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NEWS REPORT

Country:	Poland
Title:	Landmark decision of the Supreme Court regarding rights of same-sex partners in criminal law
Date:	24 March 2016
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<u>Context</u>	
Issue at stake:	Elimination of potential discrimination in criminal law
Ground of discrimination:	Sex
Source:	National court decision
Field:	Other
Applicable law:	Penal Code, Code of Criminal Proceeding; Resolution of a 7 judge panel of the Supreme Court of 25 February 2016, I KPZ 20/15

Law/case development: The Supreme Court (SC) in Resolution of 25 February 2016 decided that *'the term person 'in common cohabitation', included in the definition of the next to kin in Article 115 § 11 PC, refers to a person who remains in such actual relationship with another person, where at the same time spiritual (emotional), physical and economical bonds (common domestic household) between them exist. The existence of such relationship is also possible, when the lack of a particular bond is objectively justified. The difference in sex of persons remaining in such relationship does not constitute a condition for determining their living in common cohabitation in the understanding of Article 115 § 11 PC'*. This Resolution resulted from a procedure triggered by the motion of First President of the SC which was not related to any particular case, but was lodged within its competence for referring to the 7 judges' panel matters raising doubts in jurisprudential practice (Art. 60 of the Law on the Supreme Court of 23 November 2002, JoL 2013 item 499).

Key points of analysis: Various branches of the Polish legal system utilize the term *'common cohabitation'* (*wspólne pożycie*) which does not have a legal definition. This term constitutes, among others, part of the definition of the legal notion *'next to kin'* (*osoba najbliższa*) included in Article 115 § 11 PC. With regard to this provision, many interpretative differences occurred in jurisprudence and literature. These differences regarded, in particular, the matter of whether the term *'common cohabitation'* can be used to refer to partners of the same sex. Additionally, the elements that had to be fulfilled in order to assume that a *'common cohabitation'* existed in the understanding of Article 115 § 11 PC were unclear. Clarification of the term *'common cohabitation'* has important practical implications since, for instance, the next to kin of offenders have special rights in criminal proceedings.

Internet link source:

I KPZ 20/15

http://www.sn.pl/sprawy/SitePages/Zagadnienia_prawne.aspx?ItemID=917&ListName=Zagadnienia_prawne

http://www.sn.pl/sprawy/SiteAssets/Lists/Zagadnienia_prawne/NewForm/I-KZP-0020_15_p.pdf, accessed 2 March 2016

"Wspólne pożycie" także dla osób tej samej płci. Uchwała Sądu Najwyższego [Domestic partnership also for same-sex person. Decision of the Supreme Court], 25.02.2016, <http://www.tvn24.pl/sad-najwyzszy-osoby-tej-samej-plci-pozostaja-we-wspolnym-pozyciu,622418,s.html>, accessed 28 February 2016

Pojmowanie wyrażenia "osoba pozostająca we wspólnym pożyciu" [the understanding of the term "person in domestic partnership"]. Press release of the SC. 25.02.2016, http://www.sn.pl/aktualnosci/SitePages/Komunikaty_o_sprawach.aspx?ItemID=113&ListName=Komunikaty_o_sprawach, accessed 28 February 2016.