).

⁹ ILGA EUROPE (2021), “Annual Review of the Human Rights Situation of Lesbian, Gay, Bisexual, Trans, and Intersex People in Poland Covering the Period of January to December 2020” (<https://www.ilga-europe.org/sites/default/files/2021/poland.pdf>, last date of access: 14.01.2020).

¹⁰ Strzelecki, Marek and Dorota Bartyzel (22.11.2020), “Where Your Sexuality Can Make You Enemy of the State”, *Bloomberg* (<https://www.bloomberg.com/news/features/2020-11-22/lgbtq-news-homosexuality-makes-you-enemy-of-state-in-poland>, last access date: 14.01.2022).

¹¹ City of Kraków (2020), “Dyskryminowani/e – Sytuacja osób LGBTQIA w Krakowie” (<https://rownosc.org.pl/wp-content/uploads/2020/11/Dyskryminowanie.-Sytuacja-osob-LGBTQIA-w-Krakowie.pdf>, last access date: 14.01.2022), pp. 22–25.

¹² Charlish, Alan and Felix Hoske (08.12.2021), “Depression Rising among LGBT People in Conservative-ruled Poland, Survey Finds”, *Reuters* (<https://www.reuters.com/world/europe/depression-rising-among-lgbt-people-conservative-ruled-poland-survey-finds-2021-12-08/>, last access date: 14.01.2022).

¹³ Świder, Magdalena and Mikołaj Winiewski (2016), “Situation of LGBT Persons in Poland – 2015–2016 Report” (<https://kph.org.pl/wp-content/uploads/2019/07/Situation-of-LGBT-Persons-in-Poland-10.07.pdf>, last access date: 14.01.2022), pp. 6–9.

As explained above, the current situation of LGBTQ+ people in Poland and the policies and actions taken by the government cause distress, depression, and suicidal thoughts to LGBTQ+ people in Poland and increase the level of both verbal and physical abuse towards them. Therefore, new policies must be implemented. To this end, both the LGBTQ+ community and the Polish government will be seen as actors to whom these policies need to be adjusted in order to have a chance of implementation and in order to improve the situation.

Policy Options

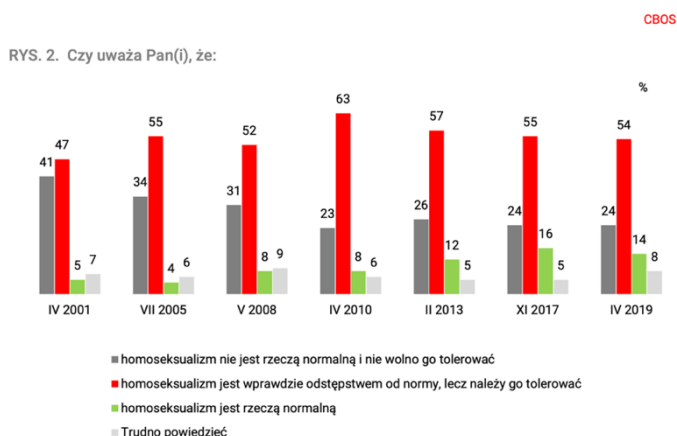
In the author's opinion, there are three options that, in theory, can be pursued. First, Poland could change its stance towards LGBTQ+ people completely. The government implements legislation that, like the Constitution, clearly prohibits crimes based on gender and sexual orientation. This would also include changing the Equal Treatment Act so that LGBTQ+ people can claim their rights when they become victims of discrimination and crimes. Furthermore, Poland introduces at least a partnership system, in a better case allows same-sex marriage, and recognises both marriages made abroad and children of Polish same-sex couples living abroad so that LGBTQ+ people are fully protected by law. Lastly, politicians stop calling LGBTQ+ people an ideology but give them the human rights that they are accorded by international norms.

This kind of change in policies would obviously help the LGBTQ community. However, this is not realistic as long as there is no new government, given that the current PiS-government and its electorate are ideologically conservative, right-wing Christian, and rural poor to middle-class people. Therefore, whereas one side (the LGBTQ+ community) gains a lot, the other side (the current government) is unable

to accept such new policies.

Second, the PiS government does not change anything and continues its current policies. This would obviously be the worst scenario for the LGBTQ+ community, especially when considering that a further rise in violent crimes, depression, and suicides is to be expected. However, is this the best option for the PiS government, too? The author of this paper clearly thinks otherwise. Not only is the PiS government facing many arguments with the EU, it has numerous cases at the European Court of Justice and is already paying a number of fines. There is even a possibility that

Graph 2



Translation of Graph 2: "Do you think that..."

Dark Grey: "Homosexuality is not a normal thing and must not be tolerated?"

Red: "Homosexuality is indeed not the norm, but it should be tolerated?"

Green: "Homosexuality is something normal?"

Light Grey: "It's hard to say."

Source of Graph 2: CBOS (2019): "Stosunek Polaków do związków homoseksualnych", Komunikat z badań 90, p. 3.

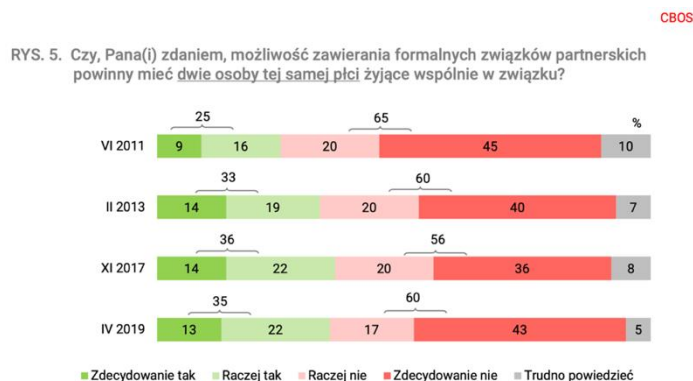
funding for Poland will be stopped. At the same time, and this is crucial, the PiS does not need to fight these battles with the EU and discriminate against the LGBTQ+ community in order to win its elections, as it tried to do in 2019. According to CBOS, a Polish survey institute, 14% of Polish people said that homosexuality is normal. Additionally, 54% stated it is not the norm, but it should be tolerated (see graph 2). This means that although there are differences as to questions like: “Should same-sex marriages be allowed?”, a considerable majority (68%) of Polish people thinks that LGBTQ+ people should be tolerated. This leads us to the third option.

The third option is a compromise to satisfy both actors, namely the PiS government with its electorate and the LGBTQ+ community. Obviously, this is not the preferred option for both actors and from the perspective of human security. It is, however, the option which has benefits for both sides. This option must include legislation in all necessary legal fields to prohibit hate crimes towards LGBTQ+ people, as already stated in the Constitution, so that LGBTQ+ people are protected and can find help in the police and courts. Such steps would be welcomed by a majority of Polish people without hurting conservative or religious feelings. However, this would not include a same-sex marriage or another institutionalised partnership in Poland as only 30% of Polish people in 2019 supported a partnership system for same-sex couples whereas 60% rejected it (see graph 3). Poland might start, however, accepting marriages that were made abroad, in a limited way, in order to minimise the criticism from the international community while defending its electorate by saying that in Poland such partnerships remain illegal.

Recommendations

The author’s recommendation is clearly the last option which is a compromise between the first two. It remains possible that the government, i.e., the actor with the power to change something, will choose option two and do nothing out of fear of losing the next election. From the data and reasons shown above the author thinks, however, that the third option – i.e., a reduced change in policy that defends the LGBTQ+ community from crimes and promotes their acceptance as fellow citizens while not giving them equal rights – not only helps the LGBTQ+ community but could give the PiS government a chance to stabilise

Graph 3



Translation of Graph 3: “Do you think that two persons of the same sex that are living together should have the possibility of registering in a formal partnership?”

Dark Green: “Definitely yes.”

Light Green: “Rather yes.”

Light Red: “Rather no.”

Dark Red: “Definitely no.”

Grey: “It’s hard to say.”

Source of Graph 3: CBOS (2019): “Stosunek Polaków do związków homoseksualnych”, Komunikat z badań 90, p. 7.

its foreign policy and relations with its nearest neighbours while remaining a country with conservative values. This could then be sold as a double victory, i.e., there are incentives for both sides to cooperate as recommended in option three. From a human security perspective this would not promote equality, but it would at least improve the personal security of the LGBTQ+ population and set a first step towards more tolerance and eventually more equality in the future.

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