



**Compilation of city reports on legislation, policies and practices to prevent and combat homo- and transphobia**

**(Charleroi, Girona, Sabadell, Thessaloniki, Wroclaw and Nottingham)**

**WS1. Transnational and comparative research on homo- and transphobia in small and medium cities**

**April 2016**

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**City Report on existing legislation, policies and practices  
(CHARLEROI)**

**April 2016**

**By Isabelle carles**

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## Introduction

Belgium is considered a liberal country as regards LGBT issues. Same-sex couples gained the right to marry in 2003 and the right to adopt children in 2006.

This country is a federal state with a complex political and institutional structure. There are seven legislative texts implementing EU Directive 2000/78/EC with relevance to discrimination on the basis of sexual orientation. The *Interfederal Centre for Equal Opportunities (UNIA)* is the body competent to deal with issues relating to discrimination on the ground of sexual orientation. Their annual report of 2014 shows that 4 per cent of all complaints concerned sexual orientation. They represent 80 complaints and most of them were related to representations of homosexuality in the media, including the internet (29%), discrimination on the labour market (20%) and were related to social problems (for example fights with neighbours) (20%) and denial of access to goods and services (9%).

Discrimination against transgender persons is largely covered in Belgian legislation under the ground of 'sex' (rather than under the ground of 'sexual orientation'). On the federal level, discrimination on the ground of sex is the object of a separate piece of legislation (the Sex Discrimination Act of 2007) and a different equality body is responsible for combating gender discrimination, namely the *Institute for the Equality of Women and Men*.

## LEGISLATION

### Constitution

Constitution	Yes/No	Comments
Equality/non-discrimination guarantee in constitution?	<b>Yes</b>	Articles 10 and 11 of the Belgian constitution enshrine the principle of equal treatment and prohibits discrimination.
Sexual orientation /sexual option	<b>No</b>	
Gender identity	<b>No</b>	
Gender expression	<b>No</b>	
Sex characteristics	<b>No</b>	
Open-ended list (indicated by words like 'any ground such as' or 'or other status')?	<b>No</b>	
Can individuals invoke the constitution directly in legal proceedings?	<b>Yes</b>	
Is there any case law under these provisions?		Articles 10 and 11 have been used to challenge administrative acts and legislative norms which violate the principles of equality and non-discrimination. This is the case for judgements of the Constitutional Court n° 157/2004 on Law of 15 February 1993 establishing a Centre for Equal Opportunities and Opposition to Racism and n°s 17/2009, 40/2009 and 64/2009 regarding actions in annulment launched against the 2007 Antidiscrimination Federal Act.

## National Anti-discrimination Laws

Anti-discrimination law	Yes/No	Comments
Sexual orientation	Yes	Discrimination on ground of sexual orientation is prohibited by the Antidiscrimination Federal Act of 10 May 2007 (Article 3). In several respects, the federal legislation goes beyond what is required by the European directives.
Gender identity		The Belgium Act of 10 May 2007 aiming at fighting against discrimination between women and men was amended on 24 July 2014. The new Article 4, §3 explicitly mentions 'gender identity' and 'gender expression' as prohibited grounds of discrimination. Before the amendment, only 'change of gender' was protected by law.
Gender expression		See above concerning gender identity
Sex characteristics	No	
<b>Additional Comments</b>		
Areas covered	YES/NO	COMMENTS
Employment	Yes	The prohibition concerns employment both in the public and private sector. The law covers equal conditions of access to employment, career advancement, terms of dismissal, salary, work conditions.
Education	Yes	
Health and social services	Yes	It includes social security and healthcare and social advantages
Public spaces	Yes	
Policing and security	Yes	
On-line spaces	Yes	

Others (please specify)		<p>The law also covers:</p> <ul style="list-style-type: none"> <li>• The provision of goods, facilities and services;</li> <li>• Social security and social benefits;</li> <li>• Membership of or involvement in an employers' organization or trade union;</li> <li>• Official documents or (police) records;</li> <li>• Access to and participation in economic, social, cultural or political activities open to the public.</li> </ul>
<b>Complaint system</b>		
Does the law allow for individual complaints?	<b>Yes</b>	
Does the law allow for group complaints?	<b>Ye</b>	<p>A recent law adopted in March 28, 2014 allows class actions for the first time in Belgium. However it only concerns consumers' groups.</p>

<p>Does the law allow for complaints by an Equality Body or other organisation?</p>	<p><b>Yes</b></p>	<p>The Antidiscrimination Federal Act of 10 May 2007 allows for complaints to the Equal Opportunities Centre (UNIA). This Centre has been recently turned into an Interfederal Centre that will continue to focus on promotion of equal opportunities and the fight against discrimination according to the anti-discrimination legislation at both federated and federal levels. The Centre carries out its functions and missions in an independent manner without any interference from the state.</p> <p>The Interfederal Institute for the Equality of Women and Men established in 2002 has the mandate to guarantee and promote the equality of women and men and to fight against any form of discrimination and inequality based on gender, including gender identity and transgender issues. The Institute is also allowed to lodge a legal complaint.</p> <p>Both organisations can bring civil as well as criminal proceedings before the prosecutor.</p> <p>In addition, unions, employers' federations, NGOs aiming at combating discrimination, among others, are also allowed to lodge a legal complaint.</p>
<p>If the law allows for complaints by body/organisation, is a complaint without an individual complainant possible?</p>	<p><b>No</b></p>	<p>Article 31 stipulates that the complaint is admissible only if the organisation has received the agreement of the victim to act. However, the Interfederal Equality body can lodge a complaint when cases have a clear impact on social life and/or have an emotional impact on people and concern an important group of persons (without the obligation to identify victims).</p>
<p>Can an investigation by the police or prosecutor be initiated without a complaint from the victim?</p>	<p><b>No</b></p>	

## National Criminal Law Provisions

<b>Criminal law provisions Does the criminal law provide against:</b>	<b>Yes/No</b>	<b>Comments</b>
Homophobic hate speech?	<b>Yes</b>	The 2007 Federal Antidiscrimination Acts make it a criminal offence to incite publicly discrimination, hatred or violence against a person, a group or a community on the basis of sexual orientation. Hate speech can also be dealt with by means of existing legislation relating to slander, defamation and insults.  In terms of the reporting on hate speech on ground of sexual orientation, the Centre is responsible for LGB persons.
Transphobic hate speech?	<b>Yes</b>	The Institute for Equality between Women and Men is competent for hate speech against transgender persons.
Homophobic hate crime?	<b>Yes</b>	
Transphobic hate crime?		
Incitement to homophobic hatred?	<b>Yes</b>	
Incitement to transphobic hatred?	<b>Yes</b>	
Incitement or encouragement of violence to LGBT people?	<b>Yes</b>	
Does the criminal law provide for increased penalties when a crime is committed with a homophobic or transphobic motive?	<b>Yes</b>	A Law was adopted in January 2013 concerning homo/transphobic cases. It modifies Article 405quater of the criminal code and aims at enhancing the penalties for criminal offences perpetrated on the basis of sexual orientation. The current Article 405quater provides that the judge <b>must</b> now apply the heavier penalties when aggravating circumstances are proven.  The relevant provisions concern a large number of common crimes, including rape, assault, manslaughter, murder, criminal negligence, stalking, arson, defamation and slander, desecration of graves, vandalism, etc.
<b>Victims' role in the</b>	<b>Yes</b>	The victim can take part in the criminal proceeding

<b>proceedings:</b> Does the victim play a role in the criminal proceeding ?		by claiming compensation.
As witness?	<b>yes</b>	In case of criminal proceeding without civil action
As party?	<b>Yes</b>	When the victim is asking for compensation in a civil proceeding.
Can the victim claim compensation in criminal proceedings ?	<b>Yes</b>	The victim can claim compensation at different stages of the procedure: at the beginning, at the stage of instruction or judgement.
Can victims appear in the proceedings and exercise the accusation regardless of what may be formulated by the prosecutor ?	Yes	If no action has been taken by the authorities, the victim can introduce a civil action in order to force the judge to exercise the criminal proceeding.
If so, are they entitled to the benefits of legal aid?	Yes	Victims are entitled partially to the benefits of free legal aid through the services of a free lawyer under certain financial conditions.
What actions are foreseen in the law to protect the victims from reprisals from perpetrators?		Articles 16 and 17 of the 2007 Antidiscrimination Acts protect victims as well as witnesses against reprisals. However, according to the Interfederal Centre, the protection is not really effective, especially in case of harassment at work where complainants are usually victims of double victimisation. <sup>1</sup>
<b>Additional Comments</b>		
<p>Concerning hate speech, there is a barrier to the effective application of the legal provisions concerning the prohibition of hate speech on the ground of sexual orientation and gender identity. In the case of written and published materials, there is a special protection regime according to which these cases can only be tried by the Assize Court. Consequently, so called press crime is seldom successfully prosecuted because the Assize Court is composed by a majority of ordinary citizens and a minority of professional judges.</p> <p>That is why in 1999, article 150 of the Belgian Constitution that stipulates “the jury is created in all criminal matters and for political and press offences motivated by racism and xenophobia” was modified. An exception was introduced to Article 150. In case of racist or xenophobic motivation, offences can be brought before ordinary courts exclusively composed of professional judges.</p>		

<sup>1</sup> See Interfederal Centre for Equal Opportunities, Assessment Report of the Antidiscrimination Act of 10 May 2007 aimed at combating particular forms of discrimination, p.55.

However, this exception does not concern any other ground of discrimination. As a result, this makes it unlikely that a prosecution is brought against a person accused of homophobic incitement in written and published material.

In order to improve effective justice against homophobic hate speech, the ECRI has recommended the extension of the exception to Article 150 of the Constitution to homophobic incitement so that prosecution can be brought before ordinary courts.<sup>2</sup>

## Recognition marriage/registered partnership between same sex persons

<b>Marriage/registered partnership</b>	<b>Yes/No</b>	<b>Comments</b>
Can persons of the same sex get married?	<b>Yes</b>	The law of 13 February 2003 allow same-sex marriages
Can persons of the same sex enter into a civil partnership creating similar rights to marriage?	<b>Yes</b>	The law of 23 November 1998 establishing so called “legal cohabitation” does not distinguish between heterosexual and same-sex cohabitants and grants restrictive rights compared to marriage.
Can persons of opposite sex enter into a civil partnership creating similar rights to marriage?	<b>Yes</b>	The law of 23 November 1998 establishing so called “legal cohabitation” does not distinguish between heterosexual and same-sex cohabitants and grants the them restrictive rights.
Can persons of the same sex enter into a civil partnership with limited rights?	<b>No</b>	
Does the national law distinguish between same sex spouses and different sex spouses for purpose of entry and residence rights?	<b>No</b>	The Belgian law treats same sex and different sex spouses equally for purpose of free movement and family reunification.
If it is the case, can the same sex spouse enjoy the right of family reunification?	<b>Yes</b>	The Aliens Act, amended in April 2007, gives the following definition of “family members”: spouses, partners with the registered partnership equivalent to marriage, and partners with a registered partnership not equivalent to marriage. LGBT partners of EU and non-EU citizens are

<sup>2</sup> ECRI Report on Belgium, p. 22.

		therefore treated in the same way as heterosexual partners.
Does the national law distinguish between same sex partners and different sex partners for purpose of entry and residence rights?	<b>Yes</b>	
If it is the case, can the same sex partner enjoy the right of family reunification?	<b>Yes</b>	Belgium grants family reunification rights to same-sex partners of third country nationals and extends this right to the same-sex partners in <i>de facto</i> relationships.
<b>Additional Comments</b>		

### Legal change of sex/gender

Legal change of sex/gender	Yes/No	Comments
Does the registration process for new born babies allow for a category other than male or female (e.g. possibility of sex to be left open or to enter an X)?	<b>No</b>	As of 15 May 2007, article 57 of the Civil Code provides for the possibility to postpone the registration of the gender of a child in the birth certificate by three months, if its gender is unclear and on the condition that a medical justification is submitted.
Can the sex on a person's birth certificate and other official documents be changed? If so describe the procedure	<b>Yes</b>	<p>The Transgender Federal Act of 10 May 2007 (M.B. 11/07/2007) provides transgender people with a legal basis for the registration of the change of their sex and name.</p> <p>Requirements for rectifying a recorded gender or name in official documents are the following:</p> <ul style="list-style-type: none"> <li>- Certification by a psychiatrist that the person concerned is convinced that she or he belongs to the opposite gender</li> <li>- Gender reassignment surgery</li> <li>- Medical certification of the permanent inability to procreate</li> </ul> <p>Due to these conditions, this law applies to only some transgender people, namely transsexuals. As a result, people who have not undergone sex change surgery cannot legally register their change of name or gender.</p>

		<p>If these requirements are fulfilled, the person concerned can submit a special request of first name change. Contrary to the general procedure, where a first name change is not automatic, the first name change for a transsexual is seen as a right. The Minister of Justice has the obligation to allow the first name change. The transsexual is free in his/her choice of a new name, the choice is not limited to gender-neutral names. The Minister can only refuse the request if the new name will cause confusion or cause harm to the applicant or to a third party.</p> <p>As soon as the sex has been changed on the birth certificate, the person is considered to be somebody who has legally changed sex.</p>
<p><b>Additional Comments</b></p> <p>In order to prevent communication of information about the sex change, a transgender specific regulation exists concerning the consultation of the National Registry to avoid revealing the change during the consultation of the National Registry data during statistical surveys or other similar exercises.</p>		

**Other National Legislation**

The Transgender Federal Act of 10 May 2007 places administrative proceedings before the registrar of civil status, with judicial review, which allows transsexuals to change gender quickly, in an affordable way and with less stress. The gender change request is made by a simple declaration to the officer of civil status, accompanied by a statement signed by a psychiatrist and a surgeon.

**EU Legislation**

**Victims Directive (Directive 2012/29/EU (2012/29/EC establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA)**

EU legislation: the Victims Directive 2012/29/EC	Yes/No	Comments
Has the Victims Directive been transposed into national law? Describe in what way	Yes	Partially transposed
If the Directive has not been	N/A	

transposed, are there plans of doing so? E.g. proposals for legislation		
If the Directive has not been transposed and there are no plans of doing so, is there any reason why not? (e.g. Government might be of opinion that it is covered by existing legislation)		The existing Belgian legislation concerning victims' protection is well developed. Victims enjoy the following rights: <ul style="list-style-type: none"> <li>• The right to provide information</li> <li>• The right to receive legal advice</li> <li>• The right to the benefits of a free legal aid through the services of a pro deo lawyer</li> <li>• The right to receive psychological care</li> <li>• The right to financial compensation</li> </ul>
If the directive has been transposed, is it envisaged that victims of crimes committed on grounds of homophobia or transphobia can be considered particularly vulnerable and susceptible to special protection?	<b>N/A</b>	
Is it envisaged that the victims can receive legal advice?	<b>Yes</b>	Free legal advice is provided to people without financial resources in priority through local Councils for legal access. Their main functions are to inform people on their rights and obligations, provide practical help in the execution of a legal act or the drafting of a legal act or assistance before tribunals.
Is it envisaged that the victims can receive psychological care? Is that care free?	<b>Yes</b>	Since 2006, psychologists work in 29 police stations in order to help victims and to improve police practices.
<b>Additional Comments</b>		

**Qualification Directives (Directive 2004/83/EC and 2011/95/EU on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted)**

<b>EU legislation: the Qualification Directives 2004/83/EC and 2011/95/EU</b>	<b>Yes/No</b>	<b>Comments</b>
Has the Qualification Directive	<b>No</b>	Belgium is one of the 16 EU countries that have

(in its original or its recast form) been transposed into national law? Describe in what way		infringement proceedings for no communication on the victims Directive.
If the Directive has not been transposed, are there plans of doing so? E.g. proposals for legislation	<b>N/A</b>	
If the Directive has not been transposed and there are no plans of doing so, is there any reason why not? (e.g. Government might be of opinion that it is covered by existing legislation)	<b>N/A</b>	

**Regional and Local Legislation**

<p><b>Is there any regional or local legislation that could be relevant in relation to homophobia and transphobia? If so, describe this?</b></p> <p>The division of competence between the federal authorities, the Regions and the Communities means that the federated entities must also adopt antidiscrimination legislation in their respective fields of competence, with the aim to harmonise their laws with the federal acts and to ensure that all fields of life, resulting of their competences, such as employment, education and health, are covered. The proliferation of laws has resulted in a complex anti-discrimination legislative framework at federated entities’ level.</p> <p>The Regional Antidiscrimination laws at this level includes:</p> <ul style="list-style-type: none"> <li>○ The 2008 Flemish Decree dealing with the competences of the Flemish Community and the Flemish Region;</li> <li>○ The 2008 French Community Decree;</li> <li>○ The 2008 Walloon Region Decree;</li> <li>○ The Brussels Region Decrees;</li> </ul> <p><b>The Flemish Decree</b></p> <p>The Flemish Decree of 10 July 2008 creates a framework for the Flemish policy of equal opportunity and it is roughly modelled on federal legislation.</p> <p>The Framework Decree also includes a list of discrimination grounds based on that of the federal legislation, namely: gender, race, descent, national or ethnic origin, nationality, age,</p>
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sexual orientation, marital status, birth, language fortune, religion or belief, political conviction, state of health, disability, physical or genetic characteristics and social position. It therefore provides the same benefits as the federal legislation.

Concerning transgender issues, the Flemish Decree stipulates in Chapter IV " Equal treatment " (Section 1, Art. 16 § 5) " that less favourable treatment in a comparable situation because of transsexuality is considered as a less favourable treatment in a comparable situation on grounds of sex ".

The decree also specifies the areas in which there can be no discrimination: healthcare, education, housing, mobility, culture, youth, social benefits and access to and participation in economic, social, cultural or political activities available outside of the private sphere.

The definitions of identity and gender expression have been included in the anti-discrimination Flemish decree adopted in March 19, 2014 by the Flemish Parliament.

### **The Walloon Decree**

The Walloon Region has the Decree of 6 November 2008 aimed at combating particular forms of discrimination (Discrimination Decree) that has the explicit aim to implement Directive 2000/78/EC, Directive 2000/43/EC and the several sex discrimination directives.

The Decree determines in article 5 that it is applicable in all of the contexts having to do with employment to the extent that the Walloon region is competent in this regard, i.e.:

- Social protection, including health care;
- Social benefits;
- Professional orientation;
- Social mobilization and professional life;
- Employment finding;
- Attribution of support for promoting employment;
- Attribution of support and bonuses for employment as well as financial incentives for businesses, in the framework of economic policy, including the social economy;
- Vocational training;
- Goods and services outside of the strictly private and family sphere (including housing);
- Access to, participation in or any other exercise of an economic, social, cultural or political activity open to the public;
- All employment positions in the services of the Walloon government; the public legal persons that are dependant on the Walloon Region; the provinces and municipalities, the associations of provinces, the associations of municipalities and the autonomous provincial and municipal enterprises;
- Public centres for social aid and the associations founded by the public centres for social aid.

Criminal provisions relevant for sexual orientation cover the prohibition of incitement to hatred, discrimination and violence (art. 23 Discrimination Decree) and a prohibition on

discriminatory conduct by civil and public servants (art. 24 Discrimination Decree).

The Decree covers the same discrimination grounds as the several federal acts combined.

The Walloon Decree stipulates in Chapter I. " Introductory provisions " (art. 3 § 2) that " gender-based discrimination and related criteria that are pregnancy, childbirth and motherhood, or transsexuality and sex change are prohibited."

### **The French Community Decree**

The Decree of the French Community of 12 December 2008 on the fight against certain forms of discrimination applies in the following areas related to the material and territorial competency of the French Community, both for the public and the private sector:

- Employment (for statutory and contractual civil service of the French Community);
- Education (for staff and school-student relationships);
- Goods and services such as access to museums, libraries, health;
- Affiliation and membership in public and private organisations subsidized by the French Community.
- The protected grounds are sexual orientation and change of gender, among others<sup>3</sup>

The Decree provides for the exact same civil and criminal provisions as the federal legislation does.

The criminal provisions relevant for sexual orientation cover a prohibition on incitement to hatred, discrimination and violence (art. 52 Discrimination Decree) and a prohibition on discriminatory conduct by civil and public servants (art. 55 Discrimination Decree).

### **The Brussels Region Decrees**

The Brussels Region has also transposed the Anti-discrimination European directives concerning sexual orientation and change of sex in the field of employment<sup>4</sup>, including in the public service<sup>5</sup> and housing<sup>6</sup>.

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<sup>3</sup> The other protected grounds are nationality, race, skin color, ethnic origin, age, religion or belief, disability, sex and related criteria such as pregnancy, childbirth and motherhood, marital status, birth, wealth, political convictions, language, current or future health, physical or genetic characteristics, social origin or union belief.

<sup>4</sup> See Ordinance of 4 September 2008 aimed at combating discrimination and promoting equal treatment in employment (Brussels-Capital Region)

<sup>5</sup> See Ordinance of 4 September 2008 for advancing diversity and combating discrimination in public office of the Brussels Region (Brussels-Capital Region)

<sup>6</sup> Ordinance of 19 March 2009 reforming the Ordinance of 17 July 2003 pertaining to the Brussels housing code (Brussels-Capital Region)

## POLICIES

**Are there any national policies in relation to homophobia and transphobia, especially in the areas mentioned in the guiding themes? If so describe these and indicate whether they can be seen as examples of good practice.**

The main national policy is the Interfederal Action Plan against homophobia and transphobia adopted in 2013. Before the adoption of this Plan, several actions and activities were implemented with the objective of combatting hate speech, such as two raising-awareness campaigns launched by UNIA.<sup>7</sup>

In addition, in October 2012 a charter was signed by the major actors in the educational field aiming to create a policy on gender and sexual identity in schools. In that framework a broad range of activities was set up, such as collecting communication material and good practices, setting up networks, and sensitising and informing key players (such as school directors, teachers, pedagogical services, teacher trainings, etc.).

In 2012, several violent crimes were perpetrated against individuals on the basis of their real or perceived sexual orientation. At the beginning of the year, a man died in Liège, after being beaten and abandoned in a field. In July of the same year, another man was murdered in a park in Liège. The previous week, a gay couple had been severely beaten in Aalst.

As a result, the Belgian Government decided to adopt an Action Plan (2013-2014) aiming at eliminating structural discriminations and combating prejudices against LGBT through activities in education, employment, health and well-being, as well as awareness-raising actions.

The Plan contains six priorities:

- Aid to research on LGBT issues;
- Law improvement including 2007 Antidiscrimination Laws' assessment in order to identify the positive aspects and the missing points;
- Prevention
- Awareness raising;
- Improvement of victims' aid;
- Follow-up and prosecution.

The competent ministers for the action plan are the Federal as well as Regional Equal opportunities ministries. The Plan has been mainly implemented under the responsibility of the Centre and the Institute.

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<sup>7</sup> See Campagne « Pas de haine sur scène » : <http://www.pasdehainesurscene.be/>

### **1. Knowledge Improvement on LGBT issues**

The Action Plan includes the creation of a LGBT inter-federal experts' network gathering researchers, NGOS, grass root actors and public organisations involved in the implementation of the plan. The objective is to exchange scientific information and research results and to identify missing research areas.

This network is also in charge of the quantitative and qualitative assessment of the Action Plan.

### **2. Legal Improvements**

While discrimination based on transsexuality was prohibited by the 2007 Anti-discrimination Laws, it was not the case of gender identity and gender expression. That is the purpose of the Law of 24 July 2014. The Article 4, §3 explicitly mentions 'gender identity' and 'gender expression' as prohibited grounds of discrimination.

The second objective of the plan concerning law improvement was the 2007 Antidiscrimination assessment laws, finally done in 2014.

### **3. Improvement of prevention**

The main idea is to better train people, especially in the public services, to avoid discriminatory attitudes. In this context, the Plan proposes the following actions:

- Anti-discrimination trainings provided to regional civil servants
- Specifically, for police services, a couple of actions have been implemented:
  - o Information and awareness-raising for police concerning gender identity and gender expression have been organised by the inter-Federal Institute;
  - o Training has been also organised by the inter-Federal Centre on homophobia;
  - o In addition, training on discrimination including sexual orientation and transgender issues is mandatory in police schools.

### **4. Increase awareness raising to combat prejudices**

Awareness raising is used to change the perception of gender norms. Institutions and organisations in charge of scientific, social or pedagogical function have been invited to actively participate to this change. As a result, a number of actions have been implemented at different areas such as education or health. The following actions can be seen as good practices:

### **In the field of Education:**

In the Flemish community, several manuals to guide teachers have been prepared. They provide information on how to address LGBT issues at school and a web-site provides tips for gender neutral and LGBT-friendly schools.

In addition, the Flemish authorities fund the educational work of LGBT organisations.

In the French part of the country, on 26 June 2012, the Decree of the French Community on the mission of teaching in primary and secondary education was amended in order to include education in emotional, social and sexual life (EVRAS) as a mandatory subject.

Under the pressure of LGBT organisations, a sexual diversity theme has been included in the Education Programme on Affective and Sexual Life at school (EVRAS):

- Creation of a leaflet including homophobia and transphobia themes
- Inclusion of the LGBT theme in the training for EVRAS trainers

In addition, the Walloon Region gives financial support to the youth sector by funding several actions dedicated to sexual diversity led by youth NGOs, such as a theatre play devoted to the issue of coming out.

- **In the sector of health:**

The Walloon region has given financial aid to support the Arc-en Ciel Wallonia NGO in order to aware and inform people working in health sector, including mental illness Centre and psycho-social services for LGBT to the specificities of the target group and provide them better and more adequate services.

### **5. Aid to victims**

A network of eleven regional points has been created to give the opportunity to victims to register a complaint at local level. In Wallonia, for instance, in Charleroi, a local point has been created. Victims can complain freely or get information on discrimination.

A collaborative Protocol between the Regions and the Interfederal Equality Body (UNIA) have been signed giving to the later the mission to treat the complaint. To sum up, the complaint is registered at the local level and treated and analysed at the federal level.

### **6. Follow up and prosecutions**

If the legal framework is well developed in Belgium, there are nevertheless clear weaknesses in registration of complaints and a phenomenon of under-reporting on discrimination on the

ground of sexual orientation and on homo- and transphobia. The reasons are various. According to the Prosecution service, the number of homophobic cases is low because the police do not always register the homophobic aspect of the crime in the initial reports or administrative staff forgets to enter the specific code in the IT system. On the other hand, LGBT people file complaints with the police without specifying that they concern homo- or transphobic aggression.

To counter the phenomenon of underreporting, a new circular, namely the circular COL 13/2013 foresees the designation of a contact person within the police responsible for racism and homo/transphobic issues as well as within the judiciary (contact prosecutor in the corresponding prosecution department). The contact person will be in charge of LGBT issues and responsible for improving the response of police to complaints from individuals. This is also the role of the contact prosecutor in each court district specialised in discrimination issues in the prosecution service.

In addition, the two Interfederal equality bodies disseminate information on how to enforce the rights of LGBT to potentials victims of discrimination and trans/homophobic violence. They both maintain close and regular contacts with LGBT NGOs and organise numerous conferences and seminars contributing to spreading information on the rights and remedies available to victims.

At the Regional level, the Walloon Region have decided to actively support the LGBT sector by financing LGBT NGOs such as the Rainbow federation and the Rainbow houses and similar NGOs in order to help them to support victims of discrimination.

**PRACTICES**

**Are there any national practices in relation to homophobia and transphobia, especially in the areas mentioned in the guiding themes? If so describe these and indicate whether they can be seen as examples of good practice.**

Transgender issues have been significantly improved in Belgium. Since the study "Being Transgendered in Belgium", the Institute for the Equality of Women and Men (the Institute) has developed expertise regarding transgender issues.

For instance, partnership, work exchange and collaboration with the representative associations of transgender people is implemented more effectively and efficiently.

The Institute's staff has been trained in specific listening skills for transgender people and the Institute participates in various seminars and conferences on the topic and organizes seminars and symposia to give voice to the research and recommendations in the area.

Concerning transgender people themselves, work on the accessibility of information on the rights of transgender people has been completed. The reporting form for discrimination has been adapted to also address them specifically.

More specifically, in the area of work, in 2013 a brochure with information for employers has been published on the topic of 'Transgender on the work floor'. It provides advice and practical tips on how to deal constructively and respectfully with employees undergoing gender reassignment: terminology, the medical process, the legal framework, pointers for job interviews and hiring, and tools to deal with complicated situations during the transition process or in case of bullying or discriminatory behaviour.

Concerning the improvement of the complaint system, The Interfederal Centre UNIA has concluded formal protocols with some NGO's active in the field of discrimination on the basis of sexual orientation, so that these NGO's can act as (independent) local complaint offices for the CEOOR.

**Are there any regional practices in relation to homophobia and transphobia, especially in the areas mentioned in the guiding themes? If so describe these and indicate whether they can be seen as examples of good practice.**

**Flemish Region**

**In the field of work**, in the Flemish part of the country, a number of good practices have been

launched for transgender people:

- Programme focusing on employment opportunities for transgender persons
- Publication of a brochure “Transgender on the work floor” with advice and practical tips for employers
- **Opening of a Transgender** Info Point at the Centre for sexology and gender issues of the Ghent University Hospital.

**In the field of education**, in Flanders again, measures and tools were adopted such as “Gender in the blender” which is a tool with theory, exercises and tips for secondary education about gender and diversity. The website [www.genderindeblender.be](http://www.genderindeblender.be) provides tips for a gender- neutral and LGBT friendly school and examples of diversity policies;

In addition, the project ‘open book’ (2010-2011) provides instruments on how to break gender stereotypical and heteronormative images. The project focused on publishers of books and manuals for schools.

The department of education also funds the educational work of Cavaria (umbrella for LGBT Flemish organisations).

Two tools were developed by Sensoa (expertise centre on sexual health – funded by the Flemish Government). The Flag System is a tool that will allow schools to discuss ‘sexually intolerable behaviour’.

A new manual serves as inspiration for schools to create a policy on relations and sexuality. The manual focuses on the diversity of target groups: aspects of sexual orientation, (trans)gender, socio-cultural background are discussed. In addition, the different contexts of teaching are taken into account relating to the diversity of the class, the age, sexual development, etc.

**In the field of health**, In Flanders, the employees of Centres for General Welfare receive special training on LGBT issues and a set up of a specific preventive health policy towards lesbian women regarding cervical cancer.

**In the area of sport**, at the time of the Eurogames (2008), the Minister for Sports launched a campaign “Are you thinking about sex now?”. In this campaign LGB organisations worked together with the Flemish Sports Federation. Posters were distributed, displaying images of physical contact between rugby players’ during a rugby game. A feminine version portrayed a picture of two gymnasts helping each other during an exercise. This campaign was accompanied by a ‘Charter for the equal treatment of heterosexuality and homosexuality in the sports club’. By signing and displaying the poster, a sports club clearly states that LGBT can come out in the open about their sexual identity and that homophobic remarks and

actions are unacceptable.

**In the Walloon region**, in February 2011, the Walloon Government adopted the first Walloon Equality Plan aiming at engaging the responsibility of each Minister in the reduction of discriminations. The Walloon Rainbow Federation is part of an expert group in charge of the follow-up of the implementation of the plan.

In addition, the following activities can be seen as regional good practice:

#### **LGBT guide in Wallonia on smartphone**

The Walloon Rainbow Federation has implemented an application of the LGBT Guide to Wallonia. One can get on smartphone information on LGBT stores and NGOs, as well as addresses of Family Planning centres, AIDS screening centres and medically assisted insemination centres.

#### **Creation of a short film to combat prejudices**

The programme was made by the Interfederal Equality Centre and the Wallonia Region and will be presented to local TVs in order to encourage a discussion between grass root actors.

#### **Animations in schools**

In the framework of an awareness raising campaign, GrIS Wallonie, a group of LGBT volunteers, organise animations in secondary schools based on their own experience. This project aims at responding to teachers and school directions' demands in terms of awareness raising.

#### **Actions from family planning centres**

Family planning Centres have produced leaflets on sexuality and studies on homosexuality perceptions among young people. They also organise animations at school and elsewhere and psychological consultations.

#### **Raising awareness in sport**

The French Community works in cooperation with LGBT organisations on the issue for football. For instance, they published a Guide of good practice to combat homophobia in football.<sup>8</sup> This guide has been done for the following target group: football clubs and associations of supporters. They also organised workshops for managers, trainers and stewards and awareness raising for players and supporters through posters, rainbow shoe laces, ...

**In the Brussels Region**, a campaign against violence towards people because of their sexual

orientation or sexual identity was launched in 2011.

This campaign was organised by the Brussels-Capital Region in partnership with Brussels police and LGBT NGOs in order to counter the issue of under-reporting. It included a website providing help and advice to victims of violence and aggressions of “homophobic, transphobic, lesbophobic nature.

**Are there any local practices in relation to homophobia and transphobia, especially in the areas mentioned in the guiding themes? If so describe these and indicate whether they can be seen as examples of good practice.**

**The Charter of Equal Opportunities for municipalities can be seen as a good practice.**

This Charter is the result of a reflection by nine pilot municipalities, supported by the Wallonia Region, acting together for the creation of a Charter of Equal Opportunities for All cities of Wallonia. The city of Charleroi is a signatory of the charter.

The objectives of the charter are the following:

- Promote a policy of equal opportunities within city services through the establishment of an action plan and regular monitoring of its implementation;
- Designate a reference person in charge of equal opportunities;
- Combat all forms of discrimination
- Allow each citizen to participate in public local life without discrimination
- Promoting actions and aware citizens, staff members and partners in the Charter on equal opportunities
- Incorporating equal opportunities in all areas of political life
- Ensure diversity and equal opportunities within its administration at every career stage (recruitment, training, skills development and career development)
- Communicate commitment
- Ensure compliance with the charter throughout the municipal entity

## Conclusion

Belgium is very active in combating discrimination and homo and transphobia at different levels of the society and in different areas. Belgian legislation can be seen as exemplary, because, among others, of the large list of prohibited grounds and the prohibition of homophobic and transphobic discriminations in a numerous areas of social life.

However, despite the adoption of a strong and complete legal framework namely the 2007 federal Antidiscrimination Acts as well as Regional Acts, the protection of victims and their access to justice is not satisfactory. In addition, prejudices and stereotypes against LGBT are still persistent and discriminatory attitudes and behaviour are pervasive in numerous areas of daily life. It seems therefore necessary to continue and reinforce information on the Antidiscrimination legal framework, to aid victims and to support activities promoted by LGBT NGOs.

That means that the interfederal Plan against homophobia and transphobia launched in 2013 was not efficient to combat homo and transphobia. Several social actors criticized the Plan. The UNIA considers that the plan is clearly lacking the necessary budget for its implementation and is more a catalogue of existing actions and activities than a real innovative action plan.<sup>9</sup> At the regional level, according to the Rainbow Regional Wallonia Federation, the Plan has failed to look in detail at the concrete situation regarding LGBT issues in some areas such as employment and training policies, youth, sport, health, social actions, access to services, housing, adoption and childhood.

It is therefore necessary to improve the application of the legal framework and accompany it with concrete policies to improve outcomes for LGBT persons suffering from discrimination. In order to this, will require more detailed analysis of the phenomenon of discrimination but within Belgian society, especially at local level, in particular given the specific institutional structures in place.

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<sup>9</sup> See UNIA Activity Report 2014, p.

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### Federal Laws

Law of 23 November 1998 created legal cohabitation according the same rights to heterosexuals and homosexuals.

Law of 13 February 2003 on marriages between same sex persons

Law of 18 May 2006 allowing national and international adoption by same sex couples

Act of 10 May 2007 aimed at combating particular forms of discrimination, (*MB* 30 May 2007)

Act of 10 may 2007 aimed at combating discrimination between women and men

Transgender Federal Act of 10 May 2007

Law of 14 January 2013 modifying Article 405quater of the Criminal Code, *MB* 31 mars 2013.

### Regional decrees

Decree of 10 July 2008 establishing a framework for Flemish policies of equal opportunities and equal treatment (Flemish Community & Flemish Region combined)

Decree of 2 December 2008 concerning particular forms of discrimination (French Community)

Decree of 6 November 2008 aimed at combating particular forms of discrimination (Walloon Region)

Ordinance of 19 March 2009 reforming the Ordinance of 17 July 2003 pertaining to the Brussels housing code (Brussels-Capital Region)

Ordinance of 4 September 2008 for advancing diversity and combating discrimination in public office of the Brussels Region (Brussels-Capital Region)

Ordinance of 4 September 2008 aimed at combating discrimination and promoting equal treatment in employment (Brussels-Capital Region)

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# **City Report on existing legislation, policies and practices (Girona and Sabadell, Spain)**

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## 1. Legislation

### 1.1. Constitution (Spanish Constitution)

Constitution	Yes/No	Comments
Equality/non-discrimination guarantee in constitution?	YES	<p>Article 10</p> <p>1. The dignity of the person, the inviolable rights which are inherent, the free development of the personality, respect for the law and the rights of others, are the foundation of the political order and the social peace.</p> <p>Article 14</p> <p>Spaniards are equal before the law, without any discrimination on the grounds of birth, race, sex, religion, opinion, or any other personal or social condition or circumstance.</p>
Sexual orientation /sexual option	NO	<p>However, several sentences of the Constitutional Court have stipulated that discrimination on the grounds of sexual orientation (STC 41/2006, STC 41/2013, STC 92/2014) and gender identity (STC 176/2008) suppose an infringement of the article 14 of the Constitution.</p>
Gender identity	NO	
Gender expression	NO	
Sex characteristics	NO	
Open-ended list (indicated by words like 'any ground such as' or 'or other status')?	YES	The Constitution uses the expression: "or any other personal or social condition or circumstance" (art.14).
Can individuals invoke the constitution directly in legal proceedings?	YES	<p>Article 53</p> <p>2. Any citizen may make a claim to the liberties and rights recognized in Article 14 and the first Section of the Second Chapter before the regular courts through a process based on the principles of preference and speed and through the recourse before the Constitutional Court.</p>
Is there any case law under these provisions?	YES	A number of cases addressed to the Supreme Court or the Constitutional Court are based on an infringement of the article 14 of the Constitution.
<p><b>Additional Comments</b></p> <p>In relation to the guarantee of basic rights, the article 10.2. States that "the norms relative to basic rights and liberties which are recognized by the Constitution shall be interpreted in</p>		

conformity with the Universal Declaration of Human Rights and the international treaties and agreements on those matters ratified by Spain”.

#### A. 1.2. National anti-discrimination Laws

Anti-discrimination law Spanish Penal Code	Yes/No	Comments
Sexual orientation	YES	<b>Organic Law 10/1995, of 23 November, on the Criminal Code</b> ( <i>Ley Orgánica 10/1995, de 23 de</i>

Gender identity	YES	<p><i>noviembre, del Código Penal)</i></p> <p>Art. 314 – Employment and discrimination. This is a regulation against discrimination based on sexual preference and sexual identity, among other reasons, in work and employment.</p> <p>Art. 510 – Hate Speech. This is a regulation against hate speech based on sexuality, orientation or sexual identity, among other reasons.</p> <p>Art. 511 and 512 – Discrimination in services. These articles regulate discrimination in services based on sexuality, orientation or sexual identity, among other reasons.</p> <p>Art. 510.2. A– The following persons shall be punished with a prison sentence of six months to two years and a fine: (1) those who injure the dignity of others through actions that involve humiliation, contempt or discredit, based on sexual orientation or identity, among other reasons; or (2) those who produce, develop or possess, with the aim of distributing, facilitating access to third parties, distributing, disseminating or selling writings or any other kind of material or format that based on its content could be injurious to the dignity of others.</p> <p>Art. 515.4 –Those actions that promote discrimination, hate or violence against persons, groups or associations based on their ideology, religion or belief, on their members or any of them belonging to an ethnic group, race or nation, on their gender, sexual preference, family situation, illness or handicap, or incite to do so.</p>
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Gender expression	YES	<p><b>Organic Law 10/1995, of 23 November, on the Criminal Code</b> (<i>Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal</i>)</p> <p>Point 4 of article 22 defines aggravating circumstances: “Committing the offence for racist or anti-Semitic reasons, or another kind of discrimination related to ideology, religion or belief of the victim, ethnicity, race or nation to which he belongs, his gender, sexual orientation or identity, illness suffered or disability”. The penal code uses the term “gender-based” from the Council of Europe Convention on preventing and combating violence against women and domestic violence in order to open the concept of gender beyond a relationship between a woman and a man in domestic life. (Treaty No.210 - Council of Europe Convention on preventing and combating violence against women and domestic violence)</p>
Sex characteristics	NO	The national legislation does not recognize sex characteristics other than gender identity and sexual orientation.
<p><b>Additional Comments</b>  Article 22 of the Criminal Code regulates aggravating circumstances, in which gender, sexual orientation and identity are considered to be particular circumstances, among others, that possibly negate the principle of equality.</p>		
<b>Areas covered</b>	<b>YES/NO</b>	<b>COMMENTS</b>

Employment	YES	<p>Besides the arrangement in article 314 of the Criminal Code, <b>Royal Legislative Decree No. 1/1995, of 24 March , which approves the Revised Text of the Workers' Statute</b> (<i>Real Decreto Legislativo 1/1995, de 24 de marzo, por el que se aprueba el texto refundido de la Ley del Estatuto de los Trabajadores</i>), establishes:</p> <p>Art. 4.2 – Right to non-discrimination based on gender or sexual orientation.</p> <p>Art. 17.1 - Nullity of contracts based on discriminatory treatment, including gender and sexual orientation.</p> <p>Art. 54.2. - Regulation of gender harassment based on sexual orientation, among others, of employees or people working in the company.</p> <p><b>Royal Legislative Decree 5/2000 of 4 August, on Social Order Infringements and Penalties</b> (<i>Real Decreto Legislativo 5/2000, de 4 de agosto, por el que se aprueba el texto refundido de la Ley sobre Infracciones y Sanciones en el Orden Social</i>)</p> <p>Articles 8.12, 8.13bis, 10bis and 16bis define serious infractions. Discrimination based on sexual orientation, among other reasons, is a serious infraction.</p> <p><b>Act 36/2011, of 10 October, which regulates social jurisdiction</b> (<i>Ley 36/2011, de 10 de octubre, reguladora de la jurisdicción social</i>)</p> <p>Article 96 regulates the burden of proof for discrimination actions and accidents at work. According to this law, the burden of proof for sexual orientation or gender identity discrimination, among others, falls on the defendant.</p>
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Education	YES	<p><b>Act 2/2013, of 9 December, on the Improvement of the Quality of Education</b> (<i>Ley Orgánica 8/2013, de 9 de diciembre, para la mejora de la calidad educativa</i>)</p> <p>This law uses the term discrimination in a generic way, but only article 124 refers to sexual identity as a specific aggravating circumstance. Gender identity is not mentioned in specific terms, but should be interpreted in a generic way as discrimination.</p>
Health and social services	YES	<p><b>Act 14/1986, of 25 April, the General Health Law</b> (<i>Ley 14/1986, de 25 de abril, General de Sanidad</i>)</p> <p>Art. 10 - Respect for personality, dignity and privacy. No discrimination based on gender or sexual orientation, among other reasons.</p> <p><b>Act 33/2011, of 4 October, on General Law Public Health</b> (<i>Ley 33/2011, de 4 de octubre, General de Salud Pública</i>)</p> <p>Article 6 regulates the right to equal treatment equality in public health. According to this article, nobody can be discriminated against due to sexual orientation, gender identity, or any other personal or social circumstance.</p>

Public spaces	YES	<p><b>Organic Law 4/2015, of 30 March, on the protection of public safety</b> (<i>Ley Orgánica 4/2015, de 30 de marzo, de protección de la seguridad ciudadana</i>)</p> <p>Article 16 forbids police profiling based on sexual orientation and sexual identity, among other reasons.</p> <p><b>Law 19/2007, of 11 July, against Violence, Racism, Xenophobia and Intolerance in Sport</b> (<i>Ley 19/2007, de 11 de julio, contra la violencia, el racismo, la xenofobia y la intolerancia en el deporte</i>)</p> <p>Article 6 prohibits discrimination based on sexual orientation against participants and spectators attending sporting competitions. Articles 23, 34 and 35 categorize as serious and very serious discriminatory attitudes, including those towards sexual orientation.</p> <p><b>Real Decree 203/2010, of 26 February, regulating the prevention of violence, racism, xenophobia and intolerance in sports</b> (<i>Real Decreto 203/2010, de 26 de febrero, por el que se aprueba el Reglamento de prevención de la violencia, el racismo, la xenofobia y la intolerancia en el deporte</i>)</p> <p>This royal decree develops regulations for Law 19/2007, of 11 July.</p>
Policing and security	NO	<p>There is not a specific law against non-discrimination in policing and security based on gender or sexual orientation. In this case, the victims should review other national legislation such as the Criminal Code.</p>

On-line spaces	YES	<p><b>Convention on Cybercrime (2001).</b> Ratified by Spain in 2010.</p> <p><b>Additional Protocol to the Convention on Cybercrime,</b> concerning the criminalization of acts of a racist and xenophobic nature committed through computer systems, published in 2003 and ratified by Spain in 2014.</p> <p><b>Act 25/2007, of 18 October, on retention of data relating to electronic communications and public communication network communications</b> (<i>Ley 25/2007 del 18 de octubre, de conservación de datos relativos a las comunicaciones electrónicas y a las redes públicas de comunicaciones</i>)</p> <p><b>Act 34/2002, of 11 July, on Information Society Services and Electronic Commerce</b> (<i>Ley 34/2002, de 11 de julio, de servicios de la sociedad de la información y de comercio electrónico</i>)</p> <p><b>According to this law, offensive material can be removed from the Internet (Art. 8.1).</b></p>
Others (please specify)	--	--
<p><b>Additional Comments</b>  Education, health and social services are provided through regional policy. The specific measures concerning discrimination in these areas are developed mainly in autonomous community legislation. Review the regional legislation point.</p>		
<b>Complaint system</b>		
Does the law allow for individual complaints?	YES	<p><b>Royal Decree of 14 September 1982, Law on Criminal Proceedings</b> (<i>Real decreto de 14 de septiembre de 1982 por el que se aprueba la Ley de Enjuiciamiento Criminal</i>)</p> <p>Art. 101 – All Spanish citizens can exercise the complaint in accordance with the law. But, according to Art 102, it not will be possible for those who do not enjoy full civil rights.</p>
Does the law allow for group complaints?	YES	<p>According to article 101 of the Law on Criminal Proceedings, the Equality Body or organizations can report a crime. But a person who represents the organization is always required.</p>
Does the law allow for complaints by an Equality Body or other organisation?	YES	

If the law allows for complaints by body/organisation, is a complaint without an individual complainant possible?	YES	<p>In addition, the Spanish Constitution (art. 125) recognizes that “citizens may engage in popular action and take part in the administration of justice” (also art. 270 of Royal Decree of 14 September 1982, Law on Criminal Proceedings). It means that organizations and individual persons can report a crime when it is public.</p> <p>However, article 101 of the Law on Criminal Proceedings and article 19.1 of the Judiciary Law (<i>Ley Orgánica 6/1985, de 1 de Julio, del Poder Judicial</i>) limit the exercise of such action to Spanish citizens, excluding foreigners.</p>
Can an investigation by the police or prosecutor be initiated without a complaint from the victim?	YES	<p><b>Royal Decree of 14 September 1982, Law on Criminal Proceedings</b> (<i>Real decreto de 14 de septiembre de 1882 por el que se aprueba la Ley de Enjuiciamiento Criminal</i>)</p> <p>Art. 105 –Prosecutors are obligated to initiate actions in all criminal cases, but in some situations a complaint by the victim is necessary. (See art. 620 of the Criminal Code.)</p>
<p><b>Additional Comments</b>  <b>Law 1/2000, of 7 January, on Civil Procedure</b> (<i>Ley 1/2000 del 7 de enero, de Enjuiciamiento Civil</i>). Article 217 establishes that, in accordance with procedural laws, when the allegations are well-founded in sexual discrimination cases, the accused will have to prove the absence of discrimination.</p>		

### 1.3. National Criminal Law Provisions

<b>Criminal law provisions Does the criminal law provide against:</b>	<b>Yes/No</b>	<b>Comments</b>
Homophobic hate speech?	YES	<p><b>Article 510 of the Criminal Code</b></p> <p>1. The following persons shall be punished with a prison sentence for one to four years and a fine for six to twelve months:</p> <p>a) Those who publicly encourage, promote or incite, directly or indirectly, hatred, hostility, discrimination or violence against a group, part of it or any particular person due to his belonging to this group, based on the sexual orientation or</p>
Transphobic hate speech?	YES	
Homophobic hate crime?	YES	
Transphobic hate crime?	YES	
Incitement to homophobic hatred?	YES	
Incitement to transphobic hatred?	YES	
Incitement or encouragement	YES	

<p>of violence to LGBT people?</p>		<p>identity motives, amongst others.</p> <p>b) Those who produce, develop or possess with the aim of distributing, facilitate the access to third parties, distribute, disseminate or sell writings or any other kind of material or format that based on its content could be appropriate to encourage, promote or incite, directly or indirectly, hatred, hostility, discrimination or violence against a group, a part of it or any particular person due to his belonging to this group, based on the sexual orientation or identity motives, amongst others.</p> <p>c) Those who publicly deny, grievously trivialise or praise the crimes of genocide, against humanity or persons or protected properties in the case of military conflict, or who praise the perpetrators of these, when these have been committed against a group, a part of it or any particular person due to his belonging to this group, based on the sexual orientation or identity motives, amongst others.</p> <p>2. The following persons shall be punished with a prison sentence for six months to two years and a fine for six to twelve months:</p> <p>b) Those who praise and justify through any public or broadcasting medium of expression the crimes that have been committed against a group any part of it, or any particular person due to his belonging to this group based on the sexual orientation or identity motives, amongst others.</p> <p>c) The sentences (or punishments) covered above shall be in the upper half of the range when the acts have been carried out through any social media, through the Internet or the use of information technology in such a way that the message is made available to a large number of people.</p>
<p>Does the criminal law provide for increased penalties when a crime is committed with a homophobic or transphobic motive</p>	<p>YES</p>	<p>One of the circumstances that aggravate criminal accountability is when the offence is due to discrimination on the basis of “sexual orientation or identity” (art.22.4).</p>

<b>Victim's role in the proceedings</b> Does the victim play a role in the criminal proceedings?	YES	The roles and rights of the victim are regulated by the <b>Law of the Statute of the Victim of a felony</b> ( <i>Ley 4/2015, de 27 de abril, del Estatuto de la víctima del delito</i> ). The victim has the right to be informed and to appear as a witness or as a party. Article 23 of the Statute establishes special measures to protect the victims of the felonies committed on the basis of sexual orientation or identity.
As witness?	YES	
As party?	YES	
Can the victim claim compensation in criminal proceedings?	YES	The victim can claim a compensation for damages (materials and morals). Even though the victim doesn't claim any compensation, the prosecutor must act automatically. In addition, if the offender is insolvent or unknown, the State has to compensate the victim according to the <b>Law of assistance to victims of violent felonies and felonies against sexual freedom</b> ( <i>Ley 35/95, de 11 de diciembre, de ayudas y asistencia a las víctimas de delitos violentos y contra la libertad sexual</i> ).
Can victims appear in the proceedings and exercise the accusation regardless of what may be formulated by the prosecutor?	YES	The victim has the right to appear and exercise the criminal action.
If so, are they entitled to the benefits of legal aid?	YES	The prosecutor may request that the victim is referred to an <b>Office for Attention to Victims</b> . In this Office, the victim will receive a comprehensive assistance, and will be informed of the existing services and the protection measures. In addition, the Office will determine if the victim needs the aid of social services.
What actions are foreseen in the law to protect the victims from reprisals from perpetrators?	YES	The <b>Law on Witness Protection</b> ( <i>Ley Orgánica 19/1994, de 23 de diciembre, de protección a testigos y peritos en causas criminales</i> ) establishes some measures to protect the identity of the victim and to provide them with financial support. But according to some legal experts, this law is insufficient to protect the victims and it is very difficult to obtain the financial support.
<b>Additional Comments</b> In 2015, Spain's parliament adopted legislation amending the penal code to introduce "sexual identity" among the protected grounds, alongside sexual orientation (Organic Law 1/2015 of 30 March 2015 which amends the Organic Law 10/1995 of 23 November 1995 of the Penal		

Code).

#### 1.4. Recognition marriage/registered partnership between same sex persons

Marriage/registered partnership	Yes/No	Comments
Can persons of the same sex get married?	YES	<p>The <b>Civil Code (approved by Royal Decree of July 24, 1889)</b> (<i>Real Decreto de 24 de julio de 1889 por el que se publica el Código Civil</i>) was amended on 30 June 2005.</p> <p>Article 44: Men and women are entitled to marry in accordance with the provisions of this Code. Marriage shall have the same requirements and effects when both prospective spouses are of the same or different genders.</p>
Can persons of the same sex enter into a civil partnership creating similar rights to marriage?	NO	<p>Civil partnerships are not regulated at the national level, but some regional administrations have regulated them.</p> <p>The <b>Catalan Civil Code</b> (Act 29/2002 of 30 December) refers to civil partnership as a “stable partnership” (art. 234.1 onwards). It tries to equate civil partnership and marriage in terms of rights and obligations, but there are some differences:</p> <ul style="list-style-type: none"><li>• <i>Inheritance</i>. In the case of the death of one of the partners, the other one does not have the right to inherit if there is not a will.</li><li>• <i>Widow’s pension</i>. According to the Catalan Civil Code, the civil partnership only offers widow’s rights after two years of registration.</li><li>• <i>Tax purposes</i>. The person in a civil partnership cannot file a joint income tax statement.</li><li>• <i>Marriage leave</i>. The worker regulations do not consider civil partnerships as reasons for marriage leave. Nevertheless, some sectorial agreements govern the matter.</li><li>• <i>Marital property</i>. It is not applicable to civil partnerships. To make it applicable, it must be</li></ul>

		expressed in an agreement. In the Catalan case, it is the same for marriage.
Can persons of opposite sex enter into a civil partnership creating similar rights to marriage?	NO	Same-sex and opposite sex couples have the same rights in civil partnerships (see the box above).
Can persons of the same sex enter into a civil partnership with limited rights?	NO	Same-sex and opposite-sex couples have the same rights in civil partnerships.
Does the national law distinguish between same sex spouses and different sex spouses for purpose of entry and residence rights?	NO	Same-sex spouses and opposite-sex spouses have the same rights for purpose of entry and residence rights according to migration law.
If it is the case, can the same sex spouse enjoy the right of family reunification?	YES	Same-sex spouses and opposite-sex spouses have the same rights to enjoy family reunification according to migration law.
Does the national law distinguish between same sex partners and different sex partners for purpose of entry and residence rights?	NO	Same-sex partners and opposite-sex partners have the same rights for the purpose of entry and residence according to migration law.
If it is the case, can the same sex partner enjoy the right of family reunification?	YES	The same-sex partner and the opposite-sex partner enjoy the same right of family reunification according to <b>Royal Decree 557/2011 of 20 April, 2011</b> . Art 53 b.
<b>Additional Comments</b> For all legal purposes in Spain and Catalonia, civil unions and marriages are considered in the same way regardless of sexual orientation or gender of the partners.		

### 1.5. Legal change of sex/gender

Legal change of sex/gender	Yes/No	Comments
Does the registration process for new born babies allow for a category other than male or female (e.g. possibility of sex to be left open or to enter an X)?	NO	
Can the sex on a person's birth certificate and other official		In 2207, the Spanish government passed the "Law 3/2007 regulating the rectification of the register,

documents be changed? If so describe the procedure	YES	concerning peoples' sex" (wrongly known as the 'gender identity law') <sup>1</sup> . This law grants people the right to change their sex in documents after obtaining a 'gender dysphoria' diagnosis (art. 4.1.a) and two years of hormonal treatment (art.4.1.b), without the need of sex reassignment surgery (art.4.2).
If the sex on a person's birth certificate cannot be changed, does the law recognise right to decide on gender identity in any way?	—	
<b>Additional Comments</b>		
The Act 20/2011 on the Civil Registry simplifies the administrative procedures for changing a person's name (and the order of surnames). Nonetheless, the entry into force of this law has been suspended until 2017.		

## 1.6. Other National Legislation

**Is there any other national legislation that could be relevant in relation to homophobia and transphobia? If so, please describe**

**Law 62/2003, of 30 December, on Fiscal, Administrative and Social Order Measures** (*Ley 62/2003, de 30 diciembre, de Medidas Fiscales, Administrativas y del Orden Social*)

Articles 28, 34 and 35 define the equal treatment principle where sexual orientation is taken into account as one of the most important principles of the law. Article 36 defines the burden of proof in discrimination actions such as sexual orientation, among others. This act establishes the modification of different acts where the equal treatment principle has to be included (art. 37, 39, 40, 41, 42, 50, 51).

**Law 14/2006, of 26 May, on Human Assisted Reproduction Techniques** (*Ley 14/2006, de 26 de mayo, sobre técnicas de reproducción humana asistida*)

Article 6 of this law states that all adult women, regardless of civil state or sexual orientation, can use this kind of techniques to become pregnant.

**Law 12/2009, of 30 October, regulating the right to asylum and subsidiary protection** (*Ley 12/2009, de 30 de octubre, reguladora del derecho de asilo y de la protección subsidiaria*)

<sup>1</sup> Ley 3/2007, de 15 de marzo, reguladora de la rectificación registral de la mención relativa al sexo de las personas.

The last update of the Spanish Asylum Law (2009) expressly includes sexual orientation and gender identity (art.7.1) as qualification criteria. Nonetheless, LGBT NGOs claimed that none of the over 300 such asylum cases were approved (ILGA, 2015)<sup>2</sup>.

### 1.7. European Union Legislation:

#### 1.7.1. Victims Directive (Directive 2012/29/EU (2012/29/EC establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA)

EU legislation: the Victims Directive 2012/29/EC	Yes/No	Comments
Has the Victims Directive been transposed into national law? Describe in what way	YES	<b>Spain has transposed the Directive into national law with the Law 4/2015, of 27 April, on the status of crime victims (Ley 4/2015, del 27 de abril, del Estatuto de la víctima del delito)</b>
If the Directive has not been transposed, are there plans of doing so? E.g. proposals for legislation	--	--
If the Directive has not been transposed and there are no plans of doing so, is there any reason why not? (e.g. Government might be of opinion that it is covered by existing legislation)	--	--
If the directive has been transposed, is it envisaged that victims of crimes committed on grounds of homophobia or transphobia can be considered particularly vulnerable and susceptible to special protection?	NO	Law 4/2015 does not refer to homo- or transsexuals as particularly vulnerable. This is attributed to the need to evaluate each individual victim in crimes committed based on sexual orientation and sexual identity (among others) (art. 23).
Is it envisaged that the victims can receive legal advice? Is that care free?	YES	Articles 3 and 5 of Law 4/2015 define the rights of the victim. The law considers legal advice as a right of victims. According to article 5.1c, the procedure for obtaining legal advice has to be

<sup>2</sup> ILGA-Europe (2015). *Annual Review of the Human Rights Situation of Lesbian, Gay, Bisexual, Trans and Intersex People in Europe*. Brussels: ILGA.

		free.
Is it envisaged that the victims can receive psychological care? Is that care free?	YES	Article 5.1a of Law 4/2015 defines the right of victims to assistance and support measures such as medical, psychological or material. Article 28 establishes the functions of the victim's office. It defines the provision of emotional support in preliminary reception and derivation to specialized services such as psychological assistance, legal support or specific measures of protection.
<b>Additional Comments</b>		

**1.72. Qualification Directives (Directive 2004/83/EC and 2011/95/EU on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted)**

<b>EU legislation: the Qualification Directives 2004/83/EC and 2011/95/EU</b>	<b>Yes/No</b>	<b>Comments</b>
Has the Qualification Directive (in its original or its recast form) been transposed into national law? Describe in what way	NO	The Commission has sent Reasoned Opinions to Bulgaria and Spain for having failed to communicate national measures to transpose the updated Qualifications Directive (2011/95/EU) <sup>3</sup> .
If the Directive has not been transposed, are there plans of doing so? E.g. proposals for legislation	--	No available
If the Directive has not been transposed and there are no plans of doing so, is there any reason why not? (e.g. Government might be of opinion that it is covered by existing legislation)	--	No available
<b>Additional Comments</b>		

<sup>3</sup> See [http://europa.eu/rapid/press-release\\_IP-15-5699\\_en.htm](http://europa.eu/rapid/press-release_IP-15-5699_en.htm)

## 1.8. Regional and Local Legislation

(Note: Most cities are covered by the national civil and criminal legislation and there will not be any legislation as such at local or regional level. This might be different in a Federal state, where there may be legislation at regional level. At local level there might be regulations, policies and practices)

**Is there any regional or local legislation that could be relevant in relation to homophobia and transphobia? If so, describe this?**

### **Regional level**

**Organic Act 6/2006, of the 19th July, on the Reform of the Statute of Autonomy of Catalonia**  
(*Llei Orgànica 6/2006 del 19 de juliol del règim de cessió de tributs de l'Estat a la Comunitat Autònoma de Catalunya*)

Article 40. Protection of the Individual and the Family

7. The public authorities shall promote the equality of the different stable forms of union established between couples, bearing in mind their characteristics, regardless of the sexual orientation of the partners. The law shall regulate these unions and other forms of cohabitation and their consequences.

8. The public authorities shall promote the equality of all individuals, regardless of background, nationality, gender, race, religion, social condition or sexual orientation, and shall also promote the eradication of racism, anti-Semitism, xenophobia, homophobia, and of any other manifestation that may constitute a violation of the equality and dignity of the individual.

**Law 11/2014, of 10 October, for guaranteeing the rights of lesbian, gay, bisexual, transgender and intersex people and eradicating homophobia, biphobia and transphobia**  
(*Llei 11/2014, del 10 d'octubre, per a garantir els drets de lesbianes, gais, bisexuals, transgènere i intersexuals i per a eradicar l'homofòbia, la bifòbia i la transphobia*).

The objective of the act “consists of developing and guaranteeing the rights of lesbian, gay, bisexual, transgender and intersex (LGBTI) people and preventing discrimination and violence against them, so as to ensure complete freedom in relation to sexual and affective diversity in Catalonia”.

“In accordance with the guiding principles behind this law, public authority action in relation to LGBTI people must:

- a) Protect the integrity, dignity and freedom of all individuals, in accordance with fundamental rights and universal human rights.
- b) Make measures taken in this area comprehensive and of a cross-cutting nature.
- c) Guarantee respect for diversity where identities corresponding to sexual and affective orientation are concerned.
- d) Provide for awareness raising in the area in question; for the prevention and detection of discrimination; for assistance for and the recovery of victims of discrimination; and for a guarantee of their right to redress.
- e) Ensure the participation, visibility and representation of LGBTI people, and of their situation and specific needs, in public and private life alike.
- f) Take all the different situations involving discrimination which could affect LGBTI people into account, bearing in mind interactions of homosexuality, bisexuality, trans identity and intersexuality with any other personal or social circumstance that might give rise to discrimination.
- g) Implement recognition of the heterogeneity of family in Catalan public and private law, in judicial and administrative practice, and in all the activities of the Generalitat.
- h) Guarantee cooperation between administration bodies.
- i) Ensure that professionals receive specialised training and develop the necessary skills.
- j) Promote studies of and research into sexual and affective diversity which might serve to eradicate discrimination and violence against LGBTI people.
- k) Establish measures to promote organisations that work for the realisation of LGBTI rights and of non-discrimination against LGBTI people.
- l) Adapt the actions and measures taken to the specific needs of small municipalities and rural environments”.

Catalonia has full competence regarding Civil Law. Thus, **the Catalan Civil Code** regulates several areas concerning LGBT people, such as artificial insemination, the right of parentage in the case of lesbian couples, civil partnership (see 1.4), etc.

The **Law on the administrative regulation of the public spectacles and recreational activities** (*Llei 11/2009, del 6 de juliol, de regulació administrativa dels espectacles públics i les activitats recreatives*). Article 10 states that the right of admission and stay shall not imply, in any case, discrimination based on sexual orientation or gender identity.

#### **Local Level**

**Girona** does not have local legislation about homophobia or transphobia.

**Sabadell** does not have local legislation about homophobia or transphobia.

## 2. Policies

**Are there any national policies in relation to homophobia and transphobia, especially in the areas mentioned in the guiding themes? If so describe these and indicate whether they can be seen as examples of good practice.**

At the national level there are not any specific policies to prevent and combat homo- and transphobia. Sexual orientation and identity expression are included as transversal issues in some policies, such as public health or National Family plan, but not as a specific field of work.

On 16 May 2014 the Council of Ministers signed an institutional declaration to combat homo- and transphobia. It announced the implementation of specific policies, but these are not known at the moment.

Policies of sexual orientation and gender identity are often developed at the regional level.

**Are there any regional policies in relation to homophobia and transphobia, especially in the areas mentioned in the guiding themes? If so describe these and indicate whether they can be seen as examples of good practice.**

The Ministry of Labour, Social Affairs and Family has a **section on equal treatment and non-discrimination towards LGTB people**. According to Decree 332/2011, of 3 May, on the restructuring of the Department of Family and Social Welfare, the functions of this section are:

- a) Carry out actions in favour of non-discrimination against LGBT people. Contributing to achieving full of social and legal equality of this group and to avoiding any discriminatory action, regulation or attitude against LGBT people.
- b) Supervise the implementation of the Interdepartmental Plan for non-discrimination towards homosexuals and transsexuals.
- c) Establish relationships with the ministries of the Catalan Government and other private and public bodies to ensure the deployment plan.
- d) Evaluate the projects and grants linked with this section.
- e) Promote the National Council for Lesbian, Gay, Bisexual Men and Women and Transsexuals.
- f) Carry out any other function of the same nature entrusted by their superiors.

### **Interdepartmental Plan for non-discrimination towards homosexuals and transsexuals.**

This non-discrimination plan covers different areas of action:

- Legal, regulatory, justice and interior
- Work and business
- Health
- Education and training
- Culture and leisure
- Communications
- Social welfare and family
- Participation and solidarity

- Exploration and research

In Catalonia, in 2007, the **National Council of Lesbian, Gay, Bisexual, Transgender and Intersexual Persons** was created as an area for the greater participation of citizens in terms of rights and duties of LGBTI persons. The Council acts as an advisory body for the Catalan administrations and makes proposals to achieve maximum visibility of the LGTB collective, prevent LGTB-phobia, and assure that public services are adequate to meet the needs of this group.

The Ministry of Labour, Social Affairs and Family has edited **some publications about LGBTI issues**. It has a directory of LGTBI associations and NGOs. It has an institutional declaration for LGBT pride day and the International day against homophobia. The Ministry supports AMPGIL (LGBT families association) and offers advice on any subject, and gives advice to LGBTI person on how to file a complaint of a discriminatory act.

Besides the LGBTI section in the Ministry of Labour, Social Affairs and Family, the Catalan Government has a **specific section about health and HIV and AIDS** where LGBT policies, among others, are taken into account.

**Are there any local policies in relation to homophobia and transphobia, especially in the areas mentioned in the guiding themes? If so describe these and indicate whether they can be seen as examples of good practice.**

#### **GIRONA**

In 2012 the Girona City Council created the **Municipal Council LGTB** to address consultations about LGTB issues. Its main goals are to promote equal rights, freedom and social recognition of gay, lesbian, transgender and bisexual persons. It proposes measures to make Girona a more inclusive city. It promotes the contributions of LGTB people in all spheres of the city. It is consulted before the municipality approves matters of special impact for LGTB people. It promotes coordination and collaboration between NGOs and civil associations. It promotes the participation of groups and associations of LGTB persons.

#### **SABADELL**

The Councillorship of Civil Rights and Citizenship has the **Department of Gender, Feminisms and LGBTI**, which is responsible for planning and implementing the policies linked to LGBT issues. This Councillorship also manages the **Civil Rights Office (CRO)**, which has the purpose to ensure the equality of diversity and to assist persons that have been discriminated on the grounds of their sexual orientation, gender, age, religion or disability.

The Council of Sabadell has elaborated an **LGBTI Comprehensive Plan (2013-2016)** that is jointly coordinated by 21 government departments and local services. The aim of this Plan is gathering and assessing the local measures and programs linked to improving the welfare of the LGBT population. Until now, two Assessment Reports of the Plan have been elaborated (2013 and 2014).

Due to some cases of hate crimes occurred in the city, in 2004 the Council of Sabadell and the main civil society organisations created the **Commission of Coexistence**. This Commission is

composed of all political parties which are in the local parliament, trade unions, civic and neighbourhood organisations, members of the Lawyers Association of Sabadell, representatives of social minorities, LGTB associations and representatives of the local government. The Commission is a citizens' tool to monitor and deal with violence and discrimination on the grounds of racism, xenophobia and LGBT-phobia.

### 3. Practices

**Are there any national practices in relation to homophobia and transphobia, especially in the areas mentioned in the guiding themes? If so describe these and indicate whether they can be seen as examples of good practice.**

Spain has not yet established equality bodies dealing with discrimination on the grounds of sexual orientation or gender identity. These functions correspond to the **Ombudsperson** (Defensor del Pueblo), at the state level, and to the Ombudspersons of each of the Autonomous Communities. The Ombudsperson (an authority recognized by the Constitution –art.54-) is the High Commissioner of the Parliament responsible for defending the fundamental rights and civil liberties of citizens by monitoring the activity of the Administration and public authorities. They can carry out any investigations they consider necessary, informing parliament of the results. They do not themselves decide on possible sanctions in cases they investigate, but can make suggestions in this regard (FRA, 2015 ).

The Platform for Police Management of Diversity has published, in 2013, the “**Handbook for diversity management by the police**”, a specific guidelines for promoting improved practices by police forces ([goo.gl/q7mD9h](http://goo.gl/q7mD9h)).

In 2015 the Secretary for Security approved a **new hate crime protocol**. Drafted in partnership with NGOs, the compulsory protocol seeks to guarantee an overview of hate crimes nationwide, and provide victims an adequate support ([goo.gl/97cMLP](http://goo.gl/97cMLP)).

Ministry of the Interior. Since 2013, this ministry publishes (once a year) a **special report on hate crimes** committed in Spain ([goo.gl/aCsu0j](http://goo.gl/aCsu0j)).

In 2015, the Spanish government launches the first **guide for the prevention, detection and intervention in situations of homophobic bullying in the school**. The title of the guide is “Embracing diversity: proposals for an education free of homophobia and transphobia”. The guide provide advice with the aim of promoting the respect for the diversity in terms of sex, family configuration and gender identity, and some indicators in order to detect possible cases of bullying ([goo.gl/Lm9b4M](http://goo.gl/Lm9b4M)).

Moreover, the Spanish government has participated, from 2013 till 2015, in the **awareness-raising campaign "Yosoytu"**. The aim of this campaign, co-funded by the EU and disseminated through social media, is to strengthen the concept of diversity (included the sexual diversity) amongst young people (<http://goo.gl/Q92tu8>).

In 2015, a **Practice Guide** on discrimination and violence on the grounds of hate and intolerance has been published by the Spanish Institute for Women's Affairs. The Guide presents two versions, one addressed to the general public, and another to legal practitioners.

Since 2014, the programs to promote equal treatment and improve the assistance to victims of discrimination in relation to sexual orientation or gender identity are included in the grants

financed by the **Personal Income Tax**.

It is important to note the impact of NGOs and associations in Catalonia combatting homo and transphobia. Law 11/2014, of 10 October, guarantees the rights of lesbian, gay, bisexual, transgender and intersex people and eradicates homophobia, biphobia and transphobia by recognizing, in the preamble, the role of these organizations to combat discrimination.

**Are there any regional practices in relation to homophobia and transphobia, especially in the areas mentioned in the guiding themes? If so describe these and indicate whether they can be seen as examples of good practice.**

In 2009, the **Service of Hate Crimes and Discrimination** was created (for the first time in Spain) by the **Provincial Prosecutor's Office of Barcelona**. Since 2013, each Spanish province has a special prosecutor whose main responsibility is to respond with expertise to crimes that threaten the principles of equality and non-discrimination. At present, there are 53 prosecutors in Spain dedicated to hate crimes (11 in Catalonia).

Moreover, the Provincial Prosecutor's Office of Barcelona also has a **Service for the Protection and Assistance of the Victims** that offers counselling, information and protection to particularly vulnerable victims.

In 2008, the Catalan Police Force (Mossos d'Esquadra) created the **first police procedure** of the police forces of Mediterranean zone, in which they become directly involved as a police force **in the fight against homophobia and transphobia**. Two years later, the Catalan police force adopted this procedure within the frame of the protocol for the investigation of hate crimes and discrimination. [goo.gl/ijsOMG](http://goo.gl/ijsOMG)

Each police station of the Catalan Police Force (Mossos d'Esquadra) has: A) An **Office for Community Relationships** that is responsible for strengthening the relationships with the citizens. To this end, each Office frequently organises meetings with the organisations of social minorities, such as the LGTB associations. B) A **Victims' Support Group** with the main aim to assist victims of hate crimes and discrimination.

The **Catalan Offices for Attention to Victims**. They are free services that provide a comprehensive care, support and guidance for victims and people affected by crimes or misdemeanors. They are also a bridge between victims and judicial bodies involved in the process.

The **Catalan Observatory of Homophobia** was created by the LGBT social movements to fight LGBT-phobia and report hate crimes based on sexual and gender expressions, as well as to support the victims. In 2013 the Observatory received 383 reports of discrimination (Observatori contra la homofòbia, 2014).<sup>4</sup>

<sup>4</sup> Observatori contra l'homofòbia (2014). *L'estat de l'homofòbia a Catalunya*. <https://goo.gl/7Nv3DD>

It is important to remark the role of **NGOs and associations** in Catalonia to combat homo- and transphobia. In this sense, the Law 11/2014 for guaranteeing the rights of lesbian, gay, bisexual, transgender and intersex people and eradicating homophobia, biphobia and transphobia recognize, in the preamble, the role of the social organizations to combat discrimination.

**Are there any local practices in relation to homophobia and transphobia, especially in the areas mentioned in the guiding themes? If so describe these and indicate whether they can be seen as examples of good practice.**

## **GIRONA**

### **Municipal Plan for equal treatment and non-discrimination to LGBT people**

An annual plan that in 2016 includes actions such as training for council workers, development of a protocol for situations in which people are discriminated against based on sexual orientation or gender identity, awareness raising and training of citizens, promotion of a support service for LGBT people and participation in the Divercity Project.

## **SABADELL**

Since November 2015, the **Prosecutor's Office of the Area of Sabadell** designated a special prosecutor who is in charge of hate crimes and discrimination. This prosecutor is under the coordination of the Service of Hate Crimes and Discrimination belonging to the Provincial Prosecutor's Office of Barcelona.

The Youth Office of Sabadell has published some **thematic guides of awareness-raising** addressed to young people. These guides deal with topics such as sexual prejudices, sexism, HIV/AIDS prevention, gender violence and bullying.

The Civil Rights Office has published four **monographic guides**: 1) Monograph for the LGTBI Day (2012); 2) Monograph for the Day against Homophobia (2012); 3) Monograph on Homophobia in sport (2014); Monograph on approaches to sexual diversity (2015).

On the occasion of the **Day against Homophobia in sports**, the Council of Sabadell carried out some activities in 2015: some football matches with LGBT associations, an exhibition on gay and lesbian athletes, a conference about homophobic attitudes in sport, etc.



# **City Report on existing legislation, policies and practices**

## **(Thessaloniki)**

Edited by KMOP

April 2016



Co-funded by the Rights, Equality and Citizenship Programme of the EU

**LEGISLATION:****A. Constitution:**

<b>Constitution</b>	<b>Yes/No</b>	<b>Comments</b>
Equality/non-discrimination guarantee in constitution?	<b>YES</b>	
Sexual orientation /sexual option	<b>NO</b>	
Gender identity	<b>NO</b>	
Gender expression	<b>NO</b>	
Sex characteristics	<b>NO</b>	
Open-ended list (indicated by words like 'any ground such as' or 'or other status')?	<b>NO</b>	
Can individuals invoke the constitution directly in legal proceedings?	<b>YES</b>	
Is there any case law under these provisions?		
<b>Additional Comments</b>		

**B. National Anti-discrimination Laws**

<b>Anti-discrimination law</b>	<b>Yes/No</b>	<b>Comments</b>
Sexual orientation	<b>YES</b>	
Gender identity	<b>YES</b>	
Gender expression	<b>No</b>	
Sex characteristics	<b>No</b>	

**Additional Comments**

Law 3304/2005 protects sexual non-discrimination and aims to adopt a general regulative framework for the combating of discriminations because of sexual orientation and of discriminations in employment and workplace.

Law 3896/2010 equates any transgender discrimination with any other gender discrimination.

Under the anti-racism bill 4285/2014 which was submitted to parliament in September 2014, the law would provide protections on the basis of sexual orientation and gender identity

Areas covered	YES/NO	COMMENTS
Employment	Yes	Employees may enforce their discrimination rights by filing a lawsuit before the competent courts or a complaint before the Labour Inspectorate. In addition, the violation of the relevant anti-discrimination legislation entails criminal and administrative sanctions.
Education	Yes	
Health and social services	Yes	
Public spaces	Yes	
Policing and security	Yes	
On-line spaces	Yes	
Others (please specify)		

**Additional Comments**

A new Law published in December 2015 (4356/2015) introduces an important amendment concerning the general antidiscrimination legislation. Greece's legal order already punishes discriminatory treatment during transactional providing of services and goods, by virtue of Law 3305/2005. Through Art 29 of the Law, cases of contemptuous treatment which lead to the person's exclusion from the providing of services and goods based on grounds of race, colour, national or ethnic origin, descent, religious or other beliefs, sexual orientation, gender identity, or disability is included. Through criminal law victims are now covered as regards to volunteer or humanitarian assistance, since in these cases the contemptuous character of exclusion does not only impair the social status of the victim, but also demonstrates that the victim is not even acknowledged as a human being; thus, humiliating him/her and simultaneously fuelling propaganda which cultivates a belief that certain lives are stripped of humanity and therefore, not worthy of food or medical treatment. This provision refers to exclusion from the provision of services and goods, which objectively leads to the demonstrated contempt of the victim

Complaint system		
Does the law allow for individual complaints?	Yes	
Does the law allow for group complaints	Yes	

Does the law allow for complaints by an Equality Body or other organisation?	<b>Yes</b>	
If the law allows for complaints by body/organisation, is a complaint without an individual complainant possible?	<b>No</b>	They represent the individual complainant
Can an investigation by the police or prosecutor be initiated without a complaint from the victim?	<b>No</b>	
<b>Additional Comments</b>		

### C. National Criminal Law Provisions

<b>Criminal law provisions</b> <b>Does the criminal law provide against:</b>	<b>Yes/No</b>	<b>Comments</b>
Homophobic hate speech?	<b>Yes</b>	
Transphobic hate speech?	<b>Yes</b>	
Homophobic hate crime?	<b>Yes</b>	
Transphobic hate crime?	<b>Yes</b>	
Incitement to homophobic hatred?	<b>Yes</b>	
Incitement to transphobic hatred?	<b>Yes</b>	
Incitement or encouragement of violence to LGBT people?	<b>Yes</b>	
Does the criminal law provide for increased penalties when a crime is committed with a homophobic or transphobic motive	<b>Yes</b>	
<b>Victim's role in the proceedings</b> Does the victim play a role in the criminal proceedings?	<b>Yes</b>	
As witness?	<b>Yes</b>	
As party?	<b>Yes</b>	
Can the victim claim compensation in criminal proceedings?	<b>Yes</b>	
Can victims appear in the proceedings and exercise the accusation regardless of what may be formulated by the prosecutor?	<b>Yes</b>	
If so, are they entitled to the benefits of legal aid?	<b>Yes</b>	
What actions are foreseen in the law to protect the victims from reprisals from perpetrators?		
<b>Additional Comments</b>		
The 'anti-racism' Law 4285/2014 which in the definition of violence or hatred-incited crimes now		

includes incitement to hatred, violence and discrimination against a person or a group of persons that are identified on the basis of *inter alia* gender identity. A transphobic motive leads also to increased sentences.

#### D. Recognition marriage/registered partnership between same sex persons

Marriage/registered partnership	Yes/No	Comments
Can persons of the same sex get married?	No	
Can persons of the same sex enter into a civil partnership creating similar rights to marriage?	Yes	
Can persons of opposite sex enter into a civil partnership creating similar rights to marriage?	Yes	
Can persons of the same sex enter into a civil partnership with limited rights?		
Does the national law distinguish between same sex spouses and different sex spouses for purpose of entry and residence rights?	No	
If it is the case, can the same sex spouse enjoy the right of family reunification?	No	
Does the national law distinguish between same sex partners and different sex partners for purpose of entry and residence rights?	No	
If it is the case, can the same sex partner enjoy the right of family reunification?		
<p><b>Additional Comments</b>            On 23th December 2015 the Greek Parliament voted in favour of a human rights' bill which recognises same sex civil partnerships (Law 4356/2015 (OJ 181 A / 24.12.2015)).</p> <p>The new legal provisions recognise that persons which enter into civil partnerships acquire a similar legal status to that of married couples, since they acquire rights related to taxing systems, health insurance and pensions, residence permits and citizenship rights, refusal to testify, next of kin status for medical purposes, etc.</p>		

#### E. Legal change of sex/gender

Legal change of sex/gender	Yes/No	Comments
Does the registration process for new born babies allow for a	No	

category other than male or female (e.g. possibility of sex to be left open or to enter an X)?		
Can the sex on a person's birth certificate and other official documents be changed? If so describe the procedure	<b>Yes</b>	Procedure before the court (correction of the birth certificate) because of sex change
If the sex on a person's birth certificate cannot be changed, does the law recognise right to decide on gender identity in any way?		
<b>Additional Comments</b>		

#### F. Other National Legislation

<b>Is there any other national legislation that could be relevant in relation to homophobia and transphobia? If so, please describe</b>
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#### G. EU Legislation:

**Victims Directive (Directive 2012/29/EU (2012/29/EC establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA)**

<b>EU legislation: the Victims Directive 2012/29/EC</b>	<b>Yes/No</b>	<b>Comments</b>
Has the Victims Directive been transposed into national law? Describe in what way	<b>No</b>	
If the Directive has not been transposed, are there plans of doing so? E.g. proposals for legislation	<b>Yes</b>	A legal committee has been established, responsible for the preparation of the transposition
If the Directive has not been transposed and there are no plans of doing so, is there any reason why not? (e.g. Government might be of opinion that it is covered by existing legislation)		
If the directive has been transposed, is it envisaged that		

victims of crimes committed on grounds of homophobia or transphobia can be considered particularly vulnerable and susceptible to special protection?		
Is it envisaged that the victims can receive legal advice? Is it envisaged that the victims can receive psychological care? Is that care free?		
Is it envisaged that the victims can receive psychological care? Is that care free?		
<b>Additional Comments</b>		
<p>Article 15 of the Law 4356/2015 establishes a “National Council against Racism and Intolerance” (the Council) as an advisory body for improving the consultation process and cooperation amongst stakeholders as well as for improving services on issues related to preventing and combating racism and intolerance. Article 17 states that the Council is responsible for the harmonisation with international and European regulations and practice; and the development of initiatives throughout the whole Public Sector in order to achieve the most effective protection of persons and groups which are targeted because of their race, colour, national or ethnic origin, descent, social origin, religious or other beliefs, sexual orientation, gender identity or disability. Furthermore, a National Action Plan will be carried out with clear qualitative and quantitative indicators, which will progress through the following stages: a) prioritisation of goals and cost, b) observation and update and c) evaluation, in order to ensure the coordinated combating of racism and intolerance by State.</p>		

**Qualification Directives (Directive 2004/83/EC and 2011/95/EU on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted)**

<b>EU legislation: the Qualification Directives 2004/83/EC and 2011/95/EU</b>	<b>Yes/No</b>	<b>Comments</b>
Has the Qualification Directive (in its original or its recast form) been transposed into national law? Describe in what way	<b>Yes</b>	Presidential Decree 96/2008 for the transposition of Directive 2004/83/EC and Presidential Decree 141/2013 for the transposition of Directive 2011/95/EU
If the Directive has not been transposed, are there plans of doing so? E.g. proposals for legislation		
If the Directive has not been transposed and there are no plans of doing so, is there any reason why not? (e.g. Government might be of opinion that it is covered by		

existing legislation)		
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**Additional Comments**

**H. Regional and Local Legislation**

(Note: Most cities are covered by the national civil and criminal legislation and there will not be any legislation as such at local or regional level. This might be different in a Federal state, where there may be legislation at regional level. At local level there might be regulations, policies and practices)

<b>Is there any regional or local legislation that could be relevant in relation to homophobia and transphobia? If so, describe this?</b>
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No
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**POLICIES**

<b>Are there any national policies in relation to homophobia and transphobia, especially in the areas mentioned in the guiding themes? If so describe these and indicate whether they can be seen as examples of good practice.</b>
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<b>Are there any regional policies in relation to homophobia and transphobia, especially in the areas mentioned in the guiding themes? If so describe these and indicate whether they can be seen as examples of good practice.</b>
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<b>Are there any local policies in relation to homophobia and transphobia, especially in the areas mentioned in the guiding themes? If so describe these and indicate whether they can be seen as examples of good practice.</b>
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**PRACTICES**

**Are there any national practices in relation to homophobia and transphobia, especially in the areas mentioned in the guiding themes? If so describe these and indicate whether they can be seen as examples of good practice.**

**Are there any regional practices in relation to homophobia and transphobia, especially in the areas mentioned in the guiding themes? If so describe these and indicate whether they can be seen as examples of good practice.**

Athens has a large number of LGBT associations and a developing gay village in the Gazi, Athens neighborhood. A gay pride event, the 'Athens Pride' and an international Gay and Lesbian film festival, the 'Outview', are held annually.

There is also a big gay scene in Thessaloniki with gay/lesbian bars/clubs and several friendly mixed venues, and several LGBT organisations.

The gay scene in the island of Myconos and the lesbian scene in Eressos, Lesbos are famous internationally.

The Athens Pride is an annual Lesbian, Gay, Bisexual and Transgender Pride parade and festival held every June (since June 2005) in the center of Athens city, Greece.

**Are there any local practices in relation to homophobia and transphobia, especially in the areas mentioned in the guiding themes? If so describe these and indicate whether they can be seen as examples of good practice.**

From June 2012 Thessaloniki has its own Pride festival which is one of the most successful events in the city supported by the Municipality of Thessaloniki.



# City Report on existing legislation, policies and practices

## (WROCLAW)

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# 1. Legislation

## 1.1. Constitution

Constitution	Yes/No	Comments
Equality/non-discrimination guarantee in constitution?	<b>Yes</b>	The general anti-discrimination clause in the 1997 Constitution of the Republic of Poland reads: "(1) All persons shall be equal before the law. All persons shall have the right to equal treatment by public authorities. (2) No-one shall be discriminated against in political, social or economic life for any reason whatsoever." (art. 32). Furthermore, the article 30 states that "the inherent and inalienable dignity of the person shall constitute a source of freedoms and rights of persons and citizens. It shall be inviolable. The respect and protection thereof shall be the obligation of public authorities". The Constitution also guarantees to all citizens legal protection of freedom (art. 31), including freedom of conscience and religion, freedom of expression, freedom of association and the right of access to public services (art. 53, 54.1, 58.1 and 60) (cf. Bojarski 2013: 11-12).
Sexual orientation /sexual option	<b>No</b>	Even though in its various articles, the Constitution includes various social groups (e.g. national and ethnic minorities, men and women, disabled persons, veterans, war invalids, persons of advanced age), it does not list sexual minorities as a protected group. As Łukasz Bojarski (2013: 12) writes, "according to sexual minority rights organizations, the rejection of a version of a founding draft bill that clearly contained a prohibition of discrimination based on sexual orientation indicates that there is a strong tendency in Poland to deny the principle of equality for homosexuals before the law."
Gender identity	<b>No</b>	According to the 2015 FRA report, Poland treats discrimination on the grounds of gender identity, gender expression and sex characteristics as a form of gender discrimination in general (FRA 2015: 28) (for more details see section B). But, considering that the Constitution does not mention "gender", but explicitly "men and women" (art. 33), the Constitution does not seem to be such case.
Gender expression	<b>No</b>	See above

Sex characteristics	<b>No</b>	See above
Open-ended list (indicated by words like 'any ground such as' or 'or other status')?	<b>Yes</b>	The Constitution anti-discrimination clause is wide ("for any reason whatsoever"). If any legal regulations are contrary to the principle of equality, the Constitutional Tribunal (see additional comments) declares their non-conformity with the Constitution. As soon as the Tribunal's judgment enters into force, the provisions become void. On the other hand, there are examples of discriminatory laws and regulations, which are at odds with principle of equality. Actually, sometimes provisions appear non-discriminatory and neutral, but their interpretation and implementation result in discriminatory treatment. Thus, it frequently is a matter of practice (cf. Bojarski 2013: 153)
Can individuals invoke the constitution directly in legal proceedings?	<b>Yes</b>	<p>In the article 8.2 the Constitution states that "the provisions of the Constitution shall apply directly, unless the Constitution provides otherwise." But, even though this statement seems to be in favor of the direct applicability, this provision remains basically theoretical. Łukasz Bojarski (2013: 12) observes that "it is not easy to put the concept of direct applicability into operation before a court, because in judicial proceedings it is necessary to use the existing legal and procedural framework and adjust the constitutional argument to it." Many lawyers, who worked with people who had tried to fight against discrimination by bringing such cases to court, believe it is just impossible to bring the case only on the constitutional grounds. In fact, judges rather refer a question of law to the Constitutional Tribunal to check the conformity of a normative act with the Constitution or the ratified international agreement (as provided in the art. 193 of the Constitution). Thus, the equality principle described above can be evoked both against the state and the private actor, but with a specific legal basis at hand (cf. Bojarski 2013: 12-13).</p> <p>According to the article 79.1 of the Constitution, every Polish citizen "whose constitutional freedoms or rights have been infringed, shall have the right to appeal to the Constitutional Tribunal for its judgment on the conformity to the Constitution of a statute or another normative act upon which basis a court or organ of public administration has made a final decision on his freedoms or rights or on his obligations specified in the Constitution."</p>
Is there any case law under these	<b>No</b>	According to our knowledge so far.

provisions?		
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**Additional Comments**

Polish legislation is based on the hierarchical system of law sources. The 1997 Constitution of the Republic of Poland (<http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm> accessed 15/04/2016) is the basic law. Other sources include: acts of the Parliament (*ustawy*), ratified international agreements which after ratification become part of the domestic law and ordinances (*rozporządzenia*) issued by a Minister or the Council of Ministers. Consequently, legislative acts can be brought to the Constitutional Tribunal to be analyzed in terms of their conformity with the Constitution (cf. Bojarski 2013: 3, 152).

## 1.2. National anti-discrimination laws

Anti-discrimination law	Yes/No	Comments
Sexual orientation	<b>Yes</b>	Sexual orientation is explicitly mentioned among the grounds of discrimination in the Labor Code ( <i>Ustawa z dnia 26 czerwca 1974 r. Kodeks pracy</i> ) (art. 18 <sup>3a</sup> ), in the Employment Act ( <i>Ustawa z 20 kwietnia 2004 r. o promocji zatrudnienia i instytucjach rynku pracy</i> ) (art. 2a) and in the Anti-discrimination Act (see below) (art. 8), but solely in the context of employment field.
Gender identity	<b>No</b>	<p>According to 2015 FRA report (FRA 2015: 28), Poland treats discrimination on the grounds of gender identity, gender expression and sex characteristics as a form of gender discrimination in general: “this is generally a matter of practice by the anti-discrimination bodies or courts rather than an explicit stipulation in the legislation”. But the actual use of an open list of grounds of discrimination remains basically untested as there is scarcity of relevant case law (cf. FRA 2015: 71-72).</p> <p>Furthermore, even if there is no formal legal provisions, FRA (2015: 45) reports (on the basis of information received from local NGOs) that labor courts consider discrimination on the ground of gender reassignment as form of sex discrimination.</p>
Gender expression	<b>No</b>	See above
Sex characteristics	<b>No</b>	See above

**Additional Comments**

The first single act forbidding discrimination on all grounds was the Act on the Implementation of Certain Provisions of the European Union on Equal Treatment (*Ustawa z dnia 3 grudnia 2010 r. o wdrożeniu niektórych przepisów Unii Europejskiej w zakresie równego traktowania*), commonly called the Anti-discrimination Act. It was adopted by Poland in December 2010 and came into force on the 1st of January 2011 as a part of introducing EU directives into the Polish law. It mentions sexual orientation only in the employment field and does not mention gender identity, gender expression and sex characteristics at all. As it is almost a verbatim implementations of EU directives (2000/43/EC and 2000/78/EC), the Anti-discrimination Act provides an exhaustive list of grounds of discrimination, and thereby may limit protection on the basis of other characteristics (cf. Bojarski 2013: 4-6). Since June 2013 Polish Parliament had been working on introducing gender identity among the prohibited grounds and of extending protection on grounds of sexual orientation and gender identity to all areas of life (cf. FRA 2015: 26; ECRI 2015: 30-31), but it did not manage to complete it by the end of the parliamentary term in November 2015. In its fifth monitoring cycle ECRI notes that there have been only 5 cases brought to the Polish courts on the basis of the act (cf. ECRI 2015: 30-31). Dwelling on this situation, FRA in its 2015 report observes that it is both underreporting of discrimination cases and the lack of statistical data (on court cases and on complaints to equality bodies), which remains the most significant problem (FRA 2015: 35-37; cf. Bojarski 2013: 22).

As Łukasz Bojarski (2013: 15) notes, no anti-discrimination law, including the Anti-discrimination Act, defines the mentioned concepts. Thus, even though it is evoked, there is no definition of sexual orientation in Polish anti-discrimination legislation.

Areas covered	Yes/No	Comments
Employment	Yes	In this respect, anti-discrimination law comprises the Labor Code (art. 18 <sup>3a</sup> ), The Employment Act (art. 2a) and the Anti-discrimination Act (art. 8). Unlike the Anti-discrimination Act or the Employment Act, the Labor Code lists several grounds which are understood solely as examples (“any discrimination (...) in particular on the grounds of ...”). Consequently, the list remains open and the courts could potentially take into consideration other grounds as well (cf. Bojarski 2013: 14-15). But, as Łukasz Bojarski (2013: 87-88) observes, there have been so far very few cases before Polish employment courts where the ground of sexual orientation was raised in the claim. One of the reasons is the unwillingness of LGBT persons of disclosing their non-normative genders/sexualities in the workplace due to homo- and transphobic environment.

Education	<b>No</b>	<p>The right of every citizen for universal and equal access to education as well as the autonomy of the institutions of higher education are enshrined in the Polish Constitution as (art. 70).</p> <p>The Education Act (<i>Ustawa z 7 września 1991 r. o systemie oświaty</i>) refers to major international human rights instruments (1948 Universal Declaration, 1966 International Covenant on Civil and Political Rights and 1989 Convention on the Rights of the Child) and prohibits discrimination in general, but does not include neither explicit anti-discriminatory provisions, nor particular protected grounds. There are also no anti-discriminatory provisions in the Higher Education Act (<i>Ustawa z 27 lipca 2005 r. prawo o szkolnictwie wyższym</i>), although access to higher education institutions is granted to all Polish citizens and foreigners equally (with some exceptions) (art. 43).</p> <p>Only the Anti-discrimination Act explicitly prohibits discrimination in education and higher education, but solely on the grounds of race, ethnic origin or nationality (art. 7).</p> <p>According to The Education Act’s Preamble, “schools must ensure that each pupil has the conditions necessary for his/her development, prepare him/her to fulfil family and civic responsibilities based on the principles of solidarity, democracy, tolerance, justice and freedom”. But, in view of the aforementioned provisions of the Anti-discrimination Act, a special attention is given in the Education Act only to the grounds mentioned above (art. 13). Also pupils with disabilities are granted possibility of education in all type of schools and special care, if necessary (art. 1). The Higher Education Act provides similar provisions. But implementation of those rights still raises concerns (cf. Bojarski 2013: 67-73). Gendered/sexualized issues are not taken into account at all.</p>
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Health and social services	<b>No</b>	<p>The Medical Treatment Act (<i>Ustawa z 27 sierpnia 2004 r. o świadczeniach opieki zdrowotnej finansowanych ze środków publicznych</i>) ensures that the access to medical services and to “waiting lists” (when medical services are not accessible immediately, a person must sign up to a list and wait for his/her turn) “should be drawn up in line with the principle of just, equal, anti-discriminatory and fair access to medical treatment” (art. 20.5) (cf. Bojarski 2013: 66). But what exactly this phrase is to mean is not explained. Even though sexual orientation, gender identity, gender expression or sex characteristics can be thought of as included, they are not explicitly mentioned.</p> <p>Under the Order of the President of the National Health Fund of 29 March 2013 (<i>Zarządzenie Nr 16/2013/DSOZ Prezesa Narodowego Funduszu Zdrowia z dnia 29 marca 2013 r. w sprawie wniosków o indywidualne rozliczenie świadczeń i Bazy Rozliczeń Indywidualnych</i>), there is possibility of obtaining reimbursement of services granted to a person whose gender is different from that indicated in his or her administrative file. As regards the problem of discrimination against transgender persons by medical staff, this problem was declared by the former government to be the subject of action under the National Action Plan for Equal Treatment 2013-2016 (cf. ECRI 2015: 32). But it does not seem that any measures were actually undertaken.</p> <p>The Anti-discrimination Act prohibits discrimination in social protections on the grounds of gender, race, ethnic origin or nationality (art. 6) and discrimination in relation to healthcare on the grounds of race, ethnic origin and nationality (art. 7). (cf. Bojarski 2013: 65). Sexual orientation, gender identity, gender expression or sex characteristics are not listed and the exhaustive character of the list leaves no room for their potential inclusion, but, according the aforementioned FRA stipulations, “gender” leaves the possibility for actual practice open. Acts listed below make up similar case.</p> <p>The Social Security Act (<i>Ustawa z 13 października 1998 r. o systemie ubezpieczeń społecznych</i>), which is the basic statute for the social security area, amended by the Anti-discrimination Act, lists gender, race, ethnic origin, nationality, family and marital status (art. 2a.1), but not sexual orientation or sex characteristics (cf. Bojarski 2013: 14, 66).</p> <p>The Capital-Based Pensions Act (<i>Ustawa z dnia 21 listopada 2008 r. o emeryturach kapitałowych</i>), amended by the Anti-discrimination Act, lists gender, race, ethnic origin, nationality, state of health, family and marital status as the grounds used to discriminate in calculating the amount of pension (art. 2), but does not mention sexual orientation or sex characteristics (cf. Bojarski 2013: 15, 66).</p>
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Public spaces	<b>Yes</b>	<p>The Act Amending the Act on Broadcasting and Television (<i>Ustawa z dnia 25 marca 2011 r. o zmianie ustawy o radiofonii i telewizji</i>) (art. 16b) prohibits the broadcasting of commercials that include content considered discriminatory on the ground of race, gender, nationality, ethnic origin, religion or beliefs, disability, age or sexual orientation (cf. FRA 2015: 26).</p> <p>The Anti-discrimination Act (art. 6) prohibits unequal treatment in access and conditions of use of services, including housing, goods, purchasing rights and energy if they are offered to public, on the grounds of gender, race, ethnic origin and nationality. In its fifth cycle report ECRI (2015: 32) notes that following the judgment of the European Court of Human Rights in the <i>Kozak v. Poland</i> case (no. 13102/02), in the field of housing the legal provisions under which the applicant was denied the succession of tenancy following his partner's death have been amended. In November 2012 the Supreme Court confirmed (case III CZP 65/12) the case law to the effect that the cohabitation of same-sex and bisexual couples constitutes an adequate legal basis for succession of tenancy.</p> <p>There is no law regulating the operation of private clubs etc. They use their freedom of economic activity to establish their own internal rules, but general legal provisions of civil and criminal law apply (cf. Bojarski 2013: 75).</p>
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Policing and security	<b>No</b>	<p>The Criminal Code (<i>Ustawa z dnia 6 czerwca 1997 r. Kodeks karny</i>) recognizes as protected characteristics national, ethnic, racial, or religious affiliation or the lack of religious beliefs. The list is exhaustive, so sexual orientation, gender identity, gender expression or sex characteristics are explicitly excluded. But, in the chapter 32, entitled “Crimes against public order”, it states that “any person who takes an active part in an unlawful assembly, knowing that the participants are jointly committing a violent assault on a person or property, shall be subject to imprisonment of up to 3 years” (art. 254.1) and that “if the consequence of a violent assault is the death of a human being or serious damage to health, the participant of the unlawful assembly as defined in § 1 shall be subject to imprisonment of 3 months to 5 years” (art. 254.2) (cf. Makuchowska, Chaber 2013: 12). Thus, in this case the protected characteristics are not explicitly mentioned, which opens possibilities for their wider use.</p> <p>The changes to the Assemblies Act (<i>Ustawa z dnia 5 lipca 1990 r. Prawo o zgromadzeniach</i>) introduced in 2012 allow the prohibition of assemblies if these involve risks of violence. In its 2015 report FRA notes that both NGOs and the Human Rights Defender stress that those changes disproportionately limit freedom of assembly. While the changes were introduced following violent incidents at the Kraków pride event in May 2011, in the subsequent pride events in Warsaw, Wrocław, Poznań, Gdańsk no major incidents were reported. But, “Poland has still been affected by recurring ‘traditional’ homophobic protests at pride marches, often resulting in violence and/or homophobic hate speech” (FRA, s. 50, 52-53).</p>
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On-line spaces	<b>No</b>	The Polish Constitution enshrines the freedom to express opinions, to acquire and to disseminate information as well as forbids preventive censorship of the means of social communication (art. 54). The Provision of Electronic Services Act ( <i>Ustawa z dnia 18 lipca 2002 r. o świadczeniu usług drogą elektroniczną</i> ) states that in the case of Internet this freedom may be constrained if protection of health, national defense, national security or public security so require (art. 3b). But, even though it is a service provider who establishes internal rules (due to freedom of economic activity) (art. 8.1), the relevant general rules of the civil and criminal law applies to on-line spaces as well (e.g. the Civil Code art. 23 and 24 – see additional comments; the Criminal Code art. 256 and 257 – see section C).
Others (please specify)	<b>No</b>	
<p><b>Additional Comments</b></p> <p>Poland is a state party to the European Convention for the Protection of Human Rights and Fundamental Freedoms, but has not ratified Protocol No. 12, which makes the independent use of Article 14 impossible (cf. Bojarski 2013: 111).</p> <p>The aforementioned article 30 of the Constitution says that the inherent and inalienable dignity of the person constitutes a source of freedoms and rights of persons and citizens and is inviolable. Consequently, the respect and protection thereof makes up the obligation of public authorities. Interpreted in line with that constitutional provision, the Civil Code (<i>Ustawa z dnia 23 kwietnia 1964 r. Kodeks cywilny</i>) (art. 23 and 24) provides protection of “personal rights” as well as compensation (of both material and immaterial type) for violation of these rights. According to the Civil Code (art. 23), personal rights, in particular health, freedom, honor, freedom of conscience, name or pseudonym, image, secrecy of correspondence, inviolability of the home, and scientific and artistic work as well as inventions and improvements are protected by civil law without prejudice to protection provided by other regulations. This provision does not include sexual orientation, gender identity, gender expression or sex characteristics. But, considering that the list of “personal rights” is not exhaustive, a person discriminated against outside the labor context on the aforementioned grounds, whose individual dignity is certainly infringed, “may try to seek redress through this general civil clause.” (Bojarski 2013: 108-109 )</p>		

Complaint system		
Does the law allow for individual complaints?	<b>Yes</b>	<p>The Civil Procedure Code (<i>Ustawa z dnia 2 lipca 2004 r. o zmianie ustawy – Kodeks postępowania cywilnego oraz niektórych innych ustaw</i>) divides complaints into three types: complaints for provisions (which includes certain behaviors, material assets etc.); complaints for establishing of existence or non-existence of the law or the legal relation; complaints for shaping the law or the legal relation. (cf. Kostyra n.d.)</p> <p>As mentioned above, the Civil Code (art. 24) allows individual whose “personal rights” have been violated by another’s actions to demand that the action cease, unless it is not unlawful; and that a person who violated “personal rights” rectifies the effect of violation. In this context the article provides that a statement of appropriate content and form will be made. In light of the rules of compensation provided in the Civil Code, individual can also demand pecuniary satisfaction or payment to a indicated social cause. When the infringement of personal rights results in material loss, the compensation may be demanded on general legal terms. According to the Civil Procedure Code (art. 87.1) legal representation of an individual may be provided by an advocate or a legal adviser. (cf. Bojarski 2013: 109, 111)</p> <p>In case of gender/sexuality related discrimination an individual can complain to the Human Rights Defender, to the Government Plenipotentiary for Equal Treatment (with stipulations mentioned in additional comments), to the Chief Labor Inspectorate (<i>Państwowa Inspekcja Pracy</i>) and to NGOs (cf. <i>Do kogo mogę ...</i> n.d.) (for more details see sections below)</p> <p>When discriminatory treatment takes the form of a criminal offence prosecuted under the Criminal Code, a criminal proceeding can be initiated by the victim herself/himself in accordance with the Criminal Procedure Code (<i>Ustawa z dnia 6 czerwca 1997 r. Kodeks postępowania karnego</i>) (for more details see section C).</p>

<p>Does the law allow for group complaints</p>	<p><b>Yes</b></p>	<p>The Class Action Act (<i>Ustawa z dnia 17 grudnia 2009 r. o dochodzeniu roszczeń w postępowaniu grupowym</i>) is basically of purely procedural nature, because it does not introduce changes to the substantive legal basis for claims or to the principles of a defendant's liability, but puts forward only a new mechanism for the group proceedings in Polish legal system. The group proceeding is a judicial proceeding in civil cases in which claims of one kind are based on the same or a similar factual basis and are pursued by at least 10 individuals. But the scope of the application is limited and involves only three categories of cases: consumer protection cases; cases on the grounds of liability for damage caused by hazardous products; and cases on the grounds of liability for damages inflicted by tort, except for claims for the protection of personal rights (art. 1). (cf. Kubas, Kos, Gałkowski 2015). Consequently, the act cannot be applied in the context of homo- and transphobia related complaints.</p>
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<p>Does the law allow for complaints by an Equality Body or other organisation?</p>	<p><b>Yes</b></p>	<p>An institution with strongest instruments to intervene in the case of discrimination is the Commissioner for Citizens' Rights (<i>Rzecznik Praw Obywatelskich</i>), which in 2011 assumed the English name: the Human Rights Defender. But, the Polish Constitution and the Ant-Discrimination Act limit the Human Right Defender's competences as regards conflicts between private parties, because they refer to a vertical understanding of human rights (between a public authority and a person). In the case of private parties, he/she can formally provide the victim only with information on rights and possible actions. But in practice, he/she attempts occasionally to intervene, e.g. by writing letters or contacting other relevant public agencies and urging them to intervene. However, as deprived of formal power, the effectiveness of such actions is limited (cf. Bojarski 2013: 129, 133, 137).</p> <p>According to the Civil Procedure Code (art. 61), organizations whose official objects include equality protection and nondiscrimination protection from unfounded direct or indirect violation of the rights and duties of citizens may, in the case of claims in this field and with the written consent of citizens, institute actions on behalf of citizens. The court verifies the fulfilment of the formal criteria, including the association's official objectives (cf. Bojarski 2013: 118-119). As Łukasz Bojarski (2013: 118) notes, "civil, criminal and administrative laws use the very wide terms 'non-governmental organizations' (civil law) and 'social organizations' (criminal and administrative law) that include any associations and foundations, trade unions, professional organizations, etc."</p> <p>As FRA (2015: 44-45) observes, the experience of NGOs proves that the involvement of organizations in court proceedings may be of strategic importance and may bring a more general effect. The involvement of the Helsinki Foundation for Human Rights (<i>Helsinkińska Fundacja Praw Człowieka</i>) in cases concerning discrimination on the ground of sexual orientation contributed considerably and the cases reached the Supreme Court (e.g. Case III CZP 65/12).</p>
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<p>If the law allows for complaints by body/organisation, is a complaint without an individual complainant possible?</p>	<p><b>Yes</b></p>	<p>Excepting the right to perform in the name of citizens, NGOs can perform as a complainant in their own cases as well. There is no specific regulations as regards such situations, so the general legal rules applies (cf. Jagieła 2014: 19). The Campaign Against Homophobia (<i>Kampania Przeciw Homofobii</i> – one of the major LGBT organizations in Poland) has pursued several legal complaints aimed at showing deficiencies of legal systems both in Poland and in EU (cf. <i>Rodzina i związki</i> n.d.)</p> <p>The Human Rights Defender can initiate proceedings ex officio based on media and other information as well as on his/her own observations while visiting various state institutions (prisons, psychiatric hospitals etc.). He/she can also lodge constitutional complaint with the Constitutional Tribunal as well as a legal request and a last resort appeal with the Supreme Court in a penal case. (cf. <i>Działalność Rzecznika Praw Obywatelskich</i> n.d.)</p>
<p>Can an investigation by the police or prosecutor be initiated without a complaint from the victim?</p>	<p><b>Yes</b></p>	<p>The Civil Procedure Code (art. 7) states that the prosecutor can initiate a proceeding in any case, if according to his/her judgement the protection of law and order, citizens' rights or public interest so requires. However, in practice significance of this provision is limited due to the scarcity of fields included in gender and sexuality related anti-discrimination law (see the sections above).</p> <p>When discriminatory treatment takes the form of a criminal offence prosecuted under the Criminal Code, a criminal proceeding can be initiated by the public prosecutor ex officio in accordance with the Criminal Procedure Code. However, sexual orientation, gender identity, gender expression or sex characteristics are not listed in the Criminal Code (for more details see section C).</p>

## Additional Comments

Poland, like many other EU Member States, has opted for the model of a single equality body that covers the range of grounds rather than for a particular body addressing LGBT issues. Still, the national human rights institutions are fragmented, which results in the absence of a coherent and coordinated approach (cf. FRA 2015: 40-41).

The office of the Human Rights Defender was first established in Poland on 1 January 1988 (*Ustawa z dnia 15 lipca 1987 r. o Rzeczniku Praw Obywatelskich*) and acknowledged in the 1997 Constitution (art. 208 – 212). It is an independent body appointed by the Lower House of Polish Parliament (*Sejm*) upon the approval of the Upper House (*Senat*) for a five-year term of office and accountable to Parliament. But only the 2010 Anti-discrimination Act, which amended the Act on the Human Rights Defender, designated the existing office as the equality body, granted it new competences and entrusted it with responsibility for protecting the principle of equal treatment (cf. Bojarski 2013: 131-132).

According to the Constitution (art. 80) everyone has the right to apply to the Human Rights Defender for assistance in protection of his freedoms or rights infringed by organs of public authority. His/her competence in relation to equal treatment and individual complaints comprises: safeguarding the observation of the equal treatment principle; analyzing, monitoring and supporting the equal treatment of all persons; preparing and issuing independent reports and recommendations regarding discrimination-related problems. He/she has no right of legislative initiative, but can apply to competent authorities for a legislative initiative to be undertaken or for a legal act to be issued or amended. The Human Rights Defender cooperates with civil society, associations and foundations focused on the equal treatment; provides support to the victims of discrimination; examines facts described by a complainant. He/she can apply to another state audit institution for examination of a case when establishes that the principle of equal treatment has been violated. He/she can also apply to competent authorities for the rectification of a violation and subsequently monitors the implementation of the recommendation. The Human Rights Defender can require preparatory proceedings to be initiated and can participate in all ongoing civil or administrative proceedings. (cf. Bojarski 2013: 133-134)

The post of the Government Plenipotentiary for Equal Treatment (preceded by the post of the Government Plenipotentiary for Equal Status of Women and Men between 2001 and 2005) has been established in April 2008 as a member of the cabinet at the rank of secretary of state on the basis of the Council of Ministers Ordinance (*Rozporządzenie Rady Ministrów z dnia 22 kwietnia 2008 r. w sprawie Pełnomocnika Rządu do spraw Równego Traktowania*). Its office within the Chancellery of the Prime Minister was established in July 2008. The Anti-discrimination Act became its new legal basis, but the Ordinance is still the valid law. As a part of the Chancellery, the Plenipotentiary is not independent, but appointed by, recalled by and accountable to the Prime Minister. It has no separate budget. (cf. Bojarski 2013: 132-133)

The Plenipotentiary is not the equality body, but the body in charge of executing governmental policy in relation to the principle of equal treatment and of counteracting discrimination, in particular in view of gender, race, ethnic origin, nationality, religion or beliefs, political convictions, age, disability, sexual orientation, civil (marital) and family status. Its competences comprise analysis and research; monitoring; collaboration with other bodies, local government and NGOs; the creation of draft laws; issuing opinions about laws drafted by other bodies; and taking actions aimed at rectifying or minimizing the consequences of infringement of the rule of equal treatment. The Plenipotentiary can also issue recommendations (The Anti-discrimination Act, art. 21). The Plenipotentiary has no legal standing to accept individual complaints, to assist victims and to bring discrimination complaints or to intervene in legal cases regarding discrimination. But he/she does receive complaints, applications, and letters from victims of discrimination and NGOs. Consequently, he/she informs victims about institutions to which they should turn; approaches governmental agencies with questions and applications for explanations of their position; and recommends changes to the law and practice that stem from the received complaints. (cf. Bojarski 2013: 130, 139-141)

In January 2016, the present government changed the post name to the Government Plenipotentiary



### 1.3. National criminal law provisions

Criminal law provisions Does the criminal law provide against:	Yes/No	Comments
Homophobic hate speech?	<b>No</b>	<p>The criminal law does not define hate crime or hate speech in legal terms. But, as Łukasz Bojarski (2013: 37-38) notes, the Criminal Code includes some crimes which belong to this category, as for instance: the use of and incitement to violence or unlawful threat towards a group of people or an individual person on account of their national, ethnic, racial, political or religious affiliation or because of their lack of religious belief (art. 119); public propagation of fascism or other totalitarian regime or incitement to hatred based on national, ethnic, racial or religious differences or lack of religious belief (art. 256); public insulting of a group of people or an individual person on account of his/her national, ethnic, racial or religious affiliation or because of these grounds infringes the physical inviolability of another person (art. 257). But, as already mentioned, the protected grounds do not include sexual orientation or gender identity. Because of exhaustive character of the list, they cannot be read into the list by a court of law.</p> <p>In 2012 the legislative process aimed at amending the current Criminal Code was initiated. Three different drafts were proposed to the Parliament as regards the provisions on discriminatory violence and incitement to hatred, which included such protected grounds as disability, gender identity and sexual orientation. But the Parliament did not manage to complete the proceeding by the end of its term in November 2015. (cf. Amnesty International 2015: 6, 28-30)</p> <p>It is worth noting that even if there is no legal regulation against homophobic and transphobic hate speech, courts sometimes rule against it. For instance, following a Warsaw Court of Appeal decision, the regional court ruled against registering “No queering!” (“<i>Zakaz pedałowania!</i>”) as the official symbol of the radical National Rebirth of Poland (<i>Narodowe Odrodzenie Polski</i>) (FRA 2015: 53)</p>
Transphobic hate speech?	<b>No</b>	See above

Homophobic hate crime?	<b>No</b>	See above
Transphobic hate crime?	<b>No</b>	See above
Incitement to homophobic hatred?	<b>No</b>	The FRA (2015: 62) notes that “where incitement to hatred, violence or discrimination against LGBTI people is not explicitly defined as constituting a criminal offence, generally worded offences have sometimes been used to protect LGBTI persons from homophobic or transphobic expressions.” According to FRA, Poland exemplifies such case.
Incitement to transphobic hatred?	<b>No</b>	See above
Incitement or encouragement of violence to LGBT people?	<b>No</b>	See above
Does the criminal law provide for increased penalties when a crime is committed with a homophobic or transphobic motive	<b>No</b>	Because the criminal law does not explicitly list sexual orientation or gender identity as the protected grounds, crimes committed on those grounds are usually recognized as regular crimes (for more details see Amnesty International 2015). But, according to the article 53 of the Criminal Code, while determining penalties, the court must consider motivation and the manner of conduct of the perpetrator. Furthermore, as FRA (2015: 68) notes, in light of the article 40, “the court can sentence somebody to deprivation of their public rights in the case of imprisonment for more than three years, for crimes committed as a result of motivations deserving particular condemnation.” Sometimes judges apply the above and similar provisions and treat a homophobic motive as the aggravating circumstances (e.g. <i>Szykanowani geje wygrywają w sądzie</i> 2015).
<b>Victim’s role in the proceedings</b>		
Does the victim play a role in the criminal proceedings?	<b>Yes</b>	According to the Criminal Procedure Code, the victim is a part of the preparatory proceeding (art. 299). He/she and his/her legal adviser can apply for performing specific acts of investigation (art. 315 and 325a). The victim is also a part in the judicial proceeding. She/he has the right to bring evidence motions, to ask questions in the interrogation process and to lodge an appeal. If the victim does not have a legal representative, the appeal need to be prepared and signed by an advocate (attorney-at-law) or a legal adviser (art. 446). (cf. <i>Prawa i obowiązki pokrzywdzonego</i> n.d.)
As witness?	<b>Yes</b>	The victim can perform as a witness both in the preparatory and in the judicial proceedings.

As party?	<b>Yes</b>	<p>According to the Criminal Procedure Code, when the offence is prosecuted by the public prosecution (ex officio), the victim may become a litigant in the judicial proceeding as the auxiliary prosecutor (<i>oskarżyciel posiłkowy</i>). She/he needs to make a statement until the moment of commencement of the proceeding in the main hearing (art. 53 and 54). Other victims of the same offence may join the pending proceeding within the same time span (art. 55). (cf. <i>Compensation to crime victims – Poland 2007</i>).</p> <p>In the case of offences prosecuted by the public prosecution, the victim may also perform as the subsidiary auxiliary prosecutor (<i>oskarżyciel posiłkowy subsydiarny</i>) when the public prosecutor denies to commence or remits the proceeding for the second time. Then she/he brings the indictment to court. The indictment should be prepared and signed by a legal advisor. Other victims of the same offence may join the proceeding until the moment of commencement of the pending proceeding in the main hearing. The public prosecutor may also join the case commenced by the auxiliary prosecutor (the Criminal Procedure Code art. 55) (cf. <i>Prawa i obowiązki pokrzywdzonego</i> n.d.)</p> <p>Until last year, the victim could have performed as a civil plaintiff (<i>powód cywilny</i>) (the Criminal Procedure Code art. 62), who in the criminal proceeding claimed compensation in terms of the civil law (cf. <i>Compensation to crime victims – Poland 2007</i>). But from July 2015, the institution is not anymore present in the Polish criminal law.</p> <p>In the case of offences prosecuted on complaint, after filling the charge, the criminal proceeding is performed by the public prosecution (the Criminal Procedure Code art. 12), so the above regulations apply.</p> <p>In the case of offences prosecuted by the private prosecution, the victim performs as the private prosecutor (<i>oskarżyciel prywatny</i>). Other victims of the same offence may join the pending proceeding until the moment of commencement of the proceeding in the main hearing. In this type of offences, if the public interest so requires, the public prosecutor may commence the proceeding or join the pending one. Then the proceeding continues ex officio and the victim becomes the auxiliary prosecutor. If the public prosecutor withdraws, the victim assumes his/her former role (the Criminal Procedure Code art. 49 and</p>

		50). This refers to situations when it is not known in advance if the offence should be prosecuted by the public or the private prosecution (cf. <i>Compensation to crime victims – Poland 2007</i> ).
Can the victim claim compensation in criminal proceedings?	<b>Yes</b>	<p>Until last year the Criminal Code defined the obligation to compensate for the damage as one of the possible penalties. This referred both to material and immaterial damages (art. 39 item 5). In July 2015 this item was removed. The financial provision is still listed among penalties (art. 39 item 7). But under the article 46 of the Criminal Code, a judgment ordering compensation (in whole or in part) for damage caused as a result of an offence in line with the civil law (except annuity) is considered to be an obligation of the court if the victim or other person entitled lodges a motion for issuance of this kind of judgment. The court cannot refuse to impose this obligation if the offender's guilt and the damage caused have both been proved. The motion should be lodged directly in the court in the course of a hearing or already in the preparatory proceedings, but then the court decides on its effectiveness in the concluding judgment (cf. <i>Compensation to crime victims – Poland 2007</i>).</p> <p>The institution of civil plaintiff is not present anymore in the Polish criminal law (see above). But the victim can bring the civil claim for damages against the offender on the basis of civil law. Under the article 415 of the Civil Code a person who is guilty of causing damage to the other person is obliged to compensate for this damage. The Civil Code regulates also the liability for personal injuries or disturbance of health (art. 444). Compensation may be claimed for the loss suffered (art. 445) and for the death of the injured (art. 446) as well. The Civil Code contains also the detailed procedure for claiming compensation for infringed personal interests (art. 448), which is referred to in article 23 (described in section B). (cf. <i>Compensation to crime victims – Poland 2007</i>).</p> <p>The Act on State Compensation for Victims of Certain Intentional Offences (<i>Ustawa z dnia 7 lipca 2005 r. o państwowej kompensacie przysługującej ofiarom niektórych przestępstw umyślnych</i>) provides a pecuniary compensation paid from the state budget to the victims (or to their next of kin) of some intentional crimes committed with the use of violence, which resulted in the victim death or in disturbance of the functioning of a bodily organ or disturbance to health (as provided in the Criminal Code art. 156 and 157). The Acts covers intentional crimes committed only in</p>

		the territory of the Republic of Poland. The compensation is of subsidiary character. The reimbursed costs can include lost earnings or other means of subsistence, medical expenses or funeral expenses (art. 3). (cf. <i>Compensation to crime victims – Poland 2007</i> )
Can victims appear in the proceedings and exercise the accusation regardless of what may be formulated by the prosecutor?	<b>Yes</b>	According to the Criminal Procedure Code, as the auxiliary prosecutor, the victim can litigate while assisting the public prosecutor or instead of him/her (art. 53). Thus, when the public prosecutor decides not to prosecute, the auxiliary prosecutor does not lose his/her rights to proceed and performs as the subsidiary auxiliary prosecutor. Because the prosecutor first of all represents the public interest, as the auxiliary prosecutor, the victim can assert her/his lawful rights. (cf. <i>Compensation to crime victims – Poland 2007</i> )
If so, are they entitled to the benefits of legal aid?	<b>Yes</b>	<p>The victim in a criminal case (as well as claimant in the civil one) can receive a waiver from court costs and a legal adviser paid by the state if he/she proves that his/her material situation does not allow him/her to bear incur costs. He/she needs to bring a motion to the prosecutor in the preparatory proceeding or to the court in the judicial proceeding (the Criminal Procedure Code art. 87 and 88). (cf. <i>Prawa i obowiązki pokrzywdzonego</i> n.d.) However, the access to an ex officio lawyer is limited and the quality of legal aid services is not encouraging (cf. Bojarski 2013: 113).</p> <p>Unlike in the criminal and the civil proceedings, in the administrative proceedings the claimant does not have the right to state-guaranteed legal aid and considerable numbers of administrative proceedings may concern discrimination. The right to legal aid arises only when a person decides to file a complaint with an administrative court. But review of an administrative decision in court is limited to an evaluation of its compliance with the law, but not of its merits (cf. Bojarski 2013: 113).</p>
What actions are foreseen in the law to protect the victims from reprisals from perpetrators?		The provisions of The Victim and Witness Protection Act ( <i>Ustawa z dnia 28 listopada 2014 r. o ochronie i pomocy dla pokrzywdzonego i świadka</i> ) provides that a victim or a witness in the criminal proceeding as well as his/her closest person (a spouse, an ascendant, a descendant, siblings, a relative in the same line or degree in-laws and people cohabiting) can demand protection, both during the proceeding and after it is closed, when their life or health is threatened. The

		<p>instruments involve: protection at the time of proceeding (e.g. the assistance of a police officer on a way to and off the court); personal protection (e.g. the permanent presence of a police officer nearby the victim/witness); the assistance with change of residence, including financial help that covers basic existential and housing needs and health care (art. 3-8). The Act provides also for establishing victim/witness protection coordinators (art. 11).</p> <p>The Punishment Execution Code (<i>Ustawa z dnia 6 czerwca 1997 r. Kodeks karny wykonawczy</i>) provides assistance to victims of offences and their families from the Post-Penitentiary Assistance Fund (<i>Fundusz Pomocy Pokrzywdzonym oraz Pomocy Postpenitencjarnej</i>), administered by the Minister of Justice. The assistance is granted directly by a president of a competent court or authorized judges and professional probation and supervision officers. Indirectly, it may be granted by a non-governmental organization, which obtained means from the fund. The assistance consists of granting cash benefits, covering the expenses for purchase of food, medicines, garments, rent payments, covering the cost of specialized legal or psychological advice etc. (art. 43) (cf. <i>Compensation to crime victims – Poland 2007</i>).</p> <p>Additionally, according to the Criminal Procedure Code, in the line-up procedure, the victim can demand that it is performed in a way which makes impossible being recognized by a person of interest (art. 173). It is also required that the victim is notified immediately by the prosecutor if a suspect has been released from custody (art. 253). (cf. <i>Prawa i obowiązki pokrzywdzonego</i> n.d.)</p>
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#### **Additional Comments**

In its latest report on Poland, Amnesty International (2015: 5-7, 26-27) stresses that while Poland has made “some important progress in addressing hate crimes against some groups”, it entirely left behind others, creating a two-tier system and a significant protection gap in law and in practice”. Excepting sexual orientation and gender identity, that gap concerns age, disability, gender and social and economic status. Given that there are no objective reasons for so doing, the fact that hate crimes against certain groups are treated differently in the Polish law is in itself discriminatory.

On the other hand, the Campaign Against Homophobia in its 2013 report states that the most urgent issue is “the ineffectiveness of using existing legal instruments against various forms of aggression. The practice of prosecutors and courts in this area is very lenient on those who violate the law.” The report quotes Prof. Monika Płatek from the University of Warsaw who says that although crimes defined in the articles 256 and 257 of the Criminal Code are prosecuted by the public indictment, “one of the reasons for refusing enforcement is referring to the fact that the act is reported by a person who was

not directly affected, as he or she is not, for example, a Rom or a Jew. (...) [S]o recognition of the perspective of the victim is used in Poland to resign from undertaking any legal action. In Poland, there is still no understanding of the nature of hate motivated crime. It is an indictable crime, which imposes on law enforcement authorities ex officio and on the citizens by civic duty to report violations (the Criminal Procedure Code art. 304.1). It is clearly visible, then, that the aforementioned practices are rather motivated by finding excuses for abandoning the action." Furthermore, the authors note that even though "the Polish government was obliged by the UN Human Rights Council in its recommendations to conduct training for law enforcement officers and justice department workers, including police officers and judges, on hate speech and hate crimes" those recommendations so far have been implemented to rather limited extent. (Makuchowska, Chaber 2013: s. 13-14, 15)

Finally, the problem mentioned in most of reports (e.g. Amnesty International 2015; Makuchowska, Chaber 2013; ECRI 2015; FRA 2015) comprises the lack of system of monitoring hate crimes, including those motivated by homo- and transphobia. ECRI (2015: 30) observes that the very few available data comes from NGO surveys or academic studies (including those instigated by the Government Plenipotentiary for Equal Treatment). For instance, data gathered by the Interior Ministry's Department of Control, Complaints and Petitions indicate only one incident of homo/transphobic violence in 2012 and three in 2013. Because the crime statistics compiled by the police, the Prosecutor General's Office and the Ministry of Justice are kept in accordance with the relevant provisions of the Criminal Code, they do not comprise those related to homophobia and transphobia at all (cf. ECRI 2015: 18). Furthermore, as FRA LGBT Survey shows, 27% of the LGBT people in Poland who did not report the most serious threat or violent attack against them did so because they had feared a homophobic or transphobic reaction from the police (Amnesty International 2015: 32). According to Amnesty International (2015: 27, 32, 36), the only state mechanism whose remit really extends to collecting data on homophobic and transphobic hate crimes is the Human Rights Monitoring Team within the Ministry of the Interior (*Zespół ds. Ochrony Praw Człowieka w Ministerstwie Spraw Wewnętrznych*). But the team collects data only on crimes allegedly perpetrated by police and border guards. It recorded seven homophobic hate crimes in 2013 and eight in 2014, but any transphobic hate crimes. The Council for Counteracting Racial Discrimination, Xenophobia and Related Intolerance established by the Ordinance of the Prime Minister in February 2013 (*Zarządzenie nr 6 Prezesa Rady Ministrów z dnia 13 lutego 2013 r. w sprawie Rady do spraw Przeciwdziałania Dyskryminacji Rasowej, Ksenofobii i związanej z nimi Nietolerancji*) is aimed at monitoring hate crimes more effectively (cf. ECRI 2015: 22). But the results are not visible yet.

#### 1.4. Recognition of marriage/registered partnership between same sex persons

Marriage/registered partnership	Yes/No	Comments
Can persons of the same sex get married?	<b>No</b>	The Constitution defines marriage as a union of a man and a woman, which (together with family, motherhood and parenthood) is under care and protection of the state (art. 18). Many LGBT scholars and activists stress that such a provision introduced into the basic law of the Republic of Poland long before the issue of civil partnership entered the public debate, exemplifies “sexual panic” which usually masks other problems resulting from the rapid social/economic/political change (cf. Mizelińska 2004).
Can persons of the same sex enter into a civil partnership creating similar rights to marriage?	<b>No</b>	<p>ORDO IURIS (n.d.), a conservative legal organization stresses that the article 18 of the Constitution was introduced exactly “to prevent possible attempts towards future institutionalization of any kind of same-sex couples.” Furthermore, they believe that under this article the lawmakers are not authorized “for establishing a legal institution similar to the marriage i.e. marriage-like relationships (‘paramarriage’), regardless of a name attributed to such an arrangement or to its participants (be it homosexual, heterosexual, bilateral or multilateral relationships).” In their view, the constitutional authorization for institutions such as the French <i>pacte civil de solidarité</i> (for both different- and same-sex partners) or the German <i>Eingetragene Lebenspartnerschaft</i> (for same-sex partners) is impossible in Poland. They also believe that the Constitution prevents homosexual couples registered abroad from being officially recognized within the Polish legal system.</p> <p>Even though the above interpretation seems far-fetched (f.i., in Italy, where constitutional definition of marriage is the same as in Poland, it is not perceived as the legal obstacle for institutionalizing same-sex partnership), other provisions of Polish legal system as well as both judicial and administrative practice shows that in some respects the ORDO IURIS view finds its way into actual practice (for more details see sections below).</p>
Can persons of opposite sex enter into a civil partnership creating	<b>No</b>	Civil partnership is not recognized legally in Poland in a case of different-sex couples as well. But various

similar rights to marriage?		provisions of civil and criminal law uses such phrases as “a person in cohabitation with” ( <i>osoba pozostająca we wspólnym pożyciu</i> ) or “the closest person” ( <i>bliska osoba</i> ). Even if variously interpreted, these concepts are usually taken in judicial practice as concerning different-sex relationship. Thus, in practice informal (in terms of the law) same-sex and different-sex couples do not enjoy the same legal rights (cf. <i>Co oznacza związek partnerski w Polsce</i> 2014; but see additional comments for exceptions).
Can persons of the same sex enter into a civil partnership with limited rights?	<b>No</b>	See section above
Does the national law distinguish between same sex spouses and different sex spouses for purpose of entry and residence rights?	<b>Yes</b>	<p>In its 2010 report, FRA concludes that “any refusal to grant entry and residence rights to same-sex spouses ‘would constitute a form of direct discrimination on grounds of sexual orientation, in breach of Article 26 of the International Covenant on Civil and Political Rights, the general principle of equality and the prohibition of discrimination as reiterated in Article 21 of the Charter of Fundamental Rights.’” However, five years later FRA admits that those countries (Poland included), in which both same-sex registered partnership and/or marriage are not legally recognized in the domestic law, are not obliged to grant entry and residence rights to the same-sex couples (FRA 2015: 82).</p> <p>Consequently, even if Directive 2004/38/EC has been implemented in several acts (for more details see section G), including the Act of 14 July 2006 on the Entry into, Residence in and Exit from the Republic of Poland of Nationals of the European Union Member States and their family members (<i>Ustawa z dnia 14 lipca 2006 r. o wjeździe na terytorium Rzeczypospolitej Polskiej, pobycie oraz wyjeździe z tego terytorium obywateli państw członkowskich Unii Europejskiej i członków ich rodzin</i>), it is aimed only at “family members” as defined by the Polish law. Furthermore, Poland has been reported as reluctant to fully recognize third countries family members rights because Polish legislation prohibits non-EU family members from entering without a valid travel document and a visa (art. 9.2 of the above act). (cf. Válean 2009).</p>
If it is the case, can the same sex spouse enjoy the right of family reunification?	<b>No</b>	In light of Polish law, a same-sex spouse is not recognized as the “spouse” in a legal sense (cf. FRA 2015: 82), so does not have any rights which a

		different-sex spouse enjoys.
Does the national law distinguish between same sex partners and different sex partners for purpose of entry and residence rights?	<b>No</b>	See section above.
If it is the case, can the same sex partner enjoy the right of family reunification?	<b>No</b>	A FRA (2015: 89) notes, in the case of Poland family reunification rights do not extend to unmarried partners of sponsors, either of the same or of different sexes.
<b>Additional Comments</b>		
<p>Amnesty International (2015: 31) stresses that same-sex couples are not only unrecognized in the Polish legal system, but also have no access to any legal protection. Even though LGBT activists brought the question of same-sex partnership to public attention over a decade ago, no legislative initiatives, which have been submitted to the Parliament since 2004, succeeded. In January 2013 three bills on registered partnerships (for both different- and same-sex couples) were rejected in the first reading. The latest attempt took place in May 2015. The Parliament rejected a bill refusing even to initiate a debate on the issue. Furthermore, in December 2015 Poland (led by the currently ruling party, the Law and Justice) together with Hungary blocked EU proposal on property regimes of married and registered couples. As it is reported, “both governments argued that this proposal infringe their sovereignty and interfere with the national identity, traditions and values related to family and society” even though “this proposal does not encroach on EU Member States sovereignty on domestic family law matters, but merely provides a framework for the applications of existing law on property regimes alone.” (<i>Disappointment as Poland ...</i> 2015). Recently, the Law and Justice has opted for establishing further legal provisions to guarantee protection of marriage as the relationship between man and woman and to eliminate possibility that same-sex couples would enjoy the same rights as the different-sex ones. The aforementioned organization, ORDO IURIS: The Institute for Legal Culture (<i>ORDO IURIS: Instytut na rzecz Kultury Prawnej</i>), is reported to be working on such an act (cf. Gaafar 2016).</p> <p>In its latest report ECRI (2015: 30-31) observes that the legal provisions are applied in a way that make it impossible to issue administrative documents to a person who wants to marry or to form a civil partnership abroad. To receive the civil status document, an applicant is required to indicate in a form an identity of the person he/she is to marry or with whom is to establish a civil partnership. But, under the article 18 of the Constitution, a registration officer refuses to issue documents if an application is to be used in the context of same-sex relationship. Even though the former Polish authorities had declared their intention of introducing draft legislation on civil status documents (which would allow for avoiding the above situation by the issuance of a universal certificate based on the information contained in the central registry), the amended Civil Status Act (<i>Ustawa z dnia 28 listopada 2014 r. Prawo o aktach stanu cywilnego</i>) is even more rigorous in this respect and excludes the possibility of issuing this type of documents.</p> <p>As regards parenthood, even if there is no provisions in the Polish legal system, which would explicitly prevent a homosexual person from adopting a child, in practice, “the vagueness of the term ‘child’s best interest’ (...) may lead to the use by the adoption agency worker or a judge of their own stereotypes when assessing whether the adopter will be able to guarantee child’s best interest” (Campaign Against Homophobia 2012: 32). Polish citizens who have got married abroad, as same-sex parents are not able to receive Polish citizenship for their children. For instance, a lesbian couple (one</p>		

of whom is a Polish citizen) has not been able to register her daughter in the Polish register office for three years, because the British birth certificate indicates two mothers. This was perceived by a registration officer as incompatible with Polish law. The Supreme Administrative Court shared this opinion claiming that registering the child would breach the Family Code. In the Polish legal system fatherhood always concerns a male. Eventually, the case has been brought to the European Court of Human Rights (*Ma dwie mamy, więc Polką nie będzie* 2015). Recently, the Voivodship Administrative Court upheld the decision of the Ministry of Interior which denied granting citizenship to four children of American gay married couple, one of whom is a Polish citizen. The Ministry justified its position by evoking the lack of data on mothers in American birth certificates (*WSA: słusznie odmówiono ...* 2016).

However, it should be noted that the LGBT circles did not give up. In December 2015 the New Coalition for Civil Partnership was established. Its main current initiative is to bring simultaneously five separate proceedings by five gay and lesbian couples to courts to verify “whether Polish legal system is capable of providing sufficient recognition and legal protection for same-sex couples.” The proceedings will start with local register offices and end with the European Court of Human Rights, which is hoped to “oblige Poland to adopt regulations enabling same-sex couple to register civil partnerships.” (*New Coalition for Civil Partnerships in Poland* 2015).

Additionally, a couple of judgements provided by European and Polish courts can be perceived as silver lining. The judgement of the European Court of Human Rights in the *Kozak v. Poland* case (no. 13102/02) (mentioned in section B of this report) states clearly that “recognizing certain rights of unmarried different-sex couples but not of same-sex couples would constitute discrimination against LGBT people.” (FRA 2015: 94). More recently, in the same vein, the Supreme Court declared that the right to refuse to testify against the accused person in cases cannot be applied differently when it comes to different-sex and same-sex partners, because “the system of legal protection cannot be differentiated with respect to gender”. In line with the Criminal Code, a person closest to the accused may refuse to testify. He/she is also entitled to other powers as, f.i., exercising the rights of the deceased. Extending the concept of “closest person” to same-sex couples (“a person in cohabitation with”), the judge is believed to open possibilities for classifying a same-sex couple as a family (Rylukowski 2016).

### 1.5. Legal change of sex/gender

Legal change of sex/gender	Yes/No	Comments
Does the registration process for new born babies allow for a category other than male or female (e.g. possibility of sex to be left open or to enter an X)?	<b>No</b>	
Can the sex on a person's birth certificate and other official documents be changed? If so describe the procedure	<b>Yes</b>	<p>The gender reassignment process is allowed legally only after reaching legal adulthood, which is at the age of 18. In order to access legal gender reassignment, a gender identity disorder must be diagnosed. This is followed by a court decision. Before the court decides, a person needs to undergo long procedures which involve physical examination as well as psychiatric and psychological assessment. The court action needs to be brought under the article 189 of the Civil Code, which says that the claimant may demand court to establish the existence or the non-existence of the law or the legal relation, if he/she has a legal interest. Thus, the claimant has to literally file a lawsuit against his/her own parents on the ground that they wrongly indicated his/her gender at the time of birth. The current procedure can even end up with denying a person the right to legal gender reassignment (cf. Dynarski 2014; ECRI 2015: 30; FRA 2015: 16).</p> <p>An important requirement in terms of the civil law is that a person who wish to undergo gender reassignment needs to be single. Considering that the Constitution (art. 18) defines marriage as a union between a man and a woman, if a person is married, he/she has to divorce. Furthermore, if he/she is the sole guardian of children, he/she has to wait until the children become of age. If there is another parent, the custody is transferred to that parent by court. FRA reports that the Supreme Court confirmed this requirement and adjudicated that "the gender reassignment of a trans woman could not be legally recognized because the person had accessed sex reassignment without previously informing the authorities that she was married. The court noted that, if her gender were legally recognized, the existence of her marriage would violate Article 18 of the Constitution." (I CSK 146/13) (FRA 2015: 20, 24).</p> <p>The court decision provides legal basis for changing</p>

		<p>other documents. The birth certificate is amended, but not fully, because an information on former gender is included as well. It is important that anybody who proves to have “a legal interest” has access to birth certificate. A new PESEL (personal registration number) is issued on the request, because it indicates person’s gender. An ID, a passport, a driving license are changed in line with regular administrative procedures. The change of data on university diploma is also required. The data on certificates of employment and other documents relating to employment can be changed on request of the interested party. But there is no legal mechanism which would force an employer or a school to do so. (cf. Campaign Against Homophobia 2012: 34).</p>
<p>If the sex on a person’s birth certificate cannot be changed, does the law recognise right to decide on gender identity in any way?</p>	–	See above
<p><b>Additional Comments</b></p> <p>Even though the gender reassignment process is allowed legally only after turning 18, it is reported that in practice hormonal therapy is allowed, at least by some doctors, at the age of 17 (cf. <i>Jak wygląda zmiana płci w Polsce</i> n.d.).</p> <p>Sex reassignment surgery (SRS) is accessible to legal adults. It must be preceded by diagnosis of gender identity disorder and the following court decision. The genital surgery leading to sterilization is not required in Poland (cf. FRA 2015: 16, 24).</p> <p>FRA (2015: 75-78) reports that in a case of minors, medical intervention (hormonal treatment/physical adaptation) requires consent of a legal representative. The child consent is required from age of 16. These provisions are discussed by FRA in the context of the “sex-normalizing” treatment on intersex people. But it can be also evoked in a more general sense. When a child and a legal representative disagree how to proceed, a guardianship court (<i>sąd opiekuńczy</i>) provides the decision.</p> <p>In July 2015 the Lower House of Polish Parliament approved of the Gender Accordance Act, which would have allowed people wishing so to achieve legal gender reassignment upon fulfilment of three criteria: single status, Polish citizenship and two medical documents certifying that the applicant’s gender identity is different from the one assigned at birth (cf. Amnesty International 2015: 31-32). It was also to provide the possibility of starting a formal procedure for children over 16 (FRA 2015: 19). But the President, Andrzej Duda, vetoed the bill in October 2015.</p>		

## 1.6. Other national legislation

**Is there any other national legislation that could be relevant in relation to homophobia and transphobia? If so, please describe**

In light of our research so far, there is no other national legislation relevant in the context of homo- and transphobia.

## 1.7. EU legislation:

### Victims Directive (Directive 2012/29/EU (2012/29/EC establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA)

EU legislation: the Victims Directive 2012/29/EC	Yes/No	Comments
<p>Has the Victims Directive been transposed into national law? Describe in what way</p>	<p><b>Yes</b></p>	<p>Polish legal system regulates the status of victims quite extensively and is basically in compliance with the minimum standards described in the Directive 2012/29/EU. The implementation comprises primarily amendments introduced to the Criminal Procedure Code as well as to other acts. The aforementioned 2014 Victim and Witness Protection Act is most important as it defines rules, conditions and scope of protection measures and of assistance to the victim, the witness and their closest persons if the ongoing or closed proceeding poses threat to their life or health (art. 1.1). (cf. <i>PL – Poland</i> n.d.; for more details see section C).</p> <p>An important aspect of implementation of the Directive 2012/29/EU, which has not been discussed yet, are amendments to the Criminal Procedure Code that comprise mediation (art. 23a). Actually mediation, as an example of “restorative justice services” described by the directive, was introduced to the Polish criminal law as early as 1997. The latest transposition of the Criminal Procedure Code makes “questioning a mediator as a witness illegal and (...) incorporate[s] the principles of mediation – voluntariness, impartiality and confidentiality – [as] absolutely binding.” (Paluszkiewicz, Błaszyk 2014: 228-29) Furthermore, more legal subjects are allowed to prescribe the mediation proceeding and to handle it. Generally, the tendency towards amicable solutions of criminal cases is observed. (cf. <i>Nowelizacja Kodeksu postępowania karnego ...</i> n.d.). But, even though the Criminal Procedure Code meets minimal standards required by the article 12 of the directive, Adam Lazowski (n.d.: 16) notes that “mediation is rarely used as a substitution for court proceedings; (...) the information about the benefits of mediation is not (...) widely spread (...) and Poland lacks a consolidated and highly developed practice for promoting and using restorative justice.”</p>
<p>If the Directive has not been</p>	<p>–</p>	

transposed, are there plans of doing so? E.g. proposals for legislation		
If the Directive has not been transposed and there are no plans of doing so, is there any reason why not? (e.g. Government might be of opinion that it is covered by existing legislation)	–	
If the directive has been transposed, is it envisaged that victims of crimes committed on grounds of homophobia or transphobia can be considered particularly vulnerable and susceptible to special protection?	<b>No</b>	As discussed in section C, sexual orientation, gender identity, gender expression and sex characteristics are not recognized in Polish criminal law as specially protected. Consequently, both the Victim and Witness Protection Act and the Code of Criminal Procedure construct “victim” in general/neutral terms and, unlike the directive, do not mention sexual orientation, gender identity and gender expression as particularly protected grounds. Thus, the victims of homophobia and transphobia are approached as victims of “regular crimes” (for more details see section C).
Is it envisaged that the victims can receive legal advice?	<b>Yes</b>	Excepting entitlements described extensively in section C, Adam Lazowski (n.d.: 6) notes that due to initiative of the Ministry of Justice, “a network of assistance points was created. They are run by various NGOs [and] scattered throughout the country. Details of the network members are freely available on the internet, including the website of the Ministry of Justice.”
Is it envisaged that the victims can receive psychological care? Is that care free?	<b>Yes</b>	According to the Polish Charter of Victim Rights ( <i>Polska Karta Praw Ofiary</i> – <a href="http://www.advocem.org.pl/pliki_user/File/06_-_polska_karta_praw_ofiary.pdf">http://www.advocem.org.pl/pliki_user/File/06_-_polska_karta_praw_ofiary.pdf</a> accessed: 15/04/2016), which was issued by the Ministry of Justice in 1999, a victim should be granted, amongst other things, an access to free psychological care. But research on this topic shows that victims find it insufficient and replaced often by purely legal advice (cf. Ilcheva et al. 2014: 115).
<b>Additional Comments</b>		
Piotr Karlik (2014: 157) points out that the Polish criminal law, unlike the Directive 2012/29/EU, does not use the term “victim of crime”, but the “injured party of the crime” ( <i>poszkodowany</i> ). The difference is not purely terminological, because the “victim of crime” presumes the fact of committing the crime before a legally valid decision is provided by court. The Criminal Procedure Code defines the “injured party” as “a physical or legal person whose legal interests have been directly violated or threatened by the crime, but it may be as well a state-run institution, general government or social institution even if it does not have legal personality, where procedural actions will be performed by the relevant		

authorities entitled to act on behalf of those institutions” (art. 49 – 52) (cf. Ilcheva et al. 2014: 30).

**Qualification Directives (Directive 2004/83/EC and 2011/95/EU on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted)**

EU legislation: the Qualification Directives 2004/83/EC and 2011/95/EU	Yes/No	Comments
<p>Has the Qualification Directive (in its original or its recast form) been transposed into national law? Describe in what way</p>	<p><b>Yes</b></p>	<p>The Directive 2004/83/EC was transposed to the Polish law in March 2008 as an amendment to the Act on Granting Protection to Aliens on the Territory of the Republic of Poland (<i>Ustawa z dnia 18 marca 2008 r. o zmianie ustawy o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej oraz niektórych innych ustaw</i>). It did not form a new anti-discrimination law, but provided some definitions which were new to the legal system. For instance, definitions useful in “assessing the grounds of persecution” of people who applied for a refugee status were introduced. According to the article 14, “the concept of race includes in particular color of skin, descent, or membership of a particular ethnic group”; “the concept of nationality is not limited to a citizenship or its absence, but shall in particular include membership of a group defined by: a) cultural, ethnic or linguistic identity or b) common geographical or political origin or c) linkage with the population of another country.” (Bojarski 2013: 18)</p> <p>The amendment referred also to sexual orientation. Under article 14.2 the act states that “depending on the conditions prevailing in the country of origin, a particular social group might include a group whose members share a common sexual orientation, but sexual orientation cannot include acts which, according to Polish law, constitute crimes.” (Bojarski 2013: 20). Consequently, as ECRI (2015: 31) observes, because Poland explicitly recognized that sexual orientation is included in the concept of “membership of a certain social group”, international protection can be afforded to asylum-seekers fleeing persecution to which they are subjected on grounds of sexual orientation.</p> <p>In September 2015, the above act has been further transposed in line with the Directive 2011/95/UE (<i>Ustawa z dnia 10 września 2015 r. o zmianie ustawy o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej oraz niektórych innych ustaw</i>). Alongside others, the new regulation lists sexual</p>

		<p>orientation and gender identity among grounds, which may be considered as premises for particularly sensitive approach (literally, “special treatment”) in the process of applying for international protection or social assistance (art. 68.1). Furthermore, people who apply for a refugee status or other forms of protection (e.g. tolerated residency, temporary protection, subsidiary protection) are granted access to legal, social, medical and educational assistance (art. 70.1 – 74.1)</p> <p>As regards other transposed acts, they comprise, amongst other things, the Social Assistance Act (<i>Ustawa z dnia 12 marca 2004 r. pomocy społecznej</i>) which grants access to social assistance both to people with a refugee status and those with other forms of protection. It aims primarily at overcoming language, material and social barriers in their everyday life as well as at alleviating their traumatic personal experience (for more details see Klaus et al. 2011). The Higher Education Act (see section B), names persons with a refugee status and having temporary and subsidiary protection as granted access to Polish institutions of higher education equally to Polish citizens (art. 43).</p> <p>Even though such European legal acts as the Qualification Directive (recast), the Free Movement Directive or the Family Reunification Directive provide rules which indicate that “family members” (though differently defined by each of them) should be allowed to join third-country nationals or stateless persons qualified as beneficiaries of international protection, the national legislation of the EU Member States prevails. As discussed in section D, in Poland neither same-sex spouses, nor different- and same-sex partners are legally recognized as forming a “family members” category. Consequently, the above EU provisions do not apply (cf. FRA 2015: 79-80).</p>
<p>If the Directive has not been transposed, are there plans of doing so? E.g. proposals for legislation</p>	<p>–</p>	
<p>If the Directive has not been transposed and there are no plans of doing so, is there any reason why not? (e.g. Government might be of opinion that it is covered by existing legislation)</p>	<p>–</p>	

### **Additional Comments**

Anna Śledzińska-Simon and Krzysztof Śmiszek (2013) observes that despite the European legislation and resolutions that have been adopted over past years in Poland, asylum legislation (or rather actual practice) provides LGBT asylum seekers with insufficient protection or specific measures. The authors describe two cases of homosexual Ugandan asylum seekers, who have been wrongly treated by Polish authorities. One of them claimed to have been beaten, tortured and humiliated in his country, but was married and had biological children. The other had been caught having homosexual intercourse in a park, arrested and subjected to physical and psychological violence. Even though he was released after ten days, he expected a criminal sentence of imprisonment for seven years or the death penalty. Their applications were refused in the first instance of the respective asylum proceedings. The Head of the Office for Foreigners stated that “the situation in Uganda did not pose a real risk of persecution on the basis of sexual orientation.” In the case of the first applicant, this was reversed in the second instance. The Refugee Board declared that “the mere existence and execution of the provisions penalizing homosexual acts may be sufficient to grant a refugee status.” In the case of the second applicant, the Refugee Board held that his homosexual orientation was not effectively established despite the sexologist’s medical certificate and other materials provided by the claimant. This decision was dismissed only by the administrative court (Śledzińska-Simon, Śmiszek 2013: 17-18).

### 1.8. Regional and local legislation

(Note: Most cities are covered by the national civil and criminal legislation and there will not be any legislation as such at local or regional level. This might be different in a Federal state, where there may be legislation at regional level. At local level there might be regulations, policies and practices)

**Is there any regional or local legislation that could be relevant in relation to homophobia and transphobia? If so, describe this?**

In light of our research, there is no regional and local legislation relevant in the context of homo- and transphobia.

## 2. Policies

**Are there any national policies in relation to homophobia and transphobia, especially in the areas mentioned in the guiding themes? If so describe these and indicate whether they can be seen as examples of good practice.**

The Polish Council of Ministers adopted the first National Program of Activities for Equal Treatment for the years 2013-2016 (*Krajowy Program działań na rzecz równego traktowania na lata 2013-2016*) prepared by the Government Plenipotentiary for Equal Treatment in December 2013. As Łukasz Bojarski (2013: 154) observes, it is the first governmental document that tackles the problem of discrimination comprehensively. The Program covers six areas: anti-discrimination policy; equal treatment on the labor market and in the system of social security; counteracting violence (including domestic violence) and increasing protection of victims of violence; equal treatment in education; equal treatment in the health system; equal treatment in access to goods and services. Even though it reflects to some degree the provisions of the Anti-discrimination Act, it also attempts to transgress some of the act's limitations. For instance, it recognizes discrimination on the grounds of sexual orientation beyond the field of employment and takes gender identity into account. Furthermore, as ECRI (2015: 51) notes, numerous awareness-raising and training activities in connection with racist crimes, intolerance and discrimination have been carried out by the Polish authorities. Whether the current government will continue these policies remain an open question.

The network of human rights plenipotentiaries in the police has been established in 2004. In 2010, due to the Anti-discrimination Act provisions, their functions had been extended to cover promotion of the principle of equal treatment, including gender identity and sexual orientation. In the same year, the position of Human Rights Plenipotentiary at the National Police Headquarter was funded. ECRI (2015: 22) observes that the network "was instrumental in changing the recruitment and selection procedures for police officers so as to exclude candidates with intolerant or racist attitudes." Among other initiatives, a joint project with the Human Rights Defender and the Government Plenipotentiary for Equal Treatment resulted in a publication entitled *People first: Anti-discrimination measures in national police units*. Furthermore, police training modules on homophobic and transphobic hate crimes have been introduced (cf. FRA 2015: 65).

As ECRI (2015: 22) notes, the Prosecutor General issued various guidelines for prosecutors in October 2012 and in February and October 2014, which related to, amongst other things, the treatment of hate speech (including online hate speech) and hate crimes. The guidelines on the participation of prosecutors in cases of crimes prosecuted upon private complaint were also included. In July 2013, in each region special prosecutor's offices were designated where two prosecutors were appointed to conduct proceedings relating to cases of hate crime and to improve practices in the preliminary proceedings. These measures complemented the appointment of consultant prosecutors in the appeal courts. Measures were also taken against two prosecutors who had failed in their duties as regards the fight against racist crime. But, all these policies are based on the Criminal Code provisions and thereby do not take homo- and transphobia related crimes into consideration. However, there is possibility that they would facilitate proceedings in other types of hate crimes as well.

In its fifth cycle report ECRI recommended "to introduce to all school curricula (including higher and vocational schools) a section on LGBT persons and how to fight against discrimination of such persons and to provide in-service training programs to raise awareness of all relevant professionals (including medical staff)." Responding to the recommendation the Polish authorities stated that because the

dignity of all persons remained the important issue, “the core curriculum of general education in all types of schools contained education objectives and contents addressing the issue of fighting all forms of discrimination, including discrimination on grounds of sexual orientation.” But, due to Polish national regulations, which in the case of sexual education of minors privilege parents’ opinion, “the Polish side cannot commit itself to implementing the above recommendation with respect to all pupils.”(ECRI 2105: 57)

**Are there any regional policies in relation to homophobia and transphobia, especially in the areas mentioned in the guiding themes? If so describe these and indicate whether they can be seen as examples of good practice.**

In light of our research so far, there is no regional policies in relation to homophobia and transphobia, which can be seen as examples of good practice. However, we hope to find more information on this subject in the course of empirical research.

**Are there any local policies in relation to homophobia and transphobia, especially in the areas mentioned in the guiding themes? If so describe these and indicate whether they can be seen as examples of good practice.**

In light of our research so far, there is no local policies in relation to homophobia and transphobia, which can be seen as examples of good practice. However, we hope to find more information on this subject in the course of empirical research.

### 3. Practices

**Are there any national practices in relation to homophobia and transphobia, especially in the areas mentioned in the guiding themes? If so describe these and indicate whether they can be seen as examples of good practice.**

The picture of practices concerning LGBT communities in Poland, emerging from various reports, is rather gloomy (cf. Amnesty International 2015; Makuchowska, Chaber 2013; ECRI 2015; FRA 2015). The findings of our research so far support this picture to a high extent. There have been numerous educational and awareness raising campaigns organized mostly by NGOs (e.g. the aforementioned Campaign Against Homophobia (<http://kph.org.pl/>), the Trans-Fuzja Foundation (*Fundacja Trans-Fuzja*) (<http://transfuzja.org/>), but also by the equality bodies and other state agencies described above. Various publications promote good practices in various fields, such as business, health care, education, trade unions, civil society, local government, police force etc. Most of them have been published by NGOs thanks to EU funding. But all those initiatives seem not to have turned in actual practice yet, at least on the nation-scale level.

However there are initiatives which can be regarded as actually making a difference. For instance, the Polish Society of Anti-discrimination Law (*Polskie Towarzystwo Prawa Antydyskryminacyjnego*) coordinates a nationwide network of pro bono lawyers (<http://www.ptpa.org.pl/english>); Lambda Warszawa runs "Interventional Hostel for LGBT people", which offers not only a safe space, but also legal, social and psychological assistance (<http://lambdawarszawa.org/lambdawarszawa/robimy/hostel-lgbt/>); and the Hate Stop Project provides a website through which users are able to report instances of hate speech noticed in public space (<http://www.zglosnienawisc.otwarta.org/dobre-praktyki/artukul/40?lang=en>).

Furthermore, even if reports envisioning Polish society as particularly homo- and transphobic (cf. Amnesty International 2015), especially outside of big cities, are probably justified, the last year story from a village near Poznań (western Poland) proves otherwise. A lesbian couple who has been living in the village for eleven years, not only fit into local community (one of them is a provost), but in an official diploma (received on graduation from primary school) congratulating on raising their daughter perfectly well, the headmistress replaced a phrase "Mr and Mrs " with "Ms and Ms" to congratulate both mothers (cf. Błaszkiwicz 2015).

**Are there any regional practices in relation to homophobia and transphobia, especially in the areas mentioned in the guiding themes? If so describe these and indicate whether they can be seen as examples of good practice.**

In light of our research so far, there is no regional practices in relation to homophobia and transphobia, which can be seen as examples of good practice. However, we hope to find more information on this subject in the course of empirical research.

**Are there any local practices in relation to homophobia and transphobia, especially in the areas mentioned in the guiding themes? If so describe these and indicate whether they can be seen as examples of good practice.**

In light of our research so far, there is no local practices in relation to homophobia and transphobia, which can be seen as examples of good practice. However, we hope to find more information on this subject in the course of empirical research.

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# **City Report on existing legislation, policies and practices**

## **(Nottingham)**

**Edited by Middlesex University**

**April 2016**



Co-funded by the Rights, Equality and Citizenship Programme of the EU

**DiverCITY TEMPLATE for comparative analysis on existing legislation, policies and practices on homo- and transphobia**

**LEGISLATION:**

**A. Constitution:**

<b>Constitution</b>	<b>Yes/No</b>	<b>Comments</b>
Equality/non-discrimination guarantee in constitution?	No	Britain does not have a written constitution Article 14 ECHR incorporated
Sexual orientation /sexual option	No	
Gender identity	No	
Gender expression	No	
Sex characteristics	No	
Open-ended list (indicated by words like 'any ground such as' or 'or other status')?	No	
Can individuals invoke the constitution directly in legal proceedings?	No	
Is there any case law under these provisions?	No	
<b>Additional Comments</b> Britain has no written constitution. The European Convention on Human Rights has been incorporated into British law via the Human Rights Act 1998. This includes Article 14 ECHR, the anti-discrimination article.		

**B. National Anti-discrimination Laws**

<b>Anti-discrimination law</b>	<b>Yes/No</b>	<b>Comments</b>
Sexual orientation	Yes	Equality Act 2010
Gender identity	No	Not explicitly mentioned, but gender reassignment is and this includes transgender Via EU law, which sees gender identity falling under sex discrimination, it should in national law also fall under sex discrimination
Gender expression	No	Not explicitly mentioned
Sex characteristics	No	Not explicitly mentioned

**Additional Comments**

Gender identity, gender expression and sex characteristics are not explicitly mentioned in the Equality Act 2010 but they are covered.

The Act does protect against discrimination on the ground of 'gender reassignment' (section 7):

1. A person has the protected characteristic of gender reassignment if the person is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning the person's sex by changing physiological or other attributes of sex.
2. A reference to a transsexual person is a reference to a person who has the protected characteristic of gender reassignment.
3. In relation to the protected characteristic of gender reassignment
  - (a) a reference to a person who has a particular protected characteristic is a reference to a transsexual person;
  - (b) a reference to persons who share a protected characteristic is a reference to transsexual persons.

The explanatory notes to the Act explain that a transsexual person has the protected characteristic of gender reassignment. So gender identity is implicitly covered.

Inter-sex people are not explicitly protected from discrimination by the Act, but you must not be discriminated against because of your gender or perceived gender.

<b>Areas covered</b>	<b>YES/NO</b>	<b>COMMENTS</b>
Employment	yes	
Education	yes	
Health and social services	yes	
Public spaces	yes	
Policing and security	yes	
On-line spaces	yes	
Others (please specify)		Goods and services
<b>Additional Comments</b>		
Equality Act 2010 has a broad coverage for all grounds covered by the Act.		
<b>Complaint system</b>		
Does the law allow for individual complaints?	yes	
Does the law allow for group complaints		Complainants can join in a group, but each will have to take individual case
Does the law allow for complaints by an Equality Body or other organisation?	yes	
If the law allows for complaints by body/organisation, is a complaint without an individual complainant possible?	Yes	Equality and Human Rights Commission can conduct inquiries and investigations. The EHRC can give an 'unlawful act notice'. The EHRC can also intervene in legal proceedings, at national level and in the ECtHR

Can an investigation by the police or prosecutor be initiated without a complaint from the victim?	yes	Evidence will have to be gathered from other than the victim, which might be more difficult.
<b>Additional Comments</b>		

### C. National Criminal Law Provisions

<b>Criminal law provisions Does the criminal law provide against:</b>	<b>Yes/No</b>	<b>Comments</b>
Homophobic hate speech?	yes	Section 29B Public Order Act 1986 (added by the Criminal Justice and Immigration Act 2008)
Transphobic hate speech?	yes	S4 Public Order Act 1986 determines that A person is guilty of an offence if he— (a) uses towards another person threatening, abusive or insulting words or behaviour, or (b) distributes or displays to another person any writing, sign or other visible representation which is threatening, abusive or insulting, with intent to cause that person to believe that immediate unlawful violence will be used against him or another by any person, or to provoke the immediate use of unlawful violence by that person or another, or whereby that person is likely to believe that such violence will be used or it is likely that such violence will be provoked.  S5 POA 1986: Harassment, alarm or distress. (1)A person is guilty of an offence if he— (a)uses threatening, abusive or insulting words or behaviour, or disorderly behaviour, or (b)displays any writing, sign or other visible representation which is threatening, abusive or insulting, within the hearing or sight of a person likely to be caused harassment, alarm or distress thereby. Both sections 4 and 5 apply to sexual orientation and transgender hate speech
Homophobic hate crime?	no	No specific offences but homophobic motive can lead to enhanced sentencing. Hate crime provisions limited to race and religion, but sentencing provisions of Criminal Justice Act 2003 and police, prosecution and other agencies policies on recording hate crime also cover sexual orientation, disability and transgender.
Transphobic hate crime?	no	Idem for transphobic motive
Incitement to homophobic hatred?	yes	S29B Public Order Act 1986
Incitement to transphobic hatred?	yes	See under hate speech.
Incitement or encouragement of violence to LGBT people?		Public Order Act 1986 only mentions material which is threatening and which the publisher or distributor

		intends to stir up hatred on the grounds of sexual orientation. But there is a general provision on encouragement or assisting crime in S 44-46 of the Serious Crime Act 2007. In Northern Ireland it is a criminal offence to incite hatred, violence or discrimination on the ground of sexual orientation
Does the criminal law provide for increased penalties when a crime is committed with a homophobic or transphobic motive	yes	Section 146 Criminal Justice Act 2003: increase in sentence for convicted crimes if there is aggravation related to sexual orientation and transgender. (Transgender was added S 65 of the Legal Aid Sentencing and Punishment of Offenders Act 2012)
<b>Victim's role in the proceedings</b> Does the victim play a role in the criminal proceedings?		
As witness?	yes	
As party?		
Can the victim claim compensation in criminal proceedings?	yes	
Can victims appear in the proceedings and exercise the accusation regardless of what may be formulated by the prosecutor?	no	
If so, are they entitled to the benefits of legal aid?		
What actions are foreseen in the law to protect the victims from reprisals from perpetrators?		See page 29 of code mentioned under comments
<b>Additional Comments</b> Ministry of Justice has issues a Code of Practice for Victims of Crimes (October 2015): <a href="https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/476900/code-of-practice-for-victims-of-crime.PDF">https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/476900/code-of-practice-for-victims-of-crime.PDF</a> There are also special measures that can be taken for a vulnerable victim when giving evidence as a witness This code of guidance also has information about what you are entitled to as a witness		

#### D. Recognition marriage/registered partnership between same sex persons

Marriage/registered partnership	Yes/No	Comments
Can persons of the same sex get married?	yes	Introduced by the Marriage (Same Sex Couples) Act 2013
Can persons of the same sex enter into a civil partnership creating similar rights to marriage?	yes	Via Civil Partnership Act 2004
Can persons of opposite sex enter into a civil partnership creating similar rights to marriage?	no	
Can persons of the same sex enter into a civil partnership with limited rights?	no	Legal civil partnerships give the same rights as marriage

Does the national law distinguish between same sex spouses and different sex spouses for purpose of entry and residence rights?	no	
If it is the case, can the same sex spouse enjoy the right of family reunification?	no	
Does the national law distinguish between same sex partners and different sex partners for purpose of entry and residence rights?	no	
If it is the case, can the same sex partner enjoy the right of family reunification?	no	
<b>Additional Comments</b> Same sex or opposite sex partners have same rights in relation to entry and residence and both have to fulfil entry criteria		

#### E. Legal change of sex/gender

Legal change of sex/gender	Yes/No	Comments
Does the registration process for new born babies allow for a category other than male or female (e.g. possibility of sex to be left open or to enter an X)?	No	The registration of sex/gender is compulsory at birth. The only options are male or female.
Can the sex on a person's birth certificate and other official documents be changed? If so describe the procedure	yes	Gender Recognition Act 2004 S 1: A person of either gender can request a gender recognition certificate. S 9 Where a full gender certificate is issued, the person's gender becomes for all purposes the acquired gender S 10: Where there is a UK birth register entry in relation to a person to whom a full gender recognition certificate is issued, the Secretary of State must send a copy of the certificate to the appropriate Registrar General.
If the sex on a person's birth certificate cannot be changed, does the law recognise right to decide on gender identity in any way?		
<b>Additional Comments</b> See for more information country report on the UK, pages 177-187: <a href="https://www.wodc.nl/images/2393-volledige-tekst_tcm44-573686.pdf">https://www.wodc.nl/images/2393-volledige-tekst_tcm44-573686.pdf</a>		

#### F. Other National Legislation

**Is there any other national legislation that could be relevant in relation to homophobia and transphobia? If so, please describe**

Protection from Harassment Act 1998: prohibits harassment and stalking and makes harassment and stalking a criminal offence  
 Malicious Communications Act 2003: includes electronic forms of communication

**G. EU Legislation:**

**Victims Directive (Directive 2012/29/EU (2012/29/EC establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA)**

EU legislation: the Victims Directive 2012/29/EC	Yes/No	Comments
<p>Has the Victims Directive been transposed into national law? Describe in what way</p>	yes	<p>See: Ministry of Justice Code of Practice for Victims of Crime, footnote 1: ( website below)            This Code is issued by the Secretary of State for Justice under section 32 of the Domestic Violence, Crime and Victims Act 2004. It implements relevant provisions of the EU Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime; Directive 2011/92/EU combating the sexual abuse and sexual exploitation of children; and Directive 2011/36/EU preventing and combating the trafficking of human beings.</p>
<p>If the Directive has not been transposed, are there plans of doing so? E.g. proposals for legislation</p>		
<p>If the Directive has not been transposed and there are no plans of doing so, is there any reason why not? (e.g. Government might be of opinion that it is covered by existing legislation)</p>		
<p>If the directive has been transposed, is it envisaged that victims of crimes committed on grounds of homophobia or transphobia can be considered particularly vulnerable and susceptible to special protection?</p>	Yes	<p>In the Code of Practice, hate crime is defined as: Any criminal offence that is motivated by hostility or prejudice based on the victim’s disability, race, religion or belief, sexual orientation or transgender identity. There are enhanced entitlements under this code if you are a victim of hate crime or for a persistently targeted victim (targeted repeatedly as a direct victim of crime over a period of time, particularly if you have been deliberately targeted or you are a victim of a sustained campaign of harassment or stalking). There are other circumstances that can make you particularly vulnerable, e.g. below 18 years.</p>
<p>Is it envisaged that the victims can receive legal advice?</p>		<p>Victims are entitled to:</p> <ul style="list-style-type: none"> <li>• A needs assessment to help work out what support you need;</li> <li>• Information on what to expect from the</li> </ul>

		<p>criminal justice system;</p> <ul style="list-style-type: none"> <li>• Be referred to organisations supporting victims of crime;</li> <li>• Be informed about the police investigation</li> <li>• Be informed if the suspect is to be prosecuted or not or given an out of court disposal;</li> <li>• Seek a review of the police or CPS's decision not to prosecute</li> <li>• Arrange a court familiarisation visit and enter the court through a different entrance from the suspect and sit in a separate waiting area where possible;</li> <li>• Meet the CPS advocate and ask him or her questions about the court process where circumstances permit;</li> <li>• Be informed of any appeal against the offender's conviction or sentence;</li> <li>• Make a complaint if you do not receive the information and services you are entitled to, and to receive a full response from the relevant service provider</li> </ul>
Is it envisaged that the victims can receive psychological care? Is that care free?		Victims must be informed where and how to get advice or support, including access to medical support, any specialist support (such as psychological support) and alternative accommodation
<p><b>Additional Comments</b>  Ministry of Justice Code of Practice for Victims of Crime (October 2015):  <a href="https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/476900/code-of-practice-for-victims-of-crime.PDF">https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/476900/code-of-practice-for-victims-of-crime.PDF</a></p>		

**Qualification Directives (Directive 2004/83/EC and 2011/95/EU on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted)**

EU legislation: the Qualification Directives 2004/83/EC and 2011/95/EU	Yes/No	Comments
Has the Qualification Directive (in its original or its recast form) been transposed into national law? Describe in what way		Original Directive (2004/83/EC) yes, recast Directive: UK has opted out Directive 2004/83/EC was implemented by The Refugee or Person in Need of International Protection (Qualification) Regulations 2006
If the Directive has not been transposed, are there plans of doing so? E.g. proposals for legislation		Not for Directive 2011/95/EC
If the Directive has not been		UK has opted out of Directive 2011/95/EC

transposed and there are no plans of doing so, is there any reason why not? (e.g. Government might be of opinion that it is covered by existing legislation)		
<b>Additional Comments</b>		

## H. Regional and Local Legislation

(Note: Most cities are covered by the national civil and criminal legislation and there will not be any legislation as such at local or regional level. This might be different in a Federal state, where there may be legislation at regional level. At local level there might be regulations, policies and practices)

<b>Is there any regional or local legislation that could be relevant in relation to homophobia and transphobia? If so, describe this?</b>

## POLICIES

<b>Are there any national policies in relation to homophobia and transphobia, especially in the areas mentioned in the guiding themes? If so describe these and indicate whether they can be seen as examples of good practice.</b>
<p>Although the hate crime provisions in criminal law are limited to race and religion, the sentencing provisions of Criminal Justice Act 2003 (for enhanced punishment) and police, prosecution and other agencies policies on recording hate crime also cover sexual orientation, disability and transgender. See for example:  Crown Prosecution Service: Homophobia and Transphobia and the policy leaflets there:  <a href="https://www.cps.gov.uk/publications/prosecution/homophobia.html">https://www.cps.gov.uk/publications/prosecution/homophobia.html</a>  College of Policing, hate crime operational guidance:  <a href="http://www.report-it.org.uk/files/hate_crime_operational_guidance.pdf">http://www.report-it.org.uk/files/hate_crime_operational_guidance.pdf</a>  Home Office Hate Crime, England and Wales, 2014-2015, Hannah Corcoran, Deborah Lader and Kevin Smith, Statistical Bulletin 05/15, 13<sup>th</sup> October 2015:  <a href="https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/467366/hosb0515.pdf">https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/467366/hosb0515.pdf</a></p>
<b>Are there any regional policies in relation to homophobia and transphobia, especially in the areas mentioned in the guiding themes? If so describe these and indicate whether they can be seen as examples of good practice.</b>
These should come out of the fieldwork
<b>Are there any local policies in relation to homophobia and transphobia, especially in the areas mentioned in the guiding themes? If so describe these and indicate whether they can be seen as examples of good practice.</b>
Ibid

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**PRACTICES**

<p><b>Are there any national practices in relation to homophobia and transphobia, especially in the areas mentioned in the guiding themes? If so describe these and indicate whether they can be seen as examples of good practice.</b></p>
<p>See above under policies. The CPS leaflets could be seen as examples of good practice. See also: N. Chakraborti and S-J Hardy, LGB&amp;T Hate Crime Reporting: Identifying Barriers and Solutions, 2015, research report for the Equality and Human Rights Commission: <a href="http://www.equalityhumanrights.com/sites/default/files/publication_pdf/LGBT%20hate%20crime%20reporting%20research%20report_0.pdf">http://www.equalityhumanrights.com/sites/default/files/publication_pdf/LGBT%20hate%20crime%20reporting%20research%20report_0.pdf</a></p> <p>Work of Stonewall: <a href="http://www.stonewall.org.uk">www.stonewall.org.uk</a></p>
<p><b>Are there any regional practices in relation to homophobia and transphobia, especially in the areas mentioned in the guiding themes? If so describe these and indicate whether they can be seen as examples of good practice.</b></p>
<p>Work of gallop (<a href="http://www.galop.org.uk">www.galop.org.uk</a>) can be seen as examples of good practice. Galop is London's LGBT anti-violence &amp; abuse charity.</p>
<p><b>Are there any local practices in relation to homophobia and transphobia, especially in the areas mentioned in the guiding themes? If so describe these and indicate whether they can be seen as examples of good practice.</b></p>
<p>Should come out of field work</p>