



POLSKIE TOWARZYSTWO  
PRAWA ANTYDYSKRYMINACYJNEGO

# ALTERNATIVE REPORT TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Submitted by the Polish informal coalition for the  
CCPR for consideration of the UN Human Rights  
Committee in reference to the Session no 118

Warsaw, 21 July 2016

This report has been prepared jointly by the following organizations:

Polish Society of Antidiscrimination Law (coordinator of the report works)

Federation for Women and Family Planning

TUS Foundation

Trans-Fuzja Foundation

Open Republic – Association against anti-Semitism and xenophobia

Campaign Against Homophobia

KARAT Coalition



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### **Members of the Coalition:**

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

**Federation for Women and Family Planning** (Federacja na rzecz Kobiet i Planowania Rodziny), established in 1992, a non-governmental organization acting for gender equality by defending women's and girl's reproductive rights

**TUS Foundation** (Fundacja TUS), a non-government organisation, which has a long-term experience in social and professional activation of people with disabilities

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

**Open Republic - Association against Anti-semitism and Xenophobia** (Otwarta Rzeczpospolita - Stowarzyszenie przeciw Antysemityzmowi i Ksenofobii) was established in 1999 as an expression of the need to counteract xenophobic and anti-Semitic prejudice reappearing in the Polish public life. The basic goals of the Association include promotion of the attitude of openness and respect for persons and groups of a different ethnic, national, religious, cultural or social identification.

**Campaign Against Homophobia** (Kampania Przeciw Homofobii), established in 2001, a nongovernmental organization working for the equal rights of lesbian, gay, bisexual and transgender people

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



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## Introduction

This report has been prepared by the informal coalition of 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 equality and non-discrimination issues that were raised by the Human Rights Committee in its List of issues prior to submission of the seventh periodic report of Poland. This is why the alternative report contains information with regard to selected issues formulated by the Human Rights Committee.

In order to provide a broad picture of the human rights protection in Poland the coalition decided to include information not only regarding the reporting period but also concerning most recent events that took place in 2015 and 2016.

### Institutional protection against discrimination

The Equal Treatment Act establishes two institutional mechanisms in order to implement the principle of non-discrimination:

- 1) Government Plenipotentiary for Equal Treatment operating within the Chancellery of the Prime Minister
- 2) Extended remit of Human Rights Defender to counteract discrimination

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"<sup>1</sup>.

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



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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 freedom<sup>2</sup>.

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 exaggeration<sup>3</sup>.

Human Rights Defender – 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.

#### 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.

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

<sup>3</sup> <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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## **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)<sup>4</sup>. 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 equality**

#### Hate motivated crimes against racial and religious groups

The authors of the alternative report, referring to the interim report on Poland's implementation of the International Covenant on Civil and Political Rights, state that

<sup>4</sup> [https://rownosc.info/media/uploads/raport\\_do\\_druku.pdf](https://rownosc.info/media/uploads/raport_do_druku.pdf)



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information presented in relation to paragraphs 6 and 7 is imprecise and incomplete, and above all does not include statistics kept by the non-governmental organizations.

We can hardly agree with the statement that the proportion of cases taken on in the area of hate speech increases, the cause of this increase supposedly being a greater involvement of prosecutors and their thorough analysis of the perpetrators' motives. The absurd justification in case of refusal to initiate the investigation demonstrates something completely different.

For example, the decision of the District Prosecutor's Office in Warsaw, in the case of incitement to exterminate the refugees shows a lack of good will and minimal effort of the Prosecutor put into interpreting the author's intention, as well as ignorance of the law and interpretation contrary to international law and the case law of both the Human Rights Committee and the European Court of Human Rights: "The content of the entry» "What remains is to complete the work of Adolf " «cannot be considered as instigating hatred. The author does not provide further information concerning a person named "Adolf " nor any details of the "work", which "remains to be finished", thus leaving this entry open to interpretation".

Prosecutors also do not recognize anti-immigrant content as inciting hatred on grounds of nationality: "Immigrants are people of different faiths, nationality, origin or race. So you cannot equate the notion of an immigrant with a specific religion, nationality or ethnic origin."

Between September 2014 and the 15th of April 2016, the Association Against Anti-Semitism and Xenophobia Open Republic, as part 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, seven 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.

We cannot agree with the understated number of incidents of anti-Semitic nature. According to our statistics, in twenty months we have had to deal with at least 30 incidents of this kind. We mean both online entries, graffiti, dissemination of anti-Semitic works as well as the issue of the sale of anti-Semitic press in Poland. What is really upsetting is the sale of anti-Semitic press at the Warsaw University Library. Intervening with the Rector brought no effect, neither did the notice of offense reported to the Prosecutor's Office. Selling press containing anti-Semitic and xenophobic contents on the University campus was not recognized as public incitement to hatred on grounds of national, ethnic and racial differences.



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It is worth noting that the majority of cases related to hate crimes are not pursued, despite existing guidelines on their more effective prosecution. These guidelines as well as raising awareness of prosecutors and judges led only to an increase in the number of cases reported and considered, and not to an increase in cases ending in judgment. The percentage of discontinued cases does not change over the years, only the reasons for such decisions are changing. Basic categories can be distinguished: the reasons for a hateful entry were strong emotions provoked by the behavior of people at whom the act was directed; failure to detect the perpetrator - mostly suggesting that the suspect is not the author of the entry, because the computer is used by a lot of people; acquiescence of the prosecution to the perpetrators' assurances that their intentions were not racist nor xenophobic.

Returning to the issue of statistics carried out by non-governmental organizations, including the Open Republic, it has to be admitted that they differ radically from those presented by the Polish government. Watchdog organizations record all hateful events, both those eligible to be reported to the Prosecutor's Office, as well as those that can be removed by intervening with the administration of the portals. Additionally, the understatement of the number of cases refused the initiation of proceedings is affected by the fact that investigations are initiated only in order to be discontinued a short while later. Of course, this changes the statistics dramatically, because these cases are treated as those in which the proceedings were in progress, but there has been no punishment of the perpetrator. It is the level of penalty of the authors of the hateful comments which is the true measure of the effectiveness of state bodies in the fight against hate speech. In conclusion, it must be admitted that the statistics cited by the government, have nothing to do with the reality, which in our opinion and in the light of our statistics is becoming increasingly hateful and aggressive.

#### 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

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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.

### 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. Actions aimed at raising awareness among law enforcement agencies only in recent years begun to take a more systemic approach. It is still too early to assess the potential impact these activities have on changing the attitudes toward victims of homophobic, biphobic and transphobic violence. 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

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regulations. Polish new Government, established after the parliamentary elections in October 2015 still has not decided to bring this kind of bill to the Parliament. 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 Code<sup>5</sup>.

Lack of appropriate provisions in the Polish Penal Code results in using ineffective data collection methods and deepens the problem of underreporting of homophobic, biphobic and transphobic hate crimes.

Monitoring of the homophobic, biphobic and transphobic violence run by the law enforcement agencies was marginal in the reporting period. Its mechanism was based on establishing separate units or entrusting selected officers with the duty to collect and analyze this category of crimes. According to NGOs this mechanism proved to be ineffective. As a result statistics collected by NGOs still played a dominant role in assessing the scale of homophobic, biphobic and transphobic violence during the entire reporting period.

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. The activities of the Council for the Prevention of Racial Discrimination, Xenophobia and Related Intolerance (mentioned in the government's report) did not bring any tangible effects during the entire reporting period. Since the end of 2013 the Council's activity was superficial and the Council refused to undertake any activity aimed at protection of LGBT people. Eventually, at the end of April 2016 the Prime Minister abolished the Council. It also needs to be mentioned that the government's Plenipotentiary for Equal Treatment has no effective legal tools in the area of human rights protection. The first actions taken by the person occupying this position after the parliamentary elections in October 2015 give the impression that current Polish government downplays the scale and importance of counteracting homophobic, biphobic and transphobic hate crimes 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. Trans-Fuzja Foundation has been organizing trainings for armed forces (mainly the Polish police) for a number of years now and in most cases these trainings have been asked for by the police themselves, mainly the Center for Police Training in Legionowo, which to Trans-Fuzja's knowledge was not part of a wider governmental initiative. However, none such trainings took place in 2015.

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



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### 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. Polish legislator decided to amend the law on civil status. The new law enables obtaining civil marital status in two forms, according to art. 49, a civil marital status not specifying the purpose of its usage and art. 83 certificate obtained in order to confirm applicants legal entitlement to get marriage abroad. When applying for the civil marital status according to art. 83, applicant has to specify the name, surname and sex of applicant and the future spouse. In case when sex of the applicant and the future spouse is the same, the applicant is refused issuing the certificate.

Several discriminatory have been observed regarding attempts of Polish citizens in same sex marriages/civil partnerships to obtain a birth certificate for children born outside of Poland. This discriminatory practice might be exemplified Katherine M. and Zofia M.'s case. Katherine M. a British citizen and Zofia M., a Polish citizen, who got a civil partnership in Great Britain. Katherine M. gave birth to their daughter Maria M. In 2011. In Maria M.'s British birth certificate, Katherine appears as a birth mother, and Zofia M. as a parent. Zofia M. applied in Registry Office in Lodz for transcription of her daughter's birth certificate into the Polish birth registry, however, she was refused the transcription. Lack of transcription of birth certificate makes it impossible to obtain Polish citizenship. The reasoning of the refusal was based on argument that transcription of the British birth certificate with two parents of the same sex would be in contradiction with basic rules of Polish law, as it does not legalize same sex couples and Polish legal system consolidates traditional model of the family.

Zofia M. has challenged the decision at the Voivodships Governor's, Voivod's Administrative' Court and Supreme Administrative Court, however all instances upheld the Register's Office decision. Sofia M. has lodged a complaint in European Court of Human Rights, the case is pending. Few similar cases are pending for ruling in Polish courts.



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Same sex couples also face institutional discrimination when attempting to change surname to partner's. According to The Law on Changes of Names and Surnames, change of the name has to be justified by an important reason. In some cases, however, Registry Office refuses to change the name of the applicant when the reason given is being in a same sex relationship. Registry Office usually justifies the decision reasoning that same sex partnership is not legal in Poland.

### Ill-treatment of persons deprived of their liberty

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.



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The Ministry of Education is unwilling to cooperate with civil society organizations representing LGBTI community. Although many attempts of contact were undertaken by KPH – no cooperation has been launched so far. 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.

Sexual orientation or homophobia as a phenomenon are not discussed or counteracted – more than 60% of students admit that the subject is not brought up by teachers during classes. At the same time, in 3,5% of all cases of verbal homophobic violence the offenders were teachers, whereas 23,5% of cases of verbal violence happened at school. The situation is even worse when it comes to physical violence – almost 40% of homophobic attacks take place at learning facilities. 76% of students admit that homophobic language is present in their school, 26% have noticed physical bullying such as kicking, spitting, pulling. Because of that only 12,6% of students are completely ‘out’ in their school environment, the rest feels the need to conceal their sexual orientation in some way. There is no data on suicide of young people due to homophobic bullying, but studies show that LGB teens have suicidal thoughts ca. 5 times more often than their straight peers (accordingly 62,7% and 12,3%).

Information about sexual orientation is to some extent present in the school curricula. However, it is not provided in an objective and respectful manner. Neither does the school curriculum contain references to gender identity, yet gender is seen exclusively in the Equal treatment law. The curriculum does not seem to feature elements educating about transgender issues in the manner compliant with the current standards of human rights.

At the same time teachers admit that they lack competence and skills to deal with homophobic bullying at schools. Half of them stated that more training on the subject would help them address homophobic incidents at schools properly. The documents concerning the standards for teacher training do not require teachers to be appropriately qualified to conduct anti-discrimination education or combat discrimination in school. Also more than half of the teachers admit that the subject of homosexuality is not present enough in the school curricula.

The most recent Campaign Against Homophobia’s (KPH) project related to youth in the system of formal education "Equal school - without discrimination and violence" (2014-2016), projects “Equality lesson” (2012-2014) were designed to assist schools evaluate its culture with regards to existing equal treatment policies, plan and successfully address the needs of school in terms of non-discriminatory education and good practices. Nonetheless, the project also has shown that public institutions’ support for such activities in the system of formal education is virtually non-existent. Currently schools are



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obliged to address the issues of inequality, discrimination and social exclusion and conduct non-discriminatory education (in accordance with the Decree of Ministry of Education regarding pedagogical supervision). Nevertheless, principals, teachers and school counselors, who are responsible on the school's part, have little to no knowledge and skills regarding discrimination and exclusion, especially regarding LGBTI persons, left alone methods of non-discriminatory education. Various reports ("The Big Absent", TEA, 2011; "Equality Lesson. Attitudes and needs of school staff and youth in terms of homophobia in schools", KPH, 2012; "Discrimination in schools - presence unjustified", TEA, 2015) address the issue that school staff is not given any means to familiarize themselves with non-discriminatory education in the process of training as a professional group. One of the key findings of the researches proves that educators who have not received relevant trainings conduct ecological/democratic/preventive education mistaking it for non-discriminatory one. In response to that problem, the project aims at engaging relevant stakeholders and bodies responsible for contents and programs in pedagogical studies and courses to investigate good practices, create an adequate programs fit for practical appliance and disseminate them among the future and present school staff.

## Women's rights

### Decision-making process and political life

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 life<sup>6</sup>. 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 at put women' 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

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



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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 Ministry of Health is not working on any legal provisions or other measures and in its correspondence with the Human Rights Defender it stated that there is no need for such actions.

The former administration performed a “research” on the use of conscientious objection in Polish hospitals. The Ministry claims that the results “show” that the problem in fact does not exist. There is no work on monitoring of the use of conscientious objection. Meanwhile the Federation for Women and Family Planning conducted a monitoring of hospital protocols that are used when a woman wants to perform a legal abortion. It clearly showed that not only conscientious objection is a problem but also the fact that hospitals create additional requirements and barriers (not in accordance with the existing law) that limit women’s access to legal procedures even more.

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.

In terms of art. 7 of the Covenant it should be stated that there are two European Court of Human Rights’ decisions that Poland violated women’s right to stay free from inhumane and degrading treatment in cases of access to legal abortion and prenatal diagnosis (P. and S. v. Poland and R.R. v. Poland). Neither of the two judgments (issued in 2011) has been implemented.

### The right to privacy

Access to information and means to decide freely and responsibly about one’s family life in terms of the number and spacing of children is limited. It is because there are no family planning centers in which relevant and comprehensive information would be provided. Moreover access to contraceptives is limited by: prescription requirement, difficulties in obtaining a prescription for hormonal contraception, abuse of conscientious objection on



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that matter by doctors, attempts to illegal use of conscientious objection by pharmacists, no subsidization from the state budget.

## 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 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. In the view of the organisations that prepared this alternative report 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 Defender<sup>7</sup> 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.

One of the most drastic examples of how prisoners with disabilities are treated in Polish prisons is a case of a person detained in one of the psychiatric hospitals. The representatives of the Human Rights Defender and the Foundation for Poland Without Barriers when visiting the place, they received information that one of inmates was taken away from his wheelchair and as a result he was forced to move on his knees. He was also dependent from other inmates' assistance in the use of toilets.

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



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### 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).