

POLAND

Most questions require a reply based on the following codification:

a. Yes, already done <input type="checkbox"/>	b. Yes, work is in progress <input type="checkbox"/>	c. We intend to work on this <input type="checkbox"/>	d. Position non determined <input type="checkbox"/>	e. No <input type="checkbox"/>
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Section I – Implementation and dissemination of the Recommendation

1. How would you assess the status of implementation of the Recommendation in your country?
Fully satisfactory ☐ Adequate ☒ Insufficient ☐ Absent ☐

Please explain your reply.

In the case of Poland, the LGBT people are protected by the general provisions of the civil and criminal law. However, in the recent years, more specific and centralized approach has been adopted in respect to the problem of discrimination on grounds of sexual orientation and gender identity.

The actions undertaken by the Government of Poland and other public entities include adoption on 3 December 2010 of comprehensive legislation against discrimination – the Act on implementing certain European Union legislative provisions concerning equal treatment, which defines the individual areas and methods of counteracting violations of the principle of equal treatment, as well as methods of protecting it and appoints the relevant bodies to perform tasks related to the implementation of this principle. The instant Act lists grounds for discrimination, including explicitly sexual orientation. Moreover, in the process of constant review of that Act and in the view of the increase of the public awareness of the specific problems faced by LGBT people, the Government Plenipotentiary for Equal Treatment prepared a draft amendment of the 2010 Act, which *i.a.* provide for the explicit inclusion of gender identity as a protected ground and ensures equal protection in all areas of life regardless of the ground of discrimination, as well as widen the remedies available to the victims of the discrimination. Together with the legal changes, the change of the judicial practice comes hand in hand, most visibly expressed in the Supreme Court's view that the persons remaining in cohabitation are entitled to succeed tenancy after the death of a partner, who was a tenant, equally if that person is of the same or the opposite sex (Resolution of 28 November 2012, ref. no. III CZP 65/12).

Lastly, it should be underlined that various public authorities acquainted themselves with the Recommendation and its explanatory report, which were translated into Polish, and take it into the account in the course of both their legislative work and administrative practice. The public authorities are nowadays consecutively trained on the issue of anti-discrimination, also on the grounds of sexual orientation and gender identity. They also cooperate with the representatives of the civil society in that field on a regular basis.

2. Has a review been carried out of existing legislative and other measures which could result directly or indirectly in sexual orientation or gender identity discrimination?
a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please explain and, if appropriate, provide examples of any such measures found:

The Ministry of Justice regularly reviews measures to combat discrimination while filing the reports on the implementation of international agreements in the field of human rights (which are available on the Ministry's website (<http://bip.ms.gov.pl/pl/prawa-czlowieka/onz-i-prawa-czlowieka/sprawozdania-rp>)), and more recently during the second cycle of the Universal Periodic Review of Human Rights in Poland.

The Government Plenipotentiary for Equal Treatment (*Pełnomocnik Rządu do spraw Równego Traktowania*) monitors the functioning of the **Act of 3 December 2010 on implementing certain European Union legislative provisions concerning equal treatment** (Journal of Laws of 2010 No. 254, item 1700), in force since 1 January 2011. The Act lists grounds for discrimination, including sexual orientation and prohibits unequal treatment in various areas of life (although with different scope of protection depending on the ground of discrimination) and grants compensation rights to all persons with regard to whom the principle of equal treatment has been violated. **In 2012, the Plenipotentiary reviewed the provisions of the Act and prepared a draft amendment**, which includes not only her own proposals of amendments, but also views expressed by the civil society organizations and the Ombudsman. The amendment provides, among other things, the introduction of an open catalogue of the protected grounds, the simplification of provisions as well as ensuring equal protection regardless of the ground of discrimination, it introduces also the possibility of applying for non-pecuniary compensation for the breach of principle of equal treatment, in addition to the currently existing claim for damage.

The above-presented proposals for amendment were presented to the public at the conference organized in December 2012 by the Government Plenipotentiary for Equal Treatment in cooperation with the Polish Society of Anti-Discrimination Law.

The draft amendment is currently consulted within the Chancellery of the Prime Minister.

Are there measures in place to redress any such discrimination?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices:

In general, legal measures to combat discrimination based on sexual orientation and gender identity are similar to those functioning in other areas of public life (for example, complaint to the Ombudsman, civil action for compensation or redress, notice of committing a crime).

Additionally, since 1 January 2011, *i.e.* the date of entry into force of the above-mentioned Act of 3 December 2010, there has been an additional measure to protect the principle of equal treatment, introduced by Article 13 of the Act, which provides for the right to compensation for anyone with regard to whom the principle of equal treatment was violated. Provisions of the Civil Code and the Code of Civil Procedure apply in cases involving the violation of equal treatment, with the burden of proof of non-discrimination resting with the party accused of the violation. It should be stressed that claims under the said Act do not deprive of the right to seek redress under the provisions of other laws.

3. Have legislative and other measures against discrimination on grounds of sexual orientation or gender identity been adopted and implemented since the adoption of CM Recommendation 2010(5) (including the possible establishment of national action plans, the inclusion of the Recommendation in existing plans, or the creation of cross-sectoral working groups for its implementation)?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If appropriate, please provide examples of measures adopted or in preparation.

On 3 December 2010, the Act of on implementing certain European Union legislative provisions concerning equal treatment (Journal of Laws of 2010 No. 254, item 1700) has been adopted. It is in force since 1 January 2011. The Act defines the main areas in which unequal treatment is prohibited and ways to prevent violations of the principle of equal treatment on grounds of sex, race, ethnicity, nationality, religion, belief, creed, disability, age and sexual orientation. The Act includes also definitions of basic terms, such as: direct and indirect discrimination, unequal treatment or harassment.

In respect to sexual orientation, the Act prohibits unequal treatment in (Art. 8 § 1):

1. undertaking vocational training, including training, development, retraining and professional practice;

2. conditions of initiating and performing business or vocational activities, in particular in the framework of labour relations or employment on the basis of a civil contract;

3. access to and activities within trade unions, employers' organizations and professional associations, as well as the use of the powers of the members of these organizations;

4. access to and conditions of use of the instruments of the labour market and labour market services, as defined in the Act of 20 April 2004 on the employment promotion and labour market institutions offered by labour market institutions and instruments of labour market and labour market services offered by other entities acting for the employment, development of human resources and prevention of unemployment.

4. Are there measures in place to collect and analyse relevant data on discrimination on grounds of sexual orientation?

a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Are there measures in place to collect and analyse relevant data on discrimination on grounds of gender identity?

a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Are there measures in place to collect and analyse relevant data on hate crimes and hate-oriented incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices:

Statistical data on victims of crime in respect to all forms of discrimination may be collected under the Act on public statistics only on a voluntary basis (Art. 8 of the Public Statistics Act in conjunction with Art. 27 of the Act on the protection of personal data). In view of the above, the Ministry of Justice collects statistical data on the number of first instance judgements as well as final convictions of adults (obtained from the criminal record cards of the National Criminal Record) for hate crimes, referred to in Art. 118 § 1-3, Art. 118a, Art. 119 § 1 and 2, Art. 126a, Art. 126b, Art. 194, Art. 195 § 1 and 2, Art. 196, Art. 256 § 1-4 and Art. 257 of the Criminal Code and in Art. 55 of the Act of 18 December 1998 on the Institute of National Remembrance – Commission for the Prosecution of Crimes against the Polish Nation, **however, without the indication of the motives which drove the perpetrator in committing the hate crime.**

In 2012 the Ministry of Justice took actions to change the methodology of obtaining and collecting of statistical data on crimes motivated by hate. For this purpose, a statistical file in a criminal case on hate crimes under Art. 118 § 1, 118 § 2, 118 § 3, 119 § 1, 119 § 2, 256, 257 of the Criminal Code was developed. **It now includes the statistical data on the perpetrators of these acts and the persons injured, as well as the motives of crimes in this category.** The Ministry of Justice receives the completed files since 1 April 2012.

The Ministry of Justice receives also **the statistical files of cases concerning discrimination in employment (including on the basis of sexual orientation) under the labour law.** It should be noted that currently the statistical database of the MJ contains data on the cases in district and regional courts concerning damage claims for breach of the principle of equal treatment in employment of men and women on the basis of Article 18^{3d} of the Labour Code, and in connection with sexual harassment as one of the form of discrimination in the workplace (Art. 18^{3a} § 6 of the Labour Code in conjunction with Art. 18^{3d} of the Labour Code), as well as on the cases concerning damage and compensation for moral damage claims in connection with mobbing (Art. 94³ § 3 and 4 of the Labour Code) and on cases concerning discrimination in employment (Art. 11³ of the Labour Code). That data is gathered in half-yearly and annual cycles.

Furthermore, it should be noted that the Ministry of Justice **is implementing a new system** which will allow collection of detailed statistical data from the courts' records. It will provide comprehensive monitoring of cases of violations of the principle of equal treatment based on a number of factors, including sexual orientation, and monitoring of hate crimes and hate-oriented incidents based on sexual orientation and gender identity. Full implementation of this system is planned for the years 2013-2015.

Further on, in December 2011 a Human Rights Protection Team was established in Department of Control, Complaints and Petitions of Ministry of Interior, on the basis of Monitoring Team on Racism and Xenophobia, which had been functioning earlier (since 2004). Responsibilities of Human Rights Protection Team include, among others, **monitoring cases related to hate crimes, including sexual orientation or gender identity-related crimes**. The Team also undertakes actions aimed to ensure an adequate level of human rights protection during the realization of tasks by bodies subordinated or supervised by Minister of Interior, that also includes counteracting the discriminating behaviour of police and Boarder Guard officers in relation to persons of other nationality, ethnicity, sexual orientation or gender identity. Human Rights Protection Team monitors cases since the event happens till the end of actions of relevant bodies (law enforcement agencies or courts).

The Government Plenipotentiary for Equal Treatment collects statistical data on complaints lodged by from citizens, groups of citizens or non-governmental organizations. She then takes actions on the basis of such applications, as well as on the basis of media reports, out of her own initiative. The Plenipotentiary examines some of the cases in her own capacity (suggesting, for instance, changes in the law or cessation of discriminatory actions), while in others she indicates the rights and possible actions to be undertaken by the applicant. Some cases are handed over to other authorities for consideration, in accordance with their competences. **In 2011, the Office of the Government Plenipotentiary for Equal Treatment examined 405 cases concerning unequal treatment and discriminatory behaviours, of which 46 related to sexual orientation. In 2012, 30 cases - out of the total number of 459 - related to sexual orientation.**

Also the Statistical Information Department of the Office of the Ombudsman collects statistical data on complaints lodged by persons discriminated against on grounds of sexual orientation or gender identity.

5. Do effective legal remedies for victims of sexual orientation or gender identity discrimination exist (including sanctions for infringements and adequate reparation for victims)?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

If so, are there measures in place to raise awareness and facilitate access of victims to such remedies?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

As already indicated above, in accordance with Article 13 of the Act of on implementing certain European Union legislative provisions concerning equal treatment, anyone with regard to whom the principle of equal treatment has been violated (e.g. due to sexual orientation), is entitled to compensation. The 2010 Act does not however allow for the possibility to seek compensation for violation of the principle of equal treatment on the basis of gender identity.

6. Which obstacles, if any, have been encountered in the implementation of the Recommendation?

Until recently, Poland has lacked coordinated system actions (policies) in order to combat discrimination based on sexual orientation or gender identity. Now, however, the Government Plenipotentiary for Equal Treatment is working on a comprehensive programme in this respect.

7. Has the Recommendation, including its Appendix, been translated in all your national languages?
a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

8. Which steps have been taken to ensure dissemination of the Recommendation and its Appendix as widely as possible?

The Recommendation has been translated into Polish. It was disseminated by posting it on the website of the Government Plenipotentiary for Equal Treatment (<http://rownetraktowanie.gov.pl/akty-prawne/zalecenie-komitetu-ministrow-rady-europy-w-sprawie-przeciwdzialania-dyskryminacji-ze>) and the Ministry of Justice (<http://bip.ms.gov.pl/pl/prawa-czlowieka/inne-organizacje-miedzynarodowe-i-prawa-czlowieka/prawa-czlowieka-w-radzie-europy/>), as well as by the distribution on the conference held in the Chancellery of the Prime Minister on 18 July 2012, organized by the Plenipotentiary and the Council of Europe, inaugurating in Poland the Council of Europe project *Combating discrimination based on sexual orientation or gender identity*. The Recommendation was also distributed to the libraries of the Ministry of Justice and the Central Board of Prison Service.

Section II – Implementation of the specific provisions in the Appendix

I. Right to life, security and protection from violence

9. Are there measures in place to ensure an effective, prompt and impartial investigation into alleged cases of crimes and other incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator?
a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

A guarantee of effective, prompt and impartial investigation into the hate crimes and hate-motivated incidents is ensured by the general rules of law.

The prompt conduct of proceedings is guaranteed by the act of 17 June 2004 on Complaint Against Violation of a Party's Right to Have Its Case Hared Within a Reasonable Period of Time in Court Proceedings or in a Proceedings Conducted or Supervised by a Prosecutor (Journal of Laws 2004, No. 179, item 1843 as amended), according to which a victim can complaint to a Court when it finds that investigation is not conducted without undue delay.

The impartialness of proceedings is guaranteed by the separation of the offices of the Minister of Justice and the Public Prosecutor General. Previously these two offices were combined. The separation of the functions was meant to remove any and all doubts as to the full independence and freedom from political influences of the prosecution authority in Poland. The Public Prosecutor General is appointed for a single 6-year term of office. Heads of all district and provincial appellate prosecution authorities are also appointed for terms of office of 6 and 4 years, respectively. The law on prosecution authority enhances the status of so-called front desk public prosecutors that work on particular cases. Superiors of such prosecutors can issue orders to their subordinates, but they must do so in writing and there is an obligation to append a relevant document to the case file. The National Council of Public Prosecutors, which is patterned after the National Judiciary Council, monitors continuous learning and promotion paths of public prosecutors. Mechanisms which make the promotion of a public prosecutor contingent solely on professional criteria were also introduced.

According to Polish Code of Criminal Procedure, a prosecutor shall be disqualified by law from participation in a case if: (1) the case concerns him directly, (2) he is the spouse of a party to the proceedings, of the injured person, of the defence counsel, of the attorney, or of the legal representative, or if he lives in cohabitation with one of these persons, (3) he is related to any such person by blood or marriage, directly or collaterally, down to a relation between the children of the

sibling of those listed under (2), or else related to any such person by adoption, guardianship or custody, (4) he was an eye-witness to the act from which the pending case arises, or has appeared as a witness or expert in the same case, (5) he has participated in the issuance of a decision subject to appellate measure, or has himself issued a ruling subject to such measure, (6) he had conducted mediation, (7) if there are circumstances of such nature that his impartiality in the given case might give rise to reasonable doubts. The grounds for disqualification shall continue to be valid, even if the ties of marriage, cohabitation, adoption, guardianship or custody upon which they had been founded, have been dissolved.

The effectiveness of proceedings is guaranteed by the control by an independent and impartial court over potential decisions not to institute or to discontinue criminal investigation. If the injured party does not agree with the prosecutor's decision to dismiss a case or with the decision to fail to institute proceedings, he or she has the right to take the decision to court and demand that the court order the prosecutor to initiate or continue proceedings. If, having taken the steps ordered by the court, the prosecutor still finds no grounds for indictment, the injured party may seek an indictment on his or her own.

10. Are there measures in place to ensure that a bias motive related to sexual orientation may be taken into account as an aggravating circumstance?
- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are there measures in place to ensure that a bias motive related to gender identity may be taken into account as an aggravating circumstance?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Pursuant to Article 53 of the Criminal Code, homophobic or transphobic motivations are considered to be aggravating circumstances when sentencing. The relevant provisions of the Criminal Code provide that:

Article 53. § 1. The court shall impose the penalty at its discretion, within the limits provided for by law, making sure that its severity does not exceed the degree of guilt, taking into account **the social harmfulness of deed**, and taking into account the objectives of prevention and education, which is achieved in relation to the sentenced, and the need for development of legal awareness of the society.

§ 2. In imposing a penalty, the court shall consider in particular **the motivation and behaviour of the offender**, committing a crime jointly with a minor, the type and degree of infringement of the obligations imposed on the offender, the nature and size of the negative consequences of crime, personal characteristics and conditions of the offender, a way of life before the offence and behaviour after its commission, particularly a desire for compensation or redress in some form to the social sense of justice, and the behaviour of the victim.

Article 115. § 2. In assessing social harmfulness of a deed the court shall take into account the type and nature of the infringed good, the size of the caused or threat of injury, the manner and circumstances of committing the offence, the importance of responsibilities violated by the offender, as well as the form of intention, **the motivation of the offender**, the type of the violated rules of prudence and the degree of violation.

During trainings for the future judges and prosecutors (legal trainees), which are mandatory, human rights in criminal proceedings are broadly discussed. The trainings relate primarily to the issues of substantive criminal law, including the crimes against: life, health, sexual freedom, decency, honour and physical integrity – examined also from a perspective of discriminatory motivation of the perpetrator. Moreover, the trainees familiarize themselves with the case law of the European Court of Human Rights, including the discrimination cases.

The judges and prosecutors take part in the training entitled "*Criminal law aspects of the fight against the discrimination on racial, ethnic, religious grounds, sexual orientation or gender identity grounds.*" During this training, the issue of discrimination based on, among other things, sexual orientation or gender identity, and effective ways to combat it, is discussed. Particular emphasis is placed on discriminatory crimes in the criminal code, the problem of discrimination in the context of criminal law protection of the dignity (honour) and physical integrity of a person, and the legal provisions allowing the prosecution of these crimes.

11. Are appropriate measures taken to ensure that victims and witnesses of sexual orientation- or gender identity-related hate crimes and incidents are encouraged to report them?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

In order to increase public awareness, especially on the subject of the rights of victims, the Ministry of Justice conducted in 2010 a public campaign "*Know your rights. Come out of the shadow. Let help yourself*", as a part of the project "*Facilitating Access to the Judiciary*". During this campaign, amongst others, 430 radio programmes were broadcasted.

Within the frames of the above-mentioned project also a website www.pokrzywdzeni.gov.pl has been updated. That site contains, among other things, the characteristics of selected offences, including punishable threat, bodily harm, beatings (which, according to the NGOs, particularly often affect LGBT people) and provide information about the institutions in which victims can seek help.

In 2011 also the website of the Ministry of Justice was developed in order to equip the victims of violence with a convenient source of information about their rights and institutions providing assistance.

12. Do training programmes and procedures exist to ensure that the police, judiciary and prison officials possess the knowledge and skills to identify such crimes and incidents and provide victims and witnesses with adequate assistance and support?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The judges, prosecutors and Prison Service officers are regularly trained in the field of human rights, also in the field of equality and non-discrimination, including based on sexual orientation and gender identity. These trainings help to increase the level of awareness of the problem of discrimination, detection of crimes committed with discriminatory motives and the proper treatment of the victims among the legal and prosecutor's trainees, judges, prosecutors and their assistants, and Prison Service officers.

Judges and prosecutors

For judges and prosecutors, trainings in this area are carried out both at the stage of education of trainees (future judges and prosecutors) and for professional judges and prosecutors. The main institution responsible for the preparation of training plans for this group is the Polish National School of Judiciary and Public Prosecution (hereinafter: KSSiP). It conducts training at the national level, as well as in collaboration with foreign and international institutions.

Between 2011 and 2012, 225 trainees were trained in the field of substantive criminal law relating to crimes against life and health, and against sexual freedom and morality.

Judges and prosecutors took part in the following trainings, from 2009 to 2012: "*Discrimination and mobbing in labour relations. Application of the provisions of the Civil Code in cases of labour law*" (2009 - 58 people), "*Criminal law aspects of the combat against the discrimination on racial, ethnic, religious grounds, due to sexual orientation or gender identity. Criminal, criminological and legal aspects of human*

trafficking" (2010 – 100 people), *"Equal treatment in employment. Harassment. Protection of personal goods. Employee's claim based on the provisions of the Civil Code"* (2011 – 89 people), *"The obligation of employer to prevent harassment and unequal treatment in employment in judicial decisions"* (2012 – 100 people).

At the same time, between 2009-2012, the following trainings for judges and prosecutors on the phenomenon of discrimination, organized by the Academy of European Law (ERA) and by the European Court of Human Rights, in cooperation with KSSiP, were carried out: *"The EU Anti-Discrimination Directives 2000/43 and 2000/78 in practice," "EC legislation on equal treatment between women and men," "EU Anti-discrimination Law," "Study Visit at the European Court of Human Rights."* In total, they were attended by 53 people.

Prison Service

Prison Service officers acquaint themselves with the issues of equal treatment and non-discrimination, including on the basis of gender identity and sexual orientation, during trainings organized by the Central Board of the Prison Service, such as: *"International standards of conduct with persons deprived of their liberty," "Penal issues," "Service pragmatics of the Prison Service."* During these trainings, the Prison Service officers learn the norms in various systems of human rights protection and familiarize themselves with a range of various documents and international conventions. Furthermore, during the *"Situational Workshops"* lead by psychologists, the PS officers learn how to be tolerant in interpersonal contacts. The PS officers are sensitized to the symptoms of violent behaviours among the inmates. In addition, the issues of physical and mental violence, including negative behaviours and attitudes towards LGBT people, are discussed in detail during the interviews with candidates for some official positions, such as correction officer and senior correction officer in a penal institution.

Police

In the Police, changes were introduced in the selection to the police, with an aim to exclude socially prejudiced people, which could have a negative impact on engaging in the combat against crime on homophobia and transphobia, already at the stage of recruitment.

As a part of the 7-month basic training, the issues related to homosexuality and transsexual people are always addressed with an aim of shaping the desired attitudes to contribute to the effective fight against crime on this background.

Moreover, a specialized guide for Police teachers entitled *"To serve and protect"* was developed. Its aim is to develop tolerant attitudes and behaviours, as elements and features necessary for the proper approach of police officers to people with different sexual orientation and gender identity.

Also a workshop for police executives *"Human Rights in Police Management,"* which shapes the specific sensitivity in the prosecution of different categories of offences, including those committed in relation to sexual orientation and gender identity, was developed and implemented.

Since 2006, **specialized workshops for police officers "Law Enforcement Officers Programme on Combating Hate Crimes"** (LEOP) have been conducted. The program is being carried out in Polish police in cooperation with ODIHR OSCE and it is coordinated by the Ministry of Interior. In the framework of the program, the system of vocational trainings on counteracting and combating hate crimes, elaborated by the special team, has been implemented. The subject of the trainings includes the issues of identifying hate crimes, investigating them properly and gathering evidences, reacting adequately and preventing hate crimes. The aim of those trainings is to raise the competence of police officers to conduct the investigation in hate crime cases, including sexual orientation- or gender identity-related crimes, as well as to give them the ability to deal with hate crime victims and to sensitize police officers to the issue of discrimination – also in the case when police officers are its perpetrators. Until today, over 50 000 police officers have been trained within the program. Apart from lecturers from the police, the trainings are conducted also by the representatives of nongovernmental organizations acting in the field of combating racism and neofascism and representing the particular groups of minorities which are threatened with hate crimes, including sexual minorities.

Currently a specialized guide for police officers entitled *"Firstly, human – anti-discrimination guide for Police units"* is under preparation, under the patronage of the Office of the Ombudsman. The guide presents *i.a.* the issues connected with the environment of sexual minorities.

The police programme of environmental meetings entitled *"Position of a victim in a criminal process,"* which is dedicated solely to LGBT people across the country, was developed and implemented. The programme was created in collaboration with the NGO Campaign Against Homophobia.

The topic of LGBT is also a regular component of seminars and conferences on human rights protection organized in the police environment.

13. Are there specific measures in place to ensure the safety and dignity of lesbian, gay, bisexual and transgender persons in prison or in other ways deprived of their liberty, in accordance with paragraph 4 of the Appendix to the Recommendation?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

One of the primary responsibilities of the Prison Service is to ensure personal safety of all prisoners. What is more, also a condemned person is obliged to immediately inform the supervisor of threats against personal safety (Article 108 of the Executive Criminal Code).

After admitting an LGBT person to the penal institution, the administration is required to take appropriate actions aimed at suitable placing of the inmate and ensuring his/her safety. These actions are taken based on an individual assessment of the situation of each prisoner and consist in particular on the proper selection of fellow inmates or placing a person in a single cell, a suitable organization of walks, visits, cultural and educational activities and sports. Furthermore, under Article 73a of the Executive Criminal Code, the director of the penal institution may decide to monitor the rooms in which such persons are staying.

The Prison Service does not collect any data related to sexual orientation and gender identity of persons deprived liberty, however, any signal of threats to personal safety of the prisoners or the possibility of harassment or symptoms of other discriminatory behaviour is analysed.

Prisoners at risk of intolerant behaviour on the part of other inmates are ensured safe location in cells, and the company of convicts who are characterized by tolerance and open attitude, presenting a low level of social corruption and actively participating in the process of rehabilitation, which holds promise of proper interpersonal relationships between the prisoners. If necessary, the prisoners are provided with psychological help, and the atmosphere in a cell is subject to a systematic supervision. Officers are required to keep sexual orientation in confidentiality, so that the LGBT prisoners are not subjected to stigmatization in the penal institution and are not exposed to undesirable behaviour.

The penitentiary staff implements a number of programmes targeted to specific groups of prisoners promoting attitudes of tolerance, teaching inmates non-aggressive solutions of conflicts and respect for the rights of others. Appropriate disciplinary measures are taken against the prisoners violating social norms in the above-specified fields. The use of preventive measures and programmes preventing aggressive behaviours influences the reduction of the number of such incidents. At the end of 2012, 225 programmes against aggression and violence were implemented, which were attended by 2,224 inmates.

Another important regulation is the provision of Article 102 item 10 of the Executive Criminal Code, which states that the convicted person has the right to submit petitions, complaints and requests to the authority competent to consider them and to present them, in the absence of other people, to the administration of the penal institution, heads of organizational units of Prison Service, penitentiary judge, prosecutor and the Ombudsman.

14. Have appropriate measures been taken to combat all forms of "hate speech" against lesbian, gay, bisexual or transgender persons, in accordance with Article 10 of the European Convention on Human Rights and with paragraph 6 of the Appendix to the Recommendation ?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

If so, have specific measures been taken to raise awareness of public authorities/ institutions of their responsibility to refrain from statements which may reasonably be understood as legitimising hatred or discrimination against lesbian, gay, bisexual or transgender persons?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

With regard to the prosecution and punishment of "hate speech"

In accordance with the ECHR judgement of 13 February 2002 in *Vejdeland v. Sweden* case, penalizing hate speech that takes the form of distribution of "threats or contempt" is in line with the Convention. In Poland, the dissemination of threats is penalized particularly by Article 190 of the Criminal Code, and contempt in the Article 216 of the Criminal Code.

Polish law distinguishes between "hate speech", defined as the distribution of "threats or contempt" and "the language of hostility". It penalizes the former, also on the homophobic and transphobic grounds. Hate speech is penalized in situations when it takes the form of incitement to crimes (Art. 18 § 2 of the Criminal Code) or calling for them or praising them (Art. 255 of the Criminal Code). The latter provision also applies to calling for and praising acts of verbal aggression (Art. 212 and 216 of the Criminal Code) or physical aggression (Art. 148 et seq. Criminal Code) against fellow citizens.

It should be noted that according to the provisions of the European Union (Council Framework Decision 2008/913/JHA of 28 November 2008 *on combating certain forms of racism and xenophobia by means of criminal law* (OJ of EU L of 6 December 2008), such measures cannot violate fundamental rights, including the right to freedom of expression (item 14 of the preamble). Therefore, the Member States are not obliged to criminalize acts of hate speech other than threatening, abusive or insulting, or are likely to cause disruption of public order (Art. 1 sec. 2 of the Decision).

Raising the awareness of the public authorities on avoiding the use of discriminatory language

The Polish National School of Judiciary and Public Prosecution conducts a number of trainings on equality and non-discrimination, including on the grounds of sexual orientation and gender identity. The subject of these trainings also covers prevention of the so-called "hate speech." For example, the subject of the training *"Criminal law aspects of the combat against the discrimination on racial, ethnic, religious grounds, owing to the sexual orientation or gender identity. Criminal, criminological and legal aspects of human trafficking"* was discrimination based on sexual orientation or gender identity in the context of criminal law protection of the dignity (honour) and physical integrity, the definition of the problem and ways to combat them effectively.

Moreover, the Ministry of Justice and the Polish National School of Judiciary and Public Prosecution, in collaboration with civil society organizations, took actions in order to expand the training programme for spokespersons of the courts and prosecutor's offices and to include the above-mentioned issues. The first edition of the training with the extended programme is planned for 2013.

From 2011 to 2013, the Government Plenipotentiary for Equal Treatment in collaboration with the Jagiellonian University and the School of Economics is implementing the project *"Equal Treatment as a Standard of Good Governance."* The aim of the project is to prepare the government administration at all levels to draft new law and monitor the existing provisions and to implement anti-discrimination policies concerning *i.a.* LGBT people.

The project includes:

- establishment of a nationwide network of 51 Coordinators for Equal Treatment in all ministries, Chancellery of the Prime Minister, regional offices and selected government agencies and the National Labour Inspectorate;

- development by the Jagiellonian University the Strategic Recommendations for Equal Treatment, which are the basis for development of the National Action Plan for Equal Treatment;
- trainings for about 480 employees of 87 governmental institutions on the implementation of the principle of equal treatment and prevention of all forms of discrimination, raising the competence of public administration personnel;
- activities promoting the ideas of equality and prevention of all forms of discrimination through the implementation of public information campaign on equal treatment and non-discrimination;
- launching of the website www.siecrownosci.gov.pl ("Network of equality");
- organization of 16 regional and 4 thematic conferences on various aspects of anti-discrimination policy and law;
- dissemination of the results of research carried out within the project.

As a part of the project, the School of Economics conducted between December 2011 and January 2012 expanded research with the extensive Gender Index measure (discrimination on grounds of sex, race, ethnicity, nationality, religion, belief, political views, age, disability, sexual orientation, marital or family status) in all ministries and in the Chancellery of the Prime Minister, thanks to which it will be possible to assess the level of equality of opportunities in all areas of discrimination covered by the catalogue. The research report was drawn up in 2012.

Furthermore, between 2012 and 2013, the Office of the Plenipotentiary for Equal Treatment was implementing the project *"Media of Equal Opportunities"*, co-funded by the European Commission within the EU programme for employment and social solidarity PROGRESS. The overall objective of the project was to introduce the notion of equality to the language of public debate through the educational and promotional activities aimed at individuals and communities taking part in the public debate. As a part of the project, two contests were carried out. In the course of the first one, addressed to experts and NGOs, the best reports, research or analyses concerning communications and the language of the media in the context of anti-discrimination or coaching manuals and training materials in the field of policy of equal opportunities and combating discrimination in the mass media were selected. The chosen materials are to be published and distributed as an award. The project creator intended that award as a form of support of the non-governmental sector and promotion of innovative methods and studies related to the topic of anti-discrimination. In the course of the second contest, directed to journalists and journalism students, the best ideas to promote equality and combat discrimination in three categories: pen (Internet), microphone and image were selected.

II. Freedom of association

15. Are there measures in place to ensure that freedom of association (including access to public funding available for non-governmental organisations) can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If any, please provide examples of limitations or exceptions to the guarantees set out in Paragraphs 9 and 10 of the appendix to the Recommendation and indicate whether any measure to review or lift such limitations or exceptions is in preparation:

Polish law protects the right of association in a way that it even provides for imprisonment up to 2 years of anyone who by using violence or unlawful threat prevents the conduct of a lawful meeting, or disperses such a meeting (Article 260 of the Criminal Code). This concerns in particular the meetings referred to in the Act of 7 April 1989, the Law on Associations (Journal of Laws of 2001, No. 79, item 855, as amended).

16. Are there specific measures in place to effectively protect defenders of human rights of lesbian, gay, bisexual and transgender persons against hostility and aggression, including when allegedly committed

by state agents, in accordance with the Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Polish criminal law protects defenders of LGBT persons' rights from hostility and aggression, either active (Art. 148 et seq. of the Criminal Code) or verbal (Art. 190, 216, 212 of the Criminal Code).

Polish Criminal Code also provides for severe penalties for a public officer who showed behaviour having features of a crime motivated by discrimination. Any such abuse during or in connection with the performance of the public officer's duties, if reported by the victim or otherwise known to the law enforcement authorities, is the subject of preparatory proceedings as a separate offence of misuse of powers or negligence of duty by the officer. The preparatory proceedings in these cases are conducted in the form of "investigation," rather than a simplified form of "inquiry," which minimizes the potential interference in the course and results of these proceedings. Due to the potential perpetrator, the proceedings are characterized by meticulousness in collecting the evidence.

Decisions of prosecutors on whether to prosecute are under the control of an independent and impartial court. If the victim does not agree with the prosecutor's decision to discontinue the proceedings, he/she can appeal against that decision to the court and request that it orders the prosecutor the initiation or continuation of the proceedings (Art. 330 of the Code of Criminal Procedure), and if the prosecutor, after taking the steps ordered by the court, still cannot see basis for preparing an indictment – the victim can do it on his/her own behalf (Art. 55 of the Code of Criminal Procedure).

17. Have measures been taken to ensure that non-governmental organisations defending the of human rights of lesbian, gay, bisexual and transgender persons are appropriately consulted on the adoption and implementation of measures that may have an impact on the human rights of these persons?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

In its legislative activities, the Ministry of Justice closely follows § 12 sec. 5 of the Resolution No. 49 of the Council of Ministers of 19 March 2002 - Rules of Procedure of the Council of Ministers, which provides the possibility of consulting draft documents with the civil society organizations and other stakeholders and institutions. The decision on whether the document will be sent out for consultation is not mandatory and should be taken after considering the content of the government draft document, and taking into account other factors, including its importance and the expected social and economic impact, the degree of its complexity and its urgency. In legislative practice of the Ministry of Justice any document which may be associated with significant effects or whose content provides significant new legislation, is subjected to consultations.

In its non-legislative activities, the Ministry of Justice is working closely with the NGOs. For example, the proposition of cooperation in the training of spokesmen of courts and prosecutor's offices was sent to the NGO Campaign against Homophobia, the Foundation for Transgender People "Trans-Fuzja", the Association Lambda Warszawa and the Anti-discrimination Education Association.

In addition to the above, the Plenipotentiary for Equal Treatment, initiated a series of meetings with representatives of the non-governmental sector and the academic community. During the first meeting, on 1 February 2012, the Plenipotentiary met with the Coalition for Equal Opportunities, which brings together organizations working in different areas of anti-discrimination, including the LGBT persons. The meeting aimed at initiating regular contacts and cooperation. The proposals

submitted by organizations were discussed on the meeting. Since that time, a series of meetings, during which the issues of equal treatment were discussed, have been held.

The Ombudsman also meets regularly with the LGBT organizations.

III. Freedom of expression and peaceful assembly

18. Are there measures in place to ensure that freedom of expression, including freedom to receive and impart information on subjects dealing with sexual orientation or gender identity, can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are there measures in place to ensure that freedom of peaceful assembly can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If specific limitations or exceptions regarding such freedoms are in place, please provide examples and indicate whether any measure to review or lift such measures is in preparation:

The Law on Assemblies of 5 July 1990 guarantees the right of freedom of peaceful assembly. This act does not contain any provisions that would discriminate against, or could potentially pose a risk of discrimination based on sexual orientation or gender identity.

The Law on Assemblies 1990 enumeratively lists the data which shall be included in a notice of intention to hold an assembly. The required data does not include indication of the sexual orientation of the applicant, nor can such information be learnt from the notice of intention.

Polish law protects the right to assembly in a way that it provides even for imprisonment up to 2 years of anyone who by using violence or unlawful threat prevent the conduct of an lawful assembly or a march or disperses such an assembly or a march. This applies not only to assemblies and marches reported to the authorities under the Act of 5 July 1990, the Law on Assemblies, but also the so-called "spontaneous assemblies" not reported to the authorities because of the abruptness of the event which caused it (see the judgement of the Constitutional Court of 10 July 2008, Ref. no. P 15/08).

19. Do law enforcement authorities take appropriate measures to protect participants in peaceful demonstrations in favour of the human rights of lesbian, gay, bisexual and transgender persons?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

IV. Right to respect for private and family life

20. Have measures been taken to ensure that criminal law provisions which, because of their wording or scope, may lead to a discriminatory application with respect to sexual orientation or gender identity are either repealed, amended or applied in a manner which is compatible with the principle of non-discrimination?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The Polish criminal law does not contain provisions which, due to their unclear wording, could discriminate LGBT persons.

21. Are there measures in place to ensure that personal data referring to a person's sexual orientation or gender identity are not collected, stored or otherwise used, except where this is necessary for the performance of specific, lawful and legitimate purposes, and that existing records that do not comply with this principle are destroyed?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please provide examples of exceptions to this principle, if any:

In Poland, data on sexual orientation or gender reassignment information is not collected or stored. What is more, that data cannot be coded in reference numbers used in the population records. These issues, along with the possible exceptions in the collection of "sensitive" data, are regulated by the Act of 29 August 1997 on the protection of personal data, which, in so far as relevant, says:

Article 27. 1. The processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, religious, party or trade-union membership, as well as the processing of data concerning health, genetic code, addictions or sex life and data relating to convictions, decisions on penalty, fines and other decisions issued in court or administrative proceedings is prohibited.

2. Processing of the data referred to in paragraph 1 is acceptable if:

- 1) **the data subject has given his/her written consent**, unless the processing consists in erasure of personal data,
- 2) the specific provisions of other statute provide for the processing of such data without the data subject's consent and provides for adequate safeguards,
- 3) processing is necessary to protect the vital interests of the data subject or of another person where the data subject is physically or legally incapable of giving his/her consent until the establishment of a guardian or a custodian,
- 4) processing is necessary for the purposes of carrying out the statutory objectives of churches and other religious unions, associations, foundations, and other non-profit seeking organizations or institutions with a political, scientific, religious, philosophical, or trade-union aim and provided that the processing relates solely to the members of those organizations or institutions or to the persons who have a regular contact with them in connection with their activity and subject to providing appropriate safeguards of the processed data,
- 5) **processing relates to the data necessary to pursue a legal claim**,
- 6) processing is necessary to carry out the tasks of the data administrator relating to the employment of employees and other persons, and the extent of processing is provided in the Act,
- 7) **processing is required for the purposes of preventive medicine, the provision of care or treatment**, where the data are processed by a health professional subject involved in treatment, other health care services, or the management of health care services and subject to providing appropriate safeguards,
- 8) the processing relates to those data which were made publicly available by the data subject,
- 9) it is necessary to conduct scientific researches including preparations of a thesis required for graduating from university or receiving a degree; any results of scientific researches shall not be published in a way which allows identifying data subjects,
- 10) data processing is conducted by a party to exercise the rights and duties resulting from decisions issued in court or administrative proceedings.

Article 28. 1. (passage deleted)

2. Serial numbers applied in the census may include only such features as: sex, date of birth, consecutive number, and control number.

3. Assigning any hidden meaning to the elements of serial numbers in the records relating to natural persons is prohibited.

It is worth noting that currently the Constitutional Court is dealing with the issue of a prohibition of processing the so-called sensitive data (including data of LGBT persons) in connection with the processing of personal data by the authorized representatives of the Supreme Chamber of Control. The Constitutional Court will examine the compatibility of the provision of Art. 29 sec. 1 item 2 letter i of the Act of 23

December 1994 on the Supreme Chamber of Control in connection with Art. 27 sec. 2 point 2 of the Act of 29 August 1997 on the protection of personal data – with Art. 2, Art. 47, Art. 51 sec. 2 in connection with Art. 31 sec. 3 and Art. 51 sec. 4 of the Constitution of Poland, as well as with Art. 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ref. K 39/12).

It is also advisable to refer to the statistical information, collected under the Act of 29 June 1995 on Public Statistics, as well as on the basis of the Act on the Protection of Personal Data. The scope of the information collected is defined in executive acts, issued each year based on the provisions of the Act on Public Statistics. In particular, the data in connection with manifestations of all forms of discrimination may be collected under the Act on Public Statistics only on a voluntary basis (Art. 8 of the Act on Public Statistics in conjunction with Art. 27 of the Act on the Protection of Personal Data).

Protection of data of transgender people:

With regard to the storing of sensitive data of persons after gender reassignment, it should be noted that although the issue of gender reassignment is not regulated in a single procedure and in practice consists of three phases (medical procedure, then the recognition of changes before the court, and finally administrative procedure with the purpose of correcting the data shown in the civil registry records), the privacy of such data is fully guaranteed.

The domestic court's judgment acknowledging gender reassignment (in a procedure under Art. 189 of the Code of Civil Procedure) is forwarded to the Civil Registry Office that issued a birth certificate of a given person in order to make a note of a sex correction on the birth certificate in accordance with Art. 21 of the Law of 29 September 1986 on the Civil Registry Records ("1. If after the preparation of a civil status record events occur that have an impact on its content or validity, changes arising therefrom shall be entered into the act in the form of additional mention; 2. The basis for the mention, referred to in the sec. 1, are final court rulings, final decisions, copies of the civil registry records and other documents that affect the content or validity of the act"), see also the Supreme Court ruling of 22 March 1991, III CRN 28/91, in which it stated that "in case of finding in the judgement that the change of sex took place, such ruling acts with *ex nunc* and is the basis for the disclosure of the circumstances in the civil registry records in the form of an additional entry under Article 21 of the Act on the Civil Registry Records." The sex determined in the birth certificate is then the basis for the preparation of official documents and giving identification numbers. The person concerned may then apply for a change of name to the Civil Registry Office and, in accordance with Article 31b (5) point 2 of the Act of 10 April 1974 on census and identity cards ("**PESEL number is subject to change in case of ... correction of sign or a sex change of the person, to whom it was given**"), for a new Social Security number. The next step is to apply for an identity card and other documents reflecting the changes. **It should be underlined that the information of one's sex at birth is showed only in the extended version of the birth certificate, and not in the certified abridged copies of the birth certificate, which are commonly used in the official situations, such as when applying for marriage or for issuing a death certificate. The extended birth certificate is not required in any official situation and it only reflects the "full history" of a person.**

Detailed information on the collection of data on employment:

At the recruitment stage, an employer is entitled to require from the person applying for a job only a limited amount of personal data. According to the Labour Code, an employer has the right to request only the data including: name(s) and last name, parents' names, date of birth, place of residence (address for correspondence), education, the course of previous employment, as well as:

- other personal data of an employee, as well as names and birth dates of children of an employee, if providing such data is necessary for an employee to use the special powers provided for in the labour law,
- Social Security number (PESEL) of an employee assigned by the Government Information Centre of Universal Electronic System for Registration of the Population (RCI PESEL).

The employer may request personal data other than those specified above, if the obligation to provide them arises from separate regulations.

Information on good practice of Border Guard:

Border Guard strictly complies with the law on the protection of personal data, in particular the so-called sensitive data, which include personal data relating to sexual orientation and gender identity of people. From 1 January 2010 to January 2013, the Border Guard received only 1 complaint about the behaviour of the BG officers in the above-mentioned field, which resulted in immediate preventive measures in the form of training of the personal processing data. Moreover, representatives of commanders of divisions for the protection of human rights were trained in September 2012 by the Administrator of Information Security the Commander in Chief of Border Guard in terms of the protection of personal data, particularly sensitive data.

22. Are appropriate measures available to guarantee full legal recognition of a person's gender reassignment in all areas of life in accordance with the provisions of paragraph 21 of the appendix to the Recommendation?

a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Have prior requirements for legal recognition of a gender reassignment been reviewed in order to remove any abusive requirements?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

As already indicated above, in Poland, gender reassignment procedure is a three step process, starting with appropriate medical treatment (hormone therapy, surgery), through the court phase, aimed at assigning the proper sex of a person whose gender identity differs from their registered sex, to the administrative procedure for changing the contents of the birth certificate, change of personal data and issuing a new PESEL (social security number). **None of these steps include prior requirements which would have been unnecessary or could have offensive nature.** Medical treatments are performed on the basis of diagnosis of transsexualism, defined as "the difference between one's mental sense of his or her gender and the morphological and biological build and social gender (metrical), which are perceived as 'alien' by that person and belonging to the opposite sex" (definition by K. Imieliński, accepted without reservations by the Polish science). At the court stage, the basic evidences in the case are diagnosis of a sexologist and the testimony of the plaintiff. The administrative procedures of changing the documents take place on the basis of the final judgement of the court.

It is worth emphasizing that actions aimed at comprehensive regulation of gender reassignment procedures are taken. Among others, on 1 August 2011, the Ombudsman reported to the Minister of Justice the need for a comprehensive legislation on transgender people and the urgent intervention of the legislator in the mode of legal change of registered sex (ref. no. RPO/660929/10/I). On 26 April 2011, the Ombudsman questioned the Minister of Labour and Social Policy in connection with the lack of regulations governing personal data changes in the work's certificate in the event of the former employee's gender reassignment (ref. no. RPO/673031/11/III).

23. Once gender reassignment has been completed and legally recognised, is the right of a transgender person to marry a person of the sex opposite to their reassigned sex effectively guaranteed?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

People after gender reassignment can freely marry person of the opposite sex, according to the general rules set out in the Family and Guardianship Code. Gender of a person applying for marriage is assessed on the basis of the certified abridged copy of the birth certificate.

24. Where national legislation recognises registered same-sex partnerships, are their legal status, rights and obligations equivalent to those of heterosexual couples in a comparable situation?
- a. ☐ b. ☐ c. ☐ d. ☐ e. ☐ - *Not applicable*

If national legislation does not recognise nor confer rights to registered same-sex partnerships and unmarried couples, has the possibility been considered to provide same-sex couples with legal or other means to address the practical problems related to this fact in their lives?

- a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

Please provide examples:

In this regard, good practices can be identified in which Polish law gave certain rights to cohabitants, without requiring that they are of the opposite sex. As an example, it should be noted that it is clear from the decisions of the Supreme Court (Resolution of 28 November 2012, ref. no. III CZP 65/12), that by a person who “actually remained in cohabitation” with the deceased tenant (and therefore is entitled to succeed a tenancy), should also be understood a person of the same sex.

25. Are there measures in place to ensure that decisions regarding parental responsibility and adoption of a child are taken primarily in the child’s best interest, as well as without discrimination based on sexual orientation or gender identity?
- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The fundamental principle of the Polish Family Law is the notion of the child’s well-being (*dobro dziecka*). The well-being of the child is assessed *in concreto* by deciding what is the best for the child in a given situation and at a given time.

As for the practical activities, it is worth to emphasize the training activities of the Polish National School of Judiciary and Public Prosecution, which organizes trainings entitled “*Selected issues of domestic and foreign adoption*” and “*Adoption – the substantive and procedural issues – foreign adoption (regulations under the Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption, done in The Hague on 29 May 1993).*” Their scope includes problems of discrimination on the grounds of sexual orientation and gender identity in deciding on the adoption of children by single person. Furthermore, the specific topics covered during this training include the judicial decisions of the European Court of Human Rights about adoptions and issues of foreign adoptions. In the years 2008-2011, 243 people have been trained in that matter.

V. Employment

26. Does legislation prohibit discrimination in employment in the public and private sector on grounds of sexual orientation?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Does legislation prohibit discrimination in employment in the public and private sector on grounds of gender identity?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place concerning in particular:

Access to employment

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Promotion, dismissals, pay and other working conditions

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Prevention and punishment of harassment

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Protection of privacy of transgender persons

(in accordance with paragraph 30 of the Appendix to the Recommendation)

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The Act on employment promotion and labour market institutions stipulates that the provisions of the Act protect the obedience of the principle of equal treatment in access and use of the services of the labour market and labour market instruments, regardless of sex, race, ethnicity, nationality, religion, belief, creed, disability, age or sexual orientation. **List of discriminatory grounds is open**, which means that discrimination on any other grounds, such as gender identity, is prohibited.

The Act prohibits discrimination in the following areas:

- establishing criteria for issuing work permits for foreigners,
- business rules of employment agencies,
- conducting employment recruitment,
- receiving job offers submitted by employers, vocational guidance and career information,
- managing and benefit from trainings.

Provisions of the Act of 3 December 2010 on implementing certain European Union legislative provisions concerning equal treatment apply to the proceedings for infringement of the principle of equal treatment.

The Act on employment promotion contains also penal provisions concerning proceedings for violation of the prohibitions of discrimination – in accordance with the provisions, who, leading employment agency, does not respect the principle of non-discrimination on grounds of sex, age, disability, race, religion, ethnic origin, nationality, sexual orientation, political beliefs and faith or because of union membership or because of gender, age, disability, race, religion, nationality, political beliefs, ethnic origin, religion or sexual orientation refuses to employ a candidate for a vacant job or a position of professional preparation, is liable for punishment by fine of not less than PLN 3000 .

The prohibition of discrimination, regardless of the ground for it, is also among the basic principles of the labour law (Article 11³ of the Labour Code). **The list of the grounds of discrimination contained in the Labour Code is open.** Therefore, even though discrimination based on gender identity is not mentioned directly – it is included in the list and is under protection.

The text of the applicable provisions of the Labour Code:

Article 11³. Any discrimination in employment, direct or indirect, in particular with regard to sex, age, disability, race, religion, nationality, political views, trade union membership, ethnic origin, belief, sexual orientation, as well as employment for a fixed or indefinite time period, full or part-time work – is not allowed.

Chapter II a – Equal treatment in employment

Article 18^{3a}. § 1. Employees should be treated equally in labour relations in terms of concluding and terminating an employment, terms of employment, promotion and access to training to improve professional qualifications, in particular, regardless of sex, age, disability, race, religion, nationality, political views, trade union membership, ethnicity, belief, sexual orientation as well as employment for a fixed or indefinite time period, full or part-time work.

§ 2. Equal treatment in employment means non-discrimination in any way, directly or indirectly, on the grounds set out in § 1.

§ 3. Direct discrimination occurs when due to one or more of the grounds defined in § 1 an employee is or could be treated in a comparable situation less favourably than other employees.

§ 4. Indirect discrimination occurs when, as a result of an outwardly neutral decision, criterion applied or action undertaken, there are or there may be disadvantageous disproportions or particularly disadvantageous situation in concluding and terminating employment relationships, terms of

employment, promotion and access to training in order to improve professional qualifications in relation to all or a substantial number of employees belonging to a group singled out on the basis of one or several discrimination criteria listed in § 1, unless the decision, criterion or action is objectively justified by a lawful objective which is to be reached, while the measures which will serve to reach the objective are proper and necessary.

§ 5. Manifestations of discrimination within the meaning of § 2 also comprise:

- 1) actions which consist in encouraging or ordering any other person to violate the principle of equal treatment in employment,
- 2) undesirable conduct with the purpose or effect of violating the dignity of an employee and creating an atmosphere which is frightening, hostile, degrading, humiliating or insulting (mobbing).

§ 6. Discrimination because of gender also includes any undesirable conduct of a sexual nature or relating to an employee's gender, with the purpose or effect of violating the employee's dignity, an atmosphere which is frightening, hostile, degrading, humiliating or insulting; such behaviour may consist of physical, verbal or non-verbal elements (sexual harassment).

§ 7. Employee's surrender to mobbing or sexual harassment, as well as employee's actions against mobbing or sexual harassment, should not result in any negative consequences for the employee.

Article 18^{3b}. § 1. With the reservation of § 2-4, it is considered a breach of the principle of equal treatment in employment when an employer differentiates the situation of an employee on one or several grounds, defined in Article 18^{3a} § 1, with the following consequences:

- 1) refusal to conclude or terminate an employment relationship,
- 2) unfavourable terms of remuneration for work or other terms of employment or overlooking an employee in promotion or granting other work-related benefits,
- 3) overlooking an employee in the selection of participants for training to improve professional qualifications, unless the employer can prove that he/she was guided by objective reasons.

§ 2. The principle of equal treatment in employment shall not be infringed by actions which are proportionate to achieving a lawful differentiation of the employee's situation and which consist in:

- 1) not employing an employee on one or several grounds, set out in Article 18^{3a} § 1, if the type of work or conditions in which it is to be performed are a reason why the said ground or grounds are a real and decisive professional requirement for the employee,
- 2) terminating the terms of employment connected with duration of working time, if it is justified by reasons which do not concern employees and without referring to any other ground or grounds listed in Article 18^{3a} § 1,
- 3) applying measures which differentiate the legal position of an employee due to the protection of parenthood or disability,
- 4) applying the criterion of the length of employment while specifying the terms of engaging and dismissing employees, terms of remuneration and promotion, as well as access to training to improve professional qualifications, which justifies different treatment of employees due to their age.

§ 3. It shall not be a breach of the principle of equal treatment in employment to take measures during a specified period of time, aimed at compensating for unequal opportunities of all or a significant number of employees singled out for one or several grounds defined in Article 18^{3a} § 1, by reducing any actual inequalities for the benefit of these employees, to the extent specified in this provision.

§ 4. It shall not be a breach of the principle of equal treatment if churches and other religious unions, as well as organizations with an ethics based on religion or belief restrict access to employment, because of religion or belief if the type or nature of activities carried out by churches and other religious unions, as well as organizations makes religion or belief the real and decisive occupational requirement posed to an employee, proportional to achieving the legitimate aim of diversifying the situation of the person; this applies also to requiring from employees to act in good faith and loyalty to the ethics of church, other religious union and organization whose ethics is based on religion or belief.

Article 18^{3c}. § 1. Employees have the right to equal remuneration for the same work or for work of the same value.

§ 2. The remuneration referred to in § 1 shall include all components of the remuneration, irrespective of what they are called and of what nature they are, as well as other work-related benefits, granted to the employee in the form of money or in any other form.

§ 3. Work of the same value shall be work which requires comparable professional qualifications, certified by documents specified in separate provisions, or practice and professional experience, and also comparable responsibility and effort.

Article 18^{3d}. A person who is a victim of a breach by an employer of the principle of equal treatment in employment shall be entitled to compensation in the amount not lower than the minimum remuneration for work, determined on the basis of separate regulations.

Article 18^{3e}. § 1. The fact that an employee took advantage of the rights to which he or she is entitled in connection with a breach of the principle of equal treatment in employment by the employer shall not constitute grounds for unfavourable treatment of the employee, and it shall not cause any negative consequences for the employee, especially, it shall not be the reason justifying termination, by the employer, of the employment relationship with notice or termination of such relationship without notice.

§ 2. The provision of § 1 shall apply to an employee who has given any form of support to the employee who exercises the powers of the violation of the principle of equal treatment in employment.

Moreover, as already indicated, **the Act of 3 December 2010 on implementing certain European Union legislative provisions concerning equal treatment**, which defines the areas and ways to prevent violations of the principle of equal treatment on grounds of sex, race, ethnicity, nationality, religion, belief, creed, disability, age and sexual orientation, in Article 8 sec. 1 prohibits unequal treatment based on sexual orientation in the following areas:

1. undertaking vocational training, including training, development, retraining and professional practice;
2. conditions of initiating and performing business or vocational activities, in particular in the framework of labour relations or employment on the basis of a civil contract;
3. access to and activities in trade unions, employers' organizations and professional associations, as well as the use of the powers of the members of these organizations;
4. access to and conditions for the use of the instruments of the labour and labour market services, as defined in the Act of 20 April 2004 on the employment promotion and labour market institutions offered by labour market institutions and instruments of labour market and labour market services offered by other entities acting for the employment, development of human resources and prevention of unemployment.

VI. Education

27. Are there appropriate legislative and other measures, addressed to educational staff and pupils, to ensure that the right to education can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity, taking into due account the over-riding interests of the child and the rights of parents regarding education of their children?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place concerning in particular:

Anti-discrimination training or support and teaching aids

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Information, protection and support for pupils and students

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Objective information on sexual orientation and gender identity in school curricula ?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

School equality and safety policies and action plans

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Chapter VI, point 31 of the above-mentioned Recommendation of the Committee of Ministers CM/Rec(2010)5 provides for ensuring respect for the rights of children and young people to learn in a safe environment free from violence, intimidation, social exclusion and other forms of discriminatory and degrading treatment related to sexual orientation or gender identity.

The above-mentioned Recommendation of the Committee of Ministers CM/Rec(2010)5 provides also for the obligation of adopting the necessary measures to promote mutual tolerance and respect in schools, regardless of sexual orientation and gender identity.

At this point, the obligation to develop an educational programme and prevention program by school headmasters resulting from educational law should be noted. Headmaster is required to provide the conditions for their implementation and prepare teachers in the required preventive competence. Educational programme and prevention programme must be consistent with the content contained in the core curriculum, also in the education on human sexuality, functioning of social stereotypes and relationships between people in terms of their gender and sexual orientation.

Each school creates an educational programme which takes into account the values important to the school community as well as issues or problems which are important from the point of view of the environment of pupils, parents and teachers. The school is obliged to perform periodical diagnoses of problems, take preventive and corrective measures, appropriate to difficult situations present on its territory, such as prevention of all forms of discrimination. These activities allow realistic assessment of the needs and represent an opportunity to reduce many risk factors, triggering negative behaviour of pupils both in the school environment and outside school, this applies also to aggressive or abusive behaviour directed at pupils who are not accepted by their peers because of their sexual orientation or gender identity.

The core curriculum defines mandatory set of objectives and content of education, including skills described in a form of general and specific requirements for the knowledge and skills which a pupils should have at the end of a particular stage of education, then included in the curriculum.

The core curriculum specified in the *Regulation of the Minister of National Education of 27 August 2012 on the core curriculum of pre-school education and general education in particular types of schools* (Journal of Laws item 977) the issues of sexuality, sexual orientation and sexual health are included in the core curriculum of the subjects, such as family life education and biology.

The core curriculum presents the objectives and educational content of the family life education subject taking into account the age, sensitivity and cognitive needs, and the reception of pupils at a given educational stage:

2nd educational stage (classes IV-VI of primary school)

- the core curriculum focuses on portraying family values in personal life and the help to prepare for the understanding and acceptance of the changes of puberty, pointing to, among others, basic functions of the family with emphasis on the child's place in the family, transfer values and traditions in the family, family bonds, emotional relationships and other relations in the family, motherhood and fatherhood, basic knowledge of the structure and functioning of the human reproductive system, differences and similarities between boys and girls, physical and psychological changes of puberty, human right to privacy and protection of this right, assertive attitudes, the essence of friendship, institutions acting for children and families, responsibility for own development;

3rd educational stage (lower secondary school)

- general objectives relate to issues such as showing respect to other people, appreciation for their effort and work, attitude of self-respect, bringing a positive contribution to the life of own family, adoption of an integral vision of a person, choice and realization of values serving personality development, directing own development, taking self-educational effort in accordance with the recognized standards and values, knowledge of the human body and changes taking place in it and acceptance of one's sexuality, adoption of an integral vision of human sexuality, ability to defend one's privacy and sexual integrity, ability to use counselling for children and young people;

4th educational stage (upper secondary school)

- this stage includes the issues of deepening knowledge related to functions of a family, love, friendship, performing marital and parental roles, human sexuality and procreation, further emphasis is placed on development of skills such as making responsible decisions about the choice of life path, solving problems associated with puberty, adolescence and the choice of the way of life, creating own personality, better understanding of oneself and the immediate surrounding, seeking and giving answers to the questions: who is human, what are his/her goals and objectives in life, what is the meaning of life, the adoption of a positive attitude towards human life, knowledge of basic rules of conduct in the field of human sexuality.

The draft Regulation amending the Regulation of the Minister of National Education of 7 October 2009 on pedagogical supervision (Journal of Laws No. 138, item 1324) lists the requirements of schools and institutions in the implementation of anti-discrimination activities.

In the requirements contained in the proposed Annex to the Regulation, the evaluation of work of schools was differentiated, depending on the scope of the implemented activities taking into account the diversity and specificity of the school environment and including the whole school/institution community. The importance of activities of a school/institution designed to recognize not only how pupils learn, but also their skills, mental and physical capabilities, needs and individual circumstances was highlighted in them.

The evaluation of the school work is dependent on the extent of organization of classes encouraging development of interests and talents. The requirement to support each pupil in the development and providing him or her with optimal psychological and pedagogical help, adequate to the identified needs will undoubtedly contribute to active development of school forms and methods of work with a pupil to combat various forms of discrimination. The evaluation of the school work is also dependent on its cooperation with the entities of the environment responsible for supporting children and youth according to the needs and social situation of pupils, which undoubtedly have a positive impact on raising the level of tolerance.

Centre for Education Development – a unit subordinate to and supervised by the Ministry of National Education, as a part of statutory tasks undertakes a number of activities in the field of education for human rights and civic education, which include themes of non-discrimination, also on grounds of sexual orientation.

Information materials, publications:

- Compasito. A manual on human rights education for children (CODN; Association for Children and Young People CHANCE); Compasito provides practical tools to approach the topic of human rights in the work of a teacher using activating teaching methods.

- Compass. A manual on human rights education with young people (2005, CODN; Association for Children and Young People CHANCE); Compass is a guide to education for human rights and, as such,

indicates specific ideas and practical exercises to engage and motivate young people to lead their own research to increase knowledge, develop skills and attitudes close the philosophy of human rights.

- Human Rights – Teacher's Guide (2002, CODN); the publication is devoted to the issues of human rights and introduction of this issue to the Polish school. The book can be used in work related to shaping attitudes of tolerance and spreading knowledge of human rights and freedoms among teachers, children and youth.
- Anti-discrimination. Educational Package (2005, CODN); Anti-discrimination education package developed under the programme PHARE 2002 PL 2002/000-605/01.02 Strengthening anti-discrimination policy in Poland, introduces the issues of equality and preventing discrimination to educational activities undertaken by teachers, educators and representatives of NGOs. The publication provides an excellent substantive base for training relating to the issues of anti-discrimination and the promotion of equal treatment policy. The publication financed with European Union funds.

We would also like to draw attention to the initiatives of the Ministry of National Education supporting the activities of schools in shaping attitudes based on mutual tolerance and dialogue.

The Ministry of National Education continues to support development of schools promoting health, as part of the European Network of Schools for Health in Europe.

Schools promoting health create conditions for building an integrated school community, among others, by the joint identification of priorities for promoting various forms of physical activity, creative leisure time, which prevents the occurrence of peer violence and various forms of discrimination.

Ministry of National Education, in May 2012, announced open competition for the implementation of public tasks entitled: *Live with PASSION. Projects supporting development of child's own activity, education in partnership, mutual respect and acceptance of Janusz Korczak propagating educational ideas*. The aim of the Competition was to select the best offers of the applicants who will plan and implement projects which include activities such as development of interests and talents of children and youth, strengthening mental health through development of skills of coping with stress and preventing mental crisis in schools and/or in other educational institutions.

In the school year 2012/2013, the role played by education and providing pupils with a sense of security in the activities of schools was particularly highlighted.

Ensuring safety of all pupils does not mean focusing only on the prevention of aggression and violence.

Attention to safety and education is widely understood, for instance, as taking care of the environment favourable for development and safe for pupils, protection against discrimination, physical and mental violence, building a sense of security, learning mutual respect, tolerance, cooperation, responsibility for self and others. Placing *Strengthening safety* in the national educational policies as one of the priorities means that headmasters are required to pay attention to this aspect in the entire operation of schools as a part of their activities.

In the area of care for the safe behaviour of a pupil, the Ministry of National Education prepared the material entitled *Offer of prevention activities addressed to teaching staff, parents, pupils and authorities running school and institutions* to be used in the implementation of teaching, educational and preventive tasks.

The material is to help teachers in preparing meetings with pupils and parents, as well as help to enrich their workshop, and the included websites allow quick access to the information needed.

The part addressed to parents contains numerous guides and programmes helpful in identifying the causes of problem behaviours of children, as well as the use of effective forms of educational influence, with respect for the rights of the child.

Pupils will find there an offer of scenarios of meetings aimed at developing their psychosocial competence and information concerning the causes and effects of violence. The proposed prevention programmes can contribute to building a positive climate in the classroom and school, and prevent all forms of discrimination.

As a part of the priority of Strengthening Safety in school, the Ministry of National Education prepared an interactive map, which includes the area concerning safety in schools. It consists of issues related to the prevention of aggression and violence, emergency response, resolution of conflicts, attention to the atmosphere in a classroom, school, relationships with peers and adults.

Each separate aspect of safety includes materials which introduce particular problem and show possibility of improving the situation of a pupil and his or her environment.

VII. Health

28. Are there appropriate measures in place to ensure that the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity, in accordance with the provisions of Paragraph 33 of the Appendix to the Recommendation?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

29. Has homosexuality been removed from the national classification of diseases?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

30. Are there measures in place to ensure that transgender persons have effective access to appropriate gender reassignment services?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If there are limitations to the costs covered by health insurance for gender reassignment, please explain:

Outpatient specialized healthcare services in the field of psychology, endocrinology and surgery are available to all people insured within health insurance scheme. Plastic or cosmetic surgery health services are also included in basic benefit package, however, it concerns only services provided in following cases: birth defect, trauma, disease and effects of its treatment. Treatment of other cases is not financed by public payer.

VIII. Housing

31. Are measures taken to ensure access to adequate housing can be effectively and equally enjoyed by all persons, without discrimination on grounds of sexual orientation or gender identity, that protection is provided against discriminatory evictions, and that equal rights are guaranteed in respect of ownership of land and other property,?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Polish law provides, in Article 691 of the Civil Code, that after the death of a tenant, the person entitled to succeed a tenancy is, *inter alia*, "a person who actually remained in cohabitation with the tenant" (§ 1) provided that he/she lived with a tenant in the property until his/her death. As it stems from the judicial decisions of the Supreme Court (Resolution of 28 November 2012, III CZP 65/12), the person remaining "actually in cohabitation" is understood as the person who was connected with the deceased tenant with an emotional, physical and economic relationship, even if it is a person of the same sex.

32. With respect to the risk of homelessness faced by lesbian, gay, bisexual and transgender persons, in particular young persons and children, are measures taken to ensure that the relevant social services are provided without discrimination on grounds of sexual orientation or gender identity?
- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

According to the Act on social assistance, the right for social assistance benefits, including those granted to the homeless, does not depend on factors such as sexual orientation or gender identity. The law defining the conditions for granting social assistance are clear, unambiguous and make it possible for the concerned entities to understand precisely their rights and responsibilities.

IX. Sports

33. Have measures (including awareness-raising measures) been taken to tackle discrimination on grounds of sexual orientation or gender identity (including the use of discriminatory insults) in sports and in connection with sports events?
- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

In the area of sports, the Ministry of Sport and Tourism carries out a number of actions to combat all forms of discrimination (caused by race, religion, nationality, etc.), which include also the fight against discrimination based on sexual orientation or gender identity, however, there are no activities or programmes directed solely at the LGBT community.

Ministry of Sport and Tourism, with a view to strengthen the effectiveness of its actions to fight the discrimination, carries out inter-sectoral tasks and cooperates directly with other central offices, such as the Ministry of the Interior, the Council for Sports Events Security and through the participation in projects of the Government Plenipotentiary for Equal Treatment.

Ministry of Sport and Tourism has undertaken a number of activities aimed at realization of the right of equal access to sport for all social groups, and endeavours not to highlight the differences of any of the groups involved in the sporting life.

It should be noted that the various undertakings in the social dimension of sport, do not distinguish specific target groups, and the implemented projects are designed to prevent any possible negative behaviours in sport, including discrimination, intolerance or racism. Implementation of these activities is based on the dissemination of the principle of fair play, both in sports and in everyday life, creation of an atmosphere of tolerance, integration and shaping positive patterns of behaviour. Examples of activities in this area include:

- signing, on 28 January 2011 (the pilot programme in 2010), an agreement on the joint implementation of the programme *I am Fair*, between the Ministry of Sport and Tourism, the Ministry of the Interior, the City of Lodz Office and the University of Lodz. The project also included a number of institutions, associations and organizations, including sports clubs, and the patronage over the project was taken by the Polish Olympic Committee. The programme *I am Fair* aims to promote the idea of fair play, as the educational component of the combat against racism, xenophobia and anti-Semitism and other forms of discrimination and to propagate the attitude of greater understanding and tolerance for other people, cultures and religions among the pupils of the first grade in middle schools;
- organization of an expert conference, from 18 to 19 July 2011, entitled “*Equalizing opportunities through sport as an element of social policy*,” which started a series of events organized as a part of the Polish Presidency in the area of sport and became a part of the implementation of one of the priorities of the Polish presidency of the EU, which was the social dimension of sport;

- implementation of the UEFA EURO 2012™ Social Responsibility Programme, which was carried out with broad collaboration of public sector entities and NGOs. The objective of this programme was to build attitudes of openness, tolerance and cooperation, and promote involvement and active participation of citizens in public life, including the minimization of the violence attitudes and political beliefs of racial overtones in the environment of football fans, promote positive support, promote volunteering in sport;
- measures to prevent riots of spectators at sporting events, including the cases of the use of discriminatory insults, undertaken by the Ministry of Sport and Tourism in cooperation with the entities operating in the area of safety in sport, including the Council for Sport Events Security (a subsidiary organ of the Prime Minister, which unites public administration bodies, the Police, the sports community, and sports fans);
- participation in the project *“Equal Treatment as a Standard of Good Governance,”* coordinated by the Government Plenipotentiary for Equal Treatment. The aim of this project is to take steps to prepare the government administration at all levels to develop and monitor the law and to develop and implement appropriate strategies taking into account the principle of equality. What is more, the Co-ordinator for Equal Treatment was appointed at the department of sport and tourism.

The good practices of the sport unions should also be underlined, such as internal regulations regarding the issues of racism at football stadiums adopted by the Polish Football Association: a resolution on exhibiting banners at football matches (resolution XV/372 of 29 October 2009), which prohibits exhibiting totalitarian, fascist, anarchist, racist and other content which incites intolerance, chauvinism, xenophobia, or hooliganism; a resolution on the identification of participants of football matches classified at mass public events (resolution IV/51 of 30 March 2010); Rules governing the security of matches organized by the PFA, which obligate the match organizer and participating clubs to implement the UEFA 10-point plan on racism. Practical actions undertaken by the PFA include also seconding security delegates to every central-level match – the delegates cooperate with police officers, security staff and the stadium announcer, and draft a report which serves as the basis for possible sanctions against clubs and players; the use of “stadium bans” (bans on entering football stadiums) against hooligans disseminating racist messages and symbols. Moreover, the PFA has published a booklet entitled *Security at Polish Football Stadiums*, which includes a list of graphic signs and symbols used by football hooligans, together with their meaning.

X. Right to seek asylum

34. In cases where your country has an international obligation in this respect, may a well-founded fear of persecution based on sexual orientation or gender identity be recognised as a valid ground for the granting of refugee status and asylum under your national law?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

In accordance with Art. 13 para 1 of the *Act of 13 June 200, on granting protection to foreigners within the territory of the Republic of Poland* (Journal of Laws of 2012, item 680), the refugee status shall be granted to a foreigner, if as a result of justified threat of persecution in the country of origin because of his/her race, religion or nationality, political opinion or belonging to a determined social group, he/she cannot or does not want to enjoy protection of such country.

Additionally, Art. 14 para 2 states that depending on conditions prevailing in the country of origin, a determined social group may constitute a group, whose members have common sexual orientation, with the reservation that sexual orientation cannot embrace acts constituting an offence under Polish law.

In the last year the decision makers attended two trainings devoted specifically to the issue of LGBTI. At these trainings they were explained e.g. the concepts of so-called 'discretion requirement' and 'reasonably tolerably test' (UK jurisprudence).

35. Does your country ensure that asylum seekers are not sent to a country where their life or freedom would be threatened because of their sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Each application for granting the refugee status within the territory of the Republic of Poland is examined on the individual basis and the aspects of sexual orientation and gender identity, as explained above, are taken into account in the decision-making process. Nobody whose life or freedom would be threatened because of his/her sexual orientation or gender identity will be sent back to the country of origin.

In this context it is worth to mention the decision of the Polish Refugee Board (second instance authority in the course of the administrative procedure) no. RdU-178/1/S/12 of 25 July 2012. In the abovementioned decision the Refugee Board stated the following:

- penalisation of the homosexual behaviour in the national law constitutes a ground for granting protection, the enforcement of these national provisions is not a decisive factor in this respect;
- the credibility of an applicant in terms of his sexual orientation and gender identity has to be assessed on the basis of general credibility of his/her statements. The complexity of factors which form sexual orientation do not allow for its determination in the course of medical examination.

Additionally, it should be underlined that the Court of Justice of the European Union, whose rulings constitute a binding interpretation of the relevant EU law provisions for its Member States, is expected to issue a preliminary ruling on the following questions asked by the Dutch Raad van State:

- which homosexual activities fall within the scope of the Directive 2004/83/EC and, in the case of acts of persecution in respect of those activities and if the other requirements are met, can that lead to the granting of refugee status? That question encompasses the following subquestions:

(a) Can foreign nationals with a homosexual orientation be expected to conceal their orientation from everyone in their country of origin in order to avoid persecution?

(b) If the previous question is to be answered in the negative, can foreign nationals with a homosexual orientation be expected to exercise restraint, and if so, to what extent, when giving expression to that orientation in their country of origin, in order to avoid persecution? Moreover, can greater restraint be expected of homosexuals than of heterosexuals?

(c) If, in that regard, a distinction can be made between forms of expression which relate to the core area of the orientation and forms of expression which do not, what should be understood to constitute the core area of the orientation and in what way can it be determined?

- Do the criminalization of homosexual activities and the threat of imprisonment, which are discriminatory by nature, constitute an act of persecution?

XI. National Human Rights Structures

36. Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of sexual orientation?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of gender identity?

a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

If so please explain and indicate in particular, if appropriate, what possibilities of intervention are included in their mandate, including in particular with respect to discrimination on multiple grounds:

By the means of the Act of 3 December 2010 on implementing certain European Union legislative provisions concerning equal treatment, tasks related to the implementation of the principle of equal treatment were vested to the Civil Rights Ombudsman (*Rzecznik Praw Obywatelskich*), as an independent body, and to the Government Plenipotentiary for Equal Treatment, responsible for implementing Government policy in this field, including counteracting the discrimination on the grounds of sexual orientation.

The Ombudsman is tasked with protecting the principle of equal treatment, in particular by analyzing, monitoring and supporting equal treatment of all persons; conducting independent research on discrimination; drafting and publishing independent reports and recommendations pertaining to discrimination. The Ombudsman also provides the Parliament with an annual statement on the implementation of the principle of equal treatment in Poland and the Ombudsman's actions in this field.

It should be noted that originally the Ombudsman's competences were fully of a vertical nature, i.e. when the human rights violation was connected with the activity of public administration bodies, cf. Article 80 of the Constitution of the Republic of Poland. However, the Act of 3 December 2010 assigned to the Ombudsman new tasks, including the obligation to provide independent assistance to victims of discrimination, regardless of which entity has committed the discriminatory treatment. Therefore, as a compromise, the limited competences with regard to relations between private entities were given to the Ombudsman, who can now acquaint herself with a case involving private entities and consequently advise them on the measures available.

The Government Plenipotentiary for Equal Treatment, implements Government policy in the field of equal treatment, in particular by drafting and assessing draft legislation in terms of the principle of equal treatment and their compliance with the principle; taking actions aimed at eliminating the consequences of violation of the principle; monitoring the across-the-board implementation of the principle of equal treatment; promoting and disseminating equal treatment; cooperating with national community organizations, other countries, and foreign and international institutions.

The 2010 Act requires the Plenipotentiary to develop and submit to the Council of Ministers the National Action Programme for Equal Treatment, setting goals and priorities of actions to promote equal treatment, in particular with regard to:

- raising public awareness on equal treatment, including the causes and consequences of violation of the principle of equal treatment;
- prevention of violations of the principle of equal treatment;
- cooperation with the social partners, NGOs and other entities in the field of equal treatment.

Moreover, since 2004, a national network of police plenipotentiaries for the protection of human rights has been operating in the **Police**. It includes full-time positions, working on the basis of three-year strategies

(http://isp.policja.pl/portal/isp/49/3680/Kierunkowa_streategia_Policji_w_zakresie_systemowej_ochrony_praw_czlowieka_na_la.html). The plenipotentiaries are situated in 17 provincial Police offices, the Central Police headquarters and police academies, and at the same time perform the role of the so-called liaison officers with, among others, the LGBT community.

The positions of Plenipotentiary of the BG Commander in Chief for the Protection of Human Rights and Equal Treatment and plenipotentiaries of the commanders of BG divisions are functioning also within the **Border Guard**.

XII. Discrimination on multiple grounds

37. Are there measures in place to ensure that the provisions of national law prohibiting or preventing discrimination also protect against discrimination on multiple grounds, including on grounds of sexual orientation or gender identity?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Section III - Follow-up

38. Which measures by the Council of Europe would you recommend to ensure that member states are guided in their national legislation and practice by the principles set out in the Recommendation and in its Appendix ?

Seminars and workshops for public officials; publication of good practices.

39. Should the Council of Europe continue examining periodically the implementation of this Recommendation? If so, should such examination in future concentrate on specific issues, and which specific issues would you recommend examining in that case?

The implementation of this Recommendation should be examined periodically, however in the reasonable periods of time, allowing the national authorities to introduce and implement relevant changes (4-5 years). Such examination, should not be focusing on specific issues, at least at the beginning.

40. Are there any issues on which the Recommendation and its Appendix should be revised or completed? If so, please indicate them.

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