

Territorial self-government and “LGBT-free zones”

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ABSTRACT

Several dozen of self-governments – municipal and county councils and regional assemblies passed resolutions and declarations against the LGBT ideology. The authors of these documents emphasized the will to protect the family based on traditional values and to defend the education system against LGBT propaganda/ideology. Opponents warned against the stigmatization of non-heteronormative people. The guideline for the above-mentioned documents became the “Local Government Charter of Family Rights”, published in 2019. Signs “LGBT-free zone” have appeared at the entrances to areas administered by self-governments that have adopted such declarations or resolutions. The dispute has become increasingly wide-ranging and has involved the media, the courts, the prosecutor’s office, the Ombudsman, the European Parliament, and the European Commission.

The author of this article does not take sides. He merely believes that unnecessary quarrels harms our country. To demonstrate the absurdness of the argument over “LGBT-free zones”, the article refers to: – the selected documents relating to local government (declarations, resolutions, court judgments) and the “Local Government Charter of Family Rights” – generally binding acts of law relating to the self-government, family and educational tasks; – biographies of people (e.g. writers) who should be considered positive in Polish and World history, despite their complicated family life.

The selection of the analyzed data can be considered subjective. The author chose the documents of local governments of Małopolska and Beskid Mountains, because he considers the areas managed by them to be very attractive for tourists – he likes to spend holidays in Cracow, Zakopane and Beskid Śląski and Żywiecki, e.g. in Koniaków and Żywiec. The reading list for secondary schools, adopted by the Minister of National Education, determined the selection of writers’ biographies. The choice of the others was determined by the uniqueness of their biographies and the impact on the history of Poland and the world. Finishing work on the article in March 2022, the author consciously introduced the theme of Ukraine.

Key words: LGBT, “LGBT-free zones”

“LGBT-free zones” – the genesis of the dispute

LGBT is an initialism that stands for lesbian, gay, bisexual, and transgender. These people believe that they have been and are treated worse than heterosexuals. According to the statements of Robert Biedroń, a member of the European Parliament, there are at least 2 million non-heteronormative people living in Poland. It is difficult to verify as no relevant data was found in the Central Statistical Office.

Article 32 of the Constitution of the Republic of Poland unequivocally states:

- “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.”

In Poland, homosexuality is not considered as a crime and is therefore not punishable. According to the Penal Code (CC), procurement and pimping are punishable [Article 204 § 1, § 2 and § 3 of the CC]. This was also the case in the interwar period, after the entry into force the Criminal Code (CC) of 1932, which is no longer in operation. Only same-sex prostitution was punished. “Anyone who offers himself to a person of the same sex for a lewd act, shall be punished by imprisonment for up to 3 years” [Article 207 of the 1932 CC]. So we were more liberal than, for example, Great Britain, where even after the Second World War a gay could be sent to prison or forced to undergo therapy.

Despite such unambiguous provisions of the Constitution, LGBT persons believe that in Poland they are not equal before the law and are seeking to change it. They complain about inability to enter into marriage or partnerships and adopt a child, about complicated inheritance procedures and problems with gender reassignment. They highlight social ostracism, which in extreme cases turns into hostility leading to aggression and violence. They indicate that incitement to hatred based on sexual orientation is not protected by the Penal Code, which only prohibits insults based on national, ethnic, racial and religious affiliation [Article 256 § 1 and Article 257 of the Penal Code]. LGBT people strive for changes to the law and social acceptance by organising various actions – the most well-known are marches/parades for equality. The legalization of same-sex marriages and adoption of children by these couples has been discussed in the Parliament for years. So far, the Parliament has not dared to pass such legislation, which should be considered as a disapproval.

The LGBT community considered as an extreme manifestation of discrimination the declarations and resolutions adopted by local governments on opposition to LGBT ideology and protection of the family based on traditional values. Signs reading “LGBT-free zone” appeared on the roads, at the entrances to areas managed by local government officials who adopted such documents. It was supposed to be a kind of warning – attention, the authorities of these areas stigmatize non-heteronormative people. The signs were put up by the “invisible hand” and local government officials felt offended.

The dispute became more and more widespread and involved TV stations, newspapers, courts and the Ombudsman. According to media reports, both the European Parliament and the European Commission had condemned the conduct of local authorities discriminating against LGBT people and warned that it may result in the suspension of EU funds for Poland.

The foreground of the dispute over “LGBT-free zones” was the “The Local Government Charter of Family Rights” published in 2019”, the author of which is the

non-governmental foundation The Ordo Iuris Institute for Legal Culture. The Charter states that “attempts have been made to undermine at the local government level the constitutionally guaranteed family rights, including the rights of parents and children, and the legal identity and systemic position of marriage”. The activities of the local governments of Słupsk and Gdańsk and, above all, the LGBT+ Declaration signed by the Mayor of Warsaw were pointed out. The authors of the Charter recognised that in this situation “it is necessary to take sides with the values protected by the Constitution – the identity of marriage as a union of a man and a woman, the protection of the family and parenthood (Article 18), the right to protect family life (Article 47), the right of parents to bring up their children according to their own convictions (Article 48(1)) and the principle of protection of children against demoralisation (Article 72(1))”.

Although the authors of the Charter admitted that the local government is not entitled to set the curriculum, they believe that it should know the views of the NGOs with which schools cooperate. They postulate that “public funds should not be allocated to projects which nature implies questioning the constitutional identity of marriage as a union of a man and a woman and the identity and autonomy of the family”.

The Charter has become a kind of a guideline for declarations and resolutions on opposition to LGBT ideology, adopted by dozens of local authorities – municipal and district councils and regional assemblies (examples below). For the sake of precision, the articles of the Constitution referred to in the Charter were quoted:

- Article 18 Marriage, being a union of a man and a woman, as well as the family, motherhood and parenthood, shall be placed under the protection and care of the Republic of Poland”.
- Article 47 “Everyone shall have the right to legal protection of his private and family life, of his honour and good reputation and to make decisions about his personal life”.
- Article 48 paragraph 1 “Parents shall have the right to rear their children in accordance with their own convictions. Such upbringing shall respect the degree of maturity of a child as well as his freedom of conscience and belief and also his convictions”.
- Article 72(1) “The Republic of Poland shall ensure protection of the rights of the child. Everyone shall have the right to demand of organs of public authority that they defend children against violence, cruelty, exploitation and actions which undermine their moral sense”.

Declarations and resolutions of local governments – examples

The declarations and resolutions that have contributed to the dispute over “LGBT-free zones” were based on “The Local Government Charter of Family Rights” by municipal, district and provincial councillors. The message of these documents is similar, so there is no need to discuss all of them in this article, especially since some of them have already been repealed. To illustrate the way of thinking of local government officials, three examples will suffice.

In the Declaration of the Regional Assembly of the Małopolska Region, adopted on April 29, 2019, the following was written: “As Councillors of the Małopolska Voivodeship we declare support for the family based on traditional values and defence of the education system against LGBT propaganda threatening the proper development of the young generation. We declare that the Regional Assembly of the Małopolska Region, in carrying out its public tasks, will be faithful to the national and state tradition, bearing in mind the thousand-year tradition of Christianity in Poland and the centuries-old attachment of Poles to freedom”. The Declaration was repealed in September 2021.

The Declaration of the Council of the Jordanów Commune on opposition to the introduction of “LGBT” ideology to local communities states: “we declare support for the family based on traditional values and the protection of the educational system against LGBT propaganda that threatens the proper development of the young generation”.

In the resolution of the Istebna Commune Council on stopping LGBT ideology by the local community it is written: “Radicals striving for a cultural revolution in Poland attack freedom of speech, the innocence of children, the authority of family and school and the freedom of entrepreneurs. That is why we will consistently defend our local community! For the sake of life, family and freedom, we declare that the self-government we represent – in accordance with our centuries-old culture based on Christian values – will not interfere in the private sphere of Polish families’ life. We will not allow ourselves to be imposed upon by the exaggerated problems and artificial conflicts brought about by “LGBT” ideology.

These documents show that the family based on traditional values is under threat. This threat is posed by LGBT ideology/propaganda, which invades schools and eliminates a centuries-old culture based on Christian values.

The Act on Municipal Self-Government (usg) states that satisfying the needs of the local community is one of the commune’s own tasks [Article 7(1) usg]. The list of own tasks is extensive and includes such matters as:

- “supporting the family and the system of foster care” [Article 7(1) (6a) usg];
- “public education” [Article 7(1)(8) usg].

Local self-governments considered that these provisions gave them the right to adopt declarations and resolutions concerning family protection and the education system. However, they have not defined what a family based on traditional values is, nor the LGBT ideology that threatens such a family.

The resolution of the Istebna Commune Council was appealed by the Ombudsman, and the Provincial Administrative Court on July 14, 2020 declared the resolution invalid. The Ombudsman alleged a violation of:

- a number of articles of the Constitution;
- Article 6 and Article 18 of the Act on Municipal Self-Government “by exceeding the scope of the commune’s activity and the scope of jurisdiction of the commune council, as well as sovereign interference in the scope of competence of other public authorities, including executive bodies of local self-government and government

administration bodies, and consequently, the lack of legal basis and violation of the constitutional principle of legality, which shows that public authorities act on the basis and within the limits of the law”.

Translating this into language that is understandable not only for lawyers – a number of other acts of law refer to the issues of family and education, which the Council of Istebna Commune and probably other self-governments did not take into account.

It is worth noting that the Ombudsman alleged the violation of, inter alia, Articles 47 and 48(1) of the Constitution, which referred to in “The Local Government Charter of Family Rights”. As you can see, the Constitution is understood differently by different bodies. However, it cannot be denied that everyone, regardless of sexual orientation, has the right to protection of private life, honour and reputation. Parents can raise their children according to their own beliefs. If they want their son or daughter to know who LGBT people are, the Constitution does not prohibit that.

The Ombudsman also pointed out that it is impossible to determine unequivocally what the term LGBT ideology means. Indeed, no definition of the term has been found in the Polish legal system. The only definition that has been found is provided by Wikipedia. “LGBT ideology, gender ideology, less commonly homosexual propaganda, homopropaganda – terms used in media and political statements in Poland, related to the populist anti-LGBT rhetoric. What is called LGBT ideology or gender ideology does not, in fact, meet the criteria of the ideology. According to researchers analysing terms such as “gender ideology” or the so-called “homosexual agenda”, these entities do not exist apart from the anti-LGBT propaganda rhetoric, and suggesting that they do exist has sometimes been described as a form of conspiracy theory” [I.LGBT].

The Polish legal system also fails to define the term of a family, let alone a family based on traditional values. The Constitution of the Republic of Poland specifies only that marriage is a union of a man and a woman, but it does not equate the concepts of: marriage, family, motherhood, parenthood [Article 18].

The Family and Guardianship Code states: “The spouses have equal rights and obligations in marriage. Are required to cohabitation, mutual assistance and fidelity, and to work together for the good of the family, which by its association was founded” [Article 23]. The Act on Counteracting Domestic Violence refers to a family member. This term means “the closest person within the meaning of Article 115 § 11 of the Act (...) Penal Code (...), as well as another person cohabiting or managing together” [Article 2, point 1]. The Criminal Code states: “A next of kin is a spouse, an ascendant, descendant, brother or sister, relative by marriage in the same line or degree, a person being in an adopted relation, as well as his spouse, and also a person actually living in co-habitation” [Article 115 § 11 of the Penal Code].

To sum up, family members are: spouses and their children; immediate relatives, e.g. ascendants, descendants, siblings; persons actually living in co-habitation who do not necessarily have to be of the opposite sex and who do not necessarily have to get married.

You are a family member regardless of your sexual orientation. People of the same sex living together also form a family. It is not clear what kind of family based on traditional values the local government wants to protect and promote.

If it is not clear what the LGBT ideology and the family based on traditional values are, then it is also not clear what the defense of the education system against this ideology is in the name of the good of such a family. The basic act of legislation concerning the educational system in Poland is the Act on Education Law (uPo).

“Education in the Republic of Poland is the common good of the entire society; it is guided by the principles contained in the Constitution of the Republic of Poland, as well as the indications contained in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child. Education and upbringing – while respecting the Christian system of values – is based on universal principles of ethics. Education and upbringing serve to develop in young people a sense of responsibility, love for the homeland and respect for the Polish cultural heritage, while being open to the values of European and world cultures. The school should provide every student with conditions necessary for his or her development, prepare him or her to fulfil family and civic duties based on the principles of solidarity, democracy, tolerance, justice and freedom” [uPo preamble].

As can be seen from the above, the Polish education system is based on universal principles of ethics, openness to the values of world cultures, democracy and tolerance. In the quoted the Act on Education Law and other acts of law concerning education there is no prohibition to teach about non-heteronormative people or people living in informal relationships, as discussed below.

The Minister of Education and Science has issued a number of executive regulations concerning the curriculum of different types of schools. The 2019 ordinance on framework curricula for public schools, as the name suggests, defines the curriculum of each type of school. The basic subjects are Polish, history and mathematics. Polish schools also teach a range of other subjects, such as music and art. An extensive reading list for secondary schools is included in the regulation on the core curriculum of general education for general secondary schools, technical secondary schools and industry secondary schools, issued in 2018. The compulsory range includes *Gloria victis* by Eliza Orzeszkowa. Complementary readings include *On the Niemen* by Eliza Orzeszkowa, a selection of poems by Maria Konopnicka and selected short stories by Jarosław Iwaszkiewicz. Recommended film works are *Nights and Days* directed by Jerzy Antczak, based on a novel by Maria Dąbrowska.

Maria Dąbrowska (1889–1965), Jarosław Iwaszkiewicz (1894–1980) and Maria Konopnicka (1842–1910) were non-heteronormative and can be described as bisexual. For example, Iwaszkiewicz had two daughters with his wife Anna, but also his sexual partner was the prominent composer Karol Szymanowski. Eliza Orzeszkowa (1841–1910) annulled her marriage and got involved with a married man. Yet these writers became

part of our history through their work. Dąbrowska, Iwaszkiewicz and Orzeszkowa were nominated for the Nobel Prize. Konopnicka is one of the greatest writers in the history of Polish literature. Her best known works are fairy tales and poems for children, as well as *Rota* published in "Gazeta Cieszyńska" in 1908. In 1910, Feliks Nowowiejski composed music to the words of *Rota*. This is how a patriotic song was created, which encouraged Poles to fight for their own identity.

In history lessons, in every Polish school, children and teenagers learn about Józef Piłsudski (1867–1935). He is admired for regaining Poland's independence in 1918 and for his victory in the Polish-Soviet war in 1920. Piłsudski's intimate life was as turbulent as his political activity. Being married, he met Aleksandra Szczerbińska in 1906. The daughters of Piłsudski and Aleksandra were born in an informal relationship – Wanda in 1918, Jadwiga in 1920. Only after the death of his wife, in 1921, the Marshal married Aleksandra. Only after his wife's death, in 1921, the Marshal married Aleksandra. Piłsudski was also suspected of having an affair with the doctor Eugenia Lewicka, who died in 1931, probably committing suicide.

One of the greatest men of all time was Leonardo da Vinci (1452–1519) – Renaissance artist and scholar, painter, sculptor, architect, engineer. His most famous works are the *Mona Lisa* (Louvre Museum in Paris) and *The Last Supper*, performed on the wall of the Dominican Monastery at the Basilica of Santa Maria delle Grazie in Milan. Poland prides itself on the painting *the Lady with an Ermine* (National Museum in Cracow). In 1476, Leonardo da Vinci was accused of homosexual contacts. Fortunately, the Florentine police authority "without specifying 'guilt', limited itself to a warning and an official reprimand" [I.LV].

When teaching history of the the Second World War, it is impossible not to talk about Alan Turing (1912–1954), an outstanding British mathematician and cryptologist, considered one of the founders of computer science and computers. During the war, based on the achievements of Polish mathematicians – Marian Rejewski, Jerzy Różycki and Henryk Zygalski – he broke the codes of the German Enigma. Turing was gay, and homosexuality in Britain was prosecuted by law. "Sentenced by the court, facing the prospect of imprisonment, he chose compulsory hormonal treatment as a milder option. It had lamentable side effects, both both in the physical and mental spheres" [Grajek 2007, pp. 666–667]. In June 1954, he committed suicide.

Finally, it is worth mentioning one more non-heteronormative figure whose extraordinary life is associated with both the Beskids and Ukraine. Wilhelm von Habsburg (1895–1948) was the son of Archduke Karol Stefan, a candidate for king of Poland during the First World War and owner of the famous brewery in Żywiec. He probably visited the area of today's Istebna commune, because until 1918 the Beskids were part of the Habsburg monarchy. Wilhelm devoted his life to fighting for Ukraine's independence, aspiring to become its king. He is known as Vasyl Vyshyvani. The surname comes from the shirts worn by the prince, embroidered like Ukrainian folk costumes. In August 1947, while living in Vienna, he was kidnapped and transported to the Soviet

Union. In May 1948, “a Soviet tribunal found Wilhelm guilty of aspiring to the Ukrainian throne in 1918, commanding the Free Cossacks in 1921 and collaborating with British and French intelligence during and after the war”. Soviet law was retroactive and extra-territorial, reaching back to the times before the creation of the Soviet Union and into areas over which Moscow never had sovereignty” [Snyder 2010, p. 253]. Wilhelm died in a Kyiv prison in 1948.

Questions and suggestions

A self-governing community is legally formed by the inhabitants of the municipality [Article 1, Sec. 1 of The Act on Municipal Self-Government], and the regional self-governing community is created by law by the inhabitants the voivodeship [Article 1, Sec. 1 of Voivodeship Self-Government Act]. As it results, self-governing communities are made up of all inhabitants of communes and provinces, including LGBT people.

The own tasks include, inter alia, the matters of:

- “support and dissemination the idea of self-government” [Article 7(1)(17) usg];
- “promotion of the municipality” [Art. 7(1)(18) usg].

Stigmatising LGBT people is a negation of the idea of self-government. It has nothing to do with promoting communes or voivodeships. On the contrary, it may deprive the attractive areas of Małopolska and the Beskids of tourists.

Councillors, who declare the protection of the family based on traditional values and the defense of the educational system against LGBT propaganda/ideology, should be asked:

- Does the family life of Eliza Orzeszkowa and especially Józef Piłsudski meet their requirements?
- Should the works of Maria Dąbrowska, Jarosław Iwaszkiewicz and Maria Konopnicka be removed from school reading?
- Should the National Museum in Cracow stop boasting about Leonardo da Vinci’s painting *The Lady with an Ermine*?
- Should Karol Szymanowski’s music concerts be banned, and the museum in Zakopane devoted to the composer closed?
- Should we stop boasting about the Poles’ contribution to the breaking of the Enigma code, because they passed their achievements on to a homosexual?
- The councillors of the Istebna commune should additionally be asked whether the youth of the Cieszyn and Żywiec poviats should learn about the history of the Habsburgs who govern these areas, known as the Polish Habsburgs, since there was a person like Wilhelm among them?

There is also the question of the famous lace from the village Koniaków (a village in the Istebna commune). Does the skimpy lingerie (thongs) made from Koniaków lace, sold throughout Poland, favors family life based on traditional values? And what if people wearing lace from Koniaków appear at equality parades – is this an advertisement for entrepreneurs or a public scandal?

And finally, a question for everyone – is the dispute over “LGBT-free zones” good for Poland?

An indispensable condition for the fulfilment of the principle of openness to the values of the cultures of Europe and the world, as set out in the Education Law, is speak about outstanding people, regardless of whether they were heterosexual or non-heteronormative. Teaching about such people in schools has nothing to do with a lack of respect for the Christian value system. It only testifies to the reliability of the education system and respect for the universal principle of tolerance. The examples of Leonardo da Vinci and Alan Turing clearly show how important tolerance is – the approach of the Florentine authorities allowed a brilliant artist to flourish, while the repressive British system destroyed the genius mathematician.

The reading list compiled by the Minister of Education and Science included works by non-heteronormative people. Reading such books by young people was not considered demoralising. It is worth mentioning that Jarosław Iwaszkiewicz had an audience with Pope John XXIII in 1962, and a private audience with John Paul II in 1989. It is difficult to assume that Karol Wojtyła did not know about the writer’s sexual orientation, especially since Iwaszkiewicz’s sexual partner was Szymanowski, who, like the Pope, was emotionally connected with the Tatra Mountains. Could it be that popes are more tolerant than local government officials?

Konopnicka’s bisexuality also does not bother the Polish People’s Party, the roots of which date back to the end of the 19th century (the People’s Party was founded in 1895). The *Rota* is “a kind of anthem” of this party.

As you can see, not everyone in Poland wants to stigmatise people living in informal relationships, especially non-heteronormative people. Fortunately, the arguments about “LGBT-free zones” will go down in history. When emotions subside, it is important to consider what to do to prevent such conflicts from occurring in the future. The LGBT communities should also consider whether they are provoking hostile behaviour towards each other. Non-heteronormative people seek social acceptance by organising various actions, such as equality parades. Unfortunately, the obtained effect is often different from the intended one. The participants of the marches are accused of vulgarity, depraving children and even of violating the religious feelings of believers. Such an assessment is undoubtedly influenced by the behaviour of people participating in the parades, especially by their excessively skimpy outfits. Perhaps at equality marches, instead of naked bodies, we should present the silhouettes and achievements of, for example, Leonardo da Vinci or Alan Turing.

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Samorząd terytorialny a „strefy wolne od LGBT”

STRESZCZENIE

Kilkadziesiąt samorządów terytorialnych – rad gmin i powiatów oraz sejmików województw podjęło uchwały i deklaracje w sprawie sprzeciwu wobec ideologii LGBT. Twórcy tych dokumentów podkreślali chęć ochrony rodziny opartej na tradycyjnych wartościach oraz obronę systemu oświaty przed propagandą/ideologią LGBT. Przeciwnicy ostrzegali przed stygmatyzacją osób nieheteronormatywnych. Wytoczną dla powyższych dokumentów stała się upubliczniona w 2019 r. „Samorządowa Karta Praw Rodzin”. Przy wjazdach na tereny zarządzane przez samorzady, które przyjęły takie deklaracje czy uchwały, pojawiły się tabliczki z napisem „Strefa wolna od LGBT”. Spór zaczął zataczać coraz szersze kręgi, włączyły się media, sądy, prokuratura, Rzecznik Praw Obywatelskich, Parlament Europejski i Komisja Europejska. Autor artykułu nie opowiada się po żadnej z polemizujących stron. Uważa jedynie, że niepotrzebne kłótnie szkodzą naszemu krajowi. Dla wykazania absurdalności sporu o „strefy wolne od LGBT”, w artykule odniesiono się do:

- wybranych dokumentów dotyczących samorządu terytorialnego (deklaracje, uchwała, wyrok sądu) oraz „Samorządowej Karty Praw Rodzin”;
- powszechnie obowiązujących aktów prawa odnoszących się do zadań własnych samorządu terytorialnego, rodziny oraz oświaty;
- biografii osób (np. pisarzy), które zapisały się pozytywnie w historii Polski i świata, mimo pogmatwanego życia rodzinnego.

Dobór analizowanych danych można uznać za subiektywny. Autor wybrał dokumenty samorządów Małopolski i Beskidów, bo zarządzane przez nie tereny uważa za bardzo atrakcyjne dla turystów – lubi spędzać wakacje w Krakowie, Zakopanem oraz Beskidzie Śląskim i Żywieckim, np. w Koniakowie i Żywcu. Wykaz lektur dla szkół ponadpodstawowych, przyjęty przez Ministra Edukacji Narodowej, zdecydował o doborze biografii pisarzy. O wyborze pozostałych osób przesądziła niezwykłość ich życiorysów oraz wpływ na historię Polski i świata. Kończąc pracę nad artykułem w marcu 2022 r. autor świadomie wprowadził wątek Ukrainy.

Słowa kluczowe: LGBT, „Strefa wolna od LGBT”

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