



## European network of legal experts in gender equality and non-discrimination

### NEWS REPORT

<b>Country:</b>	Poland
<b>Title:</b>	Printing house employee found guilty of refusal to print a roll-up for LGBT initiative. Unprecedented reaction of Minister of Justice
<b>Date:</b>	28 July 2017
<b>Expert:</b>	Lukasz Bojarski
<b><u>Context</u></b>	
<b>Issue at stake:</b>	Can law be interpreted in a way that in order to protect the rule of equal treatment and non-discrimination limits, stifles freedom of thought, beliefs and views, as well as the economic freedom and freedom of transactions
<b>Ground of discrimination:</b>	Sexual orientation
<b>Source:</b>	National court decision, national equality body, policy development
<b>Field:</b>	Access to goods and services
<b>Applicable law:</b>	Code of Petty Crimes <sup>1</sup>

### **Content**

A small printing company in Łódź refused to print a roll-up of the Civil Society Organization LGBT Business Forum. An employee wrote in a refusal email "we do not contribute to the promotion of LGBT movement in our work". Following the complaint of LGBT organisations, the Ombud sent a motion to the Police suggesting an investigation in relation to discrimination in access to services based on the Petty Crimes Code. The Police agreed and filed a motion to the court to fine the company.

The case was being dealt with under Art. 138 of the Code of Petty Crimes which stipulates 'Anyone who, being a professional service provider, demands or collects payment higher than that in force, or deliberately refuses to provide the service without just cause, shall be subject to a fine.' The fine imposed by the court (Article 1.1) may be up to around EUR 1 250 (PLN 5 000).

The Lodz-Widzew District Court fined the printers PLN 200 (EUR 45) in a simplified procedure (meaning that there was no hearing; based only on the motion of the police, the court fined the owner of the printing house). At this time, the case became famous and the Minister of Justice/Prosecutor General as well as the think tank Ordo Iuris engaged in the debate on the issue and the case itself. The court verdict was appealed. Once such a fine is challenged the case starts from the beginning before a 1<sup>st</sup> instance court in a regular procedure – meaning with hearing of both parties during the court hearing. The court verdicts are presented below. It should be however mentioned that this case is important due to some additional circumstances. First – the extraordinary intervention of the Minister of Justice/Prosecutor General (also published on the website

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<sup>1</sup> Poland, Law of 20 May 1971 on petty crimes (*Ustawa z dnia 20 maja 1971 r. Kodeks wykroczeń*).

of the Ministry) which was widely criticized as a blatant threat to the independence of the judiciary and independence and impartiality of particular judges (statements of Judges Association Iustitia,<sup>2</sup> Helsinki Foundation for Human Rights<sup>3</sup> and others).<sup>4</sup> The Minister of Justice simply stated that the verdict in the simplified procedure was unconstitutional; suggested that the judge was uneducated and gave instruction as to what the verdict should look like.

According to the Minister,<sup>5</sup> the judgment of the court "stifles freedom of thought, beliefs and views, as well as the economic freedom and freedom of transactions. It puts in a privileged position the Foundation representing the sexual minorities and breaks the freedom of conscience of an employee who has the right not to support homosexual content. [...] Courts are obliged to guard the constitutional freedom of conscience, and not to break it. They are supposed to protect the rights and freedoms of citizens, including the freedom to pursue business, and not impose coercion on them. No ideological reasons do justify violating these fundamental principles [...]."

The Ombud also took position by sending a letter to the Minister analysing the concept of discrimination, especially in access to goods and services.<sup>6</sup>

The case moved the conservative circles which started a debate and also some actions. Ordo Iuris for instance prepared a petition to amend the Code of Petty Crimes by deleting Arts 135 and 138 "as a reminiscence of communism"<sup>7</sup> being used by promoters of radical ideologies to limit the freedom of thought and economic activity. The petition was signed by more than 16.000 people<sup>8</sup> and those signatures were officially handed over together with the proposal of amendment to the vice minister of Justice on 19 December 2016.<sup>9</sup>

Finally, the case was one more reason to attack the Ombud as one who defends LGBTI persons and not "normal citizens". The attacks came from conservative CSOs, media and politicians, including MPs and members of the government.

### **Decision of the Court:**

**Simplified procedure:** Sąd Rejonowy dla Łodzi-Widzewa (Łódź-Widzew District Court); July 2016; Police v. Printing house  
The Court fined the printers PLN 200 (EUR 45) in a simplified procedure (there was no hearing).

**First instance:** the District Court for Łódź-Widzew; 31 March 2017.

The court decided that the entrepreneur was guilty of committing the misdemeanour from Art. 138 of the Code of Petty Crimes and indicated that his convictions did not justify refusing to perform the service. However, the court waived the punishment. The verdict was appealed.

**Second instance:** the Regional Court in Łódź (Sąd Okręgowy); 26 May 2017.

The court of 2<sup>nd</sup> instance, on the very last day the case could be decided, decided to reject the appeal and upheld the ruling of the court of 1<sup>st</sup> instance. The court underlined in the oral justification that the sentence had no ideological tinge. "The court does not

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<sup>2</sup> <http://www.iustitia.pl/uchwaly/1507-opinia-iustitii-w-sprawie-skargi-krs-do-trybunalu-konstytucyjnego>.

<sup>3</sup> <http://www.hfhr.pl/ministerstwo-sprawiedliwosci-krytykuje-wyrok-sadu-rejonowego- stanowisko-hfpc/>.

<sup>4</sup> <http://www.rp.pl/Dobra-osobiste/307279883-Drukarze-nie-maja-klauzuli-sumienia---rozmowa-z-Irena-Kaminska.html?template=restricted>.

<sup>5</sup> Translated by author from: <https://ms.gov.pl/pl/informacje/news,8476,oswiadczenie-ministra-sprawiedliwosci-prokuratora.html>.

<sup>6</sup> <https://www.rpo.gov.pl/sites/default/files/RPO%20do%20Zbigniewa%20Ziobro%2029.07.2016.pdf>.

<sup>7</sup> <http://www.ordoiuris.pl/wolnosc-gospodarcza/ordo-iuris-zlikwidujmy-komunistyczne-relikty-z- kodeksu-wykroczen>.

<sup>8</sup> <http://www.maszwpływ.pl/zlikwidujmy-komunistyczne-relikty-w-kodeksie-wykroczen-ml2,60,k.html>.

<sup>9</sup> <http://www.ordoiuris.pl/wolnosc-gospodarcza/ordo-iuris-w-obronie-praw-przedsiębiorców>.

speak for or against the orientation of LGBT groups or the accused. It is an expression of the principle of equality before the law". The court stated that whether the case concerns refusal to print roll-ups for LGBT organizations or promotional posters for pro-life movements, it should be assessed exactly the same way – in terms of misconception of understanding of the freedom of conscience.

**Further proceedings:** as of 23 July, the written justification of the verdict was not made available. However, Prosecutor General/Minister of Justice already on June 16<sup>th</sup> announced in the Polish Radio that once he receives the written justification, he will challenge the case twofold. Firstly – in a cassation procedure before the Supreme Court. Secondly – before the Constitutional Tribunal (to challenge the law on petty crimes as limiting the freedom of conscience and freedom of enterprise). Finally, he promised to consider the amendment of the law on petty crimes being basis of the court verdict.

**Key points of analysis:** The case is being dealt with under Art. 138 of the Code of Petty Crimes, defining refusal to sell goods and provide services as a petty crime, provisions stemming from the communist era and fight with "speculators" in a situation of shortage of goods. Art. 138 was identified as one that could possibly play a role to some extent in the prohibition of discrimination in access to goods and services. Finally, when the provision was used for the purpose of challenging discrimination the Minister of Justice (as well as Government Plenipotentiary for Equal Treatment) strongly opposed to using this article by the courts. The case brought vivid debate on the right to equal treatment and non-discrimination versus freedom of thought and economic activity, the debate that proved not only the controversy in a society, but the fact that lawyers and even authorities do not know the law on discrimination.

**Internet link source:** the court verdicts are not available. Other sources are listed above in the footnotes.