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## **Gender Identity in Cis-Heteronormative Legal Orders: A Comparative Approach – Poland and Mexico<sup>1</sup>**

**Abstract:** In this article, we examine the legal challenges encountered by LGBT+ individuals in Poland and Mexico within the context of prevailing cis-heteronormative structures. These structures deeply influence societal and legal systems in both countries, resulting in marginalization and discrimination. We compare the development of LGBT+ movements and their impact on legislative changes by analysing enacted laws, court cases, and law proposals. The study highlights the progress and obstacles to achieving equality in each case: Mexico has made significant strides in recognizing non-binary perspectives and advancing LGBT+ rights, while Poland has faced setbacks due to the continuous rejection of progressive reforms. Both countries continue to navigate unique challenges in their pursuit of greater inclusivity for the LGBT+ community, offering valuable lessons from each experience.

**Keywords:** cis-heteronormative order, cis-normativity, gender identity, heteronormativity, human rights, non-binary identity

### **Introduction**

An exploration of legal dilemmas surrounding sexual and gender identity first requires an understanding of the pervasive influence of cis-normativity and heter-

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onormativity in our societies. Cis-normativity assumes the existence of only two genders – male and female – while heteronormativity dictates that romantic or sexual relationships are acceptable only between individuals of opposite sexes. These normative frameworks are deeply embedded in our societal and legal systems, establishing a binary paradigm that rigidly defines one sexual preference and two gender identities as the standard and norm. However, the reality for many within the LGBT+ community is much more nuanced. When we refer to LGBT+ in this text, it is fundamental to treat it as an ‘umbrella concept’ that encompasses a wide range of different groups with presumably diverse problems and claims, including lesbian, gay, bisexual, asexual, transsexual, and transgender people, as well as non-binary groups such as genderfluid, bi – and multigender, and agender individuals, among others. This internal diversity underscores the need for nuanced approaches to addressing legal challenges related to their sexual and gender identities.

This study seeks to unravel the main dilemmas and legal claims of LGBT+ groups in their pursuit of rights, thereby challenging the cis-heteronormative order, in two distinct yet intersecting contexts: Poland, a Member State of the European Union, and Mexico, a Latin American country. Despite their many differences, these nations share the influence of the Catholic religion on social life and policymaking, as well as documented discrimination against the LGBT+ community. Through a comparative lens, this research examines the legal frameworks shaping the rights and protections afforded to non-heteronormative and non-binary individuals in Poland and Mexico. By analysing enacted legislation, significant court cases, and proposed laws, it aims to illuminate pathways to progress and the persistent barriers that hinder equality and inclusion.

Structured into four main sections, this article begins with an exploration of individual and collective identities, drawing from constructivist and gender perspectives. It then delves into the challenges that evolving and broadening conceptions of human rights pose to prevailing cis-heteronormative orders. The subsequent sections offer comparative case studies, tracing the evolution of LGBT+ movements in each country and examining their legal advancements and gaps. The article concludes with key insights drawn from the analysis.

## **1. Individual identity and collective identity from a constructivist and gender perspective**

The concept of identity gained popularity at the turn of the 20th and 21st centuries. It has been studied from the perspective of many research areas, including sociology, psychology, cultural studies, anthropology, and legal sciences. The popularity and ubiquity of the term has led some to consider it a ‘buzzword’ (Cornwall, 2007, p. 70). Regardless of emerging scepticism, the problem of identity has become

a leading topic of both scholarly and political discourse, opening many areas of theoretical and practical exploration. The question of who needs identity and why it is essential has gained prominence, especially in the context of advancing globalization (Świątkiewicz-Mośny, 2015, pp. 7–8). This phenomenon is characterized by the concurrent convergence and divergence of cultures, including legal cultures (Nawrot et al., 2012). Consequently, identity emerges as a lens through which we interpret and understand the world (Bauman, 2007, pp. 14–15). Although the concept of identity is polysemic and multidimensional, this study will focus on individual (personal) identity in relation to the collective (general, social) identity of non-heteronormative and non-binary individuals belonging to the LGBT+ community.

It should first be emphasized that individual identity is linked to our relationships with others, reflecting self-awareness. To form this identity, we engage in a shared ‘symbolic world of meanings’. Collective identity, on the other hand, asks ‘who are we in relation to other groups?’ It arises from the human need for affiliation and similarity with others (Dzieskanowska, 2008), being shaped by cultural and psychological factors, and distinguishing one group from another. Identity is thus both the ‘image of oneself’ and ‘the image of one’s group’. Multiculturalism has greatly contributed to the intensification of the processes of transforming and negotiating identity (Palczny, 2008, p. 42).

Gender identity, a fundamental element of individual and collective identity within LGBT+ groups, has conventionally been linked to biological sex, determined by genitalia and genetics. It was assumed that these biological factors were the primary determinants of the observed differences between males and females, and consequently the resulting social disparities between them. This perception thus framed gender identity as a natural and spontaneous manifestation of sex (Mayobre Rodríguez, 2007, pp. 35–36), with males typically associated with strength and protection, while females often regarded as weaker, primarily oriented toward child-bearing. These beliefs shaped social norms and relationships within what we call here a cis-heteronormative framework, seen as natural due to its alignment with biologically ascribed characteristics (the so-called ‘ascribed identity’).

Constructivists have challenged the notion that the cis-heteronormative societal order is determined solely by biological factors, arguing instead that it is primarily a social construct shaped by power structures (Foucault, 1990). This intersection between power and the construction of ideas (or concepts), often referred to as knowledge, is central to Foucault’s theory, and has been extensively taken up in feminist, gender, and queer theories (Ahmed, 2020; Butler, 2002; De Lauretis, 2000; Wittig, 1992). Through the construction of knowledge – defining what is true, normal, and desirable – norms are established to reinforce these constructs while marginalizing deviations. This process thus leads to both naturalization (perceived as natural and true) and normalization (considered as normal and desirable). Foucault’s analysis fo-

cuses on the division between normal and abnormal behaviours, using heteronormative human sexuality as a key example. Various political and social forces seek to assert control over human reproduction, resulting in the creation of rules that regulate sexual behaviour, often categorized as a form of biopower, effectively marginalizing, pathologizing, and criminalizing those deemed outside the norm (Foucault, 1990).

While Foucault focuses on heteronormativity as a form of oppression rooted in the control of human reproduction, feminists and queer theorists like Judith Butler argue that oppression also stems from cis-normativity, which governs broader human roles. Firstly, it perpetuates the historical subjugation of one gender, typically female, by power structures. Secondly, gender identity must be further deconstructed; this is necessary not only because assigned sex may not align with perceived gender identity, resulting in individuals being 'male-bodied' but identifying as female, or vice versa, but also because various identities exist outside the traditional gender binary (Butler, 2002).

Recent medical progress presents both opportunities and risks, as it can lead to the reinforcement of biopower, seeking to control, normalize, and 'correct' individuals who fall outside the cis-heteronormative order, or, on the contrary, to its contestation. For instance, there has been significant progress in understanding sexual orientation and gender identity. The World Health Organization removed homosexuality from its list of mental illnesses in 1990; similarly, in 2018, transgenderism was also delisted as a mental disorder. This shift reflects a recognition of the stigma associated with such categorizations and their inconsistency with current medical knowledge (Czerwiec, 2021; Robles, et al., 2016). However, stigma persists, affecting both individuals and groups, often resulting in feelings of inferiority, social inadequacy, and a sense of a 'wounded identity'. Stigmatized individuals may isolate themselves and encounter hostility, suspicion, and anxiety (Porankiewicz-Żukowska, 2013). Nonetheless, stigmatization and the formation of identity within such adverse circumstances can also serve as a catalyst for change. This change seems urgent, and the revision or deconstruction of legal systems is imperative to ensure the granting of necessary rights and adequate protection to LGBT+ groups.

## **2. Non-cis-heteronormativity and human rights**

Human rights are universal and inalienable, belong to every human being, and are linked to principles of equality before the law and equal political rights (Gawin et al., 2016). In this sense, every person possesses the 'right to have rights' by virtue of their inherent dignity. Despite this, the violation and deprivation of basic human rights, including in the form of discrimination, remain prevalent issues even in the 21st century, occurring when individuals from certain social groups face differential

treatment due to prejudice, despite no justifiable rationale. Simply their ‘otherness’ becomes the basis for unequal treatment (Czeszejko-Sochacka, 2019, p. 193).

The imperative to combat discrimination is evident in international law and EU regulations. While various existing international laws, such as the International Covenant on Civil and Political Rights (Art. 2 sec. 2), the International Covenant on Economic, Social and Cultural Rights (Art. 2 sec. 2), and the Convention for the Protection of Human Rights and Fundamental Freedoms (Art. 14), prohibit discriminatory practices, they often fail to explicitly address discrimination based on sexual orientation or gender identity. Responding to human rights violations against LGBT+ groups, the European Parliament condemned discrimination on these specific grounds (European Union Agency for Fundamental Rights, 2009, pp. 81–82).

The Yogyakarta document, formulated in Indonesia in 2006, provides a comprehensive definition of discrimination based on gender identity or sexual orientation. Its first principle emphasizes the universal right to the enjoyment of human rights, affirming that all individuals are born free and equal in dignity and rights. Discrimination, as elaborated in the second principle, consists of any differentiation, exclusion, limitation, or privilege based on sexual orientation or gender identity. Subsequent rules detail the rights derived from these foundational principles, including the right to legal personality, the right to life, personal security, privacy, and others. The document underscores that ensuring these rights is a responsibility of the state (Remin, 2009).

Since the Yogyakarta declaration, international forums like the UN General Assembly, the Council of Europe, and the European Parliament have advocated for the complete decriminalization of homosexuality and have condemned discrimination based on gender identity or sexual orientation (Council of Europe, 2010; European Parliament, 2011; European Parliament, 2023).<sup>2</sup> Despite lacking binding legal force, these resolutions, often referred to as ‘soft’ international law, represent a crucial advancement in protecting the rights of individuals facing discrimination on these grounds. They are also a manifestation of an evolving worldview adapting to changing social realities (Czeszejko-Sochacka, 2019, p. 199). Despite the global efforts, discrimination against sexual and gender minorities persists, even within the EU. Members of the LGBT+ community frequently face verbal, sexual, and physical aggression, as well as institutional bias, perpetuating multifaceted and multilevel social oppression which manifests through the reinforcement of cis-heteronormativity, heterosexism, homophobia, lesbophobia, transphobia, and various forms of hate crimes (Czeszejko-Sochacka, 2019).

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2 Additional insights into the criminalization of homosexuality can be obtained from the IGLA 2020 report (Botha et al., 2020). Homosexuality is still considered a crime punishable by death in 12 countries.

### 3. Problems of non-heteronormative people in Mexico and Poland: A comparative analysis

#### 3.1. The LGBT+ movement as a political actor in Mexico and Poland

Poland and Mexico, despite their different backgrounds, share a deeply rooted Catholic culture that has shaped their social codes and interactions for centuries (Amuchástegui et al., 2015; Eberts, 1998; Mach, 2007; Peralta, 2012; Porter-Szucs, 2011). Presently, despite the Church contending with liberal ideologies and experiencing a decline in adherents, government statistics indicate that a significant majority still identify as Catholics, comprising 78.6% of Mexicans (INEGI, 2020) and 71.45% of Poles (GUS, 2021). Catholicism as a (bio)power structure promotes a profoundly heteronormative and cisgender conception of social roles and human relations (Henshaw, 2014), championing patriarchy (Attoh, 2017) and obstructing initiatives related to sexualities (Barcenas, 2011; Korolczuk, 2020; Szwed & Zielińska, 2017; Žuk & Žuk, 2020). The cis-heteronormative paradigm has led to the growing exclusion of LGBT+ individuals in both Mexico and Poland. Fuelled by external progressive forces and internal impetus, these groups organize and advocate for their rights within antagonistic and inflexible national contexts. Understanding the rise of activism requires briefly tracing key historic landmarks that marked the LGBT+ movement in both countries.

Mexico's LGBT+ history can be divided into three large periods: pre-Hispanic, colonial, and post-independence. While pre-Hispanic times were not universally tolerant, some indigenous communities embraced non-heteronormative practices, even honouring 'Two-Spirit' or 'third-gender' identities, such as the *muxe* community in Juchitán de Zaragoza, Oaxaca (Mirandé, 2013). This cultural heritage and distinctiveness could have initially contributed to greater inclusion and diversity in Mexico, compared to Poland. During the colonial era, strict laws against sodomy were imposed, resulting in severe punishments, such as burning at the stake. In independent Mexico, despite the absence of the explicit criminalization of sodomy after the Napoleonic code was introduced by the French invasion in the 1860s, broad interpretations of 'public outrage against decency' (Maximilian I Penal Code, 1866, Art. 330 sec. 4) led to frequent repression of non-cis-heteronormative behaviours. Nevertheless, a homosexual subculture emerged in the late 19th century, especially in Mexico City, laying the foundation for the country's LGBT+ movement. The so-called Dance of the Forty-One in 1901 marked a significant and symbolic moment in Mexican history: forty-one men, some dressed in women's clothes, were arrested at a ball, symbolizing the repression of homosexuality (Franco, 2019). Throughout the 20th century, repression persisted alongside the growing collective action and expansion of non-governmental organizations (NGOs) (López, 2017, pp. 73–74). The establishment of the first NGO, the Homosexual Liberation Front, in 1971 marked a formalization of the movement; six years later, Lesbos, the first lesbian organization, was



founded. These groups, and members of the LGBT+ community, actively participated in key political events, such as supporting the 1968 student movement and the Cuban Revolution (Secretaría de Cultura, 2019). Through shared values extending beyond gender and sexuality, they forged alliances with left-wing parties, which integrated their causes into political agendas. The conservative centre-right Institutional Revolutionary Party, which ruled Mexico for over 70 years from 1929 to 2000,<sup>3</sup> also faced a growing imperative to co-opt LGBT+ groups. This was aimed at demonstrating the country's commitment to modernization (McGee & Kampwirth, 2015, p. 55), influenced by progressive legislative and judicial developments in the USA and Canada, the imperative for regional integration, and recommendations from the Inter-American Commission on Human Rights.

The greater formalization and politicization of the LGBT+ movement led to its increased visibility. The first LGBT+ Pride Parade in Mexico City in 1979 marked the beginning of a nationwide expansion (Secretaría de Cultura, 2019). Media representation addressing LGBT+ issues flourished, alongside the development of LGBT-friendly tourism (Bailey, 2022). Notable figures emerged in politics, including Patria Jiménez, the first openly lesbian Congress member, in 1997, and Amaranta Gómez Regalado, a transgender individual, in 2007. Acceptance of diverse gender identities and sexual orientations within political networks has grown, particularly since the left-wing Party of the Democratic Revolution began governing Mexico City in 1997 (López, 2017, p. 74). This trend intensified after 2018, with the National Regeneration Movement (Morena) gaining power and securing a parliamentary majority. Notably, in the 2021 parliamentary elections, a record-breaking 44 transgender individuals participated, with two transgender women securing seats in Congress for the first time (Infobae, 2022). These developments reflect the years of struggle of the Mexican LGBT+ movement and the profound legislative reconfigurations it has achieved, which will be further explored in the following section.

In contrast to Mexico, LGBT+ activism in Poland emerged later, and is typically traced back to the late 1980s or early 1990s (Bielska, 2018, p. 62; Lizurej, 2009, p. 1; Mizielińska, 2012, p. 288). Before this, a history of persecution prevailed, institutionalized through historical criminal codes under foreign occupation, the penalizing of same-sex relationships, and the association of homosexuality with paedophilia, zoophilia, and prostitution. Although consensual sexual relations between adult men were officially decriminalized in 1932, penalties could still be enforced under laws regarding homosexual prostitution until 1969 (Bielska, 2018, p. 60).

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3 The Institutional Revolutionary Party was founded as the National Revolutionary Party (Partido Nacional Revolucionario, PNR) in 1929. It was renamed the Party of the Mexican Revolution (Partido de la Revolución Mexicana, PRM) in 1938, and finally became the Institutional Revolutionary Party (Partido Revolucionario Institucional, PRI) in 1946.

Key historical events, such as the persecution of homosexual men in Nazi concentration camps during World War II, have left a lasting impact on the group's collective memory (Plant, 2011). During the era of the People's Republic of Poland, LGBT+ individuals lived discreetly within small social circles, facing strict control and blackmail by security services and the militia. This era culminated in 'Operation Hyacinth' between 1985 and 1987, an initiative officially aimed at combating HIV/AIDS which primarily targeted homosexual men, resulting in massive arrests and the creation of thousands of personal registries known as 'Pink Files' (Bielska, 2018, pp. 63–64). While 'Operation Hyacinth' is seen by some as a catalyst for the LGBT+ community's awakening, others attribute the movement's dynamism to the fall of the Berlin Wall and the metaphorical 'pink curtain'. They argue that Poland's LGBT+ movement primarily arose due to external western influences rather than spontaneous genesis (Bielska, 2018, p. 59), in contrast to Mexico. In 1989, the Lambda Association became the first officially registered LGBT+ organization, later branching into independent entities across various cities. However, these initiatives were short-lived, reflecting what Bielska terms 'sinusoidal development' (2018, p. 145), marked by internal divisions. Lambda Warsaw was reactivated locally in 1997, retaining its status as the oldest operating LGBT+ organization. In 2001, the Campaign Against Homophobia (CAH), the second major institution, was established, but also faced internal division (Bielska, 2018, p. 150).

Since 2001, these organizations have focused on launching social campaigns to promote the coming-out process and organizing mass events such as Pride and Tolerance parades to increase the visibility of the LGBT+ community – despite frequent bans from local governments and opposition from conservative groups. However, this inclusive image has been mostly misleading, primarily representing gay interests with less attention given to lesbians, while excluding transgender issues and even stigmatizing bisexual individuals. Mizieleńska attributes this to internal narrative inconsistencies stemming from the movement's inception, where Polish activists attempted to assimilate all western tendencies accomplished over more than three decades, leading to 'temporal disjunction and asynchrony' (2012, p. 290). CAH and Lambda Warsaw adopted a more inclusive, 'umbrella' approach to non-binary individuals relatively late, as reflected in their joint 2021 report (*Kampania Przeciw Homofobii/Lambda Warszawa*, 2021, p. 4). The establishment of the Trans-fuzja Foundation in 2008 marked the beginning of the Polish transgender movement.

The 'sinusoidal' development of LGBT+ engagement, marked by periods of progress followed by setbacks, limits its long-term impact on policymaking. Unlike in Mexico, there are no significant strategic alliances between the movement and leading political parties. Setbacks often coincide with periods of extreme-right rule by the Law and Justice (*Prawo i Sprawiedliwość*, PiS) party (in 2005–2007 and 2015–2023). On the other side, left-wing parties have shown limited commitment to representing LGBT+ rights in their agendas (Lizurej, 2009, p. 2), focusing more on women's rights



and abortion. Given the fragmentary development and setbacks at the political level, Polish movements have looked to external forces to support their quest for rights. Increased exposure to western culture, due to open borders and the need to align with its standards, have indeed challenged cis-heteronormative worldviews. As a member of the EU, Poland is bound by its directives, laws, and values. EU institutions explicitly recognize LGBT+ rights as human rights and lead by example in their protection, applying pressure through soft and hard power mechanisms, such as withholding funding, initiating infringement processes, and employing discursive and reputational tactics, like putting Poland at the bottom of the ‘rainbow ranking’<sup>4</sup>

However, the impact of supranational EU law remains limited, as policies concerning family matters fall within national competence, and EU rules apply primarily in cross-border cases. While Article 21 of the Charter of Fundamental Rights explicitly prohibits discrimination based on sexual orientation, and Directive 2000/78/EC (European Parliament, 2000) extends this prohibition to the workplace, specific protections for transgender and intersex individuals are still lacking, despite some directives attempting to broaden the spectrum of discrimination to cover gender reassignment and gender identity and expression (European Parliament, 2006; European Parliament, 2012). Despite amending its Labour Code in 2003 to comply with EU requirements and enacting a law on the implementation of certain EU provisions on equal treatment in 2010, Poland has not only largely failed to align with EU standards but has also obstructed significant supranational initiatives. For instance, on 9 June 2023, as announced on social media by politicians Sebastian Kaleta and Zbigniew Ziobro, Poland vetoed an EU statement on LGBT+ safety and opposed an EU directive on violence against women, citing concerns about prioritizing LGBT+ rights over others and rejecting the use of the term ‘gender’ in EU documents (Ministerstwo Sprawiedliwości, 2023).

### **3.2 Questioning cis-heteronormative legal frameworks: Diverging experiences in Mexico and Poland**

This section offers detailed insights into the rights of LGBT+ communities in Mexico and Poland. We begin by examining how discrimination is conceptualized in legal frameworks, including national constitutions. Secondly, we delve into family-related rights, encompassing civil partnerships, same-sex marriage, and adoption, and their potential to challenge heteronormative orders. Thirdly, we assess whether laws enabling gender-identity changes on official documents contest cis-normativity, and we explore whether rights for these groups expand into other areas. In the final part of this section, we contrast the initiatives undertaken by Poland and Mexico to

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4 Data of the IGLA 2023 Rainbow Europe Map and Index are available at <https://www.ilga-europe.org/report/rainbow-europe-2023/>.

protect LGBT+ minorities via penal codes, with a specific focus on the combatting of hate crimes related to gender and sexual preferences.

The rights of LGBT+ people in Mexico have been significantly strengthened over the last two decades. In 2001, Article 1 of the Mexican Constitution was amended to explicitly introduce protection against gender-based discrimination (Diario Oficial de la Federación, 2001). In 2003, the Federal Law to Prevent and Eliminate Discrimination (Cámara de Diputados, 2003) was enacted to prohibit any discriminatory practices related to gender or sexual orientation, also establishing the National Council to Prevent Discrimination as the institution responsible for overseeing its implementation and serving as the governing body for public policies. Over time, the law has been strengthened to encompass various forms of discrimination, including direct, indirect, structural, and associative discrimination, and to explicitly address homophobia and misogyny.<sup>5</sup> Between 2004 and 2017, all the states enacted their own local antidiscrimination acts, including for gender and sexual bias, with some extending the scope of prohibited behaviours beyond homophobia to also include lesbophobia, biphobia, and transphobia.<sup>6</sup> In 2011, Article 1 of the Mexican Constitution underwent another significant amendment (Diario Oficial de la Federación, 2011); this revision acknowledged that all individuals are entitled to the human rights recognized not only within the Constitution itself but also in the international treaties to which Mexico is a party. Additionally, the broad concept of ‘preferences’ previously included in Article 1 was refined to specifically address ‘sexual preferences’.

In contrast, in Poland, no constitutional amendments have been pursued to ban discrimination based on sexual preferences or gender. However, according to Bielska, ‘[t]he Polish LGBT+ movement does not strive to achieve this goal at all’ (2018, p. 188). Although discrimination is prohibited for any reason, and men and women are entitled to equal rights (Arts. 32 and 33 of the Polish Constitution), the Constitution still explicitly promotes a cis-heteronormative, Christian order. It refers to religious values, with a direct reference to God ‘as a source of truth, justice, goodness, and beauty’ in its preamble, and defines marriage as a union between a man and a woman (Art. 18). Poland’s national antidiscrimination law, known as the Law on Implementation of Certain EU Provisions Regarding Equal Treatment (2010), is generally less detailed compared to Mexico’s FLPED. It prohibits direct and indirect discrimination based on sexual orientation or gender, mainly targeting LGB groups and women, and primarily focusing on economic rights. A recent proposal in 2022 by a left-wing party

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5 Direct discrimination means less favourable treatment based on prohibited grounds; indirect discrimination refers to neutral practices disadvantaging specific groups; structural discrimination refers to systemic norms and behaviours causing exclusion; associative discrimination is discrimination due to association with a protected group (definitions from the Federal Law to Prevent and Eliminate Discrimination, 2003, p. 2).

6 Local antidiscrimination laws in Oaxaca and Mexico City.

aimed to extend this law to cover all LGBT+ groups, including transgender individuals, by incorporating gender identity and expression and broadening the definition of discrimination (Sejm, 2022). However, the draft did not even receive a parliamentary number, suggesting limited support.

Mexico has made significant strides in improving the legal possibilities for LGBT+ people to form a family. An important milestone occurred in 2006 when the Law on Civil Partnership (Asamblea Legislativa del Distrito Federal, 2006) was approved in the Federal District (now Mexico City). However, it still differentiated between heteronormative and other types of unions, leaving same-sex couples without the same access to social protection and inheritance processes (Reyes & Rosado, 2022, p. 13). A transformative moment took place in December 2009 when, for the first time in any Latin American jurisdiction, the legalization of same-sex marriage was established through the reform of Article 146 of the Civil Code of the Federal District (GODE, 2009); the decree established that marriage would be the ‘free union between two persons’. Consequently, Article 391 was also reformed to enable same-sex couples to adopt. The 2015 ruling of the Mexican Supreme Court (Suprema Corte de Justicia de la Nación, SCJN), a pivotal institution in driving judicial and legislative change for LGBT+ rights, played a crucial role by establishing jurisprudence for equal marriage nationwide, deeming state laws that limit marriage to heterosexual unions as unconstitutional (Judgment of the Mexican Supreme Court, 2015).

Despite this landmark ruling, many local governments exhibited institutional resistance to non-heteronormative ideas for years (López, 2017, pp. 79–82). It took over a decade for all the remaining 31 states to align and amend their civil codes to allow for equal marriage, with Tamaulipas being the last to approve such unions in 2022. Notably, only nine states enabled adoption by same-sex couples between 2014 and 2022 (García, 2023). In 2017 and 2019, two groundbreaking rulings affirmed the rights of same-sex couples to family life, including various forms of adoption and the right to register one’s partner’s children to protect their best interests (Judgments of the Mexican Supreme Court, 2017 & 2019). Despite resistance, as seen in the case of same-sex marriage, further standardization of local laws can be expected.

In Poland, the landscape regarding family rights is one of the least progressive in the EU. Currently, there is no legislation allowing same-sex couples to formalize their relationship and acquire the associated rights. This gap is a key point of contention for LGBT+ collective action (Bielska, 2018, p. 189), as evidenced by multiple law proposals. Nine projects for civil partnerships and civil partnership agreements have been submitted but subsequently rejected or have been stalled in legislative limbo, beginning with a pioneering draft by Senator Szyszkowska from the Democratic Left Alliance and Labour Union (SLD-UP) coalition in 2003. The initial project, while significant, had limited scope, focusing only on joint ownership, inheritance procedures, and tax exemptions on inheritances and donations (Senat, 2003); it excluded all other rights granted in heteronormative marriages. Subsequent projects submitted

in 2011 (by the SLD), 2012 (by the Palikot Movement/SLD and by Civic Platform), and 2013 (by the SLD and the Palikot Movement) attempted to fill various gaps but failed to grant all the rights (Sejm, 2011; 2012a; 2012d; 2012e; 2013b; 2013c). The first more comprehensive proposals came from the *Nowoczesna* party in 2018 and from the left-wing coalition (KL) in 2020 (Sejm, 2018; Sejm, 2020a). Both granted rights to changing surnames, joint ownership, joint tax filing, inheritance procedures (including tax exemptions), burial rights for the partner, survivor's pensions, caregiving allowances, access to health information, and limited adoption rights (restricted to child recognition). This last aspect is particularly contentious in Poland, as only a small percentage of the public (6–8%) accepts the idea of adoption by same-sex couples (Bielska, 2018, p. 196). As of now, only one proposal for same-sex marriage has been presented, in 2020, by Anna M. Żukowska (from the KL), defining marriage as a union between 'two persons of different or the same sex' and proposing necessary changes in other Polish laws accordingly (Sejm, 2020b).

The advancement toward a more non-binary societal structure and the broader inclusion of diverse transgender groups has been notable in Mexico in recent years. As with other laws, the capital city led the way in this progress by amending Article 135 of its Civil Code, simplifying the process of changing gender identity on birth certificates and other official documents. This amendment replaced the previous judicial process with a straightforward administrative procedure. This pioneering law set a precedent for similar changes in 17 states between 2017 and 2022. However, these measures had limits and initially excluded transgender minors, despite evidence from a 2018 government survey indicating that a significant proportion of transgender individuals (39.2%) recognize their gender identity as early as childhood (EN-DOSIG, 2018, p. 4). The SCJN's ruling in 2022 declared age limits for gender-identity recognition unconstitutional (SCJN, 2022). However, only a few states have since implemented procedures to accommodate transgender minors: Mexico City adopted a decree in 2021, and corresponding laws were enacted in Jalisco (2020), Oaxaca, Morelos (2021), and Sinaloa (2022), typically allowing children above 12 years old to access such administrative processes. However, a significant milestone occurred in Salto, Jalisco, where the first gender recognition was granted to a 5-year-old transgender boy (Milenio, 2022).

These laws, however, only cater to individuals identifying within the binary gender framework as either male or female, thereby excluding non-binary, genderfluid, agender, and other groups. Responding to pressures from the LGBT+ and queer movements, recent initiatives led by the leftist *Morena* party, currently in power, have included the proposal in 2023 of a non-binary law (*Ley No-binaria*) for Mexico City. This legislation would enable transgender individuals to change their gender identity on birth certificates from the age of 12 and register it as non-binary. Emphasizing self-perceived gender identity, gender expression, and inclusive language, this initiative reflects a broader societal shift. Additionally, *Morena* politicians suggested

several amendments to the Federal Civil Code in 2020, along with a proposal in 2022 to amend Article 11 of the Mexican Constitution to recognize the rights of non-binary individuals.

In Poland, there is currently no explicit provision in the law recognizing the right to change gender identity on official documents. While legal gender change is indeed possible, the procedures involved are notably complex. According to Grzyb, 'in accordance with the model established in the jurisprudence of the Supreme Court, a transsexual person can seek a change of gender before a district court, based on Article 189 of the Code of Civil Procedure, simultaneously suing their parents' (2022, p. 260). Additionally, this process requires the applicant to undergo a 'real-life test' and a psychiatric diagnosis. The Trans-fuzja Foundation has long advocated for legislation to regulate and simplify the process of changing gender identity (Bielska, 2018, p. 189). A proposal for such a law, known as the Act on Gender Recognition, was submitted in 2013 by Anna Grodzka (from the Palikot Movement), the first openly transgender person in the Polish parliament. However, unlike its Mexican counterpart, this draft aimed to simplify and standardize the procedure, without replacing the judicial process with an administrative one. Under this proposed law, court rulings would serve as the basis for issuing new birth certificates for individuals over 16 years old, subject to certain conditions, such as a statement about their gender identity, along with medical assessments confirming the persistent difference between gender identity and assigned sex (Sejm, 2013a). The proposal was vetoed by the president in 2015 and now remains in a legislative vacuum.

In addition to recognizing fundamental rights for LGBT+ individuals, it is also crucial to address their protection under the law. These groups continue to experience crimes and persecution based on their sexual orientation or gender identity or its expression. Physical and verbal attacks against LGBT+ individuals remain common in both Mexico and Poland. However, comparing statistics is challenging, due to differences in measurement methodologies and varying levels of general violence and homicide in each country.

The increasingly rich catalogue of rights and the greater visibility of non-cis-heteronormative communities in Mexico has turned out to be something that is still very difficult to accept in its conservative, Catholic, macho culture. It can be argued that in Mexican society, there is a noticeable inconsistency in the interplay of law, cultural norms, and social attitudes toward LGBT+ people. Despite their very high legal recognition, homophobia and transphobia persist. According to a government survey (ENDOSIG, 2018, p. 7), 62% of respondents who identify as LGBT+ faced verbal abuse, while 18.2% experienced physical violence and 9.7% suffered sexual attacks, all within their neighbourhood. However, in Mexico, which has one of the highest homicide rates, hate crimes can go beyond verbal, sexual, or minor physical assaults and culminate in murder. As reported by the Mexican NGO LetraEse (2020, pp. 8–11), more than half of the victims of fatal violence against the LGBT+ com-

munity are transgender women (54.5%), followed by 28% gay individuals. Between 2016 and 2020, at least 459 non-cis-heteronormative people were murdered in Mexico, with the majority being transgender (*trans homicidio*). According to the Trans Murder Monitoring project, the country currently ranks second in Latin America and globally, after Brazil, in terms of LGBT+ murders (Transrespect versus Transphobia Worldwide, n.d.).

In Poland, murders are not a statistically significant problem, partly due to very low homicide rates (World Bank, n.d.); against this backdrop, the Trans Murder Monitoring project reported only one trans murder case, in 2011 (Transrespect versus Transphobia Worldwide, n.d.). However, according to the Lambda/CAH report, in 2019–2020, 53% of respondents belonging to the LGBT+ community experienced hate crimes, with 59% of them facing verbal violence, 36% facing threats, 14% experiencing physical violence, and 22% sexual violence (Kampania Przeciw Homofobii/Lambda Warszawa, 2021, pp. 30–33).

The above highlights the serious need to reform the penal codes in both countries. Currently, despite high levels of homicide, only 12 states in Mexico have specific laws addressing aggression or homicides against the LGBT+ community (Cámara de Diputados, 2022). Amendments in 2013 to Articles 209 and 306 of the Federal Penal Code increased penalties for injuries and homicides based on the victim's sexual orientation or gender identity, ranging from 30 to 60 years of imprisonment. Subsequent changes to Article 303 of the Code in 2021 defined hate crimes, and those to Article 209 in 2024 prohibited involuntary conversion therapies. However, serious shortcomings in the Mexican justice system, including high rates of corruption and impunity, hinder the enforcement of these laws (Fuentes et al., 2023).

In Polish law, hate crimes based on gender or sexual preference are not given adequate consideration. Despite three proposals in 2012 to amend Articles 119, 256, and 257 of the Penal Code to include penalties for such crimes, they have not been enacted and remain in a legal vacuum (Sejm, 2012b; 2012c; 2012f). Consequently, the Polish Penal Code lacks specific provisions related to gender or sexual orientation. This gap is concerning, especially given the findings from the Lambda/CAH report (Kampania Przeciw Homofobii/Lambda Warszawa, 2021) and the presence of hate speech at various levels, including in influential NGOs like *Ordo Iuris*, youth organizations like All-Polish Youth, and political figures belonging to extreme-right and ultranationalist factions. Even more concerning is the use of openly hateful rhetoric by Judge Krystyna Pańłowicz of the Constitutional Tribunal in her frequent declarations in the press and on social media. The increasing number of local governments declaring themselves 'LGBT-free zones' since 2019 further institutionalizes and normalizes, in a Foucauldian way, hate and exclusion. These developments have faced strong opposition from the European Parliament, which responded by declaring the entire EU a 'LGBTIQ Freedom Zone' in 2021 (European Parliament, 2021).



## Concluding remarks

In light of the contrasting legal landscapes and societal attitudes toward LGBT+ rights in Mexico and Poland, it becomes clear that the journey toward equality and acceptance is multifaceted and complex. Mexico has witnessed significant advancements in federal and state laws, demonstrating an increasing recognition of non-binary perspectives and the inclusion of transgender children and youth. Conversely, Poland has seen minimal legal progress, with the continuous rejection of proposals aimed at challenging heteronormative rather than cis-normative orders. However, both countries grapple with their own structural challenges. In Mexico, despite very progressive laws, the LGBT+ community remains at high risk of hate crimes and homicide, highlighting the need for further improvements in the system of justice. In Poland, the example of Mexico underscores the importance of strategic alliances between the government and the LGBT+ movement and the necessity of integrating LGBT+ claims into political agendas, especially by pro-European parties. Now that the left-wing coalition has secured a parliamentary majority and several groups are resuming reform projects abandoned during PiS's rule, it is time to embark on a more steadfast path to break the cyclical nature of the LGBT+ movement's progress in Poland and begin, without further setbacks, to have a longer-term impact on the policy-making process in the country. In this scenario, education emerges as a fundamental tool in dismantling the rigidities of cis-heteronormative social structures that have long shaped human relations. By fostering greater awareness, visibility, and understanding, both Mexico and Poland can pave the way for more inclusive societies.

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