



*Federation for Women  
and Family Planning*



## **REPORT**

**July 2009**

To the UN Human Rights Committee  
in connection with the 6<sup>th</sup> 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 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). 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.unhchr.ch/hurricane/hurricane.nsf/view01/F1269CA5311CDAF3C12575B50041AEBE?opendocument>

## **ARTICLE 3 – EQUAL RIGHTS OF WOMEN AND MEN (RECOMMENDATIONS 8 AND 9 OF THE COMMITTEE)**

Although the Government addressed the recommendations 8 and 9 of the Committee in the context of Article 6 (Right to life), we believe that its most appropriate place is Art. 3. The Polish Government understands the right to life in a very narrow sense – only in the context of the life of the fetus. It ignores completely the right to life 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.

### **Addressing Government responses 43-72:**

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=hbk&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.

## **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)

## **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.

### **ARTICLE 3 – EQUAL RIGHTS OF WOMEN AND MEN (RECOMMENDATIONS 10 AND 16 OF THE COMMITTEE)**

7. 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.

#### **Addressing Government response 7**

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.

As stated in item 7 of this report, currently „The Ministry of Labour and Social Policy 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”. 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, beliefs, 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 to what extent.**

### **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.

<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

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

## **ARTICLE 7 – PROHIBITION OF TORTURE (RECOMMENDATION 11 OF THE COMMITTEE)**

### **Addressing Government responses 73-84**

#### **DOMESTIC VIOLENCE**

The content of the governmental report concerning violence against women is not comprehensive and does not cover many areas where women's human rights are abused. It is concentrated only on domestic violence and there is visible lack of consistency in presentation of work in this field. It is also not clear whose initiatives some of the activities presented are. What is missing are statistics and data. What is worrying, for instance, is the point about promotion of mediation in cases of domestic violence, concentration mainly on children as victims instead of seeing interdependence between violence against women and children as concern domestic violence.

Reports shows, however that Poland has not put in place yet comprehensive and complementary system aimed at preventing and combating domestic violence. This is seen as gender neutral social phenomenon which is placed along with such pathology as alcoholism. There is lack of clear governmental leadership and comprehensive national policy do prevent and combat domestic violence. It is visible even in the governmental report to the HRC : various institutions are doing certain things which are not complementary and are often overlapping. The fact that domestic violence is placed in the Ministry of Labour and Social Affairs shows clearly government's perspective on the problem: it is more seen as social phenomenon than the crime which requires adequate legal reaction. Ministry of Justice set up a separate framework for Crime Victims and a separate Division for Crime Victims. Its structure is aimed at providing interdisciplinary assistance to all victims including victims of domestic violence. Both structures and work of ministries are not complementary and coordinated. Information of the Ministry of Justice shows that 90 per cent of assistance under the framework set up by the ministry was provided to victims of domestic violence. If the work on preventing and combating domestic violence would be coordinated, resources spent on separate structure to help victims of crime would be differently allocated and there won't be overlapping of work and competencies, assistance provided to victims with special needs will be more effective and of higher quality.

Women's Rights Centre see the following areas and problems which were not addressed in the governmental report and need urgent attention in order to provide better protection of women's human rights:

#### **PROBLEMATIC AREAS:**

- Perception of domestic violence as a gender neutral phenomenon strongly linked to alcoholism;
- Lack of coherency and continuity of the governmental policy to prevent and combat domestic violence;
- Long lasting criminal proceedings
- lack of pro active approach of law enforcement in dealing with domestic violence against women cases;
- High percentage of dismissal of domestic violence cases at the prosecution level;
- Lack of legal measures allowing police to issue barring order (restraining order);
- Ineffective and long lasting procedure for issuing restraining order by criminal court and lack of legal possibility for applying for civil protection or inter injunction order;
- Ineffective sentencing (nearly 90% suspended sentences and lack of adequate reaction in cases of breaching the law by perpetrators);
- Strong impact of gender-based stereotypes and prejudices on criminal proceedings and court judgments;
- Lack of clear governmental leadership and comprehensive national policy do prevent and combat domestic violence. It is visible even in the governmental report to the HRC: various institutions are doing certain things which are not complementary and are often overlapping.
- Lack of consistent and comprehensive multi agency cooperation in preventing and combating domestic violence based on clear rules and standards of works;
- Lack of perception of domestic violence in broader context of unequal position of women in the family and in the society;
- Insufficient and imprecise system of collecting data for domestic violence interventions and lack of data of refusals to initiate criminal procedure as well as accurate gender specific data on killings based on domestic violence;
- Insufficient number of services, especially comprehensive services which empower women and help them to get economic independence and specialized refuges for women and children victims of domestic violence;

- Gender neutral services which results sometimes in victimization of women when perpetrator of violence pretend to be victim and is seeking assistance in the same place as victims;
- Limited access to free forensic examinations;
- Abuse of mediation procedure for domestic violence cases.

## SERVICES

Poland still has no sufficient number of specialized places where women can seek refuge or assistance. The number of specialized shelters is far too low to meet the needs - **in some regions of Poland, there are no such shelters at all**. All together we have only 36 specialized shelters. The other places where victims may find place to stay are for instance for homeless women or women with small children who has no place to stay.

The new law requires local government to set up specialized centers providing assistance to victims of violence and **Crisis Intervention Centers**. CIC are not specialized in domestic violence cases and are obliged by law to provide assistance to people in different kind of crisis situations.

## THE LAW AND ITS APPLICATION

Although police and the prosecutors are legally obligated to initiate criminal proceedings when domestic violence may have been committed, **in practice they are prosecuted only on victim's request and when official well-documented complaint is pressed**.

Despite legal possibility to keep perpetrator under arrest for 48 hours, if his presence endangers the victim's life or health; or petition a court to issue a pretrial detention order, police and prosecutors hardly ever use it. **The only measures used by the police to move the perpetrator from the house are so-called "sobering-up detention centers"** when he is drunk. This is not an effective measure because the next morning perpetrator is free and the bill for spending a night in this place has to be paid by the whole family.

**Long lasting prosecution procedure** prevent women from filing a case. There are cases when pre-trial proceedings and waiting for the trial last for two up to three years. In the meantime, victims and perpetrators often live together under the same roof, causing victims to be vulnerable to further violence and other forms of pressure from the perpetrator. **As concerns protection of the victim from further violence new law does not provides adequate measures**.

## PROBLEMS WITH ACT ON PREVENTION DOMESTIC VIOLENCE ENACTED IN 2005

The *Act on Prevention of Domestic Violence* enacted in 2005 **did not filled the biggest gap in the Polish law that is protection of victims**. The legal possibility to protect victim is still very weak and neither police nor court are equipped in adequate legal measures. Police does not have an authority to issue a barring or restraining order for immediate eviction of the perpetrator from the house. **Restraining order can be issued only by the court and under certain conditions**.

One of the basic problems is that the Act by no means refers to inequality between women and men and to the fact that domestic violence is not gender neutral phenomenon. Due to the generalization of the Act, **specific problems of female victims cannot be addressed adequately**. One of these problems is the victim's **economic dependence on the perpetrator**, that hinders the ability to leave abusive relationship. This problem must be recognized and addressed in cooperation with employment agencies and employers to effectively help women.

The other issue which is missing in the law is **housing which is crucial for women who leave in their partner or partner's parents' house**. Unfortunately, no steps have been taken to address those issues. **Missing measures in the law are also civil remedies: protection or injunction order**.

**The other problem with prosecution of domestic violence is that single acts of violence are not publicly prosecuted**. Violence against women is publicly prosecuted only when it occurs repeatedly. Single acts of violence may be prosecuted under general provisions prohibiting the use of violence against any person and they requires victims initiative and fees has to paid to the court.

## FORENSIC EXAMINATION

Very often women are required by police to deliver medical certificate preferably of forensic examination to initiate investigation. Although the Constitution guarantees free medical services, victims often have to pay medical experts for forensic examination. Other doctors often refuse to write medical statement claiming that they are not specialists and by these means forcing women to visit and pay for private forensic examination. The problem is that victims are unaware that the law guarantees them a free of charge medical diagnosis and forensic examination in case it is required by police or prosecutor. The every day practice should be that the first contact doctor is able to deliver medical diagnosis in case of domestic violence and forensic examination should be used only in more difficult and complicated cases.

#### RECOMMENDATIONS:

- Amend law on domestic violence to make it more comprehensive and effective by including regulations concerning:
  - police power to issue barring (restraining) order;
  - civil protection order;
  - gender based analysis of domestic violence roots and as a result need to address the issue of domestic violence in broader context of inequality between women and men; e.g. housing, employment and financial assistance to women;
- Introduce clear and strong governmental leadership in the field of preventing and combating domestic violence;
- Allocate adequate financial resources to run programs aimed at preventing and combating dv;
- Introduce regular monitoring of the implementation of the existing law with the focus on the impact of gender based stereotypes and prejudices on criminal proceedings and court judgments;
- Incorporate domestic violence issues seen in the broader context of gender based discrimination and unequal position of women into routine training of the police and other criminal and family justice professionals;
- Secure easy access to assistance for victims of domestic violence, including legal and psychological counseling, medical help and shelter;
- Improve system of collecting statistic to make it more comprehensive and gender specific;
- Implement pro-active approach in cases of domestic violence interventions;
- Prosecute perpetrators of domestic violence without a formal complaint from the victim;
- Enable the victims' participation in the parole procedure;
- Address impact on gender based stereotypes and prejudices on criminal proceedings and court judgments in domestic violence cases;
- Mediation procedure should not be applied for domestic violence cases.

#### RAPE

#### PROBLEMATIC AREAS:

- Order of initiating prosecution that requires the **victim to press charges**. Shame and fear of revenge often prevent women from pressing charges;
- Legal definition of rape which requires use or threat of violence in fact often reverse focus from perpetrator to the victim behavior;
- Rape might be questioned when there is no sign of victim resistance or victim behave improperly;
- Long lasting and unfriendly legal procedure;
- Victim has to testify many times;
- Low punishment for rapists;
- Strong impact of gender based stereotypes and prejudices on criminal proceedings and court judgments;
- Insufficient and imprecise system of collecting statistics for rape cases including data of refusals to initiate criminal procedure;
- Lack of specialized psychological and counseling services for victims.

#### RECOMMENDATIONS:

- Amend the law on rape:
  - rape should be the crime publicly prosecuted (ex officio);
  - definition of rape should be changed ( lack of consent should constitute a crime);
  - object of legal protection should be changed ( rape crime against freedom not against sexual freedom and morality)
- Examine implementation of the law as concerns sentencing;
- Secure easy access to assistance for victims including psychological, legal counseling and medical help;
- Improve system of collecting statistic to make it more comprehensive and reflect not only gender but also relationship between victim and perpetrator.
- Address impact on gender based stereotypes and prejudices on criminal proceedings and court judgments.

### ARTICLE 12 – FREEDOM OF MOVEMENT

We would like to draw the attention of the Committee to the fact that Polish citizens wanting to enter into same-sex registered partnerships or same-sex marriage with a citizen of another country where such unions are legally recognized, encounter many discriminatory obstacles created by Polish authorities. The Polish Registry Office (Polish authority competent for civil status documents) has on many occasions refused to issue certificates of marital status which are required to enter into a same-sex union abroad. According to KPH the Registry violates the Covenant's freedom of movement and the provision laying down the liberty to leave any country freely , including his own.

### ARTICLE 18 – FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION (RECOMMENDATIONS 19 OF THE COMMITTEE)

We would like to draw the attention of the Committee to the phenomenon of homophobic hate speech used by high-profiled politicians, public administration representatives as well as Catholic Church officials. The stereotypes and prejudices persisting in Polish society are used in a very particular way by politicians wanting to attract attention and to raise their popularity. In the period of 2003-2008 homophobic comments were made by the highest level public figures such as Deputy Prime Minister Roman Giertych and the two following Prime Ministers - Kazimierz Marcinkiewicz and Jarosław Kaczyński as well as Deputy Chair of the Polish Parliament Stefan Niesiolowski. Hate speech towards LGBT communities still remains as an urgent problem not only in the political context but also in Polish society in general.

**KPH would like to underline the great lack of provisions concerning hate speech and hate crimes based on homophobia. Recently (2009) in its letters to Campaign Against Homophobia and Polish Ombudsman, the Polish government refused to amend the Penal Code to effectively combat violence and defamatory speeches towards LGBT community.** This refusal is in contradiction with the statement of the government included in the VI Periodic Report in point 261 (Art. 26 Equality Before The Law And Equal Legal Protection).

### ARTICLE 20 – PROHIBITION OF PROPAGANDA FOR WAR AND ADVOCACY OF NATIONAL, RACIAL OR RELIGIOUS HATRED

KPH would like to draw the attention of the Committee to the fact that the Polish government has never worked out any national anti-discrimination strategy which would aim to effectively counteract discrimination of LGBT people. KPH would like to underline a great lack of legislation regulating prohibition of discrimination outside the employment. Polish authorities are ineffective when it comes to identification and monitoring homophobic violent groups. Polish authorities have never instituted any criminal proceedings regarding homophobic hate-speech and incitement to violence based on homophobia. Polish authorities seem not to be interested in collaboration with LGBT groups to effectively counteract discrimination. For instance, in 2006 a series of trainings for Polish Police which were to be conducted by one of the leading Polish LGBT organizations, Lambda Warszawa was cancelled.

## **ARTICLE 21 – FREEDOM OF ASSEMBLY**

In the years 2004-2006 in Poland, persons participating in demonstrations organized by the gay and lesbian communities were physically attacked by participants of counter-demonstrations (Krakow, Warsaw, Poznan). The authorities did not authorise the marches in Warsaw and Poznań. Their decisions were justified by safety factors, possible violation of moral norms, etc. On 3 May 2007 the European Court of Human Rights in Strasbourg issued a judgment in *Baczkowski and others v. Poland* case (application No. 1543/06) where a new standard was established, according to which the procedural rules concerning organization of the Equality Parade should be built in such a way as to exhaust all domestic remedies before the date of the assembly.

**Until today, the government has not introduced any laws implementing the ECtHR's judgment.**

## **ARTICLE 26 – EQUALITY BEFORE THE LAW AND LEGAL PROTECTION EQUALITY (RECOMMENDATIONS 16 AND 18 OF THE COMMITTEE)**

### **Addressing Government responses 252-260**

The draft Act on Equality, 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 of the Act on Equality, namely, the necessity to fulfill the provisions of anti-discriminatory EU directives by Poland, which resulted in the change of the name of the Act (to Act of Equal Treatment) and its scope as a result of which it was no 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. 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 (vide Note Item 7.), 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.(vide Note 258).

### **Addressing Government response 258**

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.

## 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.

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**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.

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**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.

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