



*Federation for Women  
and Family Planning*



## **REPORT**

**July 2009**

To the UN The Committee on Economic, Social and Cultural Rights  
in connection with the Fifth Periodic Review of Poland

Submitted by

Federation for Women and Family Planning  
(The FWFP has a Special Consultative Status with UN ECOSOC)

Campaign against Homophobia

Women's Rights Centre

### **INTRODUCTION**

Although Poland has ratified several international human rights documents, conventions and protocols; and voluntarily pledged to ensure “respect for all human rights and fundamental freedoms without any exception” it continues to fail to protect rights related to sexuality, reproduction, women’s personal safety and gender equality which remain seriously violated in Poland. A number of UN Treaty Monitoring Bodies (TMB), including Human Rights Committee (1999, 2004), Committee on the Elimination of Discrimination Against Women (2007) as well as Committee on Economic, Social and Cultural Rights (1998, 2002), Committee on the Rights of the Child (2002), Commissioner for Human Rights of the Council of Europe and the European Court of Human Rights expressed concerns about the breach of sexual and reproductive health and rights (SRHR) as well as insufficient measures protecting women against gender based violence. The Government has failed to implement recommendations related to SRHR made by TMBs. In May 2009 UN Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health during his mission to Poland on 5-11

May 2009 issued preliminary conclusions and observations in which he expressed numerous concerns re the observance of SRHR, available at:

<http://www.unhcr.ch/hurricane/hurricane.nsf/view01/F1269CA5311CDAF3C12575B50041AEBE?opendocument>

## **ARTICLE 2, 3, 6, 7 – EQUAL RIGHTS OF WOMEN AND MEN, NON-DISCRIMINATION; RIGHTS TO WORK AND RIGHT OF EVERYONE TO THE ENJOYMENT OF JUST AND FAVOURABLE CONDITIONS OF WORK**

The Ministry of Labour and Social Policy (Department for Women, Family and Counteracting Discrimination) is responsible for the coordination of activities concerning the status of women and family in the society as well as fulfillment of objectives concerning counteracting any and all forms of discrimination. The Ministry is the successor of the Government Plenipotentiary for Equal Status of Women and Men and was notified the European Commission as the institution for equal treatment within the effective directives.

Fulfilling the obligations towards the United Nations, the government of the Republic of Poland established the Office of the Government Plenipotentiary for Family and Equal Status of Women and Men in October 2001. In 2005, after PiS won the elections, the Prime Minister Marcinkiewicz disbanded the office, explaining his decision by the necessity of financial savings within government administration. Since 2005 within the structure of the Ministry of Labour and Social Policy there has been the Department for Women, Family and Counteracting Discrimination whose activities are supervised by the Minister. The Department can not be regarded as national equality body since it lacks basic competences as: independent assistance to victims of discrimination, power to issue independent decisions, reports and recommendations, independent and separate budget, independent policy, independent structure and independence with regard to interventions.

Simultaneously, on April 30, 2008, the Council of Ministers established the Office of the Government Plenipotentiary for Equal Treatment „(...) acting in the area of counteracting discrimination involving sex, race and ethnic background, religion, believes, age and sexual orientation<sup>1</sup>”, who is to be engaged in „the government’s policy issues concerning equal treatment and conducting analyses as well as evaluation of legal solutions taking into account the equal treatment being respected<sup>2</sup>”. **Due to the fact that the Plenipotentiary acts at the Council of Minister Office, not at the Ministry of Social Care and Labour, it is not completely clear who should be responsible for counteracting discrimination involving sex and sexual orientation and to what extent.**

**What has to be underlined, there is a significant lack of horizontal and comprehensive equality legislation in Poland, which would ban discrimination in the field of culture, education, economic and social rights.**

The draft Act on The Equal Status between Women and Men , in accordance with the recommendations of the Beijing Platform, was prepared by the group of independent experts already in 1997 thanks to the initiative of non-governmental organizations. Since then it has been modified and presented in the Parliament several times, yet it has not been supported enough or adopted.

After Poland joined the EU, there have appeared new reasons for adoption not only of the Equal Status between Women and Men law but also of the broader Equal Treatment legislation because of the necessity to fulfill the provisions of anti-discriminatory EU directives by Poland. This resulted in the change of the name of the Act (to Act on Equal Treatment) and its scope as a result of which it was no

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<sup>1</sup> Government Order of 22 April

<sup>2</sup> Item 260 of the 6<sup>th</sup> Interim Report of Republic of Poland

longer the document focused on political, social and economic rights of one group, namely women in all aspects of life, and became a document on rights of minorities as well as discriminated groups, including women, first of all in one aspect of life, namely, the labour market. As a result of the European Union leaving the issue of reproductive rights and women's rights within the family to be decided by the member states, the mentioned issues have not appeared in the draft of new Act in spite of having appeared in the earlier versions and currently appear in the human rights conventions by the UN ratified by Poland.

Under the threat of financial sanctions Poland is obliged to prepare the Act on Equal Treatment and have adopted by Sejm as soon as possible. It is the Ministry of Labour and Social Policy which is to prepare the draft Act. The last proposal presented by the Ministry (of 25 September 2008) has been consulted with the nongovernmental organizations environment and is named as „Act on Introducing certain EU provisions concerning equal treatment”, which fully reflects its character. This is a document which is assumed to limit itself to adopt only certain provisions of the EU law and is not going to be a full Act on Equality. What is worrisome, the Government decided not to establish a special mechanism on equal treatment but is planning to pass over equal treatment portfolio to very controversial Ombudsman for Human Rights Mr. Janusz Kochanowski who recently publicly stated that he does not like feminists because they do not like other women. Although he apologized for this outrageous statement, it reflects well his attitude toward gender equality policies. He is also strong opponent of the legislation introducing quota system for increasing of political participation women. This draft has not still been accepted by the Council of Ministers.

The Act focuses on the change of competence of the Ministry of Labour and Social Policy and determines the scope of competence within government but it neither refers to all forms of discrimination nor introduces the independent mechanisms which guarantee introducing and monitoring equality policy. Provisions of the Act do not encompass the private and family life spheres; thus they do not regulate the issues of equal treatment and discrimination counteracting as a whole not only as far as the labour market is concerned but also as far as all life spheres are concerned, including private life. The proposal of establishment of an institution of appeal, of its independent character, being established in order to monitor equality right and to provide help for discrimination victims, in the Ministry of Labour and Social Policy is contradictory to assumptions concerning the independence of an appeal instance.

The EU directives impose an obligation on the member states to adopt the law and conduct active anti-discriminatory policy, namely to establish an institution, the role of which would be providing help for discrimination victims, conducting independent research concerning discrimination, publishing reports and issuing recommendations concerning counteracting discrimination. According to the draft Act, the mentioned tasks are to be fulfilled by the General Inspector for Equal Treatment. In compliance with the draft Act however, the General Inspector for Equal Treatment is not to constitute an independent institution responsible for the control over equality law observance. In accordance with the draft Act of September 2008, it is the Minister of Labour who is to nominate the General Inspector who is to be employed in the Ministry of Labour and Social Policy in the rank of the Secretary of State. Thus it is planned to establish the office of an Inspector which will report to the minister responsible for introducing equality policy which will be monitored and assessed by the Minister. Furthermore, the competence of the Inspector would involve providing help including legal help not for natural persons, but only for legal persons. As a consequence, the General Inspector would not be able to receive complaints from the citizens, although the institution of an ombudsperson (in this case the General Inspector) in its character should be open for citizens. Particularly, persons who belong to different minority groups feel discriminated in Poland and demand to have their ombudsperson.

Until today, the law on equal treatment which would prohibit discrimination outside employment has not been introduced. As mentioned above, there were many versions of the draft laws, unfortunately, none of them included any provisions with regard to prohibition of discrimination on the ground of gender identity or multiple discrimination (which affects for example lesbian women or lesbians from ethnic minority groups). There is no national equality institution in Poland which performs all competences prominently laid down in a number of key documents: the UN “Paris Principles”; Council of Europe's

ECRI general policy recommendation Nr 2; EU Directive 2000/43/EC (Art. 13); EU Directive 2002/73/EC amending Council Directive 76/207/EEC (art. 7 inserting art. 8a.); EU Directive 2004/113/EC (art. 12); EU Directive 2006/54/EC (art. 20).

**Whatever solution finally is accepted, it is clear that there is no political will to introduce strong, functional and transparent mechanism. The entire process is aimed primarily at eliminating the risk of payment of the EU sanctions and transfers the whole competence concerning equal treatment to the Ministry of Labour, giving the control over the appeal instance to the Ministry as well.** From the equality perspective, the draft Act constitutes the legal act which will lead to creation of greater equality illusion, namely, the situation, where the state is to be able to say that it fulfills the equality directives simultaneously protecting itself against the possible control and accusations of discrimination and lack of the actual equal treatment. Furthermore, a such solution still will not determine the competence of the Office of the Government Plenipotentiary for Equal Treatment. It will not be clear who is responsible for the equality policy. Thus still, the intention of the assumptions of the Act on Equal treatment is not clear and it is difficult to predict whether it will be adopted or not. Especially taking into account the fact that new drafts are being prepared but the work of government on the next drafts is not transparent and the process of consultation with non-governmental organizations is far from perfect.

**Last minute comment, the Government publicly announced its decision not to establish any effective institutional mechanisms on equal treatment but is only planning to pass over some very general equal treatment competences to the Commissioner for Civil Rights Protection. The Commissioner's competences laid down in the draft law, in view of the NGOs active in the field of equality, are not effective enough to effectively combat discrimination. The Commissioner will not be granted any additional and specific powers to effectively counteract discrimination. It is important also to underline that the current Commissioner Mr. Janusz Kochanowski is a very controversial public officer and he recently publicly stated that he does not like feminists because they do not like other women. Although he apologized for this outrageous statement, it reflects well his attitude toward gender equality policies. He is also strong opponent of the legislation introducing quota system for increasing political participation of women.**

## **DISCRIMINATION BASED ON SEXUAL ORIENTATION**

Campaign against Homophobia (KPH) would like to draw attention of the Committee to the fact that the discrimination based on sexual orientation has become a public issue after years of silence. Within the period of the last few years Poland has adopted only some provisions concerning the prohibition of and counteracting discrimination based on sexual orientation in employment. Statistics show that discrimination on the ground of sexual orientation is wide spread. According to research<sup>3</sup> carried out in 2005-2006 by Campaign Against Homophobia and Lambda Warsaw (another non-governmental Polish organisation dealing with discrimination in the ground of sexual orientation) a substantial part of the Polish LGBT population still suffers from discrimination, violence and unequal treatment. All details are included in the report attached.

In the period of 2005 -2007 Polish government run and developed homophobic policy. The biggest effort was made in the field of education. Deputy Prime Minister and Minister of National Education stated many times, that there is no place at Polish schools for gay and lesbian teachers. According to the homophobic policy, Ministry of National Education prepared special law proposal on "Prohibition of homosexual propaganda at schools". The law proposal was aimed into the possibility of discussion on tolerance an equality of LGBT people, but there was a big risk that due to the provisions of the law, LGBT people could be excluded from the employment at schools. The law has never come into force, but the atmosphere of fear and homophobia remained at Polish schools and touches LGBT employees.

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<sup>3</sup> "Situation of bisexual and homosexual persons in Poland. 2005 and 2006 report", Edited by Marta Abramowicz, Warsaw 2007, (attachment)

## ARTICLE 6 – RIGHT TO WORK

KPH also would like to draw attention of The Committee to the fact, that Polish anti-discrimination regulations in the field of employment does not explicitly cover self-employment neither membership in many self-governing professions (i.e. advocates, legal advisers, architects, doctors). KPH would like to also underline the fact, that Polish anti-discrimination regulations in the field of employment does not cover clearly ground of gender identity. Such regulation could be a very helpful legal tool for all transgender and transsexual persons suffering from discrimination at work. We believe, that including clear and precise provision prohibiting unequal treatment on the ground of gender identity would have educational dimension as well as could be an effective way to encourage people discriminated on the ground of gender identity to fight for their rights.

KPH would like to draw attention of The Committee to the fact, that Polish Government has never worked out any national anti-discrimination strategy which would be aiming at an effective counteracting discrimination of LGBT people, especially in the field of employment. Also, there is no example in Poland of effective collaboration between employers and workers organisations in combating discrimination on the ground of sexual orientation and gender identity. Government has never encouraged any social dialogue parties (trade unions and associations of employers) to cooperate together to counteract discrimination on the ground of sexual orientation and gender identity. KPH would also like to underline the fact, that Polish Labour Inspection has never undertaken any step to effectively promote anti-discrimination provisions concerning sexual orientation and gender identity. There is a big lack of reports and studies prepared by Polish Labour Inspection regarding the level of discrimination and homophobia in the field of employment.

Women's Rights Center would like to indicate that although Poland's accession to the EU resulted in the adoption of the anti-discriminatory provisions to the labor law its implementation is far from being satisfactory. There is practically no governmental policy and strategy at the national as well as regional and local level aimed at preventing and combating gender based discrimination. Existing legislation is not well known among employees and there have been no campaign nor any educational effort to promote new legislation among employees, employers and trade unions members. There is also no adequate institutional framework aimed at providing assistance to women and other people who face discrimination at the labor market. NGOs working in this filed are not able to fill this gap for the lack of financial and human resources. Existing system of financing of NGOs based on projects does not ensure adequate resources and therefore stability to carry out this work on the regular basis. This system results in lack of sustainability and lost continuity of activities and undermines the quality and effectiveness of their work. Many NGOs which develop their expertise in the filed and build their own system of assistance over the years gradually may be refused the next grant and the newly established NGO or semi NGO (without any mission behind and expertise) created simply to be able to access financial resources available for instance for trainings. They than will need time and resources to build also their own expertise. The existing system of financing NGOs results in waste of financial and human resources and is a serious barrier in building effective and sustainable system of preventing and combating gender based discrimination.

Although women are better educated than men amongst professionals, their position in the labor market is much weaker. Women earn, on average, less than men and are the first to be fired and the last to be hired. Job offers are often gender and age specific, which, in practice, discriminates against women. A woman's physical appearance is often weighed, and most offers are for secretarial positions, while men receive managerial jobs.

The activity and employment rate is much higher for men. By the end of 2008 activity rate for men was 62,5 % and for women 46,2%; the employment rate respectively 58,4% for men and 42,6% for women. The number of women unemployed is also higher than that of men. Unemployment rate for men by the end of 2008 was 6,5% and for women 7,7%. Unemployed women also faced greater hardship than men did because they remained unemployed longer and experienced more difficulty in finding new jobs. The number of training courses and new job openings differs significantly for men and women. The

decreased access to childcare facilities and increased prices for services have seriously affected women's possibilities in the labor market, especially for those poorly paid. Women (not men) seeking a job experience many discriminatory practices, they are often asked about their reproductive plans, number of children and other personal questions. Their reproductive status (having children, planning to have them) are at stake whenever employers make decision about employment and women's reproductive functions often play against them.

Women victims of violence are among those the most vulnerable. Battered women are more likely to become the long-term unemployed. They earn much less than women who have never been abused by their partners. Recent studies verified the hypothesis on the relationship between domestic abuse and women's position in the labour market, particularly as regards the barriers and difficulties they face. It seems to be a "Catch 22" or "no-win" type of situation. Financial and emotional dependence makes them more susceptible to violence and makes it difficult for them to leave an abusive intimate. On the other hand, staying in abusive relationship leads to increased problems in finding and maintaining employment, in reconciling work and family life and it adversely affects the situation of children.

Studies find that bodily and psychological harm caused by continuous stress adversely affect women's ability to fulfil their professional duties. Victims of violence take more sick leaves, come late to work, and so forth, which can undermine their position and lead to the loss of employment. Additionally, staying in abusive relationship makes it difficult for victims to raise their education and professional skills. Abusive intimates often forbid women to enter employment, or they harass them in the workplace trying to discredit them and cause their dismissal. They are well aware that economic independence can help their victims to leave an abusive relationship thus depriving them of the power and control over them.

Interviews with employers have revealed that employers have little knowledge of domestic violence and specific barriers faced by women victims in the labour market. They hardly take any measures to improve the situation of these women. They rarely offer flexible work arrangements or provide child care centers. Women who are considered troublemakers are often dismissed. Low awareness of the complexity of domestic violence among employers and the lack of laws regulating specific situation of victims of violence as well as the lack of institutional solutions not only adversely affect women's position in the workplace but also their willingness to leave an abusive relationship. The studies conducted by the Women Rights Center as well as many other foreign studies show that employers' attitudes plays a very important role in encouraging women to seek financial independence. Government should play more active role in taking into consideration specific needs of women victims of violence in the labour market by creating legislative framework and by addressing employers and employment agencies to pay special attention to the needs of those women.

#### **ARTICLE 9, 10,11 – RIGHT TO SOCIAL SECURITY .....**

The lives of victims of violence are governed by fear – often simply fear of being beaten up and afraid of leaving violent relationship because of lack of financial resources and safe place to go. As a result of brainwashing (their partners make them believe: that they are worthless, uneducated, unattractive, that no court would grant them custody of their children and that, all in all, they should be grateful to their partners for not leaving them), women often feel worthless, have no self-respect and cannot believe that they would be able to cope with life after leaving an abusive partner. Moreover, many women believe that they should stand abuse for the sake of their children and find strength to quit only when children themselves become victims of violence. They are often too afraid that they wouldn't be able to earn their living, to find and maintain an appropriate housing and that their children would be taken away from them, because they would not be able to provide proper care for them.

The lack of a comprehensive system of assistance to women victims of violence including institutionalised access to information, counselling, medical and social care, housing, legal aid, shelters, prevent many women from enforcing their rights and leaving violent partner. Continuous violence tends

to increase and take more brutal and drastic forms. It poses serious threat to women's health and lives. It is not uncommon, that the spiral of violence ends with the death of a victim. According to the police statistics, in Poland, every year hundreds of homicides are related to domestic violence.

Poland lacks specialised shelters for woman and children victims of violence. That is why many victims seek refuge in shelters for the homeless, which do not address their specific needs. These shelters do not meet the EU standards and their number is far from sufficient. Many women who are not able to find a safe place remain at home, together with an abusive partner, often risking their own lives. The decision to leave the partner is most dangerous for woman, as their violent intimates often become even more aggressive, hoping to regain control over their victims.

The difficulties in looking for assistance partly result from the fact that its providers usually neglect work related problems, and those involved in labour activation are not aware of the specific problems and barriers met by the victims of abuse. Institutions operating in above mentioned areas do not co-operate among each other, which seriously undermines the efficacy of their activities. Difficult situation of battered women is often aggravated by the fact that they are more burdened with domestic duties and care for children. It has to be underlined that in Poland there is a serious lack of child care services.

The very existence of specific needs of women victims of violence has still not been commonly recognized as a great social problem and the government is not taking any actions to address it.

The violation of the principle of gender equality and right to social security is quite visible in provisions concerning the retirement age and retirement pension. Pursuant to the law retirement age differs for women and men: at least 60 for women and 65 for men. Although the law says that this is a right of a person in practice women are often forced to go for the retirement against their will. The existing pension system will affect women very badly. There are well-established estimates that women may get pension even 60 per cent less than men existing

## ARTICLE 12 – RIGHT TO HEALTH

The right to health of women, especially pregnant women, whose life is at risk due to restrictive anti-abortion legislation (details below). On the other hand, realizing women's fundamental right to gender equality cannot be achieved without realization of their human rights in the area of sexuality and reproduction.

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. We could observe at first hand how the system works, or rather does not work, in practice, what are the barriers women face.

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. Alicja Tysiac and RR vs Poland (still pending) cases in the European Court on Human Rights);
- 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.

## RESTRICTIONS TO ABORTION

## Principal reasons of the denial of the therapeutic 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. The sixteen years of the anti-abortion in force allows for a number of observations on the real effects of the law on the women's life and health.

Physicians refuse to issue a certification required for therapeutic abortion, even when there are genuine grounds for issuing such a permit. 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.

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 whole 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 a chilling effect** not only on the provision of legal abortion services. It has a negative impact on health care services provided to pregnant women who did not seek abortion in first place but due to health risks abortion should be considered 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 is currently an applicant before the European Court of Human Rights (ECHR) represented by lawyers collaborating with the Federation for Women and Family Planning. 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 endangering the life of 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. More information available on can be read at the ECHR website:

<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=852028&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>

## The conscience clause

The Polish state has failed to take into account and implement the Concluding Observations of the HRC from 2004, specifically on the issue of conscience clause.

One of the reasons of restricted access to the 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).

Serious malpractice related to conscience clause can be best illustrated by the famous in Poland (for a couple of weeks it attracted national media attention) case of anonymous of 14-year old girl called Agata from Lublin – pregnant as a result of rape. In spite of 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 kilometers 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 public recognition of the case. Most women whose cases would not be public, would not experience same ministerial support.

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

Since 13 May 2005 in the Polish law there had been in place the regulation of Minister of Health which obliged a hospital to subcontract services in case 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 we had to hold the government accountable for implementing women’s rights to services in question – was eliminated by a current Minister of Health by the regulation of 13 May 2008. In the response to the letter of the Federation to the MoH requesting explanation of this extremely disappointing decision, the Minister responded that this regulation was overregulation – not necessary because of the above mentioned article 39 of the Act of 5 December 1996 on the medical profession in place.

### **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 rapes per year. The situation is worsened by the fact that sometimes non-medical professions deny women right to legal abortion like e.g. a persecutor who objected to issue a referral to a pregnant woman who reported rape on religious grounds. Moreover, long procedures make difficult for a women to receive legal abortion before the deadline which is 12 weeks of pregnancy. At the police station raped women are not offered emergency contraception nor antiretrovirus drug which should be the routine service for such women to minimize the risk of unwanted pregnancy or HIV infection. They are even not informed they should take such drugs privately.

### **Limited access to prenatal tests and, as a result, to abortions on genetic grounds**

Pregnant women quite often experience difficulties in receiving prenatal tests in public healthcare. Some clinics refuse to issue necessary referral on the grounds that it may lead to abortion. Moreover, indications for prenatal tests practiced in Poland ignore the universally accepted age indication of 35 and have been increased to 40. This leaves hundreds of pregnant women between 35 to 40 without access to tests and may lead to genetic defects of born children or make impossible for women to realize her right to lawful abortion on the grounds of fetal abnormality.

## **ACCESS TO CONTRACEPTIVES**

The Polish state has failed to take into account and implement the Concluding Observations of all TMBs incl. the HRC from 2004 which recommended the government to “assure the availability of contraceptives and free access to family planning services and methods”.

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. Contraceptive counseling is not integrated into primary health care system. Private gynecological visits are necessary to receive doctor's prescription which dramatically increases the costs which is a serious barrier to young women as practically, only gynecologists provide contraceptive counseling, not e.g. 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.

## **RECENT DEBATE REGARDING IN VITRO FERTILIZATION (IVF)**

Currently in Poland very hot debate has been carried out which may lead to the legislation which in practice can seriously restrict access to infertility treatment i.e. IVF on religious grounds. Currently they are two drafts pending in Parliament which fully ban IVF. Among fundamentalist opponents to IVF the Roman Catholic clergy takes a very active part in this debate, pushes on the ban of the IVF and uses very aggressive and nasty language against couples treated with IVF treatment.

Application of the language and „logics” of the IVF opponents in the discourse on in vitro in Poland makes, already today, many families conceal the fact that their baby was conceived by the IVF from the people around them and even their relatives. Those people are just worried about their children and do not want their children to be humiliated. While being confronted with propaganda machinery of the Catholic Church, they feel weak, defenseless and abandoned. Catholic hierarchs including bishops (e.g. Tadeusz Pieronek saying that Frankenstein was the prototype of in vitro or that IVF is a subtle form of abortion) discriminate citizens on the grounds how children have been conceived. Such scandalous phrases which are the open violation of the rights stipulated in the Constitution are not condemned by the media, or, which is worse, the reaction of the Ombudsman or the Ombudsman for Children's Rights, who are the authorities obliged under the Constitution to react to such discriminatory practices.

## **ACCES TO HELTH CARE SERVICES FOR WOMEN VICTIMS OF VIOLENCE**

Women victims of violence have limited access to professional health care services which are able to adequately identify and document physical and psychological harm related to violence they experienced. It is very important not only for curing but also for prosecuting perpetrators. Women are often required to deliver well-documented complaints if they want the police to proceed. The police require numerous medical certificates, which women have to acquire and pay for them. Although, according to the Constitution, public health services are free in Poland, women who seek forensic medical examination and apply for a certificate issued by a certified forensic doctor must pay for it.

Moreover, as access to forensic examinations in public clinics is highly limited, most women use the services of private clinics, where the fee for such examination exceeds 60 to 160 zlotys (15 to 40 Euro) per certificate. Doctors in public clinics who are not certified as forensic medical practitioners routinely refuse to carry out examinations and issue certificates that declare abuse-related injuries, although such refusals are in contradiction with the existing law.

Apart from the financial barriers to obtain a medical certificate, which is recognized by prosecutors, accessibility to authorized doctors is also limited, even in Warsaw. Women complain that general or forensic practitioners routinely refuse to carry out examinations and issue certificates that declare abuse-related injuries, although such refusals are in contradiction with law. They are unkind, suspicious and tend to blame victims for their lot, as routinely do professionals in other institutions. There are no procedures or codes of conduct with regard to victims of domestic violence. Combined with the lack of knowledge and sensitivity to the specific needs of victims of violence, it leads to the situation, in which women are not just unable to find adequate help, but also experience secondary victimization, which discourages them from seeking any assistance, when the next incident of violence occurs.

## ART. 13 – RIGHT TO EDUCATION

### SEXUALITY EDUCATION

The Polish state has failed to take into account and implement the Concluding Observations of TMBs incl. of the HRC from 2004, on the issue of sexuality education.

The school curriculum provides for realization of the “Preparation for Family Life”. Nevertheless, it is not obligatory but facultative. The government recently made a small step and passed the regulation which may increase the number of pupils participating in these classes. But the content of the teaching is often very problematic. The content of the programme is far from the ideal 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 officially recommended by the Ministry of National Education textbooks, 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 for 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. In Lodz – big city in Poland such a program will start from September.

The weaknesses of the current school program can be measured by the low level of knowledge re sexual health among teenagers and their need for counseling which can be observed in the very striking 2008 report carried out by the Group of Sex Educators Ponton on the basis of counseling services via summer hotline. Report in English available at: [http://www.ponton.org.pl/downloads/2009\\_Report\\_from\\_Ponton\\_Summer\\_Hotline.pdf](http://www.ponton.org.pl/downloads/2009_Report_from_Ponton_Summer_Hotline.pdf)

In the summer of 2006 the Minister of National Education, Roman Giertych dismissed Mirosław Sielatycki, the Director of the National In-Service Teacher Training Centre. The reason for the dismissal was Sielatycki’s approval for the publication of “Compass”, the Council of Europe’s official manual aimed at youth on human rights education including counteracting sexual orientation discrimination. “Compass” was published in this country in 2005 when Poland held the presidency of the Council of Europe. The publication was co-financed by the previous Minister of National Education, Michał Seweryński (PiS). Roman Giertych’s objections were raised in relation to just four verses of the 500-page textbook<sup>4</sup>. Among others, he found the following information controversial: *“Living as an LGBT person in Europe today varies from being very easy (in the larger towns in western Europe, with a well-developed subculture, bars, clubs and organisations), to being relatively difficult (in small-town western Europe, and large parts of central Europe where views about homosexuality are slowly changing)”*. The above statement is supplemented by a quotation from a research conducted in Poland: 22% of LGBT (lesbian, gay, bisexual and transgender) people stated that they have experienced physical abuse and 77% of them have never reported these incidents to the police for fear of the reactions of their families and the police. There is a suggestion on page 205 to contact gay or lesbian organisations in your country and invite one of their representatives to address your group and find out which issues of equality and rights are the most pressing in your own country. Many Polish and international organisations protested against the dismissal of the director of the National In-Service Teacher Training Centre, (e.g. the Polish Section of Amnesty International, the Helsinki Committee in Poland, the Polish Humanitarian Organisation, the Polish Teachers’ Union, the Education International<sup>5</sup>). A lawsuit has been brought before a Warsaw court against the dismissal.

<sup>4</sup> Gazeta Wyborcza, 10.06.06, see: <http://www.gazetawyborcza.pl/1,75478,3407781.html>

<sup>5</sup> Gazeta Wyborcza, 22.06.06, see: <http://www.gazetawyborcza.pl/1,75478,3433264.html>

Although current Government does not seem to be against “Campass”, until present moment there is no confirmation that the manual will reach schools.

## **INFORMATION ABOUT ORGANIZATIONS SUBMITTING THE REPORT:**

**Federation for Women and Family Planning** is a formal alliance of seven non-governmental organizations established in 1991. The main mission of the FWFP is to promote sexual and reproductive health and rights as human rights issue, health issue and gender equality issue. From the very beginning, the FWFP is monitoring the situation in Poland in this area and submitted a number of reports to international human rights bodies about gender discrimination in the area of reproductive health and rights. The Federation undertakes legal interventions and litigations in the European Court on Human Rights. FWFP has a consultative status with ECOSOC.

**Contact information:** Wanda Nowicka,  
Federation for Women and Family Planning  
ul. Nowolipie 13/15, 00-150 Warsaw, Poland, ph/fax 48.22.635 9395  
e-mail: [biuro@federa.org.pl](mailto:biuro@federa.org.pl) , [www.federa.org.pl](http://www.federa.org.pl)

**Campaign Against Homophobia** was established in order to protect the constitutionally and internationally guaranteed rights of lesbians, gays, bisexuals and transgender people (LGBT). KPH engages in activities including: political lobbying, educational campaigns, petitions, monitoring of national and international legislations. KPH contributes to the social change movement through collaborating with Polish and international non-profit organizations and individuals working towards social justice and peaceful coexistence.

**Contact information:** Krzysztof Smiszek  
Campaign Against Homophobia (KPH)  
ul. Zelazna 68, 00-866 Warsaw, POLAND  
e-mail: [prawnik@kph.org.pl](mailto:prawnik@kph.org.pl), [www.kph.org.pl](http://www.kph.org.pl)

**Women’s Rights Center (WRC)** was established in December 1994 and has its offices in Warsaw, Gdansk, Lodz, Wroclaw and Grojec. The main objective of WRC is to foster the recognition of women’s rights as human rights, including violence against women as an abuse of human rights and to act against gender-based violence and discrimination. WRC is providing direct services to women who are victims of gender-based violence and discrimination (legal, psychological, social, safe place to stay) as well as undertaking various educational activities directed to women and various professional groups. We also monitor implementation of the existing legislation and actively advocate for legal changes including law on domestic violence, equal treatment and access to legal aid.

**Contact information:** Urszula Nowakowska  
Women’s Rights Center (WRC)  
Ul. Wilcza 60 m. 19, 00-679 Warsaw, Poland  
e-mail: [temida@cpk.org.pl](mailto:temida@cpk.org.pl), [www.cpk.org.pl](http://www.cpk.org.pl)

**Barbara Limanowska** – independent expert on gender issues  
[blimanowska@hotmail.com](mailto:blimanowska@hotmail.com)