



Hate Crime in Poland 2012-2016

LAMBDA
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Stowarzyszenie
Interwencji
Prawnej


pracownia
różnorodności

Hate Crime
in Poland
2012-2016

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Cover photo: Door of the Lambda Warsaw's office, vandalized with racist and homophobic graffiti in 2016. © Piotr Godzisz.

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Executive summary

1. This report has been prepared for the 3rd cycle of the Universal Periodic Review and covers the issue of protection from hate crimes (racist, xenophobic, homophobic and disablist violence) and hate speech in Poland in the years 2012-2016. Authors refer to the recommendations accepted by Poland in the 2nd cycle of the Universal Periodic Review which have not been implemented yet. Main reasons for lack of their implementation are also presented. The report raises key issues and provides indications of some areas of concern. Specifically the report highlights:

- gaps in the protection of LGBT people and people with disabilities due to a lack of gender identity, disability and sexual orientation in the list of protected grounds in the hate crime provisions of the Polish Criminal Code;
- gaps in protection of refugees and people perceived to be refugees due to narrow understanding of the protected grounds related to race, national and ethnic origin and religion;
- under-reporting and under-recording of hate crimes due to low confidence in Police, low capacity of Police officers to recognize hate crimes and lack of coordination between different authorities responsible for collecting data on cases that are Policed, prosecuted and sentenced;
- gaps in victim rights and victim support system as there is no developed specific, publicly-funded support addressed to victims of hate crimes;
- lack of effective bodies which would provide forum for regular discussion and exchange of information between all stakeholders involved in countering hate crimes, i.e. authorities, Police, prosecution services, and victim support service providers.

Summary of recommendations

2. To further improve the work on countering hate crime in Poland and ensure compliance of the Polish Criminal Code, other laws and relevant policies with international human rights standards and good practices, the authors make the following key recommendations to the Polish government:

- a. add sex, gender identity, disability and sexual orientation to the list of protected grounds in hate crime and hate speech provisions in the Criminal Code;
- b. amend the Criminal Code to ensure that all types of offences committed with a bias motive are investigated *ex officio* and attract higher penalties than crimes committed without such a motive;
- c. conduct awareness-raising campaign about hate crimes, particularly those based on sexual orientation, gender identity and disability;
- d. set up publicly funded third-party and online hate crime reporting facilities;
- e. introduce a system in the National Prosecutor's Office and the Ministry of Justice where hate crime data are captured based on motivation and not legal qualification;
- f. conduct regular hate crime victimization surveys;
- g. provide a regular, well-grounded and funded consultation forum on hate crime with participation of government officials, Police, prosecutors, judges and NGOs
- h. ensure sufficient grounding, funding and staffing for the unit within the Ministry of Interior and Administration responsible for hate crime policy and data collection, as well as the Commissioner for Human Rights.

Criminal law

LGBT and people with disabilities

3. During the UPR of Poland (2nd cycle – 13th session) in 2012, Poland accepted several recommendations pertaining to the countering of hate crimes and hate speech, or – more generally, equality and non-discrimination and racial discrimination.¹ In the following paragraphs, we provide an analysis of the implementation of selected recommendations.

4. The current provisions of the Criminal Code 1997 pertaining to hate speech (Article 256 para 1) and hate crime (Article 119 and Article 257) recognize only nationality, ethnicity, race, religion (or lack of thereof) and political affiliation (Article 119) as protected grounds.² Thus, other categories, such as sex, gender identity, disability and sexual orientation are not included in these provisions, creating a hierarchy of victims, and resulting in differences in prosecuting and sentencing of hate crimes based on different grounds.

5. The current provisions on racist threats, violence and incitement to hatred are largely copied from the Criminal Code 1969, where they were introduced following the experience of the WW2, and to implement the international human rights framework.³ They have been virtually unchanged in the past 47 years, despite the immense political and cultural changes in Poland.

¹ These recommendations are listed in the area 8 (Equality & non-discrimination) and 9 (Racial discrimination) of the Thematic List (Matrice) of Recommendations, <http://www.ohchr.org/EN/HRBodies/UPR/Pages/PLSession13.aspx>.

² The English translation of the Articles 119 and 257 is available at <http://www.legislationline.org/topics/country/10/topic/4/subtopic/79> (access: 2016-11-15).

³ See also: Mateusz Woński, *Prawnokarne Aspekty Zwalczenia Mowy Nienawiści [Criminal Law Aspects of Combating Hate Speech]* (Warszawa: LexisNexis, 2014), 156–57.

As such, they do not adequately address the problem of bias crimes and hate speech (including cyberhate) nowadays.

6. During the 2nd cycle of UPR in 2012, Poland accepted the recommendation to include sexual orientation and gender identity in the hate speech provisions (90.66) and to recognize gender identity and sexual orientation as aggravating circumstances for hate crime (90.68). **These recommendations have not been implemented.** In addition, Poland accepted several other recommendations to strengthen legal and other measures to address bias-motivated crimes.⁴ **These recommendations have not been implemented,** particularly as concerns crimes motivated by bias based on sex, gender identity, disability and sexual orientation.

7. In addition, since 2012, recommendations to add new grounds (including gender identity, disability and sexual orientation) were made by the European Commission Against Racism and Intolerance (ECRI),⁵ the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe (ODIHR),⁶ as well as United Nations treaty bodies.⁷

8. Despite accepting the UPR recommendations, the government did not attempt to prepare a draft amendment aimed at expanding the catalogue of protected categories hate crime and hate speech provisions.

9. The government considered the issue of amending the Criminal Code in the National Action Plan for Equal Treatment 2013-2016, subject to the outcome of an analysis, which was however, never carried out.⁸ According to the Mid-

⁴ Recommendations 90.45 to 90.47, 90.49, 90.50, 90.54, 90.55, 90.57, 90.60, 90.64, 90.65 and 90.94 of the Report of the Working Group on the Universal Periodic Review for Poland, A/HRC/21/14, 9 July 2012.

⁵ ECRI, "ECRI Report on Poland (Fifth Monitoring Cycle)" (ECRI, June 9, 2015), <https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Poland/POL-CbC-V-2015-20-ENG.pdf>.

⁶ ODIHR, "Opinion on the Draft Amendments to Certain Provisions of the Criminal Code of Poland" (ODIHR, December 3, 2015), 15, www.legislationline.org.

⁷ See the UN information prepared by the OHCHR.

⁸ SPR, "Monitoring and Analysis Of Implementation of the National Action Program for Equal Treatment Regarding Gender, Gender Identity and Sexual Orientation (2013-

Term Progress Report prepared in 2014 by the Polish government,⁹ Polish law provides sufficient protection against hate crimes and is consistent with Poland's international obligations. The report further states that, “despite this, the Criminal Law Codification Committee has prepared draft amendments to the Criminal Code aiming to further strengthen the criminal law protection against bias-motivated crimes”.¹⁰ This information is inaccurate.

10. Indeed, between 2012 and 2015, three such draft amendments were discussed in the parliament.¹¹ Two of the draft amendments (no 340 and 383/2357), submitted in the Sejm by two opposition parties and based on a bill prepared by an alliance of civil society organizations, aimed to do it by adding sexual orientation, gender identity, gender, age and disability to the list of already protected grounds. The third amendment (no 1078), submitted by the members of the ruling party, did not mention any specific characteristics, but instead suggested the adding of a vague umbrella term “natural or acquired personal qualities or beliefs” to the existing catalogue of protected characteristics. All three draft amendments were directed for further works in the Parliamentary Permanent Subcommittee for the Amendment to the Criminal Law.

11. The official stance of the government towards the change in the Criminal Code, expressed in the opinions on the draft amendments prepared by the Ministry of Justice,¹² was negative. The government argued, *inter alia*, that

2016) Summary Report,” 2016, footnote 11, 8, <http://www.spr.org.pl/monitoring-kpdr-2013-16/>.

⁹ Universal Periodic Review Mid-term Progress Report by Poland, Human Rights Council 25th Session, 2014.

¹⁰ *Ibid.*, 11.

¹¹ Draft amendment no 340 (7 March 2012), submitted by members of the opposition party *Twój Ruch* (Your Move); draft amendment no 383 (20 April 2012), submitted by members of the opposition party *Sojusz Lewicy Demokratycznej* (Democratic Left Alliance), withdrawn due to procedural issues in February 2014 and resubmitted as draft amendment no 2357 on 7 July 2014; draft amendment no 1078 (27 November 2012), submitted by members of the ruling party *Platforma Obywatelska* (Civic Platform).

¹² The opinions of the Government on the draft amendment no 340 and 383 (3 August 2012), 1078 (29 April 2013), and 2357 (7 July 2014).

the new proposed grounds do not fulfil the requirement of being of “general interest”; that the choice of selected grounds is discretionary; and that the current protection is sufficient. While the official documents were free from discriminatory remarks, openly homophobic statements were made by conservative MPs (particularly from *Prawo i Sprawiedliwość* (Law and Justice) party) during the parliamentary debates on the draft amendments.¹³

12. The opinion of the government changed slightly in favour of the amendments in 2015. Nevertheless, the delay and lack of real will to legislate against hate resulted in a fiasco, as the parliament’s term came to an end in October 2015, and the works on the draft amendments were discontinued.

13. Following the elections in October 2015, the new Minister of Justice in the *Prawo i Sprawiedliwość* (Law and Justice) government, declared that he sees no need to introduce any changes in this area to the Criminal Code.¹⁴ **This marks a regressive action which is directly in breach of accepted UPR recommendations.**

14. In July 2016, a new draft amendment, similar to the amendment no 340, was submitted in the parliament by the an opposition party *.Nowoczesna* (.Modern).¹⁵ The Bill received a negative opinion from the National Prosecutor’s

¹³ See e.g. Zofia Jabłońska and Paweł Knut, eds., *Prawa osób LGBT w Polsce. Raport z badań nad wdrażaniem Zalecenia CM/Rec (2010)5 Komitetu Ministrów dla Państw Członkowskich w zakresie środków zwalczania dyskryminacji opartej na orientacji seksualnej lub tożsamości płciowej [LGBT rights in Poland. Report from research on the implementation of Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity]*, 1st ed. (Warsaw: KPH, 2012), 175.

¹⁴ Paweł Kościński, “Ziobro Wstrzymuje Prace Nad Karaniem Za Mowę Nienawiści. KPH Zachęca Do Wysłania Listów: Ministerstwo Ignoruje Fakty,” *Wyborcza.pl*, January 26, 2016, <http://wyborcza.pl/1,75398,19539464,ziobro-wstrzymuje-prace-nad-karaniem-za-mowe-nienawisci-kph.html>.

¹⁵ Draft amendment no 878, submitted by members of the *.Nowoczesna* party on July 15, 2016.

Office (the Minister of Justice) and was rejected by the Sejm in first reading on November 4, 2016.¹⁶

15. The absence of gender, gender identity, disability and sexual orientation in the provisions on hate speech and hate crime results in offences targeting, e.g. LGBT or disabled people, being investigated and prosecuted as common crimes. This means that they do not attract higher penalties and are not always prosecuted *ex officio*, as in the case of racist and xenophobic crimes. Furthermore, incitement to hatred based on these grounds is not treated as a criminal offence at all.

Case 1

A couple of gay men were attacked on the street by a group in Warsaw in 2012. Three offenders were charged with aggravated assault, while one, who shouted that he was going to 'knock out the faggots' teeth when he gets out', was additionally charged with punishable threats. Despite apparent bias, the homophobic character of the crime was not reflected in legal qualification and was not taken into consideration in sentencing. The offenders were given a suspended sentence of one year in prison, and ordered to pay 100 PLN (roughly \$30) damages each to the victims.¹⁷

Case 2

A group of men were insulted and physically assaulted due to sexual orientation. The hearing took place on the corridor of the Police station. One of the victims had to whisper in order to avoid any comments from other people gathered in the corridor. After the hearing the Police officer told the victims that no crime has been committed. After the victims protested, another

¹⁶ PAP, "Sejm Odrzucił Projekt Nowoczesnej Ws. Karalności 'mowy Nienawiści,'" November 4, 2016, <http://www.gazetaprawna.pl/artykuly/990147,sejm-odrzucl-projekt-nowoczesnej-ws-karalnosci-mowy-nienawisci.html>.

¹⁷ Piotr Godzisz, "Racing Race: Should Sexual Orientation Be Protected by Hate Crime Laws? Lessons from Poland," *Think Pieces: A Journal of the Joint Faculty Institute of Graduate Studies, University College London* 1(0) "UCLfacesRACEISM: Past, Present, Future" 1, no. 0 (2015): 10–26.

*Police officer took the victim to a different room and informed them that, despite the notification, the investigation will not be initiated.*¹⁸

16. Adding new characteristics to the list of protected grounds will mean that bias crimes against all most commonly targeted groups will attract higher sentences and will be prosecuted publicly. At the same time, incitement to hatred based on sex, sexual orientation, gender identity and disability will become an offence. For this reason, the Authors recommend that Poland:

a. add sex, gender identity, disability and sexual orientation to the list of protected grounds in hate crime and hate speech provisions in the Criminal Code, so that crimes motivated by bias based on those characteristics could be treated in the same way as racist and xenophobic crimes.

Racist and xenophobic crimes

17. During the 2nd UPR, Poland accepted several recommendations regarding prompt and effective prosecution of racist and xenophobic hate crimes.¹⁹ **The recommendations have been partially implemented.**

18. Even though the Criminal Code recognizes national, ethnic, racial and religious belonging as protected grounds, it is unclear what the meaning of the term “racial” is, and which groups are covered. For this reason, in a case when a victim is attacked because they are perceived as a refugee, the crime may not be considered as a bias-motivated. The bias motivation may be considered only in a

¹⁸ KPH, “Raport O Polsce [Report on Poland]” (KPH, 2016), 32, <http://kph.org.pl/wp-content/uploads/2016/08/hnm-raport-pl-www.pdf>.

¹⁹ Recommendations 90.40, 90.45, 90.47, 90.48, 90.49, 90.53, 90.54, 90.55, 90.56, 90.57, 90.60, 90.62, 90.64, 90.65.

case where there is a clear reference to race, ethnicity or religion, e.g. being Muslim or Arab.

19. When deciding on the legal qualification of a case, the Police often over-focus on racist slurs, and may ignore other bias indicators, such as victim perception. This is problematic, as some victims of racist and xenophobic attacks, e.g. people of Asian or African origin, may not understand Polish and may not recall the words used during the attack.²⁰

20. Furthermore, crimes committed against the person due to mistake in perception or victimization by affiliation may not be considered as bias-motivated either. This is the consequence of a narrow perception of the meaning of “racial” which is only considered as *belonging* to group of persons but not being *affiliated* with them.

Case 3

*During a football game in September 2013, the fans of the Lech Poznań Football Club chanted “Down with Jews”. The shouts were addressed against fans of the Łódź Widzew Football Club. The Prosecutor decided to discontinue the investigation since the fans of Łódź Widzew were not Jews. The Appellate Prosecutor’s Office in Poznań reviewed this decision and ordered re-examination of the case.*²¹

Case 4

²⁰ Karolina Brzezińska and Katarzyna Słubik, “Poradnictwo Prawne Dla Osób Pokrzywdzonych – Doświadczenia i Rekomendacje [Legal Counseling for Victims - Experiences and Recommendations],” in *Przestępstwa Motywowane Uprzedzeniami – Dylematy, Wyzwania, Strategie. Dwa Lata Działania Koalicji Przeciwko Przestępstwom Motywowanym Uprzedzeniami [Bias Crimes - Dilemmas, Challenges, Strategies. Two Years of Work of the Coalition Against Bias Crimes]*, ed. Michał Pawłęga and Piotr Godzisz (Stowarzyszenie Interwencji Prawnej i Stowarzyszenie Lambda-Warszawa, 2016), <http://lambdawarszawa.org/lambdawarszawa/co-robimy/edukacja/koalicja-przestepstwa-z-uprzedzen/>.

²¹ HFHR, “Submission to the 84th Session of the Committee on the Elimination of Racial Discrimination” (HFHR, 2014), 11, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCERD%2fNGO%2fPOL%2f16285&Lang=en.

A Pakistani man was brutally assaulted, while his Polish companion was entirely ignored by the assailants. The absence of racist slurs resulted in the Police qualifying the attack as physical assault without bias motivation.²²

21. The fact that people racialized as refugees or simply foreigners are attacked became especially visible in 2015, following the migration crisis. The report issued by the Ministry of Interior and Administration²³ shows the rise in recorded violent crimes and incitement to hatred cases against Muslims and Arabs, yet does not clarify how many people were attacked due to being perceived as refugees.

22. Despite the evidence that hate crime persists in Poland, high level government officials downplay the number and significance of attacks. For example, in May 2016, the Government Plenipotentiary for Civil Society and Equal Treatment Wojciech Kaczmarczyk undermined the credibility of the results of the EU LGBT Survey 2012.²⁴ Also in May, in a response to a letter from the Commissioner for Human Rights (NHRI), urging the government to step up efforts to counter racism at universities, the Minister for Higher Education Jarosław Gowin said ‘I will not be telling the rectors what they should do’.²⁵ In September 2016, the Minister of Interior and Administration Mariusz Błaszczak condemned the Commissioner for Human Rights for expressing

²² PAP and jaga, “OBWE Chce Zmiany Polskiego Prawa,” April 15, 2016, <http://www.rp.pl/Prawo-karne/304159909-OBWE-chce-zmiany-polskiego-prawa.html>.

²³ MSWiA, “Analiza Przystępczości Z Nienawiści” (MSWiA, 2016), http://www.spoleczenstwoobywatelskie.gov.pl/sites/default/files/analiza_mswia_policja.pdf.

²⁴ Ewa Siedlecka, “Równość Według Wojciecha Kaczmarczyka, Pełnomocnika Rządu Ds. Równego Traktowania,” *Wyborcza.pl*, accessed July 16, 2016, <http://wyborcza.pl/magazyn/1,152469,20031971,rownosc-wedlug-wojciecha-kaczmarczyka-pelnomocnika-rzadu-ds.html>.

²⁵ PAP, “Gowin O Apelu RPO Ws. Ksenofobii: Nie Będę Mówił Rektorom, Co Robić,” *Nauka W Polsce*, May 25, 2016, <http://naukawpolsce.pap.pl/aktualnosci/news,409837,gowin-o-apelu-rpo-ws-ksenofobii-nie-bede-mowil-rektorom-co-robic.html>.

concerns about the rising tide of xenophobia,²⁶ and said that hate crimes make up only 0.1 per cent of all crimes in Poland, which is seen as another attempt to marginalize the issue.²⁷

23. The Commissioner for Human Rights is charged with dealing with equality issues, including discriminatory violence. Because of his involvement with these issues, particularly anti-LGBT discrimination, he has regularly been an object of political attacks, particularly by senior members of the ruling party.²⁸

24. For this reason, the Authors recommend that Poland:

- b. ensure that attacks on people perceived as refugees are investigated as hate crimes**
- c. instruct the Police that victim perception, among other bias indicators, should be considered when deciding on the initial legal qualification of a crime**
- d. ensure that cases where the victim is attacked due to affiliation with a group distinguished by a protected category, as well as cases where the offender is mistaken as to the identity of the victim are investigated as hate crimes**
- e. ensure that high-ranking officials condemn high-profile cases of hate crime that are publicized in the media**
- f. ensure sufficient funding and staffing for the Commissioner of Human Rights allowing him to continue work on discriminatory violence.**

²⁶ Wirtualna Polska, “Rzecznik Praw Obywatelskich Odpowiada Szefowi MSWiA: Nie Czuję Się Politykiem,” *Wiadomosci.wp.pl*, September 8, 2016, <http://wiadomosci.wp.pl/kat,1342,title,Rzecznik-Praw-Obywatelskich-odpowiada-szefowi-MSWiA-nie-czuje-sie-politykiem,wid,18498332,wiadomosc.html>.

²⁷ pr/, “Błaszczak: Przewinienia Z Nienawiści Są Bardzo Rzadkie,” *Polsatnews.pl*, September 15, 2016, <http://www.polsatnews.pl/wiadomosc/2016-09-15/blaszczak-przewinienia-z-nienawisci-sa-bardzo-rzadkie/>.

²⁸ Interia, “Krystyna Pawłowicz Atakuje Adama Bodnara: ‘Lewacki Przechył,’” September 5, 2016, <http://fakty.interia.pl/polska/news-krystyna-pawlowicz-atakuje-adama-bodnara-lewacki-przechyl,nId,2263179>.

Types of offences

25. The discussion regarding change of hate speech and hate crime law in Poland so far has been mostly about adding new grounds to the existing articles criminalizing incitement to hatred, threats and physical assaults. This entails the risk that, even if the new grounds are added, the laws may not properly address most serious or frequent forms of crimes that generally target certain persons or groups because of their protected characteristic (e.g. homicide, physical assaults, rape and sexual assault, serious and less serious bodily harms, threats, harassment or stalking, arson, robbery/theft/burglary, damage to or destruction of goods and property, vandalism and the desecration of graves).

Case 5

In 2016, offices of Campaign against Homophobia and Lambda Warsaw were attacked several times. The front door of Lambda Warsaw was spat at and covered with celtic cross and the expressions "white power" and "ban of faggoting". The Police originally considered to classify the crime as propagating fascism and inciting to hatred but as the front door of the organization was not located in a public place the proceedings were discontinued.

26. Article 53 of the Criminal Code includes a general provision stating that when sentencing perpetrators, the courts shall consider, among others, their particular motivation and behaviour when determining the penalty, within the limits specified by law; this provision does not, however, explicitly mention a *bias* motivation on specific grounds. While certain criminal offences of the Criminal Code also include specific reference to aggravating factors leading to the imposition of higher penalties, they also do not include references to bias motivation as such. In particular, Article 148 [manslaughter] refers to penalty-enhancing circumstances for crimes committed "for motives deserving special condemnation"; however, this wording remains relatively vague and may trigger

diverging court interpretations as to whether “bias motive” constitutes such a circumstance.

Case 6

On January 2014, a 20-year old student went to a gay club in Szczecin. When he left the club, he met three other men. The morning after his body was found nearby. The forensic medical examination established drowning as the cause of death. His face had probably been pushed into a puddle on the clay soil. One offender was sentenced for murder. The other was sentenced for participating in a physical assault that resulted in death. When passing sentence, the court did not consider the homophobic motivation, hence it had no influence on the punishment.²⁹

27. Based on the above, it is recommended that Poland:

g. amend the Criminal Code to ensure that all types of offences committed with a bias motive are investigated *ex officio* and attract higher penalties than crimes committed without such a motive.

Monitoring and reporting of hate crime

Under-reporting and under-recording

28. During the 2nd cycle of UPR in 2012, Poland accepted recommendations to institute outreach by Police and law enforcement to LGBT persons and communities to increase reporting of hate crimes (90.94) and to enact public awareness campaigns and government training to decrease anti-Semitism and

²⁹ Brzezińska and Słubik, “Poradnictwo Prawne Dla Osób Pokrzywdzonych – Doświadczenia I Rekomendacje [Legal Counseling for Victims - Experiences and Recommendations].”

discrimination (90.50). **The former recommendation has not been implemented, while the latter has been implemented only partially.**

29. Hate crimes in Poland are both under-reported and under-recorded. There is a high discrepancy between the numbers of hate crimes that are committed, that are reported to the competent authorities or NGOs, and that are officially recorded and investigated as hate crimes. For example, in a survey conducted by the FRA among LGBT people living in the EU, 35% of the respondents from Poland reported having been attacked or threatened with violence in the five years preceding the question.³⁰ In 2014, Polish NGOs reported to ODIHR 22 crimes motivated by bias against LGBT people, compared to seven officially recorded incidents. In 2015, Poland did not report any anti-LGBT hate crime case to ODIHR.³¹ Until now, there are no officially recorded hate crimes based on disability.

30. Reasons of under-reporting of hate crime are well documented, and include, i.a., low confidence in Police, lack of knowledge of what constitutes hate crime and reporting mechanisms, language and cultural barriers (migrants), as well as fear of homophobic reaction from the Police.³²

31. Efforts to increase the number of reported crimes, such as the information campaign *Racism. Say it to fight it*, carried out by the Ministry of the Interior, are sporadic and limited to racism and xenophobia. Until today, there has been no attempt, on the part of the authorities, to encourage reporting of anti-LGBT or disability hate crimes through e.g. public campaigns or establishing permanent links (e.g. liaison officers) with affected communities. At the same time, there are no publicly funded third-party or online reporting facilities through which Police could receive reports.

³⁰ FRA, “Survey Data Explorer: LGBT Survey 2012” (FRA, 2013), <http://fra.europa.eu/DVS/DVT/lgbt.php>.

³¹ ODIHR, *OSCE Annual Hate Crime Reporting* (Warsaw: ODIHR, 2015), www.hatecrime.osce.org.

³² KPH, “Raport O Polsce [Report on Poland]”; FRA, “EU LGBT Survey.”

32. Selected Police officers and prosecutors receive hate crime training in the framework of the curricula based on OSCE ODIHR's capacity building programmes TAHCLE³³ and PAHCT.³⁴ Members of the judiciary do not receive any specific hate crime training. NGOs are sometimes invited to participate in trainings or deliver trainings. Nevertheless, statutory bodies as a rule of thumb do not pay for trainings, expecting the NGOs to deliver them for free as a sign of *bona fide*. This solution is unsustainable, as NGOs are dependent on external funding to deliver trainings.

33. For the above reason, it is recommended that the Police Headquarters and/or the Ministry of Interior and Administration:

h. conduct awareness-raising campaign about hate crimes, particularly those based on sexual orientation, gender identity and disability

i. conduct outreach activities to the most commonly victimized communities, particularly black, Asian and minority ethnic groups; Ukrainian community; Muslim and Jewish communities; lesbian, gay bisexual and transgender communities; and people with disabilities

j. conduct hate crime reporting trainings for Police officers and prosecutors; the trainings should cover, *inter alia*, crimes based on sexual orientation, gender identity and disability and should be delivered in cooperation with NGOs and funded from public sources

k. set up publicly funded third-party and online hate crime reporting facilities.

³³ ODIHR, *Training Against Hate Crimes for Law Enforcement. Programme Description* (Warsaw: ODIHR, 2012), <http://www.osce.org/odihr/tahcle>.

³⁴ ODIHR, *Prosecutors and Hate Crimes Training (PAHCT). Programme Description* (Warsaw: ODIHR, 2014), <http://www.osce.org/odihr/pahct>.

Data collection system

34. Since the last UPR, Poland made some improvements in the collection of data on and monitoring of hate crime and hate speech. Specific changes were implemented by the Police Headquarters, Ministry of Interior and Administration, and Ministry of Justice under the previous government.

Nevertheless, significant shortcomings remain, and there is a threat that a regressive action may take place.

35. The most important drawback is lack of coordination between different agencies responsible for catching data on the different levels of the criminal justice procedure. Since 2013, the Police and the Ministry of Interior and Administration has been monitoring crimes based on a working definition of hate crime, which includes, next to racist and xenophobic crimes, offences based on sex, gender identity, disability and sexual orientation, as well as other grounds.³⁵ At the same time, neither the National Prosecutor's Office nor the Ministry of Justice have introduced a working definition of hate crime, and continue to collect data based on provisions of the Criminal Code which cover racist and xenophobic crimes only.³⁶

36. Secondly, the system used by the National Prosecutor's Office, unlike the system used in the Police Headquarters/Ministry of Interior and Administration and the Ministry of Justice, is not IT-based, and does not

³⁵ Human Rights Protection Team, <https://mswia.gov.pl/pl/bezpieczenstwo/ochrona-praw-czlowieka/zespol-do-spraw-ochron/204,Dzialalnosc.html>.

³⁶ As hate crime data collected by the National Prosecutor's Office continue to be captured according to the provisions of the Criminal Code (Articles 119, 256 and 257), data from prosecution only contain incidents motivated by racism and xenophobia. Similarly, even though the form used by the Ministry of Justice allows for choosing bias motivation based on sexual orientation, gender identity or disability, the records are still attached to Articles 119, 256 and 257. This means that homophobic, transphobic and disablist cases will not be captured as long as sexual orientation, gender identity or disability do not make their way into the Criminal Code's list of protected characteristics.

automatically disaggregate the cases by specific bias motivations or types of offences, requiring significant manual work.

37. Thirdly, the introduction of new data collection system in the Police, especially the fact that additional bias motivations are being monitored, was not followed by training for all Police officers using the system. As the experience of the Authors show, front-line, or even investigating officers are often not aware of the fact that, e.g. the homophobic motivation can be recorded in the system.

38. Summing up, while improved, the data collection is not systematic. While the system can capture recorded incidents motivated by racism and xenophobia (i.e. bias motivations explicitly included in the Criminal Code), when it comes to biases not specifically mentioned in the Criminal Code (primarily sexual orientation, gender identity and disability), the numbers captured are still negligible (see section on under-reporting and under-recording above).

39. Finally, Poland does not conduct regular victimization studies that would cover the issue of hate crime, which is considered a good practice as it improves the understanding of the problem.³⁷ The Police Headquarters conducts annual crime survey, but it does not contain questions on hate crime. The surveys conducted by the Ministry of Justice cover, in part, the issue of violence towards people with disabilities, but do not cover the violence based on homophobia/transphobia, or even racism, xenophobia. In the opinion of the Authors, the reason for this is the fact that bias-motivated violence is not seen as an important issue by subsequent Ministers of Justice.

40. Lack of reliable and up-to-date information on the prevalence of hate crimes is a major obstacle not only for research, but also for public

³⁷ ODIHR, *Hate Crime Data Collection and Monitoring Mechanisms. A Practical Guide* (Warsaw: ODIHR, 2014), <http://www.osce.org/odihr/datacollectionguide?download=true>.

acknowledgement and awareness of the problem of bias-motivated violence and hate speech in Poland. For this reason, it is recommended to:

- l. extend the working definition of hate crime used by Police/Ministry of Interior and Administration to National Prosecutor's Office and the Ministry of Justice**
- m. introduce a system in the National Prosecutor's Office and the Ministry of Justice where hate crime data are captured based on motivation and not legal qualification, compatible with the system used by the Police Headquarters/Ministry of Interior and Administration**
- n. conduct regular hate crime victimization surveys covering at least racist and xenophobic, anti-Semitic, Islamophobic, anti-LGBT and disablist hate crimes.**

Gaps in victim rights and support

41. There is no developed specific, publicly-funded support system addressed to victims of hate crimes. Specialized support services for victims of hate crime are provided by few NGOs, which do not receive long-term support from the state. The lack of victim support system becomes even more disturbing when the low rate of notification about hate crimes is considered (see above).³⁸

42. Currently, there are no public funds that would specifically aim at providing legal and psychological support for victims of hate crimes. The Victim Support Fund, managed by the Ministry of Justice, does not address specific needs of victims of hate crimes in any way. All initiatives to provide specialized support are therefore led by NGOs, which makes them unsustainable, as they are dependent on external grants.

³⁸ HFHR, "Submission to the 84th Session of the Committee on Tte Elimination of Racial Discrimination," 12.

43. In November 2014, Poland adopted the Act on protection and assistance for victims and witnesses,³⁹ with a view to implement the EU Directive 2012/29/EU.⁴⁰ The directive aims to increase the rights of victims by respecting the principle of non-discrimination. It also requires that states should respond to specific protection needs of hate crime victims, ensuring that both the nature of the crime and personal characteristics of the victim (e.g. gender, sexual orientation, hearing impairment, language) should be considered.⁴¹

44. **The Act did not implement provisions of the EU Directive regarding the protection of and support for victims of hate crimes, particularly based on motivations not included in the current Criminal Code** (see section *LGBT and people with disabilities* above).

45. Because the current provisions of the Act lack direct references to those issues, some vulnerable victims cannot benefit from specific protection, which makes the implementation inconsistent with the EU Directive. In consequence, legal definitions refer only to the general concept of victim without differentiating their status due to type of crime or personal characteristics.⁴²

46. Specific protection and support needs of victims of hate crimes are included in the individual victim needs assessment form, which was piloted by the Ministry of Justice in 2015. No final report was produced following the pilot project.⁴³ The Police have not received specific training on how to use the questionnaire. It is unclear how effective this tool is in identifying the needs.

47. The problem of violating the rights of victims of hate crimes, particularly members of the LGBT community, but also other groups, e.g.

³⁹ <http://isap.sejm.gov.pl/DetailsServlet?id=WDU20150000021>

⁴⁰ European Parliament and Council of the EU, *Directive 2012/29/EU of the European Parliament and the Council of the European Union of 25 October 2012 Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime, and Replacing Council Framework Decision 2001/220/JHA, OJ L 315, P. 57–73, 2012*, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32012L0029>.

⁴¹ *Ibid.*

⁴² KPH, “Raport O Polsce [Report on Poland].”

⁴³ Information received by KPH from the MoJ, letter DSRIN-IV-061-2/16/6 dated 13 September 2016.

foreigners, during the criminal justice procedures, is well evidenced in civil society reports.⁴⁴

Case 7

*The victim of a homophobic assault wanted to report the crime at a Police station. The officer taking the report stated that 'it would be a private prosecution' and 'you should go with it to the court.'*⁴⁵

Case 8

*The provisions on language support [interpretation in court] are understood differently by different courts. Sometimes the interpreter is called for each court session where the victim says they will be present. Much more often, however, the interpreter is called only to translate the hearing of the victim, even if the victim acts as auxiliary prosecutor (...). This means that they are de facto excluded from participating in the court proceedings.*⁴⁶

See also the Case 2 above.

48. For the above reasons, it is recommended that Poland:
- o. introduce in the Act on protection and assistance for victims and witnesses references to the special situation of victims of hate crimes, including crimes based on sexual orientation, gender identity and disability.**
 - p. provide public funding for specialized NGOs for legal and psychological counselling aimed specifically at victims of hate crimes.**

⁴⁴ See, for example, KPH, "Raport O Polsce [Report on Poland]"; Brzezińska and Słubik, "Poradnictwo Prawne Dla Osób Pokrzywdzonych – Doświadczenia I Rekomendacje [Legal Counseling for Victims - Experiences and Recommendations]."

⁴⁵ Brzezińska and Słubik, "Poradnictwo Prawne Dla Osób Pokrzywdzonych – Doświadczenia I Rekomendacje [Legal Counseling for Victims - Experiences and Recommendations]," 20.

⁴⁶ *Ibid.*, 14.

Cooperation with civil society

49. During the 2nd cycle of UPR in 2012, Poland supported the recommendation regarding the work of the Council for Counteracting Racial Discrimination, Xenophobia and Related Intolerance, ‘with a view to ensure a well-planned and coordinated approach in combating acts of racism and xenophobia’ (90.61). **The recommendation was implemented partially until 2016, when the Prime Minister dissolved the Council, marking the start of a regressive action in hate crime policy and practice.**⁴⁷

50. There is no existing forum for regular exchange of information between the government, Police, criminal justice system personnel and NGOs. Between 2012 and 2016, Poland has not established permanent and effective bodies that would provide forum for discussion and consultation on hate crime issues between the government, law enforcement, criminal justice system and civil society. While a few initiatives, e.g. the Police Platform against Hate, or the abovementioned Council, did emerge, lack of funding, grounding and ability to take any real action beyond discussion decided on their ineffectiveness.

51. The Government Plenipotentiary for Civil Society and Equal Treatment does not see cooperation with anti-discrimination NGOs, or even reaction to attacks on those organizations, as a priority. In an interview in July 2016, the then-Plenipotentiary Wojciech Kaczmarczyk said that ‘we will move from funding ideological projects in support of projects’, adding that, until now, the focus was on the discrimination of sexual minorities.⁴⁸ In response to the letter urging him to take action after the series attacks on offices LGBT organizations

⁴⁷ nh, “Polish PM Abolishes Anti-Discrimination Council,” *Polskie Radio Dla Zagranicy*, May 4, 2016, <http://www.thenews.pl/1/9/Artykul/251284,Polish-PM-abolishes-antidiscrimination-council>.

⁴⁸ wSieci, “Nowy numer ‘wSieci’: PiS Na celowniku! ‘Rzuca Wszystkie Siły, by Powstrzymać Zmiany. Mogą Nawet Zabijać,’” July 31, 2016, <http://wpolityce.pl/polityka/302830-nowy-numer-wsieci-pis-na-celowniku-rzuca-wszystkie-sily-by-powstrzymac-zmiany-moga-nawet-zabijac>.

Lambda Warsaw and KPH in the beginning of 2016, the Plenipotentiary said that he ‘can only call for good manners and restraint when voicing one’s opinion.’⁴⁹ Following next attacks, he offered a statement saying that he supports the dispute, but not based on violence.’⁵⁰

52. In the end of 2015, the Ministry of Interior’s Human Rights Protection Team tried to form a consultation platform called the Working Group on Countering Hate Crimes. During the first meeting, subgroups were formed to discuss specific issues. The meeting of the first subgroup on hate speech was called for several months later, in July 2016. It was, nevertheless, cancelled last minute, supposedly due to the World Youth Days taking place at the same time. Until September 2016, no more meetings of the Working Group took place.

53. In November 2016, the three-person Human Rights Protection Team at the Ministry of Interior and Administration, responsible for hate crime data collection and Police training, was dissolved. People and tasks were moved to the Division for the European Migration Network and Anti-Trafficking.⁵¹ In the opinion of the Authors, this significantly diminishes the capacity of the Ministry to continue work on improving data collection mechanisms and engagement with civil society.

54. For the above reasons, it is recommended that Poland:

q. provide a regular, well-grounded and funded consultation forum on hate crime with participation of government, Police, prosecutors, judges and NGOs representing different identity groups, particularly migrants and refugees, national, ethnic and religious minorities, LGBT and people with disabilities

⁴⁹ <http://otwarta.org/wp-content/uploads/2016/03/list-od-pe%C5%82nomocnika-rz%C4%85du-ds-rownego-traktowania-1.pdf>

⁵⁰ <http://www.spoleczenstwoobywatelskie.gov.pl/aktualnosci/oswiadczenie-pelnomocnika-w-sprawie-atakow-na-organizacje-lgbt>.

⁵¹ Information received from the Ministry of Interior and Administration by Lambda Warsaw, 2016-11-08.

r. ensure sufficient grounding, funding and staffing for a unit within the Ministry of Interior and Administration responsible for hate crime data collection and Police training.

Annex 1 Authors

Lambda Warsaw (Stowarzyszenie Lambda Warszawa)

Lambda Warsaw, established in 1997, is Poland's most experienced organization providing support services for, and monitoring the situation of, LGBT victims of human rights abuses, discrimination and hate crime. Our activities related to protection of human rights of LGBT people include, i.a.:

- We conduct regular surveys (since 2001) and collect cases and monitor the situation of LGBT people in Poland;
- We draft shadow reports;
- We provide support services for LGBT people (over 700 clients in 2015), including: telephone, email and face-to-face psychological and legal counselling; emergency hostel (until October 2016 - the hostel is temporarily closed due to lack of sustainable funding);
- We litigate cases;
- We build capacity of police and victim support service providers;
- We coordinate the work of the Coalition Against Bias Crimes;
- We work on the amendment of the Criminal Code;
- We co-lead (with the University of Brescia) the transnational project ‘Come Forward’ on empowering and supporting hate crime victims.

Association for Legal Intervention

(Stowarzyszenie Interwencji Prawnej)

Association for Legal Intervention (SIP) was established in 2005 by a group of young activists and lawyers. Since then SIP evolved into a professional non-profit organization with the aim of combating social exclusion through provision of free legal advice to people whose rights and freedoms are threatened or violated and raising legal and civil awareness in the society.

Our activity focuses on:

- Support – we provide legal and social counselling in individual cases; we represent our clients in courts and before administrative agencies – our counselling is based on Association’s standards and is free of charge.
- Information – our association develops and conducts trainings for professionals and groups of diverse cultural backgrounds, concerning their rights and duties. We are also aimed at spreading the civil and legal awareness in the society.
- Policy – the aim of our actions is to improve the situation of marginalized social groups – through conducting research, monitoring the application of the law and presenting our opinions to bills we influence the state politics and its institutions.

The Diversity Workshop *(Stowarzyszenie*

Pracownia Różnorodności)

SPR, or in English: The Diversity Workshop, is a non-governmental non-profit organization founded in March 2009 in Toruń, Poland. Beginnings of SPR date

back to January 2006, when an informal branch of Campaign Against Homophobia (CAH), a Warsaw-based LGBTQ association, was established in Toruń. Since its establishment as an independent LGBTQ association SPR has been active not only locally, but also on the national level. SPR has issued statements regarding almost every homophobic incident involving a politician or public person. SPR is especially active in hunting down defamatory, homophobic statements – therefore SPR's activities range from participation in court cases to verifying the content of school textbooks. Members of SPR prepared drafts of bills adding sex, gender identity, age, disability and sexual orientation to the list of protected grounds in hate crime and hate speech provisions; upon receiving approval from other Polish LGBTQ NGO's, the drafts were submitted in Parliament (2011 and 2012). Additionally, from 2014 to 2016 SPR was monitoring implementation of the governmental “National Action Program for Equal Treatment” in areas of gender, gender identity and sexual orientation.

All Authors belong to the **Coalition Against Bias-Motivated Crimes**. Members of the Coalition work and cooperate, inter alia, on:

- Providing legal and other support for victims of racist and xenophobic hate crime
- Monitoring hate crimes nationally
- Advocacy work around hate crimes
- Capacity building of Police, prosecutors and judges.

Annex 2 Official hate crime statistics 2012-2015

The following figures are based on the official statistics provided to ODIHR by the Ministry of Interior, based on the information collected by the Police, the Prosecutor General's Office, and the Ministry of Justice.

Table 1. Overall hate crime figures 2009-2015

Year	Hate crimes recorded by Police	Prosecuted	Sentenced
2015⁵²	263	229	195
2014⁵³	778	179	127
2013	757	116	53
2012	266	76	39
2011	222	43	24
2010	251	30	28
2009	194	29	27

Table 2. 2015 hate crime statistics disaggregated by bias motivation and type of crime

Bias motivation	Type of crime	Recorded by Police
Racism and xenophobia	Physical assault	38
	Incitement to violence	4
	Desecration of graves	9

⁵² The drop in the total number of cases recorded by the Police is due to the improved capacity of the Police to disaggregate hate crime cases from offences related to hate speech, which was not the case in the previous years. Prosecution and sentencing figures include crimes of incitement to hatred.

⁵³ Figures for 2009-2014 include crimes of incitement to hatred.

	Attacks against places of worship	14
	Vandalism	20
	Threats/ threatening behaviour	48
Bias against Roma and Sinti	Physical assault	8
	Incitement to violence	2
	Vandalism	4
	Threats/ threatening behaviour	12
Anti-Semitism	Incitement to violence	1
	Desecration of graves	5
	Attacks against places of worship	3
	Vandalism	36
	Threats/ threatening behaviour	5
Bias against Muslims	Physical assault	8
	Incitement to violence	2
	Attacks against places of worship	1
	Vandalism	26
	Threats/ threatening behaviour	5
Bias against Christians and members of other religions	Desecration of graves	1
	Attacks against places of worship	10
	Vandalism	1

This report was prepared for the 3rd cycle of the Universal Periodic Review and covers the issue of protection from hate crimes (racist, xenophobic, homophobic and disablist violence) and hate speech in Poland in the years 2012-2016. It raises key issues and indicates areas of concern. Specifically, the report highlights:

- gaps in the protection of LGBT people and people with disabilities;
- gaps in protection of refugees and people perceived to be refugees;
- under-reporting and under-recording of hate crimes;
- gaps in victim rights protection and victim support system;
- lack of effective consultative bodies on hate crime.