

# **ALTERNATIVE REPORT**

## **on the implementation of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)**

and  
**List of Issues and Questions**  
brought to the attention of CEDAW Pre-Session Working Group

### **POLAND 2014**

Draft Version

submitted to the **UN Committee on the Elimination of  
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on behalf of  
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**Association for Women's Initiative**, established in 2012, conducting initiatives related to professional and social activation of women, supporting them in the area of personal and family life, counteracting the violation of their rights and fighting all types of discrimination against women

**Campaign Against Homophobia**, established in 2001, a non-governmental organization working for the equal rights of lesbian, gay, bisexual and transgender people

**Congress of Women**, established in 2009, social initiative assembling women from all over Poland, with different worldviews and different social backgrounds

**Federation for Women and Family Planning**, established in 1992, a non-governmental organization acting for gender equality by defending women's and girl's reproductive rights

**Feminoteka Foundation**, established in 2005, non-profit organization aiming to eliminate gender-based discrimination from all spheres of social, public and cultural life

**Institute of Public Affairs**, established in 1995, a leading Polish think tank and an independent centre for policy research and analysis

**KARAT Coalition**, a regional coalition of organizations and individuals focusing its actions on observance of women's human rights and ensuring gendered economic and social justice in the Region of the Central & Eastern European and Central Asian countries since 1997

**La Strada**, established in 1996, foundation counteracting the phenomena of human trafficking, slavery and forced labour, as well as exploitation of prostitution

**MaMa Foundation**, established in 2006, a non-governmental organization working for improving the situation of women, and mothers in particular

**Polish Society of Anti-Discrimination Law**, established in 2007, expert non-governmental organization associating lawyers interested in promotion and improving anti-discrimination legislation

**Trans-Fuzja Foundation**, established in 2008, a non-governmental organization devoted to a wide range of activities aimed to help the Polish transgender community

**Women's Space**, established in 2007, a foundation acting on behalf of gender equality to counteract especially gender-based and sexual orientation-based discrimination, to support women as agents participating in democratic processes and to support creative activities of women



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## INTRODUCTION

This draft report has been prepared by an CEDAW Coalition of Polish Non-Governmental Organizations, specializing in the protection against discrimination, women's rights and gender equality<sup>1</sup>. The report has been prepared in connection with the reporting process of the Polish Government, which was supposed to submit the combined seventh and eighth reports for the period 2002-2010 by September 2010.

The draft of the alternative report, discussing the most dire problems concerning the implementation of the provisions of CEDAW Convention in Poland, was completed in March 2012, when the Polish Government submitted the combined seventh and eighth reports for public consultation. The informal Coalition, working on the alternative report, submitted comments to the Government's report, but a large part of these comments has been disregarded. Therefore, the particular chapters of the alternative report have been expanded to include commentary on the governmental report.

On 21 November 2012, the Polish Government submitted its report to the CEDAW Committee which scheduled the review of the Polish Government's report for the 59th session, planned in October 2014. Due to the fact that nearly two years have passed since the alternative report was prepared, the NGO Coalition decided to update it so that the information in the report accounts for changes that have taken place through the end of 2013.

### **Structure of the alternative report**

The alternative report presents topics in the same order as CEDAW articles and contains additional chapters devoted to groups of women who are particularly vulnerable to intersectional discrimination.

This alternative report is not going to discuss all the issues and articles approached in the State report, as it focuses on selected areas which the non-governmental organizations specialize in.

The chapters are comprised of:

- Description and analysis of the most pressing, in the recent years, issues related to discrimination of women in a given area, as well as inaccuracies and gaps in the law and in the conducted policies and their implementation
- commentary to the governmental report<sup>2</sup>
- recommendations for the Polish Government with regard to the implementation of CEDAW and to improving the situation and status of women

### **Recommendations to the List of Issues & Questions**

**The alternative report is preceded by a proposed List of Issues & Questions which the CEDAW Coalition of NGOs working on the report would like to bring to the attention of the Pre-Session Working Group of the CEDAW Committee for the 59<sup>th</sup> Session.**

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<sup>1</sup> Complete list of organizations can be found on page no.(iii)of this report.

<sup>2</sup> With the exception of the following chapters: "Violence against women", „Lesbians and Bisexual Women", „Trans persons"



**LIST OF ISSUES & QUESTIONS**  
brought to the attention of  
**Pre-Session Working Group**  
**of the CEDAW Committee for the 59th Session**  
by  
**CEDAW Coalition of Polish NGOs**

***The Pre-session Working Group of the CEDAW Committee for the 59th Session may wish to ask Polish Government the questions proposed by our Coalition:***

## **Principle of Non-discrimination and Equality (Art.1-4)**

### **Legislation**

1. The Act on the implementation of some regulations of the European Union, dated December 3, 2010, concerning equal treatment, protects against discrimination based on gender only in the area of employment and access to goods and services. It does not safeguard from discrimination in all aspects of life (e.g. health care, private and family life and education). Also, in this law the intersectional discrimination is not treated as a separate form of unequal treatment. This means that instances of such discrimination are not treated by the legislator as more serious offences and, therefore, sanctions for such type of unequal treatment are not designed adequately. This contradicts the guidelines specified in General Recommendation number 28, item 18.

***Does the Government plan to introduce anti-discrimination legislation which includes the definition of discrimination (including intersectional discrimination), as specified in Art. 1 CEDAW, and which protects women from discrimination in all spheres of life?***

### **Institutional mechanisms**

2. The equal treatment approach (since April 2008) resulting from the European Union regulations influenced the government's attitude towards gender equality. The institutional mechanisms are responsible for equal treatment and counteracting discrimination on diverse grounds where gender is one of 10 grounds of discrimination. As a result of such approach, there is no institutional machinery nor the National Action Plan for gender equality and women's empowerment. Considering the lack of government body acting for gender equality (as shown by the example of the previous head of equal treatment body – Plenipotentiary for Equal Treatment – where gender equality was ignored for the period of 4 years), there is a danger that this topic will be restricted or abandoned during subsequent changes in the government.

***Does the government plan to establish a permanent governmental body responsible for gender equality and women's empowerment, located at the highest governmental level with a significant separate budget and mandate to influence government policies?***

3. The Plenipotentiary for the Equal Treatment does not have a separate budget for the implementation of gender equality within the National Program for Equal Treatment and does not have a sufficient number of civil servants at her disposal.

***Does the government plan to legally guarantee governmental funds and additional personnel for the implementation of gender equality under the National Program for Equal Treatment?***

## Policy

4. The gender mainstreaming has never had a legally binding nor de facto binding status, however it was included in the strategic policy documents (two National Action Plans for the period 1997-2005 based on the Beijing Platform for Action). There is neither a regulation defining the relationship between the Plenipotentiary and the Ministries nor an inter-departmental coordination structure to coordinate or stimulate gender mainstreaming in the government.

***Does the government plan to develop a strategy and action plan for applying gender mainstreaming at central and local governmental level?***

## Data collection

5. The collection of data disaggregated by sex is a legal obligation of the Central Statistical Office. However, the statistical office does not provide the data concerning intersectional approach to women's issues.

***Does the government plan to adopt a policy of collecting gender disaggregated data, allowing for intersectional approach in case of groups particularly vulnerable to discrimination (such as migrants, LBT, rural women), concerning the respective forms of discrimination (e.g. direct and indirect discrimination, sexual harassment, forms of violence) and other factors (such as age, socioeconomic status)?***

## Stereotypes (Art.5)

### Policy

6. Since November 2013, Polish Roman Catholic Church and the right-wing circles have been conducting an intensive "anti-gender" campaign, directed against the idea of gender equality and aiming to reinforce the traditional social models of female and male roles. "Gender" is called a major threat to traditional family values. The campaign has had a negative impact on the situation of institutions, especially preschools, conducting education on gender equality: there are cases of harassment of the principals and teachers, including the hostility from local authorities. Even though it is too early to fully evaluate the results of this campaign, considering the status and power of the Church in Poland, the authorities must take decisive actions now in order to prevent its further negative consequences.<sup>3</sup>

***Is the government reacting – and how – to the „anti-gender” campaign, launched by the hierarchy of the Roman Catholic Church in Poland, which reinforces gender stereotypes?***

***What kinds of actions is the government taking in order to successfully promote the equality of women and men?***

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<sup>3</sup> More information in the chapter „Equality in Education”, Alternative report

7. The number of stereotypical portrayals of sexual violence in the Polish media has increased over the past 15 years. Even though there are more articles about sexual violence, which ceases to be a taboo subject, still about a quarter of articles perpetuates myths about rape.

The media underplay the particular cases of molestation and rape in many ways, including frivolous titles, intended to be funny; adopting the perspective of the person suspected or convicted of rape and expressing empathy towards them rather than the victim; perpetuating the myth that the victims are partly responsible for sexual violence, because they provoke with their looks; suggesting that the victims are partly responsible for the assault if they walk around town alone; diminishing the suffering of female sex workers who have been raped.

***Is the government monitoring the occurrences of content which is discriminatory against women and the reinforcement of gender stereotypes in the media, in particular stereotypes concerning sexual violence against women, and does it intervene in such situations?***

***What does such monitoring entail and what is the scale of the interventions?***

#### **Education**

8. Police, courts, health care professionals, and even psychologists often perpetuate stereotypes connected with rape victims. According to studies on the situation of rape, neither the police stations nor hospitals have clear procedures in this matter; furthermore, the victims are met with attitudes including undermining their credibility, testing their lifestyle (their „conduct”), investigating the circumstances of rape (wasn't the woman „provoking” the attacker?), shifting responsibility for rape to the victim („she brought it on herself”), as well as commenting (sometimes in a vulgar, sexist way) on their behaviour and looks.

***What educational policy, aimed at changing gender stereotypes and spreading knowledge about their impact on violence against women, is the government conducting among public services and institutions assisting women who experience sexual violence?***

9. The government's actions in the area as sensitive as the stereotypes' impact on violence, and in particular sexual violence, are more than inadequate. There has never been a nationwide campaign in Poland devoted to the issue of rapes and to the problem of shifting guilt and responsibility from perpetrators to the victim. According to studies and reports, many women in Poland are still convinced that they deserve sexual violence and they themselves are responsible for it, because they dressed „provocatively” or were inebriated. Male attitudes and behaviours also constitute a part of the violence problem. Gender stereotypes and their impact on violence against women and girls are not taken into consideration in educational and training programs. They are reinforced by gender insensitive school education. In the media, women's point of view is rarely noted or is often simply depreciated, also in matters of sexual violence against women.

***Is the government conducting a long-term educational policy aimed at changing gender stereotypes in the society and raising awareness of their impact on violence against women, and if so, what is this policy?***

***(e.g. training courses for journalists, including these issues in educational***

*curricula and training programs, organizing campaigns for the society in general)*

## **Trafficking in Women and Sexual Exploitation of Women (Art.6)**

### **Institutional mechanism**

10. Despite of NGO (Polish La Strada Foundation) long time lobbying for a National Rapporteur, an independent body with the mandate to gather and disseminate information in order to highlight problems and recommend solutions for combating trafficking in persons, it seems to be that governmental bodies are still not ready to accept this institution.

***Does the government plan to take actions in order to establish an office of the National Rapporteur on Trafficking who should be required to present an annual report to the Government?***

### **Policy**

11. The lack of procedure for obligatory identification is one of the reasons why many potential victims are not identified and thus do not receive proper help or even worse, are deported without being given opportunity to be interviewed about the crime that was done to them. Many police and border guard officers still cannot determine whether they are dealing with a victim or cannot ask the proper identifying questions. It is also possible that the victims of human trafficking end up in a detention centre (so-called deportation jail) from which they are sent back to their country of origin without being identified. Such a practice puts them at risk of facing the perpetrators again – in their country of origin – and in danger (such as becoming a victim of human trafficking again). There exist no appeal procedures.

***Does the government plan to introduce obligatory identification procedure for the presumed victims of human trafficking (especially those being transferred to locked facilities), which would also include an appeal procedure?***

## **Women's Participation in Political Life (Art. 7)**

### **Legislation**

12. Since 2011 an electoral list of candidates for any political party has to include at least 35% of either gender. The governmental report lacks evaluation of the true effectiveness of the "quota act" in really increasing women's representation in the Lower House of the Polish Parliament (the percentage of female parliamentarians only increased by 4%).

***Does the Government plan to increase the participation of women in politics e.g. by introducing the parity and "zipper system" (placing women and men in alternate order on the electoral lists)?***

### **Policy**

13. The State Report does not cover the issue of women's participation on the boards of publicly listed companies. In 2010 the number of women on the boards of publicly listed

companies amounted to 11,8%, which in comparison to the number of female university graduates in Poland (65% of all graduates) is very low.

***Has the Government noticed the issue of the extremely low women's participation on the boards of publicly listed companies and has it taken any action in order to increase it?***

## **Equality in Education (Art. 10)**

### **Policy**

14. Educational system in Poland is gender insensitive and reinforces gender stereotypes. There exists a significant lack of interest in implementing gender equality as a principle in the educational system, e.g. incorporating the gender perspective in school curricula as well as in the teacher training and continuing teacher education.

***How does the Government plan to mainstream gender perspective into the system of education?***

15. The Ministry of Education failed to prepare any special standards concerning the principle of non-discrimination in textbooks. As a result, the textbooks are still full of gender stereotypes (e.g. when a family is pictured in a textbook, in most cases the picture is conventional and traditional, in accordance with the perspective of the Catholic Church), women's contribution to human civilization as well as women's history are neglected. The state report omits this issue.

***What are the mechanisms guaranteeing the assessment of curricula and textbooks from the perspective of gender equality and the principle of representation?***

***Does the government plan to verify the currently used textbooks with regard to gender equality perspective and the principle of representation?***

16. The State report doesn't recognize the phenomenon of gender-based violence and violence related to sexual orientation at schools and no official research has ever been conducted to measure the extent of this phenomenon. Also, this issue is completely absent from the largest campaign addressing violence at school, the program "School free from Violence".

***Does the government recognize the issue of gender-based violence and violence related to sexual orientation at schools and what is the governmental strategy to prevent such violence?***

### **Education**

17. In Polish schools sex education constitutes part of the course called „Preparation for Family Life” and is not perceived in terms of sexual and reproductive health, but in terms of family values. The terms “sexual and reproductive health”, “sexual and reproductive rights” do not occur in the curriculum – or in the state report. Additionally, the governmental report mentions regulations concerning sex education in schools but neglects the matters of their practical implementation, e.g. the preparation of teachers

and assessment of textbooks (which, according to NGOs, are full of gender stereotypes).

***What actions is the government taking to introduce compulsory sex education into school curricula, consistent with the recommendations of WHO?***

## **Employment: legal and institutional measures for eliminating gender-based discrimination (Art.11)**

### **Policy**

18. In its report the Government focuses mainly on exposing specific problems with regard to the certain forms of discrimination of women in the employment area, such as feminization of certain professions, gender pay gap and protection of pregnant women in the workplace. However there is no information on how this discrimination is or will be addressed.

***What is the government's long-term strategy to effectively combat these kind of inequalities?***

### **Monitoring and Education**

19. The Government does not carry out any detailed monitoring of the cases of discrimination in employment. No statistics stipulating the respective forms of discrimination (e.g. direct and indirect discrimination, harassment, fostering discrimination) are available. This shows lack of commitment of the Government to raising awareness and preventing discrimination, which in turn has an impact on the quality and quantity of the court cases, as there is a high level of gender prejudice and stereotypes among Polish judges.

***Has the Government been carrying out comprehensive monitoring of the cases of discrimination in employment, including collecting data concerning the respective forms of discrimination (e.g. direct and indirect discrimination, sexual harassment)?***

***Does the Government plan to introduce systematic trainings for labour law judges on gender equality in the field of employment?***

### **Legislation**

20. Polish law contains provisions allowing organization/associations/legal entities to instigate legal proceedings on behalf of victims of discrimination. However, there is still need for:
- enabling the abovementioned entities to instigate proceedings even if the victim is not individualized (so-called *actio popularis*); that is when unlawful activities take place and no specific individual can be singled out as experiencing them (e.g. job ads published by a particular employer which for a long period of time have contained discriminatory criteria of recruitment and there is no particular individual who would be willing to instigate proceedings in court).
  - introducing the law permitting so-called test situation as evidence to prove discrimination. The test situations allow to check how persons exhibiting particular

features would be treated in a given situation as opposed to persons not exhibiting these features. Test situations is a set-up and consist of pairs of persons who differ with regard to the feature which may result in discrimination (for example, gender) being directed to a work establishment suspected of discriminatory practices. If, from among the pair of testers, the person possessing the given feature is treated worse than the person who does not possess it, and there exists no other justification of the differential treatment, then it is concluded that discrimination took place.

***Has the Government taken any steps in order to introduce into domestic law the possibility of instigating public interest proceedings (actio popularis) as well as using test situations for collecting evidence for court proceedings in cases of discrimination, in order to increase the efficiency of anti-discrimination legislation?***

## **Labour market (Art.11)**

### **Policy**

21. The governmental report does not touch upon the issues of major changes and trends of the labour market, such as precarious work, working poor, „pushing for self-employment”, which affect women’s situation on the labour market. The dangers in the form of the worsening situation of women on the labour market have been publicly commented on by the women’s movement (e.g. Polish Women’s Solidarity March) and trade unions.

***Is the government aware of the increasing phenomenon of precarious work and working poor among women?***

***What systemic solutions, aimed at counteracting the increasing poverty among working women in the low paid feminized sectors is the government planning to introduce?***

22. One of the biggest gaps between men’s and women’s salary is among people with basic vocational and primary education and amounts to over 30%. This is particularly alarming for women with the lowest education which means the lowest earnings. The basic vocational education addressed to women neither corresponds to the current challenges in the labour market, nor does it lead to a salary which could contribute to reducing the huge gap in the income between women and men and guarantee a living wage. The education opportunities at this level are much higher for men than for women and offer a much better job opportunity and remuneration for men.

***Does the government plan to develop and implement policy to address the wage gap between women and men, particularly among low paid feminized employment sectors?***

***Does the government plan to improve women’s access to Basic Vocational Training by adjusting it to the current needs and requirements of the labour market, particularly in professions which secure an adequate remuneration equal to men’s?***

## **Monitoring**

23. The economic situation of women and their social safety are negatively influenced by the increasing frequency of replacing work contracts signed in accordance with the Labour Code with civil-law agreements. Such forms of employment affect women to a greater extent than men. They do not provide women with the rights related to pregnancy, maternity and parenthood which are guaranteed by the labour contracts. The lack of security, inevitably related to precarious work, is an additional factor that limits women's reproductive choices. In a long-term perspective the work on the basis of civil agreements will contribute to the poor material situation of older women due to the lower amount of pension contribution deduced from the total earnings.

***Does the government plan to monitor the impact of precarious work contracts on women (e.g. maternity and parental leaves, pension, disability and other social benefits) with special attention given to feminized sectors?***

## **Child care institutions (Art. 11)**

### **Policy/monitoring**

24. There is an impressive 20% improvement in access to various forms of preschool education during the last few years. The number of children of ages 3-5 attending public preschools in 2012/2013 was 71% (compared to 32,6% in 2007). However, needs are still unmet. There is a striking disproportion in access to public preschool facilities between cities and rural areas. Outside large cities over half of the children have no access to preschool education, and the number of preschools in rural areas has decreased dramatically - by 13,5% - over the past few years.

***What systemic solutions is the government planning to implement in order to ensure access to preschool care for all children, given the vast inequality of access to childcare between rural and urban areas, and between rich and poor areas in general?***

***Does the government plan to monitor the implementation of the Act on preschools, due to the large variety in development of childcare centres in Poland?***

## **Sexual and Reproductive Health (Art.12)**

### **Policy**

25. Polish law on abortion is one of the most restrictive in Europe. In addition, the extremely limited access to lawful pregnancy termination makes the law even more restrictive in practice than on paper. Access to lawful abortion on therapeutic and criminal grounds is practically nonexistent. According to women's NGOs the number of illegal abortions might reach circa 150.000 or more abortions per year. The access to illegal services, their safety and quality, depend very much on the economic situation of women. Despite the repeated appeals issued by a number of human rights bodies to Poland, including CEDAW, the authorities have never investigated the scope, causes and impact that

illegal abortions have on women's health and life. Further, no steps were taken to improve access to lawful abortion.

***What is the impact of the anti-abortion law on the lives and health of women?***

***What steps have been taken to assess this impact?***

***What measures did the Government undertake to improve women's access to lawful abortion and eliminate the barriers that push women entitled to it into resorting to illegal, unsafe abortion?***

26. The "conscientious clause" which allows the individual doctors to refrain from providing abortion is seriously abused and even invoked by health institutions as a whole. Moreover, it is usually applied to deny access to reproductive health services that only women need, mainly to abortion but also to the other services (e.g. emergency contraception). From 2005 till 2008 the Polish law included the regulation of Minister of Health which obliged a hospital to subcontract the services that were denied by the staff due to conscientious objection. Moreover, it allowed the National Health Fund to dissolve agreement with a hospital in case the abovementioned provision was breached. This regulation was withdrawn by the Minister of Health in May 2008. Since then there has been no instrument to keep the authorities accountable for implementing women's rights to lawful abortion.

***Why was the regulation of 2005 withdrawn?***

***What measures were taken to protect women from the consequences of the "conscientious clause" that is being used/overused in health facilities to deny access to reproductive health services?***

27. Women in Poland have limited capacity to control their fertility. The main barrier to modern contraception is of financial nature since only one contraceptive pill (registered under four names) is refunded (partly). The emergency contraception is not refunded at all and is sold, like other hormonal contraceptives, with prescription, which makes it difficult to obtain given the short time limit and the doctors' frequent refusal to prescribe it. Due to the law of 1932 sterilization is being interpreted as illegal for both women and men and is not accessible as a method of fertility control. There are no sexuality-related counselling services for young people available in Poland nor specialized medical services. The requirement of parental consent constitutes a serious barrier for girls and young women to accessing reproductive health services, including contraception.

***What is the State's policy on family planning and what measures have been taken to make access to modern contraception and relevant knowledge widely available and affordable?***

***How does the State support girls and young women who want to prevent unwanted pregnancy?***

***What is the status of sterilization as a voluntary birth control method and what steps have been taken to make it accessible to women who do not want to be pregnant again?***

## Education

28. The school curriculum provides for realization of the “Preparation for Family Life”. Nevertheless, it is not obligatory but facultative. The content of the teaching is often very problematic and often does not conform to scientific standards. The vast majority of textbooks are not objective but present sexuality from the point of view of Catholic teaching (e.g. “masturbation causes infertility” or “contraception is a denial of a true love”). Such misinformation has consequences for young people in terms of their vulnerability to STIs as well as teenage pregnancy. Furthermore, these textbooks strongly stereotype women, promote traditional model of family roles and present strong anti-choice discourse.

***What steps have been taken by the State to guarantee that girls and boys are provided in schools with comprehensive sexuality education consistent with international standards?***

## Rural women (Art.14)

### Policy

29. Rural women, more than other social groups, are at risk of poverty due to their place of residence and their gender. This risk is caused by low income as well as limited access to education, health care, social services, sub-standard living and sanitary conditions, as well as due to the very traditional attitude towards the social role of women (as carers and farm workers). The governmental report only mentions poverty, the most important social issue concerning rural women, in general terms, without discussing the specific character of women’s poverty. The report fails to notice the poverty of older women. At no point does it acknowledge the phenomenon of cross discrimination nor does it conduct an intersectional analysis (e.g. age, economic status, religious denomination or lack thereof, sexual orientation). It also does not take into consideration important social issues concerning women from rural areas, such as violence. Rural women are not addressed by any assistance programs implemented by state or local governments.

***Does the government plan to develop and implement a plan of action for eliminating rural women’s poverty with special focus on old women, and to implement programs combating violence against rural women?***

## Violence against Women (GR 19)

### Legislation

30. Discussion concerning the signing of the Council of Europe *Convention on preventing and combating violence against women and domestic violence* took many months, due to harsh criticism on the part of right-wing and Catholic circles who disagreed with the Convention’s clauses related to combating gender stereotypes. The Convention was signed in December 2012, but its ratification is still being postponed, which worries Civil Society Organizations. According to recent news, the Upper House of the Polish Parliament will vote on the ratification of the Convention in February/March 2014.

***Did Poland ratify the Council of Europe Convention on preventing and combating violence against women and domestic violence?***

**Policy**

31. In the National Action Plan for Counteracting Domestic Violence there are no concepts of „gender-based violence” or „violence against women”.

***What guarantees have been made for the implementation of the National Action Plan for Counteracting Domestic Violence to account for and properly address women’s needs?***

***Does the Government plan to secure adequate resources including the budget for counteracting violence against women?***

***Does the Government intend to develop a network of Specialized Support Centres for Victims of Domestic Violence, including shelters for female victims of violence?***

**Data collection and monitoring**

32. According to estimations made by non-governmental organizations, official statistics concerning violence against women are grossly underestimated and do not reflect the scale of the phenomenon. Data concerning victims of domestic violence makes it impossible to establish how many women have been harmed in the particular types of crimes (victims of depredation, bodily harm or menacing), including the number of underage women who experienced domestic violence

***Does the government have a long-term strategy aimed at increasing the detection of the instances of violence against women?***

***Is the government planning to take into account the “gender” variable during the collection of data concerning the particular types of crimes as well as underage victims of domestic violence?***

**Migrant women**

**Policy**

33. Migrant women experience double discrimination on the labour market: as women and as foreigners, so they are forced to accept worse conditions of employment and lower wages. The necessity to maintain employment – usually the legalization of their stay depends on continuity of employment – makes these women fall prey to exploitation and harassment, and even violence in the workplace. Access to free health care for women attempting to obtain international protection is limited through organizational barriers, language and cultural barriers. Undocumented migrant women cannot access free of charge public health care even during pregnancy, labour and the postpartum period (which is the right of every female Polish citizen). In practice, undocumented female migrants approach the public health care system only in the most dire circumstances, fearing that their status would be revealed and they would face deportation.

***Does the government plan to take actions in order to facilitate the legalization procedure of female migrants who have terminated the employment relationship as a result of exploitation or sexual harassment in the workplace?***  
***Does the Government plan to enable access to state-funded health care for migrant women and female asylum-seekers during pregnancy, labour and the postpartum period and for migrant victims of domestic violence, regardless of the legality of their residence in Poland and their participation in the public health insurance system?***

## **Women with Disabilities**

34. The situation of women with disabilities is doubly difficult because they are at risk of discrimination on the basis of their disability and of their gender. The governmental report lists actions aiming for the professional activation of women with disabilities, although despite those actions the activity rate among women with disabilities is still extremely low (27% in the 3<sup>rd</sup> quarter of 2013).

The report neglects to mention the issue of the difficult access to health care, which manifests through architectural and communications barriers combined with an almost total lack of information about the particular needs of women with different kinds of disabilities and the ways of supporting patients with disabilities among medical personnel.

The report also lacks information about the scale of violence against women with disabilities who, due to being unemployed, dependent on the perpetrator of violence and having limited access to information and support institutions are particularly vulnerable, and about actions taken in order to reduce the scale of this violence.

***What is the strategy for removing architectural and communications barriers which limit the access of women with disabilities to labour market, healthcare and support institutions?***

***Is the government conducting actions aimed at sensitizing medical professionals to the particular needs of women with different types of disabilities?***

***Does the government plan to examine the scale of violence against women with disabilities and counteract it, as well as adapt centres providing aid and support for the violence victims to the needs of women with disabilities?***

## **Lesbians and Bisexual women**

### **Policy/data collection/monitoring**

35. The governmental report neglects to address the problem of lesbians and bisexual women, who are particularly vulnerable to intersectional discrimination – based on their gender and sexual orientation and therefore suffer the most marginalization and silent prejudice. Moreover, they are vulnerable to specific forms of violence (e.g. hate speech,

“reparative rape”). Social expectation that they will lead ‘heterosexual’ lives discriminates against them as unproductive members of the society. Data considering lesbians are not available from any public source and data collected by NGOs are scarce.

***Is the government conducting studies and monitoring the situation of lesbians and bisexual women?***

***Does the government include information concerning these groups of women in sex education curricula and do its goals include combating stereotypes, discrimination, and counteracting violence against lesbians and bisexual women?***

## **Legislation**

36. Polish law does not provide any regulations that concern same-sex partnerships. All the rights concerning couples are reserved for marriages (e.g. the right to obtain information and make decisions for the partner when life or health are threatened, the right to joint taxation and joint marital property). This is a big disadvantage for all same-sex couples whose relationships are not legally recognized. The lack of such legislation is certainly a violation of right to family life of same-sex couples raising children. In Polish reality this issue concerns especially lesbians, because due to court practice of assigning custody to child’s mother when parents divorce and no adoption rights for same-sex couples, gay men have very few possibilities to raise children.

***Does the government plan to introduce legislative regulations concerning same-sex partnerships?***

## **Trans People**

### **Legislation**

37. There is still no actual law on gender recognition in Poland. The process itself requires a civil court case which leads to several complications, especially with the fact that the parents of an adult person are involved in the process and may sometimes delay the court decision on changing the gender marker. Also, there is a lack of state funding for gender reassignment procedures (surgeries, hormone therapy). In late 2013 the government presented its own outline of a gender recognition law that was criticized by NGOs, as consultations were held mainly with sexologists, whose knowledge and practice still follow procedures established in the 1980s, and no human rights organization has been invited to partake in the process.

***Does the government plan to introduce a Gender Recognition Act in order to stop the current complicated court practice? Will the Civil Society Organizations specializing in the needs of trans people be invited to take part in the process? Does the Government plan to instate gender reassignment procedures to be covered by state health insurance?***

# **ALTERNATIVE REPORT**

**By**  
**CEDAW Coalition of Polish NGOs**

**Poland 2014**

Draft Version

## PRINCIPLE OF NON-DISCRIMINATION AND EQUALITY (Art. 1 – 4)

*Karolina Kędziora and Krzysztof Śmiszek (Polish Society of Anti-Discrimination Law)*

In the Polish context the implementation of articles 1 to 4 of the Convention should mostly be viewed in light of the Act dated December 3, 2010 on the implementation of some regulations of the European Union concerning equal treatment (hereafter referred to as so-called ‘anti-discrimination’ law). This law is an effect of the obligatory implementation of regulations specified in a series of Directives of the European Union, regulating the principle of gender equality in various spheres of life. It should be emphasized here that Poland, in spite of its presence in the European Union since May 1 2004, had been delaying full implementation of the adequate regulations, which resulted in the European Commission instigating several criminal proceedings related to non-fulfilment of this obligation. The effects of implementing EU regulations include amendments to the Labour Code and the Act dated December 3, 2010 on the implementation of some regulations of the European Union concerning equal treatment.

This Act is the first legal act in the history of the Polish legal order which attempts to thoroughly regulate the issue of counteracting discrimination. This attempt, according to non-governmental organizations acting on behalf of the equal status of women, is not a satisfactory effort and is, unfortunately, rather minimalistic. The main issues, also those resulting from the scope of the Convention, which have been brought up throughout the legislative process and which have been ignored by the Government and, consequently, by the legislator are:

- 1) **Intersectional discrimination** – in the Polish legal system, particularly in the ‘anti-discrimination’ law, it is not treated as a separate form of unequal treatment. This means that instances of such discrimination are not treated by the legislator as more serious offences and, therefore, sanctions for such type of unequal treatment are not designed adequately. This contradicts the guidelines specified in General Recommendation number 28, item 18, where the CEDAW Committee noted that intersectional discrimination pertains mostly to women and women’s membership in various minority groups and determines, to a high extent, the incidence of their unequal treatment.

**Institutional mechanisms** – two new institutional mechanisms were created in light of the Polish ‘anti-discrimination’ law, in order to safeguard the principle of, among others, equality of the sexes. The solutions, including the Government Plenipotentiary for Equal Treatment (operating within the Chancellery of the Prime Minister) and the office of the Human Rights Defender (who has received new competencies to counteract discrimination), should be evaluated critically. According to General Recommendation No 28 item 34, countries are required to provide women with effective procedures for filing complaints related to discrimination. As it seems, the main aspect of these procedures which should encourage women to claim their rights is the independent character of these organs. The independence of their activities creates an atmosphere of trust and a feeling of security for those who address these institutions. Unfortunately, the legislative solution of granting anti-discriminatory competencies to the Government Plenipotentiary for Equal Treatment, who holds the rank of the Secretary of State in the Chancellery of the Prime Minister, does not maintain this independence. Another important barrier in the institutional protection against gender-based discrimination is that fact that the Human Rights Defender, according to regulations stipulated in the Constitution and other legislative acts, has no legal capabilities for considering complaints related to discrimination on a horizontal level, that is discrimination in

relations between private actors. This means that women who have encountered unequal treatment in spheres such as access to goods and services cannot count on the support of the Human Rights Defender in claiming their rights which have been infringed upon by unequal treatment. This situation means that most instances of women's discrimination fall outside of institutional protection. Poland's last report, which combined seventh and eighth periodic reports of States parties due in 2010, lacks information about possible new institutional solutions which would fix these serious omissions.

Conducting appropriate policies equalizing the chances of men and women – Polish regulations of the 'anti-discrimination' law have introduced the obligation for the Government to carry out the National Program for Equal Treatment. Such an obligation of the Government should be greeted with pleasure because this is the first instance in the history of the Polish legal order of introducing such a solution. However, it should be mentioned that the legislation is worded in a very general manner, it does not contain any additional obligations related to the form and content of the National Program for Equal Treatment. As a result, the first Program, which should have been reported to the Cabinet by the end of March 2012, has just entered in force in December 2013. What should be evaluated particularly harshly is the lack of any obligations for implementing programs which equalize the chances of men and women. This constitutes a violation of General Recommendation No 28 item 38a, which says that States Parties should implement appropriate programs aimed at equalizing the chances of men and women. These programs should comply with the guidelines stipulated in the Beijing Platform for Action. Even more importantly, the new 'anti-discrimination' law does not provide for any budgetary expenses for carrying out gender equality policies. Furthermore, in their justification of the law, its designers emphasized that its implementation would be possible without incurring any costs, which violates the guidelines in General Recommendation Number 28 item 38a. According to the law, the Government Plenipotentiary for Equal Treatment is financed by the Chancellery of the Prime Minister. Costs connected with the carrying out of new duties by the Human Rights Defender should be covered through the funds which have so far been available to the office. No new employees may be hired. Shortly after the current Human Rights Defender received additional competencies (without any additional funds), she filed a motion to the Marshall of the Lower House of the Polish Parliament to suspend the functioning of the 'anti-discrimination' law as it relates to the competencies and obligations which she is responsible for, until a sum necessary for carrying out these duties is set aside from the national budget. According to information obtained from persons representing the Human Rights Defender Office, financial situation has changed for better. However, there is still no clear information about how new tasks are performed by the Human Rights Defender as Equality Body, exactly how many lawyers investigate complaints of discrimination, etc.

- 2) Lack of regulations connected to the so-called positive duties of the state – Polish law, unlike legislation in many other European countries, does not place any positive obligations on public authorities with relation to equalizing the status of men and women.
- 3) The law does not safeguard from discrimination in all aspects of life, as provided for by the Convention. There are no legal regulations counteracting discrimination against women in fields such as health care, private and family life and education. The new 'anti-discrimination' law, and other so-called educational laws, do not contain clear regulations connected to equal status in education as related to gender. This means that

the Polish legislator is not interested in situations such as sexual harassment in schools or sexist content of textbooks that reinforce gender stereotypes, which violates the regulations of the Convention.

It is still difficult to evaluate the effects of the functioning of the 'anti-discrimination' law. Polish courts have not yet had any opportunity of settling cases regulated by the abovementioned legal act. It cannot be unequivocally determined whether the new regulations increase the level of protection, because the regulations have not been complemented with any judicial practice. Furthermore, awareness of the existence of new 'anti-discrimination' regulations is very low among Polish women because the government has in no way promoted the new regulations and Polish judges have not been properly trained to take them into account. No training workshops have been organized for professional plenipotentiaries (barristers, legal counsels) as part of their professional training.

#### **Comments to the Governmental report:**

The Government in its report omitted several problematic issues which are not covered by the 'anti-discrimination' law adopted at the end of 2010, after the reporting period. It is all about the above-mentioned limited powers of the Human Rights Defender as Equality Body (it cannot support the victims of discrimination which occurs in the relations between private actors). There is a lack of information about plans to extend protection against discrimination based on gender in areas of life other than employment and access to goods and services (also in accordance with Article 32 of the Constitution). Strengthening the law on gender equality with special focus on health care, private and family life and education is particularly recommended.

#### **Recommendations for the Government of Poland:**

- 1) Introducing anti-discrimination legislation which includes the definition of discrimination (including intersectional discrimination), as specified in Art. 1 CEDAW, and which protects women from discrimination in all spheres of life;
- 2) Legally guaranteeing budget for institutional mechanisms, ensuring suitable personnel, and legally guaranteeing lasting government financial resources for implementing gender equality within the National Program for Equal Treatment;
- 3) Creating, in cooperation with women's organizations, a long-term Plan of Action for Gender Equality and Women's Empowerment.

## INSTITUTIONAL MACHINERIES (Art. 3)

*Kinga Lohmann (Karat Coalition)*

This chapter is related to the implementation of Article 3 (“to ensure the full development and advancement of women for the purpose of guaranteeing rights and freedoms on a basis of equality with men”) and concerns the gender equality institutional mechanisms in Poland and their development. It complements the preceding chapter “Principle of non-discrimination and equality (Art. 1-4)”.

1. **The national machinery** which addresses the women’s issues was a temporary governmental body established/reestablished by the Ordinance of the Prime Minister, and thus vulnerable to political changes and to closing down by the decision of the government till December 2010<sup>4</sup>. It has almost always been linked to the office of the Government Plenipotentiary located within the Chancellery of the Prime Minister. The office has not been attached to any Ministry and was reporting directly to the Prime Minister. Only once – in 2006-2008 – the national women’s machinery was situated in the Ministry of Labour and Social Policy<sup>5</sup> as a Department of Women, Family and Counteracting Discrimination.

The legal status of the Office of Government Plenipotentiary changed when the Act dated 3 December 2010 came into force. Since then the Office has been a legally established permanent body, which cannot be removed by the decision of the government. It is a positive development of the status and continuity of national machinery.

**The Government Plenipotentiary for Equal Treatment** is responsible for equal treatment and counteracting discrimination on diverse grounds where gender is one of 10 grounds of discrimination, and its mandate includes: elaborating and appraising bills, analyzing, evaluating legislation and initiating changes; taking actions towards eliminating discrimination; cooperating with civil society, other states, international or foreign organizations and collaborating on reporting to international bodies; developing National Program for Equal Treatment; reporting on yearly basis to the Government<sup>6</sup>.

There is neither a regulation defining the relationship between the Plenipotentiary and the Ministries nor an inter-departmental coordination structure to coordinate or stimulate gender mainstreaming in the government. The Plenipotentiary is positioned at the level of Secretary of State; however, she is not a member of the Cabinet. The Chancellery of Prime Minister provides administrative and financial support, therefore, the Plenipotentiary does not have a separate budget. The Plenipotentiary office conducts numerous projects co-financed by the European Funds.

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<sup>4</sup> Act of 3 December 2010 on the implementation of certain provisions of the European Union on equal treatment (PL). Available at: <http://isap.sejm.gov.pl/DetailsServlet?id=WDU20102541700>

<sup>5</sup> This paragraph (1) is based on:

- Chancellery of Prime Minister. (2003). *Krajowy Program Działań na rzecz Kobiet*. II etap na lata 2003-2005.

Retrieved from: [http://wiadomosci.ngo.pl/files/rownosc.ngo.pl/public/prawo\\_polskie/KrajowyProgram.pdf](http://wiadomosci.ngo.pl/files/rownosc.ngo.pl/public/prawo_polskie/KrajowyProgram.pdf)

- Polish Government (2009), Response of the Polish Government to the Questionnaire on Implementation of the Beijing Declaration and Platform for Action (1995) and the Outcome of the Twenty-Third Special Session of the General Assembly (2000). Retrieved from: <http://www.unece.org/?id=477>

<sup>6</sup> Act of 3 December 2010 on the implementation of certain provisions of the European Union on equal treatment (PL). Available at: <http://isap.sejm.gov.pl/DetailsServlet?id=WDU20102541700>

2. **The equal treatment approach** (since April 2008) resulting from European Union regulations influenced the government's attitude towards gender equality. The national machinery which at first was mainly focusing on gender equality (2005), shifted to the body combining the focus on gender equality and counteracting discrimination on all grounds (2006-2008), and finally to the body which deals with equal treatment and discrimination on diverse grounds. These changes contributed to a serious backlash in gender equality in 2008-2011 caused by the previous Government Plenipotentiary for Equal Treatment, who did not address gender issues. The lack of accountability mechanism and government commitment resulted in the lack of continuity of gender equality policies.

The backlash was demonstrated by the withdrawal from the gender equality strategy: the absence of gender equality/women programs/strategy for the last 8 years. However, there is a positive development due to a legal obligation<sup>7</sup> concerning the development of the National Program for Equal Treatment by the Plenipotentiary. A National Program for 2013-2015 has been just approved by the Government in December 2013.

As far as human resources are concerned, a decrease in the number of staff comparing to the Office in 2005 is observed: from fifty people in 2005<sup>8</sup> to twenty in the Office of Plenipotentiary for Equal Treatment in 2012<sup>9</sup>. In fact, the number of the civil servants working on gender equality is in practice even lower given that the mandate of the Plenipotentiary in 2012 focused on equal treatment where gender is placed among 10 other grounds of discrimination.

There has also been a lack of commitment to gender equality and a backlash at the parliamentary level: from the parliamentary commission on women's issues in 2005, through a sub-commission, to neither of these bodies after the parliamentary election in 2011<sup>10</sup>.

3. **The gender mainstreaming** has never had a legally binding nor de facto binding status, however it was included in the strategic policy documents (two National Action Plans for the period 1997-2000 and 2003-2005 based on the Beijing Platform for Action). Although there was no gender equality policy document after 2005, the cooperation of governmental body with the network of local Plenipotentiaries continued during the period 2006-2008. Moreover, the gender mainstreaming was present in the projects co-financed from the European Social Funds (due to the EU requirement that all projects co-financed from European Social Funds must have a gender impact assessment)<sup>11</sup>. Trainings on gender mainstreaming for the government officials organized within one of such projects was a positive development, however it has not led to a systematic or sustainable changes in the government approach to the gender mainstreaming so far.

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<sup>7</sup> Act of 3 December 2010 on the implementation of certain provisions of the European Union on equal treatment (article 22) (PL).

<sup>8</sup> Council of the European Union (2006), *Review of the implementation by the Member States and the EU institutions of the Beijing Platform for Action – Indicators in respect of Institutional Mechanisms*, prepared by the Finnish Presidency. SOC 483 (<http://register.consilium.europa.eu/pdf/en/06/st14/st14376-ad01.en06.pdf>)

<sup>9</sup> Survey HLG (2013), Data provided through the online survey by Polish High Level Group for European Institute for Gender Equality, January-February 2013

<sup>10</sup> Currently, there are two parliamentary Teams: Parliamentary Group of Women and Parliamentary Team for Equality of Women and Men which, however, have no mandate of parliamentary control.

<sup>11</sup> Survey HLG (2013), Data provided through the online survey by Polish High Level Group for European Institute for Gender Equality, January-February 2013

4. **The cooperation with the civil society** in the area of equal treatment is a legal obligation since 2010<sup>12</sup>, however the Act dated 3 December 2010 does not establish any specific structure responsible for cooperation between the Plenipotentiary and civil society. Currently, NGOs, including women's NGOs, and other social partners are involved in the governmental work. Most of the consultation mechanisms are in place and are being used, but there is no formally established advisory body where they could be represented on a regular basis. The current Plenipotentiary has a proactive approach to contributing to and drawing on NGOs initiatives, however it is still too early to evaluate the effectiveness of the cooperation. It is also hard to assess whether there will be a similar political will of the government and whether the NGOs' involvement in the cooperation will bring concrete results.
5. **The collection of data disaggregated by sex** is a legal obligation for the Central Statistical Office (by the Act on National Statistics, 1995)<sup>13</sup>. There are dedicated publications on gender statistics e.g. Women and Men in the Labour Market published every two years, Women in Poland (although the last publication is from 2007) by the statistical office. However, the statistical office does not provide the data concerning intersectional approach to women's issues.

#### **Comments to the Governmental report:**

1. It would be hard to completely agree with the governmental report stating that „in the reporting period , the tasks related to implementing the gender equality policy were carried out uninterruptedly by subsequent offices for preventing discrimination”. In fact, the office of Government Plenipotentiary for Equal Treatment in the period from April 2008 till November 2011 did not fulfill its obligation concerning gender equality because the gender equality policy was completely omitted. In December 2010, 30 diverse equal rights Civil Society Organizations appealed to the Prime Minister to dismiss the previous Government Plenipotentiary for Equal Treatment due to her lack of gender-sensitivity, relevant experience and political commitment to gender-equality .<sup>14</sup>
2. The governmental report lacks information concerning the financial resources available to the Plenipotentiary office from government funds. Meanwhile, it contains accurate information on which EU funds are the source of funding for the projects (the list of projects is quite long). As the Action Plan for Gender Equality was not in effect in the discussed time period, it is hard to determine on the basis of project descriptions alone what strategy and policy was being carried out by the subsequent Government Offices (descriptions of most projects present their goals and activities, but lack information about their results and evaluation).
3. The report also lacks information about cooperation with non-governmental organizations.

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<sup>12</sup> Act of 3 December 2010 on the implementation of certain provisions of the European Union on equal treatment.

<sup>13</sup> Act of 29 June 1995 on National Statistics (PL). Available at: [http://www.stat.gov.pl/bip/56\\_PLK\\_HTML.htm](http://www.stat.gov.pl/bip/56_PLK_HTML.htm)

<sup>14</sup> Available in Polish at <http://www.feminoteka.pl/news.php?readmore=6978>

**Recommendations for the Government of Poland:**

- 1) Establishing a permanent governmental body responsible for gender equality and women's empowerment, located at the highest governmental level with a significant separate budget;
- 2) Developing a National Action Plan for gender equality and women's empowerment;
- 3) Developing a strategy and action plan for applying gender mainstreaming at central and local governmental level;
- 4) Collecting gender disaggregated data taking into account intersectional approach.

## STEREOTYPES (Art. 5)

Joanna Piotrowska (*Feminoteka Foundation*)

Gender stereotypes are still deeply rooted in the Polish society. There is practically no area in which they cannot be found – this includes media, advertisements, as well as statements made by both scientific and political authority figures. There are plenty of them in pre-school curricula, school textbooks and, in fact, at every educational stage. At the same time, there is in Poland a near disregard for the problem of the influence of gender stereotypes, perpetuated by the media and in education, on their further reinforcement and contribution to sexual violence against women and girls.

### GENDER INSENSITIVE MEDIA AND EDUCATION

#### Media

Female point of view is rarely noticed in the media; often it is simply disregarded. There is no such area or topic in which women – as content creators, experts, or information sources – would dominate over men. The media are much more masculine than the world they describe<sup>15</sup>: in the Lower House of the Polish Parliament women constitute 24% of parliamentarians, while in the media they constitute 11% of politicians. The percentage of female experts in the media is as low as 19%, even though there are undeniably more people with tertiary education among women – 18,5% - than among men – 12,3%. Even the best-known female journalists almost exclusively invite men<sup>16</sup>.

According to the aforementioned research, in articles and materials discussing politics or economy there are only 15% of female protagonists, and in the morning radio and TV commentaries they comprise as few as 9% of protagonists. The only area in which there are even fewer female protagonists are topics related to religion (5%). Women usually appear in the media as the anonymous participants of events or live illustrations of social topics (41%).

Men hold the most important positions in editorial departments – among 33 people in managerial positions (editors-in-chief and deputy editors-in-chief) there are 6 women. In 2013, the most important news programs invited men (4438 times) three times more often than women (1370 times)<sup>17</sup>.

Media research conducted so far has shown that in the situation in which nobody invites women to speak, routine and journalist habits lead to reinforcing the stereotypes connected with women. In practice, this means that it is harder for women to make their ideas and achievements known, to overcome barriers, to fight discrimination. Not only does it diminish their achievements, but also lowers their participation – if women's successes in some area are not shown, it reinforces the social conviction that women do not do well in such roles, endeavors, initiatives or activity. This, in turn, reinforces sexism – the still deeply rooted conviction that what is female is inferior. It is a small leap from there to discrimination, molestation, and even violence.

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<sup>15</sup> P. Pacewicz, „Dziennikarze utwierdzają nas w przekonaniu, że kobiet nie warto słuchać”. Available in Polish at: [http://wyborcza.pl/1,75478,13529642,Dziennikarze\\_utwierdzaja\\_Polakow\\_w\\_przekonaniu\\_ze.html#ixzz2N2YsBzDT](http://wyborcza.pl/1,75478,13529642,Dziennikarze_utwierdzaja_Polakow_w_przekonaniu_ze.html#ixzz2N2YsBzDT)

<sup>16</sup> Among 27 guests invited to Monika Olejnik's TV show „Kropka nad i” (*Dotting the i*) between early April and mid-May there were only 3 women. In Janina Paradowska's morning show in TOK FM radio station the commentators are also almost exclusively men.

<sup>17</sup> Press Service (2013), *Na szklanym ekranie. Wizerunek kobiety w przekazie telewizyjnych serwisów informacyjnych*. Available in Polish at: <http://www.press-service.com.pl/pl/analiza-glownych-wydan-dzienniko/>

## Media and sexual violence against women

The media perpetuate numerous myths connected with rape, i.e. stereotypes concerning both the very situation of rape and its victims and perpetrators. They underplay the particular cases of molestation and rape in many ways, including frivolous titles, intended to be funny; adopting the perspective of the person suspected or convicted of rape and expressing empathy towards them rather than the victim; perpetuating the myth that the victims are partly responsible for sexual violence, because they provoke with their looks; suggesting that the victims are partly responsible for the assault if they walk around town alone; diminishing the suffering of female sex workers who have been raped<sup>18</sup>.

The number of stereotypical portrayals of sexual violence in the Polish media has increased over the past 15 years. Even though there are more articles about sexual violence, which ceases to be a taboo subject, still about a quarter of articles perpetuates myths about rape.

## Impact of gender insensitive education and violence against women

One of the causes of perpetuation of gender stereotypes and reinforcing violent behaviours is the gender insensitive education<sup>19</sup> – from curricula to school textbooks. Polish school is nationalistic, conservative, unifying, and the only consideration for „diversity” can be seen in acknowledging the gender difference: school socializes youth towards playing traditional roles. Polish education system is the most important and most effective place for reproducing patriarchy. Girls are still taught to be obedient and meek and are expected to be polite, quiet, helpful; to take care of the others rather than themselves. Boys are rewarded for different behaviours: they are supposed to be strong, independent, firm, active and loud. These stereotypical feminine qualities put women on the side of victims, while the stereotypical masculine qualities put men on the side of the perpetrators of violence. Neither the educational documents nor the preambles to the particular sections of core curriculum (both for schools and preschools) mention the need to incorporate the themes and principles of gender equality into the general education system or educational programs connected with the prevention of gender-based violence<sup>20</sup>.

## Stereotypes concerning sexual violence against women

The media, police, courts, health care professionals, and even psychologists often perpetuate stereotypes connected with rape victims. The conviction that the woman is the guilty party, that she did something wrong, that it is she who should be ashamed, is still very deeply rooted in the Polish society.

15% of Poles claim that there is no such thing as marital rape, every tenth person thinks that in matters of sex the wife should conform to the husband, and nearly half think that rape victims accept their situation<sup>21</sup>. Probably even fewer people in Poland are aware of the existence of „date rape” phenomenon, which is being analyzed in detail by experts all over the world.

There aren't many educational texts providing actual knowledge about the determinants of rape. According to studies on the situation of rape victims, neither the police stations nor

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<sup>18</sup> Kaim, A. (2011), „*Polskie media wobec przemocy seksualnej*” [in:] „Dość milczenia. Przemoc seksualna wobec kobiet i problem gwałtu w Polsce”, Fundacja Feminoteka, Warszawa

<sup>19</sup> Dzierzgowska, A., Rutkowska, E. (2009), *Ślepa na płęć. Edukacja równościowa po polsku*

<sup>20</sup> See more in the chapter „Equality in Education (Art. 10)”

<sup>21</sup> TNS OBOP (2007), „*Polacy wobec zjawiska przemocy w rodzinie oraz opinie ofiar, sprawców i świadków o występowaniu i okolicznościach występowania przemocy w rodzinie*”

hospitals have clear procedures in this matter; furthermore, the victims are met with attitudes including undermining their credibility, testing their lifestyle (their „conduct”), investigating the circumstances of rape (wasn’t the woman „provoking” the attacker?), shifting responsibility for rape to the victim („she brought it on herself”), as well as commenting (sometimes in a vulgar, sexist way) on their behaviour and looks <sup>22</sup>.

According to studies and reports, many women in Poland are still convinced that they deserve sexual violence and they themselves are responsible for it, because they dressed „provocatively” or were inebriated. Male attitudes and behaviours also constitute a part of the violence problem. Many men still think that a woman’s „no” actually means „yes” and this is how they justify using violence.

### **Evaluation of Government’s actions**

The government’s actions in the area as sensitive as the stereotypes’ impact on violence, and in particular sexual violence, are more than inadequate. This years-long neglect requires immediate action. There has never been a nationwide campaign in Poland devoted to the issue of rapes and to the problem of shifting guilt and responsibility from perpetrators to the victim. Government units responsible for carrying out anti-violence programs do not use the terms „gender-based violence” or „violence against women”. Gender stereotypes and their impact on violence against women and girls are not taken into consideration in educational and training programs. The issues of sexual molestation in schools or date rape are not discussed. These topics are still taboo and girls and women have to deal with them on their own. There is not a single specialized centre helping the victims of sexual violence in Poland.

Unless those stereotypes, harmful for women, are brought to attention and eliminated from the curricula, textbooks, teacher training courses, and services dealing with violence prevention, and unless steps are taken to eradicate them from the statements made by authority figures and the media and to counteract them, it will be hard to fight the causes of violence. It is also necessary for men to become involved both in fighting the violence against women and in counteracting gender stereotypes.

### **Comments to the Governmental report:**

Until 2005, Poland was on the right track as far as counteracting and preventing gender stereotypes is concerned. Many actions and efforts have been taken in order to change this situation. However, after 2005, when right-wing government took office, the situation worsened radically. The Office of Government Plenipotentiary for Equal Status of Women and Men has been dissolved and the very good European equality program „Compass”, which had been translated into Polish, has been withdrawn from schools. The Plenipotentiary Office was restored as late as 2008 following a lot of pressure from non-governmental organizations, but the position was filled by a person both incompetent and, in fact, opposed to equality principles. In the report on fulfilling her duties the previous Plenipotentiary recalls activities and events which she did not organize, and her role was very often limited solely to being an official patron of campaigns (such as the Girls as Engineers! campaign) or other simulated actions. Her lack of competence and failure to really counteract gender stereotypes, among other things, led to very strong criticism from numerous organizations and the media. Actions taken in this period, connected with counteracting and preventing violence, including sexual violence against women, were invisible or simulated. The Plenipotentiary did nothing at all in the sphere of counteracting and eliminating gender stereotypes affecting violence. All documents – including

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<sup>22</sup> Fundacja Feminoteka (2011), *Dość milczenia. Przemoc seksualna wobec kobiet i problem gwałtu w Polsce*

the Prevention of Domestic Violence Act and the National Programme on Preventing Domestic Violence of 2010 and 2011 are devoid of terms such as „violence against women” or „gender-based violence”, and only contain statistics. There are no such actions in the undertaken training or education programs or any other programs, either.

### **Recommendations for the Government of Poland:**

#### **Policy**

- 1) Involving government institutions responsible for maintaining equality in the media in the monitoring of cases of perpetuation of gender stereotypes in the media and preventing this phenomenon;
- 2) Intervention by proper authorities in cases when discriminatory content and content perpetuating harmful stereotypes appears in the media;
- 3) Creating and enforcing ethical guidelines on writing about sexual violence in a way which would prevent the media from underplaying it and assigning the blame to victims;
- 4) Introducing compulsory trainings for all public services and institutions on the subject of impact the gender stereotypes have on violence against women and girls and their prevention;

#### **Education**

- 5) Undertaking initiatives which will educate journalists on the subject of gender stereotypes;
- 6) Introducing school programs for girls and boys on the subject of gender stereotypes as one of the sources of violence against women and girls;
- 7) Identifying the phenomenon of gender-based violence in all anti-violence and educational programs and demonstrating its causes;
- 8) Carrying out educational campaigns for the society on the subject of sexual violence in order to change the perception of victims of sexual violence and break the myths which shift the blame from perpetrator to victim.

## TRAFFICKING IN WOMEN AND SEXUAL EXPLOITATION OF WOMEN (Art.6)

*Stana Buchowska, updated by Irena Dawid-Olczyk and Joanna Garnier (La Strada Foundation)*

### **The phenomenon: new trends and developments**

Poland is a country of origin, transit and destination for trafficked persons. Polish nationals are being trafficked mostly to Germany, the Netherlands, Belgium, Italy, Spain, Greece, Scandinavian countries, and incidentally to Austria, Australia, and the United States. The majority of victims of trafficking who are clients of La Strada Poland are women – accounting for about 90% in years 2002-2010. In the past few years, the number of female victims of human trafficking slightly dropped in relation to male victims<sup>23</sup>.

According to the analyses of the Public Prosecutor's Office, women from Lithuania, Latvia and Moldova trafficked to Germany are transited across Poland. As a country of destination, the majority of persons trafficked to Poland come from Ukraine, Bulgaria, Moldova, Romania, Belarus and other countries of the former Soviet Union.

For the past twenty years Poland, similarly to other European countries, has been struggling with the problem of female Bulgarian sex workers. They belong to the Turkish Roma minority, often are illiterate or poorly educated, and often agree to engage in prostitution because they see no other way of making any money. The problem is that their home country does not offer any effective rehabilitation programs, and therefore after repatriation they often willingly return to oppressive situation in Poland or in another country.

Unfortunately, the Prosecutor's Office does not collect gender-disaggregated data which does not allow to determine how many women among all victims of trafficking were transited through the territory of Poland.

During the past few years NGOs have noticed a growing number of trafficked persons from certain African (Cameroon, Djibouti, Nigeria, Senegal, Somalia) and Asian countries (Bangladesh, China, Mongolia, Philippines, Tajikistan, Thailand, Uzbekistan, Vietnam). Although there is a growing awareness of other forms of trafficking, available statistics still show that the majority of the trafficking cases from and to Poland are those with the purpose of exploitation in the sex sector. During the past few years a growing number of trafficking cases has been noted, whereby people have been forced into labour, slavery-like practices, domestic servitude, begging, petty crimes, both abroad and in Poland.

One new form of the exploitation of women is forcing them into fictional marriages in order to legalize the residency of men from outside the European Union (from Africa or Asia). This may involve coercing the woman to leave the country to meet with her future „husband”.

Women, as well as men, are victims of new forms of labour exploitation, using their identity to set up bank accounts, to collect social benefits or smuggle drugs. There has been an increase in exploitation of women working in households – as housekeepers or caregivers for the elderly. Those women are subject to humiliation, often become victims of sexual assault and are not compensated adequately to the work they are performing. This is true both for women from Poland who migrate for work (usually to Germany) and foreigners – especially from Ukraine – who come to Poland.

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<sup>23</sup> The ratio of female/male clients of the La Strada Foundation was as follows: 2010 – women: 75%, men: 25%; 2011 – women: 77%, men: 23%; 2012 – women: 73%, men: 27%; 2013 (until September) – women: 78%, men: 22%

According to the information from La Strada Poland, the majority of trafficked people assisted in years 2004-2006 were women aged 21 to 25. The youngest female client was 13, the oldest 52. 15% of the people assisted were male. The majority of trafficked men were over 30 years old and have been trafficked for the purpose of forced labour, labour exploitation, begging and petty crimes<sup>24</sup>.

According to the Public Prosecutor's Office, in the years 2007-2009 there were 95 cases that ended with indictment. There were 219 persons accused and 1947 persons wronged.

During preparatory proceedings conducted by the Public Prosecutor's Office, 120 adult women – victims of human trafficking have been identified in 2010 (compared with 55 adult men); in 2011 there were 247 women (343 men), and in 2012 – 144 women (86 men)<sup>25</sup>.

According to the La Strada statistics, during the years 2008-2010, 695 trafficked persons were assisted by La Strada and/or referred to other service providers.

### **New law and its practical implementation**

In September 2010, the new definition<sup>26</sup> of trafficking in human beings was incorporated into the Polish Penal Code in the new article 115, § 22, and it is described by its legislators as one that is based on:

- a) the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, ratified by Poland on 26 September 2003;
- b) the Council framework Decision 2002/629/JHA of 19 July 2002 on combating trafficking in human beings (OJ L 203, 1.8.2002);
- c) and also on the Council of Europe Convention on action against trafficking in human beings of 2005.

The definition includes, as an offence, subjecting someone to any of the forms of exploitation mentioned in the Framework Decision of 2002, including “forced or compulsory labour or services”. It focuses not only on various forms of sexual exploitation, such as ‘exploitation of prostitution, pornography or other forms of sexual exploitation’, but includes also forced labour and services, begging, servitude or ‘other forms of exploitation that are humiliating to human’s

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<sup>24</sup> Agnieszka Obsznajczyk: Social and Demographic Profile of the Victims of Trafficking in Human Beings. In: Trafficking in Human Beings in Poland. Ministry of Interior, Warsaw, 2009, page 41.

<sup>25</sup> <http://www.handelludzi.eu/hl/baza-wiedzy/statystyki/6143,Dane-statystyczne.html>

<sup>26</sup> Stipulating that trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons by means of:

- 1) Violence or unlawful threat,
- 2) abduction,
- 3) deception,
- 4) misleading, the exploitation of a person's mistake or their inability to properly comprehend the action being undertaken,
- 5) the abuse of a relation of dependence, taking advantage of a critical situation or state of helplessness,
- 6) giving or receiving of payments or benefits or its promise to achieve the consent of a person having control over another person, for the purpose of exploitation, even with the person's consent. Exploitation shall include, at a minimum, the exploitation of the prostitution of others, pornography, or other forms of sexual exploitation, forced labour or services, beggary, slavery or practices similar to slavery, servitude or the removal of cells, tissues, or organs against the regulations of the article. Should the perpetrator's behaviour concern a minor, it shall be considered “trafficking in persons” even if this does not involve any of the means set forth in points 1-6 of this article.

dignity or removal of cells, tissues and organs'. All these provisions are theoretical, thus far, because the new definition hasn't been used in practice yet.

As for the purposes of trafficking other than sexual exploitation, until now there have been several cases prosecuted (servitude, begging, forced labour and services), but they are not mentioned in statistics as specific cases. Statistics of the Prosecutor's Office just show all cases prosecuted with (an old) art. 253. In an absence of a specific definition in the Polish Penal Code, occasionally the Palermo definition as an international binding legal instrument was used by some judges. When the offence of trafficking involves a child (someone under the age of 18), none of the abusive 'means' of recruitment which are part of the offence need to occur<sup>27</sup>.

Adopting the definition of trafficking is a positive step but it is too early at this point to evaluate how the new legislation is being implemented in practice. However, the past few years have shown that, unfortunately, the new law is not commonly known. The reason for this might be the fact that too few training courses have been conducted concerning the definition and its application. Policemen and policewomen, judges and public prosecutors are still hesitant to apply the new definition in their everyday work.

### **Governmental responses to a problem of trafficking in persons:**

#### National Action Plans against Trafficking in Human Beings since 2009<sup>28</sup>

are a continuance of National Programmes for Combating and Preventing Trafficking in Human Beings, (implemented since 2003). The primary objective of the Plan is to create conditions necessary to effectively prevent and combat trafficking in human beings in Poland and to support and protect victims of this crime. The inter-ministerial Committee for Combating and Preventing Trafficking in Human Beings, which also includes non-governmental organizations, is responsible for implementation and monitoring of tasks provided in the Plan.

#### National Intervention and Consultation Centre (National Centre)

Since 2008, the National Intervention and Consultation Centre for Victims of Trafficking from Poland and abroad (annual program financed by the Ministry of the Interior) has been in operation. It is being run by a non-governmental organization chosen by way of public tender. The work of the National Centre includes identification of victims of human trafficking, intervention, preventive counselling, consultation for various institutions and organizations, and maintaining shelters for victims.

### **Addressing the most burning problems concerning situation of victims of trafficking in Poland**

#### **a) Identification of trafficked persons**

The formal identification of trafficked persons has to be performed by one of three state institutions – the Police, Border Guard or Prosecutor's Office. In practice, law enforcement and governmental institutions often consult NGOs in cases of identification and basically respect the views of the NGO running the National Centre.

The lack of procedure for obligatory identification is one of the reasons why many potential victims are not identified and thus do not receive proper help or even worse, are deported without being given opportunity to be interviewed about the crime that was done to them.

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<sup>27</sup> Barbara Namysłowska-Gabrysiak: Significance and consequences of Ratification of the Council of Europe Convention on action against THB;

<sup>28</sup> According to information on "The National Action Plan against Trafficking in Human Beings in Poland" in: [www.mswia.gov.pl](http://www.mswia.gov.pl)

Many police and border guard officers still cannot determine whether they are dealing with a victim or cannot ask the proper identifying questions.

It is also possible that the victims of human trafficking end up in a detention centre (so-called deportation jail) from which they are sent back to their country of origin without being identified. Such a practice puts them at risk of facing the perpetrators again – in their country of origin – and in danger (such as becoming a victim of human trafficking again). There exist no appeal procedures. Unattended foreign children are in a similar situation, because no procedures have been established or implemented for identifying such a child – presumed victim of human trafficking, and protecting the child from exploitation or sale.

There is also a lack of sufficient identification of trafficked persons for the purpose of labour exploitation – especially by the border guard officers. The trafficked persons are often identified just as ‘illegal’ migrant workers and without further analysis they are deported to their country of origin

b) Referral system and (a lack of) implementation of a reflection period in practice

In certain aspects, the structures and referral system in Poland function well. Representatives of the competent authorities (Police, Border Guard, Prosecutor’s Office) are trained to identify victims, including children, and they collaborate with the relevant non-governmental organizations in the majority of cases.

Trafficked persons could be issued with a temporary residence permit<sup>29</sup>.

However, the weakest point of the system is an application of the reflection period in practice. Although a „reflection period” is theoretically foreseen for 3 months, it is used only very rarely. The statistics provided by the National Centre and the Ministry of the Interior show only a few cases where the reflection period was applied. In practice, when police, border guard or prosecutor’s office representatives refer a trafficked person to The National Centre, such trafficked person has already been interrogated by the law enforcement. When a presumed trafficked person is reported to the police, the border guard or a prosecutor’s office, their officers tend to get information from the presumed trafficked person as soon as possible. So, in fact, a presumed trafficked person has no time to consider a possibility of not cooperating with the law enforcement.

After being referred to National Centre, such person is provided with appropriate help and support and starts the procedure of legalizing her/his stay. However, an access to a residence permit was in some individual cases restricted. In the last year a residence permit was refused to a trafficked person who was under a care of NGO – La Strada. In our opinion appropriate risk assessment was not conducted, including a personal risk assessment by the Alien Office who was responsible for issuing the residence permit.

c) Access to justice – compensation for trafficked persons

Trafficked persons reported to NGOs, National Centre or to La Strada have access to legal information which is reliable and accessible in a language understood by a trafficked person. They are helped to apply for residence status, during the criminal and court proceedings, as well as in the process of obtaining compensation. Although in Poland there are several official ways for trafficked persons to claim compensation, not many successful claims have been made.

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<sup>29</sup> according to the Act on Aliens, art. 53a excerpt 2 point 4, stating that „the residence permit for a fixed period may be issued to an alien who stays at the territory of the Republic of Poland illegally if the competent authorities to conduct proceedings on combating trafficking in human beings has ascertained that an alien might be a victim of trafficking in human beings within the meaning of Council Framework Decision within 19 July 2002 on combating trafficking in human beings.”

d) Lack of the institution of the National Rapporteur

Unfortunately, in spite of La Strada's long time lobbying for a National Rapporteur, it seems that governmental bodies are still not ready to accept an independent institution of National Rapporteur. The Human Rights Defender is taking certain anti-trafficking initiatives within the human rights framework, but their work is obviously only covering limited initiatives and interventions.

e) Conditionality of services offered to trafficked persons

Most of services offered within The National Centre program are conditional. Trafficked persons need to express their will to receive such an assistance and have to cease contacts with their traffickers. The trafficked person should also be identified – either informally by the NGO, or formally, in case of migrants, by the police, the border guard or the prosecutor's office. Although not required by formal agreements, individual risk assessments for trafficked persons who (have to) return are carried out by NGOs, in cooperation with partner organization from the country of origin.

f) Lack of monitoring and evaluation system

There is no monitoring and evaluation mechanism put in a place in Poland in relation to Government's anti-trafficking policies and activities. A majority of evaluation attempts concern the legal and prosecution aspects of the phenomenon. It is also important to increase the role and involvement of NGOs in the evaluation and monitoring process. Until now, only a few NGOs conducted a monitoring or evaluation activities in Poland.

g) So far, Poland hasn't ratified the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, i.e. the so-called Lanzarote Convention.

**Comments to the Governmental report:**

In Poland, there are no specialized programs for helping children (girls) – victims of commercial sexual exploitation.

According to the experiences of the La Strada Foundation, girls with those kinds of experiences do not receive specialized help (support, therapy). The „appropriate socio-educational care measures” are *de facto* a punishment. It is standard in those situations that the court pronounces the girl's demoralization and transfers her to a locked facility (school and education centre). The facilities have a difficult time dealing with girls who have experienced commercial sexual exploitation – they are considered „noncompliant” and „irreformable”, and the personnel is not trained to work with them.

Additionally, most of the girls' educational care facilities are run by Catholic nuns, which precludes worldview-related and educational neutrality.

**Recommendations for the Government of Poland:**

**Legislation and Policy**

- 1) Ratifying the Council of Europe *Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse*;

- 2) Implementing obligatory identification procedure for the presumed victims of human trafficking (especially those being sent to locked facilities), with the option of filing a complaint with another institution, such as the public prosecutor's office;
- 3) Improving access to justice in terms of compensations for trafficked persons;
- 4) Introducing a uniform procedure of dealing with unattended children – foreign girls under 18, presumed victims of human trafficking;
- 5) Developing and implementing a support program for girls under 18, victims of commercial sexual exploitation;

#### **Institutional mechanism**

- 6) Establishing an office of the National Rapporteur on Trafficking, an independent body with the mandate to gather and disseminate information in order to highlight problems and recommend solutions for combating trafficking in human beings. The Rapporteur should be required to present an annual report to the Government.

#### **Monitoring**

- 7) Introducing and implementing a monitoring mechanism covering all aspects of anti-trafficking activities of the Government.
- 8) Conducting monitoring on how the newly introduced anti-trafficking legislation (and particularly the application of definition) works in practice

#### **Data collection**

- 9) Disaggregating the data collected by the Public Prosecutor's Office by gender and the purpose of trafficking.

## **WOMEN'S PARTICIPATION IN POLITICAL LIFE (Art. 7)**

*Małgorzata Druciarek and Aleksandra Niżyńska (The Institute of Public Affairs)*

### **The low representation of women in political life**

In Polish politics women are in a minority. Their participation in Government, both on the national as well as on the local level is below 30%. This is despite the fact that since 1989 the number of women parliamentarians has been constantly increasing. Until 2001, in each term of the Lower House of the Polish Parliament women constituted between 10 and 13%. After the 2001 elections women constituted 20% of all parliamentarians. This sudden increase in the participation of women has to be linked to the voluntary adoption of quotas by three parties, the SLD (Democratic Left Alliance), UP (Labour Union) and UW (Freedom Union). These quotas required either gender to have at least 30% of the total number of candidates on electoral lists.

The quota system voluntarily used by these three parties proved to be an effective mechanism for increasing the participation of women in politics. The parties decided to include a greater number of women on the electoral lists, but based on their own, internal policies. The turning point of the discussion about the mechanism for ensuring equal representation of women and men in politics was the Congress of Women which gathered over 4000 women from the entire country in 2009.

### **Introduction of the quota system on electoral lists**

During the Congress of Women a suggestion was made to combine equal participation of women and men on the electoral lists with placing women and men candidates in alternate order (in Polish electoral jargon this is called a 'zipper system'). This would avoid a situation where women could be pushed further down electoral lists, and hence had a smaller chance of being elected. The great enthusiasm associated with increasing participation of women in public life generated by the Congress of Women resulted in the establishment of the "Civil Legal Change Initiative Committee 'It's Time for Women'". The goal of the Committee was a law guaranteeing women 50% of places on the electoral lists. The proposed bill did not include the alternate placement of women and men on the lists, or any other regulations related to gender. Sanctions for non-compliance were included in the bill.

For the bill to be presented to the Parliament, 100 000 authorized signatures of Polish citizens with voting rights needed to be secured in 3 months time. Thanks to popular support for the equal opportunities of women and men in the public sphere (according to large scale research conducted by research company PBS DGA in August 2009, 61 % of respondents were in favour of parity in politics), the signatures were collected. Consequently, the citizens bill related to the introduction of parity in elections was presented to the Lower House of the Polish Parliament on 21 December 2009. The future of the bill, similarly as the future of other legislative initiatives presented by civil society, depended on the good will of the parliamentarians, rather than experts familiar with the issue such as those involved in the 'It's Time for Women' Committee'. After the discussion was postponed a number of times, and after attempts to discredit the bill, an Act which was significantly different from the proposal, but which to some extent balances the chances of women and men in the electoral race, was adopted.

In accordance with the new Act, an electoral list of candidates for any party has to include at least 35% of either gender. If the electoral list does not fulfill this requirement, the electoral commission will not register it.

## **Impact of the new legislation on women's participation in politics**

This powerful legal mechanism led to the doubling of female candidates in the 2011 election compared to the 2007 election. In total 3 064 female candidates were registered. The percentage of women on the election lists was between 40 and 48%. The Polish Labour Party reserved almost half of the places on the electoral lists for women, although this party did not receive many votes. As far as more influential parties are concerned, the conservative PiS party (Law and Justice) had the least female candidates (40%), and the SLD (Democratic Left Alliance) had the largest number of female representatives (44%).

Being placed on the electoral list is not the only relevant issue. The place on the list is also very important and has significant impact on the candidate's chance of being elected. As far as this issue is concerned, during the 2011 elections men were in a privileged position as the first places on the lists were dominated by them. Women constituted only 21% of all first places on the electoral lists of parties. It was the electoral lists of the ruling PO party (Civic Platform) which had the greatest number of women placed in the first positions (in 14 out of 41 electoral districts). In comparison PiS gave women only 10 first places, and the lowest number of female first places were on the lists of SLD and PSL (the Polish People's Party). PO was also the only party which had at least one woman among first three positions in every electoral district.

The potential chance of female candidates being elected during the last parliamentary elections could be also assessed on the basis of the election results from 2007. On the basis of the number of candidates elected by each party in 2007, it could be approximated which spots on the 2011 election lists were likely to get elected. Naturally these are usually places at the beginning of the lists. According to this approach PO invested in women the most. Almost 38% of 'safe spots' on the election lists were given to women. The next party which reserved a large number of safe spots for women was PiS, where every 4th place which was very likely to be elected, was given to a woman. PiS was closely followed by SLD where 23% of safe spots on the lists were reserved for women. PSL had the least trust in women, giving them only 16% of safe spots.

As it turned out the 'safe spots' were the best indicator of the success of women during the last elections. The number of women in each party represented in the current Lower House of the Polish Parliament is the same as the number of women placed on the 'safe spots' on the election lists. The largest number of women currently represent PO, and women representing PiS also constitute a reasonably large group. Other parties have only a few female parliamentarians. In total women constitute 24% of all members of the Lower House of the Polish Parliament.

The positive changes mentioned above, and related to the Lower House of the Polish Parliament, do not mean that women no longer face barriers in their political career. The selection of candidates to the Upper House of the Polish Parliament does not provide women with the same opportunities as men. For many years there were very few women in the Upper House of the Polish Parliament. In the Upper House of the Polish Parliament, a plurality voting system, which according to research disadvantages women, is used. In 2011, an even more extreme plurality voting system was used. As a consequence, women constitute only 14% of members of the Upper House of the Polish Parliament. This is only 1,5% higher than in the 2007 elections.

The expectations connected to quota system were very high and many people are disappointed with the fact that the number of women in the Lower House of the Polish Parliament has increased only by mere 4 per cent compared to the previous election. It has to be remembered that time is needed for the legislative changes to have a meaningful social impact. At the same time however, it is worthwhile to contemplate the fact that the key to election success is being placed in the so-called 'safe spot' on the electoral list.

The Congress of Women and many other women's organizations declare that they will continue

their work focused on changes to the Polish electoral system, which will lead to the introduction of the 'zipper system' and parity on the electoral lists. Maybe it is worthy to look at the presence and role of women in political parties themselves. The boards of the individual parties play a very significant role in deciding the composition of the electoral lists and hence have a great impact on the opportunities of women in national politics.

After 2011 parliamentary elections, two political parties – PO and Twój Ruch (Your Move) – started to work on the amendment to the Electoral Code aimed at increasing the efficiency of quota mechanism. Twój Ruch is proposing parity instead of 35% quota and alternation of women and men placed on the electoral lists, while the "zipper system" proposed by PO would be applied only to first positions on the list fulfilling 35% quota. Both mechanisms require changes in three articles of the Code: art. 211, art. 425 and art. 457. The Supreme Court did not have any reservations against the proposals. It was also supported by the Government Plenipotentiary for Equal Treatment. The idea of introducing quotas, parity or "zipper system" is opposed by a vast number of Polish constitutionalists who are Parliamentary experts in the field of electoral law. It can slow down the process of changing current regulations to a great extent.

#### **Comments to the Governmental report:**

The governmental report does not cover the issue of women's participation on the boards of publicly listed companies, which diverges from the European number. In 2010 the number of women on the boards of publicly listed companies amounted to 11,8%, which in comparison to the number of female university graduates in Poland (65% of all graduates) is very low.

#### **Recommendation for the Government of Poland:**

- Adoption of parity combined with the 'zipper system' in order to effectively increase the number of women in the Lower House of the Polish Parliament, as well as to provide equal opportunities for women and men in politics.

## EQUALITY IN EDUCATION (Art.10)

Anna Dzierzgowska (Monitor of Education/Feminoteka Foundation)

The Polish educational system shares an important feature with systems in many other countries: girls perform better on exams and constitute the majority of students in high schools and at universities. Still, both the law and the curricula remain gender insensitive. There is no gender perspective and recognition of intersectional discrimination in school is lacking. We know little about the situation of girls from rural areas, those with disadvantaged backgrounds, the situation of Roma girls, refugees or LBT<sup>30</sup> girls. It remains very problematic that educational authorities in Poland are ill-prepared to implement gender equality policies and lack competence on these issues. Furthermore, the Polish legislation does not guarantee the protection from gender-based discrimination in the area of education which makes the claim for girls and young women's rights in this sphere rather impossible. And the overinfluential Catholic Church<sup>31</sup> creates a hostile environment for gender equality principle.

### Perpetuation of gender-based stereotypes

The Polish educational system is undergoing a reform of school curriculum and school textbooks are being revised. From the gender equality perspective, however, this reform is nothing but a missed opportunity. In new curriculum there are parts about anti-discrimination, self-respect, manners and so on, but there is no direct mention of the necessity of implementing gender equality as a principle in the educational system. Furthermore, there exists a significant lack of interest in incorporating gender equality perspective in new curricula. Women's history and women's contribution to human civilization are neglected. The almost complete lack of women's issues in the History curriculum (even the women's suffrage movement has been omitted) provides us with a striking example of aforementioned "gender insensitivity" which contributes to the perpetuation of gender stereotypes<sup>32</sup>.

Old textbooks were full of gender stereotypes. They were criticized for using masculine forms as universal and for violating the principle of equal representation. For example, when a family was pictured in a textbook, the picture was usually conventional, traditional and idealized. Non-traditional and blended families, single parents, disabled children, child abuse, poverty, unemployment or violence – all these phenomena were almost non-existent in textbooks<sup>33</sup>. Nothing indicates that new textbooks will be better.

According to the results of comprehensive study on the anti-discrimination education in the formal education system in Poland (which included curricula, most popular textbooks, standards and teacher education programs), the Polish education system as a whole remains blind to an anti-discrimination education, including education for gender equality, and there is a significant lack of systemic solutions<sup>34</sup>.

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<sup>30</sup> Lesbian, bisexual and transgender girls

<sup>31</sup> About the influence of the Catholic Church and its impact on the rights of women see for example: "*Kościół, państwo i polityka płci*", ed. Adam Ostolski, Fundacja im. Heinricha Boella, Warszawa 2010, [http://www.pl.boell.org/downloads/Kosciol\\_panstwo\\_i\\_polityka\\_plci.pdf](http://www.pl.boell.org/downloads/Kosciol_panstwo_i_polityka_plci.pdf).

<sup>32</sup> Dzierzgowska, A., Rutkowska, E., (2008), *Ślepa na płeć – edukacja równościowa po polsku. Raport krytyczny*, Fundacja Feminoteka

<sup>33</sup> E. Rutkowska, M. Środa, „Edukacja” in: „Polityka Równości Płci. Polska 2007”, raport UNDP, Warszawa 2007; see also: „Shadow Report On the Implementation of the Convention on the Elimination of all Forms of Discrimination Against Women, Republic of Poland 2006”

<sup>34</sup> Towarzystwo Edukacji Antydyskryminacyjnej, (2011), *Wielka nieobecna - o edukacji antydyskryminacyjnej w systemie edukacji formalnej w Polsce. Raport z badań*,

Available in Polish at: [http://www.tea.org.pl/userfiles/file/Wielka\\_nieobecna\\_raport.pdf](http://www.tea.org.pl/userfiles/file/Wielka_nieobecna_raport.pdf).

The Ministry of Education failed to prepare any special standards concerning the principle of non-discrimination in textbooks. Reviewers of textbooks should ensure that the contents of the textbook "comply with the law, including the ratified international conventions"<sup>35</sup> (implicitly: human rights conventions, including CEDAW). Apart from this stipulation the Minister of Education wrote a letter to reviewers in which she is "kindly asking" them to make note of any possibly discriminatory content of textbooks. It is, of course, a right move – but it is definitely not enough.

### **'Gendered' fields of study**

The phenomenon of 'gendered' fields of study is observed in the educational system in Poland. In liberal arts high schools girls are the majority, while in vocational schools boys constitute a majority. In vocational schools, some fields of study, especially engineering and architecture, are almost exclusively dominated by boys. Women constitute the majority in fields of study related to services, economics and administration. In secondary technical schools, 98% of students of technical-engineering subjects are male, while women comprise 70% of students in the fields of social services<sup>36</sup>.

Two public campaigns are being conducted under the auspices of the Ministry of Education: "Girls as Engineers!" and "Girls as Scientists!". Again, this is a move in the right direction. However, without major changes in the teacher's training system and without the elimination of discriminatory content from textbooks, such campaigns remain insufficient.

### **Teachers' training**

The system of teacher training and continuing teacher education does not sufficiently incorporate the gender perspective. This is connected to a lack of political will in this respect but also, indirectly, to the special status of *gender studies* in the system of higher education. Even though a number of study programs connected to gender have become available at Polish universities, they do not influence the content offered at "traditional" schools, including teacher training.

### **Access to sex education**

Access to sex education is a significant problem. In Polish schools sex education constitutes part of the course called "Preparation for Family Life". It is significant, that the sex education is not perceived in terms of sexual and reproductive health, but in terms of family values. The terms "sexual and reproductive health", "sexual and reproductive rights" do not appear in the curriculum – nor do they appear in the government report.

The "Preparation for Family Life" course has a status similar (albeit lower) to religious instruction. In practice, most schools offer religion lessons, while "Preparation for Family Life" is being frequently omitted or marginalized. Out of 637 people who in 2009 took part in the survey conducted by the "Ponton" group of sex educators, 252 declared that they never attended any classes on sex education<sup>37</sup>.

The government report stresses that since the new regulations were introduced in 2009, students are obliged to attend the classes on family life education, unless their legal guardians provide the written withdrawal from participation in these classes. Still, the report does not provide any information about how this rule is implemented in school practice and does not

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<sup>35</sup> Ordinance of the Minister of Education, dated 8 June 2009 concerning acceptable preschool and school textbooks.

<sup>36</sup> Central Statistical Office, (2010), *Oświata i wychowanie w roku szkolnym 2009/10*

<sup>37</sup> More information about reproductive health can be found in the chapter „Sexual and Reproductive Health and Rights (Art. 12 and GR24)”

provide any information about the preparation of teachers or about textbooks, which, according to NGOs reports, are a serious problem. The NGOs reports emphasize that the quality of the course "Preparation for Family Life", if it is offered at all, is often poor and that the textbooks are rich in gender stereotypes.

### **Physical well-being of girls**

This lack of access to reliable sex education is connected to an overall low concern for the physical well-being of pupils, including lack of concern for the special needs of girls. Almost 12% of girls suffer from eating disorders. In many schools there are still problems with basic facilities, such as bathrooms with hot water (that situation became a matter of interest for the Minister of Education, who in 2010 issued a regulation in this matter). Meals provided at schools are often of poor quality and healthcare in schools is generally considered insufficient – all of this is particularly true for rural areas<sup>38</sup>.

### **Gender-based violence at schools**

The issues of gender-based violence and violence related to sexual orientation are also connected to physical health and the general well-being of girls. Practically no data are available on this subject and no research had been conducted as these issues seem to fall outside of the range of interests of the Ministry of Education. It is significant that this particular problem is not even mentioned in the part of the government report concerning Article 10 of CEDAW. Schools are not prepared to deal with the phenomenon of gender-based violence. The issue is completely absent from the largest Polish campaign addressing violence at school, the program "School Free From Violence." Foreign statistics on the issue of violence against girls are alarming. Sadly, there are no reasons to expect that Polish statistics, if they existed, would be any better<sup>39</sup>.

Poland signed a *Convention on preventing and combating violence against women and domestic violence* but until the end of 2013 the Convention wasn't ratified. Some of the provisions, including those concerning education, are viewed as "controversial", especially for politicians associated with Catholic Church.

### **The Catholic Church: attack on gender**

In 2013 the Polish Catholic Church began an open attack on the gender equality principle, feminism, gender studies. "Gender" is mentioned in sermons and documents as a major threat to traditional family and values. The special subjects of criticism included e.g. a teacher's guide for preschool about the implementation of gender equality<sup>40</sup>. As a result, the situation of institutions, especially preschools, conducting education on gender equality, has significantly worsened: there are cases of harassment of the principals and teachers, including hostility from local authorities. The Plenipotentiary for Equal Treatment issued a special explanatory letter about "gender" and "gender equality", but the Church's attack continues, which makes the whole environment hostile for the gender equality principle in education. This hostility also threatens gender studies in Poland.

To conclude, the authorities do not show due commitment in protecting the rights of girls under Article 10 of CEDAW, which seems to derive mainly from the lack of competence in this area and the related lack of political will.

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<sup>38</sup> Report on the activity of the Ombudsman for Children's Rights for 2009

<sup>39</sup> Piotrowska, J., Synakiewicz, A. (2010), *Dlaczego dziewczęta są agresywne? Szkoła wobec problemu przemocy ze względu na płeć*

<sup>40</sup> "Poradnik dla nauczycieli: jak stosować zasadę równego traktowania kobiet i mężczyzn" (Teachers Guide: How to implement the principle of gender equity), A. Dzierzgowska, J. Piotrowska, E. Rutkowska, Fundacja Edukacji Przedszkolnej, <http://maleprzedszkola.pl/Pobieralnia>

### **Comments to the Governmental report:**

The governmental report devoted a lot of attention to the issue of women's access to education and their presence in tertiary education institutions; the report contains a lot of statistical data (which are not the worst, especially with regard to the compulsory educational stage). However, it lacks commentary explaining whether, and if so, then how, the phenomena shown by the statistics (such as the glass ceiling in education of the feminization of certain professions, including the teaching profession) are taken into consideration in the government's educational policy. The statistics also lack mention of groups such as girls from families vulnerable to poverty, refugees and immigrants, LBT students. The only groups vulnerable to discrimination with regard to access to education, included in the report, are Roma women and pregnant students.

It is worth noting that in the case of pregnant students the report mentions the provisions of law without informing how they are implemented/observed in practice (which suggests there might not be any data on this subject). The part devoted to sex education looks similar – the regulations, rather than practices, are described here as well. This lack of information about practices is one of the major flaws of the report.

The section of the report concerning education does not include the perspective of girls' health and physical well-being. The report does not mention the phenomenon of gender-based violence in schools. Sex education is not treated as a topic related to sexual and reproductive health.

Aside from remarks in the section of the report devoted to curriculum reform and information about programs concerning the Roma minority, the report does not provide information about governmental policy aimed at equalizing women's educational opportunities, promoting gender equality in education, eliminating stereotypes, improving access to sex education, etc.. This might suggest that such policies simply do not exist.

### **Recommendations for the Government of Poland:**

#### **Legislation**

- 1) Introducing anti-discrimination legislation which includes the definition of discrimination, as specified in Art. 1 CEDAW, and which protects women from discrimination in all spheres of life, including education;
- 2) Ratification of the *Convention on preventing and combating violence against women and domestic violence* and implementation of the provisions concerning education, according to the Article 14 of the Convention;

#### **Policy**

- 3) Introducing trainings for governmental officials at the Ministry of Education to improve their knowledge and competence in matters of anti-discrimination and gender equality policies;
- 4) Incorporating gender equality into teachers' training to sensitize them about discrimination against women;
- 5) Respecting the principle of gender mainstreaming in the curriculum, in educational policy-making and in particular in all activities and projects which are aimed at equalizing educational opportunities; taking steps to ensure support and sense of security for teachers conducting education on gender equality; supporting the development of gender studies in Poland;
- 6) Introducing mechanism of the assessment of curricula and textbooks from the point of view of gender equality and the principle of representation;
- 7) Introducing compulsory sex education, consistent with the recommendations of WHO;
- 8) Taking up actions to prevent violence based on gender or sexual orientation in schools.

## EMPLOYMENT – LEGAL AND INSTITUTIONAL MEASURES FOR ELIMINATING GENDER-BASED DISCRIMINATION (Art. 11)

Karolina Kędziora and Krzysztof Śmiszek (*Polish Society of Anti-Discrimination Law*)

The Labour Code, even after its amendments in 2003 and 2008, does not include protection from intersectional discrimination, which is not treated as a separate form of discrimination in the Polish legal system. This means that instances of such discrimination are not treated by the legislator as graver misconduct, therefore the resulting sanctions are not adequately designed. This contradicts the guidelines specified in General Recommendation Nr 28, item 18, where the CEDAW Committee raises that intersectional discrimination harms mostly women and their membership in particular minority groups determines to a high degree the incidence of unequal treatment.

Implementation of Art. 11 of the Convention should also be examined in light of the Act dated 3 December 2010 on implementing some regulations of the European Union on equal treatment (hereafter: ‘anti-discrimination’ law) which bans discrimination in so-called non-contractual employment, understood as vocational training (including continuing education, internships and re-training), conditions of taking up and carrying out entrepreneurial and professional activity, also through civil law contracts.

Both ‘anti-discrimination’ law and the Labour Code contain provisions for the possibility of organizations/associations/legal entities instigating legal proceedings on behalf of victims of discrimination, through referencing general regulations, that is the code of civil proceedings, which includes such a provision. However, there is still need for enabling the abovementioned entities to instigate proceedings even if the victim is not individualized (so-called *actio popularis*); that is when unlawful activities take place and no specific individual can be singled out as experiencing them (for example, job ads published by a particular employer which for a long period of time have contained discriminatory criteria for selecting the employee and there is no particular individual whose application was rejected due to these criteria and who would be willing to instigate proceedings in court).

Additionally, the possibility of arranging the so-called test situations and using their results as evidence should also be introduced into domestic law. In some countries so-called discrimination tests have begun to be conducted. They make it possible to prove how persons exhibiting particular features would be treated in a given situation as opposed to persons not exhibiting these features. Test situations consist of pairs of persons who differ with regard to the feature which may result in discrimination (for example, gender) being directed to a work establishment suspected of discriminatory practices. The workplace suspected of alleged discrimination is not aware that the situation is a set-up. If, from among the pair of testers, the person possessing the feature which may lead to discrimination is treated worse than the person who does not possess that feature, and there exists no other justification of the differential treatment, then it is concluded that discrimination took place.

In the Concluding Observations concerning Poland, dated 2 February 2007, the Committee called for decreasing and finally eliminating differences in wages of women and men and for monitoring the activities undertaken in this sphere as well as their effects. Two new institutional mechanisms<sup>41</sup>, which are supposed to safeguard the implementation of the principle of gender equality are also supposed to monitor activities for equal treatment in employment and the situation as it relates to the safeguarding of equality principle in employment. Unfortunately, the first years of existence of these newly created organs show that not a lot has been done in these matters due to the lack of additional funds.

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<sup>41</sup> See more in chapters: “Principle of Non-discrimination and Equality (Art. 1-4)” and „Institutional machineries (Art. 3)”

The Government does not carry out any detailed monitoring of the cases of discrimination in employment. No statistics stipulating the respective forms of discrimination (e.g. direct and indirect discrimination, harassment, fostering discrimination) are available. This shows lack of commitment of the Government to raise awareness and prevent discrimination, which in turn has an impact on the quality and quantity of the court cases, as there is a high level of gender prejudice and stereotypes among Polish judges<sup>42</sup>.

#### **Comments to the Governmental report:**

The Government in its report focuses mainly on exposing specific problems with regard to certain forms of discrimination of women in the employment sphere without providing plans to effectively combat these kinds of inequalities. This approach is visible when it comes to the issues of feminization of certain professions, gender pay gap and protection of pregnant women in the workplace. The lack of awareness of female employees' rights has to be identified as one of the major obstacles to achieving substantive equality.

#### **Recommendations for the Government of Poland:**

##### **Legislation**

- 1) Introducing anti-discrimination legislation which includes the definition of discrimination (including intersectional discrimination), as specified in Art. 1 CEDAW, and which protects women from discrimination in all spheres of life, including employment;
- 2) Strengthening the law on gender equality with special focus on equal pay.;
- 3) In order to increase the efficiency of anti-discrimination legislation, introducing into domestic law the possibility of instigating public interest proceedings (*actio popularis*) as well as using test situations for collecting evidence for court proceedings in cases of discrimination;

##### **Institutional mechanisms**

- 4) Establishing the national Office for the advancement of women and gender equality (responsible also for employment issues) with adequate budget and mechanisms for the participation of women's organizations in creating, implementing and evaluating policies related to women and gender equality, including those concerning different types of employment. The Office must be located at the highest possible level in the Government, falling under the responsibility of a Cabinet minister and must have a mandate to influence development of all Government policies;
- 5) Providing significant, additional funds for the implementation of the principle of gender equality in employment for the offices of the Government Plenipotentiary for Equal Treatment and Human Rights Defender;

##### **Policy**

- 6) Introducing systematic trainings for labour law judges on gender equality in the field of employment;
- 7) Investing more in improving the knowledge of women when it comes to their employment rights;

##### **Monitoring and data collection**

- 8) Carrying out comprehensive monitoring of the cases of discrimination in employment, including collecting data concerning respective forms of discrimination (e.g. direct and indirect discrimination, sexual harassment).

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<sup>42</sup> Wieczorek, M., Bogatko, K. (2013), *Prawo antydyskryminacyjne w praktyce polskich sądów powszechnych*

## SITUATION OF WOMEN IN THE LABOUR MARKET (Art. 11)

*Kinga Lohmann and Aleksandra Solik (KARAT Coalition)*

### Main concerns:

- 1) Growing phenomenon of 'working poor' among women with primary and vocational education
- 2) Job/education opportunities' gap between men and women
- 3) Pay gap amounting to over 30% between women and men with tertiary and basic vocational education
- 4) Growing number of women with lowest levels of education in informal economy
- 5) Growing phenomenon of 'precarious work'

*'Enough exploitation! We terminate the service'* was the main banner under which Polish Women's Solidarity March took place on 8 March 2011. The Government should respond to the various forms of current exploitation in the labour market e.g. junk contracts, precarious work, intensification of work, insufficient or obsolete basic vocational education that strongly affect women.

### Women in the labour market – basic indicators<sup>43</sup>

The statistics on gainful activity, employment and unemployment rates show that the situation of women in the labour market has been steadily improving over the last seven years. Activity rate of women aged 15 years and over remains almost the same for this period (appr. 48%) but it is lower by 4 percentage points since the reforms associated with introduction of a free market economy in the nineties started (54,2% in 1992). Nevertheless the improvement in women's employment by 5 percentage points as well as a significant decrease of unemployment rate by 10,5 percentage points was achieved. The latter has been related to a huge female economic movement to European Union countries after Poland joined EU in 2004 rather than to an important improvement of the situation in the labour market at the country level. The gap in activity and employment rates between men and women is slightly increasing while the gap in unemployment rate is even a little decreasing.

These basic indicators, however, do not reflect an increasing polarization of the different groups of women in the labour market.

Table 1. Activity rate of women and men 2003 -2010\*

	2003	2010
<b>Women</b>	48,0%	48,2%
<b>Men</b>	62,2%	64,1%

<sup>43</sup> Statistics presented in this chapter refer to the time frame of the governmental report (2002-2010). However, the presented problems are still valid and have not changed over the past three years.

Table 2. Employment rate of women and men 2003 -2010\*

	2003	2010
<b>Women</b>	38,2%	43,4%
<b>Men</b>	50,4%	58,1%

Table 3. Unemployment rate of women and men 2003 -2010\*

	2003	2010
<b>Women</b>	20,4%	10,0%
<b>Men</b>	19,0%	9,3%

\* Source: Central Statistical Office (2011)

### Working poor. Jobs and education opportunities' gap

One of the main concern is a growing phenomenon of 'working poor' women. The lowest earnings are in the feminized professions and thus the phenomenon of working poor affects women to a larger extent than men. The lowest wages are earned by women in the garment industry<sup>44</sup>. Their average gross salary in 2009 was PLN 1 396 - only PLN 120 above the minimum gross wage. Cashiers (salespersons) – a strongly feminized occupation – with an average salary of PLN 1 538 were at the third position from the end. One in eight employed women<sup>45</sup> now fall into the category of 'working poor', with salaries that do not cover the cost of living, and thus do not allow the women to live in dignity. This has significantly contributed to creating a social underclass (of quite a significant number of women) living in poverty<sup>46</sup> (See: Table 7 in the Annex).

The biggest gaps between men's and women's salary are among people with basic vocational and primary education (and also among people with tertiary education) – over 30%<sup>47</sup>. This is particularly alarming for women with the lowest education which means the lowest earnings. For over 1,8 million women (1/4 of all employed women) with primary and basic vocational education, the average gross salary is below PLN 1 800.

The basic vocational education addressed to women neither corresponds to the current challenges in the labour market, nor does it lead to a salary which could contribute to reducing the huge gap in the income between women and men and guarantee a living wage. The education opportunities at this level are much higher for men than for women. In 2003 - 20% of women and 35% of men had a basic vocational education; in 2010 these figures are: 18% for

<sup>44</sup> Sedlak and Sedlak (2009), Salary Reports at: [http://sedlak.pl/en/Salary\\_reports.html](http://sedlak.pl/en/Salary_reports.html)

<sup>45</sup> Own calculation on the basis of CSO (2011), Central Statistical Office, Labour Force Survey in Poland, IV quarter 2010, Warsaw 2011

<sup>46</sup> More in: Chmielecka, A., Krzyśków B., Wojciechowska-Nowak A. (2008), *Work conditions and respecting of employees' rights in supermarkets in Poland from the gender equality perspective*, Warsaw <http://www.karat.org/userfiles/Work%20conditions%20and%20respecting%20of%20employees%27%20rights%20in%20supermarkets%20in%20Poland.pdf>

and Chmielecka, A., Oponowicz K. (2008) *Research Report. Situation of female employees in super- and hypermarkets*, Warsaw, at: <http://www.karat.org/userfiles/RESEARCH%20REPORT-Women%20in%20supermarkets.pdf>

<sup>47</sup> Own calculation on the basis of CSO (2011), Central Statistical Office, Structure of wages and salaries by occupations in October 2008, Warsaw 2009

women, and 32% for men. These education opportunities offer also a much better job opportunity and remuneration for men. Among people with this level of education the gender pay gap amounts 33,3% (2008)<sup>48</sup> (See: Table 4)<sup>49</sup>.

The relationship between the activity rate and education is very apparent (See: Table 5). In 2010 the activity rate of women with tertiary education was 79% and that of women with primary or incomplete primary education was nearly 13,4%<sup>50</sup>. The latter low rate is a very “significant” figure, particularly because this group comprises 25% of women per level of education (See: Table 4). The data reveals an enormous polarization of women in their economic activity, as well as a continuing trend of “pushing” women with the lowest education outside the labour market (in 2003 – the activity rate was 18,6%) (See: Table 5) and into the informal economy or emigration (often seasonal).

Intensification of work in the feminized professions is a trend which has been growing stronger in the past few years and has increased during the last global economic crisis. In case of Poland, employers took a rather unfair advantage of the crisis to justify further exploitation of workers. The example of mechanisms used by various chains of supermarkets where the large majority of workers are women, consisting of reducing the number of employees and on keeping the same tasks to be performed, clearly shows this trend. For example, the chain Tesco in 2007 employed, on average, 90 persons per supermarket, in 2011 – it employed 74 (at the same time the number of Tesco supermarkets has increased)<sup>51</sup>. Thus, a female employee is obliged to perform the same tasks performed previously by more than one employee. The intensification of work is quite alarming because the Labour Code does not address this problem<sup>52</sup>.

### **Precarious work**

The economic situation of women and their social safety are negatively influenced by the increasing frequency of replacing work contracts signed in accordance with the Labour Code with civil-law agreements. The latter allow employers to bypass regulations of the Labour Code (for example concerning overtime and days off), lower costs related to social insurance of employees or avoid them altogether (contract of mandate, project-based contract).

### Influence on social security

Such forms of employment affect women to the greater extent than men. They do not provide women with the rights related to pregnancy, maternity and parenthood which are guaranteed by the labour contracts. The lack of security, inevitably related with precarious work, is an additional factor that limits women’s reproductive choices. In a long-term perspective the work on the basis of civil agreements will contribute to the poor material situation of older women due to the lower amount of pension contribution deduced from the total earnings. Even though it is still too early to fairly evaluate the results of gradual extension of women’s pension age from 60 to 67 years<sup>53</sup>, the following factors which may increase disproportion between women’s and men’s pensions are worrying: discrimination of older women at the labour market<sup>54</sup> and the lack

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<sup>48</sup> Own calculation on the basis of CSO (2011), Central Statistical Office, Structure of wages and salaries by occupations in October 2008, Warsaw 2009

<sup>49</sup> Ostalowska, L., *Oj, bo trafisz do zawodówki* (2011), Gazeta Wyborcza 11-12 June.

<sup>50</sup> Own calculation on the basis of CSO (2011), Labour Force Survey in Poland, IV quarter 2010, Warsaw 2011

<sup>51</sup> Solik, A. (2011), *O sytuacji kobiet w supermarketach*, in: Zielone Wiadomości, March 2011.

<sup>52</sup> Chustecka, M. (2009), *Warunki pracy i respektowanie praw pracowniczych kobiet zatrudnionych w sklepach wielkopowierzchniowych w obliczu kryzysu*, at:

[http://karat.org/userfiles/supermarkety%20a%20kryzys.m\\_chustecka%281%29.pdf](http://karat.org/userfiles/supermarkety%20a%20kryzys.m_chustecka%281%29.pdf)

<sup>53</sup> In 2012 the pension system reform of 1999 was modified through raising and gradual equalization of the pension age of men and women up to 67 years. The previous pension age was 65 for men and 60 for women.

<sup>54</sup> The phenomenon of discrimination based on age affects both men and women, however in case of women it is

of opportunities for employment/retaining a job, lack of adequate care system for dependent persons (such as the parents of older women), inefficient health care system for older people.

### State policy

Existing regulations (Labour Code) protect employees from abuse of civil agreements. They clearly define the type of work which can only be carried out with the guarantee of full employee rights. Furthermore, according to the Code, such work is also performed 'on the basis of a labour relation' regardless of the type of agreement signed with the employee<sup>55</sup>. In light of this fact, the position of the Ministry of Health is all the more worrisome. The Ministry initiated the addition of a regulation into the law adopted in April 2011 on the employment of nurses and midwives in hospitals<sup>56</sup>, which allows hospital authorities to sign project-based contracts with nurses and midwives even if the work carried out by the employees bears the features of a "labour relation"<sup>57</sup>.

This stipulation was introduced into the draft law during the last stage of the legislative process and despite protests of Nationwide Trade Union of Nurses and Midwives.<sup>58</sup> It may potentially affect 200,000 nurses, including 100,000 who are currently employed in hospitals. It should also be added that its introduction had no impact on what is termed as the nurses' right to carry out entrepreneurial activity (self-employment), which has not been undermined. The Minister of Health has also pointed out the possibility of abusing project-based contracts for nurses and midwives<sup>59</sup> and has opposed the introduction of the controversial stipulation. However, the government finally approved this legal solution, which is a cause of anxiety as it reveals the authorities' support for forms of employment which are not protected by the Labour Code and thus the authorities' lack of sensitivity to the discriminatory aspects of the changes taking place on the labour market.

### **Other indicators on women's position in the labour market**

#### Education of economically active women

One of the most visible tendencies in the scrutinized period was a marked increase of the educated women among economically active female workforce. In 2003 women with tertiary education constituted 19% of all women employed, in 2010 – 33%, which is a spectacular increase by 14 percentage points. Moreover, despite the fact that in 2010 much less women (48,2%) than men (64,1%) were economically active, there are more women than men with tertiary education among this active population, and this gap is increasing. Among the economically active people with tertiary education, women constituted in 2003 - 55% and in 2010 – 57% (See: Table 5).

#### Wage gap

In 2008, average earnings of men were 18,7% higher than the average earnings of women. The

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additionally amplified by gender-based discrimination.

<sup>55</sup> *Labour Code, art. 22, item 1.1. Employment under conditions specified in item 1 constitutes employment on the basis of a labour relations, regardless of the type of contract signed by the parties.*

<sup>56</sup> Bodnar, A. (2011), *Opinia Prawna nt. przepisów projektu ustawy o działalności leczniczej odnoszących się do form wykonywania zawodu pielęgniarstwa i położnej jako działalności gospodarczej regulowanej*, 21.03.2011.

<sup>57</sup> Labour Code, art. 22, item 1. By entering into a labour relationship the employee puts himself under the obligation of carrying out a specified type of labour for the employer, under the employer's supervision and in a work environment specified by the employer and the employer is required to employ and remunerate the employee.

<sup>58</sup> The Protest received the support of National Trade Union of Physicians (declaration dated 23.03.2011)

<sup>59</sup> PAP/Rynek Zdrowia, „Minister Fedak Opposes Project Contract for Nurses”, 19.03.2011, source: <http://www.rynekzdrowia.pl/Prawo/Minister-Fedak-przeciw-kontraktom-dla-pielgniarek,107394,2.html>

biggest gaps between men and women's salary is among people with tertiary, basic vocational and primary education (over 30%) (See: Table 6).

## **Conclusions**

Decreasing and, even more so, eliminating women's discrimination on the labour market will not be possible if the government does not react to the troubling phenomena accompanying new trends in employment and does not acknowledge the disproportions in the wages of men and women (the gender pay gap), particularly among people with the lowest education level. Preventing the phenomenon of employers bypassing the Labour Code and active policies leading to improving the situation of people receiving the lowest wages are the necessary requirements for eliminating the discrimination of women on the labour market.

## **Comments to the Governmental report:**

The governmental report does not raise the issue of significant changes and trends at the labour market, such as precarious work, working poor, „pushing for self-employment”, as if those changes had no impact on women's situation at the labour market and were not emphasized by the women's movement (e.g. Polish Women's Solidarity March) or trade unions.

The governmental report addresses gender pay gap, both the lower wages in the feminized professions and economic sectors in comparison to the masculinized professions and sectors, and the pay gap within the particular professional groups. However, the report lacks an analysis, especially with respect to the reported greatest pay gap in the „Industrial workers and craftsmen” professional group, where women make 32% less money than men. Considering that the over 30% gender pay gap also occurs among people with vocational education, the long list of governmental projects lacks the kind of projects which would introduce systemic solutions, would be targeted at the abovementioned groups of women, and would promote learning the better-paid „stereotypical masculine professions” among them.

## **Recommendations for the Government of Poland:**

- 1) Improving access of women to Basic Vocational Education by adjusting it to the current needs and requirements of the labour market, particularly in professions which secure an adequate remuneration equal to men;
- 2) Developing and implementing policy to address the wage gap between women and men, particularly among low paid feminized employment sectors;
- 3) Counteracting the various forms of women's exploitation (including precarious work), particularly in the low paid feminized sectors;
- 4) Monitoring the impact of precarious work contracts on women (e.g. maternity and parental leaves, pension, disability and other social benefits) with special attention given to feminized sectors.

## INSTITUTIONAL CHILD-CARE SERVICES (Art.11)

*Agnieszka Graff (American Studies Center and Gender Studies at the University of Warsaw, member of the Krytyka Polityczna [The Political Critique] team and the Programme Board of the Congress of Women), updated by Katarzyna Owczarek (MaMa Foundation)*

Access to childcare is among the key factors determining women's situation in the family and in the labour market. Availability of suitable (i.e. affordable and high quality) childcare is viewed by CEDAW (art. 11 p. 2) as an essential step towards preventing discrimination against women on the grounds of maternity and marriage and ensuring their right to work. EU guidelines emphasize the importance of childcare to ensuring equal opportunities in employment for men and women. It was agreed at the Barcelona Summit (2002) that by 2010 Member States should strive to ensure childcare for at least 33% of children under 3 years old and 90% of children between 3 yrs. and the obligatory school age (EU MEMO 08/592). The Lisbon Strategy (re-launched in 2005) confirmed the childcare targets set in Barcelona, as do the 2010 Employment Guidelines adopted by the Council of the European Union and the European Pact for Gender Equality 2011-2010. Data on childcare have recently been reviewed by European Institute for Gender Equality<sup>60</sup>.

Despite some improvement in the area, it is clear that Poland has by far failed to meet goals set by EU and remains at the very bottom of comparisons among European countries, as only about 4% children aged 0-3 attend childcare services.

### **Refamilisation of care and its effects on women's rights**

The present-day childcare crisis must be seen in a broader context of structural and cultural factors pertaining to the welfare system and the treatment of care-work by social policy in general. The trend in post-socialist countries after 1989 has been described by sociologists as the *refamilisation of care*. For Poland this process was additionally exacerbated by cultural factors, especially by pressure from the Catholic Church. During the 1990s the state largely withdrew from its former responsibilities in the realm of care (including childcare), while the market failed to fill the resulting gap. Notably, in the same period western European countries underwent transformation in the opposite direction: *de-familisation* of care either through increased involvement of the state (in social-democratic countries) or that of the market (commodification of care)<sup>61</sup>.

In effect, inequality between men and women deepened both at home and in the labour market. Given the unequal division of housework and care-work within the family, the childcare deficit led to a huge burden being shifted onto women. Women suffered in their right to work. Viewed as primary caregivers, they were marginalized as "difficult" employees, discriminated against both during employment process and in their advancement. Large groups of women – especially mothers of young children in the rural areas where the childcare deficit is greatest – remain locked out of the labour market altogether. Both the wage gap and the fact that Poland has one of the EU's lowest rates of women in employment are strongly linked to the childcare deficit.

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<sup>60</sup> EIGE (2011). *Review of the implementation of the Beijing Platform for Action: Reconciliation of work and family life as a precondition for equal participation in the labour market*. Draft Council Conclusions. Brussels 2011.

<sup>61</sup> Wóycicka, I., (2009), "Model opieki w Polsce." In: *Strukturalne i kulturowe uwarunkowania aktywności zawodowej kobiet*, ed. Irena E. Kotowska, Warszawa: Scholar

### **Catastrophic situation in childcare for children of ages 0-3; failure of the “crèche bill”**

With participation rate around 4%, Poland has the lowest level of children ages 0-3 enrolled in formal childcare in Europe. This is being dealt with by the government in an ineffective manner. Legal solutions are being offered, but the problem is allocation of funds.

Until recently, there were huge bureaucratic barriers to establishing day-care centres for children under three. This was due to laws left over from before the transition, which left early childcare under the auspices of the Ministry of Health, so that crèches had the status of medical centres (hence unreasonable construction and sanitary standards). In 2011 the Government made a large step towards changing this situation: the new Law on Care for Children Aged 0-3, introduced on 4 February 2011 removed early childcare from under the auspices of the Ministry of Health<sup>62</sup>. The law introduced several flexible forms of care, including so-called children’s clubs, caregivers offering childcare to small groups in their own homes, and a way to legalize the work of nannies.

Half a year after the abovementioned law was implemented, at the end of 2012, 1150 care centers (24% increase compared to 2011) were operating<sup>63</sup>. This, however, is just a drop in the ocean of needs, because according to data from the end of 2012, concerning the use of institutional childcare by children aged 0-3, there has only been an increase from 3,1% to 3,8%, compared with the previous year.

The law was well-meant and rightly justified in terms of educational advancement for youngsters, as well as the need to promote gender equality. However, it failed at the stage of implementation, due to extremely low level of funding allocated: only 40 Mln. PLN during the first year; 60 Mln. and 90 Mln. during the second and third year respectively<sup>64</sup>.

In effect, responsibility for early childcare was shifted from the state to local governments without providing them with the necessary means. Due to lack of a comprehensive information campaign, many of the promising new forms of childcare never came into existence. The legal framework also opened the possibility of privatization of existing public day-care centres and/or raising the fees and many local governments took advantage of these options<sup>65</sup>. The government has failed to take on responsibility, instead urging citizens and NGOs to monitor the effects of the law.

This state of affairs changed for the better when, in July 2013, the Act amending the Law on care of children under 3 and certain other Laws came to force<sup>66</sup>. It has finally taken into account the social opinion (including the opinion of legal entities operating nursery schools and children’s clubs), as well as the demands brought up during the debates with the President in April 2012 and February 2013<sup>67</sup>. The most important changes concerned changing the participation of the State in financing the establishing and operating of childcare centers from 50% to 80%, including natural persons, legal entities, and entities without any legal personality in the catalogue of

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<sup>62</sup> Ustawa z dnia 4 lutego 2011 o opiece nad dziećmi w wieku do lat 3 [Law of 4 February 2011 on care of children under 3], Journal of Laws 2011, no 45, item 235 (Dz.U. 2011 nr 45 poz. 235)

<sup>63</sup> Central Statistical Office (2012), *Żłobki i kluby dziecięce w 2012r.*

<sup>64</sup> Ministry of Labour and Social Policy (2011), „Maluch” *Resortowy program rozwoju instytucji opieki nad dziećmi w wieku do lat 3 realizowany w latach 2011-2013*.at: <http://emaluch.com.pl/maluch>

<sup>65</sup> Sołtysiak, A., (2011), *Results of monitoring of “crèche bill” effects*. Paper presented at European Women’s Congress, 20 September 2011.

<sup>66</sup> Ustawa z dnia 10 maja 2013 r. o zmianie ustawy o opiece nad dziećmi w wieku do lat 3 oraz niektórych innych ustaw [Act amending the Law on care of children under 3 and certain other Laws], Journal of Laws 2013, item 747 (Dz.U. 2013 poz. 747) :at: <http://isap.sejm.gov.pl/DetailsServlet?id=WDU20130000747>

<sup>67</sup> Bulletin of the Public Debate Forum [Forum Debaty Publicznej], *W trosce o najmłodszych obywateli RP – opieka i edukacja*, nr 25, Luty, 2013

persons entitled to applying for funding for care institutions, as well as extending the options for employing a day caregiver (increasing the number of employers, simplified administration, possibility of obtaining funding from communal budget). Despite the still inadequate number of places for the youngest children, it is worth noting that during the past two years (especially in comparison with the 2004-2010 period) the number of childcare centers has increased significantly (more than twice). A large part in this has been played by the Ministry program „Maluch” („Kid”), which can be used more effectively now than it has been so far, due to the recent changes in the Act.

### **Pre-schools (ages 3-5): limited availability, unequal access**

The Ministry of Education is rightly proud of the impressive 20% improvement in access to various forms of pre-school education during the last few years. The number of children of ages 3-5 attending public pre-schools in 2012/2013 was 71% (compared to 32,6% in 2007); over 250 000 places in public pre-schools were opened during the last 4 years (the number of pre-schools in towns and cities has increased by 17.8% in the past few years)<sup>68</sup>. However, needs are still unmet.

A Supreme Audit Office (NIK) report, based on a comprehensive study performed in the Spring of 2011, shows that the number of children whose applications for public preschool were rejected has grown from 6% in 2007 to 13% in 2010<sup>69</sup>.

There is a striking disproportion in access to public pre-school facilities between cities and rural areas. Outside large cities over half of the children have no access to pre-school education, and the number of pre-schools in the past few years dramatically decreased in rural areas – by 13.5%<sup>70</sup>. Preschools try to solve the problem by raising the number of children in a group over the legal maximum of 25 (even to 32), which is detrimental to quality of care as well as safety. Moreover, much of the progress in this area may prove to be illusory – access to preschools was often a matter of using short-term EU funding<sup>71</sup>. The childcare system in Poland suffers from lack of funding, lack of co-ordination, as well as a legacy of structural and cultural obstacles. Overall, Poland (along with Ireland and Finland) is among countries with lowest rates of participation in pre-school education.

In order to ensure the general accessibility of preschools, in mid-2013, the Act on preschools was amended and adopted<sup>72</sup>, which reduced the parents' expenses (while the communes are to receive designated subsidies from the state budget).

In theory, since 2015, each four-year-old is to be guaranteed a place in preschool, and since 2017, this will also apply to all three-year-olds.<sup>73</sup> As a result of the changes, preschools should be cheap for everyone; on the other hand, this deprives the parents of the option of paying for extra classes, which cannot currently be provided by preschools in any other way, and therefore, in a sense, it decreases the quality of preschool services. It is still too early to assess the impact of this Act.

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<sup>68</sup> Ministry of Education (2011). *Upowszechnienie edukacji przedszkolnej w ostatnich latach*

<sup>69</sup> Supreme Audit Office (2011), *Informacja o wynikach kontroli wychowania przedszkolnego*

<sup>70</sup> Ibidem

<sup>71</sup> Ogrodzińska, T. (2011), „Raport, jakiego potrzebujemy – propozycje do przyszłej diagnozy stanu edukacji przedszkolnej,” *Spółeczny Monitor Edukacji* at: <http://www.monitor.edu.pl/analizy/raport-jakiego-potrzebujemy-a-propozycje-do-przyszlej-diagnozy-stanu-edukacji-przedszkolnej.html>

<sup>72</sup> Act of 13 June 2013 on the Amendment of School Education System and certain other Acts [Ustawa z dnia 13 czerwca 2013 r. o zmianie ustawy o systemie oświaty oraz niektórych innych ustaw], Journal of Laws 2013, item 827 (Dz.U. 2013 poz. 827) : <http://isap.sejm.gov.pl/DetailsServlet?id=WDU20130000827>

<sup>73</sup> [http://www.men.gov.pl/index.php?option=com\\_content&view=category&layout=blog&id=254&Itemid=317](http://www.men.gov.pl/index.php?option=com_content&view=category&layout=blog&id=254&Itemid=317)

### **Comments to the Governmental report:**

While addressing the governmental report on the fulfillment of CEDAW resolutions in the period 2002-2010 it should be noted that, even though normative changes have been introduced in the regulations in order to improve access to institutionalized childcare for children under 6, the report does not show how the data on this accessibility correspond to actual needs, which largely remain unfulfilled. On the one hand the number of childcare centers has visibly increased, and on the other hand (which the report does not show) there is still no place in preschools for approx. 30% of children in Poland.

As far as the care of children under the age of 3 is concerned, there is no quantitative data in the report concerning the forms of care of the youngest children during the reporting period, which are, in fact, frightening (the report curtly describes it as „insufficient amount”).

### **Recommendations for the Government of Poland:**

#### **Policy**

- 1) Given the vast inequality of access to childcare between rural and urban areas, and between rich and poor areas in general, the problem of pre-schools calls for a systemic solution;
- 2) Privatization of public day-care centres must be prevented; prices must be controlled in all institutional childcare;
- 3) The implementation of the “creche law” must be accompanied by multi-tier information and training campaign: for public servants, for day-care providers, for parents;

#### **Monitoring**

- 4) Due to the large variety in development of childcare centers in Poland and differences in the demand for their services, the carrying out of the Act on preschools should be monitored, which is also advised by the Presidential Family Support Project 2+<sup>74</sup>;
- 5) The Ministry of Education should gather data concerning pre-school education in a more comprehensive way. Reports should include: a precise map of distribution of childcare; assessment of effects of so-called “other forms” of pre-school education; the activity of non-public pre-schools (private and NGO-run); the effectiveness of use of EU (EFS) funding for pre-schools;
- 6) The content of pre-school education programs should be monitored for sexist, racist and homophobic stereotyping. The Ministry of Education should promote gender-egalitarian content, attitudes and methods in early education. To this end it should collaborate more closely with NGOs engaged in equality-oriented educational activity;
- 7) Due to the discretionary nature of subsidies introduced for communes from the state budget, which are to benefit every child subject to preschool education, regardless of the organizational form and managing entity (public or private), granting those subsidies should be monitored as much as possible.

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<sup>74</sup> Family support program of the Polish President „Better Climate for Families 2+” [Program Polityki Prorodzinnej Prezydenta RP „Dobry klimat dla rodziny 2+ ”], Warsaw, May, 2013

## SEXUAL AND REPRODUCTIVE HEALTH AND RIGHTS (ART.12 & GR24)

Wanda Nowicka, updated by Karolina Więckiewicz (Federation for Women and Family Planning)

States parties' compliance with article 12 of the CEDAW Convention as well as with the General Recommendation No. 24 is crucial to health and well-being of women. It requires States to eliminate discrimination against women in legislation, policies and access to health, including sexual and reproductive health care services, throughout the life cycle.

Although Poland has ratified human rights treaties incl. CEDAW Convention and voluntarily pledged to ensure "*respect for all human rights and fundamental freedoms without any exception*" it continues to fail to protect sexual and reproductive rights which remain seriously violated in Poland. A number of human rights institutions, including Human Rights Committee (1999, 2004, 2010), Committee on the Elimination of Discrimination Against Women (2007) as well as Committee on Economic, Social and Cultural Rights (1998, 2002, 2009), Committee on the Rights of the Child (2002), UN Special Rapporteur on the Right to Health (2010), the European Court of Human Rights (cases of: Alicja Tysiac, 2006; R.R., 2011; P. and S., 2012) and Commissioner for Human Rights of the Council of Europe (2007) expressed deep concerns about severe consequences of the anti-abortion law in force since 1993 on life and health of women.

The major violations of sexual and reproductive rights occur in the following areas:

- 1) Criminalization of abortion on social and economic grounds that force women to seek clandestine, therefore often unsafe, terminations of pregnancy;
- 2) The anti-abortion law *de facto* is more restrictive than *de iure* (e.g. above-mentioned cases submitted to ECHR );
- 3) Limited access to modern contraceptives due to social and economic reasons as well as prohibition of voluntary contraceptive sterilization;
- 4) Limited access to reliable and comprehensive sexuality education, information and services for adolescents.

The Federation for Women and Family Planning (FWFP) could observe at firsthand how the system works, or rather does not work, in practice, and identify what are the barriers women face.

Numerous women were denied access to legal under the Polish law but hardly accessible, reproductive health services such as contraception counselling, prenatal testing for pregnant women and lawful interruption of pregnancy. Thousands of women terminate pregnancies illegally risking their life and health.

### RESTRICTIONS TO ABORTION

#### Clandestine abortions

Women have illegal abortions in great numbers either in Poland or abroad in the countries with liberal abortion law. FWFP estimates that the number of abortions - illegal or conducted abroad - might reach circa 150.000 or more abortions per year. The access to illegal services depends very much on the economic situation of women. The price varies from 500 to over 1000 Euros which is very expensive by average income level in Poland. There is substantial anecdotal data indicating that quality and safety of services is often compromised due to high costs. Although statistically not seen, there have been deaths of women as a result of abortions performed in abortion underground. Additionally, it needs to be added that abortion underground and so

called “abortion tourism” seem to increase although there is no statistics in this respect for obvious reasons. The 2010 Hearing on Abortion Tourism in the Polish Parliament revealed this phenomenon to the public as very common practice.

To great disappointment, the Polish Government consistently ignores the effects of the restrictive anti-abortion legislation on the health and life of women in Poland apparently believing that if the issue is not discussed it does not have to be recognized nor addressed.

### **Denial of the therapeutic abortions**

Restrictive anti-abortion legislation<sup>75</sup> has a chilling effect on access to lawful abortions. The long experience of FWFP, which has been providing counselling services to multiple women who experienced difficulties in access to legal abortion, leads to conclusion that barriers encountered by women are certainly of systemic nature and are not just exceptions from the general rule. Almost twenty years of the anti-abortion law in force allows for a number of conclusions on the real effects of the law on women’s life and health.

Physicians refuse to issue a certification required for therapeutic abortion, even when there are serious grounds for issuing such a referral. Furthermore, it happens that in case a woman gets a permit, the physician to whom she goes for a service questions its validity as well as the competences of a physician who issued the permit and eventually denies services.

The problem is also that the opinions issued by doctors do not reflect the real circumstances of the women’s situation and state no threat to a woman's health or life to make it impossible for her to decide about a legal abortion. Despite the fact that the Act on patient's rights introduced in 2008 established a mechanism aimed at enabling women to challenge a doctor's statement or opinion (see below), it still cannot be considered a timely and effective mechanism for women who are denied legal services. The right to appeal a doctor's opinion is poorly regulated by law and not used by women. Nevertheless the Ministry of Health and the Ombudsperson for patients' rights do not recognize the poor legislation as a problem and tend to state that not using this mechanism is due to the fact that there is no need to use it. The experience of FWFP shows the opposite trends. There have been many cases in which this right could have been used but women decided not to. Mostly because of the way it is regulated but also because even a positive outcome of the procedure does not guarantee access to actual services for them.

There are no guidelines as to what constitutes a threat to a woman’s health or life. It appears that some physicians do not take into account any threat to a woman’s health as long as she is likely to survive the delivery of a child. Also, there is a problem with assessment whether pregnancy constitutes a threat to woman's health or life in case she is suffering multiple and complex health problems, as there is no physician who would be recognized as competent to decide about her overall health status, not just about the specific organ or disease. General practitioners’ (or so-called “family physicians”) opinions are not respected in health providers hierarchy.

Restrictive anti-abortion legislation has also a chilling effect on health care services provided to pregnant women who did not seek abortion in first place but due to health risks abortion should be advised by health providers as an option. This phenomenon can be best illustrated by a case of a 25-year-old pregnant woman from Pila who died of septic shock caused by sepsis before being fully examined and properly diagnosed by a doctor. Her mother filed a case to European Court of Human Rights (ECHR) and was represented by lawyers collaborating with FWFP (Z v.

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<sup>75</sup> Allowing the termination of pregnancy only under three circumstances: 1) when pregnancy constitutes a threat to woman’s health or life; 2) when the foetus is damaged and finally 3) when the pregnancy is a result of criminal offence (e.g. incest, rape).

Poland). In May 2004, the woman was informed that she was between 4 and 5 weeks pregnant. Prior to or early during her pregnancy she developed ulcerative colitis (UC). She was repeatedly admitted to a number of hospitals (in Pila, Poznan and Lodz). Certain examinations such as a colonoscopy and full endoscopy, which would have made it possible to make proper diagnosis, were not performed because the doctors were afraid of damaging the foetus. In July she was diagnosed with an abscess. Three operations to remove it were performed. During several months of her suffering and exposure to inefficient health care treatment she was never properly informed about the threat of her illness to her life and health, as a result of which a young woman and her family were not aware either of possible worst implications of continuing pregnancy under her health status. The woman lost the foetus on 5 September 2004. On 29 September 2004 she died of septic shock caused by sepsis. The ECHR ruled on this case in 2012 with a decision on inadmissibility and no violation of art. 2 (right to life) of the European Convention on the Protection of Human Rights and Fundamental Freedoms in the procedural aspect. The ECHR did not examine the medical part of the case and stated it did not have enough evidence to judge the facts presented by the applicant. This story still remains one of the most tragic examples of effects of the restrictive abortion law in Poland although its circumstances could not be seen in the judicial context due to lack of enough evidence required in such procedures.

### **The conscience clause**

One of the reasons of restricted access to therapeutic abortion is inappropriate performance of the procedural safeguards contained in the "conscience clause". Under Article 39 of the Act of 5 December 1996 on the medical profession, *"the doctor may abstain from accomplishing medical services discordant with his/her conscience, (...) nevertheless s/he is obliged to indicate real possibilities of obtaining the service from another doctor, or in another medical institution and justify his/her decision and mention about the refusal in the medical documentation"*.

With respect to the therapeutic abortion, the "conscience clause" is seriously abused. Generally physicians referring to the "conscience clause" do not fulfill any procedural requirements stemming from it, which aim at safeguarding the patient's rights. It is important to underline that not only physicians abuse the conscience clause, but the clause is invoked by healthcare institutions as a whole. The hierarchical relations in Polish hospitals lead very often to the situation where the decision concerning the possibility of abortion is made by the director on his own, without consulting other doctors, who sometimes do not even share his/her point of view. It is not only directors of hospitals and gynaecologists who refuse to perform therapeutic abortions; it is also anaesthesiologists and auxiliary medical personnel (midwives, nurses).

The ECHR issued a judgment on the case of R.R. v. Poland in 2011. In this case a woman was denied access to legal and possible prenatal diagnosis of her foetus as, based on basic examinations, there was a risk of serious malformation. Instead of conducting additional tests doctors kept the woman in hospitals for no reason and denied services for 6 weeks. The ECHR stated that this attitude caused unnecessary suffering and enabled the woman to get information about the condition of her foetus. This led to violation of art. 3 (freedom from inhumane and degrading treatment) as well as art. 8 (respect for private and family life) of the convention. The ECHR stated that the case was connected with restrictive abortion laws in Poland – especially with their chilling effect and problems with the conscience clause that needed improvement and adequate actions on the side of government. Also – the Court stated that there was no effective legal mechanism for women who were denied legal reproductive health services.

Serious malpractice related to conscience clause can be best illustrated also by a case of anonymous 14-year old girl called P. – pregnant as a result of rape. Despite meeting all necessary legal requirements for legal abortion on criminal grounds, several hospitals denied performing

abortion to her. Only due to intervention of Minister of Health abortion was finally provided secretly in a town several hundred kilometres from her home town, half legally – abortion was not registered in the hospital files. And it is obvious that this intervention was made due to the heavy media coverage of the case. Most women whose cases would not be public, would not experience same ministerial support. P's case (together with her mother who was the second applicant) was judged by the ECHR in 2012 (P. and S. v. Poland). The Court stated violation of art. 8 (right to respect for private and family life) and art. 3 (freedom from inhumane and degrading treatment) as well as art. 5 (right to freedom) of the European Convention. In this judgment ECHR reiterated its concerns about the execution of the conscience clause in Poland and recommended changes in this regard which still have not been made.

### **Regulation aimed at improving implementation of conscience clause withdrawn**

Since 13 May 2005 the Polish law included the regulation of Minister of Health which obliged a hospital to subcontract services in case its doctors were referring to conscientious objection. Moreover, it allowed the National Health Fund to dissolve agreement with a hospital in case above-mentioned provision was breached by a hospital. This regulation – the only legal instrument to hold the government accountable for implementing women's rights to services in question – was eliminated by the Minister of Health (MoH) by the regulation of 13 May 2008.

### **Inaccessibility of abortion due to criminal grounds**

Although abortion on any legal grounds is difficult to obtain, it is particularly evident by yearly number of legal abortions due to rape. Every year no more than 2-3 abortions are performed on this ground while highly unreported rape statistics indicate several thousands of rapes per year. The situation is worsened by the fact that sometimes non-medical professions deny woman's right to legal abortion like e.g. a persecutor who objected to issue a referral on religious grounds to a pregnant woman who reported rape. Moreover, long procedures make it difficult for women to receive legal abortion before the 12 weeks deadline. At the police station raped women are not offered emergency contraception nor antiretroviral drug which should be the routine service for such women to minimize the risk of unwanted pregnancy and a risk of HIV infection. They are even not informed they should take such drugs privately.

### **Complaint procedures available to patients**

In 2008 the Parliament passed the Law on the Rights of Patients which shall also apply to the conduct of lawful abortion. The law includes the provision which is supposed to implement the judgment of the European Court of Human Rights in the case of Alicja Tysiąc v. Poland. According to this law, within 30 days a patient may lodge an appeal against a physician's decision to the Medical Commission. The appeal shall be examined by the Commission without delay, not later than after 30 days since it was lodged. The Commission delivers a reasoned decision on the basis of the medical documentation and, if need be, having heard the patient. It is composed of three physicians appointed by the Ombudsperson for Patients' Rights. The decisions of the Commission are final. Till 2013 the Commission has not examined any appeal concerning abortion.

The Federation for Women and Family Planning is monitoring this mechanism and has expressed our concerns to the Council of Europe regarding the effectiveness in the protection of patients' rights.

The concerns included: the 30 days deadline for the response by the Medical Commission to the patient which in the case of the complaint on the question of abortion may have a serious impact on the final access to services. Secondly, there is no appellation mechanism from the Commission's decision. Finally, the patient's complaint needs to refer to the article of law that

had been violated by doctor's opinion) which makes it necessary for the patient to use a lawyer's services. That of course will constitute a significant barrier to disadvantaged patients.

Moreover the Act does not contain any specific provisions guaranteeing access to lawful abortion if women's appeal is won.

### **LIMITED ACCESS TO FAMILY PLANNING**

Access to family planning continues to be limited. Social and economic barriers often prevent women and girls from obtaining contraception which can be bought only on the basis of medical prescription. Moreover, there are serious limitations to state subsidies for contraception, therefore women have to pay full price for a vast majority of hormonal contraception. Only one medication is subsidized. Contraceptive counseling is not integrated into primary health care system. Private gynecological visits are necessary to receive doctor's prescription or install the IUD which dramatically increases the costs which is a serious barrier to young women. Contraceptive counseling is provided practically only by gynecologists, and not by family doctors or other medical specialists. More and more women report that doctors deny contraceptive counseling, especially on emergency contraception, due to conscience clause.

Due to the outdated law which has been in effect since 1932, voluntary contraceptive sterilization is being interpreted illegal for both women and men against the opinion of many lawyers.

### **SEXUALITY EDUCATION**

The school curriculum provides for realization of the "Preparation for Family Life". Nevertheless, it is not obligatory but facultative. The content of the teaching is often very problematic and often does not conform to scientific standards. The vast majority of textbooks is not objective but present sexuality from the point of view of Catholic teaching. Among textbooks officially recommended by the Ministry of National Education, we find ones that state, for instance, that "masturbation causes infertility" or "contraception is a denial of a true love". Such misinformation has consequences for young people in terms of their vulnerability to STIs incl. HIV/AIDS as well as teenage pregnancy. Furthermore, these textbooks strongly stereotype women and promote traditional model of family with differentiated gender roles for men and women. They also present strong anti-choice discourse. Moreover, in some places abstinence-only programs are introduced to schools.

There is no sexuality-related counseling services for young people available in Poland nor specialized medical services. Parental consent constitutes a serious barrier in accessing reproductive health services.

### **Comments to the Governmental report:**

The State report does not recognize the actual problem with women's access to legal abortion services and the real effects of the law, the problems with registering abortion services in statistical files and lack of data on unjustified denials of abortion. There is also no study on off-protocol use of misoprostol which is not registered in Poland as a miscarriage-inducing drug. The real effects of the restrictive legislation are: clandestine services (illegal and therefore unsafe by definition), abortion tourism and growing black market of illegal abortion pills. Lack of the government's acknowledgment in this regard should not be accepted.

### **As to para. 222**

It is true that there are all kinds of modern contraceptives registered in Poland that can be legally obtained in all pharmacies. The Act on family planning though states that access to

modern methods of conscious procreation should be unconstrained. This provision means more than theoretical opportunity to purchase medications in pharmacies after obtaining prescription. In fact, the biggest obstacle to a real access to contraception for women is of financial nature. Modern contraceptives are not subsidized from the state budget. The only drug (registered under four trade names) that can be purchased for relatively low price is a pill belonging to the so-called “old generation” contraceptives. For all the modern methods women have to pay full price which means that the other contraceptives are in fact affordable for wealthy women. Another obstacle is the lack of comprehensive and common family planning services which results in lack of adequate knowledge and awareness of options for controlling one's fertility. The third biggest problem is that modern contraception (hormonal pills, rings and patches) are available only with prescription which is at times difficult to obtain from a doctor.

The state report does not mention the problem of emergency contraception which is very expensive and available only with prescription which doctors tend to refuse to issue because they either confuse it with abortion pills (illegal) or abuse the conscience clause.

As to para. 232

The right to appeal a doctor's opinion is wrongly described in the state report as a mechanism that can be used if a doctor denies certain services (mainly abortion). In fact this mechanism is regulated in such a way that a patient can only complain about the content of a doctor's opinion or statement which prevent her from executing her right for legal abortion. As denial of abortion does not have to be issued in a form of a document, such a denial is not considered to be an opinion or a statement according to the currently binding law. This means that there is still no timely effective remedy for women who are unjustifiably denied legal services. The currently existing mechanism is not such a remedy. It also does not fulfil its actual purpose as it is described in the chapter.

**Recommendations for the Government of Poland:**

- 1) Reviewing restrictive legislation on abortion;
- 2) Eliminating barriers hampering women's access to lawful abortion and access to justice in this regards;
- 3) Improving access to contraception;
- 4) Introducing comprehensive and evidence-based sexuality education to school curricula.

## RURAL WOMEN (Art.14)

Ewa Furgał (Women's Space Foundation)

The rural population of Poland is prone to social exclusion caused by insufficient infrastructure, low productivity of farms, lack of employment opportunities outside farming, low incomes, low level of education, and high unemployment. In rural areas, access to public goods such as health care centers, educational institutions, culture or transportation remains poorer than in towns and cities. Aside from the structural exclusion, persons living in rural areas may experience prejudice and worse treatment due to their place of residence<sup>76</sup>. Women who constitute 50,14% of rural population<sup>77</sup>, due to their gender they are in a particularly difficult situation. At the same time, however, they are not addressed by any assistance programs implemented by state or local governments and targeting rural population.

Situation of rural women is additionally differentiated by the influence of factors other than gender and place of residence, such as: age, economic status, family situation, sexual orientation, education, performing farm work or running non-agricultural business. We have extremely few data concerning the situation of minority women's groups in rural areas, e.g. older women, women with disabilities, lesbians and bisexual women, and even fewer data on the situation of persons for whom multiple minority identities intersect, e.g. older lesbians or women with disabilities living in rural areas<sup>78</sup>.

### Poverty

Rural women, more than other social groups are at risk of poverty due to their place of residence and their gender. This risk is caused by low income of rural women, as well as limited access to education, health care, social services, sub-standard living and sanitary conditions, as well as weak participation in social and cultural activities. Further, due to the very traditional attitude towards the social role of women, which is particularly strong in rural Poland, women are brought up to be carers and farm workers, and are not encouraged to focus on more independent professional or political activities. Their already difficult situation in the labour market is strengthened by the existing infrastructure (the lack of employment opportunities in their place of residence; the limited ability to travel to work caused by lack of sufficient public transport and low income; the lack of adequate child care services, both nurseries and kindergartens; the lack of access to appropriate education). They also face psychological barriers including low self-esteem, and lack of appropriate role models in their immediate environment. There is a low indicator of professional activity among rural women (46.6% compared to the general indicator for Polish population over the age of 15, which is 55,9% - data from the 2<sup>nd</sup> quarter of 2013<sup>79</sup>), high unemployment rate (12,4%, compared to 10,4% in general) and low employment rate (40,9%, 55,9% in general)<sup>80</sup>.

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<sup>76</sup> Regarding the stereotypes concerning people from rural areas and the metronormativity phenomenon, see E. Furgał, *Jak uniknąć metronormatywności w pracy trenerskiej? Przeciwdziałanie dyskryminacji ze względu na miejsce zamieszkania*, [in:] *(Nie) warto się różnić? Dylematy i wyzwania metodologiczne edukacji antydyskryminacyjnej - notatki z pracy trenerskiej*, ed. M. Branka, D. Cieślukowska and J. Latkowska Towarzystwo Edukacji Antydyskryminacyjnej, Warszawa 2013, 107-120.

<sup>77</sup> according to the Central Statistical Bureau data for 31.03.2013, 7 622 557 of women are rural residents

<sup>78</sup> See the report from the first Polish studies on the situation of lesbians and bisexual women living in rural areas: *Niewidoczne (dla) społeczności. Sytuacja lesbijek i kobiet biseksualnych mieszkających na terenach wiejskich i w małych miastach w Polsce. Raport z badań*, ed. Justyna Struzik, Fundacja Przestrzeń Kobiet, Kraków 2012.

<sup>79</sup> Central Statistical Office, (2013), *Aktywność ekonomiczna ludności Polski II kwartał 2013 r.*, , [http://stat.gov.pl/cps/rde/xbcr/gus/PW\\_aktyw\\_ekonom\\_ludn\\_2kw\\_2013.pdf](http://stat.gov.pl/cps/rde/xbcr/gus/PW_aktyw_ekonom_ludn_2kw_2013.pdf)

<sup>80</sup> It is worth pointing out that the National Statistical Office is gathering statistics in this area disaggregated by gender, place of residence and household type, but only considers intersectionality of the first two variables. Meanwhile, the

The risk of poverty is strengthened by the structure of rural families and linked to it overburdening of women with domestic responsibilities. The rural families more often than the urban ones consist of several generations and larger number of children. This impacts directly the level of housework and care women have to provide, caring for their dependents which include children, elderly and disabled family members. Additionally, it is practically impossible to derive sufficient income from small and ineffective farms. Indicators of the risk of extreme poverty and crossing poverty line are twice as high for persons living on farms with area below 2 ha, compared to agricultural farms in general <sup>81</sup>, and smaller farms are more often supported by women. In such farm based households women are also burdened with food production, which increases the number of their working hours (research shows that rural women work for the entire day, from 5 am until 11 pm <sup>82</sup>). Poverty is more often amplified and inherited in families which are supported by women; in poor families, women also apply for social assistance benefits more often than men <sup>83</sup>. Taking advantage of social assistance is stigmatizing in rural areas, and applying for it is both emotionally taxing and time consuming. The overburdening with chores and caring for dependent persons contributes to marginalization of rural women.

The rural women who are particularly at the risk of poverty are older women. Due to their gender they receive lower retirement payments than men. The lowest retirements pensions are those of women who receive so-called agricultural pension paid by the Agricultural Social Insurance Fund (KRUS). Further, very often due to their age and health problems, elderly women are unable to work on the farms nor be involved in the food production. Limited access to health services and social services has also greater impact on them. Additionally, they very often live in very poor housing and sanitary conditions.

## Violence

The results of IVAWS (*International Violence Against Women Survey*) conducted in Poland in 2004, indicated that living in the rural area is one of the factors decreasing the risk of being exposed to gender violence<sup>84</sup>. It should be taken into consideration, however, that rural women are less likely to report violence. They also have much more limited access to appropriate related services. The extent of the problem is reflected by the fact that rural women listed combating of family violence as the desired main role of women's organizations present in rural Poland. The need of focusing on this problem was indicated by 71,4% of women who participated in the research, the next task – addressing discrimination of women on the labour market was specified by 42,1% of respondents. The fact that 26,9%<sup>85</sup> of respondents believed that women's organizations should focus on eliminating sexual harassment of women should

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National Census of 2002 was showing huge differences in the situation of non-agricultural women and male farmers: employment rate among non-agricultural women amounted to 27,6%, and among male farmers – 58,9%; unemployment rate among non-agricultural women amounts to 34,4%, while among male farmers it was 13,1%. J. Sawicka, (2006), *Sytuacja kobiet wiejskich na rynku pracy w Polsce w świetle Narodowego Spisu Powszechnego Ludności i Mieszkań 2002*, [in:] *Krajowy System Monitorowania Równego Traktowania Kobiet i Mężczyzn. Raporty eksperckie. Tom 2*

<sup>81</sup> Central Statistical Office, (2012), *Ubóstwo w Polsce w 2011 r. (na podstawie badań budżetów gospodarstw domowych)*, at: [http://www.stat.gov.pl/cps/rde/xbcr/gus/WZ\\_ubostwo\\_w\\_polsce\\_2011.pdf](http://www.stat.gov.pl/cps/rde/xbcr/gus/WZ_ubostwo_w_polsce_2011.pdf)

<sup>82</sup> Gawlicz, K., Starnawski, M., *Oblicza pracy – oblicza biedy. Raport z badań warunków życia kobiet w gospodarstwach domowych o niskich dochodach na obszarach wiejskich województwa świętokrzyskiego*, [in:] *Kampania Przeciw Homofobii (2011), Ubóstwo i wykluczenie społeczne w Polsce. Polski raport Social Watch 2010*

<sup>83</sup> Desperak, I., Rek-Woźniak, M., *Feminizacja biedy w Polsce*, [in:] *Kobiety dla Polski, Polska dla kobiet. 20 lat transformacji 1989-2009. Raport Kongresu Kobiet Polskich 2009*, Fundacja Feminoteka, Warszawa 2009

<sup>84</sup> Gruszczyńska, B., *Przemoc wobec kobiet w Polsce. Aspekty prawnokryminologiczne*, Wolters Kluwer, Warszawa 2007,

<sup>85</sup> Walczak-Duraj, D., (2008) *Podstawowe sfery potencjalnego uczestnictwa kobiet wiejskich w życiu społeczno-politycznym*, [in:] *Diagnoza sytuacji społeczno-zawodowej kobiet wiejskich w Polsce*

also be highlighted. It seems that the problem strongly related to violence against rural women is alcohol addiction of men (the women's partners). The situation is made worse by the social acceptance for lifestyle of "bludgers" - unemployed men supported by women<sup>86</sup>.

### **Participation in Decision Making**

In the recent years an increase of the involvement of rural women in community and civic activities has been noticed. It is mainly informal involvement consisting of undertaking diverse activities in their local community. Rural women perform unpaid work benefiting their local community mainly within the structures of Rural Women Circles and other local associations. The number of women who are community leaders (sołtys) has markedly increased (currently its approximately 30%)<sup>87</sup>. Performing the role of community leaders is neither prestigious or is linked to access to genuine power and decision making. Quite rarely it makes easier for women community leaders to become council members or majors (wójt). At the same time, however, it means that the women perform unpaid work for the benefit of the local community. Rural women encounter many barriers which make it more difficult to engage in social and political activity. Those include economic, cultural and societal barriers, barriers related to geographical isolation and transformational changes, as well as barriers related to the attitude of local authorities and gender, including gender stereotypes and gender-based discrimination. The lack of time, which results mostly from overburdening with chores, is mentioned the most. One of the more prominent societal and cultural barriers is the high level of social control in rural environment and stigmatization of behaviours considered non-normative, which in some communities include women's participation in politics<sup>88</sup>.

The Final Remarks of CEDAW Committee related to the situation of rural women have not been implemented by Polish government. The government has not implemented any programs addressing rural women. As far as local authorities and the strategy of local rural administrative areas (gmina) are concerned, local women, as a group, are not seen as a group which requires any particular support, and the needs and the situation of rural women are not monitored. In case of programs addressed to rural population, implemented by the government, it is impossible to assess what impact they have had on the situation of women, because there has been no gender sensitive evaluation of these programs.. In 2008 the Ministry of Labour and Social Policy commissioned a research focusing on the social and employment situation of rural women, but it did not implement any activities related to the outcomes of the research. The Social Integration Program implemented by the Ministry as a part of the Post-accession Programs of Support for Rural Areas was implemented on the basis of the analysis of the needs of poorest rural areas which was gender insensitive (gender was not one of the indicators). The project Rural Development Programme 2014-2020, which is currently undergoing consultations, also does not include actions targeted at women in particular, nor does it take into account their specific problems connected with gender.

### **Comments to the Governmental report:**

The report prepared by the Polish Government does not take into consideration significant social problems concerning women in rural areas: violence and the low participation of women in decisionmaking processes in local government. It only mentions poverty, the most important social problem of women in rural areas, in general terms, without mentioning the phenomenon

<sup>86</sup> Desperak, I., Rek, M., *Ubóstwo*, [in:] *Polityka równości płci. Polska 2007. Raport*, ed. B. Chołuj, Fundacja „Fundusz Współpracy”, Warszawa 2007

<sup>87</sup> Matysiak, I., *Spółeczniczki, liderki, polityczki – aktywność społeczna kobiet na terenach wiejskich*, [in:] *Kobiety i rozwój. Kronika aktywności kobiet na terenach wiejskich*, ed. J. Struzik, Fundacja Przestrzeń Kobiet, Kraków 2010

<sup>88</sup> Walczak-Duraj, D., op. cit., p. 144-146.

of feminization of poverty or discussing the characteristics of the poverty of women, related to their gender. The report fails to notice the poverty of older women. At no point does it consider the phenomenon of cross discrimination nor does it conduct an intersectional analysis, which considers different factors that structurize the situation of women and may affect it concurrently, such as: age, economic status, religious denomination or lack thereof, sexual orientation.

### **Recommendations for the Government of Poland:**

#### **Policy**

- 1) Development and implementation of programs on eliminating rural women's poverty with special focus on older women;
- 2) Implementation of programs combating violence against rural women;
- 3) Development and implementation of programs addressed to rural women (e.g. preventive healthcare and increasing access to medical services, access to publicly provided childcare services, access to social services and social support, development of education facilities and opportunities);
- 4) Empowering rural women to participate in power and decision making;

#### **Data collection/research/monitoring**

- 5) Collection of data which simultaneously looks at gender and place of residence;
- 6) Conducting studies and monitoring on the subject of experiencing discrimination based on several factors, i.e. multiple discrimination, taking into consideration factors such as gender, place of residence, age, socioeconomic status, disability, sexual orientation.

## VIOLENCE AGAINST WOMEN (GR 19)

Alina Synakiewicz, updated by Joanna Piotrowska (Feminoteka Foundation)

### Extent of the phenomenon

Annually, approx. 800,000 women in Poland experience violence, while approx. 150 Polish women die every year as a result of the so-called domestic disagreements.<sup>89</sup> According to the police statistics, 82 102 women experienced domestic violence in 2010, and 50 241 – in 2012.<sup>90</sup> According to statistical data collected by the National Police Headquarters, in 2012 the police filled out 292 „Blue Card” forms.<sup>91</sup> The number of suspected perpetrators registered by the police in 2012 on the basis of the „Blue Card” procedure amounted to 51 531, including 47 728 men, 3 522 women, and 281 minors. However, it should be emphasized that the above data does not illustrate the general scale of the problem, because it only includes data collected by the police, which is only one of several entities authorized to initiate the procedure. This obligation also rests on social welfare centres, health care, or schools.

In 2010, a new clause was introduced in the Act on counteracting family violence, concerning the separation of the perpetrator of violence from the victim. The number of suspects who were issued an order to leave the residence shared with the victim (art. 275a § 1 of the Penal code) amounted to 209 in 2010, 8493 in 2011 and 1241 in 2012.<sup>92</sup>

In 2009, 33 267 proceedings were issued under art.207 of the Penal Code (domestic abuse), and 3 924 people were convicted. In 2012, the courts, following the public prosecution’s motions, convicted 3 597 people for the crime of abuse under art. 207 § 1 of the Penal Code (2010 – 3 883, 2011 – 3 937 people). The proportion of the number of legal proceedings in relation to crimes with the use of violence or unlawful threat against family member which were dismissed or concluded with the refusal to issue preparatory proceedings the total number of trials concerning the abovementioned crimes throughout the country amounted to 61.98%.<sup>93</sup>

As far as other kinds of violence are concerned, it is estimated that between 90 000 and 250 000 women experience sexual violence in Poland annually. Officially, only approx. 8% of this kind of crimes are registered. The remaining 90% are an “obscure number”. According to the police statistics, rape is reported by approx. 2 000 women every year. According to studies<sup>94</sup> as few as 17% of victims of sexual violence take advantage of the help provided by aid institutions and organizations, and their effectiveness or partial effectiveness is estimated at 49%. In 90% of rape cases, the perpetrators remain unpunished. Over 30% of all legal proceedings are dismissed due to failure to discover the perpetrator.

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<sup>89</sup> Gruszczyńska, B. (2007), *Przemoc wobec kobiet w Polsce. Aspekty prawno kryminologiczne*, Oficyna Wolters Kluwer

<sup>90</sup> [http://statystyka.policja.pl/portal/st/944/50863/Przemoc\\_w\\_rodzinie.html](http://statystyka.policja.pl/portal/st/944/50863/Przemoc_w_rodzinie.html)

This decrease could be explained in two ways – one of the reasons may be changing the method of gathering statistics, which are dispersed around various institutions; on the other hand, since 2005 the Polish Government hasn’t conducted a single campaign on violence against women. Therefore, another reason might be the decreasing awareness of women, understanding of their rights, and decreasing trust in institutions which deal with violence.

<sup>91</sup> Special form which is filled out upon every domestic violence intervention, in which the most important information concerning the intervention is noted. The form may also serve as proof in legal proceedings in cases involving violence.

<sup>92</sup> Excerpt from information about the justice system carrying out the National Program for Counteracting Domestic Violence in 2012 – statistical data.

<sup>93</sup> <http://ms.gov.pl/Data/Files/public/ppwr/aktualnosci/wyciag-z-informacji-o-realizacji-przez-wymiar-sprawiedliwosci-kppwr---dane-statystyczne.pdf>

<sup>94</sup> TNS OBOP (2007), *Polacy wobec zjawiska przemocy w rodzinie oraz opinie ofiar, sprawców i świadków o występowaniu i okolicznościach występowania przemocy w rodzinie*

Even though the rape crime is punishable by the sentence of between 2 and 12 years of prison, the average sentencing in Poland is 3 years of prison for particularly violent rape. Currently, reporting rape to the police is connected with a long, difficult procedure, which usually turns out to be a secondary victimization for the victims. According to studies on the situation of rape victims, there are no fixed and clear procedures for the police or the hospitals.<sup>95</sup>

Aside from physical and sexual violence, women in Poland also experience psychological and economic violence. Polish banks of data and statistics contain data about only a fraction of the actual number of women experiencing violence. Moreover, a lot of the data is hard to compare even between the particular years, because classifications change, and some of them do not contain the „gender” variable. It is therefore impossible to find out on the basis of these data to what extent the particular crime affects women. Nor are there studies from which it could be concluded which groups of women are particularly vulnerable to violence, or in which regions of the country this problem is particularly severe. Based on information about violence against women gathered by the particular institutions, it can only partially be figured out to what extent the anti-violence law in Poland is observed and to what extent it remains an empty law. Moreover, neither in the National Program for Counteracting Domestic Violence nor on the local government level the issue of gender-based violence or violence against women is being considered – neither at the stage of diagnosing the phenomenon, nor the preparing of programs, nor at the stage of conducting trainings, educational courses, etc.

When ruling on domestic violence, the courts rarely take advantage of the regulations contained in the *Act on Counteracting Domestic Violence*; there aren't any data concerning the number of violence proceedings in which the tools contained in the abovementioned Act are used.

### **Social awareness of the problem**

Many myths and stereotypes related to violence against women are still common in Polish society. Many think that violence against women is a private issue and therefore interference is unnecessary, or that women – victims of their partners' aggression – share the blame for their partners' behaviour. According to research carried out by OBOP in 2007<sup>96</sup>, 24% of the respondents claim that the perpetrator will stop the violence if he is not provoked; a similar number of people believe that fear of raising certain issues in a conversation with the husband is the wife's problem. 18% claim that pushing and shoving are normal behaviours during family disagreements. 16% recognize the problem only if there are bruises and wounds on the victim's body. Additionally, awareness of economic violence is lacking. 34% of respondents declare that doling out money and controlling a spouse's expenditures are desirable signs of thriftiness. Only 1% of the respondents know a family which has experienced sexual violence and violence is associated mostly with physical violence. According to research carried out in 2010 for the European Commission, 97% of persons polled heard about the problem of violence against women within the family. 66% of persons taking part in the abovementioned survey believe that violence against women is a common phenomenon in Poland. Meanwhile, 80% think that domestic violence against women is unacceptable and should always be penalized by the law<sup>97</sup>.

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<sup>95</sup> Fundacja Feminoteka (2011), *Dość milczenia. Przemoc seksualna wobec kobiet i problem gwałtu w Polsce*

<sup>96</sup> *Polacy wobec zjawiska przemocy w rodzinie oraz opinie ofiar, sprawców i świadków o występowaniu i okolicznościach występowania przemocy w rodzinie*. [Poles on the phenomenon of domestic violence and opinions of perpetrators, victims and witnesses of domestic Violence] Results of research carried out by TNS OBOP for the Ministry of Labour and Social Affairs, Warsaw, October 2007 r.

<sup>97</sup> Eurobarometer, special survey 344: Domestic violence against women, 2010

## Polish law and domestic violence against women

In Poland regulations on domestic violence include penal law – particularly Article 207 – which talks about abusing family and household members and civil law, particularly the recently (2010) amended *Law on counteracting domestic violence*. The preliminary version of the law was criticized by organizations dealing with counteracting violence, which deemed it ineffective (the main accusation: not applying the regulation on preventing contact between the perpetrator and the victim)<sup>98</sup>. The amendment of the law, as implemented in 2010, facilitates the isolation of victims from perpetrators, broadens the scope of aid offered to victims of domestic violence free of charge (psychological, legal, medical, social aid, professional and family counseling). Additionally, the amended law requires communes [administrative districts in Poland] to fulfill certain requirements related to counteracting domestic violence and protecting victims. The obligation to form interdisciplinary teams consisting of representatives of professions and organizations dealing with counteracting domestic violence was introduced. Because the law was amended only recently, it is difficult to establish to what extent it has improved the situation of women experiencing violence, particularly in light of the fact that both in the original and the newly amended version domestic violence is gender neutral.

Data concerning victims of domestic violence makes it impossible to establish how many women have been harmed in the particular types of crimes (victims of depredation, bodily harm or menacing), including the number of underage women who experienced domestic violence<sup>99</sup>.

Cases of battery of family members are often discontinued in courts (80% of cases are discontinued on the level of the prosecutor's office) due to negligible social harm or lack of statutory features of a criminal act<sup>100</sup>. For years there has been a tendency to be lenient on perpetrators of domestic violence: most of those who are convicted receive short sentences and in 90% of the case when imprisonment is order, the sentence is deferred. The fact that the rate of repeat offenders has been at the level of 72% for many years, has not influenced criminal policy<sup>101</sup>.

## NGO Activities

Non-governmental organizations provide women experiencing violence with aid, operate hotlines, information and consultation facilities, shelters, hostels, after-school care for children, legal aid, take part in interventions, monitoring of incidents etc. They also prepare reports, organize conferences devoted to those issues, attempt to draw the government's attention to the problem of violence against women and the lack of real and effective aid for them. Despite limited funding and capabilities they attempt to educate the society by organizing campaigns related to this phenomenon. The continuing existence of these projects depends on the organizations' skill in seeking sources of financing in Poland and abroad. Often, in spite of a lot of good will and effort, non-governmental organizations specializing in services for women experiencing violence are forced to limit their activities, due to insufficient funds. NGOs and informal groups intensify their activities leading to changing the society's awareness of violence against women during the International Campaign 16 Days of Activism to End Violence Against Women. Conferences, discussions, street actions, exhibitions, film screenings, workshops and

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<sup>98</sup> A. Mroziak, E. Rutkowska, I. Stefańczyk, *Kogo chronimy przed przemocą. Dwa lata ustawy o przeciwdziałaniu przemocy w rodzinie. Raport krytyczny*, [Who we protect from violence. Two years of the law on counteracting domestic violence. A critical report] Fundacja Feminoteka, Warsaw, 2007

<sup>99</sup> B. Gruszczyńska „Przemoc wobec kobiet w Polsce. Aspekty prawno kryminologiczne” [Violence against women in Poland. Legal and criminological aspects], Oficyna Wolters Kluwer, Warsaw 2007

<sup>100</sup> „Polityka równości płci. Polska 2007. Raport” [Gender equality policy. Poland 2007. Report], UNDP, Warsaw 2007

<sup>101</sup> B. Gruszczyńska, *ibidem*.

other activities are organized at that time. One can say that in recent years non-governmental organizations have been taking over the government's duties in the sphere of counteracting violence against women.

### Evaluation of Government's activities

Significant progress was recorded between the early 1990s and 2005 with regards to the government's activities in the sphere of preventing violence against women. The government has prepared campaigns, conferences and worked out strategies. In the period 2001-2005, when the government created the Office of the Plenipotentiary for Equal Status of Women and Men, activities in this sphere took priority for the successive plenipotentiaries, as reflected in the National Action Plan for Women for the period 2003-2005. The long battle for an anti-violence law was successful and the law was finally adopted in 2005.

As in the previous years, also now it should be pointed out that the government only counteracts the phenomenon of violence against women to a small degree. All analyses, reports and programs, and therefore also trainings and preventive programs, do not include information about the phenomenon of gender-based violence or violence against women. Even though it is easy to deduce from the statistics that women are the biggest group experiencing violence, actions taken by the Polish government do not take this fact into account and do not contribute to publicizing this phenomenon. Since 2005, there has been no national campaign in Poland, organized by the Polish government and targeted at women – group which is the most vulnerable to violence. In November 2009 the Platform for Action Against Sexual Violence „Stop sexual violence in Poland” was established. [91] The *Procedures for the Police and medical facilities dealing with victims of sexual violence*<sup>102</sup> were created then; in a single document they collected laws and regulations concerning the methodology of criminal investigation operations and those protecting victims' rights. The *Procedures*, however, have never been approved and are not being implemented. The *Procedures* were supposed to be accompanied by the so-called *Information for victims of sexual violence, including rape*. The leaflet was only printed in 1000 copies and it is not certain where it has been distributed. In 2011 it was reported that the *Procedures* will be accompanied with the implementation of criminal investigation packages for securing evidence. Such packages would be passed on by the Police to doctors at the moment of bringing in a rape victim – this is, in fact, the only thing that has been implemented – in 2013, 2 thousand such packages were funded and distributed around police stations.

No governmental campaign concerning the phenomenon of sexual violence, including rape, has ever been conducted. There are no fixed and clear procedures in this area, which would protect the victims of sexual violence instead of the perpetrators. There are also no programs concerning violence against girls – counteracting sexual molestation in schools and public places, date rapes and other forms of violence to which girls are the most vulnerable.

The problem of gender stereotypes reinforcing negative behaviours, affecting violence against girls and women, is not mentioned in educational programs or trainings.

Discussion about signing of the Council of Europe *Convention on preventing and combating violence against women and domestic violence* took months. The convention was met with harsh criticism from right-wing and Catholic environments. They are particularly concerned about the clauses on counteracting gender stereotypes which affect violence against women. In December 2012, the Convention was signed, but its ratification is constantly being delayed.

In 2013, as a result of Poland signing the Convention, the mode of initiating proceedings to prosecute rape was changed from motion-based to *ex officio*. This change was followed by other regulations aimed at protecting the victim of sexual violence: according to the amendment,

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<sup>102</sup> <http://www.rownetraktowanie.gov.pl/files/dokumenty/procedura%20po%20poprawkach1.pdf>.

victims of sexual crimes should only be questioned once during the whole investigation – in specially designated, friendly surroundings and in the presence of a psychologist. Video and audio from the questioning is to be recorded and played during the court proceedings. A repeated hearing can only be allowed as an exception and – in order to reduce the victim's stress - can be conducted via teleconference, without the need for direct confrontation between the injured party and defendant in the courtroom.

The summary of the government's actions in the field of preventing violence against women published along with the NGO Report Beijing 95+ is still accurate: *"Despite numerous changes which have taken place in the period of transformation, the problem of violence against women is still treated as marginal; we still lack a comprehensive and systemic approach as well as consistent and thorough actions in this sphere."*<sup>103</sup>

### **Recommendations for the Government of Poland:**

#### **Legislation**

- 1) Immediate ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence

#### **Institutional mechanisms**

- 2) Re-establishing the Office of the Plenipotentiary for Equal Status of Women and Men, with the assumption that the office could be held only by an individual who is an expert selected by women's organizations. The plenipotentiary would safeguard the implementation of the National Action Plan for Counteracting Domestic Violence to make sure that it incorporates preventing violence against women;
- 3) Increasing financial sources for counteracting domestic violence, including securing sources in the budget for counteracting violence against women;
- 4) Developing a network of Specialized Support Centers for Victims of Domestic Violence, including shelters only for female victims of violence;

#### **Data collection /Database**

- 5) Applying the principle of "gender mainstreaming" when collecting data on perpetrators and victims of domestic violence including the gender of underage perpetrators and victims;
- 6) Systematic collection of data taking into account various forms of violence, not only physical violence;
- 7) The Ministry of Justice should create a nationwide database, updated at the end of each year, which would reveal how many cases of reported domestic violence are concluded with binding court verdicts;

#### **Education/trainings/campaigns/publications**

- 8) Organizing workshops and conferences which raise awareness of violence against women for representatives of the judiciary system, police, government employees, representatives of self-government authorities, social institutions and other institutions;
- 9) Carrying out nationwide campaigns raising the society's awareness of violence against women;
- 10) Introducing classes on the prevention of violence based on gender in the curriculum at

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<sup>103</sup>Quotation in: Joanna Piotrowska, *Przemoc wobec kobiet: 1989 – 2009* [Violence against women: 1989 – 2009] [in:] *Kobiety dla Polski, Polska dla kobiet. 20 lat transformacji 1989 – 2009*, Fundacja Feminoteka, Warsaw 2009

all education levels in order to sensitize the youth to this phenomenon and to counteract it;

- 11) Creating an information booklet for victims of violence with addresses of institutions and organizations helping victims of violence; the information booklet should be available in all community centers and social institutions.

## MIGRANT WOMEN

*Katarzyna Słubik (Association for Legal Intervention)*

The issue of immigration is a relatively marginal phenomenon in Poland. Even after Poland's accession into the European Union on 1 May 2004, the influx of third-country nationals into Poland still remains at a relatively low level<sup>104</sup>, due mostly to the fact that Poland is a less attractive country than the so-called old European countries of the European Union. However, more and more often Poland is seen as a destination rather than just a transit country. Since 2008 the main source countries of female immigration to Poland are: Ukraine, Belarus, Vietnam and Russia<sup>105</sup>. For each of the nationalities, women constitute the minority of migrants but each year their percentage is increasing. A higher percentage of women in the general group of migrants from a given country can be observed among migrants from the Eastern bloc<sup>106</sup>. A significant number of migrant women entering Poland are asylum seekers from Russian Federation (Czech origin) and Georgia<sup>107</sup>.

Nevertheless, the main reason for the women's entry into Poland is economic migration. In order for migrant women to receive a permanent resident status in Poland they need to first obtain a permit for a defined period of time (maximum 2 years) and only then for settlement or an EU long-term residence. The access to legal employment is restricted – with few exceptions – to the persons who complete the labour market tests and perform work for the same employer<sup>108</sup>. In 2012 there were 12 848 work permits issued to migrant women (which was over 4 000 more than three years earlier) and 93 515 declarations of intent to employ a migrant woman were registered<sup>109</sup>. These numbers do not take into account women who may legally work in Poland without a permit (e.g. spouses of Polish citizens) and persons employed illegally – the number of illegally employed migrant women is estimated to be in the range from several thousand to several hundred thousand. The main obstacle for registered employment are high requirements for obtaining work permits. Migrant women in Poland are usually employed in household services, agriculture, commerce and gastronomy, much less often in certain niche profession like artists, sportswomen or practitioners of alternative medicine.

### Implementation of the Concluding Observations of the CEDAW Committee (2007)

Even though some improvements have been made, still the implementation of recommendations contained in sections 28 and 29 of the Concluding Comments of the Committee should be considered unsatisfactory.

So far no comprehensive research on the situation of migrant women in Poland has been initiated by the state. Statistical data disaggregated by sex may be found as regards employment and residence status of migrant women (but still no data as regards the areas of employment). No data can be found on the victims of gender-based or domestic violence of foreign origin. Polish criminal law does not recognize separate offences of violence stemming from "honour" so there can be no reliable data in respect to this phenomenon. Also data on housing, welfare benefits, access to health care are lacking. Scarcity of the data makes it impossible to evaluate

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<sup>104</sup> According to the National Census 2011, foreign citizens constitute 0,2 % of all permanent residents of Poland

<sup>105</sup> Data of the Office for Foreigners, [www.udsc.gov.pl](http://www.udsc.gov.pl)

<sup>106</sup> *Ibidem*

<sup>107</sup> *Ibidem*

<sup>108</sup> Citizens of Ukraine, Russia, Moldova, Belarus and Georgia may perform work for up to 6 months without a work permit on the basis of an employer's declaration of intent to employ a third – country national submitted at the appropriate labour office.

<sup>109</sup> Statistics of Ministry of Labour and Social Policy, [www.mpips.gov.pl](http://www.mpips.gov.pl)

the situation of migrant women and efficiency of the policies aiming at facilitating their use of human rights and integration into the Polish society.

### **Employment (Art. 11)**

Migrant women experience double discrimination on the labour market: as women and as foreigners, so they are forced to accept worse conditions of employment and lower wages. The necessity to maintain employment – usually the legalization of their stay depends on continuity of employment – makes these women fall prey to exploitation and harassment, and even violence in the workplace.

The procedure of issuing work permits – applications are submitted by the employer and not the employee – increases the latter's dependency on the former and facilitates exploitation in the workplace, especially in domestic labour, which is a largely unexplored and unresearched area of employment where migrant women from Ukraine and Belarus constitute a majority of employees.

### **Eliminating discrimination (Art.2)**

Obtaining a residence permit in Poland depends on proof of a specified income, with the amount depending on the number of the alien's dependants – this solution discriminates against women who receive lower wages and who are usually responsible for taking care of their children.

In addition to economic migration, migrant women also come to Poland in order to reunite with their families. Often the marital relationships forms the only legal basis for the woman's residence in Poland. In case of divorce or death of the spouse, the woman (if she has not yet obtained the right of permanent residence), may only remain in Poland for one year, even if her children were born in Poland and attend Polish schools. After this period is over, she is obliged to leave the country or find another basis for legalizing her stay in Poland, for example employment, which may be very difficult in case of single mothers.

Unless the Polish government withdraws the reservations they made at the time of signing the *Convention on preventing and combating violence against women and domestic violence* (see below) – a discrimination in access to state compensation for victims of violence shall occur – the third country nationals will be deprived of the claim which will be accessible only for the Polish and EU citizens.

The holders of the tolerated stay permit are in a significantly worse position than the other third-country nationals who have been granted international protection on the territory of Poland. The said permit is granted for the indefinite period of time to persons who cannot be returned to their country of origin. However they do not benefit from the integration assistance (as the recognized refugees and the holders of subsidiary protection do ) and have very limited access to social welfare benefits and no right to apply for family allowance – which is particularly hard on single mothers.

### **Protection from Violence (General Recommendation nr 19)**

Even though the *Convention on preventing and combating violence against women and domestic violence* was signed by the Polish government in November 2012, to this day this instrument – introducing measures more favorable for migrant women than the current Polish provisions – has not been ratified. Furthermore, the Convention has been signed with the reservations to Articles 30 (2) and 44 (4)e that directly apply to women of foreign origin.

Migrant women often originate from patriarchal cultures and communities, where violence against women is common in marital relations. Most acts of violence are not reported to the

authorities, statistics of reported crimes do not provide information about the victims of violence of a foreign origin. Additionally, migrant women do not seek protection if the marriage forms the only legal basis of their residence in Poland (no specific provisions are in place providing for the residence permit in case the breakdown of the marriage was a consequence of domestic violence).

Most migrant women who flee from violence may not rely on the public system of support for the victims of violence – in particular, they may not find refuge in the Crisis Intervention Centers operating on the basis of the law on social aid, which applies only to migrant women with international protection or permanent residence permits. On the other hand, migrant women who are beneficiaries of social services experience discrimination in the process of enrolling in the Centers. They are perceived as persons who may cause trouble, if not personally, then through their male family members who remain outside the center.

### **Access to Health Care (Art. 12)**

Access to free health care for women attempting to obtain international protection is limited through organizational barriers (lack of possibility of choosing the physician or facility), language barriers (physicians employed in facilities serving foreigners are not required to speak any foreign languages, no free interpreters are available) and cultural (requests for consultations with a female physician are not always taken into account)<sup>110</sup>.

Undocumented migrant women cannot access free of charge public health care even during pregnancy, labour and the postpartum period (which is the right of every female Polish citizen). They may only receive free life-saving medical aid provided by emergency medical units outside of public medical facilities. They are obliged to pay (post factum) for all other medical services, including labour and delivery. In practice, undocumented women migrants approach the public health care system only in the most dire circumstances, fearing that their status would be revealed and they would face deportation.

### **Comments to the Governmental report :**

The report of the Polish government does not answer to the recommendations contained in sections 28 and 29 of the Committee's Concluding Comments, presenting only a brief description of the asylum system in Poland. It should be mentioned however that even the system of reception and recognition of refugees fails to notice the vulnerability of female asylum seekers e.g. through the lack of mechanisms of identification of victims of torture and sexual violence, which very often leads to detention of such persons (mainly women), conducting interviews without the presence of the psychologist, with no choice of the sex of the interviewer and no access to psychological consultation or therapy during the refugee procedure. It is also noticeable that the staff of the administrative bodies granting the refugee status is not trained sufficiently to identify the gender-based persecution in the refugee cases they are working on.

### **Recommendations for the Government of Poland:**

#### **Legislation**

- 1) Ratification of the *Convention on preventing and combating violence against women and domestic violence* without the previously submitted reservations as regards Articles 30(2) and 44 (4) e;

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<sup>110</sup>For more information on the female asylum seekers' access to health care see the report (in Polish): Stowarzyszenie Interwencji Prawnej. *Poza systemem. Dostęp do ochrony zdrowia nieudokumentowanych migrantów i cudzoziemców ubiegających się o ochronę międzynarodową w Polsce, 2011* : <http://interwencjaprawna.pl/docs/poza-systemem.pdf>

**Policy**

- 2) Introduction of a comprehensive program of support for migrant women - victims of violence, preceded by a thorough research of the phenomenon;
- 3) Facilitation of the legalization procedure of migrants who have terminated the employment relationship as a result of exploitation or sexual harassment in the workplace;
- 4) Enabling access to state-funded health care for migrant women during pregnancy, labour and the postpartum period and for victims of domestic violence, regardless of the legality of their residence in Poland and their participation in the public health insurance system;
- 5) Facilitation of access to medical services for female asylum – seekers;

**Research**

- 6) Preparation of a comprehensive report on the current social-economic situation of migrant (including undocumented migrants) women in Poland.

## WOMEN WITH DISABILITIES

*Anna Góral (Association for Women's Initiative)*

The situation of women with disabilities is doubly difficult because they are at risk of discrimination on the basis of their disability and of their sex. Women with disabilities are almost invisible in social and political life in Poland. The media image of a disabled woman is a picture of someone who is not self-reliant, lonely, often dependent on others. In addition to stereotypes popular in Polish society and of the media image, other discriminating factors for women with disabilities include architectural and communications barriers. The accumulation of discriminatory features is visible particularly in two spheres: employment and health.

Polish Government signed the *UN Convention on the Rights of Persons with Disabilities* on 20 March 2007, on 15 June 2012 the Lower House of the Polish Parliament approved its ratification with no reservations, and on 6 September 2012 the President ceremoniously ratified it. What is important for improving the situation of women and girls with disabilities is the Article 6 of the Convention, which emphasizes the particularly difficult situation of the double discrimination of women. The upcoming years will show how Poland is implementing the clauses of this article of the Convention.

On 27 May 2011, the Lower House of the Polish Parliament amended the Electoral Code with regard to adapting elections to meet the needs of disabled persons. On 19 August 2011, the Lower House of the Polish Parliament adopted an Act on changing the law on civil service and certain other acts, which is to result in increasing the employment of disabled persons in public administration and other public institutions.

### General statistics on women with disabilities

An institution created solely for the purpose of helping persons with disabilities is in existence in Poland: The National Fund for the Rehabilitation of Persons with Disabilities<sup>111</sup>. The National Fund also deals with conducting research, diagnosing and analyzing data related to persons with disabilities in Poland. Unfortunately, there exists practically no research which treats gender as one of the differentiating factors and which diagnoses the situation of disabled women and girls. The only type of data available from the National Fund is numerical data on the number of disabled women and the percentage breakdown of the types of disabilities from which they suffer.

The most recent data concerning persons with disabilities were collected during the National Census in 2011 and reveal that there are approximately 4,7 million people living with disabilities in Poland.

Women account for almost 53% of all disabled persons (more than 2,5 million). 34% of women with disabilities (870 000) live in rural areas. In 2011 women constituted 46,4% of working disabled persons<sup>112</sup>.

An important aspect which influences the discrimination of women in employment and access to medical services is the type of disability. Data concerning disabled women, disaggregated by disability type<sup>113</sup>, are as follows:

1. Mobility impairments (including persons using wheelchairs) – 46.1%
2. Vision impairment (including blind persons) – 29.5%

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<sup>111</sup> In Polish: Państwowy Fundusz Rehabilitacji Osób Niepełnosprawnych

<sup>112</sup> Data of Central Statistical Office, 2012

<sup>113</sup> Data from The National Fund from 2004

3. Hearing impairment (including deaf persons) – 13.9%
4. Persons suffering from psychological disorders – 7.9%
5. Intellectual disability – 2.5%

In 2013 nearly all programs were transferred from The National Fund to local governments. Currently, programs for people with disabilities are being carried out by District Family Support Centres or similar local government units. At this time it is hard to determine how this change will affect the situation of women and girls with disabilities.

As part of the implementation of the Recommendation Rec(2006)5 of the Committee of Ministers on the Council of Europe „Action Plan to promote the rights and full participation of people with disabilities in society: improving the quality of life of people with disabilities in Europe 2006-2015”, the Polish Government launched outreach campaigns in various forms, concerning the social dimension of disability, especially in case of women and girls vulnerable to double discrimination – due to their gender and disability.

### **Women with disabilities on the labour market**

The labour market is one of the most important spheres of discrimination against women with disabilities. Unfortunately, most disabled women remain professionally inactive. The professional activity rate among women with disabilities of working age is recorded as 27,8% (Central Statistical Office and Labour Force Survey data for the 3<sup>rd</sup> quarter of 2013). This is one of the lowest rates in Europe. In comparison, the professional activity rate among the whole population of working age in 2012 was 69,4%<sup>114</sup>.

The educational level of persons with disabilities influences their professional activity. Women with disabilities have a significantly lower educational level than non-disabled persons: 24,8% have middle- and primary school education, 32,8% - vocational education, 29,8% - at least secondary education, and 12,5% - tertiary education. To compare, the percentage of able persons with vocational education was 24,1%, at least secondary education – 55,3%, and tertiary education – 21,2%<sup>115</sup>.

Low professional activity of disabled persons aged 15 and over (statistics show data concerning people at the age at which they begin their professional activity – professional training in vocational schools) is reflected in the structure of this population disaggregated by income sources. Similar to the previous years, in 2012 the main sources of income were primarily: disability compensation (39,6%, compared to 41,1% in 2011) and pension (36,4%, compared to 34,8% in 2011). 12,87% supported themselves primarily from unemployment benefits, pre-retirement allowance and other social benefits (12,5% in 2011).

The wages offered to women are lower than those offered to men. Women's average remuneration is lower than men's by 17%<sup>116</sup>.

### **Access to health care services**

There exist no statistical data on the health care of women and girls with disabilities. We are only basing this on information obtained from members, clients and collaborators of the Association for Women's Initiative (approx. 500 women).

Health care in Poland does not meet the particular needs of women with disabilities. Problems are usually encountered already when women attempt to enter health care facilities; many are

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<sup>114</sup> Ibidem

<sup>115</sup> Data from Central Statistical Office and Labour Force Survey, 2011

<sup>116</sup> Central Statistical Office (2007), „Kobiety w Polsce”

equipped only with stairs and no elevators are available. Door thresholds can also be an issue, as can be slippery floors and no markings for vision impaired patients.

Walk-in medical facilities, including OB-GYN medical offices, cannot accommodate women with various types of disabilities (women in wheelchairs, vision impaired women, short women). Interpreters speaking sign language are also not available in clinics and hospitals, there are no signs using the Braille alphabet.

However, the biggest problem is the almost total lack of information about the needs of women with disabilities among medical personnel. Employees of health care facilities are not prepared to serve persons with disabilities; they lack the most basic knowledge concerning ways of supporting patients with disabilities. Even physicians do not have basic information about the particular needs of women with various types of disabilities. Physicians treating women who use wheelchairs assume that they are not sexually active. Stereotypes connected to women with disabilities are particularly widespread in the field of preventive care. Objectification of women and prevalence of stereotypes discourage women with disabilities from undergoing prophylactic check-ups. Incompetence of medical personnel and architectural barriers present in health care facilities result in the fact that women with certificates of disability often see physicians only when their illness has progressed to an advanced stage.

The situation of women residing in small towns and rural areas, where access to health care is highly restricted, is the most difficult.

No state policies touch the issue of sexuality of women with disabilities; there exist no programs providing information to women with various types of disability, for example for women with mobility impairment or women with intellectual disabilities.

Women with disabilities also testify to lack of support and information programs for pregnant and postpartum women with disabilities.

## **Violence**

Women with disabilities are particularly vulnerable to violence. This state of affairs is caused by dependence on the perpetrators of violence, lack of access to information and support institutions. This is still an invisible problem – hard to study and detect.

According to specialists who deal with aiding violence victims, women with disabilities often live with the conviction that they have deserved violence, because everyday life with them is very hard anyway<sup>117</sup>.

Dependence on the perpetrator is also significant – they are afraid of losing help with their chores, losing their place of residence and having to move to a welfare centre. Other important factors include financial dependence and the conviction that they will not be helped quickly and competently enough. Women with intellectual disabilities also may not be aware that they are experiencing violence and that they might try to find a way out of this situation. Women with disabilities often live in isolation, do not have the option of contacting support institutions or access to information, are dependent on other people, and sometimes also incapacitated.

From among 10 randomly chosen Warsaw based organizations, specializing in helping violence victims, none are accessible to people with disabilities. The main obstacles are architectural barriers, but obstacles also include e.g. lack of option for a deaf person to make a complaint.

Organizations which provide support to violence victims should also be prepared for aiding people with disabilities, they cannot assume that this group will be taken care of by

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<sup>117</sup> <http://www.niebieskalinia.pl/edukacja/serwis-informacyjny/4894-kobiety-z-niepelnosprawnosciami-sa-bardziej-narazone-na-przemoc-domowa>

organizations which focus on defending the rights of disabled persons.

### **Comments to the Governmental report:**

The governmental report shows actual progress on the way to real and legal promoting of gender equality, including equality for women with disabilities. Particular appreciation should be given to regulations concerning counteracting employment discrimination based on gender and disability, contained in the Act of 14 December 1994 on Employment and Unemployment Counteraction, Act of 20 December 2002 amending the Act on Employment and Unemployment Counteraction, and Act of 20 April 2004 on promoting employment and labour market institutions. Recognition should also be given to the extension of competences of the Government Plenipotentiary for Equal Treatment by matters connected with counteracting discrimination based on disability, which took place at the end of the reporting period in 2010. As part of implementation of the Recommendation Rec(2006)5 of the Committee of Ministers on the Council of Europe „Action Plan to promote the rights and full participation of people with disabilities in society: improving the quality of life of people with disabilities in Europe 2006-2015”, launched outreach campaigns in various forms, concerning the social dimension of disability, especially in case of women and girls vulnerable to double discrimination – due to their gender and disability.

### **Recommendations for the Government of Poland:**

#### **Law implementation**

- 1) Complying with Art. 6 of the UN Convention on the Rights of Persons with Disabilities, concerning the particular protection of women and girls with disabilities, incorporating the resolutions of the Convention into the legal system, strategic planning, and the procedures and practices aimed at improving the situation of women and girls with disabilities;

#### **Policy**

- 2) Taking into account the special needs of women with disabilities in all activities on the national, regional and local levels, particularly with relation to city-planning, education and health care;
- 3) Adjusting public health care facilities to accommodate the needs of women with disabilities, including women with intellectual disabilities;
- 4) Conducting programs and information campaigns about the special needs of women with various types of disabilities, particularly for employees of the health care sector and for employers;
- 5) Removing the existing obstacles and barriers, including architectural, technological and communications barriers, to create equal opportunities for disabled girls and women and enable them to take part in family, social and professional life, particularly via better use of anti-discrimination law and gender equality law;

#### **Data collection**

- 6) Collecting up-to-date data concerning disability, taking into account gender and conducting research which uses gender-equality indicators, in order to uncover the real situation of women and girls with disabilities (suffering from intersectional discrimination);

**Eliminating stereotypes**

- 7) Fighting stereotypes related to women with disabilities; for example by increasing their representation in public media and improving their media image, which will allow the general public to become better acquainted with their lives and which will help women with disabilities to participate and speak out in public life.

## LESBIANS AND BISEXUAL WOMEN

*Zofia Jabłońska (Campaign Against Homophobia)*

Polish society is deeply patriarchal and traditional and the woman's role as a mother and wife is constantly emphasized. Lesbian and bisexual (LB) women are subjected to intersectional discrimination – based on their gender and sexual orientation and therefore suffer most marginalization and silent prejudice. Moreover, they are vulnerable to specific forms of violence. Social expectation that they will lead 'heterosexual' life leads to their discrimination as unproductive members of society. Hate speech and psychological violence cause LB women to suffer from a lot of psychological distress. Data considering lesbians are not available from any public source and data collected by NGOs are scarce.

In 2011 Campaign Against Homophobia conducted a detailed analysis of social situation of bisexual and homosexual persons in Poland.<sup>118</sup> The gathered data show that, fearing discrimination, 33% of homosexual and bisexual women conceal their orientation from their family members. 69% of LGB students to some extent conceal their orientation at universities. 78% of the respondents were not completely open about their orientation in the workplace.

### Legal framework

The Constitution does not *expressis verbis* name sexual orientation as a possible discrimination ground, but at the same time it prohibits discrimination on any ground. However, Constitutional regulations cannot be a sole base for a legal complaint. Other than the Constitution – the ban of discrimination of LGB persons has been implemented fully only in the field of labour law.

The the Act dated 3 December 2010 on the implementation of some regulations of the European Union concerning equal treatment refers to sexual orientation as a possible discrimination ground, but limits the protection to employment related situations, such as self-employment, labour union membership, vocational training, etc. The Act does not ban discrimination in the area of education, access to healthcare or goods and services, neither based on gender nor on sexual orientation.

Polish law does not provide any regulations that concern same-sex partnerships. All the rights concerning couples are reserved for marriages. This is a big disadvantage for all the same-sex couples whose relationships are not legally recognized. However, on 17 May 2011, a left wing party has presented a draft of civil partnership act that, if introduced will provide for legal protection of unions other than marriages – both hetero- and homosexual. Unfortunately the draft does not include any provisions concerning second-partner adoption of a biological child of a partner or any custodian rights. Lack of such legislation is certainly a violation of right to family life of same-sex couples raising children. In Polish reality this issue concerns especially lesbians, because due to other regulations (court practice of assigning custody to child's mother when parents divorce, no adoption rights for same-sex couples and practically no possibility for a single man to adopt a child) gay men have very few possibilities to raise children.

In January 2013 a debate in Parliament took place which once again showed the level of prejudice and homophobia of Polish MPs – three draft bills on civil partnerships were presented and after a violent debate none of them was passed on for further proceedings.

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<sup>118</sup> [http://www.kph.org.pl/publikacje/Raport\\_badania\\_LGBT\\_EN\\_net.pdf](http://www.kph.org.pl/publikacje/Raport_badania_LGBT_EN_net.pdf)

## Violence – General Recommendation no 19

The report<sup>119</sup> shows that 13,9% of nonheterosexual women experienced some form of physical violence. 41,9% of LGB persons who experienced violence have experienced psychical violence three or more times.

A phenomenon that is specific for non-heterosexual women is so-called reparative rape. Twice as many women report being victims of reparative rape as men – respectively 11,5% and 6,3%. No data are gathered by the State solely on the violence on LBT women.

Almost half of LB women (45,9%) experienced psychological violence. That included verbal aggression, insults, spreading of negative opinions, threats, hateful letters, blackmail, devastation of property and other forms of psychological harassment. Data gathered by Campaign Against Homophobia show that women experience more psychological violence in their private sphere – from their family members and in their flats. Fewer women than men report those incidents to the police (1,8% vs 3,5%).

Penal Code provisions include hate crimes committed against people of certain nationality, race, ethnicity and belief. Hate crimes committed against homosexual persons and women are not a specific crime and are prosecuted according to standard procedures. Hate towards homosexual persons and women is not an aggravating circumstance and is not considered as hate crime in the light of the existing law. Consequently, protection is weaker in these cases, compared to situations where the same unlawful act is committed for example for racial reasons. This is reflected in lower sanctions, different prosecution procedure, and more lenient punishments in some cases of agitation for certain crimes/offences to be committed.

Hate speech is very often used by politicians, because they think condemning or ridiculing homosexual persons will gain them support<sup>120</sup>.

## Education (Art. 10)

The education system in Poland is based on stereotypical gender dichotomy and traditional division of social roles. The majority of students of high schools attend there catholic religion classes. The school is a highly religious environment that not only duplicates but actively perpetuates stereotypical hierarchical roles of men and women and traditional, religious family model.

Sex education is only found in the form of a course titled 'Preparation for Family life' and is not a compulsory class. According to the research from 2010, on the middle school level, 70% of schools introduced 'Family life' into their curricula<sup>121</sup>. The students declare that 46% of teachers are not sexologists or psychologists but history teachers or social studies teachers with no additional relevant qualifications. Only 12% of the teachers use textbooks to teach 'Family life'.

The most popular textbook, 'Strolling towards adulthood. Education on family life for classes I-III of middle school' by Teresa Król recommended by the Ministry of Education, contains information that reinforces stereotypical views of gender psychology and social role of girls and women (eg. *"Girls should be aware that they will be the ones to pay for a wrong choice [of sexual partner], because there is no equality in nature. The boy is the giver of life, the 'sower', and she is the 'soil', on which the new life will grow."*) and contradicts modern scientific knowledge about sexual orientation.

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<sup>119</sup> Ibidem

<sup>120</sup> <http://www.pinknews.co.uk/2011/02/10/polish-mp-sorry-for-sexist-lesbian-joke/>

<sup>121</sup> [http://www.edulandia.pl/edukacja/1,112291,9093306,Badania\\_\\_Wychowanie\\_do\\_zycia\\_w\\_rodzinie\\_\\_\\_przedmiot.ht ml#ixzz1II8HeGwN](http://www.edulandia.pl/edukacja/1,112291,9093306,Badania__Wychowanie_do_zycia_w_rodzinie___przedmiot.ht ml#ixzz1II8HeGwN)

The author states e.g. that it is not proven that homosexuality has biological grounds. According to Król, it is sometimes the impact of a dysfunctional family, negative sexual experiences or homosexuality might sometimes be a matter of choice. The author claims that there are known cases of homosexuals 'cured' with help of professionals and the church.

The textbook does not mention the rights of homosexual persons.

According to Campaign Against Homophobia's experience with contacts with school authorities - faculty members of most schools deny that homosexual or bisexual students attend their schools. They say that they 'do not have those kind of problems.' This kind of attitude creates a situation when neither the faculty nor school councilors have the knowledge they require to respond to the specific needs of homosexual or bisexual students.

Students who expose their sexual orientation in school face discrimination from their schoolmates, teachers and counselors. Students often report to Campaign Against Homophobia that teachers inform the parents about their suspected orientation without their consent, call them deviants on class forum and suggest therapy. There has also been a case of two students almost expelled from school for posting lesbian photos of themselves on their social network sites. They were believed to threaten the school's reputation.

### **Health (Art. 12)**

A survey conducted in 2007 using an internet form<sup>122</sup> shows that 81,3% of LB women did not feel comfortable, experienced anxiety, tension and felt threatened by negative social attitudes toward homosexual persons. 8,7% of LB women admitted having tendencies to deliberate self-injury as an effect of lack of acceptance of their own sexuality and 9,1% - as an effect of lack of social acceptance of their sexual orientation. 71,1% felt uncomfortable having to hide their sexual relationships.

23,5% of homosexual and bisexual persons who made their sexual orientation clear to the member of health personnel have been discriminated against. The physicians, including gynecologists and other health personnel, lack the knowledge of women having sex with women, their sexual health and specific needs.

Women in lesbian relationships face the lack of legislations concerning reproductive services. Lack of procedures creates a possibility of discrimination by arbitrary denial of access to treatments.

### **Recommendations for the Government of Poland:**

#### **Legislation**

- 1) Introducing anti-discrimination legislation which includes the definition of discrimination (including intersectional discrimination), as specified in Art. 1 CEDAW, and which protects women from discrimination in all spheres of life, including the protection from discrimination of LB women in education, social protection including social security and healthcare and access to and supply of goods and services;
- 2) Adopting regulations on same-sex partnerships or marriages including adoption and custody matters;
- 3) Amending the Penal Code by penalizing crimes motivated by homophobic and gender biases;

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<sup>122</sup> Bojarska, K., *Zdrowie psychiczne lesbijek i kobiet biseksualnych*: at: <http://kobieta.kph.org.pl/index.php/podrecznik/zdrowie-psychiczne-lesbijek-i-kobiet-biseksualnych/>

**Policy**

- 4) Promoting diverse and non-heteronormative views of the society by formulating and implementing national policies that address the needs of LB women;
- 5) Undertaking specific education programmes for public officials, family judges, health care providers, psychologists, school staff concerning sexual orientation and the need to provide non-discriminatory practices including preservation of dignity and personal data protection;
- 6) Providing counseling services specifically for LB women;

**Education**

- 7) Including sex education in the school curricula as a mandatory class and ensuring educational materials in accordance with current scientific knowledge that reflect a diverse and non-heteronormative views of the society;

**Research and data collection**

- 8) Conducting research on the status of LB women and lesbian families in society, including data on violence and discrimination against LB women.

## TRANS PEOPLE

Wiktor Dynarski (*Trans-Fuzja Foundation*)

### EXPLANATORY NOTES

#### 1. The category of “women” in transgender identities

Taking into consideration the fact the Convention on the Elimination of All Forms of Discrimination against Women aims to establish gender equality, understood as equal rights of men and women, the chapter on situation of trans people in Poland in 2002-2013 will focus on rights of trans women, often described by medical language as MTF (male-to female).

This is – as the author believes – a bow to respecting different transgender identities and the right of a person to decide whether they see themselves in the narrow binary-rooted category of “women” or not. In this meaning, what the Convention refers to as *woman* the text of the chapter understands as:

- 1) a person whose gender expression is visibly feminine but their other characteristics have been recognized by the society (in various ways) as masculine
- 2) a person who identifies with the female category without taking any actions aiming to have the feeling of femininity officially recognized in their documents
- 3) a person who may or may not identify as female and decides to undergo legal gender recognition (and, if applicable, also different gender reassignment procedures) from male to female

All those persons – whether agreeing on being labeled as trans women or not – suffer discrimination in various fields because of the strict binary views on gender in the Polish society and lack of efficient law that would embrace all modern transgender identities and therefore will be acknowledged in this chapter.

#### 2. Trans men and women rights

Trans men, often referred by the modern medical language as FTM (female-to-male) are also prone to gender-based discrimination, whether being legally recognized as male or not. The question of identity and expression within this group is also important. Women-identified (who do not identify with the trans masculine spectrum, but still express their gender in a somewhat masculine way) persons may become victims of discrimination and transphobia because of their visible or believed male gender expression. This, however, is also closely linked to homophobia, since both transphobic and homophobic actions or views are difficult to distinguish within the Polish society.

Some trans men may be taken into consideration within the text of the Convention because of some biological features of their body. “Maternity” is not precisely defined and therefore may be a subject of transgender rights, i.e. for those persons who gave birth to their children and then had their gender recognized as male, those who gave birth after having their gender marker changed or those who, for various reasons, decide to not have their gender legally recognized, but still identify as male.

Taking the above into consideration, the chapter will acknowledge male-identified or male-expressed persons where possible, especially when the pointed out problems are of concerns of transgender persons of all identities, if any, or problems traditionally seen as female but applicable to trans men.

### 3. Intersex status and CEDAW

The Convention does not refer to those persons who are not deemed by society as either male or female or who have been recognized as either non-female and non-male and have that status indicated in their IDs, nor does it take into consideration the issue of intersex status. Given that the definition of *a woman* is extensively broad in the text itself, the author of this chapter decided to include most pressing issues regarding a person's intersex status in Poland.

It is important to state that Poland is yet to witness research on the situation of intersex people, hence most of the information concerning intersex individuals, unless stated differently, is based on the few experiences of human rights and LGBTQI non-governmental organizations.

### 4. Gender recognition in Poland

It is important to note that even though the Polish legal system does not require a person to undergo sterilization procedures nor genital surgery (this is due to the fact that sterilization is illegal in Poland<sup>123</sup> and may not be performed unless medically necessary) in order to have their gender legally recognized (either as male or female), there is no actual law on gender recognition. The process itself requires a civil court case which leads to several complications, especially with the fact that the parents of an adult person are involved in the process and may sometimes delay the court decision on changing the gender marker<sup>124</sup>.

This has been recognized as a problem by the Human Rights Defender in 2011 who decided to discuss it further with the Polish NGOs to find a possible solution until a Gender Recognition Bill is drafted.

The legal practice on the matter is also nontransparent and unequal. While both trans men and trans women are expected to undergo a period of hormone therapy to “physically resemble the gender they want to be assigned to”, trans men are forced to undergo chest surgeries which is in deep violation of basic human rights, especially the right to physical integrity. This problem was reported to the Human Rights Defender but still remains a subject which is difficult to approach due to the lack of a Gender Recognition Bill.

In May 2012 a draft of the law (referred to in English as *The Gender Accordance Act*) was proposed to the Parliament by the first Polish trans-gender MP who, together with the Trans-Fuzja Foundation, prepared the proposal<sup>125</sup>. To undergo gender recognition, a person would have to have Polish citizenship; be over 18 or over 13 years of age (the latter requires an approval from their legal guardians or the guardianship court), be unmarried. The applicant would also have to submit a statement that gender identity differs from their legal gender and a statement from a healthcare professional confirming a durable gender identity differing from the person's legal gender. The applicant would then have to take part in a court hearing to finish the process. The draft also forbids irreversible medical interventions on intersex children and infants and creates a possibility for those children to undergo gender recognition upon reaching the age of 13. The current version of the draft has been shaped by the legislative process within the Parliament (although it does differ much from the original version). It is expected that the first reading will be scheduled for early 2014.

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<sup>123</sup> This is due to tight prescriptions on sterilization generally in Polish law, in Article 156 of the Polish Criminal Code.

<sup>124</sup> Some of the aspects of legal gender recognition have been analyzed and commented on in a recent publication, see: Śledzińska-Simon, Anna, ed. *Prawa osób transseksualnych. Rozwiązania modelowe a sytuacja w Polsce*. Warszawa: Wolters Kluwer, 2010 and Śledzińska-Simon, Anna, [in:] Dynarski, Wiktor, Śmiszek, Krzysztof, ed. . Warszawa: Fundacja Trans-Fuzja i Polskie Towarzystwo Prawa Antydyskryminacyjnego, 2013.

<sup>125</sup> The Polish version of the draft law is available at [http://transfuzja.org/pl/artykuly/oswiadczenia/projekt\\_ustawy\\_o\\_uzgodnieniu\\_plci.htm](http://transfuzja.org/pl/artykuly/oswiadczenia/projekt_ustawy_o_uzgodnieniu_plci.htm).

In late 2013 the government has presented its own outline of a gender recognition law<sup>126</sup>. The outline creates a two-step gender recognition process, where a specialized commission, aimed to assess person's diagnosis, would be created. Unmarried status of the applicant is required. The government draft uses identity structures coming from the medical language and refers to "transsexual identity", instead of gender identity. The outline also introduces a special ID document for persons in transition – those whose appearance differs from their official data. What Trans-Fuzja Foundation hopes for is that when an actual gender recognition legislation is adopted, it would follow a human rights standard approach so that "TRANScards" or similar documents would not be needed. The government outline is also criticized for the drafting and consultation process. Consultations were held mainly with sexologists, whose knowledge and practice still follow procedures established in the 1980s, and no human rights organization has been invited to partake in the process. Trans-Fuzja Foundation, who learned about the government work quite early, applied for such a status but the application was denied, even though it is still the only organization in Poland working exclusively and continuously for transgender, intersex and gender-variant issues.

## MAIN CONCERNS AND THEIR DESCRIPTION

Even though transgender persons face a number of issues in different fields, the chapter focuses on general discrimination (particularly seen from the perspective of establishing the Act dated 3 December 2010 on the implementation of some regulations of the European Union concerning equal treatment), discrimination and issues linked to employment (as Trans-Fuzja Foundation has reported many cases of individuals being victims either of direct discrimination or the inefficient legal system) and health issues which touch both the subject of healthcare in general and its approach to trans people, as well as healthcare related to gender reassignment and issues often labeled as specific for the transgender population.

### 1) Discrimination

Transgender persons, particularly trans women, often face discrimination based on their gender identity and/or gender expression. Cases reported to Trans-Fuzja Foundation more often concern trans women as they are believed to be more visible in the Polish society due to different conceptualization of masculinity and femininity. However there have been also cases reported by trans men, most of them not being legally recognized as male, who have been either discriminated on the basis of believed sexual orientation (i.e. a heterosexual trans man was seen as a lesbian and therefore discriminated against) or sexually harassed in the work place.

About 25% of transgender people have had experiences with discrimination based on their transgender status<sup>127</sup>, more than 70% decided not to come out as transgender in the workplace (neither pre- nor post transition), claiming that it was a necessary step or their need. These numbers indicate that in general the workplace cannot be considered a safe environment for transgender people.

Discrimination of trans people in Poland (in any context) has been a major subject of concerns for all transgender and LGBT organizations since Polish law does not cover nor gender identity nor gender expression in any kind of law. The Act dated 3 December 2010, even after a dramatic lobbying process, does not include those features as possible discrimination grounds. This leaves

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<sup>126</sup> The Polish version of the outline is available at <http://bip.kprm.gov.pl/kpr/form/r828.Zalozenia-do-projektu-ustawy-o-zmianie-ustawy-Kodeks-postepowania-cywilnego-usta.html>.

<sup>127</sup> All data, unless otherwise specified, cited from the research report *Situation of LGBT Persons in Poland. 2010 and 2011 report*, ed. M. Makuchowska and M. Pawłęga, 2012. Available at [http://www.kph.org.pl/publikacje/Raport\\_badania\\_LGBT\\_EN\\_net.pdf](http://www.kph.org.pl/publikacje/Raport_badania_LGBT_EN_net.pdf).

transgender people still unrecognized by the legal system and therefore they become more prone to discrimination.

It needs to be pointed out that the Republic of Poland recognizes their citizens on the basis of their legal status. This means that a trans person is able to enjoy all their rights as a gendered person only when they have been recognized in the preferred gender, i.e. a trans woman who has been discriminated against while still being recognized as male cannot point out that she was discriminated against on the basis of sex, because her legal status does not match her identity and/or expression.

## **2) Employment**

Major issues are being faced by transgender people everyday within the field of employment. In fact, a number of transgender persons faces unemployment which is caused by numerous discriminatory actions often justified by the lack of a trans-inclusive law and/or discrimination faced by trans people in education or stigmatization in their families.

The causes of transgender unemployment differ in the whole country but a couple of points can be raised at this point:

- A number of trans people fail to finish their education on a level that would prepare them for the labour market. This is often caused either by bullying, family or personal issues which force transgender individuals to drop out from schools.
- Transgender people are often discouraged during job interviews, especially on the grounds of their gender expression or their legal status (i.e. passing as a woman, but not being yet recognized legally as female). There are no legal procedures that would prevent those kinds of situations.
- After leaving the workplace (for various reasons) transgender people who went through legal gender recognition often receive employment proving documents stating their previous legal status, both the name and gender, which definitely closes the route to gaining a job fitting their qualifications. This problem concerns especially those who do not want to disclose their transgender status.

Another problem within the employment field is harassment which has been reported by both trans women and men. Verbal abuse coming from co-workers constitutes about 25% of all discrimination incidents, while almost 18% of all verbal harassment is committed by managers. 14% of transgender employees face exclusion in their workplace and 10% have indicated (among other issues) that they have been subjected to sexual harassment in the workplace. This is an issue that is difficult to approach mostly due to the fact that transgender people are not only afraid of losing their jobs when reporting the case but also are not educated on their rights as employees or legal measures that can be taken after such an incident occurs. It is also crucial to note that in most reported cases harassment (also sexual) in the workplace starts after a person decides to come out as a transgender person, which would underline how transgender is viewed within some spaces.

The Gender Accordance Act proposal introduces an obligation for employers and institutions to issue documents proving one's education or professional experience for persons who have gone through the gender recognition process.

## **3) Health**

The highly gendered healthcare system in Poland is known for its non-trans-inclusive services. Transgender women and men who went through legal gender recognition face problems registering to a doctor who specializes in themes seen as either male or female problems. There

have been reports of trans women not being able to register for a visit to an andrologist, as well as trans men having the same issues with gynecologists.

Trans people who were, however, able to visit their chosen doctor often face medical professionals who are not only uneducated on trans issues, but also prejudiced and therefore not being able to provide trans people with needed health assistance.

A typical issue that trans people face in the healthcare system is the lack of state funding for gender reassignment procedures. This not only means not being able to afford surgeries but also problems with being able to pay for hormone therapy (extremely pricey for trans women), which every trans person needs to undergo before being legally recognized. This is also linked with problems faced in pharmacies, trans people (especially trans women) who were not yet recognized legally in their preferred gender have reported a few cases of pharmacists denying a person state-approved reimbursement, justifying their actions by the fact that a male cannot buy female hormones at a reduced price.

## **GOVERNMENT ACTION ON SELECTED PROBLEMS AND THEIR APPRAISAL**

### **1) Discrimination**

The question of gender identity and gender expression being covered by the Act dated 3 December 2010 was approached by the government as useless due to the fact that sex has been already recognized as a discrimination ground and that should be sufficient for transgender issues. This approach is viewed as a sign of a lack of transgender sensitivity in the Polish government. The already reported cases have shown that not only “sex” is a ground which does not cover transgender issues, it is also believed that trans people would feel more confident in reporting discrimination and transphobic cases more often if such grounds as gender identity and expression were recognized as stand-alone discrimination grounds.

It has been observed that the Human Rights Defender is willing to work on the issue, this was – however – stated in 2011.

### **2) Employment**

The Polish government does not monitor the unemployment issues of trans people nor the problems of harassment. There was no will towards employment equality.

### **3) Health**

State reimbursement of gender reassignment procedures has always been a problem for the Polish authorities. The previous Human Rights Defender stated – during a meeting with trans activists – that he was able to work on problems with state documents, but he was not willing to work on bringing back reimbursement for transgender-specified surgeries.

Since the work on the Gender Accordance Act, Trans-Fuzja has contacted the Ministry of Health numerous times on the subject of insurance coverage of hormone therapy and surgeries for transgender people. Although the Parliament seems to present a lack of understanding of those issues, the government itself is willing to work towards introducing insurance coverage for those procedures and it might become a part of the already outlined draft law.

## **FINAL COMMENTS**

Trans-Fuzja Foundation was extremely satisfied to note that some of the current officials are willing to work towards transgender equality. It is sad, however, to see that most of the cases are being dealt with by the Human Rights Defender only (both the previous and the present one).

It is also satisfying to see the government taking a stand on transgender issues and acknowledging that a gender recognition law needs to be adopted. It is to great dissatisfaction, however, that gender recognition and transition are seen mostly as a medical issue and not as a human rights concern. To the Trans-Fuzja Foundation, who has been following the international human rights standards of gender recognition and issues related to gender identity, gender expression and intersex status, this kind of approach shows how much more work needs to be put into the education of policymakers on the subject of transgender human rights.

**Recommendations for the Government of Poland:**

- 1) Introducing an all-inclusive gender recognition act to stop the current complicated court practice. Human rights standards and voice from the transgender community should be taken into consideration when drafting such an act;
- 2) Amending gender identity, gender expression and intersex status into possible discrimination grounds in all areas of life in the Polish legal system or ensuring that they are covered by discrimination based on gender;
- 3) Constant monitoring of the situation of transgender and intersex employees and ensuring that every trans person is protected in their workplace. An educational campaign on transgender employees rights should be launched and the problem of employment proving documents should be addressed as soon as possible;
- 4) In-state gender reassignment procedures to be covered by state health insurance as they are crucial to the transgender population's well-being. All gendered healthcare matters should be dropped or altered so that they reflect the needs of trans people and their access to healthcare and medicine.

## ANNEX 1

Table 4. Economically active population by level of education and sex in 2003 and 2010 (in thousands)

	Total	Tertiary	Post Secondary	Vocational Secondary	General Secondary	Basic Vocational	Primary **
<b>2003</b>							
TOTAL Population by level of education	30 953	3 362	852	6 169	2 790	8 430	9 349
TOTAL Economically active by level of education	16 945	2 682	623	4 249	1 328	5 812	2 249
WOMEN by level of education	16 205	1 854	650	3 138	1 961	3 248	5 353
WOMEN Economically active by level of education	7 773	1 469	465	2 021	896	1 923	998
MEN by level of education	14 748	1 508	202	3 030	830	5 182	3 996
MEN Economically active by level of education	9 173	1 213	158	2 227	432	3 890	1 252
<b>2010</b>							
TOTAL Population by level of education	31 674	5 745	942	6 401	3 359	7 829	7 398
TOTAL Economically active by level of education	17 660	4 643	647	4 286	1 619	5 017	1448
WOMEN by level of education	16 624	3 350	692	3 144	2 167	3 064	4 207
WOMEN Economically active by level of education	8 017	2 649	446	1 836	921	1 604	562
MEN by level of education	15 050	2 395	250	3 257	1 193	4 765	3 190
MEN Economically active by level of education	9 643	1 994	201	2 450	698	3 413	887

Source: Central Statistical Office (2011)

\*\*This includes Lower Secondary, Primary and Incomplete Primary

Table 5. Activity rate by level of education and sex in 2003 and 2010\*\*\*

	<b>Tertiary</b>	<b>Post Secondary</b>	<b>Vocational Secondary</b>	<b>General Secondary</b>	<b>Basic Vocational</b>	<b>Primary **</b>
<b>2003</b>						
WOMEN	79,2%	71,5%	64,4%	45,7%	59,2%	18,6%
MEN	80,4%	78,2%	73,5%	52,1%	75,1%	31,3%
<b>2010</b>						
WOMEN	79,1%	64,5%	58,4%	42,5%	52,4%	13,4%
MEN	83,3%	80,4%	75,2%	58,5%	71,6%	27,8%

\*\*\*Own calculation on the basis of Central Statistical Office, 2011

\*\*This includes Lower Secondary, Primary and Incomplete Primary

Table 6. Average gross wages by education and wage gap among women and men in October 2008 \*\*\*

<b>Level of education</b>	<b>Women Average gross wages- PLN</b>	<b>Men Average gross wages- PLN</b>	<b>Wage gap</b>
Total	2 892,88	3 557,24	18,7%
Tertiary with academic degree	3 904,77	5 694,86	31,4%
Tertiary – license and certification	3 455,89	5 311,50	34,9%
Post secondary	2 783,38	3 252,72	14,4%
Vocational secondary	2 557,13	3 184,45	19,7%
General Secondary	2 499,59	2 975,78	16,0%
Basic vocational	1 799,08	2 696,18	33,3%
Lower secondary	1 653,88	1 913,38	13,6%
Primary & incomplete primary	1 798,83	2 573,96	30,1%

\*\*\*Own calculation on the basis of Central Statistical Office, 2009

Table 7. Employed persons by sex and level of education in 2010 (in thousands)\*\*\*

	<b>TOTAL</b>	<b>Tertiary</b>	<b>Post &amp; Vocational Secondary</b>	<b>General Secondary</b>	<b>Basic Vocational</b>	<b>Primary (1)</b>
TOTAL	16 075	4 557	4 449	1 417	4 462	1 190
WOMEN	7 231	2 578	2 017	797	1 375	464
MEN	8 844	1 979	2 432	620	3 087	725

\*\*\*Own calculation on the basis of Central Statistical Office, 2011