



**POLSKIE TOWARZYSTWO
PRAWA ANTYDYSKRIMINACYJNEGO**

ALTERNATIVE REPORT

Submitted by the Polish Coalition for Equal Opportunities

**for consideration of the UN Human Rights Council in reference to the Universal
Periodic Review**

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- 15) Fundacja Generacja
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- 18) Fundacja Just Better
- 19) Fundacja Klinika Rządzenia
- 20) Fundacja Kultury Bez Granic
- 21) Fundacja MaMa
- 22) Fundacja My Pacjenci
- 23) Fundacja na Rzecz Różnorodności Polistrefa
- 24) Fundacja na Rzecz Równości i Emancypacji STER
- 25) Fundacja Nasza Przestrzeń
- 26) Fundacja Przestrzeń Kobiet
- 27) Fundacja Równości
- 28) Fundacja Trans-Fuzja
- 29) Fundacja TUS
- 30) Fundacja Wiedza Lokalna
- 31) Fundacja Wolontariat Równości
- 32) Fundacja Rodzić po Ludzku
- 33) Fundacja Strefa Kobiet
- 34) Fundacji Aktywności Lokalnej
- 35) Helsińska Fundacja Praw Człowieka
- 36) Instytut Podkarpacki
- 37) Kampania Przeciw Homofobii

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- 38) Koalicja Karat
- 39) Lambda Bydgoszcz
- 40) Lambda Warszawa
- 41) Polski Instytut Praw Człowieka i Biznesu
- 42) Polskie Forum Osób Niepełnosprawnych
- 43) Stowarzyszenia Romów w Polsce
- 44) Stowarzyszenie "W stronę Dziewcząt"
- 45) Stowarzyszenie Aktywne Kobiety
- 46) Stowarzyszenie Dni Równości i Tolerancji
- 47) Stowarzyszenie Projekt: Polska
- 48) Stowarzyszenie Homo Faber
- 49) Stowarzyszenie Inicjatyw Niezależnych MIKUSZEWO
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- 55) Stowarzyszenie Na Rzecz Lesbijek, Gejów, Osób Biseksualnych, Osób Transpłciowych oraz Osób Queer "Pracownia Różnorodności"
- 56) Stowarzyszenie na Rzecz Rozwoju Społeczeństwa Obywatelskiego PRO HUMANUM
- 57) Stowarzyszenie Naukowe Psychologia i Seksuologia LGBT
- 58) Stowarzyszenie Nigdy Więcej
- 59) Stowarzyszenie Otwarte Forum
- 60) Stowarzyszenie przeciw Antysemityzmowi i Ksenofobii „Otwarta Rzeczpospolita"
- 61) Towarzystwo Edukacji Antydyskryminacyjnej
- 62) Towarzystwo Przyjaciół Szalonego Wózkowicza
- 63) Związek Nauczycielstwa Polskiego
- 64) Żydowskie Stowarzyszenie Czulent

Introduction

This report has been prepared by the Coalition for Equal Opportunities which brings together more than 60 Polish human rights non-governmental organizations specializing in the protection against discrimination on the grounds of gender, gender expression, sexual orientation, disability, age, ethnic and racial origin, religion or belief.

The alternative report focuses exclusively on the areas of equality and non-discrimination that were raised by the Human Rights Council in the first cycle reports of Poland.

Institutions & policies in the area of equality and non-discrimination

The Equal Treatment Act establishes two institutional mechanisms in order to implement the principle of non-discrimination that are Government Plenipotentiary for Equal Treatment operating within the Chancellery of the Prime Minister and extended remit of Human Rights Defender to counteract discrimination.



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The Government Plenipotentiary for Equal Treatment (GPET) is responsible for realizing the Government's equality policy on different grounds of discrimination. The Act does not provide for Plenipotentiary's resources and separate budget. Moreover, it fails to define the relation between the Plenipotentiary and ministers as well as to create a structure for cooperation between the departments in order to enable e.g. gender mainstreaming. These institutional shortages seriously limit the GPET's capacity to fulfill its statutory obligations. In 2016, after parliamentary elections the remit of the Plenipotentiary was extended and it encompasses now also the issues of development of civil society. In 2016 the Plenipotentiary lost its separate office within the Chancellery of the Prime Minister as well as its staff was significantly cut. During the meetings with NGOs and in the interviews the new Plenipotentiary openly expressed its opinion that he will not be focusing on gender mainstreaming anymore. Instead, the new policy will be promoting so called "family mainstreaming"¹. Mr. Wojciech Kaczmarczyk, the new Plenipotentiary, has been heavily criticized by human rights NGOs and academics for his public statements in which he claimed that unequal treatment in access to goods and services on the ground of race and sexual orientation should not be regulated by the law since it violates the economic freedom². The Plenipotentiary didn't also react properly to attacks at NGOs and human rights defenders which took place in 2016. Offices of LGBTI organizations (e.g. Campaign Against Homophobia and Lambda Warsaw) were attacked several times, putting activists at risk of serious injuries. The Plenipotentiary held no statement condemning such homophobic attacks – instead he stated only that every violence is intolerable. Moreover, he organized a seminar about attacks on human rights defenders just to prove that it's not a big and systematic problem and NGOs calling for reaction is exaggeration³.

Human Rights Defender (Ombudsman) – The Equal Treatment Act extended the scope of Human Rights Defender's responsibilities to those related with realization of the principle of equal treatment (gender equality included). In 2015 the newly elected Parliament not only failed to provide for the factual budgetary needs of Human Rights Defender in 2016 but on the contrary reduced the proposed budget by 10 million PLN to the level of 2011. This decision seriously limits Human Rights Defender's capacity to use its competencies to fulfill its mandate as an independent equality body and violates UN Paris Principles. It should be stressed that the main argument for cutting the budget of the Human Rights Defender was the fact that it carries out anti-discrimination tasks, including gender equality and LGBT rights. It has to be noted that the Human Rights Defender's unit for equality remains significantly understaffed. Moreover, while presenting in the Parliament report from his activities in 2015, the Ombudsman and his deputy responsible for equal treatment and domestic violence were heavily attacked for their non-discrimination actions by right-wing parties (including the ruling party), especially for acting against discrimination of LGBT people. Some MPs proposed dismissing the Ombudsman from office – this proposal is considered seriously by the ruling party.

¹ <http://niedziela.pl/artykul/22734/Polityka-rodzinna-zamiast-gender>

² <http://wyborcza.pl/magazyn/1,152469,20031971,rownosc-wedlug-wojciecha-kaczmarczyka-pelnomocnika-rzadu-ds.html>

³ <http://wiadomosci.wp.pl/kat,1027191,title,Wojciech-Kaczmarczyk-dla-WP-ataki-na-obcokrajowcow-to-zjawisko-marginalne-Polska-jest-bezpiecznym-krajem,wid,18318634,wiadomosc.html?ticaid=11752e&ticsrn=3>



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Government Plenipotentiary for Persons with Disabilities – there is also no clear division of responsibilities and tasks between the GPET (operating within the Chancellery of the Prime Minister) and the Government Plenipotentiary for Persons with Disabilities (operating within the Ministry of Family, Labor and Social Policy). Both of them are responsible for public policy in the area of disability but there's no coordinated cooperation between them which makes both of those bodies ineffective in acting for rights of persons with disabilities.

Act of 3 December 2010 Implementing Certain European Union Provisions on Equal Treatment (Equal Treatment Act)

One of the most significant steps in enhancing the protection against discrimination in Poland was adoption of The Act of 3 December 2010 Implementing Certain European Union Provisions on Equal Treatment (Equal Treatment Act). The act was meant to fill the gap in Polish legislation and to provide regulations aimed at addressing discrimination. However the law lacks holistic approach to the issue and in fact does not safeguard all social groups' right to equality. The Act provides definitions of different forms of discrimination but does not treat all vulnerable groups equally. This results in hierarchy of protection where the least protected grounds are sexual orientation, age, disability and religion with no right to equality in the field of education, health care, access to goods and services, housing. The law lacks also the definition of multiple and intersecting forms of discrimination.

As mentioned above, this Act introduced an unjustified hierarchy of protection where the least protected grounds are sexual orientation, age, disability and religion with no right to equality in the field of education, health care, access to goods and services, housing. Such hierarchy combined with Government's passivity in promoting equal rights makes this Act ineffective. Throughout years of its being in force there have been only five cases pending in whole country (and only of them has ended with a final judgment)⁴. Human Rights Defender paid attention to the problem of Act's effectiveness and its construction so he decided to address the Act to the Constitutional Court to examine its compatibility with the Constitution. However, in the light of recent constitutional crisis and ruling party's attempts to disturb Court's functioning, there is a strong fear that its judgement wouldn't be implemented.

Racial, ethnic and religious discrimination

Hate motivated crimes against racial and religious groups

The proportion of cases taken investigated by prosecutors in the area of hate speech doesn't increase, even though hate crimes has become a huge social problem in Poland. Between September 2014 and the 15th of April 2016, the Association Against Anti-Semitism and Xenophobia Open Republic, as part

⁴ https://rownosc.info/media/uploads/raport_do_druku.pdf



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of the "Society for tolerance" program, sent 420 notices of possible crime to the Prosecutor's Office. Most of them concerned incitement to hatred on grounds of race, nationality and belief, insults related to these grounds and directed at people or groups as well as the preaching of the fascist regime. Out of 420 notices that were sent to the court, 7 reached indictment, 186 cases are pending, 205 cases, which is nearly a half of all of them, were discontinued. As much as 40 percent of the discontinued cases were justified with the inability to identify the offender, which once again demonstrates the ineffectiveness of the police and of the prosecution.

Council for the Prevention of Racial Discrimination, Xenophobia and Related Intolerance,

The Council was established in 2013 and its primary task was to enable the coordination of the works of different public institutions in the area of combatting hate speech and other acts of intolerance. On 27 of April 2016 due to the decision of the Prime Minister Beata Szydło the Council was abolished. This decision was heavily criticized by the human rights non-governmental organisations as well as by the Human Rights Defender. The decision on closing down of the Council was extremely unfortunate since it took place in the period when more and more racist and xenophobic acts happened due to the migration crisis.

Racial and religious profiling

New Anti-terrorist Act (and Government's ordinances related to the Act), adopted in June 2016, provides some mechanisms and measures based on racial and religious profiling. The Act introduces a catalogue of terroristic behaviors that have to be monitored by secret service, including e.g. information about bringing to life Islamic universities/schools in Poland, visits of Islamic clerics in prisons and grant-making to Islamic organizations or communities from abroad. Some of the Act's provision are based only on anti-Islamic and anti-Muslim prejudice – they target these social groups and make them 'separate' from the rest of the society because of religion or ethnicity. Such provisions are not only incompatible with a rule of non-discrimination, but they also threaten religious freedom of e.g. prisoners.

Discrimination on the ground of sexual orientation or gender identity

Equal treatment law

Legislation which literally prohibits discrimination based on sexual orientation has been implemented only to the Labour Code and - to a limited extent - to the so-called Equal Treatment Act. However, it needs to be mentioned, that provisions included in the Equal Treatment Act cover only the area of employment excluding this kind of protection in other areas regulated by this Act, such as health care, education and access to goods and services. Latest research conducted by NGOs indicates, that the protection under the Equal Treatment Act is illusory and ineffective. Polish authorities still have not implemented any provisions prohibiting - literally - discrimination based on gender identity. Minister of Justice (and General Prosecutor at the same time) is even trying to influence decisions of independent

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courts concerning LGBT rights not only by expressing his discriminatory opinions but also by taking procedural steps, e.g. he decided to take actions against judgement for a contractor who refused to print a banner about LGBT rights.

Hate crimes

So far, effective measures to combat homophobic, biphobic and transphobic violence and discrimination have not been taken. In the reporting period national NGOs still played the dominant role in raising public awareness in this field. Polish institutions - only occasionally - supported such activities. Research conducted by national NGOs show that still 90% of victims of this category of crimes resign to report them due to fear of homophobic, biphobic or transphobic reactions of officers. Provisions prohibiting hate crimes based on sexual orientation or gender identity still have not been introduced to the Polish Criminal Code. Existing legislation does not provide effective protection and - in practice - transfers the burden of prosecuting the perpetrator of homophobic, biphobic or transphobic violence to the victim. None of the legislative initiatives aimed at adding the category of hate crimes based on sexual orientation or gender identity led to the amendment of Polish Criminal Code. The constant fiasco of this kind of initiatives was caused by the lack of political will to implement such regulations. Jarosław Kaczyński, the leader of the political party which has the majority of votes in the Polish Parliament pointed out (in his speech on 2nd May 2016) that his party does not intend to introduce such provisions. His declaration was later confirmed by the Minister of Justice who - in his reply to The Human Rights Defender - declared that he sees no need to bring such changes to the Criminal Code⁵. With the exception of the Human Rights Defender, no public institution is currently undertaking any serious activities aimed at increasing the protection against homophobic, biphobic or transphobic violence and discrimination. There were no actions undertaken by the Government in order to educate armed forces on gender identity and/or gender expression as well as any other aspects of transgender realities.

Right to privacy

There are no legal measures enabling same sex couples to register their relationship. Current government's program does not include introduction of civil partnership or marriage equality. Polish citizens who intend to get a civil partnership or marriage with a same sex partner encounter barriers when requesting a civil status certificate. Due to The Law on civil status a person applying for a civil marital status certificate was required to state the name and the surname of the future spouse. In case when the civil servant identified the name/surname of the future spouse as a same sex as the applicant, in some cases they refused the civil status certificate. The reasoning for refusal of certificates was based on the fact that art. 18 of Polish Constitution defines marriage as a relationship of a man and a woman. Therefore, according to Polish law which does not recognize same sex relationships, applicant is not legally eligible to get a marital status certificate.

Ill-treatment of persons deprived of their liberty

⁵ <http://wyborcza.pl/1,75398,19539464,ziobro-wstrzymuje-prace-nad-karaniem-za-mowe-nienawisci-kph.html>



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When it comes to trans prisoners, there are no mechanisms that would ensure either their safety or possibility to transition. No research has been produced on the matter, however Trans-Fuzja Foundation active in the field of trans people rights maintains connections to a few trans prisoners, whose complaints usually center around lack of recognition of gender identity (placement in institutions according to legal gender, regardless of transition status), lack of safety to express that gender identity and no possibility to either continue or start medical transition. Trans-Fuzja's experiences show that a proper recognition of a trans person's needs specially regarding safety and gender expression is possible in some instances, but heavily depends on individual approaches of prison staff.

Protection of LGBT minors and rights of the child

According to the Polish Ministry of Health, the National Health Fund registered 78 procedures - referred to officially as "fixing operations" ("operacje naprawcze") - on intersex infants and/or children between 2009 and 2013. Although diagnosis of intersex variations is performed using ICD-10 tools (specifically E25.0, E.34.5, Q52.8, Q56.0, Q56.1, Q56.2, Q56.3, Q96.3 and Q99.1), ICD-9 coding is used to identify procedures, which are being undertaken (70.61, 70.62, 62.411, 62.419, 70.61, 70.62, 62.411, 62.31, 62,411, 62.419, 70.62, 62.419, 68.61 and 70.62 accordingly). There is no law that prohibits unnecessary surgical interventions specifically for intersex infants and/or children. Although the Polish Criminal Code prohibits not-life-saving medical interventions that would leave a person indefinitely sterile, it is unclear how this particular law applies to intersex persons.

Education

There are no policies and standards, which would ensure equal treatment and safety of LGBTI persons in schools in Poland. Many schools even deny the existence of LGBTI students. Students who complain about homophobia at school often turn to Campaign Against Homophobia (KPH). They experience homophobic behavior, not only from other students but also from teachers, educators, and especially priests, nuns and catechists conducting religion lessons. Moreover, the teachers, who admitted being non-heterosexual, become themselves victims of discrimination. There is no political climate conducive to the implementation of relevant equality policies in the educational system. The Ministry of Education is unwilling to cooperate with civil society organizations representing LGBTI community. There are no legal provisions that mention sexual orientation or gender identity as a possible discrimination ground in the formal education system. The so-called 'Equality Act' of 2010 does not protect LGBTI persons in access to education. According to KPH's studies, sexual orientation continues to be a taboo in schools. LGBTI students are not provided with necessary information, protection and support to enable them to live in accordance with their sexual orientation.

Women's rights

Decision-making process and political life

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The Government Plenipotentiary for Equal Treatment expressed several times his critical view on specific measures aimed at enhancing women's participation in political life. The Plenipotentiary claims that parities or quotas are not the tools which should be used to make women more participating in public life⁶. He is a strong opponent of any legislative measures in this field. He claims to be supportive for soft measures with this regard – training, public education, but neither him nor his office are involved in any initiatives of this type. Contrary to his predecessor, The Plenipotentiary office does not carry out any significant projects in this area.

Right to life and reproductive rights

Due to the fact that abortion in Poland is generally prohibited the vast majority of abortions are performed outside the law. All illegal (those performed by Polish doctors underground) abortions are by definition unsafe as they put women's life at risk. More and more often women choose to go abroad (which is safe and legal) but a large number of women use abortion pills. This can be dangerous for them if they buy pills at the black market in Poland or are afraid to see a doctor in case of doubts or complications after using the pills. Stigmatization and the atmosphere of "crime" poses a threat to women's health (in its psychological dimension but also social well-being). We estimate that 80 to 200 thousand women yearly in Poland perform abortions in one way or another. There are no measures undertaken to create the system around conscientious objection in which it would be guaranteed that women receive abortion services on time. After the Constitutional Court's decision that a doctor doesn't have to refer a patient to another doctor, there is no law that puts such obligation and responsibility on anyone. In practice there are no measures to protect a woman who is denied abortion on this ground and to guarantee that she will receive the service elsewhere. The draft amendment to the Act on patients' right that was prepared by the former government and which aim was, among others, to reshape provisions on the right to appeal to the Medical Board in abortion cases (when the statement issued by a doctor does not allow for a legal service) is no longer worked on by the new administration. The board still has up to 30 days to issue a decision. The right to appeal cannot be considered a timely and affective mechanism for women who face obstacles in access to legal abortion.

Rights of persons with disabilities

Participation in political and public life

Persons with intellectual disabilities or mental health problems may have restricted access to political life. According to Polish law only a person with a full legal capacity may vote in all types of elections. At the same time an intellectual disability or mental illness may be a basis for legal incapacitation which deprives incapacitated persons of possibility to participate in political life. Such regulations violates

⁶ <http://wyborcza.pl/magazyn/1,152469,20031971,rownosc-wedlug-wojciecha-kaczmarczyka-pelnomocnika-rzadu-ds.html>



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right to take part in a political life and are contrary to human rights guarantees, including the UN Convention on Rights of People with Disabilities.

Ill-treatment of persons deprived of their liberty

When it comes to rights of prisoners with disabilities, it has to be noted no most of the Polish prisons are not architecturally and physically adapted to the needs of people with disabilities. This kind of failure may lead to the inhuman and degrading treatment of this specific group of prisoners. The conditions of imprisonment of people with disabilities are regularly checked by the Human Rights Defender⁷ and it has been proven that people with disabilities are kept in conditions that prevent them to function independently because of architectural and communication barriers. The disabled prisoners are forced to ask for assistance of other inmates, people with physical disabilities are not even able to intimately use the toilets, there are no facilities for the blinds or visually impaired, most none of the Polish prisons staff does not use Polish sign language.

Right to privacy and family life

According to the Family and Guardianship Code, a person with intellectual disability or mental health problem cannot get married. There is only one exception – a judge can allow such persons to get married if their health or mind condition doesn't threaten neither marriage itself nor health of future children and only if such persons are not incapacitated. In practice, directors of registry offices are those who decide if a person can get married – on the basis of their preclusions they can either refuse giving needed certificates or demand specialist medical documentation to prove that a person has neither intellectual disability nor mental health problems. It happens that persons with communication problems (due to e.g. cerebral palsy) are deprived of or limited in their right to privacy and family life because of officials' ignorance and prejudice. Both law itself and practice limit mentioned rights of persons with different disabilities, especially by depending on other persons decisions (full of ignorance and bias).

⁷ <https://www.rpo.gov.pl/sites/default/files/Wyci%C4%85g%20-%20A%C5%9A%20Warszawa-Mokot%C3%B3w%202015.pdf>