

Fundacja Równość.org.pl submission to the call for input: protection against violence and discrimination based on sexual orientation and gender identity, in relation to the human rights to freedom of expression, association and assembly

1. There are a multitude of laws and prohibitions affecting the exercising of freedom of expression by civil society organisations or LGBTI human rights defenders.
2. Multiple human rights defenders were persecuted under article 196 of the Criminal Code – offending religious feelings. Activists protesting against homophobia of the Catholic Church have created and presented the image of Virgin Mary with rainbow halo. Three activists distributed and posted those images in Płock, were later arrested and prosecuted under aforementioned law. People that wore this image on their t-shirts or held printed posters of it had their identity papers verified by the police and later accused of offending religious feelings.
3. Article 196 is used to maintain hegemony of the Catholic Church, especially against other religious organisations supporting LGBTI rights. In 2019, during the Warsaw Pride, priest of a minor protestant church, provided ecumenical service and was later accused using the same article of impersonating a real priest and defaming service with use of rainbow.
4. Under article 251 of the Criminal Code – monument profanation or broadly defined article 288 – vandalism, activists that simply put rainbow flags on several monuments were targeted by law enforcement authorities. Similarly harassed and arrested were persons that wrote statement against hate from the government in chalk or using spray paint on governmental buildings.
5. The illegally appointed Constitutional Tribunal, during constitutional review of case K 16/17 in 2019, found unconstitutional article 138 of the Petty

- Offences Code – discrimination in access to services, where it affirmed that printer could refuse providing service to LGBTI organisation based on conscience clause.
6. The Ministry of Education and local Boards of Education harassed schools that publicly announced their desire to conduct events on sexual diversity under the “Rainbow Friday” campaign. Schools were audited, teachers and directors were threatened with dismissal.
 7. The Ministry of Education proposed a novelisation of Education law severely affecting access of civil society organisations to school, particularly targeting anti-discrimination groups and external comprehensive sexual education tutors.
 8. The bill criminalising providing sexual education that included informing students on sexual orientation, gender identity or pleasure-inclusive approach to CSE has passed through the first reading in Parliament. This bill will be debated again in February 2024.
 9. The bill criminalising public messaging in the support of LGBTI community, banning pride marches affecting freedom of assembly of LGBTI NGOs and copying other solutions proposed in Russian gay propaganda law has passed through the first reading in Parliament. This bill will be debated again in February 2024.
 10. There is a broad range of unlegislated practices used to seriously hinder the exercising of freedom of association and freedom of expression of LGBTI community.
 11. The National Court Register in 2016 refused registration of Fundacja Akceptacja, as it did not consider trans rights as a socially beneficial cause. It finally relented when the aforementioned organisation removed such provisions from its by-laws.
 12. Under Act on assemblies, notice of intent of organising an assembly must be provided to the local authority no later than 48 hours in advance of assembly that does not cause traffic disruptions or not later than 6 days before and 30 days earlier than the planned date of assembly disrupting traffic.

Novelisation of Act on assemblies from 2015, severely limited right to counter demonstration. Priority in choosing place and time of assembly is determined by the order of submitting notice of intent of organising an assembly. Furthermore distance between assemblies has been specified to at least 100 metres.

13. Present legal framework leads to the situation where exercising one's freedom of assembly can be used to grievously limit freedom of assembly of others. Race in sending of notices is a standard custom between pride marches organisers and far-right groups, where the latter try to utilise it to block pride marches. Certain city halls (Szczecin) requested IT experts to determine the order of submission of notices. However, in the judgment of the District Court in Białystok it was established that the minute, not the second, of submission is decisive.
14. There is no obligation of organisers to hold their rallies throughout their entire duration as stated in the notice. Legislators left a legal loophole by not considering assemblies lasting longer than one day. This allowed organisers to bypass the lower notification limit no earlier than 30 days before the planned date of the assembly. Local government authorities differed in their interpretations - some called on the notifier to fill in the gaps and report separate assemblies (Gdańsk), each lasting at most one day, others, such as Kraków, accepted these notifications in accordance with the letter of the law. All those practices are very often used to stop, discourage and render freedom of assembly null of pride organisers.
15. In the novelisation of Act on assemblies from 2016, legislators introduced a new type of an assembly - a cyclical assembly, which has priority over others demonstrations in choosing of place and time, even the ones that were notified earlier. Law avowedly favours assemblies celebrating events of historical, religious and patriotic importance.
16. The majority of decisions of the local government banning assemblies were issued against pride marches. Furthermore, certain cities have procedures

regarding notice of intent of organising an assembly, where the organisers are burdened with unlawful obligations and prohibitions.

17. Additionally freedom to spontaneous assembly is severely limited to LGBTI activists. Local authorities and law enforcement officials dissolved such assemblies instantly (Queer Tour – 20th September 2020) or used excessive force and arrested participants and bystanders (Rainbow Night - 7th August 2020).
18. Between 2018-2022 multiple local authorities have adopted so-called LGBT free zone resolutions. They were often symbolic in nature, indicating that LGBTI activism is undesirable and stating that discrimination is permissible, but had a real impact on the rise in verbal and physical violence against LGBTI persons, as well as limiting access to services. Our Foundation was refused rental of venues owned by local authorities for LGBTI events by two of such cities.
19. Public broadcaster was actively engaged in campaign attacking LGBTI community and discrediting work LGBTI civil society organisations. Undercover media workers infiltrated LGBTI organisations trying to gather materials slandering their work. On 10th October 2019 it broadcasted a propaganda movie “Invasion” just before parliamentary elections. In 2022 public broadcaster was sued by one of the LGBTI NGO - it lost, was forced to apologise to the aforementioned organisation and adjudged to donate to other LGBTI organisation.

Fundacja Równość.org.pl together with Stowarzyszenie Tęczowe Opole is currently writing a report on freedom of assembly of minority groups in Poland that would be ready by the end of February 2024.

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