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## **The EU and Poland: discursive and legislative approaches towards LGBT rights (2007 - 2020)**

Bijman, Maurits

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**Ma Thesis European Union Studies:**  
**The EU and Poland: discursive and legislative approaches towards LGBT rights**  
**(2007 – 2020)**

**Name Student: Maurits Bijman**

**Student Number: s2189631**

**Thesis Supervisor: Dr. De Coninck**

**Second reader: Dr. Shaev**

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## Chapter 1: LGBT rights in Poland and its connection to the EU

“LGBT ideology weakens the west and terrorizes people” (Kaczynski, deputy prime minister of Poland).<sup>1</sup>

### Chapter 1.1 Introduction: LGBT rights in Poland: beyond the private sphere<sup>2</sup>

LGBT rights are fiercely a debated topic in Polish politics as well as in the academic literature. Importantly, the topic of LGBT rights has been outed from the “apolitical sphere” since the collapse of communism, and more intensely, since Polish membership of the EU in 2004.<sup>3</sup> O’Dwyer has argued that politicization of the LGBT has brought opportunities for the LGBT movement unprecedented under communist rule, Poland has come close to enacting registered partnerships for example.<sup>4</sup> Yet, as LGBT people and their rights become political debates, the risk exists for their rights being weaponized for political purposes. LGBT people could be systematically stigmatized by governments and enact discriminatory laws directed towards them. Furthermore, this stigmatization may lead to social exclusion and general hostility towards LGBT people.<sup>5</sup> On the other hand, the concept of Homonationalism, developed by Puar has shown that acceptance of LGBT rights can be used as a political tool to exclude others.<sup>6</sup> She has argued that as Western societies have become more accepting of queer identities, certain groups of people risk being stigmatized as homophobic. This discourse usually presents one group as homogenously LGBT-friendly whereas it portrays another group as homogenously LGBT un-friendly. LGBT rights are then used to attack certain groups of people who are portrayed as homophobic such as immigrants and Muslims.<sup>7</sup>

This highlights that homosexuality can be symbolically important; this is arguably also the case in Poland.<sup>8</sup> Several scholars have used the term “litmus test” in relation to LGBT rights. The political willingness to ensure LGBT rights as well as societal acceptance of LGBT people has come to be an important standard by which to judge the degree of ‘Europeanness’ of Poland and other Eastern European states.<sup>9</sup> The relationship between ‘Europeanness’ and LGBT rights is well demonstrated by the fact that European symbols such as the EU flag, are used at gay prides.<sup>10</sup> The implication of this logic could be that, if one opposes LGBT rights one also opposes (a certain version of) the EU which has come to symbolize acceptance of LGBT identities in the minds of some LGBT activists and their

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<sup>1</sup> “LGBT “ideology weakens the west and terrorises people”, warns Polish leader Kaczyński”, Notes from Poland, last modified April 2, 2021, <https://notesfrompoland.com/2021/04/02/lgbt-ideology-weakens-the-west-and-terrorises-people-warns-polish-leader-kaczynski/>.

<sup>2</sup> LGBT is an acronym that stands for lesbian, gay, bisexual and transgender

<sup>3</sup> Conor O’Dwyer, “The Benefits of Backlash: EU Accession and the Organization of LGBT Activism in Postcommunist Poland and the Czech Republic.” *East European Politics and Societies and Cultures* 32, no. 4 (2018): 893 – 894.

<sup>4</sup> Conor O’Dwyer, *Coming out of Communism: The Emergence of LGBT Activism in Eastern Europe* (New-York: New York University Press, 2018), 161 - 162.

<sup>5</sup> Joanna Chojnicka, “Anti-EU and Anti-LGBT Attitudes in Poland: Considering Quantitative and Qualitative Evidence,” *Baltic Journal of European Studies* 5, no. 2 (2015): 30 –31.

<sup>6</sup> Jasbir Puar, “Rethinking Homonationalism,” *International Journal of Middle East Studies* 45, no. 2 (2013): 336.

<sup>7</sup> Puar, “Homonationalism,” 337.

<sup>8</sup> O’Dwyer, *Coming out*, 59.

<sup>9</sup> O’Dwyer, “Backlash,” 894.

Kevin Moss, “Split Europe: Homonationalism and Homophobia in Croatia.” In *LGBT Activism and the Making of Europe : A Rainbow Europe?*, ed. Philip Ayoub and David Paternotte (London: Palgrave Macmillan, 2014), 212.

<sup>10</sup> Philip M. Ayoub, “With Arms Wide Shut: Threat Perception, Norm Reception, and Mobilized Resistance to LGBT Rights.” *Journal of Human Rights* 13, no. 3 (2014): 353.

Magdalena Mikulak, “Godly Homonormativity: Christian LGBT Organizing in Contemporary Poland.” *Journal of Homosexuality* 66, no. 4 (2019): 492.

opponents.<sup>11</sup> Mikaluk identifies that homosexuality has been used “*as a political tool*” by “the Polish right” to mobilize the electorate.<sup>12</sup> However, little attention has been paid to the other side of the coin; To what extent are LGBT rights used as a political tool by pro-LGBT forces? Moreover a large portion of the scholarly literature on LGBT rights has focused on activist circles.<sup>13</sup> This research will focus on another domain, that of governmental politics. It will consider the legislative and the discursive approaches Polish governments have taken towards LGBT rights since from 2007 while taking into account interactions between the national and the European level. In doing so the analysis not focuses on under-studies areas, it also actively considers legislation which is relatively rare in the academic literature of LGBT rights in Poland.

The research question is as follows:

In what way have LGBT rights been used as a political tool by Polish governments and how does this relate to Poland’s EU membership? (2007 – 2020)?

The period from 2007 – 2020 has been chosen because during this period governments with differing attitudes vis-à-vis the EU and LGBT rights were in power.<sup>14</sup> For the remainder of chapter 1, the relevant literature with regard to the research question will be reviewed and the research method will be laid down.

## 1.2 Literature review

For the lion share of socialist Poland’s existence, homosexuality was largely absent from mainstream political debate, as it was “*treated as a social taboo*”.<sup>15</sup> Arguably, a big break-through for LGBT rights came about when Poland was in the process of joining the EU.<sup>16</sup> Scholars have argued that opponents and critics of EU membership used homosexuality as a “*scapegoat*” to signal resistance towards EU norms and to channel fears over increased globalization.<sup>17</sup> Moreover, the debates around the topic of LGBT rights (in Poland and elsewhere) have been connected by scholars to modernity. The rejection of LGBT identities and coining them as “*foreign*” or “*western*” could symbolize the rejection of Western modernity. Rejecting Western modernity could entail to reject the Western liberal economic model, but more importantly, rejecting this modernity signifies rejecting Western Europe’s liberal approach towards minority rights while stressing the importance of traditionalism.<sup>18</sup> In fact, Western rhetoric often has, since the relative mainstream acceptance of LGBT citizens in the West, connected modernity to the extent to which states are willing to grant their LGBT citizens “*sexual citizenship*”.<sup>19</sup>

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<sup>11</sup> O’Dwyer, *Coming Out*, 59.

<sup>12</sup> Mikaluk, “Godly Homonormativity,” 573.

<sup>13</sup> Mikaluk, “Godly Homonormativity,” 487.

O’Dwyer, “Backlash,” 892.

Ayoub, “With Arms Wide Shut,” 337.

Moss, “Split Europe,” 212.

<sup>14</sup> O’Dwyer, *Coming Out*, 62.

Dawid Bunikowski, “The constitutional crisis in Poland, Schmittian questions and Kaczyński’s political and legal philosophy,” *Journal of Contemporary European Studies* 26, no. 3 (2018): 287– 288.

<sup>15</sup> Mikaluk, “Godly Homonormativity,” 490 – 491.

<sup>16</sup> O’Dwyer, *Coming Out*, 74.

<sup>17</sup> Mikaluk, “Godly Homonormativity,” 492.

Piotr Zuk, Przemysław Plucinski and Paweł Zuk, “The Dialectic of Neoliberal Exploitation and Cultural-Sexual Exclusion: From Special Economic Zones to LGBT-Free Zones in Poland.” *Antipode* 53, no. 5 (2021): 1571 – 1578.

<sup>18</sup> Zuk et al, “Neoliberal exploitation,” 1571 – 1595.

<sup>19</sup> Jabir Puar, “Mapping US Homonormativities,” *Gender, Place & Culture* 13, no. 1 (2006): 86.

### 1.2.1 Anti-LGBT discourses in Poland

As underscored in the introduction anti-LGBT discourses are often used “*as a political tool*” to mobilize electorates against the EU.<sup>20</sup> O’Conor and Ayoub both have conducted comparative analyses into anti-LGBT discourses across Eastern Europe (Poland vs The Czech Republic and Poland vs Slovenia). Both authors conclude that in Poland, anti-LGBT discourses are politically more salient than elsewhere in Eastern Europe.<sup>21</sup> This begs the question as to what causes Poland to be different from its peers in Eastern Europe, who, like them have made their “*return to Europe*” after the collapse in the USSR.<sup>22</sup> One possible answer is the role played by religion. Multiple authors stress the intimate relationship between the Catholic Church and the Polish state. Ayoub argues that Catholicism “*has become linked to the popular nation*” and “*national narratives*”. Due to this intimate relationship between church and state, homosexuality, which the church condemns, can be easily interpreted as threat to the entire nation.<sup>23</sup> Similarly, Chojnicka concludes that “*the conservative reluctance or hostility towards both the EU and LGBT is caused by their incompatibility with the patriotic and religious national identity construction*”.<sup>24</sup> She also stresses that “*Catholicism is a significant part of what it means to be a Pole*”.<sup>25</sup> These observations are strengthened by the fact that the Catholic Church, especially since membership of the EU, has engaged more in public discussions concerning homosexuality.<sup>26</sup> Furthermore, it has forged a strong coalition with the far right and has participated in anti-LGBT events and has been framing homosexuality as a dangerous ideology.<sup>27</sup> Through discourse, a binary is created between religion and nationalism on the one hand and cosmopolitanism and liberalism on the other hand.<sup>28</sup> Mikaluk demonstrates that in general, mainstream LGBT activists have a secular agenda. Thus, being in favor of LGBT rights is tied up with a non-religious agenda in Poland. Conversely, being anti-LGBT is often linked to being catholic , or at least valuing Catholicism for Poland’s identity.<sup>29</sup>

The accession process to the EU was a “*moment of normative identification with the West*” for Poland according to Kazharski. This is because the accession criteria required Poland to adapt EU norms regarding democracy and minority rights.<sup>30</sup> According to this view, the Church may have (indirectly) encouraged so called ‘Western values’. On the other hand, Ayoub argues that part of the strategy of high ranking Catholic officials was to spread traditional values to Europe “*through their return to*

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<sup>20</sup> O’Dwyer, *Coming out*, 57 – 58.

Chojnicka, “Anti-EU and Anti-LGBT,” 30 – 31.

Mikaluk, “Godly Homonormativity,” 573.

<sup>21</sup> O’Dwyer, *Coming out*, 57 – 83.

Ayoub, “With Arms Wide Shut”, 337 – 362.

<sup>22</sup> Alaksei Kazharski, “The End of ‘Central Europe’? The Rise of the Radical Right and the Contestation of Identities in Slovakia and the Visegrad Four,” *Geopolitics* 23, no 4. (2018): 760.

<sup>23</sup> Ayoub, “With Arms Wide Shut,” 338 – 339.

<sup>24</sup> Chojnicka, “Anti-EU and Anti-LGBT,” 31.

<sup>25</sup> Chojnicka, “Anti-EU and Anti-LGBT,” 39.

<sup>26</sup> Mikulak, “Godly Homonormativity,” 491.

<sup>27</sup> Ayoub, “With Arms Wide Shut,” 351.

Piotr Zuk and Pawel Zuk, “Murderers of the unbron’ and ‘sexual degenerates’: analysis of the ‘anti-gender’ discourse of the Catholic Church and the nationalist right in Poland, *Critical Discourse Studies* 17, no. 5 (2020): 575 – 576.

<sup>28</sup> Ayoub, “With Arms Wide Shut”, 346.

Philip M. Ayoub, *When states come out: Europe’s sexual minorities and the politics of visibility* (Cambridge: Cambridge University Press, 2016), 51.

<sup>29</sup> Mikulak, “Godly Homonormativity,” 494.

<sup>30</sup> Kazharski, “Visegrad Four,” 761.

O’Dwyer, *Coming out*, 38 – 39.

Europe".<sup>31</sup> Being a member of the EU certainly has forced Poland to adopt legal anti-discrimination protection.<sup>32</sup> On the other hand, it has also greatly mobilized anti-LGBT movements mainly due to "increased visibility".<sup>33</sup>

Many scholarly analyses use empirical data such as interviews, speeches and statistical data to assess anti-LGBT discourses. Some focus specifically on the connection between Catholicism and nationalism, stressing the role played by religious leaders.<sup>34</sup> Whereas other analyses focus more extensively on purely political actors, such as extreme right-wing parties. O'Dwyer analyses the role played by the LPR (League of Polish families), a party that was in government from 2005 – 2007.<sup>35</sup> In this analyses, he looks at rhetoric from high-ranking figures within the LPR such as the founder, MP's and ministers.<sup>36</sup>

In her research, Verpoest stresses the role played by the EU in ensuring some base-level non-discrimination requirements.<sup>37</sup> Furthermore, Mizielińska and Stasińska analyze "discourses on families of choice in Poland" in which they show how heteronormative ideas and ideals are widespread in Polish society and how relationships between homosexuals are rarely seen as family.<sup>38</sup> Their methodology mainly consists of an analysis of the written press.<sup>39</sup> These studies will form important building blocks for their thesis as they identify important tropes and characteristics of anti-LGBT discourse. On top of that, they demonstrate how, through discourse, liberalism and 'perversion' are pitted against traditionalism and supposedly 'natural' sexual behavior.<sup>40</sup>

However, those studies lack a systematic analysis of government tactics, rather they focus on a certain discourse surrounding homosexuality. The literature focuses relatively little on analyzing legislation and on governmental approaches. Rather, they focus on the political debates surrounding legislative proposals.<sup>41</sup>

Although multiple authors note that the EU constrains Polish administration somewhat in how far its anti-LGBT actions and arguably rhetoric can go, this analysis is not extended to a longer period of time where one could compare EU influence on different Polish governments.<sup>42</sup> O'Dwyer notes how the EU has enhanced anti-LGBT rhetoric through "visibility" which has in turn, "politicized" homosexuality while LGBT rights have overall improved in Poland since 2004.<sup>43</sup> This potentially contradictory role played by the EU deserves attention by specifically looking at how the consecutive governments were influenced by EU membership rather than private, religious and political actors in general.

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<sup>31</sup> Ayoub, "With Arms Wide Shut," 343.

<sup>32</sup> Lien Verpoest, "The End of Rhetorics: LGBT policies in Russia and the European Union," *Studia Diplomatica* 68, no. 4 (2017): 7 – 8.

<sup>33</sup> O'Dwyer, "Backlash," 909.

<sup>34</sup> Ayoub, "With Arms Wide Shut," 337 – 362.

Chojnicka, "Anti-EU and Anti-LGBT, 30 – 55.

<sup>35</sup> O'Dwyer, *Coming out*, 64.

<sup>36</sup> O'Dwyer, *Coming out*, 66 – 68.

<sup>37</sup> Verpoest, "Rhetorics," 5.

<sup>38</sup> Joanna Mizielińska and Agata Stasińska, "There Is Nothing Like a Family": Discourses on Families of Choice in Poland," *Journal of Homosexuality* 64, no. 13 (2015): 1793.

<sup>39</sup> Mizielińska and Stasińska, "Family," 1796 – 1797.

<sup>40</sup> Ayoub, "With Arms Wide Shut," 346.

Mikaluk, "Godly Homonormativity," 348.

<sup>41</sup> O'Dwyer, *Coming out*, 161 – 162.

Ayoub, "With Arms Wide Shut," 337 – 362.

<sup>42</sup> Verpoest, "Rhetorics," 5 – 7.

<sup>43</sup> O'Dwyer, *Coming out*, 84.

### 1.2.2 Pro-LGBT discourses in Poland

Even though Poland's population is largely in favor of EU-membership and the country has had pro-EU governments, little research has been conducted into the way rhetoric on homosexuality has been used by liberal governmental forces in Poland.<sup>44</sup>

For Croatia, Vasilev has analyzed in what way EU membership has been influential in shaping LGBT rights. Vasilev highlights that the *"material incentives"* associated with membership are more significant for changing a state's behavior than *"discursive mechanisms"*. However those *"discursive mechanisms"*, including pro-LGBT discourse at the European level, can have a significant effect if the country strongly identifies with Europe and the European Union.<sup>45</sup> Vasilev also argues that the advancement of LGBT rights in Croatia cannot possibly be only due to material benefits as there have been instances of countries improving their LGBT rights without those benefits.<sup>46</sup> Because Croatian elites were eager to identify themselves as European, they were willing to advance LGBT rights as this is associated with 'Europeanness'.<sup>47</sup> Poland might be different in this regard, even though support for membership is rather high and Poles tend to trust the European Union.<sup>48</sup> Chojnicka finds that Polish Euroscepticism does not necessarily entail criticizing EU-membership as such, *"rather, it criticizes the ways in which the country is affected by its membership"*.<sup>49</sup> However, there is a significant part of Poland who is enthusiastic about EU membership and *"between 2007 and 2015, the ruling party in Poland was the pro-European, liberal-conservative and strict fiscal policy-oriented Civic Platform"*.<sup>50</sup> Since this party has a pro-EU stance, it could be expected to conform more to European values of non-discrimination. However, due to domestic resistance, the government might actually be hesitant to use LGBT rights as a political tool.<sup>51</sup>

However, any democratic political movement, in one way or another, is forced to react to major movement that oppose it. Far right and populist movements in Poland have used LGBT rights to oppose EU membership.<sup>52</sup> As Civic Platform is a pro-EU party there are several ways in which LGBT rights could be weaponized by Civic Platform. First of all, it could be used to rally its supporters. However, some limited research suggests this has not happened on a large scale.<sup>53</sup> This could be due to large domestic resistance towards LGBT norms which arguably makes it a risky campaign theme.<sup>54</sup> It could also be envisaged that just like in Croatia, Civic Platform, and more pro-EU forces in Poland use LGBT rights to signal their willingness to conform with transnational and EU *"LGBT norms"*.<sup>55</sup> O'Dwyer and Holzhaecker

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<sup>44</sup> Dawid Bunikowski, "The constitutional crisis," 287.

Conor O'Dwyer, "From Conditionality to Persuasion? Europeanization and the Rights of Sexual Minorities in Post-Accession Poland," *European Integration* 32, no. 3 (2010): 245.

"The European Union," Pew Research Centre, last modified October 14, 2019, <https://www.pewresearch.org/global/2019/10/14/the-european-union/>.

<sup>45</sup> George Vasilev, "LGBT Recognition in EU Accession States: How identification with Europe enhances the Transformative Power of Discourse," *Review of International Studies* 42, no. 4 (2016): 748.

<sup>46</sup> Vasilev, "LGBT Recognition," 771 – 772.

<sup>47</sup> Vasilev, "LGBT Recognition," 756, 763.

<sup>48</sup> Chojnicka, "Godly Homonormativity," 34.

<sup>49</sup> Chojnicka, "Godly Homonormativity," 35.

<sup>50</sup> Bunikowski, "The Constitutional Crisis," 287.

<sup>51</sup> Mizielińska and Stasińska, "Family," 1798 – 1799.

<sup>52</sup> O'Dwyer, *Coming out*, 62 – 64.

<sup>53</sup> O'Dwyer, "From Conditionality to Persuasion," 245.

<sup>54</sup> Verpoest, "Rhetorics," 3 – 20.

<sup>55</sup> Vasilev, "LGBT Recognition," 758.



find that Eastern Europe is converging to Western frameworks of LGBT rights.<sup>56</sup> Holzacker asserts that, under pressure of the EU, the Council of Europe and NGO's, Poland has adopted better safeguards to protect "*the right of assembly*" for LGBT activism. This pressure is partly discursive but importantly, the EU and the Council of Europe have used legal means to pursue protection of LGBT rights.<sup>57</sup> Although, since 2015 Poland has shown more resistance towards EU- and norms from the Council of Europe.<sup>58</sup> Thus, in light of more recent developments claims of increasing legal protection and better organized activism should be challenged.

A large body of research has focused on LGBT activists and their use of European identity and norms in its activism. In post-communist societies, civil society groups are traditionally weak due to the limited organizing possibilities under communist and socialist regimes.<sup>59</sup> To this end, Binnie and Klesse have conducted research into the "*transnational dimensions of LGBTQ politics and activism in Poland*".<sup>60</sup> They find a "*discursive*" connection within transnational LGBT activism between "*an LGBT rights agenda*", "*solidarity and tolerance*" and "*European Human Rights*".<sup>61</sup> Because of these links, activist often explicitly use Europe, the European Union and European symbols to advocate for their agenda.<sup>62</sup> Thus, rather than only governments using homosexuality as a political tool, activists use the EU and its liberal image to advance their own political goals.

O'Dwyer stresses in several of his scholarly works how the "*backlash*" against modern EU LGBT norms has helped Polish activists. Both anti- and pro- LGBT forces framed tolerance of homosexuality as a European norm and O'Dwyer argues this had profoundly transforming effects on the strength of LGBT activism in Poland and elsewhere in eastern Europe.<sup>63</sup> On the other hand, using international organizations and symbols in domestic LGBT activism might add fuel to the fire as this implicitly reinforces opponents' claims about the '*foreignness*' of homosexuality.<sup>64</sup> Pro-EU governments must carefully balance showcasing their modernity and willingness to integrate into the West on the one hand. On the other hand, they must work within the limits of public opinion and therefore must be careful not to go blatantly against the majority opinion.<sup>65</sup>

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<sup>56</sup> Ronald Holzacker, "State-Sponsored Homophobia and the Denial of the Right of Assembly in Central and Eastern Europe: The "Boomerang" and the "Ricochet" between European Organizations and Civil Society to Uphold Human Rights," *Law & Policy* 35, no. 1 (2013): 1.

O'Dwyer, *Coming out*, 31.

<sup>57</sup> Holzacker, "State-Sponsored Homophobia," 22 – 23.

<sup>58</sup> Bunikowski, "the Constitutional Crisis," 287 – 288.

<sup>59</sup> O'Dwyer, *Coming out*, 42.

<sup>60</sup> Jonne Binnie and Christian Klesse, "Transnational Solidarities and LGBTQ Politics in Poland." In *LGBT Activism and the Making of Europe : A Rainbow Europe?*, ed. Philip Ayoub and David Paternotte (London: Palgrave Macmillan, 2014), 193.

<sup>61</sup> Binnie and Klesse, "Transnational Solidarities," 208.

<sup>62</sup> Binnie and Klesse, "Transnational Solidarities," 200.

Ayoub, "With Arms Wide Shut," 353.

Philip M. Ayoub and David Paternotte, "Introduction," in *LGBT Activism and the making of Europe: a Rainbow Europe?*, ed. Philip M Ayoub and David Paternotte (London: Palgrave Macmillan, 2014), 5.

<sup>63</sup> O'Dwyer, "Backlash," 892.

O'Dwyer, *Coming out*, 31 – 32.

<sup>64</sup> Verpoest, "Rhetorics," 14.

<sup>65</sup> Robert D. Putnam. "Diplomacy and Domestic Politics: The Logic of Two-Level Games," *International Organization* 42, no. 3 (1988): 432.

### 1.3 Methodology

This analysis will attempt to answer the research question by, on the one hand, analyzing speeches and statements made by relevant political figures that had a role in the government such as presidents, MP's and ministers. On the other hand, this research focuses on legislative discourses as this provides insights into the way rhetoric is translated into action and partly shows what materially changes for LGBT people due to government policy.

This project is structured in the following way: the first part of this thesis has focused on reviewing the literature and justifying the research question. The second part of this thesis will focus on EU legal protection and rhetoric on LGBT rights in order to paint a picture of interactions between domestic Polish LGBT discourses and the EU. In the third part, anti-LGBT discourses and legislation enacted by governments in Poland since 2004 will be analyzed. The same will be done for pro-LGBT discourses and legislation in the fourth part. The fifth and final part of this thesis will conclude by presenting the results and reflecting on them.

#### 1.3.1 Critical Discourse analysis

In this research, discourse analysis will be used to assess the political use of LGBT rights by Polish governments. More specifically, the method called *Critical Discourse Analysis* (CDA) will be employed. CDA makes several assumptions that are particularly useful for the current research. It views "*the analysis of texts*" as "*potentially revelatory of ways in which discourses consolidate power and colonize human subjects through often covert positions calls*".<sup>66</sup> CDA explicitly links discourse to power relations. This method can thus be revelatory of the ways in which hierarchical relations and moral distinctions are created between different types of sexualities, (homosexuality vs heterosexuality), identities (European vs Polish) and regions (The 'East' vs the 'West') in Poland. On top of that, CDA and critical theories in general, consider that power relations effect "*all thought*". Furthermore, "*the relationship between concept and object ... is never stable or fixed*".<sup>67</sup> The extensive focus on power relations of critical theory in general and CDA in particular, make it appropriate to examine how power is consolidated and what strategies institutional power has used to deal with LGBT rights or to instrumentalize it in one way or another.

For the methodology, this research was inspired by the work conducted by Mizielinska and Stasinska on discourse on families in Poland. Their methodology, using CDA "*paid special attention to the analysis of topoi that show how arguments are connected to conclusions*" while analyzing articles published in the written press.<sup>68</sup> This current research will focus on the assumptions and premises underlying texts and in particular critically assess the relationship between the premises, the assumptions and the conclusions following from those while using the assumptions of CDA to assess how government discourse in Poland is sustaining or challenging hierarchies and exclusions.

For this analysis, which will be a desk-research, publicly available sources will be employed. As for the political rhetoric, the sources that have been selected for this research are representative of a certain discourse. After all, this research addresses pro- and anti-LGBT discourses. Therefore, the sources selected should demonstrate the political use of LGBT rights by institutional power. The selected sources consist of a selection of interviews, speeches and official statements made by Polish and EU-officials. The sources mainly focus on high-placed individuals with tangible influence on public policy. As for the legislative discourse, public acts will be analyzed to demonstrate what the underlying assumptions of

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<sup>66</sup> Terry Locke, *Critical Discourse Analysis* (New York: Continuum, 2004), 2.

<sup>67</sup> Locke, *Critical Discourse*, 25.

<sup>68</sup> Mizielinska and Stasinska, "Family," 1796.

the texts could be and in what way legislation is used by institutional power. This analysis seeks to contribute to the literature in several ways. First of all, contrary to large portion of the academic literature on LGBT rights in Poland, it will also consider pro-LGBT rhetoric on the part of the government. Second of all, it seeks to paint a picture of different strategies pursued by governments whereas other analyses often had a different focus such as LGBT activism, particular political parties or particular regions.<sup>69</sup>

### 1.3.2 Limitations

This research is a qualitative analysis of LGBT discourses, thus the analysis highly depends on the particular sources selected. A government is not a monolithic actor and different perspectives are present within, one official might greatly emphasize LGBT rights whereas for the other, this may not be a topic of particular importance. Therefore, a possible limitation of this research is that, depending on the sources used, a different outcome is perceivable. This research seeks to avoid this problem as much as possible by applying certain the criteria as laid down in the previous section; focusing on discourse by influential figures, using sources likely to be used politically. Furthermore, as this current analysis is relatively short, it will not be able to consider all relevant sources be they legislative or discursive. By attempting to select sources that are sufficiently representative, this analysis seeks to provide new insights nonetheless.

## Chapter 2: How has the EU approached LGBT rights both legally and discursively?

Given the frequent association in pro- and anti-LGBT discourses between Europe and LGBT rights as aforementioned<sup>70</sup>, it is insightful to address EU approaches and EU legal protection regarding LGBT rights. In the first part of this chapter, EU legal protection will be addressed while taking into account statement and decisions made by European institutions such as the Court of Justice of the European Union (CJEU). The second of this chapter will explore to what extent Europe and EU institutions have embraced LGBT rights and whether the EU has come to be a symbolic space for LGBT rights as is often claimed in the literature.<sup>71</sup> This will be done through a discourse analysis of the European Commission and the European Parliament. This chapter specifically analyzes those two institutions as those institutions are arguably supranationally focused whereas the Council of ministers has a clear national dimension.<sup>72</sup> Furthermore, those institutions have arguably more agency than the CJEU when it comes to LGBT rights as those institutions can take their own initiatives by releasing statements or, in the Commission's case by proposing legislation.<sup>73</sup>

### 2.1 Legal protection

The European Union has codified its official principles and values into treaties. The preamble for the *Charter of Fundamental Rights* states: “conscious of its spiritual and moral heritage, the Union is

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<sup>69</sup> Ayoub, “With Arms Wide Shut,” 337 – 362.

O’Dwyer, *Coming out*, 60 – 77.

Zuk et al. “Neoliberal Exploitation,” 1571 – 1595.

<sup>70</sup> Ayoub, “With Arms Wide Shut,” 337, 346.

O’Dwyer, *Coming out*, 57 – 83, 140 – 170.

<sup>71</sup> Chojnicka, “Anti-EU and Anti-LGBT,” 31.

O’Dwyer, *Coming out*, 161 - 162.

<sup>72</sup> Neil Nugent, *The Government and Politics of the European Union* (London: Plagrove, 2017), 147, 213.

<sup>73</sup> Nugent, *The Government*, 147, 220.

*founded on the indivisible, universal values of human dignity, freedom, equality and solidarity*".<sup>74</sup> These examples of so-called "European values" are easily connectable to LGBT rights. Advocates for LGBT rights often make arguments based on the need to guarantee freedom and equality for the LGBT community.<sup>75</sup> There is a tension in the EU's assertion because on the one hand, it does implicitly link EU values, as partly codified in the Charter, to "its spiritual and moral heritage". At the same time, it does claim adhering to "universal values"; this would mean that these values are both European and universal.<sup>76</sup> Actors criticizing the EU have challenged the universality of its values by putting forward their own set of values, often based on "traditional values", (the universality of) European values continue to be controversial within and outside the EU.<sup>77</sup>

Despite the official codification of EU values related to equality and human rights, the EU's competences to regulate on matters directly concerning LGBT rights are limited. Issues such as marriages are dealt with at the national level. Even so, there are some areas where for the EU is able to directly mandate legal protection or can influence national regulation.<sup>78</sup> First, there is the EU accession process during which the EU has considerable sway over states because those states know they could be rewarded with membership.<sup>79</sup> Then, there are hard legal protections in place at the EU level. Next, these two factors will be shortly examined.

### 2.1.1 LGBT rights during the accession Process

Since 1993, the EU has adopted official standards based on which a country's readiness to enter the EU is assessed, these are the "Copenhagen criteria". The three criteria include being able and willing to implement all the "Acquis" (meaning implementing all EU legislation) and having a stable "democracy" that guarantees "human rights" and the "protection of minorities".<sup>80</sup> However, at the time Poland was in the process of joining the EU, legal protection for LGBT people in the contemporary EU member states was still limited.<sup>81</sup> Poland officially applied for EU membership in 1994 whereas official negotiations began in 1998, those were concluded in 2002.<sup>82</sup>

In 1998 the European Parliament adopted a resolution *on equal rights for gays and lesbians* in which the EP urged the Commission to "take into consideration respect and observance of the human rights of gays and lesbians when negotiating the accession of applicant countries" showcasing that the Parliament was already concerned with improving LGBT rights in candidate countries at the time.<sup>83</sup>

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<sup>74</sup> European Union, "Charter of Fundamental Rights of the European Union," *Official Journal of the European Union* (2012), preamble.

<sup>75</sup> Ayoub and Paternotte, "Introduction," 5.

<sup>76</sup> European Union, "Charter," Preamble.

<sup>77</sup> Ayoub and Paternotte, "Introduction," 2.

<sup>78</sup> Robert Wintemute, "European Law against Discrimination on Grounds of Sexual Orientation," in *Same Sex Relationship and Beyond: Gender matters in the EU*, ed. Angelika Fuchs (Cambridge: Intersentia, 2017), 196.

<sup>78</sup> O'Dwyer, *Coming out*, 59.

<sup>79</sup> Vasilev, "LGBT Recognition," 753.

<sup>80</sup> "Accession Criteria," European Commission, [https://ec.europa.eu/neighbourhood-enlargement/enlargement-policy/glossary/accession-criteria\\_nl](https://ec.europa.eu/neighbourhood-enlargement/enlargement-policy/glossary/accession-criteria_nl).

O'Dwyer, *Coming out*, 38 – 39.

<sup>81</sup> O'Dwyer, *Coming out*, 40.

<sup>82</sup> "15 years of Poland in the European Union. The role of the Sejm in the accession process," SEJM, last modified May 1, 2019,

<https://www.sejm.gov.pl/Sejm9.nsf/v4Komunikat.xsp?documentId=19373E73D1025C9AC12583EE00617F1E&lang=EN#:~:text=The%20accession%20process%20was%20finalised,to%20that%20of%20the%20Union>.

<sup>83</sup> European Communities. "Information and Notices," *Official Journal of the European Communities* 41 (1998): C313/188.

However, as Vasilev has found that, “far from consistently conditioning membership on LGBT reform, the EU has a history of advancing deeply homophobic states up the accession ladder”.<sup>84</sup>

Vasilev’s point is demonstrated by the Commission’s failure to raise serious concerns over the rights of LGBT people in its report assessing “Poland’s application for membership of the European Union”. The commission asserted that “Poland presents the characteristics of a democracy, with stable institutions guaranteeing the rule of law, human rights and respect for and protection of minorities”.<sup>85</sup> The Commission failed to consider challenges faced by sexual minorities in Poland, while their rights were severely under attack before and after EU membership.<sup>86</sup>

### 2.1.2 EU legislation

In 2000, before Poland’s accession to the EU, the *Charter of Fundamental Rights* came into being. The *EU Charter of Fundamental Rights* is “legally binding” in the entire European Union since 2009.<sup>87</sup> Article 21 of the *Charter* prohibits “any discrimination based on ... sexual orientation”.<sup>88</sup> The explicit inclusion of “sexual orientation” is not listed in older human rights treaties such as the *European Convention on Human Rights (ECHR)* underlining the success of European modern LGBT-rights movements that have managed to make LGB persons a protected class in the EU.<sup>89</sup> The *ECHR* was ratified before the EU came into being and approximately 60 years before the *Charter of Fundamental Rights* became legally binding. All EU member states are also members of the Council of Europe and have therefore ratified the *ECHR*. To stress the compatibility of membership of these two organizations, article 53 of the *Charter* states that “nothing in the *Charter* shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognized ... including the *European Convention for the Protection of human rights and Fundamental Freedoms*”.<sup>90</sup>

Poland’s government was concerned that the *Charter* might infringe upon its ability to adopt or to maintain conservative standards in the fields of “abortions, euthanasia and same-sex marriages”.<sup>91</sup> To address these concerns, protocol 30 was adopted which provided an exception for Poland and the United Kingdom, stating that “the *Charter* does not extend the ability of the Court of Justice of the European Union ... to find that the laws ... inconsistent with the fundamental rights, freedoms and principles that it reaffirms”.<sup>92</sup>

Besides the *Charter*, Article 19 of TFEU also addresses LGB rights as it states :“the Council, in accordance with a special legislative procedure may take appropriate action to combat discrimination based on... sexual orientation”.<sup>93</sup> Furthermore, article 10 TFEU holds that “in defining and implementing its policies

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<sup>84</sup> Visilev, “LGBT Recognition, 754.

<sup>85</sup> “Agenda 2000 - Commission Opinion on Poland’s Application for Membership of the European Union,” European Commission, last modified July 15, 1997, [https://ec.europa.eu/commission/presscorner/detail/en/DOC\\_97\\_16](https://ec.europa.eu/commission/presscorner/detail/en/DOC_97_16).

<sup>86</sup> O’Dwyer, *Coming out*, 64 – 74.

<sup>87</sup> European Union, *Applying the Charter of Fundamental Rights of the European Union in law and policymaking at national level* (Luxembourg: Publications office of the European Union, 2020), 3.

<sup>88</sup> European Union, “Charter of Fundamental Rights of the European Union,” *Official Journal of the European Union* (2012), art. 21.

<sup>89</sup> European Union, *Applying the Charter*, 29.

<sup>90</sup> European Union, “Charter,” art. 53.

<sup>91</sup> Anthony Arnall. "Protocol (No 30) on the Application of the Charter of Fundamental Rights of the European Union to Poland and the United Kingdom." In *The EU Charter of Fundamental Rights: A Commentary*. Ed. Jeff Kenner and Angela Ward, (Bloomsbury Collections, 2022), 1601.

<sup>92</sup> European Union, “Protocol 30,” *Official Journal of the European Union* 115, (2008): 0313 - 0314

<sup>93</sup> European Union, “Consolidated Version of the Treaty on the Functioning of the European Union,” *Official Journal of the European Union* (2012): art 19.

*and activities, the Union shall aim to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation”.*<sup>94</sup>

Although discrimination against LGBT people could be challenged under the treaties, the EU’s competences to regulate in the field of “*family law*” are limited.<sup>95</sup> However, the CJEU has held that EU countries that do not recognize same-sex marriage must recognize those marriages when performed in other member states. The CJEU stated that “*article 21(1) TFEU must be interpreted as precluding the competent authorities of the Member State of which the Union citizen is a national from refusing to grant that third-country national a right of residence in the territory of that Member State on the ground that the law of that Member State does not recognize marriage between persons of the same sex*”.<sup>96</sup> This case was lost by Romania but the country has refused to comply.<sup>97</sup> On the hand, this ruling highlights that the EU can have significant impact on the family law and other matters pertaining to LGBT rights. On the other hand, it underscores the EU’s weakness is enforcing some of its law, leaving important concerns regarding the rule of law as the EU currently cannot guarantee full equal rights of LGBT rights.

Furthermore, as a major goal of the EU is to ensure “*the functioning of the internal market*”, the EU can regulate its market.<sup>98</sup> This provides an opportunity to combat discrimination in the field of employment and services. Directive 2000/78 aiming to establish “*a general framework for equal treatment in employment and occupation*”. The directive argues that “*Discrimination based on religion or belief, disability, age or sexual orientation may undermine the achievement of the objectives of the EC treaty*”.<sup>99</sup> Furthermore, this directive prohibits discrimination based on the aforementioned grounds in the fields of “*access to employment*”, “*employment and working conditions*” and “*membership of trade unions and organizations representing employers*”.<sup>100</sup>

Wintermute finds that “*with regard to same-sex couples, the CJEU is especially likely to wait for ECtHR case law, because it is very reluctant to appear to interfere with the (generally exclusive) competence of EU Member States in the area of family law*”.<sup>101</sup> EU citizens can never directly challenge alleged violations of their fundamental rights at the highest EU court, whereas it is possible to do so at the court of the Council of Europe (CoE) in Strasbourg.<sup>102</sup> Therefore, while the EU does subscribe to values that are important to the development of LGBT rights, it lacks the competences to force member states to adopt same-sex marriage. However, in the area of employment the EU can prohibit discrimination of LGBT people. Furthermore, given the EU’s important yet limited competences in this domain, it needs to rely on non-coercive strategies if it wants to further LGBT legal equality in the Union.<sup>103</sup>

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94 European Union, “TFEU,” art. 10.

95 Robert Wintermute, “European Law against Discrimination on Grounds of Sexual Orientation,” in *Same-Sex Relationship and Beyond: Gender matters in the EU*, ed. Angelika Fuchs (Cambridge, Intersentia, 2017), 196 – 197.

96 Court of Justice of the EU, *Coman et al. v. Inspectoratul General pentru Imigrări*, case 673/16 (2018): 11.

97 “Same-sex marriages and partnerships should be recognised across the EU,” European Parliament, last modified September 14, 2021, <https://www.europarl.europa.eu/news/en/press-room/20210910IPR11913/same-sex-marriages-and-partnerships-should-be-recognised-across-the-eu>.

98 European Union, “TFEU,” art. 3.

99 European Communities, “Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation,” *Official Journal of the European Communities* (2000).

100 European Union, “Directive 2000/78,” art. 3.

101 Wintermute “Sexual Orientation,” 196.

102 Wintermute, “Sexual Orientation,” 196.

103 Vasilev, “LGBT Recognition,” 763 – 764.

## 2.2 EU institutions and LGBT discourse

As aforementioned, both proponents and opponents of LGBT rights have discursively linked the EU to support for LGBT rights.<sup>104</sup> Ayoub and Paternotte contend that “*LGBT rights belong to the core of European values in the imagination of many actors*”.<sup>105</sup> If Europe and the European Union have indeed become symbols for LGBT tolerance, how can this be explained through EU discourse?

### 2.2.1 The European Commission

Von Der Leyen’s 2020 *State of the Union* will be analyzed as this a good opportunity to demonstrate how the EU is associated with LGBT rights and how the Commission might construct a favorable image of the EU by instrumentalizing LGBT rights. For the European Commission, the *State of the Union* is an opportunity to address European institutions, member states and the general public to highlight the Commission’s priorities.

In this speech, Von der Leyen addresses “*European values*”. After naming three examples of hateful acts committed in 2020, she goes on to say: “*I am proud to live in Europe, in this open society of values and diversity*”.<sup>106</sup> She represents Europe in a positive light associated with openness and “diversity”, values also associated with accepting LGBT rights. She goes on to say: “*but even here in this Union these stories are a daily reality for so many people*”. While acknowledging the challenges that lie ahead for the EU, the word “*even*” indicates a unique position for Europe.<sup>107</sup> It implicates that, although these hate crimes are despicable, we would expect them to happen in other parts of the world but not in Europe.

Furthermore, Von Der Leyen indicates: “*LGBTQI-free zones are humanity free zones. And they have no place in our Union*”.<sup>108</sup> By directly going after Poland’s “*LGBTQI-free zones*” as being contrary to the EU, she reinforces the idea that Europe and LGBT rights are somehow connected.<sup>109</sup> Universality (‘humanity’) and particularity (‘our Union’) are used to stress Europe’s positive relationship to LGBT equality, while reinforcing the idea that Europe’s values are not only European but should in fact apply to the entire human race.

Discourse linking Europe to LGBT rights can be even more explicit, Jorouvá, (vice-president of the Commission), in light of the Commission’s *LGBTIQ equality strategy* stated: “*Everyone should feel free to be who they are – without fear or persecution. This is what Europe is about and this is what we stand for*”.<sup>110</sup> Non-discrimination becomes intimately linked with a geographic area; Europe. Furthermore, Europe is arguably equated with the European Union. The implication is that if LGBT rights are opposed by a country or by individual people they may be considered as less European.<sup>111</sup>

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<sup>104</sup> O’Dwyer, *Coming out*, 59.

Ayoub, “With Arms Wide Shut,” 337 – 338.

<sup>105</sup> Ayoub and Paternotte, “Introduction,” 2.

Mizielinska and Stasinska, “Family,” 1797.

<sup>106</sup> “State of the Union Address,” European Commission, last modified September 16, 2020, [https://ec.europa.eu/commission/presscorner/detail/en/SPEECH\\_20\\_1655](https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_20_1655).

<sup>107</sup> European Commission, “Union Address.”

<sup>108</sup> European Commission, “Union Address.”

<sup>109</sup> Ayoub and Paternotte, “Introduction,” 2.

<sup>110</sup> “Union of Equality,” European Commission, last modified November 12, 2020,

[https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_2068](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2068)

<sup>111</sup> Ayoub and Paternotte, “Introduction,” 5.

This statement reinforces Ayoub's Paternotte's claim that "LGBT rights" are connected "to the idea of Europe" even though LGBT rights are not a core responsibility of the EU.<sup>112</sup> In addition to this, Europe becomes a beacon of light others should follow because of its well-developed LGBT rights framework as illustrated by the following Commission statement: "Today, the EU asserts itself as the example to follow, in the fight for diversity and inclusion".<sup>113</sup> Therefore, one of the EU's goals with regards to LGBT rights is facilitating "LGBTIQ equality around the world".<sup>114</sup> Thus, Europe's inclusive LGBT discourse, which is arguably partly made credible by individual member states' policies, becomes part of its morally superior values that should be spread around the world and are universal at the same time.<sup>115</sup> It also reinforces a common identity amongst European in light of their alleged acceptance of sexual diversity. The *LGBTIQ equality strategy* states that:

*"Our social, political and economic strength comes from our unity in diversity: Equality and nondiscrimination are core values and fundamental rights in the EU, enshrined in its Treaties and in the Charter of Fundamental Rights".*<sup>116</sup>

Again, the tension between universality and diversity is present in the statement. The EU asserts "unity in diversity" which is understandable given that the EU has to reconcile a linguistically and culturally diverse continent.<sup>117</sup> Diversity could be looked at from different angles; also from the point of values and views towards LGBT rights. However, the EU asserts there are "core values" so fundamental to the EU that they should apply anywhere in the Union. In this sense, while stressing the importance of diversity, it limits the possibility of diversity when it comes to "core values".<sup>118</sup>

### 2.2.2 The European Parliament

The European Parliament is generally more focused on human rights than other EU institutions. Gfeller has coined the term: "Champion of Human Rights" to describe the Parliament's activism on this front.<sup>119</sup> However, the European Parliament harbors parliamentarians of a broad spectrum of political ideologies present in the EU. Therefore, MEP's can be found to engage in divergent discourses regarding LGBT rights. Despite this, the European Parliament as an institution has certain tools to directly react to unfolding political controversies by adopting declarations for example. While those official communications may not be endorsed by every MEP, it can send a strong signal. As For LGBT rights, there is the *LGBTI Intergroup* consisting of MEP's from different political groups seeking to address discrimination of LGBT people.<sup>120</sup>

Local governments in Poland have adopted "LGBTIQ-free zones". In reaction to this the European Parliament declared the EU "an LGBTIQ freedom zone".<sup>121</sup> In this resolution, the EP reminded the

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<sup>112</sup> European Commission, "Union of Equality."

Ayoub and Paternotte, "Introduction," 1 - 3.

<sup>113</sup> Ayoub and Paternotte, "Introduction," 12.

European Commission, "Union of Equality."

<sup>114</sup>European Commission, "Union of Equality."

<sup>115</sup> Ayoub and Paternotte, "Introduction," 12.

<sup>116</sup> European Commission, "Union of Equality: LGBTIQ Equality Strategy 2020-2025," 3.

<sup>117</sup> Nugent, "The Government," 23.

<sup>118</sup> European Commission, "Equality," 3.

<sup>119</sup> Aurélie Élisabeth Gfeller, "Champion of Human Rights: The European Parliament and the Helsinki Process," *Journal of Contemporary History* 49, no 2 (2014): 390.

<sup>120</sup> "Our Tools," The European Parliament's LGBTI intergroup, [https://lgbti-ep.eu/what-we-do/our-tools/https://www.europarl.europa.eu/doceo/document/TA-9-2020-0014\\_EN.pdf](https://lgbti-ep.eu/what-we-do/our-tools/https://www.europarl.europa.eu/doceo/document/TA-9-2020-0014_EN.pdf).

<sup>121</sup> "Declaration of the EU as an LGBTIQ Freedom Zone," European Parliament, last modified March 11, 2021, [https://www.europarl.europa.eu/doceo/document/TA-9-2019-0101\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2019-0101_EN.html).



legal basis for LGBT protection, as it sharply criticized Poland's "LGBT-free zones" by alleging that those declarations "are indirectly calling for discrimination" against non-traditional families and "to refrain from providing financial support to projects and initiatives which protect and promote fundamental rights, organise anti-discrimination education or in any other way support equality and LGBTIQ people".<sup>122</sup>

Like the Commission, the Parliament approaches this topic through the lens of fundamental rights while relying on codified values. It also fundamentally challenges Polish discourse on LGBT people in asserting that declarations, adopted by Polish regions, are an invite for discrimination. In doing so, the European Parliament does not portray Europe as a particularly advanced place when it comes to LGBT rights even if it does rely on its codified values when pursuing LGBT rights in third countries.

In addition to the internal EU dimension, the European Parliament also monitors human rights situation in third countries.<sup>123</sup> Its tools, when acting on its own initiative, are partly discursive by adopting non-legally binding resolutions. In a statement where the EP criticizes Honduras' protection of human rights of "LGBTI people". The legitimacy of criticizing Honduras is derived from the "human rights clauses of the EU-Central America Association". The EP is generally supportive of making LGBT rights a condition to reaping the awards of EU cooperation, like the parliament did in 1998 urging the Commission to consider LGBT rights during the accession period.<sup>124</sup> These types of externally targeted pro-LGBT declaration from the EP could strengthen the association between Europe and gay rights as Ayoub and Paternotte assert.<sup>125</sup> However, this perspective could be criticized upon closer review because the an important part of the EP's work on LGBT rights is dedicated to criticizing the lack of LGBT rights in the EU from within.<sup>126</sup> Although the EP uses the official codified EU values to advocate LGBT rights, it does not seem to discursively use LGBT rights to reinforce the idea of a moral hierarchy based on the quality of LGBT rights.

### 2.3 Subconclusion

Membership of the European Union has some ramifications for LGBT rights. When Poland was in the process of becoming a member of the EU, it had to adopt the Acquis. This implied that Poland also had to adopt directive 2000/78 which protects against discrimination of LGBT people.<sup>127</sup> Apart from that, the Commission did not make LGBT rights one of its priorities during the accession process.<sup>128</sup> the *Charter of Fundamental Rights* is important document to argue against discrimination of the LGBT community, riddled with the tension between its claim to represent European values and universal ones at the same time.<sup>129</sup> The European Commission's discourse uses some implicitly or explicitly argues Europe's superiority through its quality of LGBT rights. The European parliament also links LGBT values to fundamental rights and official EU values but does not represent Europe as inherently better than other places based on LGBT rights.

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<sup>122</sup> European Parliament, "Freedom Zone."

<sup>123</sup> "Honduras: Situation of Human Rights Defenders," European Parliament [https://www.europarl.europa.eu/doceo/document/TA-8-2016-0129\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/TA-8-2016-0129_EN.pdf).

<sup>124</sup> European Parliament, "Honduras."

European Communities. "Information and Notices," C313/188.

<sup>125</sup> Ayoub and Paternotte, "Introduction," 2.

<sup>126</sup> European Parliament, "LGBTI Rights."

<sup>127</sup> European Union, "Directive 2000/79."

<sup>128</sup> European Commission, "Agenda 2000."

<sup>129</sup> European Union, "Charter."

## Chapter 3: Anti-LGBT: How has the Polish PiS-led government both legally and discursively approached the topic of LGBT rights (2015 – 2021)?

In 2015, the right-wing PiS (Law and Justice) party gained the elections and gained control over the Polish government, a position it had last held in 2007. The party has been characterized as being “populist” and “EU-skeptical”.<sup>130</sup> Their discourse was an indication of how Western LGBT discourses and indeed EU discourse of LGBT inclusion were far removed from this particular discourse in Poland. During the election campaigns PiS actively used rhetoric casting LGBT rights and identities in a negative light by insisting that LGBT is an “ideology”, a severe threat to Poland and/or to the family.<sup>131</sup>

This chapter will analyze anti-LGBT rhetoric by the Polish government in place since 2015. It is split up in two main parts. The first part focuses on political rhetoric; it identifies relevant sources that demonstrate how discourse is being used to cast LGBT as an ideology, a threat to children and how Europe and LGBT rights are connected in this discourse. The second part analyzes official declarations and legally binding texts. It focuses on municipal anti-LGBT declarations and a national law regarding education. The municipal declarations are appropriate for this thesis because on the one hand, they demonstrate the EU’s connection to LGBT rights and on the other hand, the PiS party is in power in many of these regions the rhetoric espoused by these municipalities is closely connected to the rhetoric of the PiS’ party at the national level.<sup>132</sup>

### 3.1 Political Discourse

#### 3.1.1 LGBT as a threatening ideology (to children)

Actors within the PiS-led government have often framed LGBT identities as an “ideology”. Czarnek, minister of Education since 2020 stated:

*“Let us defend the family against this kind of corruption, deprivation, absolutely immoral behaviour, let us defend us against the LGBT+ ideology and finish listening to this idiocy about human rights or equality. These people are not equal to normal people, let’s end this discussion”.*<sup>133</sup>

The “LGBT+ ideology” is constructed as a threat to “the family”. By this construction, LGBT people are excluded from this social institution that is highly valued in Polish (right-wing) discourse. Rainbow families<sup>134</sup> are not considered as being families but form a threat to the pureness of traditional heteronormative Polish families.<sup>135</sup> Furthermore, the minister’s statement does not talk about LGBT people but about “ideology”. The implication of his statement is that being LGBT is not part of your identity, a frame often used in the West by scholars, politicians and in the public space. On the contrary, being LGBT is about your beliefs and your (dangerous) ideology.<sup>136</sup> PiS discourse sometimes

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<sup>130</sup> Bunikowski, “The Constitutional Crisis,” 285 – 288.

Richard C. M. Mole, Agnieszka Golec de Zavala and Mahmut Murat Ardag, “Homophobia and national collective narcissism in populist Poland,” *European Journal of Sociology* 62, no. 1 (2021): 37 – 38.

<sup>131</sup> “Polish election: Andrzej Duda says LGBT 'ideology' worse than communism,” BBC, last Modified June 14, 2020, <https://www.bbc.com/news/world-europe-53039864>.

<sup>132</sup> Zuk et al. “Neoliberal exploitation,” 1584.

<sup>133</sup> “Annual Review of the Human Rights Situation of Lesbian, Gay, Bisexual, Trans and Intersex People in Poland Covering the Period of January to December 2020,” ILGA Europe, <https://www.ilga-europe.org/sites/default/files/2021/poland.pdf>.

<sup>134</sup> Rainbow families are defined here as families that consist of same-sex couples with or without children.

<sup>135</sup> Mizielinska and Stasinska, “Family,” 1800.

ILGA Europe, “Annual review.”

<sup>136</sup> Jasbir Puar, *Terrorist Assemblages : Homonationalism in Queer Times* (Durham : Duke University Press, 2017), 46.

claims the party and the government does not discriminate against individual people, but merely fights against a certain ideology.<sup>137</sup> However, this discourse is thoroughly dehumanizing as it decouples LGBT from personal identities and links it to unpersonal “ideology” that one could choose to believe.

On top of that, there is a profound disagreement with EU discourse that links LGBT rights to human rights and equality as chapter 2 has demonstrated. The *Charter of Fundamental Rights* states that “everyone is equal before the law” but the statement of the minister differentiates between “normal” and abnormal people.<sup>138</sup> Abnormal people, that is, people with an LGBT+ ideology, are undeserving of “equality” and thus of full human rights, thus calling into the question the validity of human rights altogether that should apply to all humans not just to however one chooses to define as “normal people”.<sup>139</sup>

Further attacking the LGBT community, Czarnek, in reaction to a gay pride in Warsaw, stated,

*“What was happening there had nothing to do with tolerance and equality; it is fetishism and a distortion of equality and tolerance”.*<sup>140</sup>

Here, the minister does not distance himself from the values of “equality and tolerance” but denies that the gay prides are about the achievement of those goals. Based on the perceived abnormality of these groups of LGBT people and allies, they cannot claim, according to the minister, to be entitled to a certain treatment based on “equality and tolerance”. Therefore, the LGBT ideology should be resisted.

*“Ahead of the European elections in 2019, when asked what’s at stake during this election, Prime Minister Mateusz Morawiecki answered as follows”:*

*“In the world of values a dispute has emerged whether to build modernity on the foundation of tradition, family warmth .... Or whether to build on shocking moral revolutions, where a traditional family is ridiculed and children are subjected to aggressive indoctrination against the will of their parents”.*<sup>141</sup>

While not rejecting modernity, PiS’ attitude towards it is highly critical as it is a danger to the “traditional family”. This “traditional family” is of course, given PiS’ rhetoric family, a family model that excludes rainbow families. The “traditional family” is under attack from “moral revolutions”; the best defense against this is sticking to traditional values. The project to attack these families is intentional as it consists of “aggressive indoctrination”.<sup>142</sup> Traditional values are not directly pitted against the EU’s universal values (as codified) of “equality and tolerance”. However, implicitly these EU values are

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<sup>137</sup> “Fake news about “LGBT-free zones,” results in a proliferation of lies about Poland. Ordo Iuris steps in,” Ordo Iuris, last Modified July 22, 2020, <https://en.ordoiuris.pl/family-and-marriage/fake-news-about-lgbt-free-zones-results-proliferation-lies-about-poland-ordo>.

<sup>137</sup> “More Polish regions revoke anti-LGBT declarations over EU funds withdrawal,” Euronews, Last Modified September 27, 2021, <https://www.euronews.com/2021/09/27/more-polish-regions-revoke-anti-lgbt-declarations-over-eu-funds-withdrawal>.

<sup>138</sup> European Union, “Charter,” art. 20, 21.

ILGA Europe, “Annual review.”

<sup>139</sup> ILGA Europe, “Annual review.”

<sup>140</sup> “LGBT “deviants don’t have same rights as normal people,” says Polish education minister,” Notes from Poland, last modified June 23, 2021, <https://notesfrompoland.com/2021/06/23/lgbt-deviants-dont-have-same-rights-as-normal-people-says-polish-education-minister/>.

<sup>141</sup> Olena Yermakova, “PiS vs LGBT: The “Othering” of the LGBT Movement as an Element of Populist Radical Right Party Discourse in Poland,” *Sprawy Narodowosciowe: Seria nowa* 53, no. 1 (2021): 19.

<sup>142</sup> Yermakova, “PiS vs LGBT,” 19.

attacked as being contrary to the traditional Polish family or at least the interpretation of these values by the EU.<sup>143</sup>

In the same vein, President Duda signed a *“family charter”* in 2020 in the context of the election, one subheading of this charter read: *“Protection of Children against the LGBT ideology”*.<sup>144</sup> In this section, Duda mainly stressed the rights of parents to choose what kind of education their children receive, to shield them from ideas parents find undesirable. In addition to this, Duda reaffirmed the traditional and Polish constitutional definition of marriage and stressed his opposition to letting homosexual couples adopt children source. This sends the message that homosexual couples are somehow fundamentally unfit to care for children and thus a threat to them.<sup>145</sup>

### 3.1.2 LGBT and Europe

In a campaign debate in the run-up the elections to the European Parliament in 2019, Tarczyński, back then member of the Polish Parliament for the PiS party, advocated for a more conservative Europe. When asked about his vision for Europe he stated: *“I’d like to see the Europe that was built on Christian values”*.<sup>146</sup> He further makes the point that Christianity has laid the whole basis of *“our culture”*.<sup>147</sup> The parliamentarian considers that Western Europe has abandoned its true Christian heritage and has fallen victim to immoral: *“Our soul is alive and the West’s soul is dead”*. The West is portrayed as deviant and immoral.<sup>148</sup> The Parliamentarian is othering the West from Poland. The West once had good values. However, it has grown victim to bad values not rooted in Christianity such as consumerism (represented by Apple and Google) and by having accepted homosexuality and sex-reassignment surgeries as demonstrated by the following statement:<sup>149</sup>

*“I do believe that the real value (of Europe) is not LGBT, it’s not Apple and Google, it’s Roman law, it’s Greek philosophy”*.<sup>150</sup>

The roots of European cultures are a debated topic and there is no consensus as to how big the influence of Christianity on Europe has been.<sup>151</sup> This opens up a whole new debate beyond the scope of the present analysis. However, it is important to stress that the politicized, nationalist version of Christianity often professed by the PiS party is far from the only version out there.<sup>152</sup> While many Christian traditions have played their part in upholding heteronormative ideals and have doctrines explicitly condemning LGBT ‘behavior’, only emphasizing this part of Christianity would be oversimplistic. In modern times, many churches incorporate LGBT members.<sup>153</sup> Christian theology by

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<sup>143</sup> Notes from Poland, “Normal people.”

<sup>144</sup> “Wsparcie rodziny, ochrona małżeństwa, dzieci i emerytów. Co zakłada Karta Rodziny,” TVP Info, last modified June 10, 2020, <https://www.tvp.info/48463041/prezydent-andrzej-duda-podpisal-karte-rodziny-co-zaklada-dokument-wieszwiecej>.

<sup>145</sup> TVP Info, “Karta Rodziny.”

<sup>146</sup> “The debate: Which way is Europe heading? | DW Conflict Zone,” Youtube, last Modified May 8, 2019, [https://www.youtube.com/watch?v=cYdWmh\\_7Xv0&t=1707s](https://www.youtube.com/watch?v=cYdWmh_7Xv0&t=1707s).

<sup>147</sup> Youtube, “The debate.”

<sup>148</sup> Youtube, “The debate.”

<sup>149</sup> Mikaluk, “Godly Homonormativity,” 488.

Ayoub, “With Arms Wide Shut,” 343.

<sup>150</sup> Youtube, “The debate.”

<sup>151</sup> Tom Holland, *Dominion: The making of the Western Mind* (New York: Little Brown, 2019), 1 – 25.

<sup>152</sup> O’Dwyer, *Coming out*, 65.

<sup>153</sup> Mikaluk, “Godly Homonormativity,” 487.

no means universally condemns LGBT people, Christian ideals can also be used to fight for LGBT inclusion in churches and society.<sup>154</sup>

For some the EU have come to be associated with values such as equality and autonomy from which LGBT rights could flow.<sup>155</sup> However, Tarczynski associates Europe with a different set of values; a conservative version of Christianity while distancing himself from other interpretations of Europe that would include tolerance for LGBT rights and liberal versions of Christianity leaving little room for ideological diversity. By this logic, the PiS party and those who agree with its vision of Europe are the real heirs of what Europe is supposed to be about.<sup>156</sup>

Yet, as Chojnicka has found, most Poles and most Polish political parties, including the PiS party are not advocating an exit from the European Union.<sup>157</sup> Poland's interest in staying in the European Union are not only economical but arguably ideological. Poland has 'returned to Europe' after the fall of the Berlin wall in 1989. Kazharski argues that there was "*normative identification with the West*" when Poland sought to join the European Union. As Poland was forcibly part of the Eastern block and under Soviet influence. Joining the EU and other Western organizations such as NATO and the Council of Europe was a way for Poland to distance themselves from Russia and to be embedded in the Western sphere of influence.<sup>158</sup>

This partly explains why the ruling PiS party is asserting a different version of European values than the officially codified values while also remaining attached to Europe. At the same time, in stating that "*the West's soul is dead*" the PiS party does mount a serious allegations towards Europe. This was done in the context on an election debate, such claims might resonate with voters. In other contexts, important political PiS figures such as President Duda have taken another approach. In a 2021 speech concerning the political situation unfolding in Belarus he stated:

*"In Belarus there is no discussion about the electoral system, polarization, minorities and ideologies. This is a luxury of us Westerners".<sup>159</sup>*

Thus, PiS' discourse vis-à-vis Europe is ambiguous. When it comes to LGBT rights, the EU and its values can be associated with 'Western decadence' and moral decay. PiS politicians identify Poland as European, but a different kind of European, as Poland is truly representative of the traditional Christian Europe.<sup>160</sup> However, in other situations, PiS-politicians even identify themselves as Westerners (supposedly) subscribing to universal values advocated by the EU.

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<sup>154</sup> Holland, *Dominion*, 511 – 536.

<sup>155</sup> Ayoub and Paternotte, "Introduction," 2 – 18.

<sup>156</sup> "EU founding values: Commission starts legal action against Hungary and Poland for violations of fundamental rights of LGBTIQ people," European Commission, last Modified July 15, 2021, [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_3668](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_3668).

<sup>157</sup> Chojnicka, "Anti-EU and Anti-LGBT," 35.

<sup>158</sup> Kazharski, "Visegrad Four," 754.

<sup>159</sup> "Speech of the President of Poland during the Summit for Democracy," Polish Government, last modified December 9, 2021. <https://www.gov.pl/web/saudiArabia/speech-of-the-president-of-poland-during-the-summit-for-democracy>.

<sup>160</sup> Mikaluk, "Godly Homonormativity," 568.

## 3.2 Legislative discourse

### 3.2.1 LGBT-free zones

Poland's "LGBT-free zones" have been controversial since they appeared in the international press.<sup>161</sup> It refers to regions in Poland that have adopted resolutions proclaiming that their region is an "LGBT ideology-free zone".<sup>162</sup> In addition to this, some regions have adopted *the Charter of the right of the family* which does not explicitly mention LGBT people or identity but reinforces the traditional heterosexual family unit as the only real form of family and implies that LGBT people threaten those families.<sup>163</sup>

The European Commission threatened to withhold funds for regions continuing to have "anti-LGBT declarations" in place source. Under this financial pressure, several regions repealed their status as "LGBT-free zones" indicating significant EU leverage after states have entered the EU, at least on a regional level.<sup>164</sup> Most of the "LGBT-free zones" zones are located in the South-East of the country, this is not a coincidence considering support for the PiS party is high in this region.<sup>165</sup> In the Polish Powiat of Włoszczowski a resolution against the promotion of the "LGBT ideology" was adopted in 2019, the municipality expressed the wish to ban visible signs of this ideology from public life. The resolution states fundamental principles are violated by the LGBT ideology as defined in the Polish constitution.<sup>166</sup> Thus, this municipality uses the constitution to justify its exclusion of the "LGBT ideology" and arguably of LGBT people. The Polish Constitution indeed reinforces a traditional vision of the family and marriage:<sup>167</sup>

*"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".*<sup>168</sup>

Rainbow families do not fit the constitutional definition of marriage and are legally excluded from this social institution. This legal heteronormative codification further legitimize actions aimed at excluding those who do not respect a traditional definitions of the family. Rainbow families cannot possibly respect those as their families often consist of same-sex partners or people not prescribing to the gender binary.<sup>169</sup>

The Resolution further asserts that the LGBT ideology goes against "the Christian tradition of Poland and Europe".<sup>170</sup> The discourse characterizes LGBT identities as contrary to Polish identity. This is partly consistent with what has been found by several scholars who assert that radical right forces portray LGBT identities as a foreign threat to Poland imposed by the European Union.<sup>171</sup> The important

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<sup>161</sup> Euronews, "EU funds."

<sup>162</sup> "LGBTQ activists have developed the Atlas of Hate in Poland," Let's Go By Talking, last Modified <https://www.lets gobytalking.eu/lgbtq-activists-have-developed-the-atlas-of-hate-in-poland>.

<sup>163</sup> Ordo Iuris, "Fake news."

<sup>164</sup> Euronews, "EU funds."

<sup>165</sup> Zuk, Plucinski and Zuk, "Neoliberal exploitation,"

<sup>166</sup> "przyjmująca rezolucję w sprawie sprzeciwu wobec promocji i prób wprowadzania ideologii „LGBT” w życiu publicznym." Rady Powiatu Włoszczowskiego, last Modified September 16, 2019, [http://www.starostwo.wloszczowa.eobip.pl/gallery/37/35/37350/88\\_os\\_niep..pdf](http://www.starostwo.wloszczowa.eobip.pl/gallery/37/35/37350/88_os_niep..pdf).

<sup>167</sup> Mizielinska and Stasinska, "Family," 1797 – 1798.

<sup>168</sup> "The Constitution of the Republic of Poland of 2<sup>nd</sup> April 1997," SEJM, <https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>.

<sup>169</sup> Mizielinska and Stasinska, "Family," 1797 – 1798.

<sup>170</sup> Rady Powiatu Włoszczowskiego, "przyjmująca."

<sup>171</sup> Ayoub, "With Arms Wide Shut," 346.

O'Dwyer, *Coming Out*, 66.

difference between the findings of those scholars and this discourse is that, this time, Europe (which is intimately linked to the EU) is not portrayed as just a threat to Poland but as having shared similar values with Poland. It is not only Poland that needs to be protected from the LGBT ideology, but Europe as a whole. Ayoub and Paternotte show that “*the idea of Europe*” has been linked by LGBT activists to LGBT rights, just like this has been done by right wing groups.<sup>172</sup> However, similar to the political PiS discourse, this legal discourse casts Europe as a traditionalist and a Christian continent, that fails to live up to its traditional values. Thus, according to the PiS party LGBT rights are not only contrary to Polish identity but to European identity as a whole.<sup>173</sup>

### 3.2.2 Education bill

This research now turns to the Polish education law, which despite not explicitly mentioning LGBT or homosexuality, it has often been framed as being related to sexual education and the freedom of parents to educate their children source. As aforementioned this law would enhance the powers of government-appointed “*superintendents*” who could control what material from third parties to allow in schools.<sup>174</sup> Furthermore, the minister gets the competence, if there is an agreement with the superintendent to fire teachers

Article 14 gives three prerequisites for activities or course material from third parties; transparency about the objectives of the program, the approval of the superintendent and the approval of the parents’ council.<sup>175</sup> This establishes both government and parents’ control over educational activities provided by third parties such as NGO’s leaving less autonomy for the school.<sup>176</sup> In the end, both the parents and the government appointed superintendent are able to veto outside activities such that the bar is relatively high for third parties to be able to influence materials used by schools cementing governmental influence over education. Given the government’s rhetoric regarding LGBT rights, it is unlikely the government-appointed superintendent would allow comprehensive sexual education.

The text of the bill is concerned with the technical details and does not contain politicized rhetoric. However, it is the superintendents that receive important responsibilities with this bill conveying the message that superintendents, appointed by the government, know better what is right for students and children than schools do.

### 3.3 Subconclusion

Political and legal discourse of the PiS’ party casts the LGBT community as representative of an ideology threatening the traditional version of society this party is attached to. Children are threatened by this community through its values.<sup>177</sup> It is not just against LGBT rights that the PiS’ party is fighting, it is also against a certain understanding of Europe; an understanding set out by the *Charter of Fundamental Rights* that emphasizes a certain understanding of equality and from which support for LGBT rights can easily flow.<sup>178</sup> When it comes to LGBT rights, the PiS’ party approaches the EU and its values on the

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Chojnicka, “Anti-EU and Anti-LGBT,” 30 – 31.

<sup>172</sup> Ayoub and Paternotte, “Introduction,” 1.

<sup>173</sup> Ayoub, “With Arms Wide Shut,” 343.

<sup>174</sup> “Hateful anti-LGBT+ bill that could devastate a generation lands in Poland’s parliament,” PinkNews, Last Modified January 12, 2022, <https://www.pinknews.co.uk/2022/01/12/poland-lgbt-lex-czarnek-education/>.

<sup>175</sup> “Tekst ustawy ustalony ostatecznie po nieprzyjęciu uchwały Senatu o odrzuceniu ustawy,” SEJM, [https://orka.sejm.gov.pl/opinie9.nsf/nazwa/1812\\_u/\\$file/1812\\_u.pdf](https://orka.sejm.gov.pl/opinie9.nsf/nazwa/1812_u/$file/1812_u.pdf).

<sup>176</sup> PinkNews, “anti-LGBT+ Bill.”

<sup>177</sup> ILGA Europe, “Annual review.”

<sup>178</sup> Ayoub and Paternotte, “Introduction,” 5.

one hand as a place that adheres to values that are fundamentally detrimental to society. On the other hand, it emphasizes the attachment to Europe and stresses it should be a continent associated with traditional values.<sup>179</sup>

## **Chapter 4: Pro-LGBT: How has the Civic Platform-led government both legally and discursively approached the topic of LGBT rights (2007 - 2015)?**

Whereas LGBT rhetoric has been prominent in PiS' discourse and has received significant academic attention from 2005 till 2007 and, to a lesser extent, from 2015 onwards, the same cannot be said for the government in power from 2007 – 2015.<sup>180</sup> During this period, Civic Platform was in power with Donald Tusk being the prime minister until 2014.<sup>181</sup> Bunikowski has described the party as being “*pro-European, liberal-conservative and strict fiscal policy-oriented*”.<sup>182</sup> In 2010, O'Dwyer found that the Civic Platform is “*socially conservative on homosexuality*” and “*has largely ignored antidiscrimination policy*” with regard to LGBT rights.<sup>183</sup> However, some signs point in the opposite direction; as recently as 2021, Tusk expressed support for legalizing civil partnerships for same-sex couples.<sup>184</sup> In this chapter, political and legal discourse regarding LGBT rights and its relationship to the EU will be analyzed from actors and laws in order to establish Civic Platform's approach towards LGBT rights.

### **4.1. Political discourse**

In its political rhetoric Civic Platform rarely mentioned LGBT rights before 2011, however there was a push for legalizing partnerships for same-sex couples. This was partly due to a party called “*Your Movement*” which espoused an aggressively secular agenda and was openly supportive of LGBT rights. This party performed well among young people in the 2011 election and pushed the governing party into picking up the topic of LGBT rights.<sup>185</sup> In this context, Tusk expressed support for allowing partnerships for gays and lesbians in the run-up to the elections. Three times, legislative proposals on partnerships were introduced, one of which was introduced by Civic Platform. However, all of these attempts failed. Civic Platform's own attempt failed due to opposition of its own MP's highlighting that its position on LGBT rights, contrary to that of the PiS government is highly heterogenous regarding the issue of LGBT rights.<sup>186</sup> At the same time, scholars have documented that support from EU politicians, such as MEP's, has been important for pushing LGBT rights in Poland. This support gave Polish politicians the possibility to frame “*LGBT rights as European*”, this can resonate with electorates and politicians who espouse a Polish as well as a European identity.<sup>187</sup>

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<sup>179</sup> Youtube, “the debate.”

<sup>180</sup> O'Dwyer, *Coming out*, 57 – 83.

Ayoub, “With Arms Wide Shut,” 337 – 362.

Zuk et al. “Neoliberal Exploitation,” 1571 – 1595.

<sup>181</sup> “Biography of Donald Tusk,” European Council, <https://www.consilium.europa.eu/en/european-council/former-euco-presidents/summary-of-donald-tusk-presidency/biography>.

<sup>182</sup> Bunikowski, “The Constitutional Crisis,” 287.

<sup>183</sup> O'Dwyer, “From Conditionality to Persuasion,” 245.

<sup>184</sup> “Poland: Donald Tusk expresses support for legalizing same-sex unions,” Kafkadesk, last modified August 30, 2021, <https://kafkadesk.org/2021/08/30/poland-donald-tusk-expresses-support-for-legalizing-same-sex-unions/>.

<sup>185</sup> O'Dwyer, *Coming out*, 155 – 161.

<sup>186</sup> O'Dwyer, *Coming out*, 161 – 162.

<sup>187</sup> Philip M. Ayoub, “Contested Norms in New-Adopter States: International Determinants of LGBT Rights Legislation,” *European Journal of International Relations* 21, no. 2 (2015): 311  
Ayoub and Paternotte, “Introduction,” 14.



#### 4.1.1 Same-sex partnerships

Civil partnerships became an important topic in Polish politics such that important political figures such as Donald Tusk also had to express a view on it. Generally speaking, Tusk's rhetoric regarding the topic of partnerships open to same-sex couples was cautious seeking a balance between those who were more progressive and those who were more conservative including within his own party.<sup>188</sup>

During the election campaign, Tusk stated: *"Regarding partnerships, I am ready to discuss this"* while stressing that this topic should not, in his view, become a major theme for the campaign. Furthermore asserting: *"I don't think there will be hell if we give ourselves a few months of time to settle these issues calmly and precisely"*.<sup>189</sup>

While being open to the idea of partnerships, Tusk as a member of a 'moderate' party in Poland who is not necessarily the party most pro-LGBT rights, does not want to make it a priority during the campaign.<sup>190</sup> This is understandable given the political circumstances and the divisions within the political party of Tusk. On the other hand, this statement assumes that this topic should not be hastily treated and is not an urgent matter. By extension, this means that LGBT rights should not be prioritized by the government.

In 2011, after the elections the new Polish government was instated, Tusk addressed the Polish parliament while devoting significant attention to Poland's place in the European Union and addressing *"social and cultural challenges"*.<sup>191</sup> In this speech, Tusk stated:

*"I am aware that in recent years, as was clearly visible in this election campaign ... new civilizational challenges also appeared. .. But our coalition, the Polish government, institutions of public life, and the Polish state are not about to carry out a moral revolution"*.<sup>192</sup>

Though not explicitly mentioning LGBT rights or identities, Tusk asserts that the government is *"not about to carry out a moral revolution"*, this language has been used to denounce the acceptance of homosexuality.<sup>193</sup> What this message does convey, is that change in terms of morality should not be too radical. As morality and homosexuality have been often linked by opponents of LGBT rights, *"a moral revolution"* could very well, in the heads of many, be referring to changing LGBT.<sup>194</sup> Overall the statement should be interpreted as culturally conservative because it denounces profound change to moral codes. Tusk goes on to say:

*You cannot close your eyes ... to those changes that are positive, related, for example, to the equal status of women and men but we also cannot pretend that evil is good when the urging of these changes taken on unacceptable shapes or expressions."*<sup>195</sup>

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<sup>188</sup> O'Dwyer, *Coming out*, 161 – 162.

<sup>189</sup> Mirosławy Makuchowskiej and Michała Pawłeg, *Sytuacja społeczna osób LGBT: raport za lata 2010/2011* (Warsaw: Kampania Przeciw Homofobii, 2012), 127.

<sup>190</sup> Bunikowski, "The Constitutional Crisis," 287.

<sup>191</sup> "Exposé Tuska - pełny tekst," Wprost, last modified November 18, 2011, <https://www.wprost.pl/270463/expose-tuska-pelny-tekst.html>.

<sup>192</sup> Wprost, "Exposé Tuska."

<sup>193</sup> "PO: nie jesteśmy za legalizacją związków homoseksualnych," Wprost, last Modified March 30, 2008, <https://www.wprost.pl/kraj/126672/po-nie-jestesmy-za-legalizacja-zwiazkow-homoseksualnych.html>.

<sup>194</sup> Wprost, "Exposé Tuska."

Zuk et al. "Neoliberal Exploitation," 1589.

<sup>195</sup> Wprost, "Exposé Tuska."

Tusk is not explicitly addressing LGBT rights though some readers might interpret his statements as addressing them. In Tusk's view some "*changes are positive*", subscribing to the idea that, over time, society might evolve in a positive manner. This leaves room for incorporating LGBT rights and LGBT people into full and equal citizenship of Poland. However, the second part of his statement asserts that "*we cannot pretend that evil is good*" and talks about "*unacceptable shapes or expressions*" which seems to address LGBT rights implicitly.<sup>196</sup>

Tusk's balancing between socially conservatism and progressivism is exemplified by the following statement in the same speech<sup>197</sup>:

*"We have to believe in a Poland based on tradition and a Poland that believes in its future, its modernity is possible".*<sup>198</sup>

Tusk's discourse vis-à-vis morals and LGBT rights is somewhat ambiguous as this topic was and still is controversial in Poland. As aforementioned in the introduction, LGBT rights has been associated with (western) modernity; being truly modern is connected to accepting LGBT rights.<sup>199</sup> Opposition towards LGBT rights is frequently framed by those who are in favor of it as being anti-modern. One scholar has characterized Polish anti-LGBT discourse vis-à-vis LGBT rights as "a rebellion against modernity".<sup>200</sup> Whereas those who are opposed to LGBT rights stress "traditional values".<sup>201</sup> Tusk combines both and does not clearly choose one over the other. On the one hand he values "Poland based on tradition" which, for LGBT rights, often means a version of society not inclusive of LGBT rights. On the other hand, by stating that "its modernity is possible" Tusk sees modernity as a process that is not yet finished, This includes not just economic modernity but also social modernity. This provides an opportunity for those both inside and outside the government to argue for LGBT rights as this is part of a 'modern Poland'.

While Tusk is somewhat ambiguous about the relationship and his priorities vis-à-vis traditionalism and modernity, he is clear regarding Poland's place in the EU:

*"In my opinion, there is no political dilemma whether to be in the center of Europe or on its periphery. This is the dilemma of the political illiterate. The real dilemma for Poland is how to be in the center of Europe".*<sup>202</sup>

The idea for Poland not being on the European Union, is deemed so ridiculous that it something only "*the political illiterate*" would consider.<sup>203</sup> As this analysis has stressed before, being in the European Union has important implications for LGBT rights; not only does the EU provide a framework of anti-discrimination laws, the European institutions discursively support LGBT rights.<sup>204</sup> By implication, LGBT rights are not only linked to a 'modern Poland' but also to a 'European Poland' which Tusk supports enthusiastically.

Just before the Polish parliament was about to take a vote on proposals for partnerships open to same-sex couples in 2013, Tusk stated:

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<sup>196</sup> Wprost, "Exposé Tuska."

<sup>197</sup> O'Dwyer, "From Conditionality to Persuasion," 245.

<sup>198</sup> Wprost, "Exposé Tuska."

<sup>199</sup> Moss, "Split Europe," 215.

<sup>200</sup> O'Dwyer, *Coming out*, 57.

<sup>201</sup> Zuk et al. "Neoliberal Exploitation," 1583 – 1584.

<sup>202</sup> Wprost, "Exposé Tuska."

<sup>203</sup> Wprost, "Exposé Tuska."

<sup>204</sup> Ayoub and Paternotte, "Introduction," 1 – 5.

*“You can’t question the existence of such people (living in homosexual partnerships) and you can’t argue against the people who decide to live in such way.”<sup>205</sup>*

Here, Tusk positions himself on the side of LGBT rights by stressing the importance of freedom of choice while also denouncing homophobia. He is positioning himself more clearly in favor of LGBT rights than in earlier statement highlighting an evolution in his discourse.<sup>206</sup>

#### **4.1.2 Overt support for LGBT rights**

Kozłowska-Rajewicz, who between 2011 and 2014 was *“the government plenipotentiary for equal treatment”* more overtly supported LGBT rights than Donald Tusk did during his time in office while denouncing violence targeted towards the LGBT community.<sup>207</sup>

*“Let us make all minorities, including non-heterosexual people, feel safe and worthy in our country”.*<sup>208</sup>

First of all, this statement does not just focus on LGBT people but on all minorities, recognizing that different minorities might face similar problems. In fact, there are important parallels between current Polish homophobia and earlier anti-Semitism as many arguments used by the far right to justify the discrimination of LGBT people such as *“Christian values”* and *“national identity”* have also been used against Jewish minorities in the past.<sup>209</sup>

Furthermore, it does not just call for the safety of the LGBT community but it implicitly refers to human dignity. From this flows the understanding that people ought to be treated in a way that reflects their dignity. This principle is well established in European law as the *Charter of Fundamental Rights’* article 1 reaffirms *“human dignity”*.<sup>210</sup> Furthermore, the Polish constitution also affirms *“the inherent dignity of the person”*.<sup>211</sup>

The statement is thus embedded in a certain understanding of human dignity and human rights. Those values are upheld by both national (Polish) and international (EU) law. Though there is by no means a consensus on the implications of human dignity for LGBT rights, the argument is supported by the Polish constitutions making it harder to attack it while recognizing the potential intersectional dimension of oppression.<sup>212</sup> At the same time, it references values that are widely recognized in the world including in the entire European Union.

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205 “Polish parliament rejects efforts to legalize gay unions,” Reuters, last modified January 25, 2013, <https://www.reuters.com/article/us-poland-homosexuals-idUSBRE9000LU20130125>.

O’Dwyer, *Coming out*, 162.

206 Reuters, “gay unions.”

O’Dwyer, *Coming Out*, 162.

207 “Agnieszka KOZŁOWSKA-RAJEWICZ - former EPP Group MEP,” EPP, <https://www.eppgroup.eu/about-us/members/agnieszka-kozlowska-rajewicz>.

208 “Kozłowska-Rajewicz nie ustaje w promocji LGBTQ: “Sprawmy, aby wszelkie mniejszości czuły się bezpiecznie,” wPolityce, last modified October 31, 2013, <https://wpolityce.pl/polityka/169840-kozlowska-rajewicz-nie-ustaje-w-promocji-lgbtq-sprawmy-aby-wszelkie-mniejszosci-czuly-sie-bezpiecznie>.

209 Zuk et al. “Neoliberal Exploitation,” 1589.

210 European Union, “Charter,” art. 1.

211 SEJM, “The constitution.”

<sup>212</sup> Zuk et al. “Neoliberal Exploitation,” 1589.

## 4.2 Legal discourse

While there have been initiatives undertaken by Civic Platform to make family law more inclusive of LGBT people, an important portion of anti-discrimination legislation action undertaken by the Polish legislature from 2007 until 2015 was because of EU directives that prescribed base-line protections against discrimination for a significant number of minorities.<sup>213</sup> In this section, a Polish act from 2010 will be analyzed to assess the action of the government to enshrine anti-discrimination policy.

### 4.2.1 Implementation of EU legislation

In 2010 the Polish parliament approved an anti-discrimination bill that entered into force in 2011.<sup>214</sup> The act sought to implement five different directives from the European Communities and the European Union. Furthermore, the act amended previous Polish acts that addressed different types of discrimination (e.g. based on disabilities). Three of the EU directives addressed in the Polish act focus on sex discrimination, one on racial discrimination whereas the remaining directive is more general in its scope as it seeks to establish a “*general framework*” for “*conditions of equal treatment in employment and occupation*”.<sup>215</sup> Out of those 5 EU directives, only the last mentioned directive explicitly mentions “*sexual orientation*”. Although it could be argued that discrimination on the basis of sex is also discrimination based on sexual orientation.<sup>216</sup> However, the CJEU did not agree to this analysis as it stated in *Grant v South-West Trains Ltd* in 1998 that contrary to sex-discrimination, “community law as it stands at present does not cover discrimination based on sexual orientation”.<sup>217</sup>

Since discrimination based on sexual orientation has been explicitly prohibited in the area of employment in EU secondary law since 2000, LGBT rights are better protected by the EU and the CJEU now.<sup>218</sup> The Directive states that “*to this end, any direct or indirect discrimination based on religion or belief, disability, age or sexual orientation as regards the areas covered by this Directive should be prohibited throughout the Community*”.<sup>219</sup>

The Polish act from 2000 shows strong similarities to the EU directive from 2000 in terms of wording and purpose.<sup>220</sup> This highlights the important of interactions between the supranational and the national level. The Polish act prohibits discrimination in the workplace based on “*sex, race, ethnic origin, nationality, religion, denomination, beliefs, disability, age or sexual orientation*”.<sup>221</sup> This list is arguably highly inclusive although it does not explicitly prohibit discrimination based on other grounds than listed. By prohibiting discrimination on these grounds, the law takes into consideration the historic grounds for discrimination. The acknowledgement of “*sexual orientation*” as a basis for discrimination is significant because it sends the message that discrimination against gay- and bisexual

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<sup>213</sup> “Act of 3rd December, 2010 on the implementation of some regulations of European Union regarding equal treatment,” International Labour Organization, <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/86331/119136/F847762410/POL86331%20Eng.pdf>.

<sup>214</sup> “International Labour Organization, “equal treatment,” art. 33.

<sup>215</sup> European Union, “Council Directive 2000/78, L303/17.

<sup>216</sup> O’Dwyer, *Coming out*, 161 – 162.

<sup>217</sup> Court of Justice of the EU, *Grant v Sout-West Trains Ltd*, Case C249/96 (1998): I-651  
*Case 66/85 Lawrie Blum v Land Baden-Württemberg* (1986). 61985J0066 – 02121.

Wintermute, “Sexual Orientation,” 196 – 197.

<sup>218</sup> Wintermute, “Sexual Orientation,” 196 – 197.

European Union, “Council Directive 2000/78.”

<sup>219</sup> European Union, “Council Directive 2000/78,” L303/17.

<sup>220</sup> International Labour Organization, “equal treatment.”

European Union, “Council Directive 2000/78.”

<sup>221</sup> International Labour Organization, “equal treatment,” art. 1.

people is a problem. Gay and lesbians are often refused to be seen as victims of discrimination at all by extreme right wing groups who assert it is conservative people who are being discriminated against and under attack by LGBT people or by its ideology.<sup>222</sup> Importantly, this law also prohibits “*indirect discrimination*” based on sexual orientation. Such an indirect discrimination only is legal if it “*is objectively justified by a legitimate aim that is to be accomplished and the means of achieving that aim are appropriate and necessary*”.<sup>223</sup> Thus, this law protects from arbitrary discrimination; merely a dislike of LGBT people is not a legitimate reason to discriminate against them.

Whereas the 1986 EC directive about sex discrimination does mention “*social security*” and prohibits discrimination based on sex, no such provision exists in the 2000 that also addresses sexual orientation:<sup>224</sup> “*This Directive does not apply to payments of any kind made by state schemes or similar, including state social security or social protection schemes*”.<sup>225</sup> For this reason the Polish act does not protect gay and bisexual people in the area of social security and housing:

*“Unequal treatment of natural persons due to sex, race, ethnic origin or nationality with regard to the access to and conditions of use of social security, services, including residential services, objects and procurement of rights and energy, provided they are offered publicly, shall be prohibited”.*<sup>226</sup>

While the Polish act seeks to protect from discrimination based on “*sex, race, ethnic origin and nationality*” throughout the entire act, discrimination based on “*religion, denomination, belief, disability, age or sexual orientation*” are only partially protected in this act, namely in the field of “*professional education*”, “*employment*” and the use of “*labour market instruments*”.<sup>227</sup>

The universal protection of characteristics like sex and race seeks to protect historically oppressed and discriminated groups. However, as characteristics like religion and sexual orientation are not protected by this act for important domains in life such as medical care, services and housing, certain groups of people are less protected by this bill. On the one hand, this could be because those groups are less often the victim of discriminations. In this case we know that, historically, this is not necessarily the case. Therefore, while this act does protect gay and bisexual people from certain forms of discrimination, it reinforces the notion that these groups either need less protection or are less deserving of it than groups who are discriminated against because of sex or race.

Finally, an exemption to the prohibition of “*unequal treatment*” is made for measures undertaken by the government in its “*application of measures necessary in the democratic state for its public safety and order, protection of health or protection of freedom and rights of others persons and actions subject of penal sanctions*”.<sup>228</sup>

Interestingly, these limitations of the bill are to protect values that are arguably incredibly important for LGBT rights; “*the democratic state*”, “*public safety and order*” and “*freedom and rights of other*”

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<sup>222</sup> O’Dwyer, *Coming out*, 57 – 83.

Ayoub, “*With Arms Wide Shut*,” 337 – 362.

<sup>223</sup> International Labour Organization, “*equal treatment*,” art. 3.

<sup>224</sup> European Communities, “*Council Directive of 11 December 1986 on the application of the principle of equal treatment between men and women engaged in an activity, including agriculture, in a self-employed capacity, and on the protection of self-employed women during pregnancy and motherhood*,” *Official Journal of the European Communities*, L359/56.

European Union, “*Council Directive 2000/78*.”

<sup>225</sup> European Union, “*Council Directive 2000/78*”, art. 3.

<sup>226</sup> International Labour Organization, “*equal treatment*,” art. 6.

<sup>227</sup> International Labour Organisation, “*equal treatment*,” art. 4.

<sup>228</sup> International Labour Organization, “*equal treatment*,” art. 8.

persons".<sup>229</sup> At the same time, vigilance is required to make sure the government does not overstep its mandate by banning gay pride parades in the name of "public safety and order", this has been attempted before by the Polish right.<sup>230</sup>

What this law means for transgender people in Poland is unclear. On the one hand, this law does prohibit discrimination based on sex. The CJEU has interpreted discrimination based on the gender identity of transgender people as being discrimination on the grounds of sex as it stated in *P v S. and Cornwall Country Council* that "Council Directive 76/207/EEC", which prohibits sex discrimination, "precludes dismissal of a transsexual for a reason related to a gender reassignment".<sup>231</sup> On the other hand, this act does not explicitly mention gender identity and lower judges could interpret this law as not applicable to transgender people.

#### 4.3 Subconclusion

Tusk's discourse vis-à-vis LGBT right is somewhat ambiguous, while stressing the importance of a European and a modern Poland which are connected to LGBT rights, his discourse seemed to implicitly address LGBT rights in a negative way.<sup>232</sup> However, over the years, his discourse has become more supportive of LGBT rights. Kozłowska-Rajewicz was more overtly supportive of LGBT rights making arguments related to human dignity.<sup>233</sup> Overall, the discourse vis-à-vis LGBT rights remained diverse within the government. However, there was an evolution to a more positive discourse towards LGBT rights.<sup>234</sup> Legislation regarding same-sex partnerships failed, nevertheless important protections were put in place through the implementation of EU directives. Even so, discrimination based on sexual orientation is not explicitly prohibited in the areas of housing and social security as opposed to sex and race which are protected throughout the entire Polish act highlighting that anti-discrimination remains incomplete at the national and at the EU level.<sup>235</sup> Overall, an hesitancy to explicitly use LGBT rights by the government was observed, the government attempted to stay away from the big controversies. However, its attachment to Europe may have contributed to the government's increasing support for supporting LGBT rights.<sup>236</sup>

### Chapter 5: In what way have LGBT rights been used as a political tool by the Polish governments and how does this relate to Poland's EU membership? (2007 – 2020)?

LGBT rights have become politicized in Eastern Europe but also at the European level.<sup>237</sup> By European institution, mainly the Commission, pro-LGBT discourses are used to assert Europe's superiority; Europe's values are superior because its LGBT rights framework is superior even if this assumption could be challenged. The story of a tolerant and a diverse Europe is one that reinforces a European identity inclusive of LGBT rights, thereby fostering links between LGBT identities and the EU.<sup>238</sup>

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<sup>229</sup> International Labour Organization, "equal treatment," art. 8.

<sup>230</sup> Wintermute, "Sexual Orientation," 181.

<sup>231</sup> Court of Justice of the EU, *P v S. and Cornwall Country Council*, Case C13/94 (1996): 2159, 2164.

<sup>232</sup> Wrpost, "Exposé Tuska."

<sup>233</sup> wPolityc, "Kozłowska-Rajewicz."

<sup>235</sup> O'Dwyer, *Coming out*, 155 – 161

Puar, "Homonormativities," 86.

<sup>236</sup> O'Dwyer, *Coming out*, 162.

<sup>237</sup> O'Dwyer, "Backlash," 893 – 894.

<sup>238</sup> Ayoub and Paternotte, "Introduction," 1 – 3.

The PiS government uses LGBT rights as a political tool in times of campaigns, attacking LGBT people while reinforcing heteronormative ideals and to increase support among their electoral base.<sup>239</sup> In its discourse, LGBT people are portrayed as ‘un-Polish’ and a danger to the country.<sup>240</sup> In doing so, the PiS government attacks European values as defined by *the Charter of Fundamental Rights*, thereby challenging the EU’s legitimacy. However, its discourse vis-à-vis Europe is ambiguous as the ruling party is still in favor of EU membership while vigorously attacking EU policy.<sup>241</sup> In different contexts, Polish government officials identify with the West and its values, a region that is at times associated by the same government as being in moral decay.<sup>242</sup> This paradox might be unsustainable for Poland; full identification with Europe and the West seems increasingly incompatible with its traditionalist world view given the increased incorporation of “*sexual citizenship*” at the European level.<sup>243</sup> In addition to this, the government stresses that its vision of Europe, a traditionalist Christian Europe is carrying forward the true legacy of it.<sup>244</sup> In addition to political rhetoric this traditional project, which actively othered LGBT people, was carried forward through legislation at the regional and national level through (symbolic) legislation that asserted a traditional understanding of LGBT rights and Europe.

The Civic Platform government was divided party when it came to LGBT rights. Tusk’s discourse vis-à-vis LGBT rights was crafting a balance between traditionalism and modernity while attachment to Europe and its values was emphasized. Civic Platform above all, tried to make sure LGBT rights would not get in the way of the party’s electoral success. Therefore, it tended to stay away from politicizing the issue highlighting the sensitiveness of it.<sup>245</sup> However, over the years Civic platform became somewhat more assertive and political figures from this party started counteracting anti-LGBT rhetoric with pro-LGBT rhetoric albeit often moderate rhetoric not directly advocating for full legal equality but advocating for freedom of choice and more equality (i.e. paternity rights).<sup>246</sup> Legislatively, Civic Platform’s succeeded attempts at anti-discrimination often came from the EU level highlighting the importance of EU-level regulation. The laws provide LGBT citizens with some protection from discrimination though sexual minorities remain under-protected as compared to women and ethnic minorities.<sup>247</sup>

There are deeper underlying questions regarding this research. Inclusion and exclusion are arguably important dynamics of any society, exclusions can marginalize certain groups of people. Politicization of minority rights has happened before and will happen again; whether it be the rights of LGBT people, racial and ethnic minorities or religious minorities. This process can be problematic in some regards because political actors can use certain marginalized minorities to achieve political gain. At the same time, drawing attention to a certain topic may overall have a positive effect.<sup>248</sup>

Vigilance from politics and civil society is required; politicization of LGBT rights makes LGBT people and their rights the subject of a political battle. In this political fight it is not always the interest of this minority group that are considered. Minority rights should never be a tool to exclude and to attack

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<sup>239</sup> Mikaluk, “Godly Homonormativity,” 573.

<sup>240</sup> Chojnicka, “Anti-EU and Anti-LGBT,” 31.

<sup>241</sup> Chojnicka, “Anti-EU and Anti-LGBT,” 35.

<sup>242</sup> Polish Government. “Democracy.”

Mole et al. “Collective narcissism,” 42.

<sup>243</sup> Puar, “Homonormativities,” 57 – 58.

<sup>244</sup> Ayoub, “With Arms Wide Shut,” 343.

<sup>245</sup> International Labour Organisation, “Equal treatment.”

<sup>246</sup> O’Dwyer, *Coming out*, 161 – 162.

<sup>247</sup> International Labour Organization, “Equal treatment.”

<sup>248</sup> O’Dwyer, *Coming out*, 83.

others. Homonationalism shows how LGBT rights could be used to exclude some citizens from society whereas openly homophobic discourse has the effect of denying a part of the society full equality.<sup>249</sup> Therefore, politicians, civil society or any individual should never forget whom they are fighting for or against while recognizing the common humanity of all.

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<sup>249</sup> Puar, "Homonationalism," 336 – 339.



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