



United States Department of State

Washington, D.C. 20520

August 14, 2019

Case No. F-2019-00364
Segments: CGFS-0001 &
Warsaw-0002

Judicial Watch
425 Third St., SW, Suite 800
Washington, DC 20024

Dear Mr. Marshall:

I refer to our letter dated July 10, 2019, regarding the release of certain Department of State material under the Freedom of Information Act (the "FOIA"), 5 U.S.C. § 552. The processing of records is ongoing and has, thus far, yielded an additional 67 documents responsive to your request. We have determined 22 documents may be released in full, 36 documents may be released in part, and 9 documents must be withheld in their entirety.

An enclosure explains the FOIA exemptions and other grounds for withholding material. Where we have made excisions, the applicable FOIA exemptions are marked on each document. Documents withheld in full are exempt from release pursuant to FOIA Exemption(s) 5 and 6, 5 U.S.C. §§ (b)(5) and (b)(6). All non-exempt material that is reasonably segregable from the exempt material has been released, and is enclosed.

The processing of your request is ongoing. We will keep you informed as your case progresses. If you have any questions, your attorney may contact Assistant U.S. Attorney Scott Sroka at 202-252-7113 or scott.sroka@usdoj.gov. Please refer to the request case number, F-2019-00364, and the civil action number, 1:19-cv-00790, in all correspondence about this case.

Sincerely,

A handwritten signature in black ink, appearing to read "Susan C. Weetman".

Susan C. Weetman
Deputy Director
Office of Information Programs and Services

Enclosures: As stated.

The Freedom of Information Act (5 USC 552)

FOIA Exemptions

- (b)(1) Information specifically authorized by an executive order to be kept secret in the interest of national defense or foreign policy. Executive Order 13526 includes the following classification categories:
- 1.4(a) Military plans, systems, or operations
 - 1.4(b) Foreign government information
 - 1.4(c) Intelligence activities, sources or methods, or cryptology
 - 1.4(d) Foreign relations or foreign activities of the US, including confidential sources
 - 1.4(e) Scientific, technological, or economic matters relating to national security, including defense against transnational terrorism
 - 1.4(f) U.S. Government programs for safeguarding nuclear materials or facilities
 - 1.4(g) Vulnerabilities or capabilities of systems, installations, infrastructures, projects, plans, or protection services relating to US national security, including defense against transnational terrorism
 - 1.4(h) Weapons of mass destruction
- (b)(2) Related solely to the internal personnel rules and practices of an agency
- (b)(3) Specifically exempted from disclosure by statute (other than 5 USC 552), for example:
- | | |
|----------------|---|
| ARMSEXP | Arms Export Control Act, 50a USC 2411(c) |
| CIA PERS/ORG | Central Intelligence Agency Act of 1949, 50 USC 403(g) |
| EXPORT CONTROL | Export Administration Act of 1979, 50 USC App. Sec. 2411(c) |
| FS ACT | Foreign Service Act of 1980, 22 USC 4004 |
| INA | Immigration and Nationality Act, 8 USC 1202(f), Sec. 222(f) |
| IRAN | Iran Claims Settlement Act, Public Law 99-99, Sec. 505 |
- (b)(4) Trade secrets and confidential commercial or financial information
- (b)(5) Interagency or intra-agency communications forming part of the deliberative process, attorney-client privilege, or attorney work product
- (b)(6) Personal privacy information
- (b)(7) Law enforcement information whose disclosure would:
- (A) interfere with enforcement proceedings
 - (B) deprive a person of a fair trial
 - (C) constitute an unwarranted invasion of personal privacy
 - (D) disclose confidential sources
 - (E) disclose investigation techniques
 - (F) endanger life or physical safety of an individual
- (b)(8) Prepared by or for a government agency regulating or supervising financial institutions
- (b)(9) Geological and geophysical information and data, including maps, concerning wells

Other Grounds for Withholding

- NR Material not responsive to a FOIA request excised with the agreement of the requester

B6

From: [redacted] on behalf of
A. Chaber <[redacted]>
Sent: Monday, March 30, 2015 8:07 AM
To: Dragan, Katarzyna E <DraganKE@state.gov>
Subject: Re: prosba o informacje - z Ambasady USA

RELEASE IN PART
B6

Witam!

Jeszcze raz bardzo dziękuję i podaję informacje:

1. Data i miejsce urodzenia: [redacted]
2. Krótki życiorys zawodowy (może być naprawdę w kilku zdaniach): [redacted]
[redacted]
3. Dane kontaktowe: [redacted]

Jako telefon stacjonarny możemy traktować numer KPH, tj. 22 423 64 38.

W razie, gdyby potrzebne były jeszcze jakiekolwiek inne informacje, to proszę o kontakt.

Pozdrawiam,

Agata Chaber

A. Chaber
Prezes Zarządu | ED
Kampania Przeciw Homofobii | Campaign Against Homophobia
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<http://redirect.state.sbu/?url=www.kph.org.pl>
<http://redirect.state.sbu/?url=www.facebook.com/lgbt.kph>
[twitter KPH](#)

Wspieraj działalność KPH | Support KPH



W dniu 30 marca 2015 13:57 użytkownik Dragan, Katarzyna E <DraganKE@state.gov> napisał:

Witam serdecznie,

W nawiązaniu do rozmowy telefonicznej, chciałabym uprzejmie prosić o przesłanie mi kilku podstawowych informacji biograficznych, które są niezbędne do nominowania Pani na wyjazd do Stanów Zjednoczonych. Tak jak wspominałam, niestety, nasza nominacja nie jest jednoznaczna z wyjazdem - procedura wyboru kandydatów jest bardzo długa i konkurencyjna, zgłaszani są kandydaci przez wszystkie Ambasad USA z całego świata, decyzje zapadają na poziomie Departamentu Stanu w Waszyngtonie. Mimo wszystko, wydaje nam się, że warto spróbować.

W związku z powyższym, byłabym wdzięczna o przesłanie następujących informacji :

1. Data i miejsce urodzenia
2. Krótki życiorys zawodowy (może być naprawdę w kilku zdaniach)
3. Dane kontaktowe: e-mail, telefon stacjonarny (jeśli jest), tel. komórkowy

Byłabym bardzo wdzięczna za możliwie szybką odpowiedź na moje pytania.

Pozdrawiam serdecznie,

Katarzyna Dragan

Political Assistant

American Embassy Warsaw, Poland

Al. Ujazdowskie 29/31, 00-540 Warszawa

Tel. [+48 22 504 2536](tel:+48225042536)

Fax [+48 22 504 2678](tel:+48225042678)

e-mail: DraganKE@state.gov

This email is UNCLASSIFIED.

From: Marcin Rodzinka <[redacted]>
Sent: Friday, December 9, 2016 7:48 AM
To: Bremner, Steven A <BremnerSA@state.gov>; Dragan, Katarzyna E <DraganKE@state.gov>
Cc: mmakuchowska <[redacted]>
Subject: Meeting with KPH
Attach: Przydatne informacje - konferencja Hate no More.pdf; HnM_ProgramPL (1).pdf; HateNoMore Conference.pdf; Campaign Against Homophobia UPR good.pdf; UPR SUMMARY POLAND V DCPM.pdf

RELEASE IN PART
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Dear Mr Bremner, Ms Dragan,

thank you once again for today's meeting. As a follow up I'm sending to you electronic version of submitted report to UPR (Universal Periodic Review). We would be thankful for conveying it to your relevant department.

I'm sending as well agenda and information about mentioned conference. You are of course invited, and I will make sure that your addresses are updated.

You are more than welcome to contact us on any occasion you need information and comment.

Many thanks,

Marcin Rodzinka

Marcin Rodzinka

Członek Zarządu | Board Member
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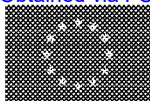


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Obtained via FOIA by Judicial Watch, Inc.



The project is financed by
the Fundamental Rights and
Citizenship Programme of the
European Commission



kampania
przeciw
homofobii

HateNoMore Conference

RELEASE IN FULL

Accommodating the Needs of the victims of SOGI motivated hate crimes

Warsaw, 12-13 December 2016.

Preliminary agenda

Venue:

Hotel Golden Tulip

Ul. Towarowa 2, Warsaw.



Monday, 12 December 2016	
10:00 – 10:05	Introduction
10:05 – 10:45	Opening Session
10:05 – 10:15	OPENING REMARKS by: Commissioner for Human Rights - Mr. Adam Bodnar , Poland
10:15 – 10:20	Video message from Michał Boni , Member of the European Parliament, EPP
10:20 – 10:30	Victims' Rights Directive regarding protection of victims of homophobic and transphobic crime victims - Prof. Ewa Bienkowska
10:30 – 10:45	Presentation of the HateNoMore project - Magdalena Swider and Giorgi Tabagari , Campaign Against Homophobia
10:45 – 11:45	Hate Crime Victims -- storytelling Q & A session
11:45 – 12:15	Coffee Break
12:15 – 12:50	Presentation of the results of quantitative and qualitative researches in Central and Eastern Europe – Dr Magdalena Budziszewska , Paulina Górka , University of Warsaw
12:50 – 13:20	Presentation of the needs of crime victims - Prof. Paul Iganski , Lancaster University
13:20 – 14:20	Lunch

14:20 – 15:50	<p>PANEL DISCUSSION: level of transposition of the Victims' Rights Directive and individual assessment tools</p> <p>Moderation: Michael Cerulus – Senior Policy Officer, ILGA-Europe, Belgium</p> <p>Experts:</p> <ul style="list-style-type: none"> ➤ Tamas Dombos, Project Coordinator, Hatter Society, Hungary ➤ Sanita Sile – Policy Researcher in criminal justice, Latvia ➤ Natalija Bitiukova – Deputy Director, Human Rights Monitoring Institute, Lithuania ➤ Nikica Hamer Vidmar - Head of the Independent Service for Victim and Witness Support, Ministry of Justice, Croatia ➤ Pawel Knut – Coordinator of the Legal team, KPH, Poland
15:50 – 16:20	Coffee break
16:20 – 17:50	<p>PANEL DISCUSSION: Strengthening cooperation between NGOs and law enforcement agencies</p> <p>Moderation: Dr. Dorota Pudzianowska – Helsinki Foundation for Human Rights</p> <p>Experts:</p> <ul style="list-style-type: none"> ➤ Michael Whine – Director, Government & International Affairs Community Security Trust (CST), UK ➤ Jacek Mazurczak - expert on hate crimes, Instytut Bezpieczeństwa Społecznego ➤ Květa Glaserová, legal counselor, In IUSTITIA, Czech Republic ➤ Kristof De Busser – Antwerp Police, Belgium
19:00	Dinner
	Tuesday, 13 December 2016

10:00 – 13:00	<p>Workshop 1 - Recognition of hate crimes - the circumstances of the offenses, questions to witnesses and victims, decisions in proceedings – Piotr Godzisz, Lambda Warszawa, Anna Mazurczak, Office of Commissioner for Human Rights (In Polish)</p> <p>Workshop 2 - EU tools and mechanisms of monitoring and enhancing the transposition of VRD for national actors – Michael Cerulus, ILGA-Europe</p> <p>Workshop 3 - How to build trust among hate crime actors? Talking about different perspectives of actors involved: law enforcement agencies, NGO's, victims, state authorities.</p> <p>Workshop 4 -Individual assessment procedures -- good practices and risks -- Tamas Dombos, Hatter Society, Hungary</p>
13:00 – 14:00	Lunch
14:00 – 15:00	<p>Presentation of the summaries of the workshops,</p> <p>summary of the conference</p>

Campaign Against Homophobia

SUBMISSION TO THE UNIVERSAL PERIODIC REVIEW (THIRD CYCLE)

RELEASE IN FULL

POLAND

Submitting stakeholder:

Campaign Against Homophobia

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Summary:

This submission covers the issue of protection from discrimination based on sexual orientation, gender identity and gender expression in Poland in the years 2012-2016 in areas of access to education, health services and private life/family life.

1. Right to privacy/family life

Recommendations made to Poland during previous cycle of UPR in 2012

1. 90.71. The adoption of policies that safeguard the rights of LGBT people and fight discrimination based on sexual orientation (Brazil);
2. To adopt legislation that recognizes the rights of same-sex couples and of persons who independently define their gender identity as well as the rights of transgender persons (69. Australia);

3. To adopt legislation enabling same-sex couples to enter into a civil union contract (97. France);

Despite the fact that all off above mentioned recommendations have not been supported by polish state, KPH strongly recommends adoption of legislation enabling same sex couples entering into civil union. Lack of recognition of same sex couples leads to discrimination

Currently 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. During the previous term of Parliament, three bills on civil unions were submitted, all by groups of MP. None of them have been gained majority votes to be further proceeded.

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 men 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 law¹ (came into force on 01.03.2015) 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 expamlified 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. Katherina 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

1

<http://isap.sejm.gov.pl/Download.jsessionid=54FBD6FF9CBCB0BEA2BB4F13E94773C8?id=WDU20140001741&type=3>

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 Voivoidships Governor's, Voivoid'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.

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.

2. Right to privacy/family life

Recommendations made to Poland during previous cycle of UPR in 2012

1. 90.71. The adoption of policies that safeguard the rights of LGBT people and fight discrimination based on sexual orientation (Brazil);
2. 90.67. Guarantee the full enjoyment of the rights of the LGBT community (Spain);
3. To implement reforms giving every citizen the right to the highest attainable standards of health care on the territory of Poland (110. Australia);
4. To take further steps to promote and protect the human rights of minorities, in particular in the area of health care, employment and housing (114. Mexico);

All of above mentioned recommendation have been supported by the state.

According to KPH's research² and information obtained from its legal and psychological counseling clients, LGBTI patients in Poland face barriers in access to health services. Study³ conducted by Ombudsman office proved that more than 20% of LGBTI patients face discrimination within healthcare system. Among frequently violated patients' rights

² *Social Situation of LGBT in Poland*, KPH, Lambda Waszawa, Trans-Fuzja, 2012, p. 56-60, http://www.kph.org.pl/publikacje/Raport_badania_LGBT_do_netu.pdf

³ *Equal treatment perceived by non-heterosexual patients in healthcare*, Polish Ombudsman Office, 2014 https://www.rpo.gov.pl/sites/default/files/BIULETYN_RZECZNIKA_PRAW_OBYWATELSKICH_2014_nr_7.pdf

in relation to LGBT people were the access to the information for the significant other, the right to dignity and privacy, and the right to healthcare services at the highest possible level.⁴

Problem partially stems from lack of curricula regarding LGBT issues in medical universities which was proven by KPH's monitoring (attachment nr 2).

Large proportion of medical practitioners see homosexuality as a pathological problem which requires psychiatric intervention (treatment). Also medical students lack knowledge on homosexuality and share harmful stereotypes about this group, for example 20% of medical students on their senior year think that homosexuality should be treated.⁵ Students think of homosexuality a pathological, due to the fact it is present in medical training and training materials.⁶ In March 2015, KPH has sent a request to Ministry of Health to recommend to authorities of medical academies inclusion of antidiscrimination curricula regarding LGBT patients. In response (attachment nr 1), the Ministry of Health stated that medical professionals are adequately trained during studies and due to the autonomy of medical universities no action is possible. KPH also approached Commissioner for Patients' Rights in order to offer cooperation regarding increasing level of awareness LGBTI patients about their rights. In response Commissioner for Patients' Rights stated that no action is required to ensure LGBTI patients rights, due to lack of reported cases. Commissioner has not expressed the will of cooperation to tackle underreporting.

Previous Plenipotentiary for Equal Treatment (Wojciech Kaczmarczyk) numerously publicly questioned methodology of Fundamental Rights Agency's research regarding level of discrimination of LGBT people, stating that it cannot be evidence to start work on LGBT issues, including health. ⁷

3. Right to education

Recommendations made to Poland during previous cycle of UPR in 2012

90.71. The adoption of policies that safeguard the rights of LGBT people and fight discrimination based on sexual orientation (Brazil);

⁴ *Equal treatment perceived by non-heterosexual patients in healthcare*, Polish Ombudsman Office, 2014

⁵ *Konteksty społeczno kulturowe sytuacji pacjentów nieheteroseksualnych korzystając z systemu usług systemu ochrony zdrowia, na terenie Polski*, Agnieszka Żok, Uniwersytet Medyczny im. K. Marcinkowskiego w Poznaniu, katedra Nauk Społecznych.

⁶ *Professionally speaking: challenges to achieving equality for LGBT people*, Fundamental Right Agency, March 2016

⁷ <http://wyborcza.pl/magazyn/1,124059,20031971,rownosc-wedlug-wojciecha-kaczmarczyka-pelnomocnika-rzadu-ds.html>

Policies regarding LGBTI in the system of formal 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 KPH. They experience homophobic behavior, not only from other students but also from teachers and educators as noted by 3,5% of respondents⁸.

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. Since 2013 KPH is a member organization of the Coalition for Antidiscriminatory Education, which advocates for systemic introduction of holistic, non-discriminatory principles in the system of formal education. The Coalition annually attempts to establish contact with the Ministry through official correspondence as well as meetings with administration workers but it has not started official cooperation. The only instance the Ministry for Education addressed the issue of homophobia in schools was on Sept. 1, 2015. As school year starts on this date, it is customary that the minister addresses the school communities across Poland in an open letter. The minister has announced a “Year of an open school [...], such that counteracts discrimination and homophobia.” The event that preceded such reaction was possibly a vigil in front of the Ministry for the teen, who committed suicide as a result of an intensive bullying and no substantial reaction of the school.

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 2010⁹ 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 classes¹⁰. 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

⁸ *Lekcja Równości. Postawy i potrzeby kadry szkolnej i młodzieży wobec homofobii w szkole*, Jan Świerszcz, KPH, Warszawa 2012

⁹ Dz.U. 2010 nr 254 poz. 1700 (isap.sejm.gov.pl/DetailsServlet?id=WDU20102541700)

¹⁰ *Lekcja Równości. Postawy i potrzeby kadry szkolnej i młodzieży wobec homofobii w szkole*, Jan Świerszcz, KPH, Warszawa 2012

sexual orientation in some way. There is no data on suicide rate of young people due to homophobic bullying, but studies show that LGB teens have suicidal thoughts 5 times more often than their heterosexual peers (accordingly 62,7% and 12,3%¹¹).

LGBTI issues in the school curricula

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 bill Ustawa z dnia 3 grudnia 2010 r. o wdrożeniu niektórych przepisów Unii Europejskiej w zakresie równego traktowania, Dz.U. 2010 nr 254 poz. 1700. 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 curricula¹².

Discrimination in school: recent studies and practices (2012-2016)

The most recent KPH's 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 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 supervision¹³). 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, 2011¹⁴; "Equality Lesson. Attitudes and needs of school staff and youth in terms of homophobia in schools", KPH, 2012; "Discrimination in schools - presence unjustified", TEA, 2015¹⁵) 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

11 *Symacja społeczna osób LGBT. Raport za lata 2010 i 2011*, Mirosława Makuchowska, Michał Pawłęga, Warszawa 2012

12 *Lekcja Równości. Postawy i potrzeby kadry szkolnej i młodzieży wobec homofobii w szkole*, Jan Świerszcz, Warszawa 2012

13 <http://dziennikustaw.gov.pl/du/2015/1270/1>

14 http://www.tea.org.pl/userfiles/file/Wielka_nieobecna_raport.pdf

15 http://tea.org.pl/userfiles/raporty/raport_tea_dyskryminacja_w_szkole.pdf

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

Case of Gymnasium in Piątkowisko

Adam Mickiewicz Gymnasium in Piątkowisko is one of the four schools in Poland, which took part in the project "Equal school - without discrimination and violence." The tasks of the schools in the project were, among others, to analyze the situation in the school in context of discrimination and unequal treatment as well as existing anti-discrimination activities, to plan and carry out anti-discrimination events corresponding to the needs and capabilities of school and to develop an anti-discrimination strategy in any form (eg. a calendar of events, change or introduction of school internal documents, etc.). All stages of the project at the school were conducted under supervision of an anti-discrimination trainer, which helped with all stages of the project.

"Focus on Diversity" was one of the events planned by the school in response to appearing homophobic hate speech. A few weeks after the event, local media, alerted by a local cell of the nationalist National Radical Camp group, described the case of activities in the school, which led to the intervention of the city mayor ordering the principal to take down any materials produced during the workshop off the school walls. Despite letters of support sent on behalf of Ombudsman, Amnesty International, and Association for Anti-discriminatory Education, KPH and the others, the Regional Superintendent on Education accused the principal of ineffectiveness of pedagogical supervision and failure to content to the age of the students. KPH agreed to challenge the report examination to the Ministry of Education. Re-examination conducted by the Superintendent maintained the decisions and conclusions of the previous analysis. Persons involved in the project, both teachers and students felt bullied on one hand by the right-wing media and nationalist organizations, and on the other, by the Regional Superintendent.



kampania przeciw homofobii

Campaign Against Homophobia – UPR Poland’s 3rd cycle

RELEASE IN
PART B6**3rd CYCLE - UNIVERSAL PERIODIC REVIEW - POLAND - UPR 2016 – ADVOCACY SHEET****Brief Assessment of the Implementation of the 2nd Cycle UPR Recommendations**

In 2012, during the UPR Cycle 2, Poland received 8 recommendations focusing on LGBT (lesbian, gay, bisexual and transgender) issues. Poland accepted 6 of these recommendations (e.g. hate crime laws, policies and laws safeguarding from discrimination, full enjoyment of rights, etc.), while 2 recommendations were noted.

Challenges**1. Right to privacy**

a) Polish citizens who intend to get a civil partnership or marriage abroad with a same-sex partner encounter barriers when requesting a civil status certificate. When the civil servant identified the name/surname of the future spouse as a same-sex as the applicant, in some cases they refuse the civil status certificate. Polish legislators decided to amend the law on civil status. The new law (came into force on 01.03.2015) 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, the applicant has to specify the name, surname and sex of applicant and the future spouse. In the case that the sex of the applicant and the future spouse are the same, they refuse to issue the certificate.

b) Several discriminatory practices 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. Parents are refused the child's birth certificate's transcription into the Polish birth registry. The reasoning of the refusal is the fact that the parents are the same sex. The lack of transcription of birth certificate makes it impossible to obtain Polish citizenship.

2. Hate crime

During the 2nd cycle of UPR in 2012, Poland accepted the recommendation to include sexual orientation and gender identity in the hate speech provisions (90.66 Slovenia) and to recognize gender identity and sexual orientation as aggravating circumstances for hate crime (90.68). **These recommendations have not been implemented.** Between 2012 and 2015, three such draft amendments were discussed in the parliament. None of the legislative initiatives led to the amendment of the Polish Criminal Code. 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)¹ 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 Code².

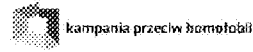
3. Equal treatment law

One of the most significant steps in enhancing the protection against discrimination in Poland was the adoption of the Act of 3 December 2010 Implementing Certain European Union Provisions on Equal Treatment (Equal Treatment Act). 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.

¹ <http://wyborcza.pl/1,75398,20015332,pis-zadnych-ustaw-o-mowie-nienawisci.html>

² <http://wyborcza.pl/1,75398,19539464,ziobro-wstrzymuje-prace-nad-karaniem-za-mowe-nienawisci-kph.html>

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organizacja pożytku publicznego



Campaign Against Homophobia – UPR Poland’s 3rd cycle

4. 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) and other LGBT ngos. They experience homophobic behaviour, 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. Current the Ministry of Education is unwilling to cooperate with civil society organizations representing LGBTI community. There is a lack of legal provisions that mention sexual orientation or gender identity as a possible discrimination ground in the formal education system.

5. Legal gender recognition

The state of legal gender recognition in Poland remains largely unchanged despite the Parliament working on a legal proposal between 2012 and 2015. This procedure is still a matter of a civil court case between an individual over 18 years of age and their parents and/or legal guardians, and has not been codified. On December 6th 2013, the Polish High Court delivered a ruling, which effectively complicates the process even further as it demands that a person seeking legal gender recognition sues both their parents, their spouse (if divorce was not finalized) and their children.

Recommendations:

1. Same sex couple recognition: To adopt legislation enabling same-sex couples to enter into a civil union contract.
2. Ensure that all children with foreign birth certificates can access to a polish citizenship, including those born abroad from same-sex families.
3. Hate Crime. To modify article 119, 256 and 257 of the polish criminal code and to add SOGI (sexual orientation and gender identity) as a protected ground
4. Legal gender recognition. Establish quick, transparent and accessible procedures defined within a legal framework that effectively distinguish between the legal and medical process of transition, leaving medical aspects between individuals and their healthcare providers, ensuring that no medical interventions are required to access legal gender recognition.
5. Non-discrimination: Amend the Act on Equal Treatment to prohibit discrimination comprehensively including sexual orientation and gender identity in all spheres and sectors, including education, health care, social protection and housing.
6. Education: ensure non biased curriculum on SOGI issues in formal education system by introducing antidiscrimination standards obligatory for school textbooks and provide measures enabling increasing competence among school staff regarding supportive and non biased approach to LGBT student.
7. Health care: to implement non biased SOGI issues in medical curriculum in higher education system for future medical staff and provide measures enabling increasing competences among medical practitioners regarding taking care of LGBT patients.

Contact person: Mirosława Makuchowska, Advocacy Director, + 48 511 803 474

B6

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organizacja pożytku publicznego

B6

From: Mirosława Makuchowska <[redacted]>
Sent: Friday, February 17, 2017 12:51 PM
To: Dragan, Katarzyna E <DraganKE@state.gov>
Subject: Re: small grants - informacja i propozycja spotkania
Attach: SMALL GRANTS kph.docx

Dzień dobry,
W załączniku przesyłam propozycje projektów wraz z kosztorysem, gdyby Państwo potrzebowali dodatkowych informacji to proszę śmiało do mnie pisać.
Dobrego weekendu,
Mirosława Makuchowska

2017-02-16 11:21 GMT+01:00 Mirosława Makuchowska <[redacted]>
Do zobaczenia.

RELEASE IN
PART B6

Wysłane z iPhone'a

Dnia 16.02.2017 o godz. 11:02 Dragan, Katarzyna E <DraganKE@state.gov> napisał(a):

Oczywiście. Do zobaczenia jutro.

KD

This email is UNCLASSIFIED.

From: Mirosława Makuchowska [mailto:[redacted]]
Sent: Thursday, February 16, 2017 10:27 AM
To: Dragan, Katarzyna E
Subject: Re: small grants - informacja i propozycja spotkania

Dobrze, spotkajmy się o 11.00. Czy możemy się spotkać u nas w biurze? Niedługo po naszym spotkaniu mam inne spotkanie i obawiam się że mogę nie zdążyć na nie dojechać.

Pozdrawiam

Mirka Makuchowska

Wysłane z iPhone'a

Dnia 15.02.2017 o godz. 16:40 Dragan, Katarzyna E <DraganKE@state.gov> napisał(a):

Proponuję godzinę 11.00 (ale może być też inna godzina, np. bardziej po południu). Gdzie miałyby się odbyć spotkanie? U Państwa w biurze, czy u nas? Możemy też się spotkać w Pijalni Czekolady Wedla na Pięknęj (niedaleko Ambasady).

KD

This email is UNCLASSIFIED.

From: Mirosława Makuchowska [mailto:[redacted]]
Sent: Wednesday, February 15, 2017 3:59 PM
To: Dragan, Katarzyna E
Subject: Re: small grants - informacja i propozycja spotkania

Dzień dobry,

W piątek możemy się spotkać. O której Państwu pasuje?

Mirka

Wysłane z iPhone'a

Dnia 15.02.2017 o godz. 13:09 Dragan, Katarzyna E <DraganKE@state.gov> napisał(a):

Witam,

W tym tygodniu może być piątek, w przyszłym – wtorek lub środa.

Jednocześnie przejrzałam jeszcze raz informacje, które otrzymaliśmy z Waszyngtonu – nie ma tam niestety więcej wskazówek, cała informacja jest na dużym stopniu ogólności.

Pozdrawiam,

KD

From: Mirosława Makuchowska [mailto: [REDACTED]]
Sent: Wednesday, February 15, 2017 11:20 AM
To: Dragan, Katarzyna E
Subject: Re: small grants - informacja i propozycja spotkania

B6

Dzień dobry,

Mamy już kilka propozycji projektów. Kiedy Państwu by pasowało się spotkać i o nich porozmawiać?

Pozdrawiam,

Mirosława Makuchowska

2017-02-08 9:56 GMT+01:00 Dragan, Katarzyna E <DraganKE@state.gov>:

Witam serdecznie,

W nawiązaniu do naszej wczorajszej rozmowy, przesyłam kilka informacji na temat programu małych grantów. Tak jak Pani wspominałam, chcielibyśmy się spotkać w przyszłym tygodniu i porozmawiać na ten temat. Propozycje terminów spotkania: wtorek-środa, dowolna godzina.

Pozdrawiam,

Katarzyna Dragan

Political Analyst

American Embassy Warsaw, Poland

Al Ujazdowskie 29/31, 00-540 Warszawa

Tel. +48 22 504 2536

Mobile: [REDACTED]

Fax +48 22 504 2678

e-mail: DraganKE@state.gov

Small grants (\$5,000 up to \$25,000) to strengthen local civil society organizations working to advance the human rights of lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons. Competitive applications should propose new, innovative, and context-specific opportunities, address immediate challenges or threats, and highlight specific needs; and/or they should be ideas or concepts that address policy objectives that result in advancement of equality and civilian security of LGBTI persons

Previously successful project objectives include:

--Introduction or passage of new anti-discrimination legislation or new legislation supportive of the human rights of LGBTI persons (such as legislation that allows individuals to change their gender identity in official documents) or steps toward repeal of discriminatory legislation (such as laws that criminalize adult consensual same-sex acts);

--Measures taken by national authorities to improve security protections for LGBTI persons (such as development/ implementation of national action plans, steps to protect LGBTI persons from violence and hate crime, counter hate crime training to law enforcement officials, public

tolerance messaging campaigns, and resources to address the needs of LGBTI persons);

--Establishment of or support to diverse coalitions that support the human rights of LGBTI persons and include a variety of stakeholders, such as health professionals, academics, faith leaders, business community leaders, and mainstream human rights organizations;

--Activities to raise awareness and facilitate dialogue with diverse stakeholders, adversaries, and potential allies, such as lawmakers, faith leaders, local and national authorities, and others, including through social media campaigns, public roundtables and dialogues, and other formats;

--Activities to sensitize media practitioners on proper/ethical reporting methods for LGBTI-related issues and to raise awareness of the media's role in social attitudes toward and bias-motivated violence affecting the LGBTI community.

Types of activities that are typically viewed as not competitive for funding include:

--Stand-alone conferences and onetime events;

--Projects that are strictly service provision (i.e. providing shelters, safe spaces, healthcare or legal services);

--Art projects;

--Activities conducted by post – Please Note: The funds being provided are foreign assistance funds meant to support civil society organizations and are not State D&CP funds, public diplomacy funds, or representational funds and cannot be used for these purposes;

--Activities on Marriage Equality

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--

Mirosława Makuchowska

Wiceprezeska Zarządu | Vicepresident
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Przeznacz 1% podatku na KPH

<image001.jpg>

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<image002.png>

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--

Mirosława Makuchowska
Wiceprezeska Zarządu | Vicepresident

B6

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Wesprzyj działania KPH - przekaż darowiznę



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RELEASE IN PART
B6

From: Dragan, Katarzyna E </o=SBUState/ou=Warsaw
AG/cn=Recipients/cn=DraganKE>
Sent: Thursday, April 6, 2017 10:23 AM
To:
Bcc: [redacted]; [redacted]; 'Krzysztof Smiszek' B6
[redacted]; 'Grzegorz Giemza' [redacted]; 'Malgorzata
Szuleka' [redacted]; 'Dorota Pudzianowska'
[redacted]; [redacted]; 'Osrodek Kultury
Muzulmanskiej' [redacted] B6
[redacted]; [redacted]
[redacted]; [redacted]; 'biuro [redacted] B6
'sekretariat@jewish.org.pl'
Subject: Program grantowy Departamentu Stanu na rzecz wolnosci religijnej oraz na rzecz
przeciwdzialania nietolerancji i dyskryminacji

Szanowni Państwo,

Chciałabym zwrócić Państwa uwagę na nowy program grantowy Departamentu Stanu na rzecz promowania wolności religijnej na świecie oraz przeciwdziałania nietolerancji i dyskryminacji. Pełna informacja o programie dostępna jest pod adresem:

<https://www.grants.gov/web/grants/view-opportunity.html?oppId=292692>

Poniżej krótki opis programu:

A. PROJECT DESCRIPTION

The U.S. Department of State, Bureau of Democracy, Human Rights and Labor (DRL) announces an open competition for organizations interested in submitting applications for projects that promote and protect religious freedom in the regions of Europe and East Asia and the Pacific.

Organizations may submit no more than one (1) application per category and must explicitly identify for which category (Europe and/or East Asia and the Pacific) an application is being submitted. If an application title does not explicitly identify one of the below categories in the submission, it may be deemed technically ineligible and may not be forwarded to the review panel for consideration.

More specifically, projects should seek to do the following:

In **Europe (\$400,000)**, DRL's objective is to have a direct and lasting impact in combating discrimination and intolerance, including acts that can lead to violence, on account of religion or belief in Europe. There has been a recent spike in anti-Semitism and anti-Muslim sentiment as part of the cultural and political discourse in Europe and some Christians including Protestant and Evangelical groups are facing increasing harassment and restrictions in certain countries. This has had a negative effect on religious freedom in many European countries. Hate projected in the public sphere and online is spilling over into violent acts in real time, with Jewish and Muslim communities and institutions increasingly targeted for hate crimes.

Projects should seek to combat intolerance and discrimination, addressing, to the extent possible, issues facing Jewish, Muslim and Christian minority populations in the targeted countries. A successful project will encourage education on tolerance and coexistence with a focus on combatting anti-

Semitism, anti-Muslim and anti-Christian sentiment, ensure that civil society can effectively address anti-Semitic, anti-Muslim, anti-Christian hate crimes, build coalitions between NGOs and work with their governments to promote full inclusion of people of all faiths.

DRL will consider projects that propose cross-national-border approaches and activities (in several countries) or projects that provide a rationale for a more narrow geographic focus. Countries chosen should be selected carefully with an eye to strategically optimizing the outcomes, keeping in mind shared or divergent cultural, social, and political norms. Projects should use creative and innovative approaches and incorporate media or other technology to achieve the best project visibility and effect. Projects must result in concrete, measurable outcomes.

Ideas for successful program activities could include, but are not limited to:

- The implementation of anti-xenophobic activities and public messaging through targeted, local language campaigns;
- The use of existing innovative technological tools that combat discrimination and intolerance, particularly those countering on-line hate speech while preserving the exercise of free speech;
- The development of educational materials for the public that promote tolerance and coexistence and combat inter-communal tensions;
- The creation of youth programs that build coalitions among majority and minority religious communities.

Organizations submitting an application for this category are encouraged to do so in partnership with at least one other organization. However, one organization must be designated as the lead applicant. While organizations are limited to submitting only one (1) application under this category, this limitation does not extend to being included as a partner in another organization's application.

Pozdrawiam serdecznie,

Katarzyna Dragan
Political Assistant
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Mobile:
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e-mail: DraganKE@state.gov

B6

Official
UNCLASSIFIED

From: Franciszka Sady [redacted]@kph.org.pl
Sent: Monday, July 3, 2017 11:06 AM
To: Bremner, Steven A <BremnerSA@state.gov>
Cc: Dragan, Katarzyna E <DraganKE@state.gov>; Marcin Rodzinka KPH [redacted] Vyacheslav Melnyk [redacted]
Subject: Re: KPH events

RELEASE IN
PART B6

Dear Steven,
How are you? I've been wondering if you have some answers for us regarding the Gala/ILGA conference?

Sincerely,
Franciszka

On 27 March 2017 at 11:56, Franciszka Sady [redacted] wrote:

Dear Steven,
Thank you for your email. Looking forward to hearing from you in a few weeks.

Sincerely,
Franciszka

On 24 March 2017 at 16:20, Bremner, Steven A <BremnerSA@state.gov> wrote:

Franciszka:

Please forgive my delayed response. I am working with our DC office on the US Embassy's participation but do not have any answers for you at this time. Let's talk again in a few weeks.

Sincerely,

Steve Bremner

From: Franciszka Sady [mailto:[redacted]]
Sent: Thursday, March 09, 2017 4:26 PM
To: Bremner, Steven A
Cc: Dragan, Katarzyna E
Subject: Re: KPH events

Dear Steven,

Hope all is well. Did you have a chance to discuss the ILGA Europe Conference in DC and has there maybe a decision been made regarding the involvement of the US Embassy in the KPH/ILGA event/events?

Looking forward to hearing from you,

Franciszka

On 31 January 2017 at 16:39, Franciszka Sady [redacted] wrote:

B6

Thank you very much!

Looking forward to hearing from you.

Franciszka

On 31 January 2017 at 16:38, Bremner, Steven A <BremnerSA@state.gov> wrote:

Dear Franciszka:

Thank you for your email. I am discussing the ILGA Europe Conference with a counterpart who works on LGBT issues in DC on Wednesday and will get back to you after that time.

Sincerely,

Steve

From: Franciszka Sady [mailto:[redacted]]
Sent: Tuesday, January 31, 2017 4:35 PM
To: Bremner, Steven A
Cc: Dragan, Katarzyna E
Subject: KPH events

B6

Dear Mr. Bremner,

Following our meeting and previous correspondence, I'm writing to you to ask whether you were able to make a decision about your involvement in our events - Side by Side Gala (7th Sept 2017) and ILGA Europe Conference (1st-4th Nov 2017)? If you have any question please let us know. We'd also be more than happy to meet with you again, if needed.

Many thanks and best regards,

Franciszka

--

Franciszka Sady

Koordynatorka projektów | Project Coordinator

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Franciszka Sady

Koordynatorka projektów | Project Coordinator

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Wesprzyj działania KPH - przekaz darowizne



--

Franciszka Sady

Koordynatorka projektów | Project Coordinator

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Franciszka Sady
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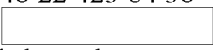
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Franciszka Sady
Koordynatorka projektów | Project Coordinator

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B6

From: Pawel Knut <[redacted]>
Sent: Wednesday, October 31, 2018 11:40 AM
To: Dragan, Katarzyna E <DraganKE@state.gov>
Subject: Re: pytanie - rejestracja dzieci

RELEASE IN PART
B6

Dzień dobry,

przepraszam za późną odpowiedź. Z uwagi na duże zainteresowanie akcją „Tęczowy Piątek” w ostatnich dniach nie miałem możliwości odpowiadania na przesyłaną korespondencję niezwłocznie po jej otrzymaniu.

Odnosząc się do Pani pytania:

w Polsce pojawia się coraz więcej spraw dot. tzw. tęczy rodzin, w których rodzice starają się doprowadzić do „rozpoznania” w prawie polskim ich relacji prawnej z własnym dzieckiem. Do tych spraw należą między innymi sprawy dotyczące:

- potwierdzenia posiadania polskiego obywatelstwa przez dziecko, które urodziło się za granicą (najczęściej dot. to sytuacji urodzenia z wykorzystaniem procedury surogacji);
- rejestracji (tzw. transkrypcji) zagranicznego aktu urodzenia dziecka urodzonego za granicą w polskich księgach stanu cywilnego.

KPH prowadzi aktualnie 2 tego rodzaju postępowań:

- o potwierdzenie posiadania polskiego obywatelstwa przez 2 chłopców urodzonych przy wykorzystaniu procedury surogacji w USA; jeden z ojców w tej sprawie (który jednocześnie jest rodzicem biologicznym) posiada polskie obywatelstwo, co w świetle polskiego prawa (stosującego tzw. zasadę prawa krwi) powinno skutkować automatycznym potwierdzeniem posiadania tego obywatelstwa przez jego dzieci; sprawa aktualnie znajduje się w Trybunale w Strasburgu; wczoraj Naczelny Sąd Administracyjny wydał precedensowy wyrok, w którym po raz pierwszy potwierdził polskie obywatelstwo dziecka urodzonego w takiej rodzinie ([TUTAJ](#) znajdzie Pani więcej informacji na temat tego rozstrzygnięcia);

- o rejestrację zagranicznego aktu urodzenia dziecka dwóch lesbijek będących obywatelkami Polski, które na co dzień żyją w Wielkiej Brytanii; sprawa ta oczekuje na rozpoznanie przez Naczelny Sąd Administracyjny; artykuł, który przywołała Pani w swojej wiadomości dot. tożsamej sprawy, która została niedawno rozstrzygnięta przez Naczelny Sąd Administracyjny; w tym precedensowym rozstrzygnięciu sąd po raz pierwszy potwierdził obowiązek dokonania tego rodzaju rejestracji.

Nie mamy w KPH, ani w innych organizacjach pozarządowych dokładnych informacji na temat ilości tego rodzaju postępowań, które obecnie toczą się w Polsce. Oceniamy - z pewną ostrożnością - że takich spraw może toczyć się ok. 10. Z pewnością jednak oba przywołane powyżej wyroki Naczelnego Sądu Administracyjnego wpłyną na zwiększenie ilości tego rodzaju spraw.

Jeżeli będzie miała Pani jakiegokolwiek dalsze pytania - proszę o dodatkowy kontakt.

Mam nadzieję, że ta odpowiedź okaże się pomocna.

Pozdrawiam serdecznie,

Paweł Knut
Współprzewodniczący Zarządu | Co-Chair of the Board
Starszy Prawnik | Senior Legal
Pion Polityczny | Advocacy and Policy Team
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Niniejsza wiadomość została wysłana przez Grupę Prawną Kampanii Przeciw Homofobii i może zawierać informacje poufne bądź zastrzeżone. Jeżeli nie są Państwo jej odbiorcą, lub otrzymali ją Państwo przez pomyłkę, prosimy o jej niezwłoczne usunięcie wraz ze wszelkimi załącznikami i poinformowanie nadawcy o fakcie jej otrzymania. Kopiowanie, rozpowszechnianie lub jakiegokolwiek wykorzystanie zawartych w wiadomości informacji, jak również ujawnienie jej treści osobom trzecim, jest zabronione. Dziękujemy za zrozumienie i współpracę.

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Wiadomość napisana przez Dragan, Katarzyna E <DraganKE@state.gov> w dniu 26.10.2018, o godz. 11:15:

Witam serdecznie,

Mam jedno pytanie dotyczące artykułu, który zamieszczam w linku poniżej – czy dużo jest takich przypadków w Polsce? Steve chciałby wiedzieć, jak duża jest skala problemu. Mają Państwo jakieś dane na ten temat? Będę wdzięczna za informacje.

<http://wyborcza.pl/7,75398,24026932,precedensowy-wyrok-nsa-dziecko-dwoch-kobiet-ma-prawo-zostac.html>

Pozdrawiam serdecznie,

Katarzyna Dragan | Political Assistant | U.S. Embassy Warsaw | Al. Ujazdowskie 29/31 | 00-540
Warsaw | Poland | Email: DraganKE@state.gov | Telephone: +48 22 504 2536 | Mobile:

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From: prawo@kph.org.pl
Sent: Friday, November 9, 2018 7:10 AM
To: Dragan, Katarzyna E <DraganKE@state.gov>
Subject: Prośba o informacje w sprawie dotyczącej uzyskania wizy

Dzień dobry,

w nawiązaniu do rozmowy telefonicznej, poniżej przeklejam pytanie od klientki KPH.

"Moja partnerka jest obywatelką Stanów Zjednoczonych. W tym roku dwukrotnie wystąpiłam z wnioskiem o wizę turystyczną B2, aby móc odwiedzić ją i jej rodzinę. Obydwa wnioski zostały odrzucone. Ostatnim razem powiedziano mi, że moje więzy z Polską nie są wystarczająco silne, i że nie dostanę żadnej zgody na podróż do Stanów, póki ja i moja partnerka nie zalegalizujemy naszego związku. Problem tkwi w tym, że nie możemy zrobić tego w Polsce, a aby dokonać tego w Stanach, musiałabym być tam fizycznie obecna. Zastanawiamy się nad złożeniem wniosku o wizę narzeczeńską K1 lub Marriage-Based Visa. Nie wiemy, na którą wizę mamy większe szanse, która opcja pozwoliłaby nam szybciej ze sobą być, i czy nie mamy innych opcji. Ze względu na to, że moje wnioski o wizę (złożone w styczniu i październiku bieżącego roku) zostały odrzucone, nie byliśmy w stanie zobaczyć się przez okrągły rok, a na tym najbardziej nam zależy - jesteśmy zaręczone i zawarcie związku małżeńskiego planowaliśmy w przyszłym roku, natomiast miałyśmy nadzieję, że do tego czasu uda nam się zobaczyć niejedenkrotnie. Chciałabym poprosić o radę, o pomoc. Jak powinniśmy zabrać się do naszych starań o ślub?"

Będziemy wdzięczni jeśli byłaby Pani w stanie uzyskać dla nas jakąś informację na temat tego jak zwiększyć szanse na uzyskanie wizy lub o jaką wizę się starać lub też co nasza klientka mogłaby zrobić aby te szanse zwiększyć

Pozdrawiam,
adw. Karolina Gierdal
Grupa Prawna KPH

--

Niniejsza wiadomość została wysłana przez Grupę Prawną Kampanii Przeciw Homofobii i może zawierać informacje poufne bądź zastrzeżone. Jeżeli nie są Państwo jej odbiorcą, lub otrzymali ją Państwo przez pomyłkę, prosimy o jej niezwłoczne usunięcie wraz ze wszelkimi załącznikami i poinformowanie nadawcy o fakcie jej otrzymania. Kopiowanie, rozpowszechnianie lub jakiegokolwiek wykorzystanie zawartych w wiadomości informacji, jak również ujawnienie jej treści osobom trzecim, jest zabronione. Dziękujemy za zrozumienie i współpracę.

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B6

From: Krzysztof Smiszek PTPA [redacted]
Sent: Wednesday, February 26, 2014 7:14 AM
To: Dragan, Katarzyna E <DraganKE@state.gov>
Subject: Re: prosba o informacje
Attach: Krzysztof Smiszek.docx

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Witam

Bardzo dziękuję za miłego i nie ukrywam zaskakującego mejla. Dziękuję za pamięć o mnie.

W załączeniu przesyłam swoje bio (rozumiem, że w j. angielskim) wraz z informacjami moich pobytach w Stanach.

Proszę dać znać, czy informacje w takiej formie są wystarczające

pozdrawiam serdecznie

--

Krzysztof Śmiszek
Przewodniczący / President
Polskie Towarzystwo Prawa Antydyskryminacyjnego
Polish Society of Antidiscrimination Law
www.ptpa.org.pl

W dniu 26 lutego 2014 10:46 użytkownik Dragan, Katarzyna E <DraganKE@state.gov> napisał:

Witam serdecznie,

Wiem, że nie ma Pana dzisiaj w biurze, a sprawę mam dosyć pilną.

Chcielibyśmy zgłosić Pana na program wyjazdowy do Stanów Zjednoczonych – od razu muszę zaznaczyć, że zgłoszenie nic nie gwarantuje – procedura wyboru kandydatów jest bardzo długa i konkurencyjna (zgłaszani są kandydaci przez wszystkie Ambasad, decyzje zapadają na poziomie Departamentu Stanu w Waszyngtonie).

W tym celu, pilnie potrzebuję od Pana kilka informacji:

1. Data i miejsce urodzenia
2. Krótki życiorys zawodowy (może być naprawdę w kilku zdaniach)
3. Poprzednie wizyty w Stanach – kiedy i gdzie oraz czy Pana wyjazdy były finansowane przez rząd Stanów Zjednoczonych.

Byłabym bardzo wdzięczna za możliwie szybką odpowiedź na moje pytania.

Pozdrawiam serdecznie,

Katarzyna Dragan

Political Assistant

American Embassy Warsaw, Poland

Al. Ujazdowskie 29/31, 00-540 Warszawa

Tel. +48 22 504 2536

Fax +48 22 504 2678

e-mail: DraganKE@state.gov

This email is UNCLASSIFIED.

B6

From: Krzysztof Smiszek [redacted]
Sent: Wednesday, August 19, 2015 3:56 AM
To: Dragan, Katarzyna E <DraganKE@state.gov>
Subject: opis projektu
Attach: Project description_LGBTI.docx

Dzien Dobry Pani Katarzyno

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Przepraszam, że zawracam głowę, ale po ostatnim spotkaniu z Państwem (byłem na nim wraz z D. Pudzianowską) umówiliśmy się, że prześlemy krótki opis tego, co chcielibyśmy z Państwem zrobić i niestety, zgubiłem wizytówkę Pani koleżanki, do której miałem to wysłać.
Czy mogę prosić Panią o przekazanie jej tego w naszym imieniu?

Z góry serdecznie dziękuję

pozdrawienia serdeczne

--

Krzysztof Śmiszek
Przewodniczący / President
Polskie Towarzystwo Prawa Antydyskryminacyjnego
Polish Society of Antidiscrimination Law
www.ptpa.org.pl

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Project description

Main project goal:

The project aims to enhance selected group of Polish human rights and LGBTI lawyers with regard to their capacities and skills related to litigation strategies that may result in leveling-up the enjoyment of human rights by LGBTI people in Poland.

Despite noticeable change in terms of social perception of LGBTI people that has taken place in Poland within last two decades, legal guarantees of full equality are far from satisfactory. The only tangible changes are the labour law provisions which prohibit discrimination at the workplace. Marriage equality, ban of homophobic and transphobic hate speech and hate crimes, equality in access to goods and services are still not covered by the Polish legislator.

The main reason to apply for the project is the lack of tangible results of many litigations that Polish lawyers conduct in the field of non-discrimination for LGBTI people. We are convinced that in spite of all the differences between Polish and American societies as well as legal systems, the study visit will equip us in valuable information and skills on how to plan long-term litigation strategies properly, how to avoid any unexpected results of the litigation and how to effectively work with the media.

Project activities:

The project would consist of a study visit of 4-5 Polish human rights and LGBTI lawyers in order to meet with their counterparts in the US as well as to enable them to meet with representatives of US governmental and non-governmental institutions that are dealing with LGBTI rights. The visit would last for approx. 10 days and would cover among others the following activities:

- Meeting with selected legal practitioners who were engaged in litigation strategies of marriage equality (e.g. cases of *United States v. Windsor*, *Obergefell v. Hodges*)
- Meeting with representatives of The Williams Institute (UCLA) a national think tank conducting rigorous, independent research on sexual orientation and gender identity law and public policy
- Meeting with representatives of American Civil Liberties Union (ACLU)
- Meeting with representatives of Equal Employment Opportunity Commission
- Meeting with other academics and legal professionals involved in LGBTI issues.

The purpose of all above mentioned meetings is to enable Polish lawyers to learn from the experience of American lawyers and activists how to generate legal change and how to achieve results in effective way.

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From: Krzysztof Smiszek [redacted]
Sent: Friday, November 11, 2016 11:49 AM
To: Dragan, Katarzyna E <DraganKE@state.gov>
Subject: biuro PTPA

B6

Pani Katarzyno

Obiecałem, że dam znać co z naszym lokalem. Po pięciu miesiącach ciszy ze strony władz dzielnicy Warszawa - Śródmieście wreszcie podpisaliśmy umowę na dalsze 3 lata. To wspaniała wiadomość dla nas!

pozdrawiam serdecznie i mam nadzieję, że w świetle ostatnich wydarzeń politycznych w USA nadal będziemy mogli współpracować w dziedzinie praw człowieka. Dla nas, możliwość kontaktu z Ambasadą USA była i jest bardzo ważna

pozdrawiam serdecznie

--

dr Krzysztof Śmiszek
Przewodniczący / President
Polskie Towarzystwo Prawa Antydyskryminacyjnego
Polish Society of Antidiscrimination Law
www.ptpa.org.pl

B6

From: Karolina Kedziora <[REDACTED]>
Sent: Monday, March 12, 2018 6:39 AM
To: Dragan, Katarzyna E <DraganKE@state.gov>
Subject: w nawiązaniu do rozmowy telefonicznej dot. mozliwosci wyjazdu na stypendium

Szanowna Pani,

W nawiązaniu do rozmowy telefonicznej, poniżej mój życiorys.

Data i miejsce urodzenia: [REDACTED]

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[REDACTED]

Karolina Kędziora

Jeśli to za mało informacji, trzeba coś więcej, proszę dać znać.

Pozdrawiam serdecznie

r.pr. Karolina Kędziora
Prezeska
Polskiego Towarzystwa Prawa Antydyskryminacyjnego

Wesprzyj nas!



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PART B6

From: Karolina Kedziora <[REDACTED]>
Sent: Wednesday, March 14, 2018 10:08 AM
To: Bremner, Steven A <BremnerSA@state.gov>; Dragan, Katarzyna E
<DraganKE@state.gov>
Subject: Further our meeting in PTPA office

B6

Dear Steven and Katarzyna,

Thank you very much for a meeting. See below the link to the description of the Romanian case, we spoke about. Hope it will be helpful.

<https://www.nytimes.com/2017/11/21/world/europe/romania-ecj-gay-marriage.html>

Best regards,

r.pr. Karolina Kędziora
Prezeska
Polskiego Towarzystwa Prawa Antydyskryminacyjnego

Wesprzyj nas!



From: Eliza Rutynowska [REDACTED]
Sent: Monday, January 21, 2019 11:57 AM
To: Dragan, Katarzyna E <DraganKE@state.gov>
Subject: Raport PTPA/FIDH nt. praw człowieka w Polsce
Attach: pologne_fidh_web_v4.pdf

B6

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Szanowna Pani,

W związku z otrzymaniem od Krzysztofa Śmiszka kontaktu do Pani, pozwalam sobie przesłać raport przygotowany przez ekspertów PTPA we współpracy z ekspertami organizacji International Federation for Human Rights, którego mam przyjemność być współautorką.

Od bieżącego roku objęłam stanowisko Specjalistki ds. rzecznictwa w PTPA, w związku z odejściem Krzysztofa z Towarzystwa.

Mam nadzieję, że raport wzbudzi Pani zainteresowanie. W razie pytań pozostaję do dyspozycji oraz liczę na dalszą wspólną współpracę.

Z pozdrowieniami

Eliza Rutynowska

Policy officer | Legal Aid Team

Specjalistka ds. rzecznictwa | Zespół poradnictwa prawnego Polskiego Towarzystwa Prawa Antydyskryminacyjnego

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International Federation for Human Rights
FIDH - Fédération internationale des ligues des droits humains

All downhill from here :
The rapid degradation of the rule of law in
Poland: what it means for women's sexual and
reproductive rights, and LGBT+ persons' rights

November 2018 / N° 726a

Obtained via FOIA by Judicial Watch, Inc.

COVER PHOTO : People wearing black bands on their eyes and mouth demonstrate in Stolen Justice silent protest at the Main Square in Krakow, Poland on 21 January, 2018.
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TABLE DES MATIÈRES

ACKNOWLEDGMENTS.....	6
ABBREVIATIONS.....	7
GLOSSARY.....	8
EXECUTIVE SUMMARY.....	10
REPORT INTRODUCTION.....	14
PART I - A 2018 REALITY CHECK:.....	16
SERIOUS BACKTRACKING ON WOMEN'S SEXUAL AND REPRODUCTIVE RIGHTS.....	16
<i>Introduction</i>	17
CHAPTER 1 - AVAILABILITY: RETROGRESSIVE LEGISLATIVE MEASURES MAKE ABORTION ONLY AVAILABLE IN VERY LIMITED CIRCUMSTANCES.....	18
I. International legal standards on the availability of abortion services.....	18
A) Legal and safe abortion services shall be available.....	18
B) States shall abolish legal procedural barriers to safe abortion services.....	19
C) States shall establish a mechanism to determine whether the conditions for legal abortion are met in individual cases.....	19
II. Poland's violations of its core obligations under the ICESCR.....	19
A) The 1993 Family Planning Act: a retrogressive legislative measure.....	19
B) Third party authorisations, and their difficulty to be challenged, render the 1993 Act even stricter in practice.....	21
C) Further retrogressive legislative measures in the making.....	22
CHAPTER 2 - ACCESSIBILITY: DE FACTO INACCESSIBILITY OF SEXUAL AND REPRODUCTIVE RIGHTS SERVICES.....	25
I. Effective physical accessibility seriously hindered.....	25
A) International legal standards on the physical accessibility of sexual and reproductive services, and the regulation of the conscientious objection.....	25
1) <i>Standards regarding the physical accessibility of abortion services</i>	25
2) <i>Standards regarding the physical accessibility of contraception</i>	26
B) In Poland, "even legal abortion is not accessible".....	26
1) <i>Abusive use of the conscientious objection</i>	26
2) <i>Most conscientious objections are not genuine</i>	28
3) <i>Worrying attempts to expand the conscientious objection to other medical professions</i>	30
4) <i>Other means used to refuse to perform abortions</i>	31
5) <i>Lack of physical access to contraception</i>	31
II. Economic accessibility: abortion: a luxury for the rich.....	33
A) International legal standards on the economic accessibility of abortion services.....	33
B) The case of Poland: "Your reproductive rights depend on money".....	33
1) <i>Contraception</i>	33
2) <i>Abortion</i>	33
III. Informational accessibility.....	34
A) International legal standards on the informational accessibility regarding sexual and reproductive health.....	34
B) Lack of accessible scientifically-accurate information on sexual and reproductive rights.....	35
1) <i>Non-scientifically accurate information provided in schools</i>	35
a) <i>The Catholic Church's firm control over comprehensive sexual education</i>	36
b) <i>Lack of qualified teachers for comprehensive sexual education courses</i>	37
2) <i>Refusal to provide pre-natal testing</i>	38
CHAPTER 3 - ACCEPTABILITY : INFORMED CONSENT ISSUES.....	39

ALL DOWNHILL FROM HERE :

The rapid degradation of the rule of law in Poland: what it means for women's
sexual and reproductive rights, and LGBT+ persons' rights

I. International legal standards on the acceptability of sexual and reproductive services	39
II. The 4,000 zlotys campaign: serious informed consent issues	39
 CHAPTER 4 - QUALITY : ABUSIVE USE OF THE CONSCIENTIOUS OBJECTION IMPACTS QUALITY OF ABORTION SERVICES.....39	
 CHAPTER 5: RESILIENCE IN AN INCREASINGLY SHRINKING SPACE FOR CIVIL SOCIETY40	
I. "The only thing this government is afraid of is force"	40
II. Shrinking space for women's rights civil society organisations and activists	40
<i>Recommendations.....</i>	<i>41</i>
<i>Conclusion.....</i>	<i>44</i>
 PART II - THREE YEARS OF LIBERATION OF ANTI-LGBT+ DISCOURSE: FROM WORDS TO ACTIONS.....45	
<i>Introduction.....</i>	<i>46</i>
 CHAPTER 1: DISCRIMINATION OF PERSONS WITH NON-CONFORMING SEXUAL ORIENTATION, GENDER IDENTITY, OR EXPRESSION IN THEIR ACCESS TO ECONOMIC, SOCIAL, AND CULTURAL RIGHTS.....46	
I. General anti-discrimination law	46
A) The principle of non-discrimination under international human rights law	46
B) The Council of Europe's stance on non-discrimination	48
C) The European Union's stance on non-discrimination	48
II. Poland's domestic anti-discrimination framework.....	49
A) Anti-discrimination legislation not adapted.....	49
B) Lack of effective remedy against discrimination for persons with non-conforming sexual orientation, gender identity or expression	51
1) <i>Clear unwillingness of the Polish Government Plenipotentiary for Equal Treatment to deal with these issues</i>	<i>51</i>
2) <i>Attempts to incapacitate the Human Rights Commissioner</i>	<i>52</i>
III. Biased education for all, and unsafe environment for LGBT+ students	53
A) Unprotected by law: Polish legal framework on discrimination in education	53
B) Bullying at school: no allies for LGBT+ students.....	54
C) At best, lack of action on the part of Polish authorities	55
D) Barriers to scientifically accurate education on sexual and equal rights: "The State ignored the whole issue [of sexual education] and let it be taken over by the Catholic Church"	56
1) <i>The Catholic Church's firm control over comprehensive sexual education</i>	<i>56</i>
2) <i>Lack of qualified teachers for comprehensive sexual education courses</i>	<i>57</i>
IV. Right to work hindered	58
A) Lack of a protective legal framework in line with United Nations standards.....	58
B) Implementing the Employment Equality Directive: legal gaps bear negative consequences	59
1) <i>Invoking religion to justify discrimination: a legal loophole</i>	<i>59</i>
2) <i>Transgender persons in particular face heightened difficulties in accessing employment</i>	<i>60</i>
V. Attempts to hinder LGBT+ rights organisations to fight for equal access to goods and services	60
VI. Difficulties in accessing healthcare.....	62
A) Unprotected by law: Polish legal framework on discrimination in healthcare.....	62
B) Poorly sensitised healthcare personnel generates discriminatory attitudes towards LGBT+ patients	63
C) "They [doctors] do not educate themselves:" an insight into transgender persons' attempt to undertake a gender reaffirming process in Poland.....	63
D) Lack of interest to train healthcare personnel on LGBT+ issues on the part of Polish authorities.....	65

ALL DOWNHILL FROM HERE :

The rapid degradation of the rule of law in Poland: what it means for women's sexual and reproductive rights, and LGBT+ persons' rights

CHAPTER 2: VERBAL AND PHYSICAL VIOLENCE MOTIVATED BY PREJUDICE AGAINST LGBT+ PERSONS IN POLAND.....	65
I. Discrepancy between international and regional human rights obligations and Poland's domestic framework.....	65
A) International and European legal standards.....	65
1) <i>Standards regarding hate crimes</i>	65
2) <i>Standards regarding hate speech</i>	66
B) Unprotected by law: Polish legal framework on hate crimes and speech.....	66
1) <i>Lack of implementation of EU law</i>	66
2) <i>Insufficient protection against crimes motivated by prejudice in the Criminal Code</i>	67
3) <i>Failed attempts to amend the Criminal Code</i>	68
4) <i>Reforms: sexual orientation, gender identity or expression considerations left behind</i>	69
II. Lack of data collection: root causes and rippling effects.....	69
III. "An atmosphere of complacent approval".....	71
CHAPTER 3: DIFFICULTIES TO EXIST DE JURE.....	73
I. Lack of legal gender recognition procedures.....	73
A) International and regional human rights standards on gender recognition.....	73
1) <i>Prior requirements</i>	73
2) <i>Effects of recognition</i>	73
B) Polish legal framework on gender recognition: a "traumatic experience".....	73
1) <i>Gatekeeping procedures restricting access to legal gender recognition</i>	73
2) <i>The failed Gender Accordance Act</i>	74
II. No rights for same-sex families.....	75
A) Council of Europe and European Union standards.....	75
B) Poland's legal void surrounding same-sex relationships.....	75
C) Children of same-sex parents impacted.....	77
<i>Recommendations</i>	78
<i>Conclusion</i>	82
PART III - THE PROGRESSIVE STRANGULATION OF PARTICIPATORY DEMOCRACY – SPACE FOR CRITICAL NGOs IS DECREASING AT AN ALARMING RATE.....	83
<i>Introduction</i>	84
I. The need for a favourable regulatory environment.....	84
II. Financing and funding.....	85
III. The right to participation.....	86
IV. Guaranteeing a safe and secure space for civil society.....	87
<i>Recommendations</i>	87
<i>Conclusion</i>	89
CONCLUSION OF THE REPORT.....	90
ANNEX ON MECHANISMS TO PRESERVE THE RULE OF LAW IN THE EUROPEAN UNION.....	92

ALL DOWNHILL FROM HERE :

The rapid degradation of the rule of law in Poland: what it means for women's sexual and reproductive rights, and LGBT+ persons' rights

ACKNOWLEDGMENTS

FIDH would like to thank, first and foremost, its member organisation the Polish Society of Anti-discrimination Law, for its guidance, assistance, facilitation, and support in conducting the fact-finding mission, drafting this report, and beyond. We extend our most sincere thanks and solidarity to members of civil society in Poland, who generously shared their time and knowledge during this mission and beyond, notably: members of the Federation for Women and Family Planning; members of the Transfuzja Foundation; members of Campaign against Homophobia; members of Lambda Warsaw; members of the Helsinki Foundation for Human Rights, members of the STER Foundation.

FIDH would like to thank Polish authorities, namely Marcin Rynkowski, Director of the Department of International Cooperation of the Polish Ministry of Health; Anna Widarska, Director of the Mother and Child Department of the Polish Ministry of Health; Bogdan Karp, Director of the Office of the National Prosecutor; and members of the Office of the National Prosecutor. Their valuable input informed our findings and conclusions.

Additionally, FIDH would like to thank the following organisations, individuals, and practitioners for their time and expertise on the subject of our research: Wanda Nowicka, former Deputy-Speaker of the Polish Parliament; Dr. Hannah Machińska, former Director of the Office of the Council of Europe in Poland; Joanna Scheuring-Wielgus, member of the Polish Parliament; Dr. Thomas Buchsbaum, Ambassador of Austria in Poland; Dr. Adam Bodnar, Commissioner of Human Rights; Dr. Sylwia Spurek, Deputy Commissioner for Human Rights; members of the Warsaw Bar Association; members of the Polish Teachers' Union; members of the Association of Catholic Pharmacists; members of Ordo Iuris.

FIDH is finally indebted to Elena Crespi, Western Europe Desk Director, for her unwavering commitment to the enjoyment of human rights for all and her tireless dedication to the publication of this report; to Elise Petitpas, women's sexual and reproductive rights consultant during the mission for her expertise; to Camille Gervais, Western Europe Desk Officer, for her contribution to this report; and to FIDH's International Bureau, for choosing to make this report a priority, especially to Dan Van Raemdonck, FIDH Secretary General, for his constant support.

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ABBREVIATIONS

CAT U.N. Convention against Torture
CC Criminal Code
CEDAW U.N. Convention on the Elimination of Discrimination
CEDAW Committee U.N. Committee on the Elimination of Discrimination
CESCR U.N. Committee on Economic, Social and Cultural Rights
CoE Council of Europe
CJEU Court of Justice of the European Union
CRC U.N. Convention on the Rights of the Child
CRC Committee U.N. Committee on the Rights of the Child
CRPD U.N. Convention on the Rights of Persons with Disabilities
EC European Commission
ECHR European Convention on Human Rights
ECRI European Commission against Racism and Intolerance
ECSR European Committee on Social Rights
ECtHR European Court of Human Rights
EP European Parliament
ETA Equal Treatment Act
EU European Union
FWFP Federation for Women and Family Planning
GONGO government-organised non-governmental organisation
GPET Government Plenipotentiary for Equal Treatment
HFHR Helsinki Foundation for Human Rights
ICCPR International Covenant on Civil and Political Rights
ICESCR International Covenant on Economic and Social Rights
KPH (Campaign against Homophobia)
LGBT+ lesbian, bisexual, gay, and transgender persons
ODIHR Office for Democratic Institutions and Human Rights
OSCE Organisation for Security and Co-operation in Europe
PiS Law and Justice Party or *Prawo i Sprawiedliwość*
PSAL or PTPA Polish Society of Anti-discrimination Law or *Polskie Towarzystwo Prawa Antydyskryminacyjnego*
SOGIE sexual orientation, gender identity or expression
TEU Treaty on European Union
TFEU Treaty on the Function of the European Union
UPR Universal Periodic Review

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GLOSSARY

FIDH advocates for the enjoyment and respect for the human rights of everyone, regardless of one's gender, gender identity, or sexual orientation, among others.

For FIDH, gender identity and sexual orientation in particular are fundamental questions, as the respect for an individual's gender identity or sexual orientation, which make the core of an individual's intimacy and sense of self, is intrinsically linked to the respect for human dignity. FIDH strongly affirms its recognition of the existence of a diversity of sexualities and genders, beyond what society usually sees as the "norm" – heterosexuality and cisgender –, and urges States to respect their international obligations when it comes to ensuring LGBT+ persons' enjoyment of their human rights, in law and in fact.¹

As such, FIDH defines **gender** as the roles, behaviours, activities and traits corresponding to a social representation that is deemed appropriate for women and men in a given society. It is to be strictly distinguished from **gender identity**, which refers to the gender a person deeply feels and experiences they belong to, and with which they identify. This gender may not be the gender which was assigned at birth. Gender identity may thus not necessarily be related to one's **gender expression**, to be understood as the way a person expresses their gender by making use of a variety of social, behavioural, or physical codes (such as clothing, body language, or tone of voice) usually attributed to a specific gender.

Questions of gender are to be distinguished from **sexual orientation**, which FIDH defines as one of the components of a person's identity, which refers to this person's physical, romantic and/or emotional attraction towards other people. FIDH views sexual orientation as not necessarily related to gender identity and sex characteristics.

Throughout the report, FIDH will thus use the acronym **LGBT +** to refer to a group of persons with a wide variety of sexual orientations, or gender identities, or gender expressions. The acronym stands for lesbian (L), gay (G), bisexual (B), transgender (T), and the countless other groups of sexual and gender minorities that would make the acronym too long for practical use (+).

FIDH also defines the following terms as:

Actual or perceived non-conforming sexual orientation, gender identity or expression: encompasses individuals who either identifies as lesbian, gay, bisexual, transgender, or any other sexual orientation and/or gender identity and/or gender expression that is not heterosexual or cisgender, and are thus considered to not "conform" to societal expectations, or who could be perceived as identifying as such regardless of whether this is actually how they identify.

Bisexuality: the fact of being able to experience emotional, affectional, and/or sexual attraction to both men and women, or of being able to have romantic and/or sexual relations with men and women.

Endocrinology: the branch of biology dealing with the endocrine glands and their secretions, and hormones of the body, especially in relation to their processes or functions.

Gay: a person who identifies as a man and is able to experience affectional, and/or sexual attraction to men.

Gender reaffirming procedures: surgical procedures that change one's body to conform to one's gender identity. These procedures may include "top surgery" (breast augmentation or removal) and "bottom surgery" (altering genitals). Gender affirming surgery is sometimes referred to as "gender reassignment surgery" or "gender confirming surgery."²

Hate crimes (or "crimes motivated by prejudice"): they are committed against people due to their

1. FIDH, International Bureau resolution on the Protection of the rights of LGBTI persons and the rights of the persons advocating for them, 2014.

2. Cornell University, Transgender Terminology, <<https://hr.cornell.edu/sites/default/files/trans%20terms.pdf>> (last visited 11 July 2018).

ALL DOWNHILL FROM HERE :

The rapid degradation of the rule of law in Poland: what it means for women's sexual and reproductive rights, and LGBT+ persons' rights

real or perceived identity or membership to a group defined by personal characteristics such as race, ethnicity, sexual orientation, gender identity, disability or social and economic status (among others). These personal characteristics are afforded heightened protection under international human rights law. These characteristics constitute the main motive that led the offender to commit a crime against the victim.

Hysterectomy: the surgical removal of the uterus. It may also involve removal of the cervix, ovaries, fallopian tubes and other surrounding structures.

Lesbian: a person who identifies as a woman and is romantically and emotionally attracted to women.

Sexology: the scientific study of human sexuality, including human sexual interests, behaviours and functions.

Transgender: (sometimes shortened to "trans") is an umbrella term used to describe a wide range of identities whose appearance and characteristics are perceived as gender atypical – including transsexual people, cross-dressers (sometimes referred to as "transvestites"), and people who identify as third gender. Transgender women identify as women but were classified as males when they were born, transgender men identify as men but were classified female when they were born, while other transgender persons don't identify with the gender-binary at all. Some transgender persons seek surgery or take hormones to bring their body into alignment with their gender identity; others do not. The opposite of transgender is cisgender (a person whose sense of their own gender is aligned with the sex assigned at birth; for example, a person who was assigned male sex at birth and who identifies himself as a man is cisgender).³

3. Ibid.

EXECUTIVE SUMMARY



Polish Supreme Court Justice Małgorzata Gersdorf (C) attends a demonstration in support of Supreme Court judges in front of the Supreme Court in Warsaw on July 3, 2018. Poland's chief justice refused to step down, defying a controversial new law by the right-wing government which requires her and other senior judges to retire early.

©Janek SKARZYŃSKI/AFP, Warsaw, Poland, 03/07/2018

This report is the result of several months of desk-based research, combined with an international fact-finding mission conducted by the International Federation for Human Rights (FIDH) in Poland, on LGBT+ persons and women's sexual and reproductive rights in the context of the degradation of the rule of law these past three years.

FIDH was able to conduct approximately 20 interviews, all in Warsaw, of a wide range of actors: civil society organisations, members of the Polish government, members of the Parliament, the office of the Prosecutor, the office of the Polish Commissioner for Human Rights, associations of professionals – lawyers, doctors, teachers –, and national experts. The fact-finding mission took place from 19 to 24 June 2017, in Warsaw, Poland. It is based on:

- a series of discussions and interviews organised in Poland with a wide range of actors (previously described) whose work was relevant to the subject of the mission – the consequences of the degradation of the rule of law for women's sexual and reproductive rights and LGBT+ persons' rights;
- desk-based research of FIDH Western Europe Desk on the subject of the mission; and
- discussions with members of the European Commission and the European Parliament, and the Polish Society of Anti-discrimination Law.

It must be noted that the name of some of the interlocutors, notably from civil society organisations, have been concealed so as to avoid any personal backlash after the publication of this report.

The findings illustrate not only a clear lowering in the protection of the rights of LGBT+ persons and

ALL DOWNHILL FROM HERE :

The rapid degradation of the rule of law in Poland: what it means for women's sexual and reproductive rights, and LGBT+ persons' rights

women's sexual and reproductive rights since 2015 when the Law and Justice Party (PiS) came into power following parliamentary elections, but also virulent attempts at backtracking on these rights.

PiS started implementing its anti-democratic agenda in 2015 through its majority in the Sejm, profoundly undermining checks and balances, such as the independence of the judiciary or the space for civil society. This degradation of the rule of law, which has triggered strong reactions from international and European human rights bodies, has been accompanied by heightened powers awarded to the Catholic Church, and worrying attacks on the rights of LGBT+ persons and on women's sexual and reproductive rights, left with no voice or safeguard to protect them. The current government has remained deaf to any international or European calls to stop the democratic backsliding and afferent human rights abuses, to the point where there exist today a clear risk of a serious breach of democracy, the rule of law, and human rights in the country.

This report focuses on the impacts this rule of law crisis has on LGBT+ persons and women's sexual and reproductive rights. While the situation of both these categories of individuals was already worrisome before PiS came into power, it has become dire since October 2015. Over the past three years, new attempts at further restricting women's already very restrictive right to abortion, expanding the scope of the conscientious objection, and refusing to implement ECtHR rulings, have heightened to the point where it is currently almost impossible for women to undergo a legal and safe abortion in the country. The increasing influence of the Catholic Church in this area, and the apparent willingness of the State to leave it under its control, through numerous anti-choice declarations and public support to stricter anti-abortion laws by officials, have been extremely damaging to women's sexual and reproductive rights. During this period, the weight given to the Catholic Church has also induced heightened intolerance towards LGBT+ persons, as appears from the national equality body (the Government Plenipotentiary for Equal Rights)'s refusal to deal with LGBT+ issues and favouring "family mainstreaming" instead, and from the numerous instances (e.g. in employment) where religion is invoked to justify discrimination on the basis of sexual orientation, gender identity, or expression. This, combined with attempts by the current government to incapacitate the Polish Commissioner for Human Rights, the lack of public officials' reactions in the face of physical attacks against several organisations advocating for LGBT+ persons' rights, and the fact that Polish law almost does not prohibit discrimination on the ground of sexual orientation, gender identity, or expression, entail LGBT+ persons' interests are not being safeguarded. Under this context, civil society organisations and opposition parties are even reluctant to introduce new laws which would expand the rights and protection afforded to LGBT+ persons, for fear this would backlash into further restrictions of these rights.

All these developments take place in a context of rapidly and drastically shrinking space for civil society critical of the current government.

Based on these findings, this report formulates several recommendations to the Polish government and other stakeholders such as the Council of Europe and the European Union. In documenting and analysing the impact the degradation of the rule of law has on the rights of LGBT+ persons and on women's sexual and reproductive rights vis-à-vis the State's international and European human rights obligations, FIDH hopes to trigger change in the current government's approach towards the protection of these rights, and in the EU's way of dealing with the situation in Poland – notably by the Council immediately triggering the Art. 7(1) TEU procedure.⁴

MAJOR RECOMMENDATIONS

To the European Union:

• To the European Union:

- Pay attention to the consequences that the degradation of the rule of law in Poland, the constitutional crisis and lack of independence of the judiciary, have on LGBT+ and reproductive rights.

• To European Union member States:

- Support in the Council action on Poland under the Article 7(1) procedure if the authorities fail to respond to the EU Commission's concerns and rule of law recommendations.

• To the Members of the European Parliament in particular:

4. For more information on Art. 7 TEU, see the Annex of this report.

ALL DOWNHILL FROM HERE :

The rapid degradation of the rule of law in Poland: what it means for women's sexual and reproductive rights, and LGBT+ persons' rights

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- Organise follow-up visits in Poland on the situation of the rule of law and its consequences for LGBT+ persons and women's sexual and reproductive rights. On these occasions, secure meetings with the Polish Human Rights Commissioner and civil society organisations working on equality issues.
 - **To the European Union institutions, the European Commission and the European Parliament:**
 - Use all necessary means to ensure full compliance by Poland with its obligations under European Union law, particularly with regards to the EU's founding values of respect for democracy, the rule of law, and human rights, as enshrined in Article 2 of the Treaty on European Union (TEU). Having regard to Articles 2 and 7 TEU, engage a structured dialogue with Poland on serious violations and deterioration of human rights, with a special focus on LGBT+, reproductive rights, freedom of expression, freedom of association, and more broadly on the shrinking space for civil society; and
 - Enhance cooperation with the Council of Europe and its Venice Commission, and civil society, in monitoring observance and ensuring full compliance by Poland with such obligations.
 - **To the European Commission:**
 - Make better and more comprehensive use of infringement proceedings when Polish law is not in accordance with EU law obligations, including the Charter of Fundamental Rights of the European Union. This is notably the case for:
 - o the Law on the Protection and Assistance for Victims and Witnesses, which fails to fully implement the EU Victims' Rights Directive into national legislation by de facto excluding homophobic, biphobic, and transphobic crimes' victims from its scope and from the specific protection and support that are required for them
 - o the Law on Civil Status, which is not compliant with CJEU's ruling in Coman requiring member States to recognise same-sex marriages concluded lawfully in the EU, irrespective of whether they have opened marriage to same-sex couples in their own territory, and thus closely follow what is the interpretation of the Polish administration of Art. 18 of the Polish Constitution which provides special protection for a marriage defined as "a union of a man and a woman"
 - Find new and flexible ways to provide financial support to local NGOs and human rights defenders, overcoming the shrinking space for civil society in Poland, and ensuring civil society is enabled to pursue its work on LGBT+ and reproductive rights.
 - **To the European Agency for Fundamental Rights:**
 - Pay thorough attention to the situation of Poland when investigating and drafting the upcoming report on the shrinking space for civil society in EU member States, and to that effect, ensure Polish civil society organisations and the Polish Human Rights Commissioner are consulted.
- To the Council of Europe:**
- **To the Parliamentary Assembly of the Council of Europe:**
 - Publicly voice concerns regarding the rapidly deteriorating situation in Poland and formally reinstate a monitoring procedure on this member State; and
 - As an aim of the Parliamentary Assembly of the Council of Europe respectively since 1981 and 2010, fighting discrimination based on sexual orientation and gender identity should remain one of the top priorities of the Parliamentary Assembly. As such, the Parliamentary Assembly should ensure the recommendations issued in 2010 be implemented in all member States of the Council of Europe; and
 - Issue written declarations on the situation of LGBT+ and sexual and reproductive rights in Poland, especially the way they have been impacted by the degradation of the rule of law and the weakening of checks and balances in the country since 2015; and
 - Analyse the policies and good practices to define and promote the necessary measures to ensure access to reproductive health and rights for all women, irrespective of their income, education or social status, in all member States of the Council of Europe.
 - **To the General Rapporteur on the rights of LGBTI people:**
 - Urge politicians and decision-makers to promote an inclusive society in which all LGBT+ persons can express their identity freely and without fear; and
 - Organise a special mission of the General Rapporteur to Poland.
 - **To the General Rapporteur on violence against women:**
 - Urge the Parliamentary Assembly of the Council of Europe to analyse the policies and good practices to define and promote the necessary measures to ensure access to reproductive health
-

ALL DOWNHILL FROM HERE :

The rapid degradation of the rule of law in Poland: what it means for women's sexual and reproductive rights, and LGBT+ persons' rights

and rights for all women, irrespective of their income, education or social status, in all member States of the Council of Europe; and

- Organise a special mission of the General Rapporteur to Poland.

• ***To the Venice Commission of Democracy through Law of the Council of Europe:***

- Maintain cooperation, dialogue, and offers of legal advice to the government of Poland regarding legislative initiatives, in order to ensure their compliance with European standards regarding democracy, human rights and the rule of law, with a special focus on the legal and factual circumstances of the daily functioning of the Commissioner for Human Rights.

To the U.N. Committee on the Elimination of all forms of Discrimination against Women, to the U.N. Committee on Economic, Social, and Cultural Rights, to the U.N. Special Rapporteur on the right to the highest attainable standard of physical and mental health, to the U.N. Special Rapporteur on violence against women, including its causes and consequences:

- Urge the Polish government to ensure the legalisation of abortion for women and girls under all circumstances; and
- Urge the Polish government to ensure women have physical, economic, and informational access to sexual and reproductive rights, notably through the strict regulation of the use of the conscientious objection, through the provision of scientifically-accurate comprehensive sexual education in all schools, through subsidising emergency contraception and everyday contraception for women and girls.

To the U.N. Committee on the Rights of the Child, to the U.N. Committee on Economic, Social, and Cultural Rights:

- Urge the Polish government to ensure LGBT+ students enjoy their right to education in a safe environment, free from bullying, violence, social exclusion, or other forms of discriminatory and degrading treatment related to sexual orientation, gender identity, or expression. To that end, urge the Polish government to have mandatory equality education for all in schools, in particular;
- Urge the Polish government to ensure the full enjoyment of all of LGBT+ persons' economic, social, and cultural rights, under all circumstances, in particular their right not be discriminated against on the basis of their sexual orientation, gender identity, or gender expression.

To the Government of the Republic of Poland:

- Ensure full compliance with the principles of respect for democracy, the rule of law and human rights, enshrined in Article 2 TEU and recognised as the three pillars on which the Council of Europe's system for human rights protection is founded; and
- In particular, ensure that any institutional and legal change fully respects and does not weaken the principle of separation of powers among independent institutions and a functioning system of checks and balances, as well as the principle of equality, essential elements of democracy and the rule of law; and
- To this end, fully and swiftly implement the recommendations and decisions of regional and international courts and mechanisms, as well as the decisions of the Polish Constitutional Tribunal in order to comply with these principles; and
- Ensure any legislative process is conducted in a democratic, transparent and accountable manner, which provides for a reasonable time for genuine political debate between parliamentary forces and ensures stakeholder participation.

ALL DOWNHILL FROM HERE :

The rapid degradation of the rule of law in Poland: what it means for women's sexual and reproductive rights, and LGBT+ persons' rights

REPORT INTRODUCTION



A banner in Polish which translates as "free courts" is displayed as Poland's Prime Minister Mateusz Morawiecki speaks during a debate on the future of Europe during a plenary session at the European Parliament on July 4, 2018 in Strasbourg, eastern France.

©FREDERICK FLORIN/AFP, Strasbourg, France, 04/07/2018

"The rule of law crisis ultimately means lowering the bar for the protection of human rights."⁵

The Law and Justice party (*Prawo i Sprawiedliwość*, hereafter "PiS") came into power following Poland's parliamentary elections in October 2015. Since then, the country has known a drastic democratic backsliding, as PiS started to implement its anti-democratic agenda thanks to a majority in the Sejm.

What later came to be known as the Polish "constitutional crisis" severely undermined Poland's check and balances through what can be described in no other way than a court-packing scheme⁶ by the current government, which appointed several judges unconstitutionally. Through amendments rushed through the Sejm, the current government has awarded itself the right to verify the Constitutional Tribunal's judgements and to refuse to acknowledge and execute them. This year, after two years of refusing to publish several judgments of the Constitutional Tribunal, which the Executive disagrees with,⁷ the Prime Minister's Office finally published them. However, the publication does not have any further consequences since it was accompanied by the notion, added by the Government and not known to the Polish legal system, that the judgments have been made "in violation of the law." The constitutional crisis in Poland raised serious issues regarding the rule of law in the country as it seriously undermined the independence of the judiciary and the guarantee of constitutional justice.

The government then proceeded to implement a large-scale judicial reform through three highly controversial Acts. The Act amending the Act on the National Council of the Judiciary⁸ terminates the mandate for all judges sitting on the Council and ensures new ones are politically-appointed. The Act

5. Interview with members of the Polish Bar Association, Wednesday 21 June 2017, in Warsaw, Poland.

6. Marcin Maczak, "Poland: From Paradigm to Pariah? Polish Constitutional crisis — facts and interpretations," March 8, 2018.

7. Starting from Constitutional Tribunal Judgment 47/15, March 9, 2016, unpublished, until all December 2016 judgments.

8. Act amending the Act on the National Council of the Judiciary.

ALL DOWNHILL FROM HERE :

The rapid degradation of the rule of law in Poland: what it means for women's sexual and reproductive rights, and LGBT+ persons' rights

amending the Act on the Supreme Court⁹ introduces political supervision of the Supreme Court by forcing approximately 40% of sitting judges to retire and allows for the General Prosecutor to further appeal final judgments. The Act on the Organisation of Ordinary Courts¹⁰ increases the powers of the Ministry of Justice, who is thereby responsible for deciding on the number of presidents and deputy presidents of courts of appeal, regional, and district courts, as well of their appointments and dismissals. The amendments worryingly increase political supervision over these key players in Polish democracy,¹¹ an alarming trend for the protection of human rights in the country as "all rights are fictional without an independent judiciary."¹² As clearly stated by Dr. Hannah Machińska: "[Poland] face[s] deep violations of human rights, democracy, and the rule of law. And by deep I mean it will not be possible to reverse the situation."¹³

This resulted in the European Court of Justice voicing concerns as to whether Poland can even fulfil the right to a fair trial to the standard required among EU member States in the context of an extradition request.¹⁴

These changes have been accompanied by an outright unwillingness of the current government to dialogue with the various international and regional human rights bodies, by notably deliberately passing Acts before the Council of Europe's Venice Commission issued its opinions. In this context, these developments, among others such as a retrogression on women's sexual and reproductive rights and the shrinking space for civil society in the country, have led the European Commission to trigger the Art. 7(1) procedure of the Treaty on European Union¹⁵ in November 2017,¹⁶ reserved to member States which present a clear risk of a serious breach of the EU's fundamental values.¹⁷

The degradation of the rule of law in Poland has reverberating consequences regarding the rights of the most stigmatised, in particular LGBT+ persons' rights and women's sexual and reproductive rights, who suffer from the creation of a so-called "illiberal democracy" in Poland, mirroring Hungary's, and of the growing deference given to the Catholic Church. As democratic checks and balances are no longer ensured and all this is taking place against a background of rapidly and drastically shrinking space for civil society organisations, notably those advocating for minority rights, women and LGBT+ persons are left with no voice. As the Polish Society of Anti-discrimination Law said: "we cannot separate the issue of the rule of law crisis from the situation of NGOs and the persons whose interests they represent, because once courts will be destroyed, NGOs will not be able to fight for individuals' rights."¹⁸

The findings of this report leave no room for doubt regarding the existence of a clear and serious risk of a systemic breach of the EU's fundamental values, notably the rule of law, in Poland, and therefore beg the immediate triggering of the Art. 7(1) TEU procedure¹⁹ by the Council.

9. Act amending the Act on the Supreme Court.

10. Act on the Organisation of Ordinary Courts.

11. Act on the Organisation of Ordinary Courts.

12. Interview with members of the Polish Bar Association, Wednesday 21 June 2017, in Warsaw, Poland.

13. Interview with Dr. Hannah Machińska, Monday 19 June 2017, in Warsaw, Poland.

14. European Court of Justice, Preliminary Ruling, Case C-216/18, 25 July 2018.

15. For more information on Art. 7 TEU, see the Annex of this report.

16. European Parliament resolution of 15 November 2017 on the situation of the rule of law and democracy in Poland (2017/2931(RSP)).

17. As laid out in Art. 2 of the Treaty on European Union.

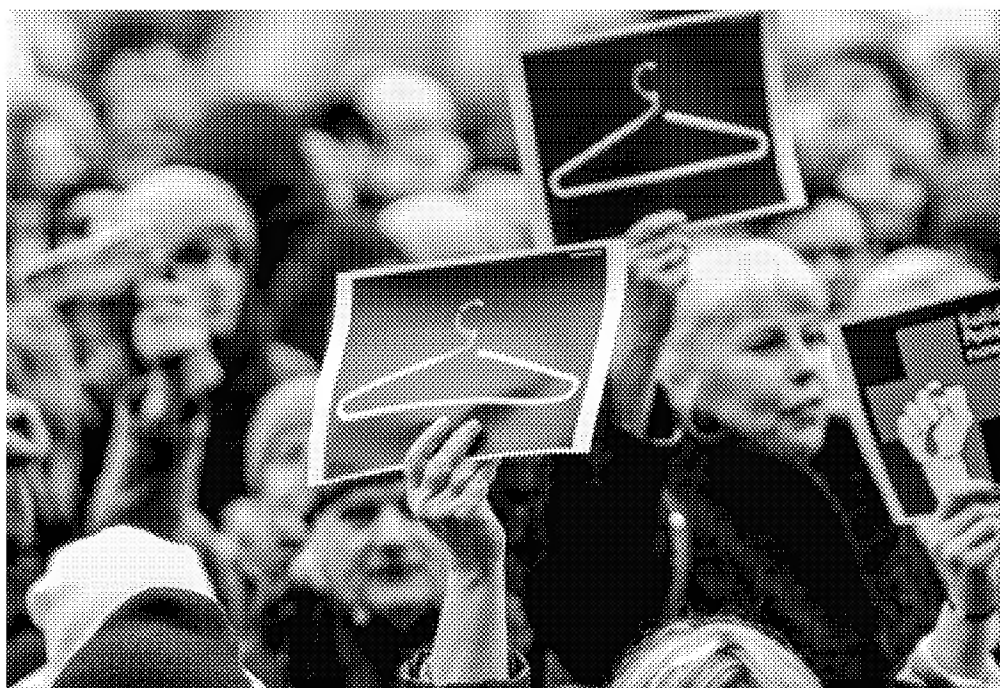
18. Interview with members of PSAL, Monday 19 June in Warsaw, Poland.

19. For more information on Art. 7 TEU, see the Annex of this report.

ALL DOWNHILL FROM HERE :

The rapid degradation of the rule of law in Poland: what it means for women's sexual and reproductive rights, and LGBT+ persons' rights

PART I - A 2018 REALITY CHECK: SERIOUS BACKTRACKING ON WOMEN'S SEXUAL AND RE- PRODUCTIVE RIGHTS



Protesters with clothes hanger pictures which symbolizes illegal abortion are seen in Gdansk, Poland on 23 March 2018. Over 1000 people - women and men protest against plans to tighten Poland's already-strict abortion laws.

©Michał Fludra/NurPhoto, Gdansk, Poland, 23/03/2018

ALL DOWNHILL FROM HERE :

The rapid degradation of the rule of law in Poland: what it means for women's sexual and reproductive rights, and LGBT+ persons' rights

Introduction

Over the last twenty years, international and European human rights norms have evolved significantly to recognise the denial of safe abortion services as a human right violation. Laws, policies, and practices that introduce new restrictions on women's exercise of their human rights, including their right to health, or that erect new barriers to women's access to health services – including legal and safe abortion services – can hardly be considered compliant with international human rights law and standards.²⁰

Under international human rights law, sexual and reproductive rights are principally protected as a component of the right to the highest attainable standard of physical and mental health. This right indeed encompasses several freedoms and entitlements, among which are sexual and reproductive rights, as outlined by the U.N. Committee Economic, Social and Cultural Rights (hereafter "CESCR") in its General Comment No. 14.²¹ The right to health – and thus reproductive rights²² – contains four interrelated and essential elements requiring that health facilities, goods, and services be available, accessible, acceptable, and of good quality (also known as the AAAQ framework).²³ While the right to health is one which abides by the principle of progressive realisation, States must fulfil minimum core obligations immediately upon ratifying the International Covenant on Economic, Social and Cultural Rights (hereafter "ICESCR"), regardless of resource constraints. These immediate obligations include: the prohibition of discrimination based on gender in the provision of health services,²⁴ the prohibition of retrogressive measures,²⁵ and the obligation to provide essential medicines such as short- and long-term contraceptives, emergency contraception, and drugs for maternal health care and management of incomplete abortion and miscarriage.²⁶

While Poland ratified most international and European human rights instruments (ICCPR, ICESCR, CEDAW, CRC, CAT, ECHR, the European Social Charter),²⁷ it still fails to ensure the adequate implementation of the obligations that derive from them. Since 1993, human rights treaty bodies and institutions have closely scrutinised the situation of access to legal and safe abortion in Poland,²⁸ and have consistently expressed deep concerns about the severe consequences of the country's restrictive

20. U.N. Committee on Economic, Social and Cultural Rights (hereafter "CESCR"), General Comment No. 3 on the Nature of States Parties' Obligations (Art. 2, para. 1), para. 9, U.N. Doc. E/1991/23 (1990); U.N. Commission on Human Rights, Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, para. 72, U.N. Doc. E/CN.4/1987/17 (1987); CESCR, General Comment 14 on the Right to the Highest Attainable Standard of Health (Art. 12), U.N. Doc. E/C.12/2000/4 (2000); CESCR, General Comment 22 on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social, and Cultural Rights), U.N. Doc. E/C.12/GC/22 (2016); U.N. Committee against Torture (hereafter "CAT"), *Final Observations on Peru*, U.N. Doc. CAT/C/PER/CO/5-6, § 15. To go further, see: Johanna B. Fine, JD, MIA, Katherine Mayall, JD, and Lilian Sepúlveda, JD, *The Role of International Human Rights Norms in the Liberalization of Abortion Laws Globally*, Leah Hoctor, Adriana Lamačková, *Mandatory waiting periods and biased abortion counselling in Central and Eastern Europe*, International Journal of Gynecology & Obstetrics, August 2017.

21. CESCR, General Comment No. 14: The right to the highest attainable standard of health (Art. 12), para. 8, U.N. Doc. E/C.12/2000/4: "the right to health is not to be understood as a right to be *healthy*. The right to health contains both freedoms and entitlements. The freedoms include the right to control one's health and body, including sexual and reproductive freedom."

22. CESCR, General Comment 22 on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social, and Cultural Rights), para. 39, U.N. Doc. E/C.12/GC/22 (2016).

23. CESCR, General Comment No. 14: The right to the highest attainable standard of health (Art. 12), para. 12, U.N. Doc. E/C.12/2000/4.

24. CESCR, General Comment 22 on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social, and Cultural Rights), para. 43(a), U.N. Doc. E/C.12/GC/22 (2016); U.N. Convention on the Elimination of all forms of Discrimination Against Women (hereafter "CEDAW"), Art. 12; U.N. Committee on the Elimination of all forms of Discrimination Against Women (hereafter "CEDAW Committee"), General Recommendation No. 24 on Article 12 of the Convention (Women and Health), para. 2, U.N. Doc. A/54/38/Rev.1, chap. I (1999); U.N. Committee on the Rights of the Child (hereafter "CRC Committee"), CRC Committee, General Comment No. 15: On the right of the child to the enjoyment of the highest attainable standard of health, (2013), para. 8, U.N. Doc. CRC/C/GC/15 (2013).

25. CESCR, General Comment 22 on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social, and Cultural Rights), para. 36, U.N. Doc. E/C.12/GC/22 (2016).

26. In accordance with the WHO Model List of Essential Medicines. See: CESCR, General Comment 22 on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social, and Cultural Rights), para. 49(g), U.N. Doc. E/C.12/GC/22 (2016); CESCR, General Comment No. 14: The right to the highest attainable standard of health (Art. 12), paras. 12(a), 43 (d), U.N. Doc. E/C.12/2000/4; CRC Committee, General Comment No. 15: On the right of the child to the enjoyment of the highest attainable standard of health, para. 37, U.N. Doc. CRC/C/GC/15 (2013).

27. International Covenant on Civil and Political Rights (1977); International Covenant on Economic, Social and Cultural Rights (1977); CEDAW (1980); U.N. Convention on the Rights of the Child (hereafter "CRC") (1991); U.N. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereafter "Convention against Torture") (1987); European Convention for the protection of human rights and fundamental freedoms (hereafter "ECHR") (1953); European Social Charter of 1961 (1997).

28. U.N. Human Rights Committee (1999, 2004, 2010, 2016), CEDAW Committee (2007) as well as CESCR (1998, 2002, 2009), CRC Committee (2002); U.N. Special Rapporteur on the Right to Health (2010), the European Court of Human Rights (cases of: *Alicja Tysiac*, 2005; *R.R.*, 2011; *P and S.*, 2012) and Commissioner for Human Rights of the Council of Europe (2007 + 2016).

ALL DOWNHILL FROM HERE :

The rapid degradation of the rule of law in Poland: what it means for women's sexual and reproductive rights, and LGBT+ persons' rights

abortion legislation on the life and health of women.²⁹

These apprehensions have increased over the past three years, since the governing PiS party came into power in October 2015 and started implementing its conservative, anti-democratic agenda which favours restrictions on human rights and women's sexual and reproductive rights more specifically.³⁰ However, the Polish government has so far disregarded most of the recommendations made by international organisations and bodies on the access to legal and safe abortion and even took further retrogressive measures.

CHAPTER 1 - AVAILABILITY: RETROGRESSIVE LEGISLATIVE MEASURES MAKE ABORTION ONLY AVAILABLE IN VERY LIMITED CIRCUMSTANCES

I. International legal standards on the availability of abortion services

Under international and European human rights law, Poland has the obligation to ensure legal abortion services are available, especially for teenagers, without third-party authorisations, and it must establish an effective mechanism capable of determining whether the conditions for obtaining a legal abortion are met. If one of these requirements is not fulfilled, abortion services cannot be deemed available in the country. It is the case in Poland.

A) Legal and safe abortion services shall be available

Under the AAAQ framework, States have the obligation to ensure the availability of legal and safe abortion services. The U.N. Committee on the Rights of the Child (hereafter "CRC") in particular recommended that States ensure access to safe abortion and post-abortion care services to girls "irrespective of whether abortion itself is legal."³¹

As underlined on several occasions by the U.N. Human Rights Committee, the prohibition and criminalisation of abortion violates women's rights to be free from cruel, inhuman, or degrading treatment, and to privacy. Indeed, the inability to receive care from trusted health professionals in one's own country and the financial, psychological, and physical burdens imposed on someone having to travel abroad to access legal and safe abortion care cause a great deal of mental suffering, attributable to the State, which can amount to cruel, inhuman, or degrading treatment.³² Therefore, no State shall prohibit abortion, even if this entails modifying the State's Constitution.³³

The European Committee on Social Rights (hereafter the "ECSR") also issued decisions on the subject.

29. U.N. Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Poland*, U.N. Doc. A/HRC/26/14, see recommendations 120.129, 120.131, 120.132, 120.134, 120.136, 18 July 2017; U.N. Human Rights Committee, *Concluding Observations: Poland*, para. 8, U.N. Doc. CCPR/CO/82/POL, 23 November 2016; CESCR, *Concluding Observations: Poland*, paras. 46-47, U.N. Doc. E/C12/POL/CO/6, 20 October 2016; CRC Committee, *Concluding Observations: Poland*, paras. 38(c) and (d) and 39(b) and (c), U.N. Doc. CRC/C/POL/CO/3-4, 30 October 2015; CEDAW Committee, *Concluding Observations: Poland*, paras. 36 and 37(a), (b), and (c), U.N. Doc. CEDAW/C/POL/CO/7-8, 14 November 2014; CAT, *Concluding Observations: Poland*, para. 23, U.N. Doc. CAT/C/POL/CO/5-6, 23 December 2013; U.N. Human Rights Council, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health: mission to Poland*, U.N. Doc. A/HRC/14/20/Add.3, 20 May 2010.

30. U.N. Human Rights Committee, *Concluding observations on the seventh periodic report of Poland*, 20 November 2016, U.N. Doc. CCPR/C/POL/CO/7; CoE Commissioner for Human Rights, *Report by Nils Muiznieks following his visit to Poland from 9 to 12 February 2016*, Doc. CommDH(2016)23, 2016; CoE Parliamentary Assembly, *Reproductive health and women's rights in Poland*, Written declaration No. 634, Doc. 14035, 11 July 2016; European Parliament, *Women's rights in Poland: MEPs checked the situation in the country*, 24 May 2017; European Parliament, *Rule of law and democracy in Poland at risk: Parliament ready for next steps*, 15 November 2017; CoE Commissioner for Human Rights, *Commissioner urges Poland's Parliament to reject bill which restricts access to abortion care*, 23 March 2018; CoE Commissioner for Human Rights, *Keynote speech by Nils Muiznieks Commissioner for Human Rights of the Council of Europe at the First Congress on Human Rights on 8-9 December 2017 organised by the Polish Ombudsman in Warsaw, Poland*, Doc. CommDH/Speech(2017)8, December 2017; CoE Commissioner for Human Rights, *Commissioner concerned about law undermining the independence of the judiciary in Poland*, 3 April 2017; CoE Commissioner for Human Rights, *Poland: slow down and consult on legislation to avoid human-rights backsliding*, 12 February 2016; European Council, *Statement by President Donald Tusk on the situation in Poland*, Doc. 493/17, 20 July 2017. To be noted: this list is non-exhaustive.

31. CRC Committee, General Observation n°15 (article 24), para. 70, U.N. Doc. CRC/C/GC/15, 17 April 2013.

32. *Mellet v. Ireland*, Human Rights Committee, Communication No. 2324/2013, paras. 7.6, 7.7, and 7.8, U.N. Doc. CCPR/C/116/2324/2013 (2016).

33. *Whelan v. Ireland*, Human Rights Committee, Communication No. 2425/2014, paras. 7.7, 7.8, 7.9, and 7.12, U.N. doc. CCPR/C/119/D/2425/2014 (2017).

ALL DOWNHILL FROM HERE :

The rapid degradation of the rule of law in Poland: what it means for women's sexual and reproductive rights, and LGBT+ persons' rights

In 2015, in *Federation of Catholic Family Associations in Europe (FAFCE) v. Sweden*,³⁴ the ECSR indeed firmly rejected attempts to interpret the European Social Charter as providing protection to foetal life. Instead, the ECSR confirmed that Sweden's abortion laws and policies, offering heightened protection to women's sexual and reproductive rights, were fully compliant with Art. 11 of the European Social Charter.

In order for States to comply with their international obligations, they must also abolish legal procedural barriers to safe abortion services such as third-party authorisation requirements from spouses, judges, parents, guardians, or health authorities for example.³⁵

B) States shall abolish legal procedural barriers to safe abortion services

This has been recommended by every international human rights bodies: the U.N. Committee on the Elimination of All forms of Discrimination against Women³⁶ (hereafter the "CEDAW Committee"), the CRC Committee,³⁷ the U.N. Committee against Torture,³⁸ the U.N. Committee on the Rights of Persons with Disabilities³⁹ (hereafter the "CRPD Committee"), the U.N. Human Rights Committee,⁴⁰ the CESCR,⁴¹ the World Health Organisation⁴² (hereafter the "WHO"), and the Council of Europe⁴³ (hereafter the "CoE"). All these bodies treat third-party authorisation requirements as forms of discrimination against women and barriers to women's access to reproductive health services.

C) States shall establish a mechanism to determine whether the conditions for legal abortion are met in individual cases

The European Court of Human Rights (hereafter "ECtHR") has noted that in member States (e.g. Ireland) where legal and safe abortion is only allowed in limited cases such as a threat to the woman's health or life, therefore requiring a doctor's approval, the "uncertainty surrounding the process of establishing whether a woman's pregnancy pose[s] a threat to her life and the threat of criminal prosecution [has] a 'significant chilling' effect both on doctors and the women concerned."⁴⁴ This serious chilling effect was also recognised by the ECtHR in *Tysiac v. Poland*,⁴⁵ where the Court found Poland had violated Art. 8 of the European Convention on Human Rights (hereafter "ECHR") as the applicant had been denied access to an effective mechanism capable of determining whether the conditions for obtaining a legal and safe abortion had been met. The Court urged Poland to instate procedures to ensure that women have effective access to legal and safe abortion, including an appeals mechanism allowing women to challenge a doctor's potential refusal to authorise an abortion. The Court explicitly called for the mechanism to consist of (1) an independent body, (2) that takes the views of the woman into consideration and (3) issues decisions in writing (4) within a reasonable period of time.⁴⁵

II. Poland's violations of its core obligations under the ICESCR

A) The 1993 Family Planning Act: a retrogressive legislative measure

In Poland, abortion is only legal in three very limited exceptions, thereby not fulfilling completely the

34. European Committee on Social Rights, *Federation of Catholic Family Associations in Europe (FAFCE) v. Sweden* (2015) No. 99/2013.

35. CEDAW Committee, *Concluding Observations on Kuwait*, UN Doc. CEDAW/C/KWT/CO/3-4, 2011 para. 43(b), *Concluding Observations on Hungary*, UN Doc. CEDAW/C/HUN/CO/7-8, 2013 paras. 30-31.

36. CEDAW, General Recommendation No. 33 on women's access to justice, (61 st Sess., 2015), para 25(c)), U.N. Doc. CEDAW/C/GC/33 (2015); CEDAW Committee, *Concluding Observations: Indonesia*, paras. 41-2, U.N. Doc. CEDAW/C/IDN/CO/6-7 (2012); *Cook Islands*, para.

35, U.N. Doc. CEDAW/C/COK/CO/1 (2007); *Burkina Faso*, para. 33, U.N. Doc. CEDAW/C/BFA/CO/6 (2010); *Timor-Leste*, para. 31(a), U.N. Doc. CEDAW/C/TLS/CO/2-3 (2015).

37. CRC Committee, General Comment No. 15: On the right of the child to the enjoyment of the highest attainable standard of health, para. 31, U.N. Doc. CRC/C/GC/15 (2013).

38. CAT, *Concluding Observations on Bolivia*, para. 23, U.N. Doc. CAT/C/30L/CO/2 (2013).

39. CRPD Committee, General Comment No. 1: Article 12: Equal recognition before the law, (11 th Sess., 2014), para. 35, U.N. Doc. CRPD/C/CO/1 (2014); CRPD Committee, General Comment No. 3 on women and girls with disabilities, para. 44, U.N. Doc. CRPD/C/CC/3 (2016).

40. U.N. Human Rights Committee, *Concluding Observations on Bolivia*, para. 9(b), U.N. Doc. CCPR/C/BOL/CO/3 (2013).

41. CESCR, General Comment No. 14 on The Right to the Highest Attainable Standard of Health, para. 41, U.N. Doc. E/C.12/2000/4 (2015).

42. World Health Organisation, *Safe abortion: technical and policy guidance for health systems*, 2012.

43. CoE Commissioner for Human Rights, *Issue paper – Women's sexual and reproductive health and rights in Europe*, December 2017, The Commissioner's recommendations, p. 11.

44. ECtHR, *A., B. and C. v. Ireland* (Application no. 25579/05), 16 December 2010, para. 254.

45. ECtHR, *Tysiac v. Poland* (Application n°5410/03), 2007.

46. ECtHR, *Tysiac v. Poland* (Application n°5410/03), paras. 117-118, 2007.

ALL DOWNHILL FROM HERE :

The rapid degradation of the rule of law in Poland: what it means for women's sexual and reproductive rights, and LGBT+ persons' rights

availability requirement.

After democratic political changes in 1989, reforms limiting women's right to access legal and safe abortion were introduced, making Poland's anti-abortion legislation one of the most restrictive in Europe. This situation has resulted from the adoption of the 1993 Family Planning Act or the so-called "compromise" which, in the post-communist period, the government conceded to the Catholic Church.⁴⁷ Prior to the 1993 Act, women were legally entitled to access safe abortion services upon request. About 500,000 legal and safe abortions a year were then reported, and more than 97% of the women said they were doing it for socio-economic reasons.⁴⁸ Nowadays, women's organisations estimate approximately 200,000 clandestine and unsafe abortions are performed each year in Poland,⁴⁹ while the Polish government publishes statistics showing only 1,000 women undergo safe and legal abortions per year⁵⁰ – ten times less. The 1993 Act is thus in itself a retrogressive legislative measure, entailing an outright violation of Art. 2(1) of the ICESCR.

As members of the Federation for Women and Family Planning (hereafter the "FWFP") rightfully pointed out, the very piece of legislation governing abortion in Poland was "a compromise between politicians and the Catholic Church; *not* a compromise to which women participated."⁵¹ At that time, the only way for Polish politicians to repay the Catholic Church for their contribution to the solidarity movement (Solidarnosc) was to trade on women's sexual and reproductive rights. Therefore, sexual and reproductive rights in Poland are, and have since then been, "a political rather than an ideological problem . . . because politicians believe their career depends on the Church's support."⁵²

While Art. 38 of the Polish Constitution defends the "legal protection of the life of every human being,"⁵³ the 1993 Act goes further by clearly recognising a right to life that includes the prenatal phase.⁵⁴ This anti-choice interpretation of Art. 38 of the Constitution has been endorsed by the Constitutional Tribunal in its judgement of 29 May 1997,⁵⁵ when it struck down a 1996 amendment to the abortion law allowing abortion for "social reasons." The Tribunal stated that, as a democratic State under the rule of law, Poland protects each person's fundamental right to life, from beginning to end – and it is not sufficient to maintain that unborn babies are not persons.⁵⁶

The current Polish government's official position on the subject is also apparent from its comments to the draft General Comment on Art. 6 of the ICCPR (on the right to life): "It is undisputable that, from the point of view of science, human life begins at conception . . . Protection of every child must be recognized regardless of age, including gestational age."⁵⁷

The 1993 Act as it stands today limits the possibility to seek, and thus the availability of abortion services to three exceptional circumstances:⁵⁸

- When the pregnancy poses a threat to the life or health of the woman, abortion is permitted at any stage of the pregnancy but – except in case of emergency – is subjected to the diagnosis of two doctors other than the one performing the abortion;
- When there is a high probability of a severe and irreversible foetal impairment, abortion is permitted after a confirmed diagnosis of two doctors other than the one undertaking the act and until viability of the foetus;
- When the pregnancy is the result of an unlawful act, such as rape or incest, abortion is permitted during the first 12 weeks. In this particular instance, a certificate from the public prosecutor is required to access the medical procedure.

47. Humanity in Action, *A Dangerous Compromise: The Battle of Reproductive Rights in Poland*, 2008.

48. The Guardian, "How Poland's far-right government is pushing abortion underground," 30 November 2017, <<https://www.theguardian.com/news/2017/nov/30/how-polands-far-right-government-is-pushing-abortion-underground>> (last visited 12 July 2018).

49. ASTRA Network, *Access to safe and legal abortion : a European perspective*, 2016.

50. Wm. Robert Johnston, *Historical abortion statistics, Poland*, 2018.

51. Interview with members of the Federation for Women and Family Planning, Wednesday, 21 June 2017, in Warsaw, Poland.

52. Interview with members of the Federation for Women and Family Planning, Wednesday, 21 June 2017, in Warsaw, Poland.

53. Constitution of the Republic of Poland (Dziennik Ustaw of 16 July, 1997, No. 78, item 483) Personal Freedoms and Rights, Art. 38, "The Republic of Poland shall ensure the legal protection of the life of every human being."

54. 1993 Family Planning Act, Art. 1.

55. Ruling K 26/96 of the Constitutional Tribunal, 28 May 1997, Poland.

56. Ruling K 26/96 of the Constitutional Tribunal, 28 May 1997, Poland.

57. U.N. Office of the High Commissioner for Human Rights, *Remarks of Poland to the General Comment No 36 on article 6 of the International Covenant on Civil and Political Rights on the right to life*, p. 1.

58. 1993 Family Planning Act, Art. 4.

ALL DOWNHILL FROM HERE :

The rapid degradation of the rule of law in Poland: what it means for women's sexual and reproductive rights, and LGBT+ persons' rights

B) Third party authorisations, and their difficulty to be challenged, render the 1993 Act even stricter in practice

It must be noted that in all three exceptions, the 1993 Act provides for the intervention of third-parties for women to exercise their right to choose, contrary to international human rights standards on the matter, as mentioned in **Section 1. A) 2) States shall abolish legal procedural barriers to safe abortion services**. This is combined with a criminal provision stating that if a doctor or anyone else assists a woman in having an abortion besides the three exceptions, including by providing transport, advice or information, they face a 3-year imprisonment sentence.⁵⁹ However, the pregnant woman is exempt from criminal liability under the current framework.⁶⁰

This punitive and stigmatising environment, put in place by the 1993 Act and anti-abortion legislative arsenal and discourse which has developed in Poland over the past decade, has created a chilling effect, even for medical professionals, who often invoke the “conscience clause” to escape their medical duty to perform abortions when absolutely necessary for a woman's life and health. This led institutions such as the ECtHR to condemn the harmful health implications and serious human rights violations caused by abortion stigma.⁶¹

However, in practice, it is extremely difficult to challenge a doctor's opinion, therefore translating into women being unable to exercise their right to choose in Poland, even in the limited available circumstances. Indeed, following the *Tysiac* ECtHR judgment, Poland adopted the 2008 Act on the Protection of Patient Rights, which allows patients to challenge their doctor's decision on the provision of healthcare, including abortion. The mechanism therefore can serve to determine whether the conditions for legal abortion have been met. The patient may file an administrative “appeal”⁶² with a Medical Commission (composed of three doctors appointed by the Ombudsperson for Patients' Rights⁶³) within 30 days following the emission of the doctor's opinion. The Commission must then deliver an administrative reasoned decision, within another 30 days. Hearings are not automatic and the decisions of the Commission cannot be further “appealed.”

The U.N. Special Rapporteur on the Highest Attainable Standard of Health has criticised the new mechanism, noting that “a panel composed exclusively of medical professionals has an inbuilt structural bias, affecting its impartiality.”⁶⁴ Furthermore, because an abortion can only be undergone during the first 12 weeks of pregnancy in two of the three exceptions provided by the 1993 Act, a 30-day period to issue an opinion is excessive and undermines women's legal right to access abortion in the end. Because this procedure is an administrative one, no obligation to provide applicants with legal advice exists. This is a further limit for women with restricted financial means in lodging their “appeal” before the doctors' board, especially considering the existing requirement for the patient's complaint to refer to the article of law that has been violated by the doctor's opinion. The mechanism therefore discriminates against the poorest women who are forced to seek clandestine and unsafe abortions.

When confronted about allegations of the lack of independence of the Commission, and the inability for women to appeal its decisions, members of the Polish Ministry of Health remained vague: “Decisions of the Commission cannot be challenged before court, however patients can always go to court. The Ombudsperson is supposed to support all patients, including women who face decisions of termination of

59. Polish Penal Code, Arts. 18, and 152 to 154.

60. 1993 Family Planning Act, Art. 149a §2.

61. See CoE Commissioner for Human Rights, *Women's sexual and reproductive health and rights in Europe*, 2017, p.29: “In the case *P. and S. v. Poland*, the European Court of Human Rights considered the harmful health implications and serious human rights violations caused by abortion stigma in a country with a restrictive abortion law. The Court held that the rights to privacy and bodily integrity under Articles 3 and 8 of the European Convention on Human Rights were violated as a result of repeated failures by the Polish authorities to ensure that the first applicant could access legal abortion services to which she was entitled under domestic law.”

62. Act of November 6, 2008 on Patient Rights and the Patient Rights Ombudsman, Chapter 8 – The Patient's Right to File an Objection to a Doctor's Opinion or Ruling, Arts. 31 and 32.

63. The Ombudsperson for Patient's Rights was established by the Act of 6 November 2008 on Patient Rights and the Patient Rights Ombudsman. The Act regulates health care providers (public and non-public)'s obligations as well as patients' rights such as: right to health services, to obtain information, to confidentiality of patient information, to consent to the provisions of health services, to respect privacy and dignity of the patients, to object to the doctor's opinion or decision, etc. The Ombudsperson is a new central public administrative body which has jurisdiction to protect these rights.

64. U.N. Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, *Report on the Rapporteur's Mission to Poland*, para. 45, U.N. Doc. A/HRC/14/20/Add.3 (2010).

ALL DOWNHILL FROM HERE :

The rapid degradation of the rule of law in Poland: what it means for women's sexual and reproductive rights, and LGBT+ persons' rights

pregnancy.”⁶⁵ Despite the Ministry’s affirmations, the fact-finding team was told that the Ombudsperson for Patient’s Rights had actually recently been replaced because she was being “too helpful in these cases.”⁶⁶ This testifies of the current Polish government’s desire for this mechanism to not be effective, but only further delay women’s claims so as to prevent their legal access to abortion. This is illustrative of the current government’s attempts to further restrict women’s already slim right to choose, notably through replacing persons whose actions are not reflective of the government’s orientations.

Finally, in the case the Commission issues a positive opinion regarding a woman’s access to abortion, the 2008 Act does not contain any enforceability mechanism guaranteeing her effective access to the granted lawful abortion. For these reasons, the Committee of Ministers overseeing the implementation of judgments of the ECtHR is, to date, not satisfied with the new law, as it expressed again in its *R.R. v. Poland* judgment⁶⁷ in which it ruled Poland had violated the ECHR due to the lack of effective mechanism to challenge a doctor’s opinion. The current mechanism indeed is not (1) an independent body, (2) only partially takes the views of the woman into consideration (since hearings are not automatic) and (3) does not issue decisions within a reasonable period of time, as required *Tysiac*.⁶⁸

Nevertheless the Polish Ministry of Health and the Ombudsperson for Patients’ Rights have said they do not believe the mechanism is faulty and tend to state that not using this mechanism is due to the fact that there is no need to use it. The Ministry of Health expressly stated that “the 2008 Act provides the possibility to object to a doctor’s refusal, as required by the *Tysiac* ECtHR judgment. We consider mechanism as effective.”⁶⁹ Moreover, in June 2017, a deputy speaker of the Senate opened the conference on the implementation of ECtHR rulings by saying he was “strongly against ECtHR rulings in cases of abortion . . . which interfere with the sovereign right of Poland,”⁷⁰ thereby clearly indicating the disregard and lack of will of the current government to comply with ECtHR rulings on the subject.

Poland’s anti-abortion legislation is thus strict in the sense that legal and safe abortion is allowed in limited cases, but is made even stricter by introducing third party authorisation before women can exercise their right to choose. Regrettably, the Polish Ministry of Health neither seem to be planning to amend the 2008 nor the 1993 Act, as it considers “it is important for the State to [have a doctor] state that termination can be executed [in a specific case] . . . and it is important that it be stated by different doctors, other than the one who carries out [the abortion].”⁷¹

As a result, officially only 600 to 1,000 legal abortions are practiced each year in Poland, among 10 millions of women of reproductive age. However, according to a survey from the Public Opinion Research Center (CBOS) and the Federation for Women and Family Planning (FWFP), the actual figures, including clandestine abortions, would rather look closer to 200,000 cases a year.⁷² The gap between official statistics and data collected by civil society is significant and suggests a discrepancy between the reality and how it is depicted by official sources. As an illustration of the current government’s official stance on the issue, Member of Parliament Joanna Scheuring-Wielgus explained that, as Poland was getting ready to celebrate the 100th anniversary of women’s right to vote in the country, in 2018, Polish authorities “agreed to make this year the year of women’s rights, only under the condition that no mention be made alleging there were issues with women’s rights in Poland.”⁷³

C) Further retrogressive legislative measures in the making

Multiple attempts have been made to further restrict cases of legal abortion, through draft legislative proposals in 2011, 2013, 2015, 2016, 2017, and 2018 that contained total or near total bans on abortion, which were defeated by massive public protests. These attempts have intensified since the 2015 parliamentary elections which brought ultra-conservative ruling party PiS to power.

65. interview with members of the Polish Ministry of Health, Thursday 22 June 2017, in Warsaw, Poland.

66. interview with members of the Federation for Women and Family Planning, Wednesday, 21 June 2017, in Warsaw, Poland.

67. ECtHR, *R.R. v. Poland*, (Application No. 27617/04), 2011.

68. ECtHR, *Tysiac v. Poland*, (Application No. 5410/03*, paras. 117-118, 2007.

69. interview with members of the Polish Ministry of Health, Thursday 22 June 2017, in Warsaw, Poland.

70. Interview with Hannah Machińska, former Director of the Office of the Council of Europe in Poland, and current lawyer and Professor at the University of Warsaw, Monday 19 June 2017, in Warsaw, Poland.

71. interview with the members of the Polish Ministry of Health, Thursday 22 June 2017, in Warsaw, Poland.

72. ASTRA Network, *Access to safe and legal abortion : a European perspective*, 2016.

73. interview with MP Joanna Scheuring Wielgus, Tuesday 20 June 2017, in Warsaw, Poland.

ALL DOWNHILL FROM HERE :

The rapid degradation of the rule of law in Poland: what it means for women’s sexual and reproductive rights, and LGBT+ persons’ rights

Not long after PiS won the October 2015 elections, a draft bill was indeed tabled, which proposed to introduce a near-total ban on abortion and sought to criminalise women and girls who underwent an abortion as well as those assisting or encouraging it.⁷⁴ The proposal, although a supposed citizens' initiative, was in fact tacitly supported by the ruling party, and passed the first stages of parliamentary scrutiny. The context in which the bill was proposed and started to be passed, and in particular the fact that it proposed to criminalise women gave rise to mass protests – which became known as the **Czarny Protest** or "the Black Protest"⁷⁵ – all over the country, including an unprecedented women's strike and widespread international solidarity. As a result, the Parliament backtracked on its decision and rejected the bill in October 2016.⁷⁶

However, the attempts to further restrict women's sexual and reproductive rights, especially regarding abortion, and the debate around the criminalisation of abortion have far from died down, especially since the current government has indicated its support in favour of greater restrictions on abortion, and other sexual and reproductive rights, in many instances.⁷⁷ For instance, in October 2017, in its remarks to the General Comment No. 36 on article 6 of the ICCPR, the Polish government strongly insisted on the protection of human life from conception.⁷⁸

This positioning has encouraged and created fertile ground for new anti-abortion initiatives, which have proliferated over the past two years. On 27 October 2017, a group of parliamentarians – mainly from the PiS party – submitted a motion to the Constitutional Tribunal questioning the constitutionality of the 1993 Family Planning Act's provisions related to access to abortion in case of a severe and irreversible foetal impairment. A month later, on 30 November 2017, the "Stop Abortion Civic Committee" submitted a draft law, widely supported by the Polish Catholic Church, bishops,⁷⁹ and high level politicians such as Prime Minister Szydło, President Duda, PiS leader Kaczyński, and PiS-affiliated Science Minister and Deputy Justice Minister.⁸⁰ The draft bill gathered 830,000 signatures⁸¹ between September and November 2017 to ban what it referred to as "eugenic abortion" – abortions until now legally carried out to eliminate potentially defective fetuses.

These heightened threats on women's sexual and reproductive rights have sparked important mobilisation from civil society, which developed new legislative proposals to counteract this restrictive trend. In October 2017, the "Save Women Civic Committee" thus collected almost 500,000 signatures for its bill on women's rights and conscious parenthood.⁸² The draft bill specifically provided for:

- Restoring women's reproductive rights, including the woman's right to legal and safe abortion, in all circumstances, until the end of the 12th week of pregnancy;
- Introducing comprehensive sexual education in schools;
- Providing free and easy access to contraceptives;
- Restoring access to emergency contraception on demand;
- Regulating the use of conscience clause by gynaecologists.

The PiS party had promised in its election campaign that the bill would be sent to further proceedings. However, it was not. The liberalising draft bill was rejected by Polish MPs on 10 January 2018, in part

74. Citizens' proposal on amendments to the 1993 Family Planning Act, Human Embryo Protection and Conditions of Permissibility of Abortion of 7 January 1993 and the Penal Code of 6 June 1997; **See also:** Center for Reproductive Rights & others, "Supplemental information on Poland for the Periodic Review by the Human Rights Committee at its 118th Session," 22 September 2016.

75. Great Coalition for Equality and Choice, *My #BlackProtest*, 2017.

76. Reuters, Polish "Parliament rejects near-total abortion ban after protests," 6 October 2016.

77. Radio Poland, "President says abortion laws are abused in Poland," 7 November 2017: "[President] Duda said removing deformed and seriously ill fetuses was 'eugenic abortion', adding that 'decidedly tougher legal solutions' needed to be introduced." **See also:** Amnesty International, "Submission for the UPR 27th session, Poland: dismantling rule of law?," April/May 2017.

78. U.N. Office of the High Commissioner for Human Rights, *Remarks of Poland to the General Comment No 36 on article 6 of the International Covenant on Civil and Political Rights on the right to life*, p. 1.

79. On 8 November 2017, the Committee of Polish bishops released a statement asserting the right to life of the unborn child and putting the committee's weight behind the campaign for this restrictive bill: *JI Press Agency, Polish Bishops' Conference Presidium: 'Instead of Abortion – Adoption of Children: Everyone has the right to life'*, 8 November 2017.

80. Radio Poland, "President says abortion laws are abused in Poland," 7 November 2017.

81. "Federation for Women and Family Planning, 'The draft law penalizing abortion in case of foetal impairment submitted to the Parliament,' November 2017.

82. "Federation for Women and Family Planning, 'Save Women' bill with 500 000 signatures submitted to the Polish Parliament," October 2017.

ALL DOWNHILL FROM HERE :

The rapid degradation of the rule of law in Poland: what it means for women's sexual and reproductive rights, and LGBT+ persons' rights

due to high absenteeism from MPs of the opposition.⁸³ This sparked nationwide protests.⁸⁴ In parallel, the "Stop Abortion"⁸⁵ bill was voted in and put forth to be discussed in the Parliamentary Commission of Social Politics and Family on 10 January 2018.

The "Stop Abortion" bill was again debated in March 2018, but was again temporarily defeated by massive public protests following which the Sejm had decided the proposal would not be tabled in the coming months. However, in June 2018, the Sejm's Social Policy and Family Committee examined the "Stop Abortion" bill once more. If adopted, the bill would impose a near total ban on abortion, as it purports to amend the 1993 Family Planning Act by prohibiting abortion in the event of a severe and irreversible foetal impairment, a ground on which 98% of legal abortion procedures are accessed in Poland.⁸⁶ The other two grounds on which abortion is permitted account for only 2% of all legal and safe abortions granted because of the many hurdles faced by women whose pregnancy is the result of a crime (rape or incest) or whose pregnancy is a threat to their life. These hurdles are in part due to the need for numerous third party authorisations – from doctors or judges –, the margin of appreciation granted, and their invoking the conscientious objection in a quasi-systematic way, or their refusal to certify the conditions for legal and safe abortions are met for fear of being criminalised for having aided a woman to undergo an illegal abortion. The passing of this bill would violate Poland's international human rights commitments, starting with, once more, the prohibition of non-retrogressive measures under the ICESCR.⁸⁷

Several international and European institutions have expressly called on Poland to reject any draft legislation further retrogressing on women's sexual and reproductive rights. For instance, at the United Nations level, the U.N. Working Group on the issue of discrimination against women in law and in practice warned Poland that "forced continuation of pregnancy *in any circumstance* violates a person's human rights."⁸⁸ At the European Union level, the European Parliament (hereafter, the "EP"), in its resolution of 15 November 2017, specifically "strongly criticise[d] any legislative proposal that would prohibit abortion in cases of severe or fatal foetal impairment,"⁸⁹ which was one of the contributing factors to the EP finding the situation in Poland represented a clear risk of a serious breach of the EU's founding values as enshrined in Art. 2 of the Treaty on European Union (hereafter "TEU"), and warranted the triggering of the article 7(1) TEU procedure.

For MP Joana Scheuring-Wielgus, "these past 18 months [in particular] have been a huge step back, in comparison with 1993. We see everything that's happening as an attempt by the current government to create a religious state."⁹⁰ She therefore believes that "what happened last autumn – introducing a stricter bill, defeated by massive protests – was not a one-time event, but the beginning of a process for change."⁹¹ Many interviewees indeed expressed their fear that "at least some restrictions to the current legislation will take place in this term of Parliament . . . [as] PiS will have to do something in that sense for their supporters."⁹² However, these allegations have been denied by the Polish Ministry of Health, stating that "so far, the provisions have not been changed . . . and there are no plans from the government to change these laws."⁹³ However, the Ministry did underline that "when a proposal is

83. Federation for Women and Family Planning, "Conformism, contempt & conceit – voting on abortion-related bills in the Polish Parliament," 10 January 2018.

84. The Independent, "Poland abortion ban: Thousands of women take to streets across country to demand reproductive rights," 17 January 2018.

85. "Zatrzymaj Aborcję," [see: <https://zatrzymajaborcje.pl/>](https://zatrzymajaborcje.pl/) (last visited 12 August 2018).

86. Federation for Women and Family Planning, "Darbarian anti-abortion bill back in the fundamentalists' game. Reactions," July 2018. The other two grounds on which abortion is permitted account for only 2% of all legal and safe abortions granted because of the many hurdles faced by women whose pregnancy is the result of a crime (rape or incest) or whose pregnancy is a threat to their life. These hurdles are in part due to the need for numerous third party authorisations – from doctors or judges –, the margin of appreciation granted, and their invoking the conscientious objection in a quasi-systematic way or their refusal to certify the conditions for legal and safe abortions are met for fear of being criminalised for having aided a woman to undergo an illegal abortion.

87. As stems from the principle of progressive realisation of Art. 2(1) ICESCR; *See* CESCR, General Comment No. 3, para. 9, U.N. Doc. E/1991/23.

88. U.N. Working Group on the issue of discrimination against women in law and in practice, "Poland must not further restrict sexual and reproductive health and rights, say UN experts," 22 March 2018 (emphasis added).

89. European Parliament resolution of 15 November 2017 on the situation of the rule of law and democracy in Poland (2017/2931(RSP)), para. 13.

90. Interview with MP Joanna Scheuring-Wielgus, Tuesday 20 June 2017, in Warsaw, Poland.

91. Interview with MP Joanna Scheuring-Wielgus, Tuesday 20 June 2017, in Warsaw, Poland.

92. Interview with Wanda Nowicka, former deputy speaker, Monday 19 June 2017, in Warsaw, Poland; Interview with members of the Hel sinki Foundation for Human Rights, Tuesday 20 June 2017, in Warsaw, Poland; Human Rights, Tuesday 20 June 2017, in Warsaw, Poland.

93. Interview with the members of the Polish Ministry of Health, Thursday 22 June 2017, in Warsaw, Poland.

ALL DOWNHILL FROM HERE :

The rapid degradation of the rule of law in Poland: what it means for women's sexual and reproductive rights, and LGBT+ persons' rights

submitted, the government will have to take a stance.”⁹⁴

Legal availability of abortion services is therefore very limited in Poland – limitations which are further exacerbated by additional legal requirements such as third-party authorisations and the lack of an existing mechanism to determine whether the conditions have been met for legal abortion. Taking place in a strong and stigmatising anti-abortion environment, the Polish legal framework on abortion is therefore not sufficient to fulfil the availability requirement of the AAAQ framework. Even more so, it is in direct and outright violation of Poland’s international human rights standards, being the result of retrogressive legislative measures.

CHAPTER 2 - ACCESSIBILITY: DE FACTO INACCESSIBILITY OF SEXUAL AND REPRODUCTIVE RIGHTS SERVICES

Under the AAAQ framework, when abortion is legal under domestic law, it must be accessible in practice.⁹⁵ This entails physical, informational, and economic accessibility. Denial of access to legal abortion services can amount to violations of the rights to health, privacy, non-discrimination and freedom from cruel, inhumane and degrading treatment.

I. Effective physical accessibility seriously hindered

A) International legal standards on the physical accessibility of sexual and reproductive services, and the regulation of the conscientious objection

1) Standards regarding the physical accessibility of abortion services

Physical accessibility is guaranteed when a sufficient number of health facilities providing these services exist throughout the country, implying that women do not have to travel long distances receive these services.⁹⁶

Physical accessibility is often drastically reduced by the legality of the use of the conscientious objection by medical practitioners. States providing for the use of the conscientious objection by healthcare personnel must therefore adequately regulate its practice to ensure that it does not limit women’s access to sexual and reproductive health services.⁹⁷ They must ensure a respectful, timely, and systematic referral is made by the objector to an alternative healthcare provider in the same hospital, and ensure that the practice is solely personal, not institutional.⁹⁸

While freedom of thought, conscience, and religion is protected under Art. 9 of the ECHR, the ECtHR has explicitly stated that Art. 9 of the ECHR did not encompass “each and every act or form of behaviour motivated or inspired by a religion or belief.”⁹⁹

The ECSR has also found that a member State was in breach of Art. 11 of the European Social Charter protecting the right to health, and of the principle of non-discrimination, when the use of the conscientious objection in the State meant that entire regions were scrapped off of doctors willing and able to perform abortion services.¹⁰⁰ In *International Planned Parenthood Federation European Network*

94. interview with the members of the Polish Ministry of Health, Thursday 22 June 2017, in Warsaw, Poland.

95. CECSR, General Comment No. 14: The right to the highest attainable standard of health (Art. 12), para. 12(b), U.N. Doc. E/C.12/2000/4.

96. CECSR, General Comment No. 14: The right to the highest attainable standard of health (Art. 12), para. 12(b), U.N. Doc. E/C.12/2000/4; CEDAW Committee, General Recommendation No. 24 on Article 12 of the Convention (Women and Health), paras. 21 and 25, U.N. Doc. A/54/38/Rev.1, chap. I (1999).

97. CECSR, General Comment No. 22, para. 43, U.N. Doc. E/C.12/CC/22, (2016).

98. CECSR, General Comment No. 24 on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, para. 21, U.N. Doc. CESCR/C.12/CC/24 (2017); CESCR, *Concluding Observations on Poland*, paras. 46-7, U.N. Doc. E/C.12/POL/CO/6 (2016); CEDAW Committee, *Concluding Observations Poland*, para. 36-7, U.N. Doc. CEDAW/C/POL/CO/7-8 (2014); *Slovakia*, para. 30-31, U.N. Doc. CEDAW/C/SVK/CO/5 6 (2015); U.N. Human Rights Committee, *Concluding Observations on Columbia*, paras. 20-21, U.N. Doc. CCPR/C/COL/CO/7 (2016).

99. ECtHR, *Pichon and Sajous v. France*, (Application No. 49853/99), 2001.

100. European Committee on Social Rights (hereafter “ECSR”), *International Planned Parenthood Federation European Network v. Italy*, (2014) No. 87/2012

ALL DOWNHILL FROM HERE :

The rapid degradation of the rule of law in Poland: what it means for women’s sexual and reproductive rights, and LGBT+ persons’ rights

*v. Italy*¹⁰¹ in particular, it found that Italy could in practice only guarantee the right to health for women who could afford to travel from hospital to hospital or from one region to another, thereby resulting in discrimination on the basis of women's economic and social capacities.

In 2015, the ECSR clearly stated that the conscientious objection could not be used by healthcare providers to refuse to provide abortion services under Art. 11 of the European Social Charter, by rejecting such claims by the Federation of Catholic Family Associations in Europe.¹⁰² The Committee unambiguously confirmed that states are not obligated to recognise or protect any right of health professionals to refuse care on grounds of personal conscience under Art. 11 of the Charter.

The ECSR finally went further in *Confederazione Generale Italiana del Lavoro v. Italy* when it also found a violation of the right to work,¹⁰³ and the right to dignity in work,¹⁰⁴ resulting from the State's inability to adequately address the burdensome workload on non-objecting doctors caused by the high percentage of objecting doctors in some areas of Italy.

Finally, it must be noted that while the Council of Europe (CoE) adopted a controversial resolution on the right to institutional conscientious objection in lawful medical care in 2010,¹⁰⁵ it has since been nullified by the CoE, notably the CoE's Commissioner for Human Rights, clearly indicating that "this view is contrary to the repeated recommendations of international human rights mechanisms that have consistently held that institutions may not be allowed to refuse to provide sexual and reproductive health care on grounds of conscience."¹⁰⁶

2) Standards regarding the physical accessibility of contraception

Furthermore, the ECtHR cut short any attempts at widening the use of the conscientious objection when it deemed inadmissible a complaint alleging that pharmacists had a right to use the conscientious objection under Art. 9 of the ECHR to refuse to sell contraceptives. The ECtHR expressly stated that: "as long as the sale of contraceptives is legal and occurs on medical prescription nowhere other than in a pharmacy, the applicants cannot give precedence to their religious beliefs and impose them on others as justification for their refusal to sell such products."¹⁰⁷

Finally, it must be recalled that the obligation to provide essential medicines such as short- and long-term contraceptives, emergency contraception, and drugs for maternal health care and management of incomplete abortion and miscarriage is a minimum core obligation under the ICESCR,¹⁰⁸ which States must fulfil immediately upon ratification.

B) In Poland, "even legal abortion is not accessible"¹⁰⁹

1) Abusive use of the conscientious objection

The physical accessibility requirement is not fulfilled in Poland, mainly due to abusive use of the conscientious objection, which is invoked institutionally by hospitals rather than by doctors on a case-by-case basis, without referring patients to other doctors willing and able to perform abortion services. The reasoning behind these refusals is that it would undermine the effect of the conscience clause since women would still be able to undergo an abortion, indirectly allowed by the referral. A majority of hospitals go as far as labelling abortions as murders and women seeking them as assassins; "we are hospitals which do not perform murders."¹¹⁰ This results in entire regions of Poland being scrapped off

101. ECSR, *International Planned Parenthood Federation European Network v. Italy*, (2014) No. 87/2012.

102. ECSR, *Federation of Catholic Family Associations in Europe (FAFCE) v. Sweden* (2015) No. 99/2013.

103. ECSR, *Confederazione Generale Italiana del Lavoro (CGIL) v. Italy* (2016) No. 91/2013, paras. 214-246.

104. ECSR, *Confederazione Generale Italiana del Lavoro (CGIL) v. Italy* (2016) No. 91/2013, paras. 282-298.

105. Council of Europe, Resolution 1763, 2010, especially para. 1: "No person, hospital or institution shall be coerced, held liable or discriminated against in any manner because of a refusal to perform, accommodate, assist or submit to an abortion, the performance of a human miscarriage, or euthanasia or any act which could cause the death of a human foetus or embryo, for any reason."

106. Council of Europe's Commissioner for Human Rights, *Issue paper – Women's sexual and reproductive health and rights in Europe*, December 2017, The Commissioner's recommendations, p. 60.

107. ECtHR, *Pichon and Sajous v. France*, (Application No. 49853/99), 2001.

108. In accordance with the WHO Model List of Essential Medicines. See CESCR, General Comment No. 22, para. 49(g), U.N. Doc. E/C.12/CC/22, (2016); CESCR, General Comment No. 14: The right to the highest attainable standard of health (Art. 12), paras. 12(a) and 43(d), U.N. Doc. E/C.12/2000/4; CRC Committee, General Comment No. 15 On the right of the child to the enjoyment of the highest attainable standard of health, U.N. Doc. CRC/C/GC/15 (2013).

109. Interview with the STER Foundation, Monday 19 June 2017, in Warsaw, Poland.

110. Interview with Wanda Nowicka, former deputy speaker, Monday 19 June 2017, in Warsaw, Poland.

ALL DOWNHILL FROM HERE :

The rapid degradation of the rule of law in Poland: what it means for women's sexual and reproductive rights, and LGBT+ persons' rights

of any single doctor willing and able to perform legal abortion services,¹¹¹ even in those limited cases provided for by the 1993 Act. Therefore "even legal abortion is not accessible."¹¹² Indeed, officially only 600 to 1,000 legal abortions are performed every year in Poland, out of more than 10 million women of reproductive age. However, women's organisations estimate approximately 200,000 clandestine and unsafe abortions are performed each year.¹¹³ In practice, the State therefore fails to provide women with the services they are entitled to: "de facto, there is no access to legal abortion . . . The [1993] law is dead in that sense."¹¹⁴

The only regulation which helped ensure women's access to legal and safe abortion services was that of 13 May 2005. The regulation obliged hospitals to subcontract services for which its doctors invoked the conscience clause. While this regulation was not fully in line with international standards, according to which every hospital should hire at least one professional willing and able to perform safe abortions, it was a start in improving women's access to safe and legal abortion by at least designating an alternative healthcare provider willing and able to do so, even if in another hospital. The regulation was however repealed by the Minister of Health on 13 May 2008.

The so-called "conscience clause" is provided for in Art. 39 of the 1996 Medical Profession Act under which doctors may refuse to perform an abortion on the ground that it conflicts with their beliefs or personal values. This right can be invoked, subject to three conditions:

- 1) the doctor is obliged to indicate real possibilities of obtaining the service from another doctor, or another medical institution; and
- 2) the doctor shall justify his/her decision; and
- 3) the doctor shall mention the refusal in the patient's medical documentation.

However, in October 2015, the Polish Constitutional Tribunal ruled against the referral obligation¹¹⁵ after the National Board of Doctors filed a complaint stating that Art. 39 contravened their right to freedom of thought, conscience, and religion protected by the Polish constitution.¹¹⁶ In the same ruling, the Tribunal declared also unconstitutional the obligation for objectors to provide abortion services in "urgent cases requiring immediate treatment" – to which the "conscience clause" did not previously apply – and thus further limited women's right to access legal and safe abortion services in cases where their health is at immediate risk. This directly goes against the infamous *Z. v. Poland* ECtHR case¹¹⁷ in which Z's daughter began experiencing ulcerative colitis while being pregnant (the pregnancy was wanted). While ulcerative colitis is not caused by pregnancy, doctors disregarded all international and medical standards and refused to treat her for the ulcerative colitis, invoking their right to conscientiously object to provide her with medicine which they feared could damage the foetus. This led to Z's daughter's health gradually worsening to the point of her life being in immediate danger, which led to a miscarriage, and her subsequent, preventable death.

The Constitutional Tribunal, in its October 2015 judgment, determined that Parliament should put in place other mechanisms by which women can access information about where they can obtain abortion services but it appears that the Minister for Health does not intend to pursue this instruction.¹¹⁸

It must be noted that the fact that the National Board of Doctors filed such a complaint in favour of more

111. interview with the STER Foundation, Monday 19 June 2017, in Warsaw, Poland.

112. interview with the STER Foundation, Monday 19 June 2017, in Warsaw, Poland.

113. ASTRA Network, *Access to safe and legal abortion: a European perspective*, 2016.

114. interview with members of the Federation for Women and Family Planning, Wednesday, 21 June 2017, in Warsaw, Poland.

115. Polish Constitutional Tribunal Ref. Act K 12/14 Journal of Laws 2015, item 1633, 7 October 2015.

116. Constitution of the Republic of Poland, Art. 53:

"1. Freedom of conscience and religion shall be ensured to everyone.

1. Freedom of religion shall include the freedom to profess or to accept a religion by personal choice as well as to manifest such religion, either individually or collectively, publicly or privately, by worshipping, praying, participating in ceremonies, performing of rites or teaching. Freedom of religion shall also include possession of sanctuaries and other places of worship for the satisfaction of the needs of believers as well as the right of individuals, wherever they may be, to benefit from religious services.

2. Parents shall have the right to ensure their children a moral and religious upbringing and teaching in accordance with their convictions. The provisions of Article 48, para. 1 shall apply as appropriate.

3. The religion of a church or other legally recognized religious organisation may be taught in schools, but other peoples' freedom of religion and conscience shall not be infringed thereby.

4. The freedom to publicly express religion may be limited only by means of statute and only where this is necessary for the defence of State security, public order, health, morals or the freedoms and rights of others.

5. No one shall be compelled to participate or not participate in religious practices.

6. No one may be compelled by organs of public authority to disclose his philosophy of life, religious convictions or belief."

117. ECtHR, *Z. v. Poland*, App. No. 46123/08 (2008).

118. Center for Reproductive Rights and others, "Supplemental information on Poland for the Periodic Review by the Human Rights Committee at its 118th Session", 22 September 2016. See also: CoE Commissioner for Human Rights, *Issue paper – Women's sexual and reproductive health and rights in Europe*, December 2017, The Commissioner's recommendations, p. 23.

ALL DOWNHILL FROM HERE :

The rapid degradation of the rule of law in Poland: what it means for women's sexual and reproductive rights, and LGBT+ persons' rights

restrictions on abortion is especially alarming as the body is entrusted with conducting disciplinary proceedings against doctors who may have acted unlawfully in refusing care on grounds of conscience. This thus calls all into question its impartiality.

Civil society organisations have noted that this ruling by the Constitutional Tribunal was "a good excuse to take a few steps back [regarding sexual and reproductive rights]."¹¹⁹ By widening the scope of the conscientious objection and suppressing the obligation to refer the patient to another doctor, willing and able to perform abortion services, the Constitutional Tribunal indeed seriously undermined the effectivity of the 1993 Act, and women's access to their legitimate right to abortion. A woman faced with an unwanted pregnancy, who falls within the scope of the exceptions of the 1993 Act and is therefore legally entitled to the provision of a legal and safe abortion, will have to search, on her own, for an hospital in which there would be a doctor willing and able to provide her with such service. Taking into account the quasi-total lack of information surrounding legal and safe abortion services and healthcare providing willing and able to provide them, this may result in further delaying the woman's legal right to a safe abortion, or make it impossible.

2) Most conscientious objections are not genuine

There therefore exists a legal authorisation not to perform abortions if this is contrary to one's religious beliefs, even in cases where the woman's health is at immediate risk. At the same time, there lacks an independent mechanism capable of determining whether the conditions for obtaining a legal abortion are met. The combination of these elements further fuels doctors' fear of prosecution for performing illegal abortion and results in some doctors refusing to perform abortions altogether, and even refusing to certify a woman needs an abortion in a specific case, unless it is 100% certain she will not survive birth. Members of the FWFP recounted stories of women who "were praying gynaecologists on their knees in hospitals 'please help us,' as they did not want to carry to term a foetus which had serious damages and were not even sure it would survive pregnancy. And nothing."¹²⁰

The Polish Ministry of Health denied this situation was happening, clearly saying: "the conscientious objection enables doctors to refuse the performance of a medical treatment when it is contrary to his/her own conscience. There is an exception for when the refusal could lead to severe damage or the endangerment of the life of the patient. Then, the doctor **cannot** invoke the conscientious objection."¹²¹

It seems that the current standard for a chance that doctors agree to perform an abortion is thus an imminent threat to the woman's life. There is currently no definition of what that threat can entail; for instance, whether mental health is included. When questioned on the inclusion of mental health, the Polish Ministry of Health simply stated "the provisions do not say."¹²² Yet, it seems that a threat to a woman's life should take into account not only the physical aspects of the threat, but also the mental ones, whereby being forced to carry an unwanted pregnancy to term can lead to grave mental suffering and even to suicide. This is illustrated by one of the stories the FWFP shared:

"There was a young girl who stood on the verge of a window of the 10th floor of a building and said that if she did not receive any help [in undergoing an abortion], she would jump. She had depression, for which she had a psychiatric treatment. She had attempted to commit suicide on several occasions and had a certificate from a psychiatrist. She went to a public hospital in Warsaw and they told her she could not get an abortion unless she could document that threat to her life. She wanted to jump under the metro."¹²³

Eventually, with the assistance of the FWFP, the girl obtained the necessary certificate. However, for one successful story, members of the FWFP had dozens of failed attempts to share, all due to the considerable chilling effect caused by the possibility of doctors being prosecuted for having been "too lenient" in their evaluation of a threat to a woman's life, and performing an abortion.

"This fear [of prosecution] by doctors is justified," said members of the Polish Bar Association. "While there are few statistics on prosecutions of doctors [on these grounds], these statistics are not a good

119. interview with members of the Helsinki Foundation for Human Rights, Tuesday 20 June 2017, in Warsaw, Poland.

120. interview with members of the Federation for Women and Family Planning, Wednesday, 21 June 2017, in Warsaw, Poland.

121. interview with members of the Polish Ministry of Health, Thursday 22 June 2017, in Warsaw, Poland (emphasis added).

122. interview with members of the Polish Ministry of Health, Thursday 22 June 2017, in Warsaw, Poland.

123. interview with members of the Federation for Women and Family Planning, Wednesday, 21 June 2017, in Warsaw, Poland.

ALL DOWNHILL FROM HERE :

The rapid degradation of the rule of law in Poland: what it means for women's sexual and reproductive rights, and LGBT+ persons' rights

indicator of the problem because of course there are so few legal abortions – and most are performed illegally.”¹²⁴ As members of the STER Foundation remarked: “the main reason [for the lack of doctors willing and able to perform abortion, and thus for the lack of physical accessibility of abortion services] is peer pressure.”¹²⁵ They explained that pressure was so intense that even doctors expected and wanted women’s rights organisations to campaign for more flexible abortion laws.¹²⁶

As a result of these policies, conscientious objections to perform abortions are often not genuine. “Doctors frequently invoke the conscientious objection as a precaution rather than pure convictions.”¹²⁷ The strong pressure from the Catholic hierarchy is apparent and a determining factor in how Poland has dealt with women’s sexual and reproductive rights since 1993. In March 2014, almost 4,000 Polish doctors signed a “Declaration of Faith of Catholic doctors and medical students regarding human sexuality and fertility,” a non-official document in which they declared that they would not provide abortions and birth control.¹²⁸ While these doctors represent only 1% of the profession, this initiative is a testimony of the influence of the Catholic religion on sexual and reproductive health and rights services in Poland.

Moreover, as the 1996 Medical Profession Act does not explicitly state that only medical professionals can conscientiously object, Polish medical institutions interpreted this provision more broadly, making the conscientious objection a hospital-wide policy.¹²⁹ Doctors, but also gynaecologists, anaesthesiologists and auxiliary medical personnel must then comply with such policy, even if this may not reflect their personal beliefs. The Polish Ministry of Health denied this was a practice, stating the conscientious objection was a “very individual provision which can be called upon only by doctors.”¹³⁰

The institutional use of the conscientious objection may also be the result of pressure exerted on hospitals by the National Health Fund not to perform abortions: hospitals invoke the conscientious objection as an institution, being afraid that would lose funding if they did not.¹³¹ This results in legal abortion services being physically inaccessible to many. Members of the FWP for instance mentioned the case of a young couple who was expecting a second child, but found out the foetus was severely damaged. “They finally were able to access legal abortion in the country, but had to go 500 kilometers away from the place they were living. And they were treated horribly.”¹³²

Abortion services are not accessible either in the entire region of *Podkarpackie Voivodship* in southern Poland,¹³³ something which was seen as a “huge victory” by the Catholic Church.¹³⁴ The physical inaccessibility of abortion services is also something which the Polish Ministry of Health denied was a common practice, stating “if there is no possibility to perform an abortion in a certain clinic, another one will perform it.”¹³⁵

Unfortunately, the situation is not likely to improve under the current government. Indeed, members of the FWP explained that the head of the group tasked with issuing standards on pregnant women within the Ministry of Health, Dr. Chazan, who himself used to perform abortions in the 1980s and 1990s as a gynaecologist, is now among the fiercest anti-abortionists. “He makes strong use of the conscientious objection: he refused a woman legal abortion even though her foetus had serious brain damage, and forced her to have the baby.”¹³⁶ The baby lived for one week in terrible suffering before passing away.¹³⁷ Moreover, the Polish Ministry of Health expressly said: “we consider this a very individual situation so, [we do not see any] point in issuing guidelines [on the use of the conscientious objection] that could

124. interview with members of the Polish Bar Association, Wednesday 21 June 2017, in Warsaw, Poland.

125. interview with members of the STER Foundation, Monday 19 June 2017, in Warsaw, Poland.

126. interview with members of the STER Foundation, Monday 19 June 2017, in Warsaw, Poland.

127. interview with members of the STER Foundation, Monday 19 June 2017, in Warsaw, Poland.

128. interview with members of the STER Foundation, Monday 19 June 2017, in Warsaw, Poland.

129. Center for Reproductive Rights and others, “Supplemental information on Poland for the Periodic Review by the Human Rights Committee at its 118th Session”, 22 September 2016.

130. interview with members of the Polish Ministry of Health, Thursday 22 June 2017, in Warsaw, Poland.

131. interview with members of the Federation for Women and Family Planning, Wednesday, 21 June 2017, in Warsaw, Poland.

132. interview with members of the Federation for Women and Family Planning, Wednesday, 21 June 2017, in Warsaw, Poland.

133. Poland’s Commissioner for Human Rights, “Report on measures taken by the Republic of Poland to implement the provisions of the International Covenant on Civil and Political Rights in the years 2008-2015”, 6 October 2016.

134. interview with members of the Federation for Women and Family Planning, Wednesday, 21 June 2017, in Warsaw, Poland.

135. interview with members of the Polish Ministry of Health, Thursday 22 June 2017, in Warsaw, Poland.

136. For more information on the case, see: *Cazeta Prawna*, *Rodzice dziecka, którym prof. Chazan odmówił aborcji: Po urodzeniu lekarze bali nam się je pokazać*, 19 June 2015.

137. interview with members of the Federation for Women and Family Planning, Wednesday, 21 June 2017, in Warsaw, Poland.

ALL DOWNHILL FROM HERE :

The rapid degradation of the rule of law in Poland: what it means for women’s sexual and reproductive rights, and LGBT+ persons’ rights

limit doctors or provide a liberal framework. Any such guidelines could lead to limitations of the rights of doctors.”³⁸

3) Worrying attempts to expand the conscientious objection to other medical professions

Though the situation was dire before PiS came into power, many indications point to more deteriorations to come. Worrying declarations from the Polish Ministry of Health such as “the conscientious objection does not only regard abortion, it is a very general one”¹³⁹ could imply the current government would be open to widening even more the use of the conscientious objection, for instance to the sale of contraceptives. Civil society organisations have expressed their concerns that since the 2015 elections, the pressure to broaden the conscientious objection has alarmingly increased.¹⁴⁰

Recently, attempts have indeed been made to expand the right to conscientious objections to other professions such as pharmacists, when selling contraceptives.¹⁴¹ *Ordo Iuris*, an anti-choice, radical which proposes many radical legal solutions to the Government, is classified as a sect in Brazil, and has connections with Opus Dei, is indeed currently gathering signatures under a petition in connection to its newest idea to broaden the scope of the conscientious objection. The Association of Catholic Pharmacists recently submitted a complaint in that sense, alleging pharmacists were discriminated against as they could not invoke the conscientious objection, contrary to doctors.¹⁴² When interviewed on the subject, members of the Association of Catholic Pharmacists explained: “our goal is not to have special rights for **Catholic** pharmacists. We want the right to act according to our conscience, regardless of whether this conscience is [based on] religio[n] or not.”¹⁴³ They claimed their convictions are based on “medical knowledge” about contraceptives:

“The notice says that this medication causes the death of the embryo. We consider the embryo to be a person. We would only be opposed to medications aimed at stopping life. Emergency contraception stops life because science says there is the possibility it might stop life . . . We would like to have the right to refuse to sell such thing . . . I would not advise anyone to use contraceptive.”¹⁴⁴

Members of the Association of Catholic Pharmacists denied that authorising pharmacists to conscientiously object to selling some medicines would result in a lack of physical access to contraception in the country (as is currently the case for abortion services). A member of the association told FIDH: “There would be no such thing as a lack of access, because many pharmacies are around. About 15% of pharmacists requested this conscientious objection. The other 85% will still be willing to sell.”¹⁴⁵ They expressed their strong hope that the bill submitted to expand the conscientious objection to pharmacists will be passed.¹⁴⁶

However, pharmacies already – illegally – make use of the conscientious objection, especially in small towns, where there is a strong influence of the Catholic Church.¹⁴⁷ Members of the FWFP explained that “some pharmacies in these towns display signs stating ‘we do not sell contraception’ on their door.”¹⁴⁸ While the FWFP alerted the authorities regarding this practice, they “receive[d] an answer from the general inspector saying this was indeed not legal and they would investigate . . . But nothing changed. The Polish Commissioner for Human Rights also wrote many letters. But still nothing.”¹⁴⁹ When explicitly asked about these practices of pharmacies, the Polish Ministry of Health stated: “We have heard this too, but only in the media. We have never seen it. If we learned that this was happening, we would ask the inspectorate to investigate this because it would be illegal.”¹⁵⁰

138. interview with members of the Polish Ministry of Health, Thursday 22 June 2017, in Warsaw, Poland.

139. interview with members of the Polish Ministry of Health, Thursday 22 June 2017, in Warsaw, Poland.

140. interview with members of the Helsinki Foundation for Human Rights, Tuesday 20 June 2017, in Warsaw, Poland.

141. Vamadu, *Ordo Iuris wpadło na “genialny” pomysł ochrony polskich sumień. To nie może się tak skończyć*, 15 July 2018.

142. interview with members of the Federation for Women and Family Planning, Wednesday, 21 June 2017, in Warsaw, Poland.

143. interview with members of the Association of Catholic Pharmacists, Wednesday 21 June 2017, in Warsaw, Poland (emphasis added).

144. interview with members of the Association of Catholic Pharmacists, Wednesday 21 June 2017, in Warsaw, Poland (emphasis added).

145. interview with members of the Association of Catholic Pharmacists, Wednesday 21 June 2017, in Warsaw, Poland.

146. interview with members of the Association of Catholic Pharmacists, Wednesday 21 June 2017, in Warsaw, Poland.

147. interview with members of the Federation for Women and Family Planning, Wednesday, 21 June 2017, in Warsaw, Poland; interview with members of the STER Foundation, Monday 19 June 2017, in Warsaw, Poland.

148. interview with members of the Federation for Women and Family Planning, Wednesday, 21 June 2017, in Warsaw, Poland.

149. interview with members of the Federation for Women and Family Planning, Wednesday, 21 June 2017, in Warsaw, Poland.

150. interview with members of the Polish Ministry of Health, Thursday 22 June 2017, in Warsaw, Poland.

ALL DOWNHILL FROM HERE :

The rapid degradation of the rule of law in Poland: what it means for women’s sexual and reproductive rights, and LGBT+ persons’ rights

An even more worrying trend is that recently, non-medical professions have also began to use the conscientious objection to refuse to perform an act or issue a document which might lead to a woman undergoing an abortion. For instance, judges have objected to issuing a referral on religious grounds to a pregnant woman who reported her pregnancy resulted from a rape.

This distortion of the current 1996 Medical Profession Act makes it even more difficult for women to access abortion, even when legal.

4) Other means used to refuse to perform abortions

Members of the FWFP explained that the conscientious objection is mostly perceived as being used by Catholic doctors, who abide by the Catholic Church's position. However many doctors actually wish to remain "neutral;" "they are afraid to lose patients because women do not want to go to doctors who use the conscientious objection as they are afraid those doctors will not tell them the truth."¹⁵¹ Therefore, many doctors use other means to avoid performing abortions, such as prescribing additional certification or testing, which will delay the performance of abortion services until it is no longer legal: "[for them] the conscientious objection is a last resort."¹⁵²

5) Lack of physical access to contraception

Legal barriers in access to abortion and latest proposals for reforms must be analysed in combination with the existing framework in place to prevent cases of unwanted pregnancies. Under the 1993 Family Planning Act, the Polish legislator indeed recognises "the right of everybody to decide responsibly about having children and to access to information, education, counselling and the means that ensure the enjoyment of this right." In this respect, central and local authorities are obliged to provide "free access to methods and measures for conscious procreation"¹⁵³ among others.

• Emergency contraception

The current government's attempts to restrict women's right to choose have gone far beyond the legislation on abortion. The government was able to have the Act of 25th May 2017 on the change in the Act on medical services financed from a state budget and some other acts adopted thanks to its majority in the Sejm, which came into effect in July 2017. Women over 18 now need a doctor's prescription in order to buy emergency contraception, that prevents pregnancy after unprotected sexual intercourse, and girls under 15 also require parental consent. The justification invoked by PiS for passing this law is its benefit for women's health as this will be the opportunity for women to have a doctor check-up before prescribing the pill.¹⁵⁴ In practice, this regressive legislation has a deterrent effect on women and girls, who may be forced to continue their pregnancy or seek to undergo clandestine and unsafe abortion.

Before the Act was passed, the emergency contraceptive pill EllaOne was available over-the-counter in pharmacies.

Initiatives such as Women on Web,¹⁵⁵ which existed before this law was passed, could potentially help bypass the effects of this 2017 law: they offer online consultations to Polish women by a doctor within the EU to issue a prescription for the morning-after pill. Indeed, according to European regulations,¹⁵⁶ pharmacies in any European country should fill the prescriptions from a European doctor: once Polish women have printed this prescription by a doctor within the EU, they should be able to collect the morning after pill in a Polish pharmacy. In September 2017, another initiative was created, called "Doctors for Women," aimed to create a network of doctors across Poland who, in the event of an emergency situation, would issue a prescription to women.¹⁵⁷ Nevertheless, "access to emergency contraception

151. interview with members of the Federation for Women and Family Planning, Wednesday, 21 June 2017, in Warsaw, Poland.

152. interview with members of the Federation for Women and Family Planning, Wednesday, 21 June 2017, in Warsaw, Poland.

153. 1993 Family Planning Act, Art. 2.2.

154. "Político, "Polish parliament votes to limit access to the morning after pill," 25 May 2017.

155. See: <<https://www.womenonweb.org/en/get-emergency-contraceptives>> (last visited 12 August 2018);

156. Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011 on the application of patients' rights in cross border healthcare, Art. 11.

157. See: <<https://lekarzokobietom.pl/>> (last visited 12 August 2018).

ALL DOWNHILL FROM HERE :

The rapid degradation of the rule of law in Poland: what it means for women's sexual and reproductive rights, and LGBT+ persons' rights

is almost impossible . . . due to doctors who can refuse to give prescriptions and pharmacies saying they are out of stock.”¹⁵⁸ Moreover, pharmacies are increasingly invoking the conscientious objection, as explained in *Section II. A) 2) c) Worrying attempts to expand the conscientious objection to other medical professions*. The result seems to have been foreseen by the Polish Parliament, as Dr. Machińska explained: “A journalist asked a Senate speaker, who is also a doctor, what he thought about EllaOne and he replied he would never prescribe it.”¹⁵⁹ Therefore, the new law only legitimises what was common practice before. Moreover, the government has announced, in September 2018, they will start tracking women who have requested or are requesting a prescription on Women on Web and other similar initiatives, by searching through online forums in what appears to be a true witch hunt,¹⁶⁰ therefore rendering it increasingly difficult for women to have access to emergency contraception. This testifies of the current government’s real crackdown on women’s sexual and reproductive rights, and extreme positioning mirroring that of the Catholic Church in the country.

Even in cases where a pharmacy agrees to sell the morning-after pill, if a woman manages somehow to obtain a prescription, this remains a luxury for the wealthy as EllaOne is very expensive, particularly for girls: approximately 128 złotych (30€).¹⁶¹

The *de facto* lack of access to emergency contraception in Poland is extremely worrying considering the fact that rapid take is essential: delayed access to the pill, due to the need to obtain a medical prescription and parental consent for minors, might lead to inefficacy and force women into a situation of unsafe abortions.

- Everyday contraception

Regarding everyday contraception, male and female condoms and vaginal suppositories are available on the market and appear relatively easy to access, except for female condoms which can only be purchased on the Internet.¹⁶²

Birth control pills can only be purchased on the basis of medical prescription, and thus following an appointment with a gynaecologist. This renders birth control pills difficult to obtain as doctors often refuse to issue such prescription, either because they confuse it with an abortion pill or because they conscientiously object (as explained in *Section II. A) 2) Abusive use of the conscientious objection*). For women who manage to obtain a prescription, serious financial limitations still remain as only one birth control pill is subsidised by the State. Birth control pills cost between 10 and 30 złotych (approximately 2 to 7€) per month,¹⁶³ and thus between 120 and 360 złotych (approximately 28 to 37€) per year if a woman has to buy it each month.

Male condoms seem to be available for everyone to purchase, and not overpriced. However, the burden of protection there lays on men most of the time, meaning women retain less control over the consequences of their sexual intercourses and therefore cannot be the only available solution.

- Voluntary contraceptive sterilisation

Voluntary contraceptive sterilisation is illegal for both women and men. A doctor who performs sterilisation, even with a patient’s consent, is subject to criminal prosecution.

The “conscience clause” is gravely abused by Polish medical institutions as a whole. They are often not genuine, going against the very “spirit” of the 1996 Medical Profession Act to “preserve one’s morals” and instead turning it into a legitimisation mechanism for anti-abortion activists, defending the interests of conservative and religious groups. However, “those women who can afford to [who are a very small minority], often do not wait for this [for doctors using the conscientious objection]: they prefer to go abroad.”¹⁶⁴

158. Interview with Dr. Hannah Machińska, Monday 19 June 2017, in Warsaw, Poland.

159. Interview with Dr. Hannah Machińska, Monday 19 June 2017, in Warsaw, Poland.

160. Email exchanges with members of the Polish Society of Anti discrimination Law, 20 September 2018.

161. A Pole’s average monthly earnings today is 4,256 złotych (around 999€).

162. Federation for Women and Family Planning, “UPR Poland 27th session,” April/May 2017.

163. Gazeta, *Tabletki antykoncepcyjne - nazwy i ceny, rodzaje, działanie Więcej*, 25 January 2018.

164. Interview with members of the Federation for Women and Family Planning, Wednesday, 21 June 2017, in Warsaw, Poland.

ALL DOWNHILL FROM HERE :

The rapid degradation of the rule of law in Poland: what it means for women’s sexual and reproductive rights, and LGBT+ persons’ rights

II. Economic accessibility: abortion: a luxury for the rich

A) International legal standards on the economic accessibility of abortion services

Under the AAAQ framework, States must ensure the economic accessibility of abortion services. This requires that safe abortion services and medicines be affordable for everyone,¹⁶⁵ thus implying that States put in place free or low-cost services and medicines for women who cannot afford them.¹⁶⁶ The CRC Committee has highlighted the fact that economic accessibility entailed the provisions of free sexual and reproductive health services, including access to contraception and safe abortion to adolescents in particular.¹⁶⁷

B) The case of Poland: "Your reproductive rights depend on money"¹⁶⁸

This requirement is not fulfilled in Poland where most women cannot have access to contraception either, or legal and safe abortion services.

1) Contraception

Most women cannot have access to contraception, whether emergency contraception or every day contraception. As previously mentioned, the morning-after pill is only prescribed upon consultation, and with parental consent for girls under 15, and costs approximately 128 zlotys (30€), and birth control pills cost between 10 and 30 zlotys (approximately 2 to 7€) per month,¹⁶⁹ and thus between 120 and 360 zlotys (approximately 28 to 37€) per year if a woman has to buy it each month.

Therefore, only those able to afford the medical consultation and the cost of the pill are able to buy emergency contraception, when doctors and pharmacies agree to prescribe and sell it. The same goes for every day contraception, as for women who manage to obtain a prescription only one birth control pill is subsidised by the State.

2) Abortion

Most women cannot have access to legal and safe abortion services, as they do not fall within the very limited cases authorised by the law, and are thus constrained to seek these services and/or medicine in private clinics, abroad, or on the black market. As a result, only those who have enough financial means to afford these costs can access abortion services.

The cost of illegal abortions performed in so-called Polish "underground" indeed spiked following the passing of the 1993 Act. Today, a woman must pay roughly the equivalent of a Pole's average monthly earnings (4,256 zlotys, or around 999€) for illegal termination of a pregnancy by a doctor in a private clinic.¹⁷⁰ Private healthcare providers carry out approximately 150,000 clandestine abortion procedures per year, thus generating about 300 million zlotys (around 75 million €) of untaxed, unregistered income.¹⁷¹

For those who cannot afford such services, Women on Web, set up in 2006, sends women Misoprostol and Mifepristone (often from India) to safely terminate a pregnancy at home. However, packages have been increasingly stopped at the border and confiscated when it contained such medicines.¹⁷² And

165. CESCR, General Comment No. 14: The right to the highest attainable standard of health (Art. 12), para. 12(b), U.N. Doc. E/C.12/2000/4; CESCR, General Comment No. 22, paras. 45-46, U.N. Doc. E/C.12/GC/22, (2016).

166. CEDAW Committee, General Recommendation No. 24 on Article 12 of the Convention (Women and Health), para. 27, U.N. Doc. A/54/38/Rev.1, chap. I (1999); CEDAW Committee, *Concluding Observations on Hungary*, para. 31(b), U.N. Doc. CEDAW/C/HUN/CO/7-8 (2013); CESCR, *Concluding Observations on Djibouti*, para. 5(e), U.N. Doc. E/C.12/DJI/CO/1 2 (2014); CESCR, *Concluding Observations on Poland*, para. 27, U.N. Doc. E/C.12/POL/CO/5 (2009); CESCR, *Concluding Observations on Armenia*, para. 22(b), U.N. Doc. E/C.12/ARM/CO/2 3 (2014); CRC Committee, *Concluding Observations on Mozambique*, para. 47(c), U.N. Doc. CRC/C/15/Add.172 (2002); Human Rights Committee, *Concluding Observations on the Republic of Moldova*, para. 17(a), U.N. Doc. CCPR/C/MDA/CO/2 (2009); CAT Committee, *Concluding Observations on the Philippines*, paras. 38-39, U.N. Doc. CAT/C/PHL/CO/ (2016).

167. CRC Committee, *Concluding Observations on Latvia*, para. 51, U.N. Doc. CRC/C/LVA/CO/3-5 (2016).

168. Interview with members of the Federation for Women and Family Planning, Wednesday, 21 June 2017, in Warsaw, Poland.

169. Gazeta, *Tabletki antykoncepcyjne - nazwy i ceny, rodzaje, działanie Więcej*, 25 January 2018.

170. The Guardian, "How Poland's far right government is pushing abortion underground," 30 November 2017.

171. ASTRA Network, *Access to safe and legal abortion: a European perspective*, 2016.

172. The Guardian, "How Poland's far right government is pushing abortion underground," 30 November 2017.

ALL DOWNHILL FROM HERE :

The rapid degradation of the rule of law in Poland: what it means for women's sexual and reproductive rights, and LGBT+ persons' rights

because Women on Web is unavailable in some regions, and some women cannot afford to wait for the package's delivery, many turn to black market supposed "abortion pills," which can be extremely dangerous.¹⁷³ Because of the highly stigmatising environment in Poland, those who buy such pills on the black market fear consulting a doctor in case of complications, thus further putting their lives and health at risk.

Over the last five years, the abortion underground has been deeply hidden and increasingly expensive, causing women who can afford to, to choose instead to travel abroad to neighbouring countries (Slovakia, Czech Republic, Germany, etc.) where services are provided in Polish and abortion is safe and legal.¹⁷⁴ The 2010 Hearing on Abortion Tourism in the Polish Parliament¹⁷⁵ revealed this phenomenon to the public as a very common practice. It is estimated that up to 200,000 women cross the border to undergo safe and legal abortions every year.¹⁷⁶

It must also be noted that there is no family planning in Poland.¹⁷⁷

As members of the FWFP summarised: "[In Poland,] your reproductive rights depend on money – if you have money you can buy your rights."¹⁷⁸ Those who cannot afford to seek care in private clinics or to travel abroad, have to resort to purchasing untrustworthy services or medicine on the black market and to carrying out very risky methods provided by untrained persons or the women themselves – "coat-hangers are the only options left for thousands of women and girls."¹⁷⁹

Women's access to abortion in those cases where it is considered illegal varies therefore greatly depending on their financial means. The poorest will often be the most geographically isolated ones, without recourse to information on safe abortion at home or elsewhere, who will thus resort to extremely dangerous procedures in order to terminate a pregnancy. This lack of information starts at school, where no comprehensive sexual education is dispensed – which thus appears to be an institutionalised policy aiming at denying information to women and girls.

III. Informational accessibility

A) International legal standards on the informational accessibility regarding sexual and reproductive health

Under the AAAQ framework, informational accessibility finally imposes on States to guarantee the access of everyone to comprehensive, age-appropriate, unbiased, and scientifically accurate sexuality education.¹⁸⁰ In that sense, and as explained in *Part II. Chapter 3 Biased education for all, and unsafe environment for LGBT+ students*, the CESCR requires States to "provide age-appropriate, evidence-based, scientifically accurate, comprehensive sexual education for all on sexual and reproductive health,"¹⁸¹ including to "adolescents and youth" on "all aspects of sexual and reproductive health, including maternal health, contraceptives, family planning, sexually transmitted infections, HIV prevention, safe abortion and post-abortion care, infertility and fertility options, and reproductive cancer."¹⁸²

These obligations are echoed at the European level by Art. 11 of the European Social Charter which obliges States to provide education "for the promotion of health."¹⁸³ This includes "information and communication about sexuality education ... among young people." Therefore, not providing information and education on this topic to adolescents and youth can be considered as a violation of the Charter. Moreover, as stated by the ECSR in *Interights v. Croatia*, States have an "obligation to ensure through the

173. The Guardian, "How Poland's far-right government is pushing abortion underground," 30 November 2017.

174. Interview with members of the Federation for Women and Family Planning, Wednesday, 21 June 2017, in Warsaw, Poland.

175. Federation for Women and Family Planning, "Public Hearing: Abortion Tourism of the Polish Women," 26 August 2010.

176. Polish informal coalition for the CCPR for consideration of the UN Human Rights Committee in reference to the session no 118, "Alternative report to the ICCPR," 21 July 2016.

177. Interview with members of the Federation for Women and Family Planning, Wednesday, 21 June 2017, in Warsaw, Poland.

178. Interview with members of the Federation for Women and Family Planning, Wednesday, 21 June 2017, in Warsaw, Poland.

179. EU Observer by Malin Bjork, "EU's 'old men' must pressure Poland on abortion rights," 15 January 2018.

180. CEDAW Committee, *Concluding Observations on Italy*, para. 36, U.N. Doc. CEDAW/C/ITA/CO/7 (2017); CEDAW Committee, *Concluding Observations on Nigeria*, paras. 33-34, U.N. Doc. CEDAW/C/NGA/CO/7-8 (2017); CEDAW Committee, *Concluding Observations on Ireland*, para. 39 (c), U.N. Doc. CEDAW/C/IRL/CO/6-7 (2017); CRC Committee, *Concluding Observations on Antigua and Barbuda*, para. 45(a), U.N. Doc. CRC/C/ATG/CO/2-4 (2017); CESCR, *Concluding Observations on Benin*, para. 42, U.N. Doc. E/C.12/1/Add.78 (2002).

181. CESCR, General Comment No. 22, para. 47, U.N. Doc. E/C.12/GC/22, (2016).

182. CESCR, General Comment No. 22, para. 18, U.N. Doc. E/C.12/GC/22, (2016).

183. European Social Charter (revised), Art. 11.

ALL DOWNHILL FROM HERE :

The rapid degradation of the rule of law in Poland: what it means for women's sexual and reproductive rights, and LGBT+ persons' rights

domestic legal system that state-approved sexual and reproductive health education is objective and non-discriminatory.”¹⁸⁴

At the European Union level, sexuality education is within the competence of the EU as part of public health, as defined in Art. 168 of the Treaty on the functioning of the EU.¹⁸⁵

B) Lack of accessible scientifically-accurate information on sexual and reproductive rights

The requirement of informational accessibility regarding sexual and reproductive rights is not fulfilled in Poland where comprehensive sexual education, when provided, is not in line with current scientific standards, and is very often permeated with religious views. The Polish government's official position on the subject is apparent from its comments to the draft General Comment on Art. 6 of the ICCPR (on the right to life) where it called to include the following paragraph: “(...) to ensure access for women and men and in particular, adolescents, to information and education about reproductive options and to a wide range of contraceptive methods. At the same time, States Parties should have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.”¹⁸⁶

Recent developments indicate that grave steps back were undertaken since the current government came into power, going as far as questioning whether sexual education should even be provided and mandatory for all. This was recently further proven by the 2017 education reform, which PiS rushed through the Sejm, and which was implemented for the 2017/2018 academic year. The reform suppresses instruction on contraceptive methods in the sexual education curriculum in biology class.¹⁸⁷

1) Non-scientifically accurate information provided in schools

While Art. 4(1) of 1993 Family Planning Act provides an obligation for central and local authorities to ensure that sexual education is part of school curricula,¹⁸⁸ the implementation of such obligation and its compatibility with international evidence-based standards on comprehensive sexual education has been questioned over the years by several human rights institutions. The CRC Committee for instance has especially expressed concerns that the family life education course in schools does not provide comprehensive, age-appropriate education on sexual and reproductive health.¹⁸⁹ Indeed, the controversial Preparation for Family Life textbook from series “*Road to Adulthood*” edited by Teresa Król, contain information such as:

- “The first sexual partner, even if accidental, will become the model with which you will compare your later husband. That is why boys prefer for their wife to be a girl who has not tried sex before.” (p. 96)
- “The girl should realise that she would pay more than a boy for making a wrong choice, because there is no equality in nature.” (p. 97)
- “The effectiveness [of condoms] of preventing pregnancy is not very high. There are often technical defects. It can leak, burst, or slip.” (p. 156)
- “In the group of people using natural methods of family planning the ‘sexual boredom’ is less frequent, and the rate of marriage disintegration is significantly lower.” (p. 176)

These statements promote sexist and damaging stereotypes regarding women's inferior place in society, who should preserve themselves for the man they will marry, and thus are not on an equal

184. ECtHR, *International Centre for the Legal Protection of Human Rights (Interights) v. Croatia*, Complaint No. 45/2007, 30 March 2009.

185. Treaty on the Functioning of the European Union (hereafter “TFEU”), Art. 168: “Union action, which shall complement national policies, shall be directed towards improving public health [and] preventing [...] diseases [...]. Such action shall cover the fight against the major health scourges, [...] their transmission and their prevention, as well as health information and education [...]”

186. U.N. Office of the High Commissioner for Human Rights, *Remarks of Poland to the General Comment No 36 on article 6 of the International Covenant on Civil and Political Rights on the right to life*, p. 5.

187. Deutsche Welle, “Poland education reform to slash thousands of teachers’ jobs,” 2 September 2017.

188. 1993 Family Planning Act, Art. 4(1): “Courses on the sexual life of an individual, principles of conscious and responsible parenthood, the value of the family, life in the prenatal phase, as well as on methods and measures of conscious procreation shall be introduced into school curricula.”

189. CRC Committee, *Concluding observations on the combined third and fourth periodic reports of Poland*, para. 39, U.N. Doc. CRC/C/POL/CQ/3-4 (2015); CoE Commissioner for Human Rights, *Report by Nils Muiznieks following his visit to Poland from 9 to 12 February 2016*, Doc. CommDH(2016)23, 2016, p.22: “Although it is critical that comprehensive sexuality education be provided as part of mandatory school curricula, in some member states, such as Bulgaria, Lithuania, Poland and Romania, sexuality education either remains voluntary or policies allow children to be withdrawn from classes.”

ALL DOWNHILL FROM HERE :

The rapid degradation of the rule of law in Poland: what it means for women's sexual and reproductive rights, and LGBT+ persons' rights

footing as men. They also dissuade boys and girls from having recourse to contraceptive methods scientifically-proven to be efficient, to the benefit of unprotected sex, which they encourage to use as a tool for women to preserve the health of their marriage – which appears to be their sole responsibility. They testify of a dramatic double standard in the way girls and boys are educated when it comes to gender roles in society, and which are in complete violation of international standards on the equality between women and men, and Poland's own Constitution.¹⁹⁰

a) The Catholic Church's firm control over comprehensive sexual education

As explained in **Part II Chapter 3 Section IV. Barriers to scientifically accurate education on sexual and equal rights**: "The State ignored the whole issue [of sexual education] and let it be taken over by the Catholic Church."¹⁹¹ Although there used to be an explicit obligation for schools to carry out anti-discrimination education, under the Act of 7 September 1991 on the system of education,¹⁹² this has been repealed by the current PiS-led government as soon as they came into power. The government proceeded to enact an educational reform, which, among others, got rid of this explicit obligation, replacing it with a broader sounding wording, alluding to the fact that schools should "take action to shape students' attitudes and respect for social norms . . . including openness and tolerance."¹⁹³ This is illustrative of the current government's institutional policy not to promote equality and prevent discriminatory attitudes within Polish society, and is coupled with the fact that school staff lack knowledge and are not given an opportunity to train themselves on those issues.

Another striking example is the lack of reaction from the Ministry of Education in the face of Catholic associations of parents and teachers vehemently lobbying against any type of progressive sexual education. These associations have created websites where parents can sign saying they do not want their children to be provided with sexual education, and instead give their approval for these classes to be spent on preparing children for their final exams. This did not trigger any reaction from the Ministry of Education, despite being contrary to the recent PiS-led education reform.

The Ministry of Health does not either seem concerned by these developments, or by the scientific-accurateness of the content of sexual education courses: "[sexual education] is considered an issue of the Ministry of Education; the Ministry of Health is not consulted. However, the curricula is prepared by experts, so they should be well prepared."¹⁹⁴

All of this results in alleged sexual education being provided in a way which is not compatible with international human rights and human rights education standards. Members of the Transfuzja Foundation and of the Polish Teachers' Union explained that classes on sexual education in primary and secondary schools are non-mandatory and called "Preparation for Family Life," which is part of a different subject called "Knowledge about Society" (civic education).¹⁹⁵ They are permeated with conservative views and promote exclusively a traditional family model coherent with the one promoted by the Catholic Church – most of the time, these classes are taught by priests or catechists, including in public schools. "The best way to prevent pregnancies is a glass of water before or after sex or, even better, instead of sex. That's what we are taught."¹⁹⁶ Members of the Transfuzja Foundation explained these classes were about "saying no to drugs and sex," and that "people don't go to these classes."¹⁹⁷ Sexual education does not improve at university level, where classes on the topic are "optional at best."¹⁹⁸

There are significant discrepancies between the content of Polish manuals on sexual education and relevant regional human rights standards. While the Council of Europe has published such resources

190. Constitution of the Republic of Poland, Art. 33 :

« 1. Men and women shall have equal rights in family, political, social and economic life in the Republic of Poland.

2. Men and women shall have equal rights, in particular, regarding education, employment and promotion, and shall have the right to equal compensation for work of similar value, to social security, to hold offices, and to receive public honours and decorations. »

191. interview with members of the Polish Teachers' Union, Wednesday 21 June, in Warsaw, Poland.

192. Act of 7 September 1991 on the system of education (Journal of Laws of 2016, item 1943), Art. 21.

193. interview with members of the Polish Teachers' Union, Wednesday 21 June, in Warsaw, Poland; see Act of 14 December 2016, Educational Law (Journal of Laws of 2017, items 59 and 949), Art. 44.

194. interview with members of the Polish Ministry of Health, Thursday 22 June 2017, in Warsaw, Poland.

195. interview with members of the Transfuzja Foundation, Monday 19 June, in Warsaw, Poland; interview with members of the Polish Teachers' Union, Wednesday 21 June, in Warsaw, Poland.

196. interview with members of the Transfuzja Foundation, Monday 19 June, in Warsaw, Poland.

197. interview with members of the Transfuzja Foundation, Monday 19 June, in Warsaw, Poland.

198. interview with members of the Transfuzja Foundation, Monday 19 June, in Warsaw, Poland.

ALL DOWNHILL FROM HERE :

The rapid degradation of the rule of law in Poland: what it means for women's sexual and reproductive rights, and LGBT+ persons' rights

– notably Compass and Compasito –, “teachers are afraid to use these manuals,” according to Dr. Machińska.¹⁹⁹ She explained that, “while there is no official position [against the use of these manuals, the authorities exert enough] informal pressure through declarations in the media to prevent teachers from using them.”²⁰⁰

Textbooks used in these courses are thus often inadequate, as they tend to reinforce gender stereotypes and do not appear to be up to scientific standards on sexual orientation. This is due to the significant leeway given to the Church in this area. As members of the Polish Teachers' Union explained, two hours per week are dedicated to religion in school, since kindergarten: “children are indoctrinated from the very beginning.” Because religion teachers are exempt from Ministry of Education rules, the Church decides what is required for them to become teachers. They are then exempt from scrutiny, meaning they are not subject to inspections by national authorities. This is especially problematic regarding sexual education as this is an important area of activity for Church-appointed teachers, who are therefore able to teach classes on this topic, free from any scrutiny, and thus provide children with sexual education utterly incompatible with international human rights law, human rights, and scientific standards.

Moreover, textbooks which are allowed to serve for educational purposes on this topic are not scientifically accurate. Members of the Polish Teachers' Union explained that textbooks on sexual education are written by independent authors for private publishing companies, which need to obtain an authorisation from the Ministry of Education for their textbooks to be accepted and introduced as educational material. The Minister can revise a textbook on his own or appoint someone (from a list) to do so. One member of the Polish Teachers' Union explained: “I have written an article on sexual education myself and at the time there were about 20 names of revisors on the list. 80% of these people were connected to the Catholic Church – often fundamentalists.”²⁰¹ With this system in place, and the fact that publishing companies will do everything possible so that the textbooks they invest in can serve as educational material, “essentially all of our textbooks are revised by a priest.”²⁰²

The Church also does not hesitate to call out and publicly shame teachers who attempt to provide sexual education. Members of the Polish Teachers' Union for instance mentioned the case of a kindergarten teacher who was trying to sensitise kinder-gardeners to gender equality by putting together a play where children would imagine their life as their opposite sex, in order to fight stereotypes. The teacher was called out by a priest during a mass, who accused him of “changing boys into pedophiles and homosexuals.”²⁰³ This happened in a small village where inhabitants know each other, and the headmaster was insulted on the streets and his dismissal required for having “condoned” this programme.

In general information regarding sexual and reproductive rights such as the legal availability of abortion or means of contraception is in particular very difficult to access in the countryside or smaller towns, where the Catholic Church has a significant influence, and women have very little financial means.²⁰⁴

b) Lack of qualified teachers for comprehensive sexual education courses

Teachers mostly appear not to be qualified to teach sexual education.²⁰⁵ Indeed, while teachers can specialise in sexual education, those who do have a hard time finding employment, which deters many from seeking to specialise in this area. The result is that other teachers, often religion ones (catechists) or priests, take on the task of providing sexual education, thus themselves being uneducated on the topic.²⁰⁶ One member of the Transfuzja Foundation indeed recalled: “when I asked questions to the [sexual education] teacher, he didn't know the answer.”²⁰⁷

199. interview with Hannah Machińska, former Director of the Office of the Council of Europe in Poland, and current lawyer and Professor at the University of Warsaw, Monday 19 June 2017, in Warsaw, Poland.

200. Interview with Hannah Machińska, former Director of the Office of the Council of Europe in Poland, and current lawyer and Professor at the University of Warsaw, Monday 19 June 2017, in Warsaw, Poland.

201. interview with members of the Polish Teachers' Union, Wednesday 21 June, in Warsaw, Poland.

202. interview with members of the Polish Teachers' Union, Wednesday 21 June, in Warsaw, Poland.

203. interview with members of the Polish Teachers' Union, Wednesday 21 June, in Warsaw, Poland.

204. interview with members of the Federation for Women and Family Planning, Wednesday, 21 June 2017, in Warsaw, Poland.

205. KARAT Coalition in Consultative Status with the ECOSOC on behalf of CEDAW Coalition of Polish NCOs, “Alternative follow up information on the steps taken to implement the recommendations indicated in Concluding Observations on the combined 7th and 8th periodic reports of Poland submitted to the UN Committee on Elimination of Discrimination against Women,” 17 January 2017.

206. interview with members of the Polish Teachers' Union, Wednesday 21 June, in Warsaw, Poland.

207. interview with members of the Transfuzja Foundation, Monday 19 June, in Warsaw, Poland.

ALL DOWNHILL FROM HERE :

The rapid degradation of the rule of law in Poland: what it means for women's sexual and reproductive rights, and LGBT+ persons' rights

To remedy this lack of State-sponsored comprehensive sexual education, civil society organisations have tried to step in to dispense such classes, sometimes on a paid contract. The role of civil society in that regard is crucial, as MP Joanna Scheuring-Wielgus explained: "There has been a deterioration regarding women's rights, LGBT+ rights, and sexual education . . . especially in Polish education. If they come into play it is only through NGOs that are forcing educational activities."²⁰⁸ Indeed, the school curriculum was changed in 1999, which promoted type A sexual education, promoting complete abstinence, and considering non-conforming sexual orientation and gender identity as illnesses. While sexual educators groups such as Ponton have been trying to provide scientifically accurate type C sexual education in schools, type A sexual education is currently on the rise due to the barriers anti-rights group raise in the face of sexual educators groups. In that regard, members of the Helsinki Foundation for Human Rights said that in May 2017, Ordo Iuris had launched a campaign whereby parents can insert the name of a school on a web page and Ordo Iuris will file an access to information request asking the school if some training is provided about LGBT+ rights and gender. "This initiative is aimed at the main sexual educators group, Ponton, who Ordo Iuris is going after now."²⁰⁹

At the time of writing this report, the Minister of Education has implemented the government's plan for redrawing the Polish school system.²¹⁰ The reform was adopted by the Parliament and signed into law by the Polish President in early January 2017,²¹¹ and has been implemented starting the 2017-2018 academic year. As a result, school curricula have undergone substantial reform: the sexual education curriculum in biology class no longer includes instruction on contraceptive methods, and the space reserved in school curricula to anti-discrimination and equality issues has been significantly reduced.

This lack of access to scientifically-accurate information regarding sexual and reproductive rights has reverberating consequences in women's lives, especially in Poland, a country where the current government's stance on sexual and reproductive rights is strongly dependent and almost submitted to the Catholic Church's views on the subject. Lacking knowledge of their rights, and of scientifically-approved and recommended prevention methods, women cannot be expected to provide informed consent when it comes to sexual and reproductive rights.

2) Refusal to provide pre-natal testing

Finally, another alarming example of the lack of women's access to information regarding their sexual and reproductive health and life is the trend among doctors to refuse the performance of prenatal diagnostics. They indeed fear those diagnostics could potentially reveal medical grounds for legal terminations.²¹² This severely restricts women's right to information and their ability to choose whether they do want to interrupt their pregnancy, and therefore the effectivity of their right to terminate a pregnancy in one of the cases foreseen by the 1993 Act.

Such practices led to the landmark ECtHR *R.R. v. Poland*²¹³ judgment, in which the Court ruled that Poland's treatment of women in this context could amount to inhumane and degrading treatment, in violation of Art. 3 of the ECHR. The Court ruled that denying a woman access to prenatal diagnosis because doctors suspected a risk there could be a medical ground for termination, for six weeks, caused unnecessary suffering and prevented the woman from obtaining information about the condition of her foetus. The Court found Poland had violated Arts. 3 and 8 of the ECHR. However, these practices do not seem to have been addressed by the current government, especially given its stance on abortion.

208. Interview with MP Joanna Scheuring-Wielgus, Tuesday 20 June, in Warsaw, Poland.

209. Interview with Helsinki Foundation for Human Rights, Tuesday 20 June, in Warsaw, Poland.

210. Ministry of National Education of the Republic of Poland, *Podsumowanie Ogólnopolskiej Debaty o Edukacji*.

211. European Foundation for the Improvement of Living and Working Conditions, "Poland: Government enacts radical education reform despite opposition," 23 March 2017.

212. Communication of 11 August 2016 to the Human Rights Commissioner, p. 5 <www.rpo.gov.pl/sites/default/files/Odp.%20FPP%2019.8.16%20%282%29.pdf> (last visited 13 July 2018).

213. ECtHR, *R.R. v. Poland* (Application No. 27617/04), 2011.

ALL DOWNHILL FROM HERE :

The rapid degradation of the rule of law in Poland: what it means for women's sexual and reproductive rights, and LGBT+ persons' rights

CHAPTER 3 - ACCEPTABILITY : INFORMED CONSENT ISSUES

I. International legal standards on the acceptability of sexual and reproductive services

Under the AAAQ framework, the State must ensure sexual and reproductive health services are acceptable, meaning they must respect the rights to confidentiality and informed consent, be culturally appropriate, and be sensitive to gender and life-cycle requirements.²¹⁴ Further, they must be delivered in a way that respects women's dignity and is sensitive to their needs and perspectives.²¹⁵

II. The 4,000 zlotys campaign: serious informed consent issues

As explained in *Section II. C) 2) Lack of accessible scientifically-accurate information on sexual and reproductive rights in Poland*, the lack of accessible scientifically-accurate information on sexual and reproductive rights in Poland is a real barrier to women's full, free, and informed consent when it comes to their rights in that area.

This is further exacerbated by the current government's anti-choice propaganda and what can be described as bribing schemes. Jaroslaw Kaczynski, PiS's leader, has indeed been at the forefront of an outrageous campaign to pass a draft bill further limiting the possibility for women to undergo legal abortions. The draft bill, proposed in March 2018 and later in July 2018, purports to delegatise abortion in cases where there is a high probability of a severe and irreversible foetal impairment. According to him, women should give birth even to children with such severe deformities that they are "condemned to death", so that they can be "baptised, buried, have a name."²¹⁶ As the bill has not yet passed, the government recently created what can essentially be described as a bribing scheme, which offers women a one-off payment of 4,000 zlotys (approximately 925€) for giving birth to such a child, whether dead or alive, instead of terminating the pregnancy.²¹⁷

This deeply disturbing scheme begs serious concerns regarding the informed consent of women being paid this amount of money, especially when the amount offered equates the country's average monthly earnings (4,256 zloty, or around 999€).

CHAPTER 4 - QUALITY : ABUSIVE USE OF THE CONSCIENTIOUS OBJECTION IMPACTS QUALITY OF ABORTION SERVICES

Under the AAAQ framework, health services must be scientifically and medically appropriate, thereby requiring States to ensure the medical personnel possesses the appropriate skills, uses scientifically approved and unexpired drugs, and has sufficient hospital equipment at disposition.²¹⁸ The quality requirement also encompasses the obligation for States to guarantee the availability of such skilled medical personnel able to perform abortions, thereby ensuring the use of the conscientious objection does not interfere with women's access to such services.²¹⁹

As medical practitioners make abusive use of the conscientious objection, whether individually or institutionally, this requirement cannot by essence be fulfilled in Poland. For more information on the use of the conscientious objection in Poland, see *Section II. A) 2) In Poland, "abortion when legal is not accessible."*

214. CECSR, General Comment No. 14: The right to the highest attainable standard of health (Art. 12), para. 12(c), U.N. Doc. E/C.12/2000/4; CEDAW Committee, General Recommendation No. 24 on Article 12 of the Convention (Women and Health), para. 22, U.N. Doc. A/54/38/Rev.1, chap. I (1999).

215. CEDAW Committee, General Recommendation No. 24 on Article 12 of the Convention (Women and Health), para. 22, U.N. Doc. A/54/38/Rev.1, chap. I (1999).

216. Interview with members of the Federation for Women and Family Planning, Wednesday, 21 June 2017, in Warsaw, Poland.

217. The Economist, 'Poland's conservatives are pushing one of Europe's toughest abortion laws,' 5 April 2018.

218. CECSR, General Comment No. 14: The right to the highest attainable standard of health (Art. 12), para. 12(d), U.N. Doc. E/C.12/2000/4.

219. CECSR, General Comment No. 14: The right to the highest attainable standard of health (Art. 12), paras. 13, 21, 28, U.N. Doc. E/C.12/2000/4; CEDAW Committee, *Concluding Observations on Slovakia*, para. 29, U.N. Doc. CEDAW/C/SVK/CO/4 (2010); CEDAW Committee, *Concluding Observations on Kuwait*, paras. 30-31, U.N. Doc. CEDAW/C/KWT/CO/3-4 (2013); CEDAW Committee, *Concluding Observations on Poland*, para. 25, U.N. Doc. CEDAW/C/POL/CO/6, (2007).

ALL DOWNHILL FROM HERE :

The rapid degradation of the rule of law in Poland: what it means for women's sexual and reproductive rights, and LGBT+ persons' rights

CHAPTER 5: RESILIENCE IN AN INCREASINGLY SHRINKING SPACE FOR CIVIL SOCIETY

I. "The only thing this government is afraid of is force"²²⁰

Interventions by international and European human rights bodies have been accompanied by a large mobilisation of civil society in Poland and across Europe demanding the 1993 Act be reformed and protesting against proposals to further restrict women's sexual and reproductive rights. These mobilisations have been crucial in ensuring no further retrogressive legislative measures are adopted on women's rights, especially in a country where democratic checks and balances have been drastically undermined. As Wanda Nowicka rightfully remarked: "the only thing this government is afraid of is force,"²²¹ as testify the several delayed attempts to introduce a more restrictive anti-abortion framework, due to nationwide protests over the past two years. "This is why they withdrew the abortion bill: because they saw the power of women in the streets."²²²

The current government is also quite closed off to any demands emanating from civil society organisations, particularly on this subject: "they don't pay attention to [civil society organisations] because they don't see them as serious threat. They want to replace this 'bad' civil society with their own people."²²³

Moreover, the enormous citizens' movement which has taken place since 2016 in favour of women's sexual and reproductive rights also sparked changes in medical practitioners' openness about being pro-choice. Indeed, before the protests, about "18 gynaecologists were pro-choice in the whole country, according to data from official agencies such as Okopress,"²²⁴ whereas "more than 40 pro-choice spoke out [after the protests] according to the same agencies."²²⁵

However, the various mobilisations and initiatives undertaken by Polish civil society are happening in a context of a drastically-shrinking space for women's rights organisations and activists, which face increasing obstacles in carrying out their work and even encounter direct attacks and threats.²²⁶

II. Shrinking space for women's rights civil society organisations and activists

Sanctions were taken against teacher participants in the October 2016 protests. As members of the Polish Teachers' Union recounted:

"We were asked as a union to take part in the October 2016 Black Protest. We simply had to say whether the teachers could leave schools and go to the protests. We replied that we supported their will to take part in the demonstrations, as long as they did not leave kids alone and leave school. It was possible because demonstrations also happened in the afternoon and evening all over Poland. [Those who could not take part in the protest during the day were called to wear black at work to show their support.] Some teachers took pictures with black t-shirts when they were at school, and they wrote on their private Facebook pages [in support of the protest]. Disciplinary commissions exist [for students] to address issues such as beatings at schools or refusal to comply with the headmaster's orders. And for the first time, teachers were taken before these disciplinary commissions for something they did in their private time. However, because it became a nationwide affair, nobody dared to do anything to these teachers."²²⁷

MP Joanna Scheuring-Wielgus also said she had been targeted personally because of her involvement in a trial against a priest "who was an icon for the far-right due to his anti-migrant, anti-women

220. interview with Wanda Nowicka, former deputy speaker, Monday 19 June 2017, in Warsaw, Poland.

221. interview with Wanda Nowicka, former deputy speaker, Monday 19 June 2017, in Warsaw, Poland.

222. interview with Wanda Nowicka, former deputy speaker, Monday 19 June 2017, in Warsaw, Poland.

223. interview with Wanda Nowicka, former deputy speaker, Monday 19 June 2017, in Warsaw, Poland.

224. interview with members of the Federation for Women and Family Planning, Wednesday, 21 June 2017, in Warsaw, Poland.

225. interview with members of the Federation for Women and Family Planning, Wednesday, 21 June 2017, in Warsaw, Poland.

226. The Guardian, "Police raid offices of women's group in Poland after protests," 5 October 2017.

227. interview with members of the Polish Teachers' Union, Wednesday 21 June, in Warsaw, Poland.

ALL DOWNHILL FROM HERE :

The rapid degradation of the rule of law in Poland: what it means for women's sexual and reproductive rights, and LGBT+ persons' rights

discourse.”²²⁸ As a result he was expelled from the Church. “I received threats and untrue information was spread about me. All women MPs have been targeted.”²²⁹

Dr. Hannah Machińska also explained how the government is barring access to funding to NGOs working on issues which it considers controversial:

“They are refusing them grants. For instance, the Centre for Women’s Rights, which has been funded annually since 2012, was refused a grant in 2016, and the explanation was that they are dealing with women and are thus discriminating against men who are victims of violence! Many NGOs are blacklisted: it will be impossible for them to receive grants. [They make] everything look apparently transparent and democratic. The government offered a one million zlotys grant to one organization which launched a campaign against children going to school at six, saying they have to stay home with mothers: ‘good Catholic mothers stay at home with their children.’”²³⁰

These testimonies are even more worrying considering the 2017 Act on the National Institute of Freedom – Centre for the Development of Civil Society passed by PiS, allowing the government to control the entire distribution process of public funding to NGOs through its “National Institute of Freedom.” Most of this Institute’s board members, including its director, are appointed by the current government, thereby leaving no space for NGO representatives to block decisions by the PiS-appointed majority. Moreover, the vagueness of the law leaves a tremendous margin of appreciation to the board in distributing public funding. In case any doubt remains on the actual aim of the passing of this law, PiS Senator Andrzej Bobko said: “just as the government cannot use public funds to support ‘an organisation whose mission is to promote the flat Earth theory, it also cannot support an organisation that promotes harmful theories regarding sexuality.”²³¹

Recommendations

To the U.N. Committee on the Elimination of all forms of Discrimination against Women, to the U.N. Committee on Economic, Social, and Cultural Rights, to the U.N. Special Rapporteur on the right to the highest attainable standard of physical and mental health, to the U.N. Special Rapporteur on violence against women, including its causes and consequences:

- Urge the Polish government to ensure the legalisation of abortion for women and girls under all circumstances; and
- Clearly voice concerns regarding the current restrictive legislative framework surrounding women and girls’ sexual and reproductive rights and the recent legislative attempts to further restrict them; and
- If deemed necessary, issue a public declaration on the matter; and
- Extend an offer for a country visit to the Polish government on its implementation of the CEDAW and the ICESCR, in particular regarding the situation of women and girls’ sexual and reproductive rights; and
- Urge the Polish government to ensure women have physical, economic, and informational access to sexual and reproductive rights, notably through the strict regulation of the use of the conscientious objection, through the provision of scientifically-accurate comprehensive sexual education in all schools, through subsidising emergency contraception and everyday contraception for women and girls.

To the European Union:

• **To the European Parliament:**

- Reiterate a recommendation to member States and candidate nations in favour of the legalisation of abortion under all circumstances for women and girls, of the decriminalisation for assisting a woman in having an abortion, including by providing transport, advice or information, and of the full respect and guarantee of women and girls’ sexual and reproductive rights under all circumstances; and
- Pass a follow-up resolution to the September 2015 resolution on “empowering girls through

228. interview with MP Joanna Scheuring-Wielgus, Tuesday 20 June 2017, in Warsaw, Poland.

229. interview with MP Joanna Scheuring-Wielgus, Tuesday 20 June 2017, in Warsaw, Poland.

230. interview with Dr. Hannah Machińska, Monday 19 June 2017, in Warsaw, Poland.

231. Siec Obywatelska Watchdog, “Is the National Institute of Freedom a deserved name?” 4 October 2017.

ALL DOWNHILL FROM HERE :

The rapid degradation of the rule of law in Poland: what it means for women’s sexual and reproductive rights, and LGBT+ persons’ rights

education in the EU," indicating that all schools should teach sexuality and anti-discrimination education, that the course should be taught by specialised teachers, not priests or catechists, and on this basis exhort Poland to amend its 2017 education reform, notably regarding sexuality and anti-discrimination education.

• **To the European Agency for Fundamental Rights:**

- Conduct an EU-wide survey on access to women and girls' sexual and reproductive rights in the EU and follow-up on the implementation of the recommendations published.

To the Council of Europe:

- Follow up on the Commissioner's recommendations to all Council of Europe member states in the field of women's sexual and reproductive health and rights, as outlined in the 2017 issue paper on "Women's sexual and reproductive health and rights in Europe." In the case of Poland, especially follow up on the following recommendations:
 - to "ensure all women's access to safe and legal abortion care"
 - to "ensure the provision of comprehensive sexuality education"
 - to "guarantee the affordability, availability, and accessibility of modern contraception"
 - to "ensure that refusals of care by health care workers on grounds of conscience or religion do not endanger women's timely access to sexual and reproductive health care"
- If deemed necessary, issue a public declaration or resolution on the matter; and
- Officially revoke resolution 1763 (2010) on the right to conscientious objection in lawful medical care; and
- Adopt a new resolution on the right to conscientious objection in lawful medical care, in line with current international and European human rights standards and ensure it does not permit member States to evade their obligation to ensure the effective access to legal abortion services; and
- Urge Poland to use scientifically accurate manuals for comprehensive sexual education courses, such as Compass and Compasito.

To the Polish Parliament:

- Amend the 1993 Family Planning Act so as to ensure legal and safe abortion services are available, under all circumstances, for all women and girls, based on the sole expression of their will to undergo an abortion. This also entails removing from the 1993 Act the recognition of a right to life that includes the prenatal phase. This may also entail modifying the Polish Constitution, notably Art. 38 which affords "legal protection of the life of every human being." This would *de facto* render Constitutional Tribunal in its judgement of 29 May 1997,²³² stating that as a democratic State under the rule of law, Poland protects each person's fundamental right to life, from beginning to end – and it is not sufficient to maintain that unborn babies are not persons²³³ – inapplicable; and
- Refrain from adopting legislative measures further retrogressing on women's sexual and reproductive rights; and
- Amend the 2008 Act on the Protection of Patient Rights to fully implement the *Tysiac v. Poland* ECtHR judgment requiring the establishment of an effective mechanism capable of determining whether the conditions for obtaining a legal abortion are met, and to effectively challenge a doctor's opinion, pending the legalisation of abortion under all circumstances. To be in line with the ECtHR judgment, the mechanism must consist of (1) an independent body, (2) that takes the views of the woman into consideration and (3) issues decisions in writing (4) within a reasonable period of time; and
- Ensure women are provided access to free legal aid if they wish to lodge a complaint before the aforementioned mechanism; and
- Ensure an enforceability mechanism is put in place, guaranteeing women's effective access to the granted lawful abortion; and
- Amend the 1993 Family Planning Act so as to suppress the requirement of third-party authorisations for access to services such as health, including sexual and reproductive health, in particular access to legal and safe abortion;²³⁴ and
- Repeal Arts. 18 and 152 to 154 of the Criminal Code, so as to repeal any form of criminalisation of a doctor or anyone else assists a woman in having an abortion, including by providing transport, advice or information; and

232. Ruling K 26 96 of the Constitutional Tribunal, 28 May 1997, Poland.

233. Ruling K 26 96 of the Constitutional Tribunal, 28 May 1997, Poland.

234. As stated in CEDAW, General Recommendation No. 33 on women's access to justice, (61 st Sess., 2015), para 25(c)), U.N. Doc. CEDAW/C/CC/33 (2015).

ALL DOWNHILL FROM HERE :

The rapid degradation of the rule of law in Poland: what it means for women's sexual and reproductive rights, and LGBT+ persons' rights

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- Guarantee that the use of the conscientious objection does not constitute an obstacle to women and girls' right to access legal and safe abortion services, whether in public or private healthcare facilities, in the cases allowed under the 1993 Family Planning Act; and
 - Enact a clear definition of what constitutes an imminent threat to the woman's life, and ensure it takes into account not only the physical aspects of the threat, but also the mental ones, whereby being forced to carry an unwanted pregnancy to term can lead to grave mental suffering and even to suicide; and
 - Strictly regulate the use of the conscientious objection by amending the 1996 Medical Profession Act to ensure:
 - the use of the conscientious objection remains exceptional;
 - a respectful, timely, and systematic referral is made by the objector to an alternative healthcare provider in the same hospital, and ensure that the practice is solely personal, not institutional. This entails that there be at least one non-objecting doctor in each hospital, whether public or private, willing and able to perform abortions or related sexual and reproductive services such as prenatal testing;
 - objecting professionals have an obligation to provide abortion services in the case where there exist an immediate and urgent threat to the life of the woman;
 - the enactment of a definition regarding a detailed procedure based on strict and precise criteria for doctors' to invoke the conscientious objections: the procedure should be based on deeply-held beliefs, expressed in writing, and should encompass an obligation for the objecting medical professional to deliver a certificate of conscientious objection to patients requesting it;
 - monitoring mechanisms are put in place to ensure doctors invoking the conscientious objection thoroughly respect the above-mentioned procedure;
 - the immediate care for women and girls wishing to undergo a legal and safe abortion, in the cases warranted under the 1993 Family Planning Act, in a reasonable geographical range;
 - Refrain from amending the 1996 Medical Profession Act or from enacting any other act which would expand the use of the conscientious objection to other medical or non-medical professions; and
 - Repeal the Act of 25th May 2017 on the change in the Act on medical services financed from a state budget and some other acts so as to suppress the requirement of having a prescription in order to buy emergency contraception and the parental consent requirement for girls under 15; and
 - Amend the 1993 Family Planning Act so as to ensure legal and safe abortion services are available, under all circumstances, especially for girls; and
 - Amend the 2017 education reform so as to reinstate instruction on contraceptive methods in the sexual education curriculum in biology class and the obligation for schools to ensure anti-discrimination education is provided at school, to all children; and
 - Repeal the 2017 Act on the National Institute of Freedom – Centre for the Development of Civil Society, or amend it so as to ensure the Institute is fully independent from the executive, distributes public funding in a transparent manner, and does not discriminate against NGOs on the basis of the type of activity they conduct.

To the Polish government, in particular the Ministry of Health:

- Ensure women have access to an effective mechanism capable of determining whether the conditions for obtaining a legal abortion are met, and to effectively challenge a doctor's opinion, pending the legalisation of abortion under all circumstances. To be in line with the ECtHR judgment, the mechanism must consist of (1) an independent body, (2) that takes the views of the woman into consideration and (3) issues decisions in writing (4) within a reasonable period of time; and
 - Ensure that data is systematically and regularly collected on the number of abortions being performed, whether considered legal or illegal; and
 - Take dissuasive disciplinary actions against pharmacists who illegally use the conscientious objection to refuse to sell contraception, including emergency contraception; and
 - Raise State subsidies for everyday and emergency contraception, and in particular ensure that girls and women with limited financial means have access to everyday and emergency contraception, notably by providing free sexual and reproductive health services, including contraception and legal and safe abortion, especially for girls, in line with the CRC Committee's recommendations, and
 - Ensure essential medicines such as short-and long-term contraceptives, emergency contraception, and drugs for maternal health care and management of incomplete abortion and miscarriage are provided to all women and girls upon request, and free of charge upon demonstration of financial
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ALL DOWNHILL FROM HERE :

The rapid degradation of the rule of law in Poland: what it means for women's sexual and reproductive rights, and LGBT+ persons' rights

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- needs, immediately, in line with Poland's minimum core obligation under the ICESCR;²³⁵ and
- Immediately refrain from actions, such as the 4,000 zlotys campaign which could tamper with women's free and informed consent regarding their sexual and reproductive health.

To the Polish government, in particular the Ministry of Education of the Republic of Poland:

- Provide systematic and quality trainings, in line with regional and international standards, to teachers on comprehensive sexual education; and
- Integrate scientifically accurate comprehensive sexual education courses in school curricula, in line with Council of Europe standards; and
- Ensure that comprehensive sexual education courses are taught by qualified teachers or non-governmental organisations and not permeated with religious views; and
- Work hand-in-hand with the Ministry of Health to design sexual education curricula; and
- Ensure dissuasive disciplinary actions are taken against medical professionals who illegally refuse to perform prenatal diagnostics.

Conclusion

While the situation of women's sexual and reproductive rights was already worrisome before PiS came into power, it has become dire since October 2015 and the degradation of the rule of law that ensued, combined with increased deference given to the positioning of the Catholic Church on this subject – as apparent from numerous anti-choice declarations and public support to stricter anti-abortion laws by government officials. Over the past three years, several attempts have been made at further restricting women's slim right to abortion through initiatives such as the "Stop Abortion" bill. The scope of the conscientious objection has also been dramatically expanded by the Constitutional Tribunal's ruling, and despite assurances from the Polish Ministry of Health, concerns regarding the passing of a bill introducing the conscientious objection for pharmacists in the near future remain and are legitimate. The current government refuses to implement ECtHR rulings on the subject and is entirely closed off to any discussion based on scientifically-accurate facts on the topic, whether at school when it comes to comprehensive sexual education or in order to bring its current positioning in line with international human rights standards – for instance, regarding the moment life begins. The degradation of the rule of law has had palpable consequences for women and girls in Poland: it has been accompanied by the current government's attempts to render women and girls' sexual and reproductive rights legally unavailable and physically, economically, and informationally inaccessible. All these developments mean that it is currently almost impossible for women to undergo legal and safe abortions in the country, for instance.

235. In accordance with the WHO Model List of Essential Medicines. See CESCR, General Comment No. 22, para. 49(g), U.N. Doc. E/C.12/CC/22, (2016); CESCR, General Comment No. 14: The right to the highest attainable standard of health (Art. 12), paras. 12(a) and 43(d), U.N. Doc. E/C.12/2000/4; CRC Committee, General Comment No. 15 On the right of the child to the enjoyment of the highest attainable standard of health, U.N. Doc. CRC/C/CC/15 (2013).

ALL DOWNHILL FROM HERE :

The rapid degradation of the rule of law in Poland: what it means for women's sexual and reproductive rights, and LGBT+ persons' rights

PART II - THREE YEARS OF LIBERATION OF ANTI-LGBT+ DISCOURSE: FROM WORDS TO ACTIONS



A man wears a t-shirt with the altered emblem of Poland during the second LGBT parade in Torun, Poland on September 29, 2018.
©Maciej Luczniewski / NurPhoto, Torun, Poland, 29/09/2018

ALL DOWNHILL FROM HERE :
The rapid degradation of the rule of law in Poland: what it means for women's sexual and reproductive rights, and LGBT+ persons' rights

Introduction

Over the past years, international and European human rights norms have evolved to recognise the need for increased protection from discrimination on the basis of sexual orientation, gender identity, or expression. Possessing anti-discrimination provisions which incorporate these three grounds is today a minimum requirement for every State in the fight against discrimination against LGBT+ persons.²³⁶

While Poland ratified most international and European human rights instruments (ICCPR, ICESCR, CEDAW, CRC, CAT, ECHR, the European Social Charter),²³⁷ it still fails to ensure its domestic legal framework is in accordance with the obligations that derive from them. Human rights treaty bodies and institutions have closely scrutinised the situation of LGBT+ persons' rights in Poland, and have consistently expressed concerns regarding the limited legal protection afforded to these persons.²³⁸

These apprehensions have increased over the past three years, since the governing PiS party came into power in October 2015 and started implementing its conservative, anti-democratic agenda which has been accompanied with at least implied validation of anti-LGBT+ discourse and initiatives, and favours "family mainstreaming" rather than what it refers to as "gender ideology."

However, the Polish government has so far disregarded most of the recommendations made by international organisations and bodies on LGBT+ persons' situation in Poland, and the current context has made civil society organisations and opposition parties increasingly reluctant to propose legislative initiatives aimed at remedying the situation, for fear they could backlash into further retrogressive measures – as happened regarding women's sexual and reproductive rights.

CHAPTER 1: DISCRIMINATION OF PERSONS WITH NON-CONFORMING SEXUAL ORIENTATION, GENDER IDENTITY, OR EXPRESSION IN THEIR ACCESS TO ECONOMIC, SOCIAL, AND CULTURAL RIGHTS

I. General anti-discrimination law

A) The principle of non-discrimination under international human rights law

Non-discrimination is a cornerstone principle of human rights law, which applies to all three of States' primary obligations to respect, protect, and fulfill the human rights of everyone regardless of sexual orientation and gender identity or expression, among others. It is central to every single international human rights instrument, from the U.N. Charter (1945),²³⁹ to the Universal Declaration of Human Rights

236. U.N. Committee on Economic, Social and Cultural Rights (hereafter "CESCR"), General Comment No. 3 on the Nature of States Parties' Obligations (Art. 2, para. 1), para. 9, U.N. Doc. E/1991/23 (1990); U.N. Commission on Human Rights, Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, para. 72, U.N. Doc. E/CN.4/1987/17 (1987); CESCR, General Comment 14 on the Right to the Highest Attainable Standard of Health (Art. 12), U.N. Doc. E/C.12/2000/4 (2000); CESCR, General Comment 22 on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social, and Cultural Rights), U.N. Doc. E/C.12/GC/22 (2016); U.N. Committee against Torture (hereafter "CAT"), *Final Observations on Peru*, U.N. Doc. CAT/C/PER/CO/5-6, § 15. To go further, see: Johanna J. Fine, JD, MIA, Katherine Mayall, JD, and Lilian Sepúlveda, JD, *The Role of International Human Rights Norms in the Liberalization of Abortion Laws Globally*, Leah Hoctor, Adriana Lamačková, *Mandatory waiting periods and biased abortion counselling in Central and Eastern Europe*, International Journal of Gynecology & Obstetrics, August 2017.

237. International Covenant on Civil and Political Rights (1977); International Covenant on Economic, Social and Cultural Rights (1977); CEDAW (1980); U.N. Convention on the Rights of the Child (hereafter "CRC") (1991); U.N. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereafter "Convention against Torture") (1987); European Convention for the protection of human rights and fundamental freedoms (hereafter "ECHR") (1993); European Social Charter of 1961 (1997).

238. U.N. Human Rights Committee, *Concluding Observations on the seventh periodic report of Poland*, 23 November 2016, U.N. Doc. CCPR/C/POL/CO/7, paras. 13-14; U.N. Committee on Economic, Social and Cultural Rights, *Concluding observations on the sixth periodic report of Poland*, U.N. Doc. E/C.12/POL/CO/6, paras. 10-11; European Commission against Racism and Intolerance, "ECRI Report on Poland (fifth monitoring cycle)," adopted on 20 March 2015, published on 9.05.2015; U.N. Human Rights Council, Report of the Working Group on the Universal Periodic Review, Poland, Thirty-sixth session, 11-29 September 2017, Agenda item 6, A/HRC/36/14. To be noted: this list is non exhaustive.

239. U.N. Charter (26 June 1945) art. 55 ("Universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion").

ALL DOWNHILL FROM HERE :

The rapid degradation of the rule of law in Poland: what it means for women's sexual and reproductive rights, and LGBT+ persons' rights

(UDHR, 1948),²⁴⁰ the International Covenant on Civil and Political Rights (ICCPR, 1966),²⁴¹ and the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966).²⁴²

As a State party to the ICCPR since 1977, the Republic of Poland (hereafter "Poland") has the obligation to enact legislation "prohibit[ing] any discrimination and guarantee[ing] to all persons equal and effective protection against discrimination on any ground" including "sex . . . or other status"²⁴³ in their enjoyment of all civil, political, economic, social, and cultural rights. The references to "sex" under Arts. 2(1) and 26 the ICCPR have been expanded by the U.N. Human Rights Committee as encompassing sexual orientation in *Toonen v. Australia*²⁴⁴ and in many of the Committee's concluding observations.²⁴⁵

As a State party to the ICESCR since 1977, Poland has the obligation to guarantee that economic, social and cultural rights will be exercised "without discrimination of any kind as to . . . sex . . . or other status,"²⁴⁶ notably through adopting legislation to this effect. The U.N. Committee on Economic, Social and Cultural Rights (hereafter "CESCR"), in its General Comment No. 20, has explicitly indicated that sexual orientation and gender identity were protected grounds under the "other status" clause of Art. 2(2) of the ICESCR.²⁴⁷

To provide States with guidance, human rights experts have elaborated the Yogyakarta Principles²⁴⁸ which flesh out the ways the principle of non-discrimination should be implemented in practice. States should embody the principle of non-discrimination on the basis of sexual orientation and gender identity "in their national constitutions or other appropriate legislation . . . and ensure the effective realisation of [this principle]"²⁴⁹ both in "public and private spheres,"²⁵⁰ taking into account "the manner in which such discrimination may intersect with other forms of discrimination."²⁵¹ These efforts should be accompanied by State-sponsored educational and training programmes, aimed at "achieving the elimination of prejudicial or discriminatory attitudes or behaviours which are related to the idea of the inferiority or the superiority of any sexual orientation or gender identity or gender expression."²⁵²

As corollary to these obligations, States must also both prevent and remedy instances of discrimination based on a person's sexual orientation or gender identity, regardless of who the perpetrator was (a State or non-State actor).²⁵³

240. Universal Declaration of Human Rights (10 December, 1948) art. 2 ("All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.");

241. International Covenant on Civil and Political Rights (16 December 1966) arts. 2(1) and 26.

242. International Covenant on Economic, Social and Cultural Rights (16 December 1966) art. 2(2).

243. International Covenant on Civil and Political Rights arts. 2(1) ("Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.") and 26 ("All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.");

244. U.N. Human Rights Committee, *Toonen v. Australia*, Communication No. 433/1992, U.N. Doc. CCPR/C/EO/D/488/1992, para. 87 (1994).

245. U.N. Human Rights Committee, *Concluding Observations of the Human Rights Committee on Chile*, U.N. Doc. CCPR/C/CHL/CO/5, para. 16, (18 May 2007); see also U.N. Human Rights Committee, *Concluding Observations of Belize in the Absence of a Report*, U.N. Doc. CCPR/C/BLZ/CO/1, para. 13 (26 April 2013); U.N. Human Rights Committee, *Concluding Observations of the Human Rights Committee on Jamaica*, U.N. Doc. CCPR/C/JAM/CO/3, para. 8 (17 November 2011); U.N. Human Rights Committee, *Concluding Observations of the Human Rights Committee on the Republic of San Marino*, U.N. Doc. CCPR/C/SMR/CO/2, para. 7 (31 July 2008); U.N. Human Rights Committee, *Concluding Observations of the Human Rights Committee on Austria*, U.N. Doc. CCPR/C/AUT/CO/4, para. 7 (30 October 2007); U.N. Human Rights Committee, *Concluding Observations of the Human Rights Committee on the United States of America*, U.N. Doc. CCPR/C/USA/CO/3, para. 25 (18 December 2006).

246. International Covenant on Economic, Social and Cultural Rights art. 2(2) ("The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.");

247. U.N. Committee on Economic, Social and Cultural Rights, General Comment No. 20, U.N. Doc. E/C.12/GC/20, para. 32 n.25 (July 2009).

248. *The Yogyakarta Principles: Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity* (March 2007), were elaborated by a community of human rights experts in 2006 and complemented by another 10 principles in 2017. They provide guidance as to how pre-existing rights under international human rights law apply to persons with non-conforming sexual orientation or gender identity or expression; as such, they do not create new rights.

249. Yogyakarta Principle No. 2(a).

250. Yogyakarta Principle No. 2(c).

251. Yogyakarta Principle No. 2(e).

252. Yogyakarta Principle No. 2(f).

253. International Commission of Jurists, "Sexual Orientation, Gender Identity and International Human Rights Law: Practitioners' Guide No. 4," at 26 (2009).

ALL DOWNHILL FROM HERE :

The rapid degradation of the rule of law in Poland: what it means for women's sexual and reproductive rights, and LGBT+ persons' rights

B) The Council of Europe's stance on non-discrimination

The European Convention on Human Rights (ECHR, 1950) also requires States to guarantee the enjoyment of all rights set in the Convention to be "secured without discrimination on any ground such as sex . . . or other status."²⁵⁴ The European Court of Human Rights (hereafter "ECtHR") has consistently considered sexual orientation and gender identity²⁵⁵ as protected grounds under the "other status" clause of Art. 14 ECHR²⁵⁶ as it indicated that the list of protected grounds was not exhaustive.²⁵⁷

The European Social Charter (revised) (ESC, 1996), which Poland has not yet ratified but has signed in 2005, also prohibits discrimination on any named ground and "other status" in the enjoyment of the rights laid out in the Charter.²⁵⁸ However, under Art. 18 of the Vienna Convention on the Law of Treaties (1980), as a signatory to the ESC, Poland is obliged to "refrain from acts that would defeat the object and purpose" of the Charter. Poland has ratified the 1951 version of the ESC.

The Council of Europe has since provided explicit protection from discrimination based on sexual orientation and gender identity in other instruments such as the Istanbul Convention on preventing and combating violence against women and domestic violence,²⁵⁹ which Poland has ratified.²⁶⁰

C) The European Union's stance on non-discrimination

The European Union (hereafter "EU") has a longstanding commitment to promoting equal rights and combating discrimination. As stated in Art. 2 of the Treaty on the European Union (TEU, 1993), the principle of non-discrimination is one of the fundamental values of the EU.

Several EU law instruments afford protection from discrimination on the basis of sexual orientation. Arts. 10 and 19(1) of the Treaty on the Functioning of the European Union (TFEU, 1958) explicitly provide for the EU's obligation not to discriminate on the basis of sexual orientation, and to combat such discrimination. Council Directive 2000/78/EC of 27 November 2000, which establishes a general framework for equal treatment in employment and occupation²⁶¹ (hereafter "the Employment Equality Directive"), is the only Directive which provides for protection against sexual orientation discrimination. Member States must also observe the Charter of Fundamental Rights of the European Union (hereafter "the Charter," 2012), rendered binding by the Treaty of Lisbon, when acting within the scope of EU law. Under Art. 21 of the Charter, the right not to be discriminated against, including on the basis of sexual orientation, is freestanding.²⁶²

Only a limited explicit protection is afforded to persons with non-conforming gender identity. Explicit protection from discrimination on the ground of gender identity is afforded under Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime.²⁶³ Protection is also afforded insofar as a person intends to undergo or has undergone gender reaffirming surgery, in which case, transgender persons are protected under "sex."²⁶⁴ Otherwise, gender identity is protected under the EU's general founding principle of equal treatment under Art. 2 TEU.

Under EU equal treatment legislation, member States are required to set up an equality body to provide

254. European Convention on Human Rights (4 November 1950), art. 14.

255. ECtHR, *Identoba and Others v. Georgia* (App. No. 73235/12), 12 May 2015, para. 96; ECtHR, *P.V. v. Spain* (App No. 35159/09), 30 November 2010, para. 30.

256. ECtHR, *Fretté v. France* (App No. 36515/97), 26 February 2002, para. 32; ECtHR, *Salgueiro da Silva Mouta v. Portugal* (Application No. 33290/96), 21 March 2000.

257. ECtHR, *Salgueiro da Silva Mouta v. Portugal* (Application No. 33290/96), 21 March 2000, para. 28.

258. European Social Charter (revised) (1 July 1999), art. E.

259. Council of Europe Convention on preventing and combating violence against women and domestic violence, also known as the "Istanbul Convention" (12 April 2011) art. 4(3).

260. Ratified on May 11, 2011 (Journal of Laws of 2015, item 961).

261. Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.

262. Charter of Fundamental Rights of the European Union (26 October 2012) art. 21.

263. Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, OJ L 315, 14.11.2012, pp. 57–73, recital 9.

264. Judgment of 30 April 1996, *P. v. S. and Cornwall County Council*, Case C-13/94: "sex encompasses discrimination against an individual because he/she intends to undergo or has undergone gender re assignment."

ALL DOWNHILL FROM HERE :

The rapid degradation of the rule of law in Poland: what it means for women's sexual and reproductive rights, and LGBT+ persons' rights

independent assistance to victims of discrimination. This can be done through designating an existing institution or setting up a new one.

II. Poland's domestic anti-discrimination framework

A) Anti-discrimination legislation not adapted

The right not to be discriminated against is enshrined in Art. 32 of the Polish Constitution,²⁶⁵ which states that "all persons are equal before the law" and prohibits discrimination "in political, social or economic life for any reason whatsoever."

While a general protection from discrimination is afforded at the Polish constitutional level, national laws in practice do not implement the principle of non-discrimination on the basis of sexual orientation or gender identity or expression.

The only piece of legislation which affords extremely limited protection is the 3 December 2010 Act on the implementation of certain European Union's provisions on equal treatment (hereafter the "Equal Treatment Act" or "ETA"). It affords enhanced protection against discrimination on grounds of gender, race, ethnic origin, nationality, religion, denomination, belief, disability, age and sexual orientation.

However, the protection afforded by the ETA varies greatly from one ground to another. The ETA only prohibits discrimination on the ground of sexual orientation in employment under its Art. 8.²⁶⁶ Therefore, the Labour Code prohibits discrimination on the ground of sexual orientation in the traditional labour relations. It also introduces the concepts of direct and indirect discrimination. It should be mentioned, however, that the provisions encompassed within the Labour Code often go unused by victims of discrimination, because of a lack of awareness as to their existence, followed by a high level of mistrust in their effectiveness. Even though employers are responsible for making anti-discrimination legislation available to their employees, it often goes unnoticed since it is neither common nor obligatory to organise anti-discrimination training or seminars. Employees are also often not aware that possible, repressive actions taken by the employer as a response to their demands based on anti-discrimination Labour Code provisions are prohibited, and they thus often choose not to act out of fear of, for instance, losing their jobs.

The Labour Code is the only piece of national legislation which affords any protection to lesbian, gay, and bisexual persons, while discrimination on the ground of race, for instance, is prohibited under the ETA with regards to social security, medical care, education, and employment.²⁶⁷ Therefore, if lesbian, bisexual, and gay persons encounter discrimination in other aspects of life such as healthcare or education, they cannot claim protection under the ETA or any other Polish legislation. The ETA can thus be considered in itself discriminatory in the way it differentiates between categories by failing to offer them equal protection without valid and legitimate justification. For this reason, the Polish Commissioner for Human Rights, Adam Bodnar, filed a motion to the Constitutional Tribunal in March 2016 regarding the ETA,²⁶⁸ questioning its consistency with the Polish Constitution and the equality principle enshrined

265. Constitution of the Republic of Poland, 2 April 1997, as published in *Dziennik Ustaw* No. 78, item 483, art. 32 ("1. All persons shall be equal before the law. All persons shall have the right to equal treatment by public authorities. 2. No one shall be discriminated against in political, social or economic life for any reason whatsoever").

266. Act of 3rd December 2010 on the implementation of some regulations of European Union regarding equal treatment, Art. 8, Journal of Laws of 2010, No. 254, item 1700.

267. Act of 3rd December 2010 on the implementation of some regulations of European Union regarding equal treatment, Arts. 6 to 8, Journal of Laws of 2010, No. 254, item 1700.

268. See U.N. Human Rights Committee, "Report on measures taken by the Republic of Poland to implement the provisions of the International Covenant on Civil and Political Rights in the years 2008-2015, information provided by the Commissioner for Human Rights of the Republic of Poland (*Rzeczniczka Praw Obywatelskich*) in accordance with the International Covenant on Civil and Political Rights in connection with consideration of the seventh periodic report of the Republic of Poland covering the period from 15 October 2008 until 31 October 2015," 6 October 2015.

ALL DOWNHILL FROM HERE :

The rapid degradation of the rule of law in Poland: what it means for women's sexual and reproductive rights, and LGBT+ persons' rights

therein.²⁶⁹ However, Adam Bodnar has since withdrawn his motion²⁷⁰ for fear that "the constitutional court would render a judgment . . . [which would] freeze the . . . constitutional interpretation of rights in a way that could be detrimental [to minorities]."²⁷¹ He indicated this was not the first time he had backtracked on strategic suits of the sort ("on cases of political nature"²⁷²) since the independence of the constitutional tribunal had come under attack.

The list of protected grounds is supposed to constitute a closed catalogue which cannot be extended, therefore leaving any person with non-conforming gender identity or expression completely devoid of protection from discrimination in Poland.

Finally, multiple and intersectional discrimination is not clearly defined or protected under the law. While members of the Polish Society of Anti-discrimination Law (hereafter "PSAL," or "PTPA" in Polish) explained it would be up to the courts to identify this form of discrimination on a case by case basis, they also underlined that no court practice in this field existed, to their best knowledge.

The legal protection against discrimination in Poland cannot therefore be considered sufficient nor effective, in so far as it excludes certain grounds from the protection afforded under the law (gender identity or expression) and fails to afford full and equal protection in every aspect of life for those grounds which it recognises as in need for protection (sexual orientation).

Despite the recommendations made by several international organisations and bodies²⁷³ as well as other States, most recently during the country's last UPR in September 2017, that efforts be made to further prevent and combat all forms of discrimination, including by amending relevant legislation,²⁷⁴ Poland has so far failed to implement those recommendations and reform its legislation in order to bring it into line with international anti-discrimination standards. The Polish government's stance, as expressed most recently during the last UPR, indicates that it feels the protection afforded by the State against discrimination, including based on sexual orientation and gender identity, under the current legal framework is sufficient and sees no need to introduce amendments that would extend its scope.²⁷⁵ This public position suggests that no further action will likely be taken in this regard in the near future.

Poland's current domestic legislation and the unwillingness of the government to amend it is only reflective of this government's official stance on LGBT+ persons' rights, which is notably apparent from the debates on the concept "gender" surrounding the adoption of the Council of Europe's Istanbul Convention on preventing and combating violence against women and domestic violence.²⁷⁶ The Government Plenipotentiary of Equal Treatment has received a draft proposal from the Ministry of Justice on 1 October 2010 calling for Poland's withdrawal from the Convention. While the initiative was eventually abandoned in January 2017, it sparked virulent debates in Parliament, with many members of the Polish Parliament referring to the Convention as a source of "evil gender ideology . . . aimed at

269. In March 2017 both Parliament and the Prosecutor General submitted their opinions on the complaint asking the CT to drop the case arguing that it did not deal with the law's constitutionality but with the lack of regulation. The Polish Human Rights Commissioner withdrew the motion in April 2017, allegedly for fear that the CT could use the opportunity to narrow the law's scope even further. See <https://ipo.trybunal.gov.pl/ipo/Sprawa?pokaz=dokumenty&sygnatura=K%2017/16>. See also European network of legal experts in gender equality and non-discrimination, "Motion of the Ombudsman to the Constitutional Tribunal regarding constitutionality of the ETA discontinued," 28 July 2017.

270. European network of legal experts in gender equality and non-discrimination, "Motion of the Ombudsman to the Constitutional Tribunal regarding constitutionality of the ETA discontinued," 28 July 2017.

271. Interview with Adam Bodnar, Polish Commissioner for Human Rights, Wednesday 21 June 2017, in Warsaw, Poland.

272. Interview with Adam Bodnar, Polish Commissioner for Human Rights, Wednesday 21 June 2017, in Warsaw, Poland.

273. See for instance U.N. Human Rights Committee, *Concluding Observations on the seventh periodic report of Poland*, 23 November 2016, U.N. Doc. CCPR/C/POL/CO/7, paras. 13-14; U.N. Committee on Economic, Social and Cultural Rights, *Concluding observations on the sixth periodic report of Poland*, U.N. Doc. E/C.12/POL/CO/6, paras. 10-11; European Commission against Racism and Intolerance, "ECRI Report on Poland (fifth monitoring cycle)," adopted on 20 March 2015, published on 9.05.2015.

274. See recommendations 120.41, 120.43, 120.44, 120.46, 120.48, 120.49, 120.50; U.N. Human Rights Council, Report of the Working Group on the Universal Periodic Review, Poland, Thirty sixth session, 11-29 September 2017, Agenda item 6, A/HRC/36/14. Regarding discrimination based on sexual orientation and gender identity more specifically, it has been noted that lesbian, gay, bisexual, transgender and intersex persons are not sufficiently protected under national law and Poland has been requested to amend its legislation in order to ensure that discrimination on these grounds is prohibited in all areas, including healthcare, education, social protection and housing. See recommendations 120.49, 120.50, 120.71, 120.76, 120.77, *ibid*.

275. See U.N. Human Rights Council, "National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, Poland," Human Rights Council Working Group on the Universal Periodic Review, Twenty seventh session, 1-12 May 2017, U.N. Doc. A/HRC/WG.6/27/POL/1, para. 85-91. See also the statement delivered by Minister J. Dzieliczak at the 36th session of the Human Rights Council, Universal Periodic Review, Poland, 22 September 2017; Statement of the Commissioner for Human Rights of the Republic of Poland, 36th Session of the United Nations Human Rights Council, 22 September 2017, item 6, UPR Outcomes-Poland.

276. Ratified by Poland May 11, 2011 (Journal of Laws of 2015, item 961).

ALL DOWNHILL FROM HERE :

The rapid degradation of the rule of law in Poland: what it means for women's sexual and reproductive rights, and LGBT+ persons' rights

destroying Polish traditional values²⁷⁷ as they mistakenly understood the Convention as promoting same-sex marriage.²⁷⁸

B) Lack of effective remedy against discrimination for persons with non-conforming sexual orientation, gender identity or expression

1) Clear unwillingness of the Polish Government Plenipotentiary for Equal Treatment to deal with these issues

As part of its obligations under EU law, Poland has to establish an equality body – one at the governmental level and one independent, respectively the Government Plenipotentiary for Equal Treatment (hereafter “GPET”) and the Human Rights Commissioner (the Ombudsman). While it has done so, the GPET lacks financial capacity and has so far proven ineffective in protecting LGBT+ persons from discrimination.

The Government Plenipotentiary for Equal Treatment, was established under the ETA to oversee the ETA's implementation and the government's equality and anti-discrimination policies, and is operating within the Prime Minister's Chancellery. However, the ETA failed to provide adequate resources and a separate budget for the GPET and to set up a structure to facilitate its cooperation with relevant ministries, thus limiting this body's capacity to carry out its mandate and rendering it ineffective in practice. The situation has worsened since the GPET's mandate has been extended in 2016 to include civil society development issues. The change, which was not accompanied by an increase in resources, along with staff cuts and the fact that the GPET lost its status as a separate office within the Prime Minister's Chancellery, further limited this organ's capacity to fulfill its mandate. Among its functions, as detailed in the ETA, the GPET was expected to submit a National Action Plan for Equal Treatment to orient governmental action in this area and mainstream equality across sectors, while contributing to the fight against discrimination. Although a welcome step, the National Action Plan 2013-2016 did not prove successful. According to the Commissioner for Human Rights²⁷⁹ and civil society organisations, the programme was not used to its full potential and overall failed to have a positive impact. The new programme, which should have been submitted as required under the ETA, has not been presented yet despite the government's reassurances during the last UPR that it will be a priority for the GPET to plan actions in continuation to the previous one.²⁸⁰ PSAL inquired about the publication of the National Action Plan, and was told “further activity surrounding the creation of a new programme should have been uptaken by the second part of 2017.”²⁸¹ However, no additional answer regarding the publication date of the new plan has been received at the date of publication of this report.

Moreover, the new Plenipotentiary Adam Lipiński, appointed after the October 2015 general elections, has raised serious concerns among civil society as to his aptness for the position and his willingness to promote equality and combat discrimination based on sexual orientation and gender identity more broadly. His soft reactions to increasing attacks against LGBT+ rights organisations over the past two years (see Chapter 2 on ***Hate Crimes and Physical Violence Motivated by Prejudice Against LGBT+ Persons in Poland***) culminated in Adam Lipiński expressly telling the Polish Commissioner for Human Rights that he would not do anything on LGBT+ persons' rights. He also suggested on several occasions that unequal treatment based on either race or sexual orientation in access to goods and services should not be regulated by law. The GPET has finally declared that gender mainstreaming will no longer be a focus of his office and that he will engage in what he defines as “family mainstreaming” instead. Such statements match those made by other government representatives on these matters and are particularly disquieting at a time when Poland registers a serious increase in both discrimination and crimes motivated by prejudice against lesbian, gay, bisexual, and transgender persons.

277. Newsweek PL, *PiS wypowie Konwencję o zapobieganiu przemocy wobec kobiet?*, 7 December 2016.

278. EU Observer, “Istanbul Convention: clearing away the fog of misconceptions,” 8 March 2018.

279. See U.N. Human Rights Council, “National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, Poland,” Human Rights Council Working Group on the Universal Periodic Review, Twenty-seventh session, 1–12 May 2017, U.N. Doc. A/HRC/WG.6/27/POL/1, para. 85–91. See also the statement delivered by Minister J. Dziędziczak at the 36th session of the Human Rights Council, Universal Periodic Review, Poland, 22 September 2017; Statement of the Commissioner for Human Rights of the Republic of Poland, 36th Session of the United Nations Human Rights Council, 22 September 2017, item 6, UPR Outcomes-Poland.

280. U.N. Human Rights Council, National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, Poland: Group on the Universal Periodic Review, Twenty-seventh session, 1–12 May 2017, A/HRC/WG.6/27/POL/1, para. 148.

281. Email exchanges with the Polish Society of Anti-discrimination Law, 6 July 2018.

ALL DOWNHILL FROM HERE :

The rapid degradation of the rule of law in Poland: what it means for women's sexual and reproductive rights, and LGBT+ persons' rights

2) Attempts to incapacitate the Human Rights Commissioner

The ETA has also extended the Human Rights Commissioner's competences so as to encompass the fight against discrimination and in favour of the right to equal treatment. However, following the 2015 general elections, several measures have been taken to incapacitate his work.

The Human Rights Commissioner, whose role is currently fulfilled by Adam Bodnar, has played a significant role in recent years in promoting equality and non-discrimination, including for LGBT+ persons. However, following the 2015 general elections, the new government substantially reduced the Commissioner's budget thus limiting his capacity to carry out its mandate, including in this area. The Commissioner's budget was indeed of 38,602,000 złotys²⁸² in 2015, following which he applied for an 18% increase in 2016. However, not only was the demand discarded, but the budget was decreased to 35,619,000 złotys,²⁸³ i.e. the same budget that had been allocated to the Commissioner in 2011.²⁸⁴ The budget planned for 2018, after the approval by the Parliament, amounts to 39,433,000 złotys,²⁸⁵ while the Ombudsman had motioned for 42,639,000 złotys.²⁸⁶ The increase (in comparison with 2017) is mostly caused by plans of investments in buildings of the Ombudsman's Office in Warsaw.

The Commissioner's involvement in anti-discrimination work, particularly on LGBT+ rights and gender equality, has been indicated by several sources as the leading argument put forward by the government to support the cuts.²⁸⁷ Both the Commissioner and his deputy responsible for equal treatment have been under fire since 2015 for their anti-discrimination work, especially on LGBT+ rights, to the point where the National Movement gathered signatures from individuals or organisations asking for the Commissioner's dismissal.²⁸⁸ However, the petition was never presented to the Polish Parliament.

While the Commissioner affirmed he tried "not to make too much of an issue" about the funding cuts, he "cannot say there is no fear. Mr. Kaczyński can wake up one day and decide that I speak too much and just find a way to shut me up. I try to do as much as I can but I know the rules of the game."²⁸⁹ At the same time, a recent study by CBOS²⁹⁰ showed about 40% of the Polish population thought positively of the Commissioner's work, the highest percentage in the 30 years of existence of the institution – which is a small assurance for the short-term survival of the Commissioner, according to Adam Bodnar.

The Human Rights Commissioner also deplored the EU's inaction on this front: "the European Commission has concentrated so much efforts on the constitutional tribunal and believed that a dialogue with the government could work, that it failed."²⁹¹ He said while the subject of the constitutional crisis in Poland required attention, the fact that the European Commission directed all efforts and time to this topic allowed PiS implement their anti-democratic agenda on all other fronts, free of concerns. "[The European Commission] did nothing regarding the media . . . [and] all branches of equality law. I am attacked because of my work on LGBT+ rights for instance, and the European Commission does nothing."²⁹² He notably regretted the fact that EU commissioners, upon visits in Poland, did not reach out to his office but rather beat around the bush dealing with judicial cooperation with the Polish Minister of Justice. "In situations of attacks like this one on fundamental EU values, there should be at least a European Commission presence here, evaluations, visits, meetings with the opposition, NGOs, and my office."²⁹³ While Adam Bodnar acknowledged the European Commission alone would not "save

282. 8,777,472.38 euros.

283. 8,099,186.28 euros.

284. U.N. Human Rights Committee, "Report on measures taken by the Republic of Poland to implement the provisions of the International Covenant on Civil and Political Rights in the years 2008-2015," information provided by the Commissioner for Human Rights of the Republic of Poland in accordance the International Covenant on Civil and Political Rights in connection with the consideration of the seventh periodic report of the Republic of Poland covering the period from 15 October 2008 until 31 October 2015, 6 October 2016.

285. 9,112,066.73 euros.

286. 9,852,900.19 euros.

287. Ministry of Justice of the Republic of Poland, "Sejmowa Komisja Sprawiedliwości negatywnie zaopiniowała projekt budżetu Rzecznika Praw Obywatelskich na rok 2018 r.," 24 October 2017.

288. Wiadomości, "Chcą odwołania Rzecznika. PiS wykorzysta społeczne oburzenie?," 22 June 2017. See also U.N. Human Rights Council, Alternative report submitted by the Polish Coalition for Equal Opportunities for consideration of the U.N. Human Rights Council in reference to the Universal Periodic Review, session No 27, Warsaw, 20 September 2016.

289. interview with Adam Bodnar, Polish Commissioner for Human Rights, Wednesday 21 June 2017, in Warsaw, Poland.

290. CBOS. Opinions about Police, Prosecutor's Office, Courts and Commissioner for Human Rights, 2017-06-20.

291. interview with Adam Bodnar, Polish Commissioner for Human Rights, Wednesday 21 June 2017, in Warsaw, Poland.

292. interview with Adam Bodnar, Polish Commissioner for Human Rights, Wednesday 21 June 2017, in Warsaw, Poland.

293. interview with Adam Bodnar, Polish Commissioner for Human Rights, Wednesday 21 June 2017, in Warsaw, Poland.

ALL DOWNHILL FROM HERE :

The rapid degradation of the rule of law in Poland: what it means for women's sexual and reproductive rights, and LGBT+ persons' rights

Poland,²⁹⁴ he did emphasize that "intensive dialogue and control by the European Commission [could] be great support to civil society, and the opposition . . . and would [not] create anti-European attitudes."²⁹⁵

The degradation of the rule of law since PiS came into power has also had palpable consequences for LGBT+ persons, who are being stripped off of any means to make their voices heard and to access justice. This combination of weak legal protection, unwillingness of the national equality body to deal with equality issues, and attempts to incapacitate the last remaining human rights institution results in lesbian, gay, bisexual, and transgender persons not having access to an effective mechanism to enforce their constitutional right to equal treatment and claim protection against violations in practice, as will further be explained in the next sections of this report on the right to education, the right to work, the right to access goods, and the right to health.

III. Biased education for all, and unsafe environment for LGBT+ students

A) Unprotected by law: Polish legal framework on discrimination in education

Under Art. 13(1) of the ICESCR, everyone has the right to education, which shall "be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms."²⁹⁶ This is echoed by Art. 28 of the CRC which recognises "the right of the child to education,"²⁹⁷ to be provided by States "without discrimination of any kind"²⁹⁸ including sexual orientation. For this right to be enjoyed by all, States must protect children "from all forms of violence without discrimination of any kind, including prejudices . . . based on children's clothing and behaviour."²⁹⁹ This includes addressing "discrimination against vulnerable or marginalized groups of children,"³⁰⁰ such as "lesbian, gay, transgender, or transsexual"³⁰¹ children by proactively ensuring their equal right to protection. The CRC Committee further elaborated on types of violence which LGBT+ students encounter in the school environment, and which they must be protected from, such as: "all forms of persistent harmful interactions with the child, for example, conveying to children that they are worthless,"³⁰² "insults, name-calling, humiliation, belittling, ridiculing and hurting a child's feelings,"³⁰³ and "psychological bullying and hazing by adults and other children, including . . . cyberbullying."³⁰⁴

Of particular relevance to the case of Poland, the CESCR also requires States to "provide age-appropriate, evidence-based, scientifically accurate, comprehensive sexual education for all on sexual and reproductive health,"³⁰⁵ including to "adolescents and youth" on "all aspects of sexual and reproductive health, including maternal health, contraceptives, family planning, sexually transmitted infections, HIV prevention, safe abortion and post-abortion care, infertility and fertility options, and reproductive cancer."³⁰⁶

These obligations are echoed at the European level by Art. 11 of the ESC which obliges States to provide education "for the promotion of health."³⁰⁷ This includes "information and communication about sexuality education . . . among young people." Therefore, not providing information and education on this topic to adolescents and youth can be considered as a violation of the ESC. Moreover, as stated by the European Committee on Social Rights in *Interights v. Croatia*, States have an "obligation to ensure through the domestic legal system that state-approved sexual and reproductive health education is

294. Interview with Adam Bodnar, Polish Commissioner for Human Rights, Wednesday 21 June 2017, in Warsaw, Poland.

295. Interview with Adam Bodnar, Polish Commissioner for Human Rights, Wednesday 21 June 2017, in Warsaw, Poland.

296. International Covenant on Economic, Social and Cultural Rights, Art. 13(1).

297. Convention on the Rights of the Child, Art. 28.

298. Convention on the Rights of the Child, Art. 28.

299. Convention on the Rights of the Child art. 19, and U.N. Committee on the Rights of the Child, General Comment 13, U.N. Doc. CRC/C/GC/13, para. 60 (18 April 2011).

300. U.N. Committee on the Rights of the Child, General Comment 13, U.N. Doc. CRC/C/GC/13, para. 60 (18 April 2011).

301. U.N. Committee on the Rights of the Child, General Comment 13, U.N. Doc. CRC/C/GC/13, para. 60 (18 April 2011).

302. U.N. Committee on the Rights of the Child, General Comment 13, U.N. Doc. CRC/C/GC/13, para. 21 (18 April 2011).

303. U.N. Committee on the Rights of the Child, General Comment 13, U.N. Doc. CRC/C/GC/13, para. 21 (18 April 2011).

304. U.N. Committee on the Rights of the Child, General Comment 13, U.N. Doc. CRC/C/GC/13, para. 21 (18 April 2011).

305. U.N. Committee on Economic, Social and Cultural Rights, General Comment No. 22, U.N. Doc. E/C 12/GC/22, para. 47 (2 May 2016).

306. U.N. Committee on Economic, Social and Cultural Rights, General Comment No. 22, U.N. Doc. E/C 12/GC/22, para. 18 (2 May 2016).

307. European Social Charter (revised), Art. 11.

ALL DOWNHILL FROM HERE :

The rapid degradation of the rule of law in Poland: what it means for women's sexual and reproductive rights, and LGBT+ persons' rights

objective and non-discriminatory.”³⁰⁸ In this particular case, of relevance to Poland, the Committee found that educational material presenting non-conforming sexual orientation in a manifestly biased, discriminatory and demeaning way constituted a violation of the right to health education in light of the non-discrimination clause of the Charter. It is worth recalling that under Art. 18 of the Vienna Convention on the Law of Treaties (1980), as a signatory to the ESC, Poland is obliged to “refrain from acts that would defeat the object and purpose” of the Charter.

At the European Union level, sexuality education is within the competence of the EU as part of public health, as defined in Art. 168 of the Treaty on the functioning of the EU.³⁰⁹

Yet, as far as education is concerned, there seem to be no legislation or policies in place at the national level to address discrimination and violence against lesbian, gay, bisexual, and transgender persons and ensure their right to equal treatment in education. Neither sexual orientation nor gender identity are protected grounds in this area. As a consequence, LGBT+ persons experience discrimination at a serious level in schools and universities.

B) Bullying at school: no allies for LGBT+ students

According to a survey carried out by PSAL and other civil society organisations, almost 40% of homophobic violence cases and 23.5% of verbal abuse ones occur at school, while 76% students interviewed affirmed that homophobic language was present in their school.³¹⁰ As a result, a mere 12.6% of LGBT+ students “come out” in the school environment, whereas the others prefer to conceal their actual sexual orientation or gender identity.³¹¹ For instance, a member of the Transfuzja Foundation recalled:

“I had stickers on my locker for trans rights and they were destroyed and replaced with one saying ‘trans kills.’ I am very privileged because I was then able to go to a private school that was very open. I know some trans people who went to public schools and couldn’t come out, or when they came out they didn’t feel safe or they had to leave school. People could not take part in proms because girls couldn’t dance together. And I know people who were attacked in the street or yelled at in public spaces.”³¹²

Although no data is available on suicides among young people due to homophobic bullying in schools, LGBT+ students appear to suffer from suicidal thoughts and depression a lot more than their heterosexual peers,³¹³ and members of PSAL recalled the case of a 14 year-old who committed suicide in 2014 after having been a victim of a hate crime at school.³¹⁴ The situation is particularly dire for transgender students, who in some cases are reportedly forced to change school due to the school authorities’ and teachers’ inability or unwillingness to address their situation and the discrimination they face.³¹⁵ Schools authorities indeed often deny having lesbian, gay, bisexual, or transgender students,³¹⁶ and therefore deny these issues are even occurring.

Homophobic, biphobic, and transphobic abuse comes not only from fellow-students, but also from educators and counselors, by disclosing their sexual orientation to their parents without their consent,

308. European Committee on Social Rights, *International Centre for the Legal Protection of Human Rights (Interights) v. Croatia*, Complaint No. 45/2007, 30 March 2009.

309. Treaty on the Functioning of the European Union, Art. 168: “Union action, which shall complement national policies, shall be directed towards improving public health [and] preventing [...] diseases [...]. Such action shall cover the fight against the major health scourges, [...] their transmission and their prevention, as well as health information and education [...]”

310. Polish informal coalition for the CCPR for consideration of the U.N. Human Rights Committee, “Alternative report to the ICCPR”, 21 July 2016. The survey also shows that when it comes to verbal abuse, in 3.5% of cases the offenders are teachers.

311. Polish informal coalition for the CCPR for consideration of the U.N. Human Rights Committee, “Alternative report to the ICCPR”, 21 July 2016.

312. Interview with members of the Transfuzja Foundation, Monday 19 June, in Warsaw, Poland.

313. According to a recent study, 49.6% of LGBT teenagers has symptoms of depression and 69.4% has suicidal thoughts. See KPH, “Social Situation of LGBT persons. Report for the years 2015-2016.”

314. Interview with members of PSAL, Monday 19 June in Warsaw, Poland.

315. Transfuzja, Report on Poland, 27th session of the Universal Periodic Review, September 2015.

316. Transfuzja, Report on Poland, 27th session of the Universal Periodic Review, September 2015. *See also* KARAT Coalition in consultative status with the Economic and Social Council of the UN on behalf of CEDAW Coalition of Polish NGOs, Alternative report on the implementation of the CEDAW – Poland, 2014.

ALL DOWNHILL FROM HERE :

The rapid degradation of the rule of law in Poland: what it means for women’s sexual and reproductive rights, and LGBT+ persons’ rights

singling them out in class and recommending them therapy.³¹⁷ In some cases, students are also reported to have been almost expelled from schools for posting "homosexual pictures" on social networks.³¹⁸ Moreover, teachers who either show openness to LGBT+ issues and support LGBT+ students or disclose their non-conforming sexual orientation or gender identity themselves also suffer discrimination as a consequence.

While for the first time in December 2017, a school was condemned for failure to counter homophobia following a student's persecution due to his sexual orientation,³¹⁹ these issues should be addressed at the political level to provide an effective response and prevent further incidents, instead of legitimized by current political discourse.

C) At best, lack of action on the part of Polish authorities

Despite some initiatives taken under the National Action Plan for Equal Treatment 2013-2016 in cooperation with NGOs to raise awareness about equality and sexual orientation in schools,³²⁰ no substantial effort has been made by the authorities to either ensure that equality and non-discrimination, including for LGBT+ persons, are integrated in school curricula and adequately addressed in schools, and that teachers receive training on these issues, or to ensure LGBT+ students' safety, by preventing and addressing homophobic violence and other abuse in schools and universities. In fact, the situation has worsened since the education reform concocted by PiS passed in 2017. Prior to the reform, there used to be an explicit obligation for schools to carry out anti-discrimination education, under the Act of 7 September 1991 on the system of education,³²¹ and therefore a mean to hold the State accountable for providing such education. This has been repealed by the current government as soon as they came into power. The government proceeded to enact an educational reform, which, among others, got rid of this explicit obligation, replacing it with a broader sounding wording, alluding to the fact that schools should "take action to shape students' attitudes and respect for social norms . . . including openness and tolerance."³²²

The authorities now not only remain overall reluctant to take action in this regard but also actively reprimand some schools taking part in initiatives aimed at promoting diversity and countering discrimination and violence based on sexual orientation and gender identity, and in some cases order them to discontinue their activities.

The case of the *Mickiewicz Gymnasium* in Piatkowisko is emblematic.³²³ The school was one of four in Poland which took part in the "Equal schools – without discrimination and violence" project run by the Campaign Against Homophobia (KPH) aimed at improving the way in which discrimination and inequalities were addressed by developing an anti-discrimination strategy and running activities and workshops in this context. One of these activities was a diversity workshop aimed at countering homophobic hate speech. Following the intervention of right-wing media, instigated by the nationalist group National Radical Camp, the mayor intervened requesting the school's headmaster to remove all the materials produced at the workshop from the school. Despite the intervention of the Human Rights Commissioner and several NGOs, the Regional Superintendent on Education reported the headmaster to the Ministry of Education for failure to supervise the pedagogical activities in his school and adapt their content to the students' age.

This in part contributes to LGBT+ students not being offered any information or support which would help them live in accordance with their sexual orientation or gender identity at school.³²⁴

317. Transfuzja, Report on Poland, 27th session of the Universal Periodic Review, September 2015. See also KARAT Coalition in consultative status with the Economic and Social Council of the UN on behalf of CEDAW Coalition of Polish NGOs, Alternative report on the implementation of the CEDAW – Poland, 2014.

318. Transfuzja, Report on Poland, 27th session of the Universal Periodic Review, September 2015. See also KARAT Coalition in consultative status with the Economic and Social Council of the UN on behalf of CEDAW Coalition of Polish NGOs, Alternative report on the implementation of the CEDAW – Poland, 2014.

319. KPH, "Sąd orzekł: szkoła musi przeprosić ucznia za homofobie. Pierwszy taki wyrok w Polsce!" 13 December 2017.

320. Among these initiatives, the leaflet "Lessons in equality: teaching materials. Talking about sexual orientation and supporting young people at school," the campaign "Parents, dare to speak up!" addressed to parents of LGBT+ children and the programmes "Equal schools without discrimination and violence" (2014-2016) and "Equality lessons" (2012-2014), all run by KPH.

321. Act of 7 September 1991 on the system of education (Journal of Laws of 2016, item 1943), Art. 21.

322. Interview with members of the Polish Teachers' Union, Wednesday 21 June, 2017, Warsaw, Poland; see Act of 14 December 2016. Educational Law (Journal of Laws of 2017, items 59 and 949), Art. 44.

323. KPH submission to the Universal Periodic Review (Third cycle), Poland, 2016.

324. Alternative report to the International Covenant on Civil and Political Rights, submitted by the Polish informal coalition for the GCPR for consideration of the UN Human Rights Committee in reference to the Session No 118, 2016.

ALL DOWNHILL FROM HERE :

The rapid degradation of the rule of law in Poland: what it means for women's sexual and reproductive rights, and LGBT+ persons' rights

D) Barriers to scientifically accurate education on sexual and equal rights: "The State ignored the whole issue [of sexual education] and let it be taken over by the Catholic Church"³²⁵

The reasons why discrimination is so widespread in the education system must be found not only in the insufficient legal protection against discrimination on those grounds in this area. It also has to do with a persistent closure of the Polish educational system towards the issue, which is linked on one hand to very little knowledge among educators about equality and non-discrimination – particularly LGBT+ – issues, and on the other hand to deeply-rooted ideologies and stereotypes related to this group, which the current political climate has indirectly when not overtly encouraged.

Members of the Polish Teachers' Union explained: "The State ignored the whole issue [of sexual education] and let it be taken over by the Catholic Church."³²⁶ A striking example is the lack of reaction from the Ministry of Education in the face of Catholic associations of parents and teachers vehemently lobbying against any type of progressive sexual education. These associations have created websites where parents can sign saying they do not want their children to be provided with sexual education, and instead give their approval for these classes to be spent on preparing children for their final exams. This did not trigger any reaction from the Ministry of Education, despite being contrary to the recent PiS-led education reform which stated schools should "take action to shape students' attitudes and respect for social norms . . . including openness and tolerance."³²⁷

1) The Catholic Church's firm control over comprehensive sexual education

All of this results in alleged sexual education being provided in a way which is not compatible with international human rights and human rights education standards. Members of the Transfuzja Foundation and of the Polish Teachers' Union explained that classes on sexual education in primary and secondary schools are non-mandatory and called "Preparation for Family Life," which is part of a different subject called "Knowledge about Society" (civic education).³²⁸ They are permeated with conservative views and promote exclusively a traditional family model coherent with the one promoted by the Catholic Church – most of the time, these classes are taught by priests or catechists. "The best way to prevent pregnancies is a glass of water before or after sex or, even better, instead of sex. That's what we are taught."³²⁹ Members of the Transfuzja Foundation explained these classes were about "saying no to drugs and sex," and that "people don't go to these classes."³³⁰ Sexual education does not improve at university level, where classes on the topic are "optional at best."³³¹

There are significant discrepancies between the content of Polish manuals on sexual education and relevant regional human rights standards. While the Council of Europe has published such resources – notably *Compass* and *Compasito* –, "teachers are afraid to use these manuals," according to Dr. Machińska.³³² She explained that, "while there is no official position [against the use of these manuals, the authorities exert enough] informal pressure through declarations in the media to prevent teachers from using them."³³³

Textbooks used in these courses are thus often inadequate, as they tend to reinforce gender stereotypes and do not appear to be up to scientific standards on sexual orientation. This is due to the significant leeway given to the Church in this area. As members of the Polish Teachers' Union explained, two hours per week are dedicated to religion in school, since kindergarten: "children are indoctrinated from the very

325. interview with members of the Polish Teachers' Union, Wednesday 21 June, in Warsaw, Poland.

326. interview with members of the Polish Teachers' Union, Wednesday 21 June, in Warsaw, Poland.

327. interview with members of the Polish Teachers' Union, Wednesday 21 June, in Warsaw, Poland; see Act of 14 December 2016, Educational Law (Journal of Laws of 2017, items 59 and 949), Art. 44.

328. interview with members of the Transfuzja Foundation, Monday 19 June, in Warsaw, Poland; interview with members of the Polish Teachers' Union, Wednesday 21 June, in Warsaw, Poland.

329. interview with members of the Transfuzja Foundation, Monday 19 June, in Warsaw, Poland.

330. interview with members of the Transfuzja Foundation, Monday 19 June, in Warsaw, Poland.

331. interview with members of the Transfuzja Foundation, Monday 19 June, in Warsaw, Poland.

332. interview with Hannah Machińska, former Director of the Office of the Council of Europe in Poland, and current lawyer and Professor at the University of Warsaw, Monday 19 June 2017, in Warsaw, Poland.

333. interview with Hannah Machińska, former Director of the Office of the Council of Europe in Poland, and current lawyer and Professor at the University of Warsaw, Monday 19 June 2017, in Warsaw, Poland.

ALL DOWNHILL FROM HERE :

The rapid degradation of the rule of law in Poland: what it means for women's sexual and reproductive rights, and LGBT+ persons' rights

beginning." Because religion teachers are exempt from Ministry of Education rules, the Church decides what is required for them to become teachers. They are then exempt from scrutiny, meaning they are not subject to inspections by national authorities. This is especially problematic regarding sexual education as this is an important area of activity for Church-appointed teachers, who are therefore able to teach classes on this topic, free from any scrutiny, and thus provide children with sexual education utterly incompatible with international human rights law, human rights, and scientific standards.

Moreover, textbooks which are allowed to serve for educational purposes on this topic are not scientifically accurate. Members of the Polish Teachers' Union explained that textbooks on sexual education are written by independent authors for private publishing companies, which need to obtain an authorisation from the Ministry of Education for their textbooks to be accepted and introduced as educational material. The Minister can revise a textbook on his own or appoint someone (from a list) to do so. One member of the Polish Teachers' Union explained: "I have written an article on sexual education myself and at the time there were about 20 names of revisors on the list. 80% of these people were connected to the Catholic Church – often fundamentalists."³³⁴ With this system in place, and the fact that publishing companies will do everything possible so that the textbooks they invest in can serve as educational material, "essentially all of our textbooks are revised by a priest."³³⁵

The Church also does not hesitate to call out and publicly shame teachers who attempt to provide sexual education. Members of the Polish Teachers' Union for instance mentioned the case of a kindergarten teacher who was trying to sensitise kinder-gardeners to gender equality by putting together a play where children would imagine their life as their opposite sex, in order to fight stereotypes. The teacher was called out by a priest during a mass, who accused him of "changing boys into pedophiles and homosexuals."³³⁶ This happened in a small village where inhabitants know each other, and the headmaster was insulted on the streets and his dismissal required for having "condoned" this programme.

2) Lack of qualified teachers for comprehensive sexual education courses

Although there used to be an explicit obligation for schools to carry out anti-discrimination education, under the Act of 7 September 1991 on the system of education,³³⁷ this has been repealed by the current PiS-led government as soon as they came into power. The government proceeded to enact an educational reform, which, among others, got rid of this explicit obligation, replacing it with a broader sounding wording, alluding to the fact that schools should "take action to shape students' attitudes and respect for social norms . . . including openness and tolerance."³³⁸

This is illustrative of the current government's institutional policy not to promote equality and prevent discriminatory attitudes within Polish society, and is coupled with the fact that school staff lack knowledge and are not given an opportunity to train themselves on those issues. This results in teachers mistaking civic education for anti-discrimination and equality one.

When it comes more specifically to sexual orientation and gender identity, according to the above mentioned survey, over 60% of Polish students stated that sexual orientation issues were not addressed in schools and indeed these remain taboo in most learning facilities in Poland.³³⁹ There therefore appears to be an almost overt willingness of the current government not to educate its youth in favour of tolerance, by not even educating its teachers.

Furthermore, teachers mostly appear not to be qualified to teach sexual education, particularly LGBT+ issues³⁴⁰ and do not receive training on either this or on how to counter homophobic incidents and

334. interview with members of the Polish Teachers' Union, Wednesday 21 June, in Warsaw, Poland.

335. interview with members of the Polish Teachers' Union, Wednesday 21 June, in Warsaw, Poland.

336. interview with members of the Polish Teachers' Union, Wednesday 21 June, in Warsaw, Poland.

337. Act of 7 September 1991 on the system of education (Journal of Laws of 2016, item 1943), Art. 21.

338. interview with members of the Polish Teachers' Union, Wednesday 21 June, in Warsaw, Poland; see Act of 14 December 2016, Educational Law (Journal of Laws of 2017, items 59 and 949), Art. 44.

339. Polish informal coalition for the CCPR for consideration of the UN Human Rights Committee, "Alternative report to the ICCPR", 21 July 2016. The survey also shows that when it comes to verbal abuse, in 3,5% of cases the offenders are teachers.

340. <ARAT Coalition in Consultative Status with the ECOSOC on behalf of CEDAW Coalition of Polish NGOs, "Alternative follow up information on the steps taken to implement the recommendations indicated in Concluding Observations on the combined 7th and 8th periodic reports of Poland submitted to the UN Committee on Elimination of Discrimination against Women", 17 January 2017.

ALL DOWNHILL FROM HERE :

The rapid degradation of the rule of law in Poland: what it means for women's sexual and reproductive rights, and LGBT+ persons' rights

bullying at school.³⁴¹ Indeed, while teachers can specialise in sexual education, those who do have a hard time finding employment, which deters many from seeking to specialise in this area. The result is that other teachers, often religion teachers (catechists) or priests, take on the task of providing sexual education, thus themselves being uneducated on the topic.³⁴² One member of the Transfuzja Foundation indeed recalled: "when I asked questions to the [sexual education] teacher, he didn't know the answer."³⁴³

To remedy this lack of State-sponsored comprehensive sexual education, civil society organisations have tried to step in to dispense such classes, sometimes on a paid contract. The role of civil society in that regard is crucial, as MP Joanna Scheuring-Wielgus explained: "There has been a deterioration regarding women's rights, LGBT+ rights, and sexual education [since 1993] . . . especially in Polish education. If they come into play it is only through NGOs that are forcing educational activities."³⁴⁴ Indeed, the school curriculum was changed in 1999, which promoted type A sexual education, promoting complete abstinence, and considering non-conforming sexual orientation and gender identity as illnesses. While sexual educators groups such as Ponton have been trying to provide scientifically accurate type C sexual education in schools, type A sexual education is currently on the rise due to the barriers anti-rights group raise in the face of sexual educators groups. In that regard, members of the Helsinki Foundation for Human Rights said that in May 2017, Ordo Iuris had launched a campaign whereby parents can insert the name of a school on a web page and Ordo Iuris will file an access to information request asking the school if some training is provided about LGBT+ rights and gender. "This initiative is aimed at the main sexual educators group, Ponton, who Ordo Iuris is going after now."³⁴⁵

At the time of writing this report, the Minister of Education has implemented the government's plan for redrawing the Polish school system.³⁴⁶ The reform was adopted by the Parliament and signed into law by the Polish President in early January 2017,³⁴⁷ and has been implemented starting the 2017-2018 academic year. As a result, school curricula have undergone substantial reform: the sexual education curriculum in biology class no longer includes instruction on contraceptive methods, and the space reserved in school curricula to anti-discrimination and equality issues has been significantly reduced. The discrimination and violence faced at school by lesbian, gay, bisexual, and transgender persons does not stop at school but continues in the workplace, as explained in the next chapter of this report.

IV. Right to work hindered

A) Lack of a protective legal framework in line with United Nations standards

In the field of employment, Council Directive 2000/78/EC of 27 November 2000 establishes a general framework for equal treatment in employment and occupation³⁴⁸ (hereafter "the Employment Equality Directive"), and lists sexual orientation as a protected ground.³⁴⁹

While Polish law seems to implement the directive, the latter is itself not compliant with U.N. standards. The right to work is protected under Art. 6 ICESCR, and must be implemented so as to ensure its exercise "on a basis of equality,"³⁵⁰ which includes the prohibition of any discrimination, "including on the grounds of sexual identity or other status"³⁵¹ such as gender identity, as indicated by the CESCR in its General Comment No. 8. The State's non-discrimination obligation applies "even in times of severe resource constraints" when "disadvantaged and marginalized individuals and groups must be protected by the

341. 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, 2016.

342. interview with members of the Polish Teachers' Union, Wednesday 21 June, in Warsaw, Poland.

343. interview with members of the Transfuzja Foundation, Monday 19 June, in Warsaw, Poland.

344. interview with MP Joanna Scheuring-Wielgus, Tuesday 20 June, in Warsaw, Poland.

345. interview with Helsinki Foundation for Human Rights, Tuesday 20 June, in Warsaw, Poland.

346. Ministry of National Education of the Republic of Poland, "Podsumowanie Ogólnopolskiej Debaty o Edukacji".

347. European Foundation for the Improvement of Living and Working Conditions, Poland: Government enacts radical education reform despite opposition, 23 March 2017.

348. Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.

349. Council Directive 2000/78/EC of 27 November 2000, Art. 1.

350. U.N. Committee on Economic, Social and Cultural Rights, General Comment No. 18, U.N. Doc. E/C.12/GC/18, para. 12 (6 February 2006).

351. U.N. Committee on Economic, Social and Cultural Rights, General Comment No. 18, U.N. Doc. E/C.12/GC/18, para. 12 (6 February 2006).

ALL DOWNHILL FROM HERE :

The rapid degradation of the rule of law in Poland: what it means for women's sexual and reproductive rights, and LGBT+ persons' rights

adoption of relatively low-cost targeted programmes.”³⁵²

Therefore, by not mandating the protection of persons with non-conforming gender identity or expression in the field of employment, the Employment Equality Directive is not in accordance with relevant international human rights standards.

In Polish law, the Employment Equality Directive is implemented through the ETA,³⁵³ which only prohibits discrimination on the ground of one's sexual orientation in the field of employment. In this sense, while Polish law seems in accordance with European standards, both the latter and Polish legislations are currently falling short of international human rights standards.

The Labour Code prohibits discrimination on the ground of sexual orientation in the traditional labour relations. It also introduces the concepts of direct and indirect discrimination. It should be mentioned, however, that the provisions encompassed within the Labour Code often go unused by victims of discrimination, because of a lack of awareness as to their existence, followed by a high level of mistrust in their effectiveness. Even though employers are responsible for making anti-discrimination legislation available to their employees, it often goes unnoticed since it is neither common nor obligatory to organize anti discrimination training or seminars. Employees are often also not aware that possible, repressive actions taken by the employer as a response to their demands based on anti-discrimination Labour Code provisions are also prohibited, therefore employees often choose not to act out of fear of, for instance, losing their jobs.

This, combined with the inexistence of functioning enforcement mechanisms (see *Chapter 1, section II B) Lack of effective remedy against discrimination for persons with non-conforming sexual orientation, gender identity, or expression*), results not only in transgender persons facing discrimination without any legal protection, but also in lesbian, gay, and bisexual persons not being able to enforce their written right to be protected from such discrimination.

B) Implementing the Employment Equality Directive: legal gaps bear negative consequences

1) Invoking religion to justify discrimination: a legal loophole

A particular issue, of great importance in a country like Poland where the weight of the Church is deeply felt, is that of the interpretation given by the authorities, including at the highest level, of the exception provided for in Art. 4(2) of the Employment Equality Directive for occupational activities within churches and other public or private religious organisations. In these cases, EU law allows member States to differentiate between employees based on their religion or belief when the nature or context in which the activities are to be carried out makes a person's religion or belief a legitimate occupational requirement. This was first enacted with the case of employees of religious institutions' in mind; e.g. a church can choose to employ Catholics, a mosque Muslims, etc. Although the Directive clearly states that this provision should be read in accordance with other constitutional and EU principles and obligations and must not be used to excuse discrimination on other grounds, the provision seems to have often been interpreted in a way which allows employers to discriminate against their employees based on their sexual orientation.³⁵⁴

A case brought by PSAL³⁵⁵ concerns a man, who, for four years, had been regularly employed by a church institution to be a speaker at annual events, and was told he would no longer be awarded any further

352. U.N. Committee on Economic, Social and Cultural Rights, General Comment No. 18, U.N. Doc. E/C.12/GC/18, para. 12 (6 February 2006).

353. Act of 3rd December, 2010 on the implementation of some regulations of European Union regarding equal treatment, Journal of Laws of 2010, No. 254, item 1700.

354. European Commission, DG Justice, Combating sexual orientation discrimination in the EU, December 2014, p. 64. The Commission notes how this exception has been used for instance to justify the possibility for faith based schools to discriminate against teachers based on their sexual orientation. The European Committee of Social Rights of the Council of Europe also recommended that Poland collect data regarding discrimination based on sexual orientation in the labour market and provide information on the application of relevant legislation by the courts, as well as on the actions undertaken by Polish authorities to combat this discrimination. The Committee especially referred, in its November 2008 conclusions on Poland, to the Mirosław Stielatycki's case, who had been dismissed from his position as director of the National Teacher Training Center for publishing the CoE's official guide for teachers Compass – Education on Human Rights, which according to the Minister of National Education, included statements which could be regarded as a promotion of homosexuality.

355. Interview with members of PSAL, Monday 19 June 2017, in Warsaw, Poland.

ALL DOWNHILL FROM HERE :

The rapid degradation of the rule of law in Poland: what it means for women's sexual and reproductive rights, and LGBT+ persons' rights

contract after he posted a message on his social media account saying he supported LGBT+ rights. The church institution denied this was linked to his social media post. Following a lawsuit brought by the man against the church institution, the Court first dismissed the claim, arguing that the Equal Treatment Act allowed churches and other religious organisations to refuse to work with persons whose beliefs are not in line with their own and that therefore the treatment against the employee did not constitute discrimination.³⁵⁶ The decision was however overturned on appeal by the second instance court³⁵⁷ which stated that in this particular case the applicant has suffered discrimination because of his perceived association to LGBT+ rights. The court found that his personal beliefs did not constitute a genuine and determining occupational requirement, thereby rendering the employer's acts discriminatory.

2) Transgender persons in particular face heightened difficulties in accessing employment

Transgender persons' gender expression and legal status are among the main obstacles preventing them from accessing the labour market.³⁵⁸ Rather than breaking down barriers faced by transgender persons in accessing the labour market, the current government introduced new rules (on diplomas and higher education certificates) in 2016, which have further exacerbated transgender persons' difficulties by requiring those having obtained legal gender recognition to deliver the court's judgment and copies of it to the higher education institution, which is under the obligation to issue a new one. The same goes for lower stages of education.³⁵⁹

This results in an additional administrative weight on transgender persons, leaving them unable to certify their education pending the new documents' issuance.

Transgender persons also face obstacles when seeking new employment opportunities, as those who went through legal gender recognition often receive employment certificates indicating their previous legal status. This, in effect, forces them to disclose their status to their new employer, thus breaching their right to privacy, and prevents those who do not want to disclose it from seeking employment.³⁶⁰ As a result, transgender persons face high unemployment levels, but no action has been undertaken by the authorities to address this issue, despite the State's clear immediate obligation under the ICESCR to adopt "relatively low-cost targeted programmes"³⁶¹ to protect disadvantaged and marginalised individuals and groups, even in times of severe resource constraints.

Transgender persons also reportedly suffer from harassment in the workplace, including verbal abuse by both co-workers and managers, and sexual harassment. However, this phenomenon remains quite hidden, as victims do not report incidents both for fear that they would lose employment and due to limited awareness about their rights as employees.³⁶² The only available data are collected by NGOs, whereas the issue remains largely ignored by the authorities.

At EU level, while sexual orientation is only listed as a protected ground in employment, a recent proposal was made to extend this protection to other areas such as accessing goods and services under a so-called "Horizontal Directive,"³⁶³ which is currently being debated in EU institutions. The case of Poland is a perfect example of why this is crucially needed.

V. Attempts to hinder LGBT+ rights organisations to fight for equal access to goods and services

356. Sad Fejonowy in X, 16 December 2016, YZ, PTFA on behalf of YZ v. *Catholic Diocese of H.*, ref. number: I C 1326/15.

357. Sad Okregowy in S, 22 March 2017; reference number: 75/17.

358. TransFuzja, Report on Poland, 27th session of the Universal Periodic Review, September 2015.

359. Email exchanges with the Polish Society of Anti-discrimination Law, 6 July 2018.

360. TransFuzja, Report on Poland, 27th session of the Universal Periodic Review, September 2015. See also KARAT Coalition, Alternative report on the implementation of the Convention for the Elimination of All Forms of Discrimination against women (CEDAW) Poland, September 2014.

361. U.N. Committee on Economic, Social and Cultural Rights, General Comment No. 18, U.N. Doc. E/C12/GC/18, para. 12 (6 February 2006).

362. *Situation of LGBT Persons in Poland, 2012*; KARAT Coalition, Alternative report on the implementation of the Convention for the Elimination of All Forms of Discrimination against women (CEDAW), Poland, September 2014.

363. Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation, COM/2008/0426 final.

ALL DOWNHILL FROM HERE :

The rapid degradation of the rule of law in Poland: what it means for women's sexual and reproductive rights, and LGBT+ persons' rights

The Yogyakarta Principle No. 2 elaborates on States' actions with regards to LGBT+ persons' access to goods and services, recommending that States "take appropriate steps to ensure that reasonable accommodation is provided, where needed, in order to promote equality and eliminate discrimination on the basis of sexual orientation, gender identity, gender expression . . . including in access to services."

As regards access to goods and services, no protection is afforded in Polish law against discrimination based on sexual orientation and gender identity in this area. However, LGBT+ persons and the organisations and lawyers representing them used to apply other provisions of domestic law, such as the provision contained in Art. 138 of the Petty Crimes Code³⁶⁴ which sanctions the refusal to sell goods and provide services, to challenge discrimination based on sexual orientation and gender identity in these situations. However, the use of this provision for such purposes has recently been challenged by the Polish authorities at the highest level.

FIDH received information on a case brought by the LGBT Business Forum against a printing company in Lodz, Poland which refused to print a roll-up for the applicant based on their work in favour of LGBT+ rights. Following a motion by the Polish Human Rights Commissioner requesting the police to open an investigation in relation to discrimination in access to services under Art. 138 of the Petty Crimes Code, the Lodz-Widzew District Court fined the company following a simplified procedure. The printing company appealed the decision. At that point, the Minister of Justice, who is now also the Prosecutor General,³⁶⁵ Zbigniew Ziobro, intervened alongside ultra-conservative NGO Ordo Iuris, by issuing a public statement claiming that the court's decision was unfair.³⁶⁶ A new prosecutor was also appointed to the case. The Minister argued that the decision was unconstitutional as it infringed the printing house's and its employees' constitutionally protected rights to freedom of thought, beliefs and views, as well as their economic freedom and freedom of transactions. It also pointed to the fact that the decision put organisations representing sexual minorities in a "privileged position"³⁶⁷ by disregarding an employee's right not to support homosexual content.

Although the first instance court's ruling was eventually upheld on appeal, the Minister announced that he would challenge the decision both before the Supreme Court and the Constitutional Tribunal, questioning the law on minor offences' compatibility with freedom of conscience and economic freedom. The case was also emblematic of the government's position on LGBT+ rights as well as increasing government interference in the courts, functioning whenever sensitive issues are at stake.

The Prosecutor General challenged the court's decision in front of the Supreme Court. The Supreme Court pointed out that freedom of conscience and religious beliefs may justify a refusal to provide a service, however a balance between freedom of conscience and religious beliefs and the prohibition of discrimination should always be struck in the light of the circumstances of the case. According to the court: "When religious beliefs are in obvious contradiction with the features and character of the service, it is allowed to refuse to perform such a service, even if it is in conflict with other values, including constitutional ones, such as the prohibition of discrimination. However, a refusal cannot be justified by individual characteristics of persons for whom this service is to be performed, such as religious denomination, manifested views or sexual preferences."

The Supreme Court pointed out that, in this particular case, the accused printer, in refusing to perform service motivated by his convictions, had no legitimate reason. His task (printing) was purely reproductive (not original) and only involved the performance of purely technical activities. The court also noted that the roll up was an advertising of the foundation containing its logotype. The contents contained in it did not promote behaviors that could be contrary to the values and canons of the Catholic faith. In the court's opinion, the refusal to provide the service would be justified, for example, if the service consisted of creating a specific work that would create a conflict between the artist's values and not if the service consists in performing ordinary technical activities. Justifying the verdict, the judge rapporteur also

364. Law of 20 May 1971 on petty crimes (*Ustawa z dnia 20 maja 1971 r. Kodeks wykroczen*) art. 138 ("Anyone who, being a professional service provider, demands or collects payment higher than that in force, or deliberately refuses to provide that service without just cause, shall be subject to a fine").

365. Following recent reforms, the two functions have been merged. See Act on the public prosecutor's office (*Dz. U. 1 of 15 February 2016 r.*).

366. Ministry of Justice of the Republic of Poland, Statement of 26 July 2016: <https://www.ms.gov.pl/pl/informacje/news,8476,oswiadczenie_ministra_sprawiedliwosci_prokuratora.html> (last visited 14 July 2018).

367. Ministry of Justice of the Republic of Poland, Statement of 26 July 2016: <https://www.ms.gov.pl/pl/informacje/news,8476,oswiadczenie_ministra_sprawiedliwosci_prokuratora.html> (last visited 14 July 2018).

ALL DOWNHILL FROM HERE :

The rapid degradation of the rule of law in Poland: what it means for women's sexual and reproductive rights, and LGBT+ persons' rights

quoted the content of the ECHR and the Catechism of the Catholic Church, which in paragraph 2357 states that homosexual persons "should be treated with respect, compassion and tenderness" and that "any signs of unjust discrimination should be avoided against them."

The Minister's intervention in the case was quite extraordinary, especially when considering the pettiness of the offence, and was rather seen by many³⁶⁸ as an attempt to influence the decisions taken by independent courts on a sensitive matter such as discrimination based on sexual orientation and gender identity in a way that would reflect the government's stance on these issues. The Minister announced that he would challenge the decision before the Constitutional Tribunal, questioning the law on petty crimes' compatibility with freedom of conscience and economic freedom. The case was also emblematic of the government's position on LGBT+ rights as well as increasing government interference in the courts' functioning whenever sensitive issues are at stake.

It is legitimate to wonder what future proceedings' outcome will be now that reforms enacted in parallel seriously threaten the courts' independence, thus risking undermining the last remaining bastion in protecting rights and freedoms, particularly for minority groups such as lesbian, gay, bisexual, and transgender persons, who do not engage the government's sympathies. As for the outcome of a procedure before the (reformed) Constitutional Tribunal, the latter has already shown its readiness to take decisions which would not displease the political forces in power. The case, and the Minister's intervention, also prompted conservative groups, such as *Ordo Iuris*, to submit a petition³⁶⁹ to reform the Petty Crimes Code by deleting the provisions used by civil society organisations and lawyers to challenge discrimination on unprotected grounds in this area.³⁷⁰

VI. Difficulties in accessing healthcare

A) Unprotected by law: Polish legal framework on discrimination in healthcare

Under Art. 12(1) of the ICESCR, States "recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health."³⁷¹ This provision must be read together with Art. 2(2) of the ICESCR prohibiting discrimination in the enjoyment of the rights contained in the Covenant, including on the basis of sexual orientation or gender identity.

Applied specifically to the situation of LGBT+ persons, the right to health encompasses the right to access the "highest attainable standard of gender reaffirming healthcare, on the basis of an individual's free, prior, and informed consent"³⁷² and the fact that this service be provided by the public health system or that the costs are covered or reimbursable under private and public health insurance schemes.³⁷³

A recent study by the European Agency for Fundamental Rights (hereafter "FRA") has pointed out that in Poland, LGBT+ issues are either overlooked in medical school or presented as a mental illness or sexual behaviour disorder,³⁷⁴ contrary to Council of Europe Recommendation 2010(5).

Although the Polish Constitution provides that everyone shall be entitled to healthcare³⁷⁵ and the authorities declare themselves committed to ensuring equal access to healthcare services for all citizens, without differentiations based on their personal characteristics,³⁷⁶ the reality appears quite different. Sexual orientation and gender identity are not among protected grounds in Polish domestic law, thereby not benefiting from any other protection from discrimination in accessing healthcare than the broadly-worded constitutional provision.

368. See Helsinki Foundation for Human Rights, "Ministry of Justice criticises district court ruling, *HFHR* comments," 2 August 2016; Judges Association *Iusticia* "Opinia iustitii w sprawie badania konstytucyjności nadzoru Min. Sprawiedliwości nad sądami," 11 November 2016; Rzeczpospolita, "Drukarze nie mają klauzuli sumienia - rozmowa z Ireną Kamińską," 27 July 2016.

369. *Ordo Iuris*, *Zlikwidujmy komunistyczne relikty w kodeksie wykroczeń*, <<https://www.meszplyw.pl/zlikwidujmy-komunistyczne-relikty-w-kodeksie-wykroczen-m1260.k.html>> (last visited 24 September 2018).

370. On this case, see also European Network of legal experts in gender equality and non discrimination, Printing house employee found guilty of refusal to print a roll-up for LGBT initiative. Unprecedented reaction of Minister of Justice, 28 July 2017.

371. International Covenant on Economic, Social and Cultural Rights, Art. 12(1).

372. Yogyakarta Principle No. 17 (k).

373. Yogyakarta Principle No. 17 (l).

374. FRA, Professionally speaking: challenges to achieving equality for LGBT people, 2016, p. 73.

375. Polish Constitution of the Republic of Poland art. 68(1).

376. See Viewpoints of the Polish authorities regarding the fifth report on Poland by the European Commission against Racism and Intolerance, Warsaw, 2 June 2015, Appendix to ECRI report on Poland (fifth monitoring cycle), 2015.

ALL DOWNHILL FROM HERE :

The rapid degradation of the rule of law in Poland: what it means for women's sexual and reproductive rights, and LGBT+ persons' rights

B) Poorly sensitised healthcare personnel generates discriminatory attitudes towards LGBT+ patients

Although generally available at the same conditions as for heterosexual patients, healthcare is not always easily accessible for lesbian, gay, and bisexual persons, and the services offered to them are reported to be often below quality standards.

According to a study mandated by the Polish Human Rights Commissioner³⁷⁷ in 2014, up to 20% of LGBT+ patients face discrimination in the healthcare system. This is echoed by various civil society organisations' reports.³⁷⁸ This is due, to a large extent, to poor knowledge and scarce sensitivity for LGBT+ issues among healthcare professionals,³⁷⁹ which is only a reflection of the lack of knowledge and sensitivity of the highest level Polish officials on the subject. For instance when the investigating team met with members of the Ministry of Health, their knowledge of health issues specific to LGBT+ persons appeared limited to the mere need for prevention activities targeted toward these persons regarding STDs and HIV/AIDS.³⁸⁰ This limited awareness among authorities has implications on how LGBT+-related health issues are addressed in medical schools' curricula. Members of both KPH and Lambda indeed explained that "LGBT+ persons are at best overlooked in medical schools: because no complaints are received from patients, the authorities consider the situation is fine."³⁸¹ Therefore, while high level authorities such as the Ministry of Health affirm that "procedures for healthcare – the whole healthcare package (gynecology, mental health) – is provided to all patients regardless their sex or sexual orientation,"³⁸² they however do not see the need for specific legislative provisions to be enacted or policies to be put in place in order to ensure the protection from LGBT+ persons from healthcare personnel's biased and discriminatory attitudes in practice: "We treat these people as other patients, we do not need special laws."³⁸³ This results in little understanding of LGBT+ issues and not only fuels stereotypes about these persons among medical professionals but also puts LGBT+ patients at risk. Szymon, a transgender man who is a member of the Transfuzja Foundation indeed recalled:

"When I was 17, I was at a psychiatric hospital for a month because I was depressed and wanted to commit suicide. I asked to be called by my [male] name, but they did not accept it. They put me in a room with a girl and had to use the girls' bathroom. This didn't help me in my depression. This hospital sent me to a mental health and neurology clinic saying 'the patient thinks he is transsexual and considers changing her sex,' which was wrong on many levels! [This clinic] gave me a diagnosis of 'disorder undefined.' They would not listen to me."³⁸⁴

The lack of training of medical professionals causes tremendous barriers to transgender persons' access to healthcare in particular, in Poland. A striking example is transgender persons' extremely difficult access to gender reaffirming procedures.

C) "They [doctors] do not educate themselves:"³⁸⁵ an insight into transgender persons' attempt to undertake a gender reaffirming process in Poland

Gender reaffirming procedures are not easily accessible nor affordable in Poland, and their quality appears to be often below scientifically recognised medical standards. This is due in part to the same reasons indicated above which are common to both lesbian, gay, bisexual, and transgender persons and to other factors.

377. Human Rights Commissioner, Equal treatment perceived by non-heterosexual patients in healthcare, 2014. The study points to dignity and privacy rights violations as well as violations of the right to the highest attainable standards of health as the most widespread violations.

378. KPH, Lambda Warszawa, Transfuzje, Social Situation of LGBT in Poland, 2012.

379. Fifth report on Poland by the European Commission against Racism and Intolerance, Warsaw, 2 June 2015, Appendix to ECRI report on Poland (fifth monitoring cycle), 2015; FRA, Professionally speaking: challenges to achieving equality for LGBT people, 2016.

380. interview with members of the Polish Ministry of Health, Thursday 22 June 2017, in Warsaw, Poland.

381. interview with members of Campaign Against Homophobia and Lambda Warsaw, Thursday 22 June 2017, in Warsaw, Poland.

382. interview with members of the Polish Ministry of Health, Thursday 22 June 2017, in Warsaw, Poland.

383. interview with members of the Polish Ministry of Health, Thursday 22 June 2017, in Warsaw, Poland.

384. interview with members of the Transfuzja Foundation, Monday 19 June 2017, in Warsaw, Poland.

385. interview with members of the Transfuzja Foundation, Monday 19 June 2017, in Warsaw, Poland.

ALL DOWNHILL FROM HERE :

The rapid degradation of the rule of law in Poland: what it means for women's sexual and reproductive rights, and LGBT+ persons' rights

A first obstacle to transgender persons' being able to undergo gender reaffirming procedures is financial. Although some costs related to gender reaffirming procedures are covered by the national healthcare plan, most costs related to medical reaffirmation are not funded by the State. Even hormone therapy, which is mandatory for both transgender men and women in order to obtain legal gender recognition, and which is extremely costly in Poland, is covered only up to 30%, and only applies to hormonal treatment (not to all hormonal drugs),³⁸⁶ which prevents many transgender persons from undergoing the procedure.³⁸⁷ Access to healthcare funds is made even more difficult by the fact that a person must have undergone full genital reaffirming surgery in order to be able to have the costs related to the reaffirmation funded, as the national health insurance is provided based on the patient's assigned gender.³⁸⁸ Cases have also been reported where pharmacists denied reimbursement to a transgender person for medical products linked to the gender towards which they were transitioning when this had not yet been legally recognised.³⁸⁹ Finally, not all drugs are available on the market in Poland, thus some transgender women prefer to travel to Czech Republic to gain access to pills and plasters available there for a much lower price.³⁹⁰

Another obstacle is the limited availability of doctors willing to perform gender reaffirming procedures, and their lack of training on the subject. About ten doctors, scattered around Poland are indeed specialized in gender treatment, as explained the Transfuzja Foundation, "and each and every one of them has something wrong."³⁹¹

Szymon, a transgender man who is a member of the Transfuzja Foundation recalled going to a public hospital, and doctors there having "very old fashioned ways to find out I was transgender: very binary. Also, they only focused on transsexual, not transgender [persons]. [The doctor] would only ask me if I wanted to . . . have a hysterectomy. He pressured me into telling him I would change gender in the next two years . . . because in Poland it's illegal to make someone infertile."³⁹² He mentioned other cases of doctors who provide gender reaffirming services and lack the necessary knowledge to assist their patients properly. "[Those who prescribe hormones] are sexologists, not endocrinologists, so they know nothing about hormones. Transgender persons are extra to their work. The situation is the same whether in public hospitals or private practices."³⁹³ When Szymon went to consult a criminal sexologist, he knew more than the doctor did about the transition process. "They know more than usual doctors because transgender persons keep coming to [see them] to get their hormones. They worked with transgender patients for many years so they think they know everything, [but] their knowledge of transgender issues is very accidental. They don't educate themselves. I feel they are still experimenting."³⁹⁴ For instance, Szymon's doctor, in his care with transgender persons, uses standards which are obsolete. "They are the only ones who give this treatment for free, and they know they are in power. So they don't want to learn."³⁹⁵

Szymon also mentioned several cases of doctors who would take advantage of their patients seeking to undertake a gender reaffirming process – for instance, "one doctor would give you hormones on your first appointment but he takes pictures of patients' genitalia, allegedly for a project he has,"³⁹⁶ another was accused of molesting patients, or some will draw blood and not explain what would be tested. However, given the very limited number of doctors providing these services, nobody wants to risk reporting these doctors, for fear it will cut their access to gender reaffirming procedures.

Even in the face of all these misconducts by doctors, endangering LGBT+ patients' physical and mental integrity, Polish authorities refuse to acknowledge the need for specific training for medical personnel on LGBT+ issues.

D) Lack of interest to train healthcare personnel on LGBT+ issues on the part of Polish

386. Email exchanges with members of the Transfuzja Foundation, June 2018.

387. Transfuzja, Report on Poland, 27th session of the Universal Periodic Review, September 2015.

388. "RA, Professionally speaking: challenges to achieving equality for LGBT people, 2016.

389. <ARAT Coalition, Alternative report on the implementation of the Convention for the Elimination of All Forms of Discrimination against women (CEDAW), Poland, September 2014.

390. Email exchanges with members of the Transfuzja Foundation, June 2018.

391. Interview with members of the Transfuzja Foundation, Monday 19 June 2017, in Warsaw, Poland.

392. Interview with members of the Transfuzja Foundation, Monday 19 June 2017, in Warsaw, Poland.

393. Interview with members of the Transfuzja Foundation, Monday 19 June 2017, in Warsaw, Poland.

394. Interview with members of the Transfuzja Foundation, Monday 19 June 2017, in Warsaw, Poland.

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ALL DOWNHILL FROM HERE :

The rapid degradation of the rule of law in Poland: what it means for women's sexual and reproductive rights, and LGBT+ persons' rights

authorities

The authorities have failed to take adequate action to address discrimination against LGBT+ persons in healthcare. Instead, they tend to dismiss or diminish the problem, as much they have done in other areas where this group suffers discrimination. Following the request by LGBT+ rights organisation KPH to the Ministry of Health to recommend that anti-discrimination, particularly regarding LGBT+ issues, be included in medical universities' curricula, the Ministry replied negatively by affirming that medical professionals are already trained adequately on those matters and that in any event medical universities are autonomous and cannot be instructed on how to devise their curricula.³⁹⁷ The response given by the Commissioner for Patients' Rights³⁹⁸ to a KPH offer to cooperate to raise awareness among LGBT+ persons about their rights in the healthcare system was equally negative. Rather than seeing the fact that no cases had been officially reported as a problem in itself that needed to be addressed (because of lack of awareness of one's rights, deterrence, etc.), the Commissioner for Patients' Rights saw this as an indication that there was no need to undertake any action in this regard.

Persons with non-conforming gender identity or expression face issues accessing aforementioned gender reaffirming procedures, and even if they do, another hurdle lies in accessing legal gender recognition procedures.

CHAPTER 2: VERBAL AND PHYSICAL VIOLENCE MOTIVATED BY PREJUDICE AGAINST LGBT+ PERSONS IN POLAND

I. Discrepancy between international and regional human rights obligations and Poland's domestic framework

A) International and European legal standards

1) Standards regarding hate crimes

Twelve U.N. organizations recently issued a joint-statement calling on States to incorporate homophobia and transphobia as aggravating factors in hate crime laws, recognising that crimes motivated by prejudice are "underreported and often not properly investigated and prosecuted, leading to widespread impunity and lack of justice, remedies and support for victims."³⁹⁹

This statement echoes regular calls from the Council of Europe, as in the Appendix to the Recommendation CM/Rec(2010)5 which urges member States to "ensure effective, prompt and impartial investigations into alleged cases of crimes and other incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator" and to take into account "a bias motive related to sexual orientation or gender identity . . . as an aggravating circumstance."⁴⁰⁰ This implies member States must ensure that law enforcement structures, including the judiciary, be trained so as to be able to identify such crimes and "provide adequate assistance and support to victims and witnesses."⁴⁰¹

Directive 2012/29/EU of the European Parliament and the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (hereafter the "Victims' Rights Directive") lays down procedural guarantees for victims of gender-based violence. It expressly encompasses persons with actual or perceived non-conforming sexual orientation, gender identity or expression in its scope, stating "victims of crime should be recognised and treated in a respectful, sensitive and professional manner without

397. <PH, "Social Situation of LGBT persons. Report for the years 2015-2016."

398. The Commissioner (or Ombudsperson) for Patients' Rights is appointed to protect patients' rights defined in the Act on Patients' Rights and the Commissioner for Patients' Rights of 6 November 2008, under the supervision of the Prime Minister of Poland and within the Office of the Patients' Rights. Its activities include dealing with complaints, proposing draft laws on patients' rights, raising awareness among the population on their rights as patients, cooperating with civil society organisations, among others. See <<https://www.rpp.gov.pl/en/about-us/law-regulations/>>.

399. The 12 U.N. organizations include: LO, OHCHR, UNDP, UNESCO, UNFPA, UNHCR, UNICEF, UNODC, UN Women, WFP, WHO, and UNAIDS. See UNAIDS ending violence and discrimination against lesbian, gay, bisexual, transgender and intersex people, 1 (Sept. 2015).

400. Appendix to the Recommendation CM/Rec(2010)5, para. 2.

401. Appendix to the Recommendation CM/Rec(2010)5, para. 3.

ALL DOWNHILL FROM HERE :

The rapid degradation of the rule of law in Poland: what it means for women's sexual and reproductive rights, and LGBT+ persons' rights

discrimination of any kind based on any ground such as . . . gender expression, gender identity, sexual orientation."⁴⁰² It also urges member States to have their law enforcement "take into account the personal characteristics of the victim such as his or her . . . gender identity or expression, . . . sexual orientation . . . [and] the type or nature and the circumstances of the crime such as whether it is a hate crime, a bias crime or a crime committed with a discriminatory motive."⁴⁰³

2) Standards regarding hate speech

While Art. 19 of the ICCPR provides for everyone's freedom of opinion, thought, and expression, Arts. 19(3) and Art. 20 place limitations on this freedom for "the respect of the rights or reputations of others" and to ensure States prohibit by law "any advocacy of . . . hatred that constitutes incitement to discrimination, hostility or violence," respectively. These provisions are intended to allow States to protect persons from being victims of hate speech based on their personal characteristics, such as sexual orientation or gender identity or expression. The UN-backed Rabat Plan of Action elaborates on political leaders' obligations by providing that "political and religious leaders should refrain from using messages of intolerance or expressions which may incite to violence, hostility or discrimination," and "have a crucial role to play in speaking out firmly and promptly against intolerance, discriminatory stereotyping and instances of hate speech."⁴⁰⁴

The Council of Europe also encourages member States to "prohibit and publicly disavow"⁴⁰⁵ hate speech whenever it occurs, calling on them to "raise awareness among public authorities and public institutions at all levels of their responsibility to refrain from statements, in particular to the media, which may reasonably be understood as legitimising such hatred or discrimination."⁴⁰⁶

Art. 10(2) of the ECHR requires States to restrict the exercise of the right to freedom of expression "for the protection of the reputation or rights of others," among others, which the ECtHR has indicated should be interpreted as including hate speech against persons on the basis of their sexual orientation in its 2012 *Vejdeland and Others v. Sweden* landmark decision. In that sense, the ECtHR has also consistently stressed that discrimination based on sexual orientation "is as serious as discrimination based on 'race, origin or colour.'"⁴⁰⁷ Hate speech and hate crimes against persons on the basis of their sexual orientation or gender identity or expression encompass "insulting, holding up to ridicule or slandering [these] specific groups of the population,"⁴⁰⁸ which the Court considers "sufficient for the authorities to favour combating [hate] speech in the face of freedom of expression exercised in an irresponsible manner."⁴⁰⁹ This is further backed by the European Commission against Racism and Intolerance's General Policy Recommendation No. 15 on combating hate speech, which expressly considers hate speech to be understood as "the advocacy, promotion or incitement, in any form, of the denigration, hatred or vilification of a person or group of persons, as well as any harassment, insult, negative stereotyping, stigmatization or threat in respect of such a person or group of persons and the justification of all the preceding types of expression, on the ground of . . . gender identity, sexual orientation."⁴¹⁰

B) Unprotected by law: Polish legal framework on hate crimes and speech

1) Lack of implementation of EU law

In November 2014, the Polish Parliament adopted the Law on the Protection and Assistance for Victims and Witnesses, with a view to implement the EU Victims' Rights Directive into national legislation.

402. Preamble to the Directive 2012/29/EU of the European Parliament and the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, para. 9.

403. Preamble to the Directive 2012/29/EU of the European Parliament and the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, para. 56.

404. Report of the United Nations High Commissioner for Human Rights on the expert workshops on the prohibition of incitement to national, racial or religious hatred, para. 36. U.N. Doc. A/HRC/22/17/Add., 11 January 2013.

405. Appendix to the Recommendation CM/Rec(2010)5, para. 6.

406. Appendix to the Recommendation CM/Rec(2010)5, para. 7.

407. ECtHR, *Smith and Grady v. the United Kingdom* (App Nos. 33985/96 and 33986/96), para. 97; ECtHR, *Vejdeland and Others v. Sweden* (App No. 1813/07), 9 May 2012, para. 55.

408. ECtHR, *Féret v. Belgium* (App No. 15615/07), para. 73, 16 July 2009; ECtHR, *Vejdeland and Others v. Sweden* (App. No. 1813/07), 9 May 2012, para. 55.

409. ECtHR, *Féret v. Belgium* (App No. 15615/07), para. 73, 16 July 2009; ECtHR, *Vejdeland and Others v. Sweden* (App. No. 1813/07), 9 May 2012, para. 55.

410. ECRI General Policy Recommendation No. 15 on Combating Hate Speech, 8 December 2015.

ALL DOWNHILL FROM HERE :

The rapid degradation of the rule of law in Poland: what it means for women's sexual and reproductive rights, and LGBT+ persons' rights

However, the 2014 Act fails to implement the directive by *de facto* excluding homophobic, biphobic, and transphobic crimes' victims from its scope and from the specific protection and support that are required for them. As these crimes are not legally recognised as hate crimes, their victims cannot benefit from the enhanced protection afforded to their victims under the directive.

2) Insufficient protection against crimes motivated by prejudice in the Criminal Code

The legal protection afforded to lesbian, gay, bisexual, transgender persons against crimes motivated by prejudice is insufficient in Poland. While the 1997 Polish Criminal Code (CC) explicitly recognises and sanctions criminal acts motivated by the victim's race, ethnicity, nationality and religion, other groups including persons with non-conforming sexual orientation or gender identity or expression, are not protected against hate crimes.

The Criminal Code recognises violence and threats thereof motivated by race, ethnicity, religion, nationality and political affiliation as a specific offence, which is punished with a 3 months to 5 year imprisonment (Arts. 119 and 257 CC). Incitement to violence on the same grounds and incitement to hatred against persons protected under these grounds are also recognised as stand-alone offences (Art. 126a CC and Art. 256 CC).

However, sexual orientation and gender identity or expression not being included in the Criminal Code, crimes motivated by these characteristics are not treated in the same manner and their victims do not benefit from the same protection. As a result, crimes motivated by prejudice against LGBT+ persons are not investigated and prosecuted as hate crimes but as common crimes. Categorising a crime as "common" rather than "motivated by prejudice" carries the consequence that these crimes attract lower penalties than crimes motivated by prejudice against protected grounds. All corollary crimes such as threats of violence or incitement to hatred against persons with non-conforming sexual orientation or gender identity or expression, are thus not considered criminal offences either. As a result, the specific needs of victims of homophobic, biphobic, or transphobic crimes are not taken into account throughout the criminal proceedings either.

The Criminal Code does include general rules providing courts shall take into account the crime's motive when sentencing the perpetrator and determining the penalty to be inflicted upon them (Arts. 53 and 115 CC), and some criminal offences provisions do include reference to aggravating factors which – when ascertained – would entail higher penalties. However, neither refer to bias motivation as such.⁴¹¹ While the government claims this provides courts with flexibility in taking into account "today's fast-changing reality" and emerging "discriminatory trends,"⁴¹² this legislative gap in fact results in an insufficient protection against crimes motivated by non-listed prejudice, which is largely reliant on the courts' interpretation in a specific case. Leaving the detection and consideration for the homophobic, biphobic, or transphobic motive of a crime solely to the courts' interpretation seems particularly risky in current times. Indeed, recent legislative reforms enacted by the government over the months preceding this report's publication have attracted severe criticism in Poland and internationally for their potential to undermine courts' capacity to remain independent from undue political influence.⁴¹³ Concerns increase when looking at the current political climate and the government's own homophobic statements and official stance on LGBT+ rights more broadly.

3) Failed attempts to amend the Criminal Code

411. Lambda Warsaw, Association for Legal Intervention, "The Diversity Workshop, Joint Submission to the Universal Periodic Review (Third Cycle) - Poland," 8 September 2016.

412. U.N. Human Rights Council, National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, Poland. Human Rights Council, Working Group on the Universal Periodic Review, 27th session, 1-12 May 2017, U.N. Doc. A/HRC/WG.6/27/POL/1.

413. Human Rights Watch, "Eroding Checks and Balances, Rule of Law and Human Rights under Attack in Poland," 24 October 2017; Helsinki Foundation for Human Rights, "the Constitutional Crisis in Poland 2015-2016," 11 August 2016; Venice Commission, "Opinion 860/2016 on the Act on the Constitutional Tribunal" Doc. CDL-AD(2016)026, 14 October 2016; European Commission, "Rule of law: European Commission acts to defend judicial independence in Poland," 20 December 2017; Polish Commission of Human Rights, "A fully independent and efficient Constitutional Tribunal guarantees the existence of the real rights and freedoms of citizens in Poland – speech of Adam Bodnar, the Commissioner for Human Rights before the Constitutional Tribunal on 3 March 2016."

ALL DOWNHILL FROM HERE :

The rapid degradation of the rule of law in Poland: what it means for women's sexual and reproductive rights, and LGBT+ persons' rights

Despite repeated recommendations by both national⁴¹⁴ and international organisations and bodies⁴¹⁵ to amend the law by adding sexual orientation and gender identity to the protected grounds against hate crime and speech, and the government's stated commitment to implementing them, to date the legislation remains unchanged.⁴¹⁵ Several proposals for amendment to the Criminal Code have been submitted to Parliament in recent years. Both the first (Bill No 340) and the second (Bill No 2357) bill, introduced respectively by the Palikot Movement in 2012 and the Democratic Left Alliance in 2014, aimed at extending the legislation's scope by adding several grounds, including sexual orientation and gender identity, to the list contained in the hate crimes (Art. 119), hate speech (Art. 256) and threats (Art. 257) provisions in the Criminal Code. The third one, presented by the then ruling party Civic Platform (Bill No 1078) in 2013, aimed at extending protection against hate crimes and incitement to hatred by adding the vague term "natural or acquired personal characteristics or beliefs" to the existing grounds which would grant greater protection. While purporting to extend the protection afforded by the existing provisions, the bill failed to mention any specific characteristics, including sexual orientation and gender identity, thus leaving uncertainty regarding the provisions' scope.

Despite initial oppositions, based on the argument that the existing legal framework already offered sufficient protection against hate speech and violence,⁴¹⁷ and amidst homophobic statements made notably by current ruling party PiS' representatives during the parliamentary debates⁴¹⁸ and in media, the government seemed to finally lean towards an amendment which would have extended the protection against hate crimes and speech to other categories, including sexual orientation and gender identity.⁴¹⁹

However, the general reluctance to push forward reforms caused delays in the legislative process which resulted in the parliament's failure to pass the bills before the October 2015 general elections. This killed the process since, as the parliamentary term came to an end, so did the discussions over the draft amendments which were then abandoned. Following the elections, the new conservative government has expressed no intention to submit new proposals for amendments to the Criminal Code which would extend the hate crime and speech provisions' scope so as to include other grounds for protection.⁴²⁰ On the contrary, both PiS' leader Kaczynski and other government representatives have clearly stated their intention not to introduce changes to the legislation.⁴²¹ A new amendment presented by opposition party *Nowoczesna* in 2016, similar to the one proposed with Bill No 340, was struck down by the Polish parliament in October 2016 after receiving a negative opinion from the government and the National Prosecutor's Office.⁴²²

Following the 2017 Universal Periodic Review session, Poland was recommended to broaden its Criminal Code provisions on hate crimes by criminalising hate crimes on the grounds of age, disability, sexual orientation, and gender identity, while taking the measures necessary to combat discrimination based

414. Letter of the Human Rights Commissioner to the Minister of Justice. See also Summary of the Report on the Activity of the Ombudsman in Poland 2015, July 2016; Summary of the Report on the Activity of the Ombudsman in Poland 2016, July 2017.

415. U.N. Human Rights Committee, *Concluding Observations on the seventh periodic report of Poland*, 23 November 2016, U.N. Doc. CCPR/C/POL/CO/7, paras. 13-14; U.N. Human Rights Council, Report of the Working Group on the Universal Periodic Review – Poland, U.N. Doc. A/HRC/36/14, recommendation 120.49, 18 July 2017, not accepted by Poland which responded 'we accept recommendations to prohibit discrimination and to ensure equal treatment but we do not see need to amend law'; U.N. Committee against Torture, *Concluding observations on the combined fifth and sixth periodic reports of Poland*, 23 December 2013, U.N. Doc. CAT/C/POL/CO/5-6, para. 25; European Commission against Racism and Intolerance, Report on Poland (fifth monitoring cycle), Doc. CR(2015)20, 9 June 2015, paras. 26 and 99.

416. See also Lambda Warsaw, Association for Legal Intervention, 'The Diversity Workshop, Joint Submission to the Universal Periodic Review (Third Cycle) - Poland,' 8 September 2016.

417. See also Universal Periodic Review Mid-Term Progress Report by Poland, Human Rights Council 25th session, 2014.

418. 'G3T+ rights in Poland. Report from research on the implementation of Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity, 1st ed, Warsaw, KPH, 2012. See also Krystyna Pawłowicz, PiS member of Parliament, who was quoted by media saying that 'the government continues to introduce a sick ideology of gender, which promotes sexual pathologies.'

419. See letter by the then Minister of Justice, Cezary Grabarczyk to the then Government Plenipotentiary for Equal Treatment, 20 February 2015; See also United Nations Human Rights Council, Seventh periodic reports of State parties due in 2015, Poland.

420. U.N. Human Rights Committee, 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.

421. The new Minister of Justice appointed after the October 2015 general elections explicitly affirmed that he saw no need to introduce changes to the Criminal Code in this area. See Paweł Kosmowski, *Ziobro Wstrzymuje Prace Nad Karaniem Za Mowę Nienawisci. KPH Zachęca Do Wysłania Listów: Ministerstwo Ingeruje Fakty, Wyborcza.pl*, 26 January 2016. PiS leader Jarosław Kaczyński also confirmed his government's intention not to introduce such changes to the legislation.

422. At this occasion, the Prosecutor General argued in a written statement that the term sexual orientation included in the proposal was unclear and might include paedophilia. See Lambda Warsaw, Legal Intervention Association, Diversity Workshop Association, Poland is dismantling the hate crime policy, warn civil society groups, November 2016.

ALL DOWNHILL FROM HERE :

The rapid degradation of the rule of law in Poland: what it means for women's sexual and reproductive rights, and LGBT+ persons' rights

on race, sex, nationality, ethnicity, religion or any other grounds.⁴²³ The government officially accepted the recommendation. The Polish Society of Anti-discrimination Law reached out, in September of 2017, to the Ministry of Justice, as a civil society organisation, to inquire after the steps that were to be taken in order to implement the said recommendation. The answer provided in March of 2018, by the Ministry of Justice, explicitly stated that the above is not viewed as important nor crucial in terms of current social needs or with regards to the needs of the justice system or of international organisations.⁴²⁴

4) Reforms: sexual orientation, gender identity or expression considerations left behind

Denying the hate crime qualification to these crimes has resulted in law enforcement's response to homophobic, biphobic, and transphobic crimes not being taken into account in any recent reform undertaken by Polish authorities following recommendations by international organisations and human rights protection mechanisms so far. The reforms included new mechanisms set up to address violence and incitement to hatred on racial and xenophobic grounds, such as specialised structures within the police, the Ministry of Interior and the Prosecutor's Office, specialised trainings for investigators and prosecutors and guidelines for prosecutors on investigating and collecting data on hate crimes (focusing solely on racist and xenophobic ones). These reforms overall strengthened the institutional response to racist and xenophobic speech and violence.⁴²⁵ However only 5% of hate crimes get reported.⁴²⁶

However, homophobic, biphobic, and transphobic hate crimes, as well as hate crimes against other unprotected categories, have been excluded from these positive developments,⁴²⁷ leaving their victims further unprotected and hampering progress towards an effective strategy to prevent and address them.

As a consequence of the legal, judicial, and training gap there is in protecting victims of crimes motivated by anti-LGBT+ prejudice, law enforcement fails to systematically collect data on homophobic, biphobic, and transphobic hate crimes.

II. Lack of data collection: root causes and rippling effects

The failure to systematically collect data on these homophobic, biphobic, and transphobic hate crimes especially results in their actual scale remaining largely unknown to the authorities and in the latter failing to see the need to reform and strengthen the protection framework to better respond to these crimes.⁴²⁸

423. U.N. Human Rights Council, Report of the Working Group on the Universal Periodic Review, Poland, Thirty-sixth session, 11-29 September 2017, Agenda item 6, A/HRC/36/14, recommendations 120.47, 120.50, 120.72, 120.73, 120.74, 120.77.

424. Email exchanges with members of PSAL, 21 September 2018.

425. Amnesty International, Targeted by hate, forgotten by law, Lack of a coherent response to hate crimes in Poland, EUP 37/2147/2015, 2015. See also OSCE ODHR, Hate Crime Reporting, 2014.

426. Commissioner for Human Rights of Poland, Summary of the Report on the Activity of the Commissioner for Human Rights in 2017, with Comments on the Observance of Human and Civil Rights and Freedoms, 2018, in Commissioner for Human Rights Bulletin 2018, No. 2.

427. The only mechanism that applies also to crimes committed based on the victim's sexual orientation or gender identity was the Human Rights Monitoring Team within the Ministry of the Interior. This mechanism, set up in 2004 to monitor and collect data about investigations of racist and xenophobic hate crimes and allegations of offences committed by the police and border guards, saw its remit extended in 2011 to cover homophobic and transphobic hate crimes. However, the Working Group on Countering Hate Crimes (hereafter "WG"), a platform established by the Human Rights Monitoring Team in late 2015 to facilitate discussion and consultation with stakeholders, failed to deliver. The first WG's subgroup on hate speech's meeting was called for several months after the WG's constitution (July 2016), subsequently called off and no further meetings were scheduled since. In September 2016, the Human Rights Monitoring Team itself saw its staff reduced by one third, which reduced its capacity to carry out its mandate. It was eventually dissolved in November 2016 and its tasks were transferred to the Division for the European Migration Network and Anti-Trafficking. See Lambda Warsaw, Legal Intervention Association, Diversity Workshop Association, Poland is dismantling the hate crime policy, warn civil society groups, November 2016; Lambda Warsaw, Association for Legal Intervention, The Diversity Workshop, Poland is dismantling the hate crime policy, warn civil society groups, November 2016.

As for the Council for Counteracting Racial Discrimination, Xenophobia and related Intolerance, another body set up in 2015 to address these issues, this was also dissolved by PM Beata Szydło in early 2016. See U.N. Human Rights Committee, Report on measures taken by the Republic of Poland to implement the provisions of the International Covenant on Civil and Political Rights in the years 2008-2015, Information provided by the Commissioner for Human Rights of the Republic of Poland (*Rzecznik Praw Obywatelskich*) in accordance with the International Covenant on Civil and Political Rights in connection with the consideration of the seventh periodic report of the Republic of Poland covering the period from 15 October 2008 until 31 October 2015, 6 October 2016; Lambda Warsaw, Legal Intervention Association, Diversity Workshop Association, Poland is dismantling the hate crime policy, warn civil society groups, November 2016; Amnesty International, Poland: submission to the United Nations Human Rights Committee, 118th session, 17 October-4 November 2016; Poland: dismantling the Rule of Law, Amnesty International submission for the UN Universal Periodic Review 27th session of the UPR Working Group, April/May 2017. Although the Council's action to protect LGBT people was almost non-existent, following its dissolution there is no public institution mandated with counteracting homophobic, biphobic and transphobic discrimination and violence. See Alternative report to the International Covenant on Civil and Political Rights, submitted by the Polish informal coalition for the COPR for consideration of the U.N. Human Rights Committee in reference to the Session No 118, Warsaw, 21 July 2016.

428. Amnesty International, Poland: submission to the United Nations Human Rights Committee, 118th session, 17 October-4 November 2016; Poland: dismantling the Rule of Law, Amnesty International submission for the UN Universal Periodic Review, 27th session of the UPR Working Group, April/May 2017.

ALL DOWNHILL FROM HERE :

The rapid degradation of the rule of law in Poland: what it means for women's sexual and reproductive rights, and LGBT+ persons' rights

Indeed, while, in theory, the Police and Ministry of Interior are collecting hate crime data on a working definition including crimes based on sex, gender identity and sexual orientation, which constitutes a step forward, this was not followed by training for all police officers. Therefore, front-line or even investigating officers are often not aware of the fact that the homophobic, biphobic, or transphobic motivation can be recorded in the system.⁴²⁹ At the same time, the National Prosecutor's Office and Ministry of Justice have no working definition of hate crimes, meaning they collect data based on the Criminal Code definition of hate crime, not encompassing crimes motivated by prejudice against persons with non-conforming sexual orientation or gender identity. This lack of coordination in the data collection systems, together with the apparent political unwillingness to collect data on the topic does not help to have reliable and probing statistics, and therefore goes in favour of PIS' argument that "Polish law provides sufficient protection against hate crimes."

This is particularly alarming when comparing data collected by Poland and data collected by civil society organisations or human rights bodies. The latter indeed show that over the past few years, violence – both physical and verbal – against LGBT+ persons and organisations working to protect and advance their rights has significantly increased. While Poland regularly reports hate crime data to the OSCE's Office for Democratic Institutions and Human Rights (hereafter "ODIHR"), the official information provided by the Polish government does not include any data on hate crimes against LGBT+ persons.⁴³⁰ The very low numbers of cases reported by the Polish government (0 in 2015) is surprising when considering the studies conducted and data collected by third-parties over the same period (2010 to 2016). For instance, in 2015 civil society information to the ODIHR counted 16 violent attacks against LGBT+ persons, 1 threat of attack and 2 attacks against LGBT+ persons' property.⁴³¹ In 2016, a survey by the Polish Human Rights Commissioner conducted on 11 144 LGBT+ persons revealed that 1 in 8 experienced physical violence during the 2 years prior to the survey, all experienced psychological violence including hate speech, 60% experienced physical violence, and 1 in 3 experienced sexual violence.⁴³²

Furthermore, lack of training and therefore low awareness among the authorities on how to respond to these crimes is also an obstacle to preventing and fighting them effectively.

The Director of the National Prosecutor's Office, Bogdan Karp, however affirmed that "since 2004 hate crimes have been a crucial issue from the viewpoint of [my] office, and this continues,"⁴³³ without specifying whether "hate crimes" encompassed crimes motivated by a person's sexual orientation or gender identity in these trainings. He explained that the National School for the Prosecution and the Judiciary, created in 2010, had the task of training both assistant judges and prosecutors, and to provide "general and systematic training" to prosecutor and judges in different areas. Bogdan Karp affirmed having himself conducted three series of trainings, two of them in relation to hate crimes and hate speech, and another led by the GPET. Given the GPET's overt stance on LGBT+ rights, one can therefore easily imagine these trainings did not encompass sexual orientation and gender identity or expression. While Bogdan Karp recognises the value of these trainings, he admits they were "not as good as [he] would have thought," but this was only "due to technical issues," in his opinion (the video-conference was not functioning properly).⁴³⁴

While NGOs such as KPH and Lambda acknowledge there have been some improvements in law enforcement's ability to spot homophobic, biphobic, and transphobic crimes thanks to trainings from the OSCE's ODIHR, they regretted: "when it comes to how these trainings [reflect on law enforcement practice], the developments are not great."⁴³⁵ A former KPH member explained that when she was working for KPH, which delivers such trainings, "it was difficult just to get 20 police officers trained."⁴³⁶

429. Lambda Warszawa, "Hate crime in Poland 2012-2016."

430. OSCE OD HR, "Report on hate crime", 2015.

431. ILGA-Europe and KPH reported 5 physical assaults, including 1 carried out by a group, and 1 threat against a lesbian woman and her partner. ILGA-Europe, Lambda Warsaw, and the Never Again Association reported 2 physical assaults, and 1 incident in which two groups clashed during the Equality Parade. ILGA-Europe and Lambda Warsaw also reported 7 physical assaults, 2 of which were carried out by groups; and 1 incident of damage to property. The Never Again Association reported 1 additional incident of physical assault carried out by a group that caused serious injuries, 1 incident of threats and 1 homophobic graffiti.

432. Poland's Commissioner for Human Rights, "Report on measures taken by the Republic of Poland to implement the provisions of the International Covenant on Civil and Political Rights in the years 2008-2015", 6 October 2016.

433. Interview with the Director of the National Prosecutor's Office, Bogdan Karp, Friday 23 June 2017, in Warsaw, Poland.

434. Interview with the Director of the National Prosecutor's Office, Bogdan Karp, Friday 23 June 2017, in Warsaw, Poland.

435. Interview with KPH and Lambda, Thursday 22 June 2017, in Warsaw, Poland.

436. Interview with Transfuzja, Monday 19 June 2017, in Warsaw, Poland.

ALL DOWNHILL FROM HERE :

The rapid degradation of the rule of law in Poland: what it means for women's sexual and reproductive rights, and LGBT+ persons' rights

Despite the possibility for police officers to mark a crime down as biased, only 12 cases were recorded in 2016 according to these NGOs, while the rate of hate crimes against LGBT+ persons are much higher: 20% of lesbian, gay, and bisexual persons and 40% of transgender persons are attacked in reality.⁴³⁷

When law enforcement fails to properly record a crime as motivated by a homophobic, biphobic, or transphobic prejudice, this has reverberating consequences throughout the entire judicial process. As members of KPH and Lambda explained: "the [anti-LGBT+] motivation is never taken into account. The crime is investigated because it is a crime, but not for its [anti-LGBT+] motivation. And because the motivation is not investigated from the very beginning, it is very hard for the prosecutor and courts to address it."⁴³⁸ They mentioned several cases where the homophobic motivation was obvious but was still not mentioned by the police officer who took the complaint and thus was not taken into account by the court. They appealed to have the motivation included in the court's decision, but the appeal failed and the case is now pending before the ECtHR.⁴³⁹

To this day, no effective measures seem to have been taken to combat hate crimes against LGBT+ persons: insufficient work has been done to ensure the collection of reliable data, training and information is still widely provided by NGOs, the legal arsenal is not adapted to hold accountable and dissuade offenders and 90% of victims are deterred from reporting the issues due to fear of homophobic, biphobic, or transphobic reactions of officers.⁴⁴⁰

III. "An atmosphere of complacent approval"⁴⁴¹

The lack of protection against hate speech and crimes for persons with non-conforming sexual orientation or gender identity or expression and persons advocating for their rights is heightened by the government's response to these attacks. Members of the Bar Association explained "the government creates an atmosphere which encourages these crimes. This is what nationalists needed to know this was their time. [The government creates an] atmosphere of complacent, passive approval."⁴⁴² This atmosphere is a result of both homophobic, biphobic, and transphobic hate speech by authorities themselves, and of their lack of reaction in the face of increased attacks against NGOs advocating for lesbian, gay, bisexual, and transgender persons' rights.

Here are a few examples of hate speech by public officials against LGBT+ individuals:

"In Poznan, another [equality] parade of sodomites who try to impose their interpretation of civil rights and obligations on others. It was important that the tram drivers did not agree that their trams would have homosexual flags." - Minister of Defense Mariusz Błaszczak on the equality parade in Poznan (August 2018).

"Dressing the national sign [the eagle] in rainbow colors constitutes a criminal act, since it is a defamatory action, insulting and desecrating a national symbol" - Minister of Interior Affairs Joachim Brudziński on the equality parade in Częstochowa (July 2018).

"M.Rosa [a Nowoczesna MP] said that same-sex couples have the right to love and start families. But it's not love through the anus, but an illness. And a family should bear children, and your 'couples' do not." - MP Krzysztof Pawłowicz (PiS) after Nowoczesna filed a draft bill to recognize same-sex partnerships (April 2018).

Dr. Hannah Machińska, former Director of the Office of the Council of Europe in Poland, and current lawyer and Professor at the University of Warsaw, indeed explained: "the dominating tone of the general rhetoric used by Polish authorities is hate speech against different minorities . . . including LGBT+."

⁴³⁷ Interview with KPH and Lambda, Thursday 22 June 2017, in Warsaw, Poland.

⁴³⁸ Interview with KPH and Lambda, Thursday 22 June 2017, in Warsaw, Poland.

⁴³⁹ Interview with KPH and Lambda, Thursday 22 June 2017, in Warsaw, Poland.

⁴⁴⁰ Polish informal coalition for the ECtHR for consideration of the U.S. Human Rights Committee, "Alternative report to the ECtHR", 21 July 2016.

⁴⁴¹ Interview with the Bar Association, Wednesday 21 June 2017, in Warsaw, Poland.

⁴⁴² Interview with the Bar Association, Wednesday 21 June 2017, in Warsaw, Poland.

ALL DOWNHILL FROM HERE :

The rapid degradation of the rule of law in Poland: what it means for women's sexual and reproductive rights, and LGBT+ persons' rights

persons."⁴⁴³ According to Dr. Machińska, this hate speech fuels further extremism, notably among Polish youth, who "follow the message coming from PiS through their foundations and organisations [GONGOS]. And the message is quite clear: you have to follow PiS."⁴⁴⁴ As a result, Dr. Machińska said Poland experienced increased numbers of "incidents" against LGBT+ students at university, among others, which is only the consequence of a "shift in ideas among students [who are] increasingly right oriented – in favour of a ban on abortion, against LGBT+ persons . . . and more and more anti-EU."⁴⁴⁵ She sent some of these right-wing organisations a letter urging them to introduce a "principle of equal rights" in their rules, but the organisations said no. "Very soon the situation will be dramatic."⁴⁴⁶

Hate speech by public officials is coupled with authorities' lack of reaction to attacks against NGOs advocating for LGBT+ rights. All of the members of such organisations interviewed said there had been a significant increase in attacks against NGOs dealing with LGBT+ persons' rights since 2015.⁴⁴⁷ In almost all cases, the bias motive underlining the attacks was evident but investigations were discontinued due to the impossibility to identify the perpetrators and the authorities failed to firmly and publicly condemn them as well as their homophobic motive. For instance, KPH's headquarters in Warsaw and offices in Poznań were repeatedly and recently attacked without an official condemnation from politicians and without an effective investigation carried out, according to their colleagues at the Helsinki Foundation for Human Rights.⁴⁴⁸ They also mentioned the State's smear campaigns against certain NGOs such as KPH or Transfuzja.⁴⁴⁹ "[The authorities] have a Nazi perspective: eliminating Transfuzja is like 'cleaning the nation.' If they could get rid of us, LGBT+ organisations, they would. . . The same thing happened against KPH: attacks against KPH were nationwide. They want to make them invisible, get rid of the organisation."⁴⁵⁰ KPH was indeed attacked around 4 times in 2016 by far-right groups and now have to have 24/7 security at the office.⁴⁵¹ Members of the Transfuzja Foundation explained that while they had not themselves been victims of any attacks, they were sharing a building with a far-right group and "there were situations where they were screaming 'kill the faggots!'"⁴⁵² While members of the Transfuzja Foundation found there were few incidents before the elections, they noticed "the situation changed after the elections: people are now screaming or laughing at people we assist. PiS elections liberated homophobic feelings."⁴⁵³ One member for instance recalled being on the metro with her transgender friends "and some were mocked and spit at."⁴⁵⁴ These increased instances of hate speech and crimes towards NGOs advocating for LGBT+ rights come at a time of heightened pressure and administrative weight put on such NGOs. Members of PSAL explained: "as an NGO we are now wasting our time being overly careful in following all provisions, securing all documents, checking our finances. We do not need the police to come to our house at 6 am."⁴⁵⁵

Under the current context, where anti-LGBT+ hate speech also comes from the State, which attempts to enroll Polish youth in its homophobic, biphobic, and transphobic crusade, all the while remaining completely passive in the face of attacks against NGOs advocating for LGBT+ rights and actively passing laws aimed at preventing them from working, a PSAL member said: "I am afraid, of course. I am sure that in the next 2 or 3 years we will have anti-LGBT+ propaganda laws as in Russia. . . I am scared of what could happen next."⁴⁵⁶

Because of the lack of protection afforded to individuals with non-conforming sexual orientation, gender

443. interview with Hannah Machińska, former Director of the Office of the Council of Europe in Poland, and current lawyer and Professor at the University of Warsaw, Monday 19 June 2017, in Warsaw, Poland.

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446. interview with Hannah Machińska, former Director of the Office of the Council of Europe in Poland, and current lawyer and Professor at the University of Warsaw, Monday 19 June 2017, in Warsaw, Poland.

447. interview with Transfuzja, Monday 19 June 2017, in Warsaw, Poland; interview with PSAL, Tuesday 20 June 2017, in Warsaw, Poland; interview with the Helsinki Foundation for Human Rights, Tuesday 20 June 2017, in Warsaw, Poland; interview with the Bar Association, Wednesday 21 June 2017, in Warsaw, Poland.

448. interview with the Helsinki Foundation for Human Rights, Tuesday 20 June 2017, in Warsaw, Poland.

449. interview with the Helsinki Foundation for Human Rights, Tuesday 20 June 2017, in Warsaw, Poland.

450. interview with Transfuzja, Monday 19 June 2017, in Warsaw, Poland.

451. interview with Transfuzja, Monday 19 June 2017, in Warsaw, Poland.

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454. interview with Transfuzja, Monday 19 June 2017, in Warsaw, Poland.

455. interview with PSAL, Tuesday 20 June 2017, in Warsaw, Poland.

456. interview with PSAL, Tuesday 20 June 2017, in Warsaw, Poland.

ALL DOWNHILL FROM HERE :

The rapid degradation of the rule of law in Poland: what it means for women's sexual and reproductive rights, and LGBT+ persons' rights

identity, or expression, discrimination and violence through the form of hate crimes and hate speech is pervasive in all aspects of these persons' lives, in almost utter impunity.

CHAPTER 3: DIFFICULTIES TO EXIST DE JURE

I. Lack of legal gender recognition procedures

A) International and regional human rights standards on gender recognition

Under Art. 16 of the ICCPR, "everyone shall have the right to recognition everywhere as a person before the law."⁴⁵⁷ Applied to transgender persons, this is understood to mean the right to one's legal gender recognition. This has been further elaborated upon by the ECtHR, which has confirmed the obligation of member States to enable legal gender recognition in their domestic legal framework⁴⁵⁸ and ruled that a State's failure to change the birth certificate of someone having undergone gender reaffirming procedures amounts to a violation of Art. 8 of the ECHR.⁴⁵⁹

1) Prior requirements

The Council of Europe has stated on multiple occasions that the conditions for legal gender recognition, such as requirements of physical changes, must be regularly reviewed⁴⁶⁰ "having regard to scientific and societal developments"⁴⁶¹ and has flagged abusive, and thus prohibited, prior requirements (the list is not exhaustive): "irreversible sterilisation, hormonal treatment, preliminary surgical procedures and sometimes proof of the person's ability to live for a long period of time in the new gender (so called "real-life experience")."⁴⁶² The criteria must not be arbitrary, and individuals must be able to fulfil them, in practice (e.g. services must be available).⁴⁶³ As noted by the Council of Europe, "a clear trend can be observed among states in Europe that are moving from compulsory medical requirements towards procedures based on self-determination."⁴⁶⁴ This culminated in the ECtHR finding that requiring "a sterilising operation or medical treatment resulting in a very high probability of infertility, amounts to a breach by the . . . State of its positive obligation to guarantee the right . . . to respect for . . . private life."⁴⁶⁵ Thus, member States cannot demand from a person seeking legal gender recognition to undergo any medical treatment that would most likely result in sterility.

2) Effects of recognition

Council of Europe bodies have consistently recommended that States remove any restrictions preventing transgender persons from remaining in an existing marriage after the legal recognition of their gender.⁴⁶⁶ The ECtHR also ruled there was "no justification for barring transsexual[s] from enjoying the right to marry under any circumstances."⁴⁶⁷

The Parliamentary Assembly of the Council of Europe has also adopted a resolution calling on States to "ensure that spouses or children do not lose certain rights" following legal gender recognition.⁴⁶⁸

B) Polish legal framework on gender recognition: a "traumatic experience"⁴⁶⁹

1) Gatekeeping procedures restricting access to legal gender recognition

457. International Covenant on Civil and Political Rights, Art. 16.

458. ECtHR, *Hämäläinen v. Finland* [GC] (App. No. 37359/09), 16 July 2014.

459. ECtHR, *B. v. France* (App. No. 13343/87), 1992; ECtHR, *Goodwin v. the United Kingdom and I. v. the United Kingdom* (App. Nos. 28957/95 and 25680/94) 2002.

460. Council of Europe adopted Recommendation CM/Rec(2010)5 of the Committee of Ministers to member States on measures to combat discrimination on grounds of sexual orientation or gender identity, para. 20.

461. ECtHR, *Goodwin v. the United Kingdom and I. v. the United Kingdom* (App. Nos. 28957/95 and 25680/94), 2002.

462. Explanatory Memorandum to CM/Rec(2010)5, see section IV. Right to respect for private and family life.

463. Council of Europe, "Protecting Human Rights of Transgender Persons: A short guide to legal gender recognition" (2015).

464. Council of Europe, "Protecting Human Rights of Transgender Persons: A short guide to legal gender recognition" (2015).

465. ECtHR, *Affaire A.P., Garçon et Nicot c. France* (Apps Nos. 79885/12, 52471/13 and 52596/13), 6 April 2017.

466. Thomas Hammarberg, "Human rights and gender identity", CommDH/IssuePaper(2009)2, pp. 22-23, 45.

467. ECtHR, *Goodwin v. the United Kingdom and I. v. the United Kingdom* (App. Nos. 28957/95 and 25680/94), 2002.

468.PACE resolution Resolution 2048 (2015) Discrimination against transgender people in Europe, para. 6.2.

469. Interview with members of the Polish Bar Association, Wednesday 21 June 2017, in Warsaw, Poland.

ALL DOWNHILL FROM HERE :

The rapid degradation of the rule of law in Poland: what it means for women's sexual and reproductive rights, and LGBT+ persons' rights

There is no law specific to gender recognition in Poland. The procedure which a person who intends to undergo gender recognition has to go through currently requires that the person brings an action against his or her parents under Art. 139 Polish Civil Procedure Code, on ground that they wrongly indicated the child's gender at birth. "This is a particularly traumatic experience for transgender persons, especially when their parents do not agree with it."⁴⁷⁰

Prior requirements exist, that are particularly heavy, to change one's gender. First, a transsexual diagnosis must be obtained, and is often accompanied by a "real life test," whereby the individual has to live full-time as their preferred gender, without being prescribed any hormonal treatment or having one's legal status altered, for a duration that can last up to two years. This is extremely problematic given the numerous instances of discrimination and violence faced by transgender persons in all areas of life in Poland. Members of the Transfuzja Foundation mentioned cases of persons forced to submit to the real life test had been fired.⁴⁷¹

There are also non-medical requirements to be fulfilled in order for a person to obtain legal gender recognition. Married individuals must divorce their partner before obtaining gender recognition as Polish law does not recognise same-sex unions. This further complicates the process, and denies transgender persons and their partners who wish to remain in a relationship the possibility to do so. As for transgender persons' rights as parents, these are not safeguarded under Polish law. Transgender persons who are a child's sole guardian must wait until the child is of age before being able to undergo gender reaffirming procedures and/or obtain legal gender recognition. When there is another parent, the child's custody is automatically transferred to that parent, which often prompts transgender parents to restrain themselves from undergoing the procedure for fear of their parental rights being restricted.⁴⁷²

The situation has slightly improved following a Warsaw court's 2016 decision⁴⁷³ to authorise persons who had undergone gender reaffirming procedures abroad to have their gender legally recognised in Poland without having to undergo medical evaluation, to file a suit against their parents, etc. However, this only improves transgender persons' situation in Poland for those who have the financial means to undergo gender reaffirming procedures abroad. A new piece of legislation specifically on legal gender recognition, affording the same rights to transgender persons' having undergone the procedures in Poland, is thus necessary.

2) The failed Gender Accordance Act

Despite efforts made to introduce a law which would regulate gender recognition, the Gender Accordance Act (*Poselski projekt ustawy o uzgodnieniu płci*),⁴⁷⁴ presented in 2012 by the first Polish transgender MP Anna Grodzka (from the Your Movement opposition party) was eventually prevented from entering into force in October 2015 by a veto imposed by Polish President (and current ruling party PiS' member) Duda and the Parliament's failure to vote again on the draft law following the veto, which resulted in the latter being upheld. The proposal, which aimed at introducing a formal procedure for gender recognition and resulted from a very close collaboration between some parliamentary forces and civil society organisations, simplified the criteria for legal gender recognition.⁴⁷⁵ The draft Gender Accordance Act, as it resulted from the discussions and negotiations among political groups in parliament, was not fully in line with international standards as it notably required that a special identity document be issued to person in transition,⁴⁷⁶ and was elaborated mainly in consultation with sexologists, without

470. interview with members of the Polish Bar Association, Wednesday 21 June 2017, in Warsaw, Poland.

471. interview with Transfuzja, Monday 19 June 2017, in Warsaw, Poland.

472. European Union Agency for Fundamental Rights (FRA), Protection against discrimination on grounds of sexual orientation, gender identity and sex characteristics in the EU, Comparative legal analysis, Update 2015 (December 2015).

473. Transfuzja, "Groundbreaking Court Decision in Poland on Gender Recognition Abroad," 21 June 2016.

474. <<http://orka.sejm.gov.pl/Druk7ka.nsf/0/AA0CB1ECA4CE5088C1257B8F00361E90/%24File/1469.pdf>> (in Polish); for a version in English see Transfuzja, "Gender Accordance Act DRAFT," <http://transfuzja.org/en/artykuly/gender_recognition_in_poland/the_gender_acordance_act_draft.htm>.

475. The draft Gender Accordance Act requested that the applicant be a Polish citizens ; that he or she is over 18 or, for transgender persons, over 13, that they have their legal guardian or the guardianship court's approval ; that he or she is not married and presents two supporting medical opinions stating that their gender identity durably differs from their legal gender, to be submitted to a regional court for examination. KARAT Coalition, cit. See also ILCA Europe, Annual Review, 2016.

476. Yogyakarta Principle No. 3 (e); Center for American Progress, "ID Accurately Reflecting One's Gender Identity Is a Human Right," 18 December 2012.

ALL DOWNHILL FROM HERE :

The rapid degradation of the rule of law in Poland: what it means for women's sexual and reproductive rights, and LGBT+ persons' rights

consulting human rights organisations and experts.⁴⁷⁷ However, it would have represented a significant step towards recognising transgender persons' rights in Poland. Szymon, a member of the Transfuzja Foundation, expressed the frustration many transgender persons face, and the hopes this legislative proposal had brought: "My parents are not supportive and I don't want to sue them, so the law was the only opportunity for me to maintain the very feeble relationship we have. But now this possibility is dead."⁴⁷⁸

Following conservative PiS party's rise to power in October 2015, NGOs and activists advocating for transgender persons' rights fear that any hope that another legislative initiative could be presented and passed might be lost.⁴⁷⁹ They also fear that another proposal would end up in a retrogression on transgender persons' few rights.⁴⁸⁰ With intensified attacks against the rights of persons with non-conforming sexual orientation or gender identity since that date, LGBT+ persons and activists are losing hope that the situation will improve. Szymon said:

"There were elections in 2015. At the 2015 pride, I could hear that people were angry, were loud, and wanted to show the government we are still here. In 2017, I could feel that people were scared. Scared of an attack of some sort. This year's [2017] pride was much smaller, the route was shorter, and everyone could see that there were more difficulties when it came to making this pride happen and making it a happy event. This exemplifies how much society has changed over these past two years. I'm scared we are going to get used to it. We also lost hope about the law in the past couple of years. There is no chance that the law would pass during this term."⁴⁸¹

II. No rights for same-sex families

A) Council of Europe and European Union standards

The ECtHR has stated very clearly in *Oliari and others v. Italy* that the fact that no marriage or civil partnership was available to same-sex couples in committed relationships in a member State was a violation of Art. 8 of the ECHR.

Recently, in *Coman and others v. Romania*,⁴⁸² the CJEU also made it clear that EU member States are now obliged to recognise same-sex marriages concluded lawfully in the EU, irrespective of whether they have opened marriage to same-sex couples in their own territory. Because of the EU's principle of supremacy, which provides that EU law prevails "even over constitutional provisions of a member State. . . in case there is a conflict between the two,"⁴⁸³ *Coman* thus requires that even member States that have a constitutional ban on same-sex marriage recognise such marriages in these situations. A member State "cannot rely on its national law as justification for refusing to recognise in its territory, for the sole purpose of granting a derived right of residence to a third-country national, a marriage concluded by that national with a Union citizen of the same sex in another Member State in accordance with the law of that state."

B) Poland's legal void surrounding same-sex relationships

Art. 18 of the Polish Constitution refers to marriage as the "relationship of a man and a woman."⁴⁸⁴ As such, no mechanism exists for same-sex couples to marry or register their partnership. Despite

477. CAPAT Coalition, Alternative report on the implementation of the Convention for the Elimination of All Forms of Discrimination against women (CEDAW), Poland, September 2014.

478. Interview with members of the Transfuzja Foundation, Monday 19 June 2017, in Warsaw, Poland.

479. PiS leader Kaczynski has been reported to have said in relation to gender reaffirming at a rally which took place before the October 2015 elections that this was "an attack on the family." ILCA Europe, Annual Review, 2016.

480. Interview with members of the Transfuzja Foundation, Monday 19 June 2017, in Warsaw, Poland.

481. Interview with members of the Transfuzja Foundation, Monday 19 June 2017, in Warsaw, Poland.

482. CJEU, *Relu Adrian Coman and Others v. Inspectoratul General pentru Imigrări and Ministerul Afacerilor Interne*, C-673/16, 5 June 2018.

483. CJEU, *Internationale Handelsgesellschaft mbH v. Einfuhr- und Vorratsstelle für Getreide und Futtermittel* (1970).

484. Constitution of the Republic of Poland art. 18 ("Marriage, being a union of a man and a woman, as well as the family, motherhood and parenthood, shall be placed under the protection and care of the Republic of Poland").

ALL DOWNHILL FROM HERE :

The rapid degradation of the rule of law in Poland: what it means for women's sexual and reproductive rights, and LGBT+ persons' rights

numerous recommendations made by international organisations and bodies⁴⁸⁵ and intensive advocacy by civil society organisations, the government has so far refused to introduce legal measures which would enable same sex couples to formalise their relationship.

Under the previous parliamentary term, several attempts were made at introducing civil unions into the Polish legal system, which would have the consequence of ensuring equality for same-sex couples in areas such as social security, inheritance and taxes. However, these initiatives were not successful as all three bills that were submitted to parliament during the previous term were struck down.

A new proposal was submitted to Parliament by opposition party *Nowoczesna* in 2016 but eventually met the same fate. Now, the current government has made clear that it has no plans to legalise same-sex relationships by amending the law so as to allow for either marriage or civil partnerships for same-sex couples.⁴⁸⁶

What is more, same-sex partners wishing to marry or register a civil partnership in another country also face obstacles in obtaining the necessary administrative documents.

Indeed, the old Law on Civil Status required a person applying for a civil marital status certificate to state the name and surname of future spouse. If the civil servant identified the future spouse as someone from the same sex as the applicant, he/she refused to issue the civil status certificate. The amended version of the Law on Civil Status now establishes two methods through which someone can obtain a civil status certificate. The first is Art. 49 of the law, whereby a civil marital status can be requested by anyone without specifying the purpose of its usage. The second is Art. 83 of the law, whereby a certificate can be requested to confirm the applicants' legal right to get married abroad. However, for this certificate to be obtained, applicants must specify their name, surname, and sex as well as those of the future spouse, and if they are a same-sex couple, their application is refused.⁴⁸⁷ The applicant wishing to marry or enter a civil union abroad must go through this specific Art. 83 procedure, rather than use the universal Art. 49 certificate. Because of the current definition of marriage in the Polish Constitution, applicants almost always see their request refused when it appears from the application that the document will be used to marry or form a union with a person of the same sex.⁴⁸⁸ The refusal is issued on the ground that, as Polish law does not recognise same-sex relationships, the applicant is not eligible to obtain a marital status certificate for this purpose.

Following the amendment of the law, members of KPH and Lambda said the General Prosecutor had sent a letter to all regional prosecutors asking them to register instances of Polish citizens trying to have their civil status amended so as to show they had gotten married or into a civil partnership abroad. "This was definitely made to scare lesbian, gay, and bisexual persons and send a clear sign to civil servants working at the registry offices that it was not acceptable to give out these certificates. It also made us feel as though the government was making a list of people, to have access to this data. We know of some prosecutors who have sent out these letters to civil registry offices in their area."⁴⁸⁹

The amended Law on Civil Status thus perpetuates discrimination against same-sex couples.⁴⁹⁰

485. U.N. Human Rights Committee, *Concluding Observations on the seventh periodic report of Poland*, 23 November 2016, U.N. Doc. CCPR/C/POL/CJ/7, para. 16(e); U.N. Human Rights Council, Report of the Working Group on the Universal Periodic Review – Poland, U.N. Doc. A/HRC/36/14, recommendation 120.75, 18 July 2017, not accepted by Poland.

486. This was recently confirmed by government representatives during Poland's third Universal Periodic Review in 2017. Statement delivered by Min. J. Dziędziczak at the 36th session of the Human Rights Council, Universal Periodic Review, Poland, 22 September 2017. Previously, President A. Duda, from the same PiS ruling party, had also declared earlier in 2017 that the Polish Constitution "clearly and expressly" defined marriage as a union between a man and a woman and expressed doubts that the government would ever agree to any amendment to the Constitution in this area, or to opening to "an interpretation of marriage that could include other genders." See TheNews, Polish President rules out gay marriage, Polske Radio Dla Zagranicy, 25 January 2017.

487. Polish informal coalition for the CCPR for consideration of the UN Human Rights Committee, "Alternative report to the ICCPR", 21 July 2016.

488. See also European Commission against Racism and Intolerance, ECRI Report on Poland (fifth monitoring cycle), adopted on 20 March 2015, published on 9 June 2015.

489. Interview with members of KPH and Lambda, Thursday 22 June 2017, in Warsaw, Poland.

490. Some couples who were refused civil status certificates have challenged the decisions in Polish courts by bringing an action against the registry office which refused to issue the requested document. ILGA-Europe, Annual Review, 2016. The Commissioner for Human Rights intervened in a case in 2016, arguing that, although Polish law indeed made it impossible to issue the certificate, the national law would be contrary to Poland's obligations under EU law and the EU Fundamental Rights Charter, as well as the European Convention for Human Rights and Fundamental Freedoms (ECHR). He therefore filed an application asking for a prejudicial question to the Court of Justice of the European Union (CJEU) about the interpretation of EU law in this case. However, the Court dismissed the Commissioner's request as well as the applicant's appeal. Summary of the Report on the Activity of the Ombudsman in Poland, July 2016.

ALL DOWNHILL FROM HERE :

The rapid degradation of the rule of law in Poland: what it means for women's sexual and reproductive rights, and LGBT+ persons' rights

However, given the recent *Coman* judgment, Poland now has the obligation to reform this system so as to comply with the judgment.

Same-sex couples also face difficulties when attempting to change their surname to their partner's. Indeed, the Law on the Changes of Names and Surnames states that such change must be justified by an "important reason," and when the reason is being in same sex relationship, applicants see their application rejected to the motive that "same-sex partnership is not legal in Poland."⁴⁹¹

Despite a restrictive legal framework, some positive developments have taken place though, thanks to the decisions issued by some courts in specific cases which went towards ensuring equal rights to same sex-couples across areas and paved the way to a more progressive interpretation of existing laws.⁴⁹² Among those, the Supreme Administrative Court's decision in September 2016 asking the Ministry of Interior to re-examine a same-sex couple's decision to buy property together, which was refused on ground that their partnership was not proof of one of the applicants' connection to the country. The court ruled that the connection with Poland should not be defined only in relation to marriages and unions with different-sex partners, thus opening to a more progressive interpretation of relevant provisions in Polish law. Earlier that year, the Polish Supreme Court held that the difference in sex of persons living in such a relationship with another person where spiritual, physical and economical bonds exist between them is not a condition for determining their living in common cohabitation, included in the definition of the next of kin in Article 115(1) of the Polish Penal Code and that therefore same-sex couples living together can refuse to testify against each other in criminal proceedings.

While the road to same-sex marriage or civil unions in Poland still seems long, so does the road to the recognition of same-sex parents.

C) Children of same-sex parents impacted

Polish citizens who married or entered into a civil partnership with a person of the same sex abroad also face obstacles when applying for a birth certificate for their children born outside Poland. In these cases, the authorities refuse to transcribe birth certificates issued abroad when the latter indicate as parents two persons from the same sex, on ground that this would violate Polish law which does not recognise same-sex relationships. As birth certificates' transcription is necessary in order to exercise citizens' rights in Poland, the refusal to transcribe the certificates prevents children born from same-sex couples from exercising their rights as Polish citizens, thus discriminating against both children and their parents.

A famous case concerned Katherina M., a British citizen, and Zofia M., a Polish citizen, who entered into a civil partnership in the United Kingdom and had a daughter, Maria M. When Zofia M. tried to have her daughter's British birth certificate transcribed at the registry office in Lodz, Poland, in 2011, the transcription was denied. The reason given by the registry office for not transcribing the certificate was that this would violate Polish law, which does not recognise same-sex partnerships but rather promotes a traditional family model. Despite Zofia's decision to legally challenge the refusal up to the highest level, the Supreme Administrative Court, all instances upheld the registry office's decision.⁴⁹³ The applicants brought the case to the ECtHR, before which a decision is pending.

The Commissioner for Human Rights criticised this practice and the system which is discriminatory and violates the right to equal treatment and requested the Minister of Interior to look into how this could be modified so that children born abroad from same sex parents can have their rights as Polish citizens' duly recognised.⁴⁹⁴

491. OHF, "Social Situation of LGBT persons. Report for the years 2015-2016"; 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.

492. LGA-Europe Annual Review, 2017. See also European network of legal experts in gender equality and non-discrimination, "Landmark decision of the Supreme Court regarding rights of same sex partners in criminal law," 24 March 2016.

493. OHF, "Social Situation of LGBT persons. Report for the years 2015-2016"; 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.

494. Summary of the Report on the Activity of the Commissioner for Human Rights in 2016.

ALL DOWNHILL FROM HERE :

The rapid degradation of the rule of law in Poland: what it means for women's sexual and reproductive rights, and LGBT+ persons' rights

Recommendations

To the U.N. Committee on the Rights of the Child, to the U.N. Committee on Economic, Social, and Cultural Rights, to the U.N. Independent Expert on Sexual Orientation, Gender Identity:

- Clearly voice concerns regarding the current limited protection from discrimination on the ground of sexual orientation, gender identity, and expression, and the apparent lack of political will to enhance such protection; and
- If deemed necessary, issue a public declaration on the matter; and
- Extend an offer for a country visit to the Polish government on its implementation of the CRC and the ICESCR, in particular regarding the situation of LGBT+ persons' rights; and
- Urge the Polish government to ensure LGBT+ students enjoy their right to education in a safe environment, free from bullying, violence, social exclusion, or other forms of discriminatory and degrading treatment related to sexual orientation, gender identity, or expression. To that end, urge the Polish government to have mandatory equality education for all in schools, in particular;
- Urge the Polish government to suppress prior requirements for legal gender recognition such as proof of infertility, gender reaffirming surgery, hormonal treatment, or the "real-life test."

To the U.N. Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, to the U.N. Committee against Torture, to the U.N. Independent Expert on Sexual Orientation, Gender Identity:

- Clearly voice concerns regarding the current anti-LGBT+ discourse by some public figures, on public platforms; and
- If deemed necessary, issue a public declaration on the matter; and
- Extend an offer for a country visit to the Polish government on its implementation of the CAT, in particular regarding the situation of LGBT+ persons' rights

To the European Union:

• To the European Parliament:

- Amend the Employment Equality Directive so as to include gender identity and expression among protected grounds, as recommended by United Nations standards; and
- Issue a public declaration or guidelines clearly specifying to member States that the exception provided for in Art. 4(2) of the Employment Equality Directive for occupational activities within churches and other public or private religious organisations cannot not serve to allow employers to discriminate against their employees based on their sexual orientation or gender identity or expression; and
- Reiterate a recommendation to the European Commission, member States, and candidate nations, once again firmly underlining the importance of a continuous assessment of the implementation of the "Guidelines to Promote and Protect the Enjoyment of all Human Rights by LGBTI Persons" by using clear benchmarks; and
- Keep on taking into account the work of the European Parliament's Intergroup on LGBTI Rights, notably on freedom of movement for same-sex couples;
- Follow up on the January 2018 resolution on protection and non-discrimination with regard to minorities in the EU Member States, notably on the strong recommendation made to the European Commission to "ensure that member States correctly implement the Free Movement Directive, consistently respecting, inter alia, the provisions related to family members and prohibiting discrimination on any grounds."

• To the European Commission:

- Focus on LGBT+ persons' economic, social, and cultural rights, and on anti-LGBT+ hate speech and crime, as part of the yearly report on progress with regard to its List of actions to advance LGBTI equality; and
- Start infringement proceedings on the Law on the Protection and Assistance for Victims and Witnesses, for failure to fully implement the EU Victims' Rights Directive into national legislation by de facto excluding homophobic, biphobic, and transphobic crimes' victims from its scope and from the specific protection and support that are required for them; and
- As guardian of the treaties, ensure member States, including Poland, fully comply with the Court of Justice of the European Union's *Coman and others v. Romania* judgment, by recognising same-sex marriages concluded lawfully in the EU, irrespective of whether they have opened marriage to same-sex couples in their own territory; and

ALL DOWNHILL FROM HERE :

The rapid degradation of the rule of law in Poland: what it means for women's sexual and reproductive rights, and LGBT+ persons' rights

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- If necessary, start infringement proceedings to ensure compliance.
 - **To the European Agency for Fundamental Rights:**
 - Follow up on the recommendations set out in the 2015 update to the comparative legal analysis on the "Protection against discrimination on grounds of sexual orientation, gender identity and sex characteristics in the EU." In the case of Poland, especially follow up on the following recommendations:
 - o to "take measures to ensure respect for gender non-conformity and facilitate access to gender reassignment surgery when requested"
 - o to "review their procedures for gender identity recognition with a view to making them clear and easy to fulfil, avoiding prerequisites such as genital surgery – which can lead to sterilisation – and/or forced or automatic divorces"
 - o to "ensure that LGBTI people, in particular, are fully informed of their rights [in the workplace], that discrimination victims are encouraged to lodge formal complaints, and that they are supported in doing so"
 - o to "ban discrimination based on sexual orientation beyond the employment sphere, including some or all areas covered by the Racial Equality Directive"
 - o to "provide training and developing guidelines/ handbooks for the police, prosecutors and judges on how to assist/support individuals who become victims of hate crime because of perceptions of their sexual orientation and/or gender identity"
 - o to "ensure that relevant quantitative data, in the form of regular surveys and official data recorded by authorities, are gathered and analysed in order to monitor discrimination and criminal victimisation based on sexual orientation, gender identity and sex characteristics"
 - o to "ensure the equal protection of rights of LGBTI people in relevant areas of EU law, in particular employment-related partner benefits, free movement of EU citizens and family reunification of refugees and third-country nationals, by explicitly incorporating same-sex partners – whether married, registered, or in a de facto union – into the definition of 'family member'"

To the Council of Europe:

- Extend an offer for a country-visit to Poland aimed at pursuing a direct dialogue with the authorities and looking into the situation of LGBT+ persons' rights, and publish a report containing conclusions and relevant recommendations to help redress shortcomings; and
 - Follow up on the recommendations set out in the 2011 paper on "Discrimination on grounds of sexual orientation and gender identity in Europe." In the case of Poland, especially follow up on the following recommendations:
 - "Grant legal recognition for the preferred gender of transgender persons and develop expeditious and transparent procedures for changing the name and sex of a transgender person on birth certificates, civil registers, identity cards, passports, educational certificates and other similar documents"
 - "Abolish sterilisation and other compulsory medical treatment which may seriously impair the autonomy, health or well-being of the individual, as necessary requirements for the legal recognition of a transgender person's preferred gender"
 - "Remove the requirement of being unmarried, or divorce for already married persons, as a necessary condition for the legal recognition of a transgender person's preferred gender"
 - "Enact legislation recognising same-sex partnerships by granting such partnerships the same rights and benefits as different-sex partnerships or marriage, for example in the areas of social security, employment and pension benefits, freedom of movement, family reunification, parental rights and inheritance"
 - Urge the Polish government to use scientifically-accurate manuals for comprehensive sexual education courses, such as Compass and Compasito; and
 - Urge the Polish government to take into account the bias motive related to sexual orientation or gender identity as an aggravating circumstance. This implies member States must ensure that law enforcement structures, including the judiciary, be trained so as to be able to identify such crimes and provide adequate assistance and support to victims and witnesses; and
 - Encourages member States to prohibit and publicly disavow hate speech whenever it occurs, calling on them to raise awareness among public authorities and public institutions at all levels of their responsibility to refrain from statements, in particular to the media, which may reasonably be understood as legitimising such hatred or discrimination; and
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ALL DOWNHILL FROM HERE :

The rapid degradation of the rule of law in Poland: what it means for women's sexual and reproductive rights, and LGBT+ persons' rights

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- If deemed necessary, issue a public declaration or resolution on the matters.
 - **To the Parliamentary Assembly:**
 - Adopt the upcoming report on "private and family life: achieving equality regardless of sexual orientation"

To the Government of the Republic of Poland in general:

- Increase the financial resources of the Human Rights Commissioner; and
- Refrain from exerting informal pressure through declarations in the media to prevent teachers from using scientifically-accurate comprehensive sexual education manuals such as Compass and Compasito; and
- More generally, refrain from public declarations, either in the media or online, containing discriminatory statement against persons with non-conforming sexual orientation, gender identity, or expression; and
- In line with Council of Europe and United Nations standards, refrain from derogatory comments towards LGBT+ persons and organisations advocating for their rights, and publicly condemn attacks against LGBT+ persons and organisations advocating for their rights.

To the Ministry of Justice of the Republic of Poland:

- Refrain from making abusive and arbitrary use of the power to intervene in cases so as to prevent the advancement of LGBT+ rights; and
- Ensure the bias motive related to sexual orientation or gender identity is taken into account as an aggravating circumstance from the start of the investigation. This implies law enforcement structures, including the judiciary, be trained so as to be able to identify such crimes and provide adequate assistance and support to victims and witnesses; and
- Together with the Ministry of Interior, adopt working definition of hate crimes which includes crimes motivated by prejudice against non-conforming sexual orientation, gender identity, or expression, notably with the view of regularly collecting data on these crimes; and
- Ensure prosecutors and judges are trained to use this harmonised data collection system on hate crimes.

To the Ministry of Interior of the Republic of Poland:

- Together with the Ministry of Justice, adopt working definition of hate crimes which includes crimes motivated by prejudice against non-conforming sexual orientation, gender identity, or expression, notably with the view of regularly collecting data on these crimes; and
- Ensure law enforcement agents are systematically trained to use this harmonised data collection system on hate crimes, as well as on LGBT+ rights issues such as crimes motivated by prejudice.

To the Ministry of Labour of the Republic of Poland:

- Regularly collect data on discrimination based on sexual orientation, gender identity, and expression in the workplace and on the labour market and make them publicly available; and
- Ensure dissuasive disciplinary actions are taken against employees or employers who have discriminatory attitudes in particular towards LGBT+ employees in the workplace; and
- Amend the 2016 rules on diplomas so that they do not constitute further obstacles preventing transgender persons from accessing the labour market, notably by suppressing the requirement for transgender persons having obtained legal gender recognition to deliver the court's judgment and copies of it to the education institution they attended, for it to issue a new diploma; and
- Conduct country-wide awareness-raising campaigns on LGBT+ persons' rights in the workplace.

To the Ministry of Education of the Republic of Poland:

- Provide systematic training to teachers on comprehensive sexual education and anti-discrimination issues; and
- Integrate scientifically-accurate comprehensive sexual education courses in school curricula, in line with Council of Europe standards;
- Ensure that comprehensive sexual education courses are taught by qualified teachers or non-governmental organisations and not permeated with religious views;
- Ensure religion teachers, appointed by the Church, are subject to scrutiny (and thus inspections) in their classroom; and
- Enact clear anti-bullying and equality policies in schools; and
- Ensure dissuasive disciplinary actions are taken against teachers who have discriminatory attitudes in particular towards LGBT+ students and teachers at school; and

ALL DOWNHILL FROM HERE :

The rapid degradation of the rule of law in Poland: what it means for women's sexual and reproductive rights, and LGBT+ persons' rights

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- Urge medical universities to amend medical schools' curricula so as to incorporate systematic equality education and systematic training on LGBT+ issues to healthcare personnel, notably on gender reaffirming procedures; and
 - Refrain from calling out and publicly shaming teachers who attempt to provide scientifically-accurate sexual education at school.

To the Ministry of Health of the Republic of Poland:

- Urge medical universities to amend medical schools' curricula so as to incorporate systematic equality education and systematic training on LGBT+ issues to healthcare personnel, notably on gender reaffirming procedures; and
- Ensure hormone therapy and gender reaffirming procedures are accessible to any person expressing a wish to undertake them, and that they be free of charge upon demonstration of financial need; and
- Suppress the current requirement that someone must have undergone full genital reaffirming surgery in order to be able to have the costs related to the reaffirmation funded.

To the Polish Parliament:

- Refrain from revoking Art. 138 of the Petty Crimes Code to prevent LGBT+ rights' advancements on this basis, or enact legislation filling the gap left by the revocation of such provision, allowing LGBT+ persons to advocate for their right not to be discriminated against in accessing goods and services; and
- Amend the Equal Treatment Act to as to revoke the provision stating the list of protected grounds constitutes a closed catalogue, include gender identity among the protected grounds in all areas of life, included in employment, in line with EU law obligations on the matter; and
- Amend the Equal Treatment Act so as to prevent the abusive use of the "religious organisations" exception of Art. 4(2) of the Employment Equality Directive, to justify employers discriminating against their employees based on their sexual orientation or gender identity or expression; and
- Amend the Act on the Protection and Assistance for Victims and Witnesses so as to include homophobic, biphobic, and transphobic crime victims in its scope; and
- Amend the Criminal Code so that hate crimes against lesbian, gay, bisexual, and transgender persons and corollary offences be recognised as motivated by prejudice instead of common crimes, and tried and sanctioned as such; and
- Enact a law providing same-sex couples with the possibility to have their relationship officially recognised, whether through marriage or civil union; and
- Remove any restrictions preventing transgender persons from remaining in an existing marriage, or remaining in custody of their children, after the legal recognition of their gender; and
- Reform the Law on Civil Status so as to conform with the CJEU's ruling in Coman obligating member States to recognise same-sex marriages concluded lawfully in the EU, irrespective of whether they have opened marriage to same-sex couples in their own territory, and thus also lift the constitutional ban on same-sex marriage by amending Art. 18 of the Polish Constitution; and
- Enact a law ensuring same-sex parents can obtain the transcription of a birth certificate issued abroad listing two persons of the same sex as parents.
- Enact a law allowing transgender persons' having undergone gender reaffirming procedures in Poland to obtain legal gender recognition without having to file a suit against their parents, or to fulfil prior medical or non-medical requirements, in line with international and regional human rights standards.

To the National School for the Prosecution and the Judiciary:

- Put together trainings to assistant judges, judges, and prosecutors on LGBT+ rights issues such as crimes motivated by prejudice.

To the Commissioner for Patients' Rights:

- Raise awareness among LGBT+ persons regarding their rights in the healthcare system, or cooperate with civil society organisations willing to do so.

To the Government Plenipotentiary for Equal Treatment:

- Immediately publish the updated National Action Plan for Equal Treatment 2017-2020, and ensure equality issues are a main focus of the plan; and
- Elaborate all future National Action Plans for Equal Treatment in consultation with civil society organisations working on equality issues.

ALL DOWNHILL FROM HERE :

The rapid degradation of the rule of law in Poland: what it means for women's sexual and reproductive rights, and LGBT+ persons' rights

Conclusion

Over the past three years, the degradation of the rule of law in Poland, and the weight given to the Catholic Church has induced heightened intolerance towards LGBT+ persons. The Government Plenipotentiary for Equal Treatment's refusal to deal with LGBT+ issues, in favour of "family mainstreaming" instead is only one of the illustration of the anti-LGBT+ developments happening under the current PiS government and the degradation of the rule of law they have brought upon Poland. The only other institution undertaking anti-discrimination issues encompassing the situation of LGBT+ persons' the Polish Commissioner for Human Rights, who the current government has repeatedly attempted to incapacitate, notably through budgetary cuts. This is not surprising as public officials' anti-LGBT+ positioning has been made clear when no public reaction of support to civil society organisations advocating for LGBT+ persons' rights was issued when these organisations were the target of physical attacks.

Under this context, civil society organisations and opposition parties are reluctant to introduce new laws which would expand the rights and protection afforded to LGBT+ persons, for fear this would backlash into further restrictions of these rights.

This is particularly alarming in light of the fact that discrimination against LGBT+ persons occurs in every area of life, religion is sometimes invoked to justify it, and Polish law almost does not prohibit discrimination on the ground of sexual orientation, gender identity, or expression. This entails LGBT+ persons' interests are not at all being safeguarded.

ALL DOWNHILL FROM HERE :

The rapid degradation of the rule of law in Poland: what it means for women's sexual and reproductive rights, and LGBT+ persons' rights

PART III - THE PROGRESSIVE STRANGULATION OF PARTICIPATORY DEMOCRACY – SPACE FOR CRITICAL NGOs IS DECREASING AT AN ALARMING RATE



Plenary session of Sejm (lower house) in Warsaw, Poland on 8 December 2017.
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ALL DOWNHILL FROM HERE :
The rapid degradation of the rule of law in Poland: what it means for women's sexual and reproductive rights, and LGBT+ persons' rights

Introduction

To avoid arbitrariness, the principle of controlling power through other powers is one of the essential components of the rule of law, which goes back to the principle of separation and non-confusion of powers. A healthy democracy must therefore allow the existence of an opposition, including financially, and allow for its development. The existence of this opposition guarantees the vitality of the democratic debate. Civil society organisations (hereafter "CSOs") contribute to this vitality when they enable the State, through their vigilance, to respect its human rights commitments, made when signing and ratifying covenants, conventions, or declarations in this area.

The EU recognises the added value of civil society. Member States, through their adherence to the Copenhagen principles, must therefore regard CSOs as committed partners working towards a shared goal: providing all citizens with the most decent life and the fairest institutions. A recent report by the EU Fundamental Rights Agency (hereafter "FRA") highlights the current trend of a shrinking civic space to work on improving the condition of their fellow citizens in the EU.⁴⁹⁵ This report, which is based on a case study from the 28 EU member States, should serve as a future framework for examining and reflecting on the situation of CSOs in the EU. The institutional character of the FRA guarantees the impartiality of its observations. This report will therefore use it as a basis for analysing the situation in Poland, by applying the proposed grid to the situation of CSOs, particularly those working on women's rights and LGBT+ rights, in Poland.

I. The need for a favourable regulatory environment

To do their work, civil society actors involved in promoting fundamental rights need to be able to exercise their rights fully and without unnecessary or arbitrary restrictions. This necessitates that States fully implement their positive obligations to promote human rights and create an enabling environment for CSOs. Art. 51(1) of the EU Charter of Fundamental Rights obliges the Union and member States to respect all Charter rights and "observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the Treaties." The rights to freedom of association, freedom of peaceful assembly (Art. 12 of the EU Charter of Fundamental Rights), and freedom of expression and information (Art. 11 of the Charter) are of particular importance in this context and apply to EU Member States when they are acting within the scope of EU law.⁴⁹⁶

The government has introduced a number of laws that raise concerns regarding the space for CSOs. In particular, human rights groups fear that these powers could be used against them in their work, including preventing them from being able to protect the confidentiality of their sources.

CSOs have expressed their concerns regarding the anti-terrorism law adopted in June 2016, as well as the February 2017 Act concerning the police, which disproportionately affect a number of rights, including the freedom of peaceful assembly, the right to privacy (increased surveillance of Internet communications under the government's authority, blocking websites, ...). As is often the case in the fight against terrorism, the very loose definition of the terms included the law does not seem to meet the requirement of foreseeability. In particular CSOs working as human rights defenders fear that these laws will be used against them, especially when it comes to protecting the confidentiality of their sources.

In the event of an increased level of security due to a terrorist risk, gatherings may be banned without any set time limit on these prohibitions, which may disproportionately affect freedom of association and peaceful assembly.

As regards the restrictions on freedom of expression, Poland already criminalises abusive, offensive, or insulting behaviour against public officials carrying out their official activities; insulting and/or defamation of the heads of State; it prohibits insulting the State or State symbols; defamation or denigration of various State institutions, such as governments, parliaments, courts, armed forces, and

⁴⁹⁵ European Agency for Fundamental Rights, Challenges facing civil society organisations working on human rights in the EU, 2017.

⁴⁹⁶ European Agency for Fundamental Rights, Challenges facing civil society organisations working on human rights in the EU, 2017, p. 7.

ALL DOWNHILL FROM HERE :

The rapid degradation of the rule of law in Poland: what it means for women's sexual and reproductive rights, and LGBT+ persons' rights

public bodies, or the authorities in general; defamation of foreign heads of State.

The Polish Council for the Prevention of Racial Discrimination, Xenophobia and Intolerance, established in 2013 to coordinate the work of different public institutions in the fight against hate speech and other acts of intolerance, has been abolished. It is also important to note that hate crimes concerning sexual orientation are not recognised in the Penal Code, which leaves the decision whether to prosecute entirely at the discretion of the judge. Knowing that justice has been completely reorganised so that it is under the control of the executive, we may rightly fear that such crimes will not be prosecuted effectively.

There have also been repeated attacks against the Commissioner for Human Rights, a strong indicator of the instability of the legislative framework. The office of the Commissioner for Human Rights was an honoured institution, particularly because of the independence of the commissioners. The last to hold office, Adam Bodnar, is well-respected. This did not prevent the leaders of the ruling Law and Justice (PiS) party from publicly criticising the Commissioner and endeavouring to damage his reputation and restrict the scope of his work. In September 2016, they called for the dismissal of Adam Bodnar because he intervened in a criminal case incriminating a printer who refused to provide services to representatives of an organisation advocating for LGBT+ rights. In 2016, the Polish Parliament also passed a law making it easier to lift the Commissioner's immunity. All these campaigns and attempts to destabilise the Polish Commissioner for Human Rights demonstrate how power seeks to eliminate the opposition, even structurally, and even though it is formally organised.

II. Financing and funding

Access to resources is an integral part of the right to freedom of association, as defined in Art. 22 of the ICCPR and other human rights instruments, including the EU Charter of Fundamental Rights (Art. 12). Art. 13 of the U.N. Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (hereafter, the "U.N. Declaration on Human Rights Defenders") enshrines the right to "solicit, receive and utilise resources" to promote and protect human rights. The concept of "resources" is broadly defined to include financial assistance, material resources, access to international funds, solidarity, the ability to travel and communicate interference, and the right to benefit from the protection of the state.⁴⁹⁷

One can reasonably speak of civil society intimidation, when, as practised in countries that do not comply with the rule of law, the government has decided to attack, by means of a defamation campaign, and even administrative and judicial harassment, critical CSOs that receive national public funds or funding from abroad. Blackmail on registration is a form of intimidation which can also be harmful to smaller CSOs by preventing them from acting for the benefit of the community and from exercising their role as guardian of democratic standards and respect for human rights vis-à-vis the government. In terms of harassment, Poland is not that different from Hungary.

The adoption of the National Freedom Institute Act in September 2017 created the National Centre for the Development of Civil Society, which mandate is to allocate state funding to civil society. Previously, decisions on how to allocate public funds to CSOs were shared between different ministries and local governments, a system which facilitated the distribution of resources to several beneficiaries. The law places the National Centre under the authority of a plenipotentiary director with discretionary powers, but largely under the control of the Prime Minister. The composition of the Centre's governing bodies, the Director and the Council, civil society development programmes are monitored from within the government. Projects of thematic areas will be proposed by the director, projects that the Council will approve without any meaningful consultation with civil society, which was not consulted further by the government during the drafting of the law. The National Freedom Institute Act provides for the allocation of funds on the basis of competition.

Some CSOs critical of the government, which are currently funded by the state, are thus justifiably afraid their funding will be reduced or denied. In the field of women's rights, LGBT+ rights, the rights of asylum

497. European Agency for Fundamental Rights, Challenges facing civil society organisations working on human rights in the EU, 2017, p. 8.

ALL DOWNHILL FROM HERE :

The rapid degradation of the rule of law in Poland: what it means for women's sexual and reproductive rights, and LGBT+ persons' rights

seekers and migrants, some CSOs are already experiencing difficulties in accessing the funds to which they are entitled, due to unexplained delays in transfers.

The Ministry of Justice has already refused funding to several women's rights organisations in 2016, including the Women's Rights Centre, which has been receiving annual funding since 2012, under the pretext that the centre focuses solely on women's rights and, therefore, discriminates against men who are victims of violence.

The limitation or even the disappearance of public funding would be particularly damaging for these CSOs, whose existence really depends on funds obtained. In some cases involving potential private partners, the only possibility of turning to private financing sometimes stalls as there is a risk of appearing to challenge power by supporting activities that the government would "censure."

Moreover, even without a reduction in the budget allocated through public funding, the increase in GONGOs and radical right-wing organisations proposing many radical legal solutions to the Government (such as *Ordo Iuris*), which are more often centrally-funded, means drastic restrictions in the share of funding available for critical CSOs.

There are real concerns about the lack of transparency in the distribution of funds.

In addition, in terms of the harassment and intimidation of the opposition, we note that, following the 2015 general elections, the new government substantially reduced the Commissioner's budget thus limiting his capacity to carry out its mandate, including in this area. The Commissioner's budget was indeed of 38,602,000 złotys⁴⁹⁸ in 2015, following which he applied for an 18% increase in 2016. However, not only was the demand discarded, but the budget was decreased to 35,619,000 złotys,⁴⁹⁹ i.e. the same budget that had been allocated to the Commissioner in 2011.⁵⁰⁰ The budget planned for 2018, after the approval by the Parliament, amounts to 39,433,000 złotys,⁵⁰¹ while the Ombudsman had motioned for 42,639,000 złotys.⁵⁰² The increase (in comparison with 2017) is mostly caused by plans of investments in buildings of the Ombudsman's Office in Warsaw.

III. The right to participation

Art. 11 of the Treaty on European Union (TEU) specifies that EU institutions "shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action" and "shall maintain an open, transparent and regular dialogue with representative associations and civil society." The right to participation in public affairs is also recognised in Art. 25 of the ICCPR and was recently reaffirmed in the Council of Europe Guidelines for civil participation in political decision-making, as adopted in September 2017 by the Council of Europe's Committee of Ministers. One of its components is civil participation, which the guidelines define as "the engagement of individuals, NGOs and civil society at large in decision-making processes by public authorities."⁵⁰³

In Poland, however, a new legislation which passed in 2016 gave priority to "cyclical" gatherings (gatherings taking place at regular intervals) and reduced the scope of counter-demonstrations against them. Legislation prevents proposed gatherings from taking place at the same place or at the same time as a cyclical gathering, much to the chagrin of CSOs, worried that their protests be less effective. This law, for example, prohibits demonstrations from taking place at the same time as cyclical commemorations of the Smolensk disaster, during which President Kaczynski lost his life. The law is now in force after having been declared constitutional by the Constitutional Tribunal, which independence has been seriously damaged following the 2015 Constitutional crisis, in March 2017.

498. 8,777,472.38 euros.

499. 8,099,186.28 euros.

500. U.N. Human Rights Committee, "Report on measures taken by the Republic of Poland to implement the provisions of the International Covenant on Civil and Political Rights in the years 2008-2015," Information provided by the Commissioner for Human Rights of the Republic of Poland in accordance the International Covenant on Civil and Political Rights in connection with the consideration of the seventh periodic report of the Republic of Poland covering the period from 15 October 2008 until 31 October 2015, 6 October 2016.

501. 9,112,066.73 euros.

502. 9,852,900.19 euros.

503. European Agency for Fundamental Rights, Challenges facing civil society organisations working on human rights in the EU, 2017, p. 10.

ALL DOWNHILL FROM HERE :

The rapid degradation of the rule of law in Poland: what it means for women's sexual and reproductive rights, and LGBT+ persons' rights

Mass demonstrations, as we saw in 2016 (the Black Protest against the revision of the law on abortion) and 2017 (the Chain of Lights protest against the reform of the judiciary) are well within the government's sights.

In addition, there is a lack of transparency and dialogue in the decision-making, dialogue and transparency processes that are required in the rule of law. This is all the more damaging when CSOs are themselves concerned by the scope of laws passed without consultation (see "National Freedom Institute Act" above).

IV. Guaranteeing a safe and secure space for civil society

CSOs and activists in the EU face physical and verbal attacks, harassment and intimidation by non-State actors. These incidents take place both online and offline. Some State officials even engage in verbal attacks and create negative narratives that stigmatise CSOs or discredit their work, harming both the support base for CSOs in society and activists' morale and motivation. It is vital for public officials to refrain from attacks, including verbal attacks, and unfounded attempts to discredit organisations that promote human rights and non-discrimination. Neither public authorities nor civil society organisations are properly recording – at the EU or national level – data on attacks and threats against CSOs.⁵⁰⁴

In 2016, the headquarters of several Polish CSOs working to defend LGBT+ rights were attacked and tagged, then invaded by people yelling insults.

Intimidation also comes from the State. In 2017, the authorities searched the offices of the Center for Women's Rights in Warsaw, Gdańsk, Łódź and Zielona Góra, who work to help victims of domestic violence. In addition, State-controlled media have accused a number of CSOs of fraudulently obtaining funds, which is akin to real smear campaigns.

Recommendations

To the European Union:

• To the Members of the European Parliament in particular:

- Organise follow-up visits in Poland on the situation of the rule of law and its consequences for LGBT+ persons and women's sexual and reproductive rights. On these occasions, secure meetings with the Polish Human Rights Commissioner and civil society organisations working on equality issues.

• To the European Union institutions, the European Commission and the European Parliament:

- Use all necessary means to ensure full compliance by Poland with its obligations under European Union law, particularly with regards to the EU's founding values of respect for democracy, the rule of law, and human rights, as enshrined in Article 2 of the Treaty on European Union (TEU). Having regard to Articles 2 and 7 TEU, engage a structured dialogue with Poland on serious violations and deterioration of human rights, with a special focus on LGBT+, reproductive rights, freedom of expression, freedom of association, and more broadly on the shrinking space for civil society; and
- Enhance cooperation with the Council of Europe and its Venice Commission, and civil society, in monitoring observance and ensuring full compliance by Poland with such obligations.

• To the European Commission:

- Make better and more comprehensive use of infringement proceedings when Polish law is not in accordance with EU law obligations, including the Charter of Fundamental Rights of the European Union. This is notably the case for:
 - o the Law on the Protection and Assistance for Victims and Witnesses, which fails to fully implement the EU Victims' Rights Directive into national legislation by de facto excluding homophobic, biphobic, and transphobic crimes' victims from its scope and from the

⁵⁰⁴. European Agency for Fundamental Rights, Challenges facing civil society organisations working on human rights in the EU, 2017, p. 11.

specific protection and support that are required for them
 o the Law on Civil Status, which is not compliant with CJEU's ruling in Coman requiring member States to recognise same-sex marriages concluded lawfully in the EU, irrespective of whether they have opened marriage to same-sex couples in their own territory, and thus also lift the constitutional ban on same-sex marriage by amending Art. 18 of the Polish Constitution

- Find new and flexible ways to provide financial support to local NGOs and human rights defenders, overcoming the shrinking space for civil society in Poland, and ensuring civil society is enabled to pursue its work on LGBT+ and reproductive rights.
- **To the European Agency for Fundamental Rights:**
 - Pay thorough attention to the situation of Poland when investigating and drafting the upcoming report on the shrinking space for civil society in EU member States, and to that effect, ensure Polish civil society organisations and the Polish Human Rights Commissioner are consulted.

To the Council of Europe:

- **To the Parliamentary Assembly of the Council of Europe:**
 - Publicly voice concerns regarding the rapidly deteriorating situation in Poland and formally reinstate a monitoring procedure on this member State.
- **To the Venice Commission of Democracy through Law of the Council of Europe:**
 - Maintain cooperation, dialogue, and offers of legal advice to the government of Poland regarding legislative initiatives, in order to ensure their compliance with European standards regarding democracy, human rights and the rule of law.

To the Government of the Republic of Poland:

- Ensure counter-terrorism efforts, through recently adopted Acts (such as the Acts on the police, counter-terrorism, and cyclical gatherings), least impact fundamental freedoms in Poland, such as freedom of peaceful assembly, freedom of association, freedom of expression; and
- Ensure funding is fairly and transparently distributed among civil society organisations, including those critical of the government; and
- Increase the financial resources of the Human Rights Commissioner; and
- Ensure an enabling legal, institutional and administrative environment for civil society, which acknowledges the fundamental role that civil society organisations play in protecting democracy, the rule of law and human rights and ensuring democratic oversight over government's actions, and ensures their protection; and
- To this end, ensure that the registration process for NGOs is simple, non-onerous and expeditious and to refrain from adopting laws requesting already registered NGOs to re-register;
- Ensure free and non-politicised access to funding, including EU funding, for NGOs, refrain from imposing and lift any restriction that would hinder access to such funding;
- Refrain from issuing statements and running public campaigns targeting civil society organisations and attempting at delegitimising them through an hostile rhetoric, and address any attempt to stigmatise or attack human rights defenders, whether by public officials or non-State actors; and
- Conduct a regular and constructive dialogue with NGOs, including by holding consultations with civil society organisations over proposed legislation and seeking their expertise on matters which fall within their mandate.

To the Polish Parliament:

- Amend the 2016 anti-terrorism law so as to define "terrorism" more specifically, to meet the foreseeability requirement; and
- Repeal the 2017 Act on the National Institute of Freedom – Centre for the Development of Civil Society, or amend it so as to ensure the Institute is fully independent from the executive, distributes public funding in a transparent manner, and does not discriminate against NGOs on the basis of the type of activity they conduct; and
- Repeal the National Freedom Institute Act.

ALL DOWNHILL FROM HERE :

The rapid degradation of the rule of law in Poland: what it means for women's sexual and reproductive rights, and LGBT+ persons' rights

Conclusion

The Polish government seems determined to silence the country's democratic opposition. Limitations to freedom of demonstration, smear campaigns, intimidation, the narrowing of the vital financial space are all attacks against CSOs that are merely revitalising the Polish democratic space.

The European institutions cannot allow the attacks on the rule of law in Poland to develop, as they have done for too long in the case of Hungary. This has led to some States, advocates of authoritarian and populist politics, believing that anything goes. Defending CSOs is paramount. If EU institutions do not react, this lack of assistance will put the rule of law in danger.

ALL DOWNHILL FROM HERE :

The rapid degradation of the rule of law in Poland: what it means for women's sexual and reproductive rights, and LGBT+ persons' rights

CONCLUSION OF THE REPORT

Through its international and European human rights commitments, Poland has undertaken to uphold women's sexual and reproductive rights and protect LGBT+ persons' rights. Yet, the findings of this report indicate not only a wide gap between the State's human rights obligations and its implementation of them, but also recent intensified attempts at actively backtracking on these commitments and the few rights already recognised.

The situation of women's sexual and reproductive rights and LGBT+ persons' rights has been going downhill from October 2015 when the PiS party came into power. These rights and persons have been the target of retrogressive policies and legislative initiatives, in complete disregard of Poland's engagements before U.N. and European bodies. The civil society organisations and national bodies advocating for their rights have also been subjected to PiS-sponsored initiatives aimed at silencing them and hindering their work. These have been some of the impacts of the rapid degradation of the rule of law which has ensued since the election of a PiS-led government, openly seeking to embark on the path towards an "illiberal democracy" in the country.

This decline in the rights of every day Polish citizens, in particular LGBT+ persons' rights and women's sexual and reproductive rights, is only symptomatic of a wider degradation of the rule of law in Poland, which has started under the current government. This report has sought to demonstrate how the undermining of checks and balances, the attacks against the independence of the judiciary, and the strangulation of dissenting voices, have impacted the daily lives of Polish citizens, by adopting an equality lens to render the current situation more palpable.

Since it came to power, the current PiS-led government has indeed severely undermined Poland's check and balances through what can be described in no other way than a court-packing scheme.⁵⁰⁵ Through amendments rushed through the Sejm, the current government has brought each judicial institution under its control, one by one. First, under what was called the "Constitutional crisis," it awarded itself the right to verify the Constitutional Tribunal's judgements, and to refuse to acknowledge and execute them. Then, it managed to forcibly terminate the mandate of all judges sitting on the National Council of the Judiciary, and ensures new ones were politically-appointed. The Supreme Court met the same fate when the government succeeded in forcing approximately 40% of sitting judges to retire and allowing for the General Prosecutor to further appeal final judgments. Finally, the powers of the Ministry of Justice were dramatically increased, thereby worryingly increasing political supervision over these key players in Polish democracy. This resulted in the European Court of Justice voicing concerns as to whether Poland can even fulfil the right to a fair trial to the standard required among EU member States in the context of an extradition request.⁵⁰⁶

PiS' anti-democratic agenda did not only concern the judiciary, but also several fundamental freedoms of Polish citizens such as the freedom of assembly, which it severely restricted through its 2016 law on cyclical gatherings – a mean to prohibit demonstrations of civil society voices critical of the government. Freedom of expression was also reduced in the name of counter-terrorism, whereby critical voices are no longer tolerated and are criminalised. Civil society organisations, whose actions consist in precious resilience in the face of the developments which occurred over the past three years, were also targeted by the current government through schemes meant to reduce or completely cut their funding.

However, over this period, civil society has not remained silent. Thousands took part in protests in favour of women's rights, such as the Black Protest, and in favour of an independent judiciary, such as the Chain of Lights protest. These demonstrations have also sparked regional and international solidarity with Polish citizens through numerous petitions, declarations, and calls from academics, experts, civil society, governments, and institutions all around the world. They testify of the hundreds of thousands eyes on the Polish government today. While Polish citizens will bear the consequences of the current government's actions for many years to come, the international community, the European Union and its member States, and Polish citizens are watching and counting on the government to stop disregarding the heritage of the Polish fight for freedom and basic rights.

505. Marcin Maczak, "Poland: From Paradigm to Pariah? Polish Constitutional crisis – facts and interpretations," March 8, 2018.

506. European Court of Justice, Preliminary Ruling, Case C 216/18, 25 July 2018.

ALL DOWNHILL FROM HERE :

The rapid degradation of the rule of law in Poland: what it means for women's sexual and reproductive rights, and LGBT+ persons' rights

Several recommendations in that sense have been formulated in this report, to the attention of the Polish government. It is also now up to the European Union in particular to take the necessary action to address the rapidly deteriorating situation in Poland, which impacts the lives of all Polish citizens, and especially those left most defenseless by the lack of judicial independence and shrinking space for civil society. In this context, these developments have led the European Commission to trigger the Art. 7(1) procedure of the Treaty on European Union in November 2017,⁵⁰⁷ reserved to member States which present a clear risk of a serious breach of the EU's fundamental values.⁵⁰⁸ FIDH strongly hopes that this report will help the European Council take the necessary measures to ensure the rule of law, democracy, and human rights are preserved in Poland.

507. European Parliament resolution of 15 November 2017 on the situation of the rule of law and democracy in Poland (2017/2931(RSP)).
508. As laid out in Art. 2 of the Treaty on European Union.

ANNEX ON MECHANISMS TO PRESERVE THE RULE OF LAW IN THE EUROPEAN UNION

The European Union has a number, albeit limited, of monitoring mechanisms enabling it to respond to violations of EU law in member States, including the EU's founding values as enshrined in Art. 2 TEU and the Charter of Fundamental Rights of the European Union, now recognised as part of the Treaties (Art. 6(1) TEU).

Among these mechanisms:

- **Art. 7 TEU**, often considered a "nuclear weapon," which can be used in situations where there is a "clear risk of a serious breach by a Member State of the values referred to in Article 2" (Art. 7(1) TEU) or "a serious and persistent breach by a Member State of the values referred to in Article 2" (Art. 7(2) TEU) and whose scope of application is not limited to situations covered by EU law;

ART. 7 TEU		
	Preventive Mechanism	Sanctioning Mechanism
WHO?	The Council , acting by a majority of four fifths of its members after obtaining the consent of the European Parliament, on a reasoned proposal by one third of the member States , the European Parliament or the European Commission .	1st step (Article 7 TEU, para. 2) - The European Council , acting by unanimity on a proposal by one third of the member States or by the European Commission , and after obtaining the consent of the European Parliament; 2nd step (Article 7 TEU, para. 3) - The Council , acting by a qualified majority; 3rd step (Article 7 TEU, para. 4) - The Council , acting by a qualified majority.
WHEN?	When there is a clear risk of a serious breach by a member State of the values referred to in Article 2	When there exists a serious and persistent breach by a member State of the values referred to in Article 2 .
HOW?	The Council hears the member State in question and may address recommendations to it, in accordance with the same procedure, in order to determine that there is a clear risk of a serious breach by a member State of the values referred to in Article 2.	1st step (Article 7 TEU, para. 2) - The European Council determines the existence of a serious and persistent breach by a member State of the values referred to in Article 2, after inviting the member State in question to submit its observations; 2nd step (Article 7 TEU, para. 3) - The Council may decide to suspend certain of the rights deriving from the application of the Treaties to the member State in question, including the voting rights of the representative of the government of that member State in the Council; 3rd step (Article 7 TEU, para. 4) - The Council may decide subsequently to vary or revoke measures taken under paragraph 3 in response to changes in the situation which led to their being imposed.

- **Infringement procedures**, which enable the EU to react to specific violations of EU law according to the procedure provided for in Art. 258 TEU;⁵⁰⁹

INFRINGEMENT PROCEDURE (ART. 258 TFEU)	
WHO?	European Commission , on its own initiative or based on complaints lodged by citizens, corporations and non-governmental organization, petitions and questions by the European Parliament or non-communication of the transposition of Directives by the member States
WHEN?	If the European Commission considers that a Member State has failed to fulfil an obligation under the Treaties
HOW?	<p>1) The European Commission sends a letter of formal notice (Lfn) to the concerned member State inviting it to submit its observations on the question raised therein within two months.</p> <p>2) If the Member State fails to reply or the reply is not satisfactory, the European Commission issues a reasoned opinion, allowing the Member State an additional two-month period within which to comply with recommendations.</p> <p>3) If the Member State fails to comply with the commission's recommendations, the Commission can take the case to the court of Justice of the European Union (CJEU), whose judgment is binding.</p> <p>If the Member State fails to comply with the Court's judgment, the Commission may, after sending a further letter of formal notice and reasoned opinion, bring the matter before the CJEU a second time, seeking the imposition of a penalty payment under Article 260 of the TFEU.</p>

509. This legal limitation, which confines the possibility of the EU to react to violations of European law, including the Charter of Fundamental Rights of the European Union, which are not violations of one or several specific provisions of EU law, is contained in Art. 61 of the Charter of Fundamental Rights of the European Union. Pursuant to this provision, and according to the interpretation given by the Commission itself in its Communication, Strategy for the effective implementation of the Charter of Fundamental Rights by the European Union, COM(2010) 573 final, 19 October 2010, the Charter only applies to members "when they implement Union law" and the Commission can only react to violations of rights protected by the Charter in member States in these situations. That interpretation has been confirmed by the Court of Justice of the European Union (CJEU) for example in *Kreshnik Ymeraga and other vs. Minister of Labour, Employment and Immigration*, case C-87/12, judgment of the Court (second chamber) 8 May 2013 and in *Thomas Pringle vs. Government of Ireland, Ireland et The Attorney General*, case C-370/12, judgment of the Court (plenary assembly) of 27 November 2012.

ALL DOWNHILL FROM HERE :

The rapid degradation of the rule of law in Poland: what it means for women's sexual and reproductive rights, and LGBT+ persons' rights

- The more recently adopted new **EU framework to strengthen the rule of Law** (hereinafter "Rule of Law Framework"), designed to "ensure an effective and coherent protection of the rule of law" by making it possible to "address and resolve a situation where there is a systemic threat to the rule of law."⁵¹⁰

The EU framework to strengthen the rule of law		
WHO?	European Commission	
WHEN?	<p>"In situations where the authorities of a Member State are taking measures or are creating situations which are likely to systematically and adversely affect the integrity, stability or the proper functioning of the institutions and the safeguard mechanisms established at national level to secure the rule of law."</p> <p>"The framework seeks to resolve future threats to the rule of law in Member States before the conditions for activating the mechanisms foreseen in Article 7 TEU would be met."</p>	
HOW?	European Commission's assessment	<p>The Commission collects and examines all the relevant information and assesses whether there are clear indications of a systemic threat to the rule of law.</p> <p>If this is the case, it initiates a dialogue with the Member State concerned, by sending a "rule of law opinion" and substantiating its concerns.</p>
	European Commission's recommendation	<p>If the Commission finds that there is objective evidence of a systemic threat and that the authorities of the Member State concerned are not taking appropriate action to redress it, the Commission issues a "rule of law recommendation," recommending that the member State solves the problems identified within a fixed time limit and informs the Commission of the steps taken to that effect.</p>
	Follow-up to the recommendation	<p>If there is no satisfactory follow-up to the recommendation by the member State concerned within the time limit set, the Commission assesses the possibility of activating one of the mechanisms set out in Article 7 TEU.</p>

If the Rule of Law was to be threatened, the EU reaction would be justified, by activating one of the aforementioned mechanisms, depending on whether the threat takes the form of a violation of a specific provision of EU law, or a concerning situation "which fall outside the scope of the EU law and therefore cannot be considered as a breach of obligations under the Treaties but still pose a systemic threat to the rule of law"⁵¹¹ or even a "future threat[s] to the rule of law in member States before the conditions for activating the mechanisms foreseen in Article 7 TEU would be met."⁵¹²

Use of one of these mechanisms does not preclude activating the others, in parallel (i.e. in situations falling under EU law that, together, also represent a systemic threat to the rule of law) or successively (i.e. in situations which can be addressed by the rule of law framework, which last stage can be activation of Art. 7 TEU). These mechanisms are therefore complementary. Their purpose is not to replace, but rather complete other existing mechanisms, such as those at the Council of Europe, to protect the rule of law.

510. Communication of the Commission to the European Parliament and Council, A new EU framework to strengthen the rule of law, COM(2014) 158 final/2 p.3, 19 March 2014. See also the State of the Union address 2013 of the previous President of the European Commission José Manuel Barroso, 11 September 2013.

511. Communication of the Commission to the European Parliament and Council, A new EU framework to strengthen the rule of law, COM(2014) 158 final/2, p. 5

512. Communication of the Commission to the European Parliament and Council, A new EU framework to strengthen the rule of law, COM(2014) 158 final/2, p. 3.

ALL DOWNHILL FROM HERE :

The rapid degradation of the rule of law in Poland: what it means for women's sexual and reproductive rights, and LGBT+ persons' rights



POLSKIE TOWARZYSTWO
PRAWA ANTYDYSKRIMINACYJNEGO

The Polish Society of Antidiscrimination Law (PSAL)

Polskie Towarzystwo Prawa Antydyskryminacyjnego
ul. Szpitalna 5 lok. 6a, 00 - 031 Warszawa
www.ptpa.org.pl

The Polish Society of Antidiscrimination Law (PSAL) is an expert, Warsaw-based, non-governmental organisation working in the human rights field. Since 2009, PSAL brings together a range of Polish law practitioners, policy experts, lawyers of human rights NGOs in Poland and academics interested in promoting and improving anti-discrimination legislation. The organisation is committed to providing the best and most adequate legal advice to all those who face discrimination on the basis of gender, sexual orientation, age, disability, religion/belief, race and ethnic origin, etc., and conducts research in the field of equality law, drafting comprehensive comparative analyses.

PSAL currently coordinates a group of over 60 legal representatives. PSAL also leads the Coalition for Equal Chances, a coalition of over 70 NGOs nationwide which main objective is setting up joint actions to implement and develop equality-promoting and anti-discrimination law.

Its primary beneficiaries are national human rights organisations who are members of the Movement, and through them, the victims of human rights violations. FIDH also cooperates with other local partner organisations and actors of change.

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fidh

Director of publications:
Amilios Christopoulos
Editor: Patricia Huyghebaert
Authors: Dani Van Raemdonck, Elena Gresol, Elise Petropas, Camille Ceryals, Krzysztof Smieszek, Eliza Rutynowska
Coordination:
Camille Ceryals
Design: FIDH

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Mobilising the international community - Advocacy before intergovernmental bodies

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For FIDH, transforming societies relies on the work of local actors.

The Worldwide movement for human rights acts at national, regional and international levels in support of its member and partner organisations to address human rights abuses and consolidate democratic processes. Its work is directed at States and those in power, such as armed opposition groups and multinational corporations.

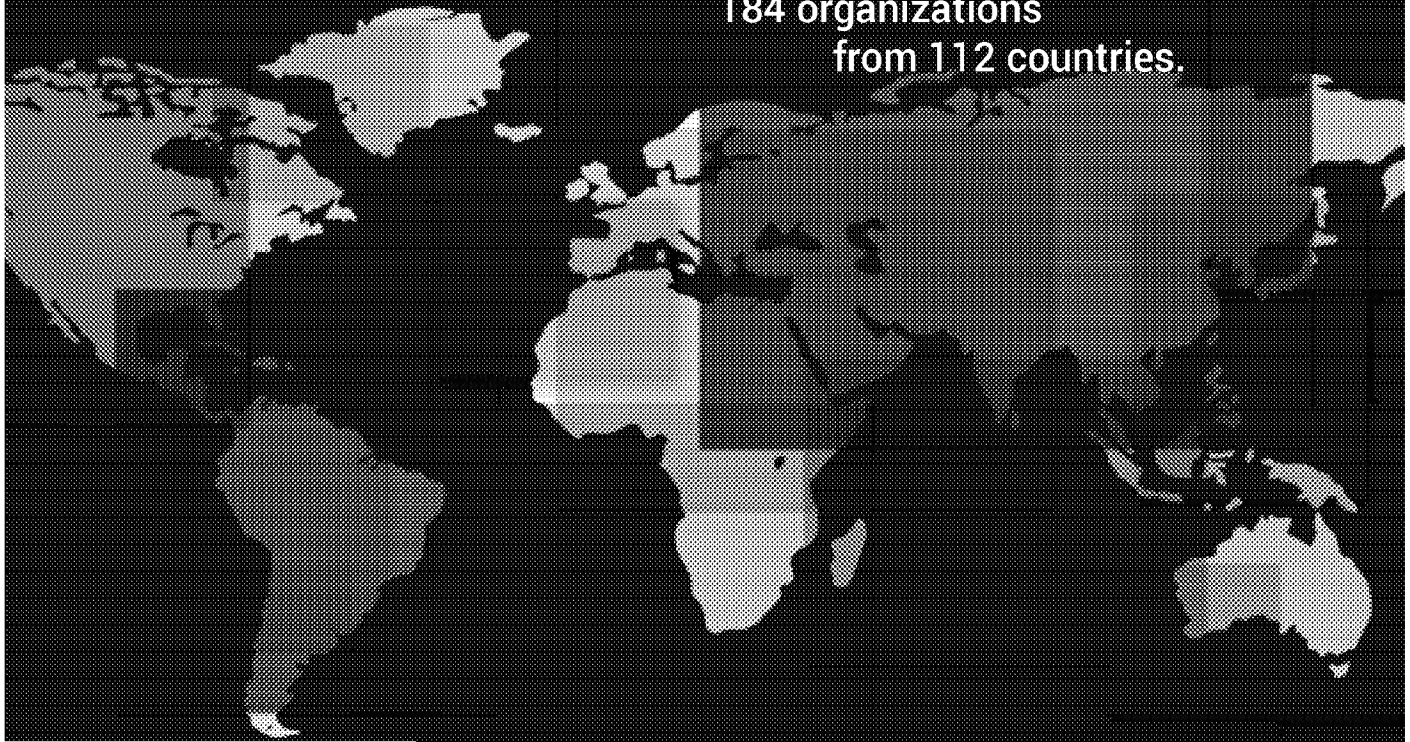
Its primary beneficiaries are national human rights organisations who are members of the Movement, and through them, the victims of human rights violations. FIDH also cooperates with other local partner organisations and actors of change.

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CONTACT US

FIDH
17, passage de la Main d'Or
75011 Paris
Tel: (33-1) 43 55 25 18
www.fidh.org
Twitter: @fidh_en / fidh_fr / fidh_es
Facebook:
<https://www.facebook.com/FIDH.HumanRights/>

FIDH is an international
human rights NGO federating
184 organizations
from 112 countries.



fidh

ABOUT FIDH

FIDH takes action for the protection of victims of human rights violations, for the prevention of violations and to bring perpetrators to justice.

A broad mandate

FIDH works for the respect of all the rights set out in the Universal Declaration of Human Rights: civil and political rights, as well as economic, social and cultural rights.

A universal movement

FIDH was established in 1922, and today unites 184 member organisations in 112 countries around the world. FIDH coordinates and supports their activities and provides them with a voice at the international level.

An independent organisation

Like its member organisations, FIDH is not linked to any party or religion and is independent of all governments.

www.fidh.org

B6

From: Eliza Rutynowska [redacted]
Sent: Monday, March 4, 2019 5:45 AM
To: Dragan, Katarzyna E <DraganKE@state.gov>
Subject: Re: Raport PTPA/FIDH nt. praw człowieka w Polsce

Szanowna Pani,

Dobrze, tak zrobmy.

Z pozdrowieniami

Eliza Rutynowska

Policy officer | Legal Aid Team

Specjalistka ds. rzecznictwa | Zespół poradnictwa prawnego Polskiego Towarzystwa Prawa Antydyskryminacyjnego

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PART B6

pon., 4 mar 2019 o 11:16 Dragan, Katarzyna E <DraganKE@state.gov> napisał(a):

Witam ponownie,

Bardzo przepraszam – czy moglibyśmy przesunąć spotkanie na środę, na godz. 11.00? Bardzo przepraszam – Steve Bremner musi uczestniczyć w jakimś innym spotkaniu.

Pozdrawiam,

Katarzyna Dragan

From: Eliza Rutynowska [redacted]
Sent: Saturday, March 2, 2019 9:37 AM
To: Dragan, Katarzyna E <DraganKE@state.gov>
Subject: Re: Raport PTPA/FIDH nt. praw człowieka w Polsce

Dzień dobry,

Uprzejmie przepraszam za wiadomość dopiero dziś. Jeżeli będzie to Państwu pasowało, oczywiście zapraszam do biura PTPA w najbliższy wtorek na godzinę 11.00.

Nasz adres to: ul. Szpitalna 5 lok 6a kl. II

Z serdecznymi pozdrowieniami,

Eliza Rutynowska

W dniu czwartek, 28 lutego 2019 Dragan, Katarzyna E <DraganKE@state.gov> napisał(a):

Tak oczywiście. Czekam na wiadomość jutro.

Pozdrawiam,

Katarzyna Dragan

B6

From: Eliza Rutynowska [redacted]
Sent: Thursday, February 28, 2019 12:29 PM
To: Dragan, Katarzyna E <DraganKE@state.gov>
Subject: Re: Raport PTPA/FIDH nt. praw człowieka w Polsce

Wtorek 11.00 jak najbardziej mi pasuje. Musiałabym sprawdzić, czy mamy wolną salę konferencyjną, czy mogłabym przekazać Pani tą informację jutro, dziś niestety nie ma mnie w biurze?

Pozdrawiam serdecznie

Eliza Rutynowska

W dniu czwartek, 28 lutego 2019 Dragan, Katarzyna E <DraganKE@state.gov> napisał(a):

W takim razie czy pasowałby Pani wtorek, np. godz. 11.00? Ale może być też inna godzina? Czy chciałaby się Pani spotkać w Ambasadzie? My również możemy przyjechać do Pani biura.

Pozdrawiam,

Katarzyna Dragan

From: Eliza Rutynowska [redacted]
Sent: Thursday, February 28, 2019 12:22 PM
To: Dragan, Katarzyna E <DraganKE@state.gov>
Subject: Re: Raport PTPA/FIDH nt. praw człowieka w Polsce

Pani Katarzyno,

Bardzo dziękuję za wiadomość

Jak najbardziej, pozostaję do Państwa dyspozycji czasowo, za wyjątkiem środy od godz. 15.00 oraz całego czwartku (niestety jestem wtedy na konferencji). Jeżeli chodzi o resztę tygodnia- mogę się dostosować.

Pozdrawiam serdecznie

Eliza Rutynowska

W dniu czwartek, 28 lutego 2019 Dragan, Katarzyna E <DraganKE@state.gov> napisał(a):

Pani Elizo,

Czy byłaby szansa na spotkanie w przyszłym tygodniu?

Może tym razem się uda.

Pozdrawiam,

Katarzyna Dragan

From: Eliza Rutynowska [redacted]
Sent: Wednesday, January 23, 2019 1:00 PM
To: Dragan, Katarzyna E <DraganKE@state.gov>
Subject: Re: Raport PTPA/FIDH nt. praw człowieka w Polsce

Szanowna Pani,

Jak najbardziej mogę przyjść do Ambasady, z pewnością tak będzie wygodniej dla Państwa.

Pozdrawiam serdecznie

Eliza Rutynowska

W dniu środa, 23 stycznia 2019 Dragan, Katarzyna E <DraganKE@state.gov> napisał(a):

Dzień dobry,

W takim razie proponuję piątek o godz. 10.00. Czy miałaby Pani ochotę przyjść do Ambasady, czy wolałaby się Pani spotkać w biurze PTPA?

Pozdrawiam,

Katarzyna Dragan

From: Eliza Rutynowska <Eliza.Rutynowska@state.gov>
Sent: Tuesday, January 22, 2019 7:18 PM
To: Dragan, Katarzyna E <DraganKE@state.gov>
Subject: Re: Raport PTPA/FIDH nt. praw człowieka w Polsce

B6

Szanowna Pani,

Bardzo dziękuję za Pani wiadomość.

Oczywiście, z wielką przyjemnością spotkam się z Państwem, by przedyskutować te ważne tematy.

W tym tygodniu najbardziej odpowiada mi termin piątkowy, jeżeli chodzi o godzinę spotkania dostosuję się do Państwa.

Z serdecznymi pozdrowieniami,

Eliza Rutynowska

Policy officer | Legal Aid Team

Specjalistka ds. rzecznictwa | Zespół poradnictwa prawnego Polskiego Towarzystwa Prawa Antydyskryminacyjnego

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wt., 22 sty 2019 o 15:08 Dragan, Katarzyna E <DraganKE@state.gov> napisał(a):

Szanowna Pani,

Bardzo serdecznie dziękuję za przesłany raport – przekazałam go również Steve’owi Bremnerowi, z którym miała Pani okazję spotkać się przy jednej z poprzednich wizyt kongresu. Bardzo chętnie spotkalibyśmy się z Panią, by porozmawiać o raporcie i ogólnie o sytuacji osób LGBT. Czy znalazłaby Pani czas na spotkanie w tym tygodniu, np. czwartek lub piątek?

Będę wdzięczna za kontakt.

Pozdrawiam serdecznie,

Katarzyna Dragan | Political Assistant | U.S. Embassy Warsaw | Al. Ujazdowskie 29/31 | 00-540 Warsaw | Poland | Email: DraganKE@state.gov | Telephone: +48 22 504 2536 | Mobile: + 48 602 448 853

From: Eliza Rutynowska <eliza.rutynowska@ptpa.org.pl>
Sent: Monday, January 21, 2019 5:57 PM
To: Dragan, Katarzyna E <DraganKE@state.gov>
Subject: Raport PTPA/FIDH nt. praw człowieka w Polsce

B6

Szanowna Pani,

W związku z otrzymaniem od Krzysztofa Śmiszka kontaktu do Pani, pozwalam sobie przesłać raport przygotowany przez ekspertów PTPA we współpracy z ekspertami organizacji International Federation for Human Rights, którego mam przyjemność być współautorką.

Od bieżącego roku objęłam stanowisko Specjalistki ds. rzecznictwa w PTPA, w związku z odejściem Krzysztofa z Towarzystwa.

Mam nadzieję, że raport wzbudzi Pani zainteresowanie. W razie pytań pozostaję do dyspozycji oraz liczę na dalszą wspaniałą współpracę.

Z pozdrowieniami

Eliza Rutynowska

Policy officer - Legal Aid Team

Specjalistka ds. rzecznictwa | Zespół poradnictwa prawnego Polskiego Towarzystwa Prawa Antydyskryminacyjnego

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Policy officer | Legal Aid Team

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Policy officer | Legal Aid Team

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PART B6

From: Eliza Rutynowska [redacted]
Sent: Friday, March 8, 2019 4:36 AM
To: Dragan, Katarzyna E <DraganKE@state.gov>
Subject: Re: prosba o informacje
Attach: CVElizaRutynowska (1).pdf

B6

Szanowna Pani Katarzyno,

B6

Eliza Rutynowska

Policy officer | Legal Aid Team

Specjalistka ds. rzecznictwa | Zespół poradnictwa prawnego Polskiego Towarzystwa Prawa Antydyskryminacyjnego

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śr., 6 mar 2019 o 16:23 Dragan, Katarzyna E <DraganKE@state.gov> napisał(a):

Witam serdecznie,

Bardzo dziękuję za dzisiejsze spotkanie. Odnośnie nominacji do programu wyjazdowego do USA, będą nam potrzebne następujące informacje:

1. Data i miejsce urodzenia
2. Obecnie zajmowane stanowisko w Stowarzyszeniu
3. Wykształcenie
4. Doświadczenie zawodowe
5. Poprzednie wyjazdy do Stanów Zjednoczonych (kiedy, dokąd i jaki był cel wyjazdu; czy któryś z wyjazdów był finansowany przez rząd Stanów Zjednoczonych)

Z góry bardzo dziękuję za przesłanie powyższych informacji.

Pozdrawiam,

Katarzyna Dragan | Political Assistant | U.S. Embassy Warsaw | Al. Ujazdowskie 29/31 | 00-540
Warsaw | Poland | Email: DraganKE@state.gov | Telephone: +48 22 504 2536 | Mobile:
853

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Eliza Rutynowska

Advocacy Officer

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Personal Info



Experience

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I hereby give consent for my personal data included in my offer to be processed for the purposes of recruitment (in accordance with the Personal Data Protection Act dated 29.08.1997: Journal of Laws of the Republic of Poland 2002 No. 161, item 926 with further amendments).

From: Eliza Rutynowska [redacted]
Sent: Friday, March 15, 2019 6:36 AM
To: Dragan, Katarzyna E <DraganKE@state.gov>
Subject: Re: prosba o informacje

B6

Pani Katarzyno,

Przepraszam, zapomniałam zupełnie dodać - [redacted]

Z serdecznymi pozdrowieniami

Eliza Rutynowska

Policy officer | Legal Aid Team

Specjalistka ds. rzecznictwa | Zespół poradnictwa prawnego Polskiego Towarzystwa Prawa Antydyskryminacyjnego

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pt., 15 mar 2019 o 11:23 Dragan, Katarzyna E <DraganKE@state.gov> napisał(a):

Pani Elizo,

Jeszcze raz dziękuję za informacje. Mam jedno dodatkowe pytanie o **miejsce urodzenia**.

Pozdrawiam,

Katarzyna Dragan

From: Eliza Rutynowska <[redacted]>
Sent: Tuesday, March 12, 2019 2:06 PM
To: Dragan, Katarzyna E <DraganKE@state.gov>
Subject: Re: prosba o informacje

Szanowna Pani Katarzyno,

Zgromadziłam mój "relevant professional experience" poniżej z zachowaniem chronologii:

B6

Z serdecznymi pozdrowieniami

Eliza Rutynowska

Policy officer | Legal Aid Team

Specjalistka ds. rzecznictwa | Zespół poradnictwa prawnego Polskiego Towarzystwa Prawa Antydyskryminacyjnego

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pt., 8 mar 2019 o 11:05 Dragan, Katarzyna E <DraganKE@state.gov> napisał(a):

Pani Elizo,

Bardzo dziękuję za informacje. Tak, praktyki w Kancelarii jak najbardziej traktujemy jako doświadczenie zawodowe.

Podaję adres mailowy Steve'a: BremnerSA@state.gov

Pozdrawiam,

Katarzyna Dragan

From: Eliza Rutynowska [redacted]
Sent: Friday, March 8, 2019 10:36 AM
To: Dragan, Katarzyna E <DraganKE@state.gov>
Subject: Re: prosba o informacje

B6

Szanowna Pani Katarzyno,

To ja dziękuję za Państwa obecność oraz za przedstawienie mi tej wspaniałej szansy.

[redacted]

B6



Jeszcze raz dziękuję oraz mam prośbę - czy mogłabym poprosić o adres mailowy p. Bremmer'a?
Chciałabym przesłać Państwu brief dot. naszej obecnie prowadzonej litygacji strategicznej.

Z serdecznymi pozdrowieniami

Eliza Rutynowska

Policy officer | Legal Aid Team

Specjalistka ds. rzecznictwa | Zespół poradnictwa prawnego Polskiego Towarzystwa Prawa Antydyskryminacyjnego

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śr., 6 mar 2019 o 16:23 Dragan, Katarzyna E <DraganKE@state.gov> napisał(a):

Witam serdecznie,

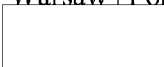
Bardzo dziękuję za dzisiejsze spotkanie. Odnośnie nominacji do programu wyjazdowego do USA, będą nam potrzebne następujące informacje:

1. Data i miejsce urodzenia
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Z góry bardzo dziękuję za przesłanie powyższych informacji.

Pozdrawiam,

Katarzyna Dragan | Political Assistant | U.S. Embassy Warsaw | Al. Ujazdowskie 29/31 | 00-540
Warsaw | Poland | Email: DraganKE@state.gov | Telephone: +48 22 504 2536 | Mobile:



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From: forumIdei Fundacji Batorego <debaty@batory.org.pl>
Sent: Thursday, April 4, 2019 3:41 AM
To: Swiderska, Monika <SwiderskMX@state.gov>
Subject: Unijne srodki na praworzadnosc - nowa analiza forumIdei

Problemy z wyświetlaniem? Zobacz ten e-mail w przeglądarce.

 Fundacji Batorego. Wspieraj z nami demokrację w Polsce!

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Unijne środki na praworządność ponad politycznymi podziałami

forumIdei Fundacji Batorego opublikowało analizę Katarzyny Pełczyńskiej-Nałęcz dotyczącą nowych unijnych mechanizmów finansowych służących ochronie praworządności w krajach członkowskich.

Na początku marca Rada Europejska ostatecznie zaakceptowała Program Obywateli, Równości, Praw i Wartości (PPW), który ma wspierać prodemokratyczne działania Europejczyków. Na akceptację Rady czeka druga uchwała Parlamentu o uzależnieniu dostępu do unijnych funduszy od stanu praworządności w państwach członkowskich.

„Oba rozwiązania mają dla Unii znaczenie strategiczne. Podważanie wspólnych zasad, zwłaszcza w sferze państwa prawa, stanowi dziś jedno z największych zagrożeń dla trwałości Wspólnoty. Nowe mechanizmy dobrze uzupełniają luki w dotychczasowych unijnych narzędziach ochrony praworządności” – pisze Katarzyna Pełczyńska-Nałęcz, dyrektorka forumIdei Fundacji Batorego.

Przestrzega jednak, że o skuteczności nowych rozwiązań zdecyduje dopiero sposób ich wdrażania. Zgoda Rady na wielkość funduszy i mechanizm warunkowości budżetowej stanie się zapewne częścią wielkiej rozgrywki wokół wieloletniego budżetu UE i wciąż potrzeba mobilizacji sił, by sprawa nie zniknęła w "negocyjnym kotle". Następnie kluczowe będzie, by nowe mechanizmy finansowe nie zaczęły służyć promocji partykularnych polityk czy przekonań albo "karaniu" państw członkowskich za inne "przewinienia" niż naruszenie praworządności.

Autorka argumentuje, że *"przy wdrażaniu Programu Praw i Wartości konieczne jest wyjście poza myślenie wyłącznie w kategoriach technokratycznych procedur. Priorytety konkursów i sposób ich przeprowadzania powinny zostać tak sprofilowane, aby program ten mógł być uznany za „własny” przez jak najszerszej rozumiane środowiska prounijne"*. Przyjęcie szerszej perspektywy jest konieczne, ponieważ znaczenie, a także ryzyko związane z nowymi regulacjami wykraczają poza samą ochronę praworządności i *"dotykają jednego z kluczowych dzisiaj wyzwań dla UE jako projektu opartego na wspólnych zasadach i wartościach. Są to w istocie pytania o granice pluralizmu wyznawanych wartości i normy fundamentalne, wobec których tolerancja systemowa już nie obowiązuje"*.

Zapraszamy do lektury:

Analiza "Praworządność w Unii poza politycznymi podziałami. Sankcje budżetowe i nowy program dla obywateli"

Piotr Kosiewski

Fundacja im. Stefana Batorego

tel. 22 536 02 72, e-mail:

B6

Gorąco zachęcamy do wsparcia naszej działalności darowizną: batory.org.pl/wspieraj

Administratorem Pani/Pana danych osobowych w postaci: imię, nazwisko, adres kontaktowy jest Fundacja im. Stefana Batorego, ul. Sapieżyńska 10a, 00-215 Warszawa. Pani/Pana dane osobowe są przetwarzane na podstawie wyrażonej przez Pana/Panią zgody w celu informowania Pani/Pana o działalności Fundacji i przesyłania zaproszeń na organizowane przez Fundację spotkania.

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Ma Pani/Pan prawo do wniesienia sprzeciwu w związku z przetwarzaniem swoich danych na potrzeby wysyłania informacji o działalności Fundacji. Przysługuje Pani/Panu skarga do właściwego organu nadzorczego.

Jeśli nie chce Pani/Pan otrzymywać od nas żadnych informacji, zaproszeń i materiałów, prosimy kliknąć link [Wypisz mnie](#) ze wszystkich list wysyłkowych.

Więcej o sposobie przetwarzania danych osobowych przez Fundację Batorego w polityce prywatności.



Fundacja im. Stefana Batorego


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00-215 Warszawa

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e-mail: informacja@batory.org.pl
www.batory.org.pl

From: Agnieszka Zowczak [redacted]
Sent: Thursday, April 25, 2019 10:11 AM
To: Dragan, Katarzyna E <DraganKE@state.gov>
Subject: Wspieraj z nami demokrację na wiosnę!

B6

Problemy z wyświetlaniem? Zobacz ten e-mail w przeglądarce.

 Wspieraj z nami demokrację w Polsce!

RELEASE IN PART B6

Wspieraj z nami demokrację w Polsce! Przeznacz 1% podatku Fundacji Batorego

Szanowni Państwo!

Chciałabym przypomnieć, że na rozliczenie podatku za rok 2018 i przekazanie 1% wybranej organizacji społecznej mamy czas do **30 kwietnia**.

Przed nami liczne wyzwania: wybory do Parlamentu Europejskiego oraz do Sejmu i Senatu RP. Ważna, okrągła rocznica 4 czerwca 1989 roku oraz rocznica wstąpienia Polski do Unii Europejskiej.

Będziemy prowadzić kampanie profrekwencyjne, wspierać organizacje społeczne oraz pomagać tym, którzy walczą o praworządność i poszanowanie praw wszystkich Polek i Polaków. Będziemy też starali się przedstawiać propozycje polityk społecznych, które odpowiadałyby na potrzeby wszystkich obywateli i wyzwania współczesnego świata.

Aby dalej prowadzić tak potrzebne teraz działania, prosimy o przekazanie 1% podatku Fundacji Batorego.


Jak przekazać 1% Fundacji?

Wystarczy wpisać w odpowiednie pole formularza PIT nasz numer KRS: 0000 101194. Prosimy też o udzielenie zgody na przekazanie nam swoich danych żebyśmy mogli podziękować Państwu za wpłatę.

Zachęcamy także do odwiedzenia naszej strony internetowej 1procent.batory.org.pl, skąd można pobrać bezpłatny program do rozliczeń PIT. W naszym serwisie zamieściliśmy także informacje o usłudze Ministerstwa Finansów Twój e-PIT.

1procent.batory.org.pl

Z wyrazami szacunku,

 Agnieszka
Zowczak *Agnieszka Zowczak*
Koordynatorka ds. fundraisingu
Fundacja im. Stefana Batorego

PS. Podobnie jak w poprzednich latach, emeryci i renciści oraz inne osoby, którym zeznanie wypełnia ZUS, mogą w prosty sposób przekazać 1% podatku. Wystarczy wpisać na druku PIT-OP nr KRS wybranej organizacji i wysłać go do urzędu skarbowego. Deklaracja ta jest również dostępna w ramach usługi Twój e-PIT na stronie www.podatki.gov.pl/pit/twoj-e-pit.

Administratorem Państwa danych osobowych w postaci: imię, nazwisko, adres kontaktowy jest Fundacja im. Stefana Batorego, ul. Sapieżyńska 10a, 00-215 Warszawa. Państwa dane osobowe są przetwarzane w celu wysyłania informacji o możliwości wsparcia Fundacji darowizną lub 1% podatku dochodowego. Państwa dane osobowe są przez nas przetwarzane na podstawie wyrażonej przez Państwa zgody.

Państwa dane osobowe będą przechowywane do momentu cofnięcia przez Państwa zgody na ich przetwarzanie lub zgłoszenia sprzeciwu wobec ich przetwarzania. Państwa dane osobowe nie będą udostępniane innym odbiorcom.

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Jeśli nie chcą Państwo otrzymywać od nas informacji o możliwości wsparcia Fundacji darowizną lub 1% podatku dochodowego, prosimy kliknąć link: [Wypisz mnie z listy wysyłkowej](#).

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 F  T  Y
a w o

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00-215 Warszawa


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e-mail: informacja@batory.org.pl

RELEASE IN PART
B6

From: Edwin Bendyk [redacted]
Sent: Tuesday, April 9, 2019 9:31 AM
To: Swiderska, Monika <SwiderskMX@state.gov>
Subject: Wspieraj z nami demokrację na wiosnę!

B6

Problemy z wyświetlaniem? Zobacz ten e-mail w przeglądarce.

 Wspieraj z nami demokrację w Polsce!

Wspieraj z nami demokrację w Polsce! Przeznacz 1% podatku Fundacji Batorego

Szanowni Państwo!

Spółeczeństwo obywatelskie nie może istnieć bez obywateli, niemożliwa jest demokracja bez demokratów, trudno wyobrazić sobie nowoczesną wspólnotę, której nie spaja solidarność. To banalne stwierdzenia, dopiero praktyka nadaje im sens i znaczenie.

Misja i działanie Fundacji Batorego polega na podejmowaniu i wspieraniu inicjatyw wzmacniających demokrację, jej wartości i instytucje. Kluczowym wymiarem demokratycznego ładu są obywatele organizujący się w struktury społeczeństwa obywatelskiego. Dlatego też nasza Fundacja od samego początku wspiera organizacje społeczne i ich liderów oraz promuje aktywne postawy obywatelskie. Działalność ta byłaby jednak niemożliwa bez zainteresowania, zaangażowania i wsparcia ze strony tych wszystkich, którzy dzielą się z nami swoim czasem, wiedzą i środkami finansowymi. To m.in. dzięki Państwa poparciu możemy skutecznie realizować swoją misję.

Poparcie to jest szczególnie istotne, gdy demokratyczne wartości i instytucje są zagrożone, wręcz dewastowane, a społeczeństwo obywatelskie poddawane próbie. Czas takiej próby przeżywamy obecnie na całym świecie, z niepokojem przyglądamy się nasilającemu kryzysowi demokracji zadając pytanie, jak głęboko sięgają jego źródła i jakie mamy rozwiązania.

Właściwa diagnoza jest kluczowa dla zrozumienia współczesnej kondycji społecznej i politycznej w Polsce, Europie i na świecie. Bez takiego zrozumienia nie sposób z kolei projektować przyszłości i rozwiązań, które odpowiadać będą na dzisiejsze, kryzysowe wyzwania. Dlatego poszerzyliśmy aktywność Fundacji Batorego o forumIdei, think-tank zajmujący się refleksją nad najważniejszymi problemami demokratycznego państwa prawnego, samorządności, relacji międzynarodowych, spraw społecznych. Zespół ekspercki współpracuje z wybitnymi prawnikami, socjologami, psychologami społecznymi,

politologami, przedstawicielami wielu innych dyscyplin wiedzy, a także praktykami życia politycznego i samorządowego, organizacji i ruchów społecznych.

Refleksja ta nie tylko pogłębia debatę o najważniejszych sprawach publicznych i przyszłości, ale także służy wypracowaniu konkretnych rekomendacji. Dorobek Fundacji należy do domeny publicznej. Zapraszamy wszystkich zarówno do krytycznej dyskusji nad naszymi propozycjami, jak i do twórczego korzystania z konkretnych rekomendacji.

Od trzydziestu lat wspieramy wartości i instytucje demokratyczne. Demokrację rozumiemy szeroko, jako ustrój oparty na takich wartościach, jak tolerancja, otwartość, słuchanie innych, szukanie porozumienia z ludźmi dobrej woli o odległych nawet poglądach. Do naszej misji należy upominanie się o prawa kobiet, o prawa ludzi innych wyznań, innego pochodzenia czy orientacji seksualnej. Dlatego wspieramy inne organizacje społeczne przekazując dotacje na działania ntydyskryminacyjne, strażnicze i podejmowane w obronie praw słabszych.

Jesteśmy przekonani, że zaangażowanie ma znaczenie, że nawet pozornie niewielkie formy aktywności na rzecz lokalnych społeczności, elementarny sprzeciw wobec degradacji sfery publicznej, niezgoda na kłamstwo i mowę nienawiści zmieniają rzeczywistość, bo przyczyniają się do tworzenia oraz umacniania kultury demokratycznej i obywatelskiej. Ważnym jej elementem jest solidarność.

Dlatego zwracamy się z prośbą o myśl o nas i skorzystanie z prawa, które mamy wszyscy jako obywatele – przeznaczenia 1% podatku na wybraną organizację pozarządową, czyli Fundację im. Stefana Batorego.

Jak przekazać 1% Fundacji?

Wystarczy wpisać w odpowiednie pole formularza PIT nasz numer KRS: 0000 101194.

Prosimy też o udzielenie zgody na przekazanie nam swoich danych poprzez zaznaczenie odpowiedniego pola w formularzu PIT.

Zachęcamy także do odwiedzenia naszej strony internetowej 1procent.batory.org.pl, skąd można pobrać bezpłatny program do rozliczeń PIT. W naszym serwisie zamieściliśmy także informacje o nowej usłudze Ministerstwa Finansów Twój e-PIT.

1procent.batory.org.pl

Jesteśmy wdzięczni tym wszystkim, którzy wspierają polską demokrację swoimi działaniami, a także darczyńcom Fundacji, którzy pomagają Polkom i Polakom angażować się w sprawy obywatelskie.



Edwin
Bendyk

Edwin Bendyk

Członek Zarządu

Fundacji im. Stefana Batorego

PS. Podobnie jak w poprzednich latach, emeryci i renciści oraz inne osoby, którym zeznanie wypełnia ZUS, mogą w prosty sposób przekazać 1% swojego podatku. Wystarczy wpisać na druku PIT-OP nr KRS wybranej organizacji i wysłać go do urzędu skarbowego. Deklaracja ta jest również dostępna w ramach usługi Twój e-PIT na stronie www.podatki.gov.pl/pit/twoj-e-pit.

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e-mail: informacja@batory.org.pl

RELEASE IN PART
B6

From: Grzegorz Makowski [REDACTED]
Sent: Friday, March 31, 2017 9:05 AM
To: Dragan, Katarzyna E <DraganKE@state.gov>
Subject: wspomniana petycja

B6

<http://schdw.org.pl/website/index.php/aktualnosci/petycja-w-sprawie-funduszy-norweskich>

Pozdrawiam,

GM

NGO mailing list
NGO@listy.panoptykon.org
<https://listy.panoptykon.org/listinfo/ngo>

RELEASE IN FULL

From: Otwarta Europa - Fundacja Batorego <batory.otwartaeuropa@batory.org.pl>
Sent: Thursday, January 12, 2017 4:01 AM
To: Otwarta Europa - Fundacja Batorego <batory.otwartaeuropa@batory.org.pl>
Subject: Zapis wideo dyskusji "Wołyn 1943 - granice kompromisu"

Szanowni Państwo,

w związku z ostatnimi wydarzeniami w Hucie Pieniackiej pragniemy przypomnieć Państwu naszą dyskusję ekspercką pt. "Wołyn 1943 - granice kompromisu."

Zapaszmy do obejrzenia nagrań wideo z tego spotkania:
http://bit.ly/Batory_Wołyn-dyskusja

Z poważaniem,
Krzysztof Mrozek

--


Krzysztof Mrozek
Otwarta Europa
Fundacja im. Stefana Batorego
tel. 22 53 60 208, faks 22 53 60 220
www.batory.org.pl
www.facebook.com/FundacjaBatorego

Open Europe
Stefan Batory Foundation
tel.(48 22) 53 60 208, fax (48 22) 53 60 220

RELEASE IN FULL

From: forumIdei Fundacji Batorego <forumidei_info@batory.org.pl>
Sent: Saturday, April 20, 2019 4:01 AM
To: Dragan, Katarzyna E <DraganKE@state.gov>
Subject: Zapraszamy do lektury bieżących komentarzy na bloguldei

Problemy z wyświetlaniem? Zobacz ten e-mail w przeglądarce.

 Fundacji Batorego. Wspieraj z nami demokrację w Polsce!

Zapraszamy na blogIdei

Eksperci forumIdei komentują tu bieżące wydarzenia, zwracają uwagę na sprawy, które mediom i politykom umknęły, prowokują, polemizują, promują nowe pomysły.

W jednym z najnowszych wpisów Paweł Marczewski rozważa przyczyny strajku nauczycieli, który ocenia jako symptom kryzysu edukacji dający się jednak przekuć w coś pozytywnego, czego starają się dokonać organizacje społeczne, nauczyciele i rodzice.

Kryzys systemu edukacji jako szansa

Marta Jaroszewicz komentuje rezultaty pierwszej tury wyborów prezydenckich na Ukrainie, które pokazują jej zdaniem w wyostrej formie charakterystykę i źródła tendencji anty-systemowych i anty-elitarnych we współczesnych demokracjach.

Wybory na Ukrainie – wołanie o sprawiedliwość społeczną

Grażyna Kopińska ocenia projekt ustawy autorstwa posłów klubu Kukiz'15, nad którym sejm rozpoczął właśnie prace, a który w założeniu ma w radykalny sposób załatwić problem korupcji polityków w Polsce.

Antykorupcja wg Kukiz '15 – za dużo rygoryzmu

Katarzyna Pełczyńska-Nałęcz podkreśla znaczenie dwóch zaaprobowanych w marcu przez Radę Europejską mechanizmów wspierających praworządność – uzależnienia dostępu do unijnych funduszy od stanu praworządności w państwach członkowskich oraz Programu Praw i Wartości zakładającego przeznaczenie istotnych środków finansowych na wspieranie prodemokratycznych działań Europejczyków.

Unijne środki na praworządność poza politycznymi podziałami

Dawid Sześciło pisze o raportach, które do końca maja po raz pierwszy złożyć mają organy

wykonawcze wszystkich samorządów. Raporty są szansą na to, by poprawić słaby dostęp mieszkańców do informacji na temat działalności władz samorządowych.

Samorzgdy do raportu

forumIdei to think tank pro publico bono Fundacji im. Stefana Batorego. Jesteśmy ośrodkiem analitycznym i miejscem wymiany idei, którego celem jest wzmacnianie sprawczości oraz aktywności obywatelskiej. Skupiamy szerokie grono ekspertek i ekspertów, którzy analizują problemy społeczno-polityczne, antycypują zagrożenia i proponują praktyczne rozwiązania. Wspieramy naszą wiedzę organizacje społeczne, samorzgdy lokalne oraz aktorów życia politycznego.

Zapraszamy na blogIdei

Gorąco zachęcamy do wsparcia naszej działalności darowizną: batory.org.pl/wspieraj

Administratorem Pani/Pana danych osobowych w postaci: imię, nazwisko, adres kontaktowy jest Fundacja im. Stefana Batorego, ul. Sapieżyńska 10a, 00-215 Warszawa. Pani/Pana dane osobowe są przetwarzane na podstawie wyrażonej przez Pana/Panią zgody w celu informowania Pani/Pana o działalności Fundacji i przesyłania zaproszeń na organizowane przez Fundację spotkania.

Pani/Pana dane osobowe będą przechowywane do momentu cofnięcia zgody na ich przetwarzanie lub zgłoszenia sprzeciwu wobec ich przetwarzania. Pani/Pana dane osobowe nie będą udostępniane innym odbiorcom.

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Jeśli nie chce Pani/Pan otrzymywać od nas żadnych informacji, zaproszeń i materiałów, prosimy kliknąć link Wypisz mnie ze wszystkich list wysyłkowych.

Więcej o sposobie przetwarzania danych osobowych przez Fundację Batorego w polityce prywatności.




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www.batory.org.pl

RELEASE IN PART B6

From: Fundacja im.Stefana Batorego <batory@batory.org.pl>
Sent: Friday, April 5, 2019 10:42 AM
To: Dragan, Katarzyna E <DraganKE@state.gov>
Subject: Zapraszamy do obejrzenia relacji z naszej konferencji "Jak przywrócić państwo prawa?".

Problemy z wyświetlaniem? Zobacz ten e-mail w przeglądarce.

 Fundacji Batorego. Wspieraj z nami demokrację w Polsce!

RELACJA Z KONFERENCJI "JAK PRZYWÓRCIĆ PAŃSTWO PRAWA?"

Zapraszamy do obejrzenia relacji z konferencji forumIdei "Jak przywrócić państwo prawa?".

Spotkanie to poświęciliśmy problemom naruszania podstawowych standardów praworządności w Polsce. Grono prawników: konstytucjonalistów, akademików i praktyków prawa zastanawiało się jak skutecznie i w zgodzie z obowiązującym porządkiem konstytucyjnym przywrócić prawidłowe funkcjonowanie Trybunału Konstytucyjnego, Krajowej Rady Sądownictwa, Sądu Najwyższego oraz sądownictwa powszechnego.

Słowo wprowadzające wygłosił Rzecznik Praw Obywatelskich dr Adam Bodnar. Konferencję rozpoczął wykład prof. Samuela Issacharoffa z NYU „Populizm a rządy demokratyczne”.



Wykład otwierający, "Populizm a rządy demokratyczne", prof. Samuel



Issacharoff:

Panel 1. Trybunał Konstytucyjny. Dr hab. Marcin Matczak - przedsatwienie rekomendacji, dr hab. Ryszard Piotrowski, prof. dr hab. Jerzy Zajadło - komentarze:



Panel 2. Krajowa Rada Sądownictwa. Łukasz Bojarski - przedstawienie rekomendacji, Irena Kamińska, dr hab. Anna Rakowska-Trela - komentarze:



Panel 3. Sąd Najwyższy. Dr hab. Agnieszka Frąckowiak-Adamska - przedstawienie rekomendacji, dr hab. Agnieszka Bień-Kacała, prof. dr hab. Hubert Izdebski - komentarze:



Panel 4. Sądy Powszechne. Jacek Czaja - przedstawienie rekomendacji, mec. Paulina Kieszkowska-Knapik, Teresa Flemming-Kulesza - komentarze:



Spotkanie zakończyła debata "Rządy prawa w Polsce - czy możliwe jest porozumienie wokół podstawowych wartości?".

W dyskusji udział wzięli: dr hab. Tomasz Tadeusz Koncewicz, prof. dr hab. Ewa Łętowska, prof. dr hab. Grażyna Skąpska, prof. dr hab. Mirosław Wyrzykowski. Prowadzenie: Aleksander Smolar.



Grzegorz Makowski
Fundacja im. Stefana Batorego
tel. 22 536 02 07,

B6

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Więcej o sposobie przetwarzania danych osobowych przez Fundację Batorego w polityce prywatności.




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RELEASE IN PART B6

From: Fundacja im.Stefana Batorego <batory@batory.org.pl>
Sent: Wednesday, February 20, 2019 9:00 AM
To: Dragan, Katarzyna E <DraganKE@state.gov>
Subject: Zapraszamy na seminarium: Jak poprawić transparentność zamówień w Polsce?

Problemy z wyświetlaniem? Zobacz ten e-mail w przeglądarce.

 Fundacji Batorego. Wspieraj z nami demokrację w Polsce!

ZAPROSZENIE

Przypominamy, że już w piątek 22 lutego 2019 r. odbędzie się seminarium Jak poprawić transparentność zamówień w Polsce? Zapraszamy w godzinach 11.00 – 14.30 do Fundacji im. Stefana Batorego (ul. Sapieżyńska 10a w Warszawie).

Zapraszamy do dyskusji o transparentności w zamówieniach publicznych. Czy standardy przejrzystości odpowiadają oczekiwaniom uczestników rynku zamówień publicznych w Polsce i pozwalają obywatelom na skuteczną kontrolę? Jakie zmiany w tej kwestii zapowiada ogłoszony 24 stycznia br. projekt nowego prawa zamówień publicznych?

Porozmawiamy o tym w gronie decydentów, zamawiających, wykonawców i zagranicznych ekspertów. Swój udział potwierdzili: **Mariusz Haładyj** (Prokuratoria Generalna), **Grzegorz Makowski** (forumIdei Fundacji Batorego), **Hubert Nowak** (Urząd Zamówień Publicznych), **Karolis Granickas** (Open Contracting Partnership) i **Eliza Niewiadomska** (Europejski Bank Odbudowy i Rozwoju).

Program spotkania i opisy warsztatów

Formularz rejestracyjny

Wydarzenie jest otwarte i udział w nim jest bezpłatny. **Zachęcamy do przekazania zaproszenia potencjalnie zainteresowanym osobom.**

Informujemy również, że dla osób, które nie będą mogły uczestniczyć w wydarzeniu będziemy prowadzili transmisję na żywo na profilu Fundacji Batorego na Facebooku.

Spotkanie odbywa się w ramach pilotażu Paktu Uczciwości w Polsce. Więcej na <http://paktuczciwosci.pl/>

Rejestracja online

Karolina Szymańska (forumIdei Fundacji Batorego)
Fundacja im. Stefana Batorego
tel. 22 536 02 71,

B6

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Więcej o sposobie przetwarzania danych osobowych przez Fundację Batorego w [polityce prywatności](#).




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From: Fundacja im. Stefana Batorego [redacted]
Sent: Tuesday, March 19, 2019 5:57 AM
To: Dragan, Katarzyna E <DraganKE@state.gov>
Subject: Zapraszamy na seminarium Ugody w zamówieniach publicznych

B6

Problemy z wyświetlaniem? Zobacz ten e-mail w przeglądarce.

 Fundacji Batorego. Wspieraj z nami demokrację w Polsce!

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ZAPROSZENIE

Fundacja Batorego oraz Grupa Doradcza KZP zapraszają na seminarium "Ugody w zamówieniach publicznych", które odbędzie się w piątek, 5 kwietnia, w godzinach 11.00 – 14.30 w Fundacji im. Stefana Batorego (ul. Sapieżyńska 10a w Warszawie).

Polubowne sposoby rozwiązywania sporów są szybsze i zazwyczaj dużo tańsze. W zamówieniach publicznych nie są jednak powszechną i lubianą praktyką, mimo iż dają szansę na uniknięcie długich i kosztownych procesów sądowych. Wykonawcy nie wierzą w skuteczność mediacji, a zamawiający traktują ugody jako ryzyko dla kwalifikowalności wydatków z funduszy europejskich i dyscypliny finansów publicznych.

Czy obawy te znajdują potwierdzenie w praktyce stosowania alternatywnych metod rozwiązywania konfliktów? Jak bezpiecznie zawierać ugody? Jakie są sposoby na unikanie sporów? Zapraszamy na spotkanie z praktykami i decydentami, którzy postarają się odpowiedzieć na te pytania.

W dyskusji zastanowimy się w jaki sposób propozycja nowego prawa zamówień publicznych może zmienić podejście uczestników rynku do ugód. Wskażemy najczęstsze przyczyny konfliktów pomiędzy zamawiającymi i wykonawcami oraz rozwiązania prowadzące do ich ograniczenia. Zastanowimy się jakie szanse i zagrożenia towarzyszą ugodom w kontekście kwalifikowalności środków unijnych, waloryzacji kosztów w trakcie realizacji inwestycji oraz staranności przygotowania przedmiotu zamówienia. Przedstawimy wnioski jakie płyną z monitoringu zamówienia objętego Paktem Uczciwości dla stosowania alternatywnych metod rozwiązywania sporów.

Spotkanie jest otwarte. Zapraszamy wszystkich, którym temat zamówień publicznych jest bliski. Ze względu na ograniczoną liczbę miejsc prosimy jednak o wcześniejszą rejestrację do **3 kwietnia 2019 r.**

Udział w wydarzeniu jest bezpłatny. Zachęcamy do przekazania zaproszenia osobom zainteresowanym tematem.

PROGRAM SPOTKANIA

FORMULARZ REJESTRACJI

Spotkanie odbywa się w ramach pilotażu Paktu Uczciwości w Polsce. Więcej na paktuczciwosci.pl

Rejestracja online do 3 kwietnia 2019

Karolina Szymańska
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B6

Gorąco zachęcamy do wsparcia naszej działalności darowizną: batory.org.pl/wspieraj

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Więcej o sposobie przetwarzania danych osobowych przez Fundację Batorego w polityce prywatności.




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From: forumIdei Fundacji Batorego <debaty@batory.org.pl>
Sent: Monday, April 29, 2019 5:10 AM
To: Swiderska, Monika <SwiderskMX@state.gov>
Subject: Zaproszenie na debate "Miasto jako wspólnota"

Problemy z wyświetlaniem? Zobacz ten e-mail w przeglądarce.

RELEASE IN PART B6

 Fundacji Batorego. Wspieraj z nami demokrację w Polsce!

ZAPROSZENIE

Zapraszamy na debatę forumIdei "Miasto jako wspólnota", która odbędzie się 10 maja, w godz. 11.00-14.00 w siedzibie Fundacji Batorego przy ul. Sapieżyńskiej 10A w Warszawie.

Wybory samorządowe 2018 roku pokazały, że proces tworzenia lokalnych miejskich wspólnot wkroczył w fazę dojrzałości. Mieszkańcy polskich miast pokazali swoją polityczną podmiotowość wybierając prezydentów i burmistrzów takich, jakich uznali za właściwych nie bacząc na próby zastraszenia i przekupstwa ze strony centralnych ośrodków władzy państwowej czy partyjnej. Jednocześnie krzepnie świadomość i podmiotowość struktur społeczeństwa obywatelskiego aktywnych w przestrzeni miast. Jednym z najciekawszych przejawów rosnącego upodmiotowienia lokalnych społeczności w Polsce jest fenomen ruchów miejskich. Zdolały one skutecznie wprowadzić do debaty o sprawach miejskich tematy, które jeszcze przed dekadą wydawały się egzotyczne i nierealne.

Jak projektować i zarządzać przyszłością polskich miast jako złożonych i różnorodnych wspólnot mieszkank i mieszkańców? Jak w pełni wykorzystać kapitał polityczny władz miast rozpoczynających długą, pięcioletnią kadencję i potencjał podmiotowości mieszkank i mieszkańców?

W dyskusji udział wezmą:

- **Marcin Bazylak** – prezydent Dąbrowy Górniczej,
- **Marta Bejnar-Bejnarowicz** – radna Rady Miasta Gorzowa Wielkopolskiego, społecznika działająca w Kongresie Ruchów Miejskich,
- **Jacek Jaśkowiak** – prezydent Poznania,
- **Lech Mergler** – prezes Kongresu Ruchów Miejskich, poznański społecznik,
- **dr hab. Paweł Kubicki** – socjolog i antropolog kultury, adiunkt w Instytucie Europeistyki Uniwersytetu Jagiellońskiego.

Spotkanie poprowadzi **Edwin Bendyk**, dziennikarz, publicysta, kierownik Ośrodka Badań nad Przyszłością Collegium Civitas, członek Zarządu Fundacji Batorego.

Prosimy o potwierdzenie obecności przez formularz rejestracyjny:

Rejestracja online

Piotr Kosiewski

Fundacja im. Stefana Batorego

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Więcej o sposobie przetwarzania danych osobowych przez Fundację Batorego w polityce prywatności.



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From: forumIdei Fundacji Batorego <debaty@batory.org.pl>
Sent: Friday, October 19, 2018 3:43 AM
To: Swiderska, Monika <SwiderskMX@state.gov>
Subject: Zaproszenie na debate "Wybory 2018 - co juz wiemy?"

Problemy z wyświetlaniem? Zobacz ten e-mail w przeglądarce.

 Fundacji Batorego. Wspieraj z nami demokrację w Polsce!

ZAPROSZENIE

Zapraszamy do udziału w dyskusji publicznej "Wybory 2018 – co już wiemy?" Spotkanie odbędzie się 24 października (środa), w godz. 15.00-17.00 w siedzibie Fundacji (Warszawa, ul. Sapieżyńska 10a, sala konferencyjna im. Jerzego Turowicza).

Spotkanie będzie się składało z dwóch części. W pierwszej ocenimy czy wybory były uczciwe. **Jacek Haman** (Uniwersytet Warszawski), autor metodologii obserwacji oraz organizatorzy akcji Obserwujemy wybory przedstawia pierwsze wnioski z obywatelskiego monitoringu wyborów. Obserwacja będzie przeprowadzona w dniu wyborów - 21 października w 300 losowo wybranych obwodach wyborczych w całej Polsce, co pozwoli na uogólnienie wyników w skali kraju i stwierdzenie czy wybory samorządowe były przeprowadzone w sposób uczciwy, sprawny i zgodny z prawem. Organizatorami monitoringu są: Fundacja im. Stefana Batorego, Akcja Demokracja, Komitet Obrony Demokracji oraz Sieć Obywatelska Watchdog Polska.

W drugiej części zastanowimy się nad wynikami i specyfiką tych wyborów. Wielu polityków i publicystów uznaje je za sprawdzian przed serią wyborów w 2019-2020. Czy tak będzie w rzeczywistości? Spróbujemy ocenić ile kontynuacji, a ile zmiany w nowych władzach samorządowych. Przyjrzymy się temu kto będzie rządził Polską samorządową i czy samorządy stały się bardziej partyjne. Przeanalizujemy jaką rolę odegrały w nich ruchy miejskie, które były jednym z fenomenów wyborów samorządowych w 2014 roku. Wyciągniemy też pierwsze wnioski w jaki sposób zmiany w ordynacji wyborczej wpłynęły na proces wyborczy - czy uczyniły je bardziej przejrzystymi i wiarygodnymi, czy przeciwnie, zwiększyły nieufność do procesu wyborczego oraz pogłębiły podziały polityczne?

W tej części dyskusji udział wezmą: **Jarosław Flis** (Uniwersytet Jagielloński), **Radosław Markowski** (Uniwersytet SWPS) i **Anna Materska-Sosnowska** (Uniwersytet Warszawski).

Dyskusję poprowadzi **Edwin Bendyk**.

Osoby zainteresowane udziałem w wydarzeniu prosimy o wypełnienie formularza rejestracyjnego.

Rejestracja online

Joanna Załuska

forumldei

Fundacja im. Stefana Batorego

e-mail

tel. 22 536 02 76

B6

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Więcej o sposobie przetwarzania danych osobowych przez Fundację Batorego w [polityce prywatności](#).



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e-mail: informacja@batory.org.pl
www.batory.org.pl

From: forumIdei Fundacji Batorego <debaty@batory.org.pl>
Sent: Friday, March 15, 2019 6:11 AM
To: Dragan, Katarzyna E <DraganKE@state.gov>
Subject: Zaproszenie na debate forumIdei "Rosja i Unia: konflikt, dialog czy chaos?"

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 Fundacji Batorego. Wspieraj z nami demokrację w Polsce!

ZAPROSZENIE

Zapraszamy na debatę forumIdei *Rosja i Unia: konflikt, dialog czy chaos?* Spotkanie odbędzie się w siedzibie Fundacji im. Stefana Batorego przy ul. Sapieżyńskiej 10a (sala konferencyjna im. Jerzego Turowicza na parterze) w czwartek, 28 marca 2019 w godzinach 17.30-19.00.

Polska, jako największy unijny sąsiad Rosji, powinna aktywnie angażować się we współkształtowanie europejskiej polityki wobec Moskwy. Podczas debaty przedyskutujemy stan relacji UE-Rosja i możliwych kierunków ich rozwoju. Punktem wyjścia do rozmowy będzie wystąpienie ambasadora UE w Rosji Marcusa Ederera oraz prezentacja też raportu *Selective Engagement between the EU and Russia* przygotowanego przez EUREN, europejsko-rosyjską sieć ekspercką działającą od 2016 roku i wspieraną z jednej strony przez Komisję Europejską, z drugiej przez Rosyjską Radę Spraw Międzynarodowych (RIAC).

Raport EUREN w języku angielskim można przeczytać tutaj.

W debacie udział wezmą:

- **Marcus Ederer** (ambasador Unii Europejskiej w Rosji)
- **Sabine Fischer** (*Public Diplomacy EU and Russia Project*, członkini EUREN)
- **Marek Menkiszak** (Ośrodek Studiów Wschodnich im. Marka Karpia)
- **Tatiana Romanowa** (Petersburski Uniwersytet Państwowy, członkini EUREN)

Spotkanie poprowadzi **Katarzyna Pełczyńska-Nałęcz**, dyrektorka forumIdei Fundacji Batorego.

Zapewniamy tłumaczenie symultaniczne polsko-angielskie.

Prosimy o potwierdzenie obecności przez formularz rejestracyjny.

Rejestracja online



Imię i

Nazwisko¹

Krzysztof Mrozek

Fundacja im. Stefana Batorego

tel. 22 536 02 08,

B6

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e-mail: informacja@batory.org.pl

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From: forumIdei Fundacji Batorego <debaty@batory.org.pl>
Sent: Friday, April 26, 2019 7:31 AM
To: Dragan, Katarzyna E <DraganKE@state.gov>
Subject: Zaproszenie na konferencje forumIdei "Polska w Europie, czyli gdzie?"

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Problemy z wyświetlaniem? Zobacz ten e-mail w przeglądarce.

 Fundacji Batorego. Wspieraj z nami demokrację w Polsce!

TRZY DEBATY NA 30-LECIE

W 2019 roku Fundacja Batorego obchodzi 30-lecie swojej działalności. Mamy zaszczyt zaprosić na drugą z trzech debat, które organizujemy z tej okazji: *Polska w Europie, czyli gdzie?* Debatę odbędzie się 16 maja w godz. 11.00-17.00 w siedzibie Fundacji przy ul Sapieżyńskiej 10A w Warszawie.

Debatę przygotowana przez forumIdei Fundacji Batorego podzielona będzie na dwie 2,5-godzinne sesje. Wspólnie z prelegentami zastanawiać się będziemy nad sporami wokół polskiej tożsamości w jej związkach z Europą oraz nad dylematami dotyczącymi naszej polityki w Unii Europejskiej.

Plan konferencji:

Sesja I, godz. 11.00-13.00

Polskie problemy z europejską tożsamością

Do jakiej Europy chcieliśmy wrócić po 1989 roku? Do Europy rozumianej jako wyzwolenie czy jako forma zakorzenienia? Gdzie znaleźliśmy się w trzy dekady po tym powrocie? Na Zachodzie? Na Wschodzie? Na Południu rozumianym jako wierność tradycji rzymskiej? A może na Północy wiernej zasadom wolnego rynku i ograniczonego państwa?

W dyskusji udział wezmą:

- **prof. Małgorzata Kowalska** – kierowniczka Katedry Filozofii i Etyki na Uniwersytecie w Białymstoku.
- **Aleksander Smolar** – prezes Fundacji Batorego.
- **Maciej Zięba OP** – dominikanin, teolog, filozof i publicysta.

Prowadzenie: **Katarzyna Pełczyńska-Nałęcz**, dyrektorka forumIdei Fundacji Batorego.

Sesja II, godz. 14.15-17.00

Polska polityka europejska

Cele Polski w polityce europejskiej często idą wbrew głównemu nurtowi Unii. Polska strategia w niektórych sferach wydaje się „przestarzała”, nie uwzględnia bowiem nowych realiów globalnych oraz wewnętrznych. Czy i co Polska powinna zmienić w swojej strategii w ramach UE? W których obszarach być może powinniśmy się dostosować się do większości w UE? W których kwestiach zachować odrębność? W jakiej Europie chcemy być? W jakiej Europie mamy szansę być?

W dyskusji udział wezmą:

- **Piotr Buras** – dyrektor Warszawskiego Biura Europejskiej Rady Spraw Zagranicznej (ECFR).
- **Olaf Osica** – przewodniczący rady Ośrodka Studiów Wschodnich, dyrektor projektu „Rynki zagraniczne” Polskiego Towarzystwa Wspierania Przedsiębiorczości.
- **Katarzyna Pełczyńska-Nałęcz** – dyrektorka forumIdei Fundacji Batrego.
- **Paweł Świeboda** – wicedyrektor Europejskiego Ośrodka Strategii Politycznej.

Prowadzenie: **Aleksander Smolar**, prezes Fundacji Batorego.

Relację video z pierwszej debaty z cyklu na 30-lecie Fundacji Batorego znaleźć można tu: *Rozdarty kraj. Jak zżyć Polskę?* Zachęcamy również do śledzenia informacji na temat trzeciej konferencji *Kontrowersje 30-lecia*, 13-14 czerwca.

Prosimy o potwierdzenie udziału w debacie *Polska w Europie, czyli gdzie?* przez formularz rejestracyjny:

Rejestracja online

Piotr Kosiewski

Fundacja im. Stefana Batorego

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From: Otwarta Europa - Fundacja Batorego <otwartaeuropa@batory.org.pl>
Sent: Monday, January 2, 2017 9:56 AM
To: Otwarta Europa - Fundacja Batorego <otwartaeuropa@batory.org.pl>
Subject: Analizy: Polska w Otwartej Europie – publikacje w 2016 r.

Szanowni Państwo,

Zapraszamy do lektury tekstów programu Otwarta Europa, które opublikowaliśmy we właśnie minionym roku:

Polacy wobec UE: koniec konsensusu (grudzień 2016), Adam Balcer, Piotr Buras, Grzegorz Gromadzki, Eugeniusz Smolar. „Istnieje potrzeba ponownego przekonania Polaków do Unii Europejskiej. Tym razem już nie do członkostwa, ale do głębokiej, jakościowej obecności w zjednoczonej Europie” – piszą autorzy. Wersja angielska w przygotowaniu.

Jak uniknąć rozmów ponad naszymi głowami? Polska wobec Rosji w dobie konfrontacji (październik 2016), Katarzyna Pełczyńska-Nałęcz. „Dla Polski stosunki Zachodu z Moskwą to jedna z najpoważniejszych dzisiaj „dużych gier” w polityce międzynarodowej. Jeśli chcemy, by gra „o nas” nie toczyła się bez nas, to w naszym najlepiej pojętym interesie jest aktywne włączenie się w proces rozwiązywania konfliktu z Rosją” – zauważa autorka, była ambasador RP w Rosji. Wersja angielska dostępna jest [tutaj](#).

Jaka zmiana? Założenia i perspektywy polityki zagranicznej rządu PiS (maj 2016), Adam Balcer, Piotr Buras, Grzegorz Gromadzki, Eugeniusz Smolar. Autorzy analizują założenia ideowe polityki zagranicznej, zwłaszcza polityki europejskiej, prowadzonej przez rząd Prawa i Sprawiedliwości. Wersja angielska dostępna jest [tutaj](#).

oraz do zapisu dyskusji o raporcie *Jaka zmiana?* z udziałem ministra ds. europejskich Konrada Szymańskiego.

Polityka europejska rządów Prawa i Sprawiedliwości. Dyskusja. (maj 2016). Raport „Jaka zmiana? Założenia i perspektywy polityki zagranicznej rządu PiS” wywołał dyskusję na temat reorientacji działań Polski na arenie międzynarodowej. Z autorami polemizował minister ds. europejskich, Konrad Szymański.

Życzymy miłej lektury i wszystkiego dobrego w Nowym Roku!

Zespół Programu Otwarta Europa.

--

Otwarta Europa

From: Swiderska, Monika </O=SBUSTATE/OU=WARSAW
AG/CN=RECIPIENTS/CN=SWIDERSKMX>
Sent: Wednesday, June 15, 2016 10:10 AM
To: DeParis, Frank <DeParisF@state.gov>
Cc: Morenski, Kathleen A <MorenskiKA@state.gov>; Dilworth, Alison E
<DilworthAE@state.gov>
Subject: Batory debate notes

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Frank,

As discussed, here are my notes from the Batory debate with Szymanski.

Monika

On May 30, the Batory Foundation held a debate on the Law and Justice (PiS) European policy, featuring DFM for European Affairs Konrad Szymanski. The debate followed the Foundation's recent publication of a collective think-tank report on PiS foreign policy. The report suggested the PiS Government has subordinated foreign policy to domestic politics and has shifted from the post-1989 doctrine in Polish foreign policy of rooting Poland in EU political, legal, and economic structures.

Szymanski: Polish Foreign Policy Strategy Does not Change but EU Needs Adaptation

DFM Szymanski defended the PiS foreign policy, and European policy in particular, by trying to the arguments made in the report. He accused the report of focusing on PiS ideology and not GOP actions. He said Euro-pessimism is not PiS-specific but is present all over Europe. He added that if "the European project" is to survive, EU needs to adapt and put more emphasis on the Member States as the current European processes or political instruments do not meet people's aspirations. He said elections in various European states demonstrate it. Contrasting Poland with some other Member States, he argued Poland "is in a privileged situation as the change of power [in Warsaw] did not result in a change of the foreign policy strategy," which is still based on the West's (EU and NATO) unity. He admitted there is a risk of EU decomposition, stressing neither of its sources – the Eurozone crisis or loss of control over the migrant problem, lies in Poland. In his view, societies have reasons to believe the EU is not coping with the two problems. He added Warsaw is not the source, either, of the EU's lower ambitions to impact the external world, listing the Dutch referendum against the Association Agreement with Ukraine and EU reluctance to introduce visa-free-regime for countries like Georgia or Ukraine.

Warsaw Sees EU-UK Agreement as a Pilot EU Adaptation Process

Szymanski called the recent EU-UK agreement a pilot project of an EU adaptation process. He saw in it certain patterns to follow or develop. These includes the need for the EU to recognize divergence of the member states, e.g. Eurozone and Non-Eurozone members. The DFM argued more integration is not the right solution to EU problems and EU member states should now think about what other solution could help. Poland, should, in his view, transition from being just the recipient of Western European models and actively engage in EU adaptation. In the Q&A session later he did not respond to a question though on what EU the PiS Government actually envisions. One of the report's authors – Piotr Buras of the ECFR, was concerned over the suggestion to adopt the EU based on the EU-UK agreement model. He believed it could lead to a multi-speed or "a la carte" Europe. While such a solution may be beneficial for the UK, he said, Poland would pay for it with weakened EU solidarity. According to Aleksander Smolar of the Batory Foundation, the EU's adoption of the UK model of cooperation is the least probable. A deeper integration of such countries as Germany, France, Belgium, and the Netherlands is, in his view, more probable.

Szymanski under Fire of Polish Intellectuals' Arguments

The panelists – Batory Foundation Chairman Aleksander Smolar, and some of the report's authors – Buras and Eugeniusz Smolar of the Center for International Relations, as well as many Polish intellectuals in the audience repeatedly raised their concerns over PiS behavior vis-à-vis EU. Buras said a redefinition of Poland's attitude towards the EU is clearly visible in that behavior and the post-1989 model of Poland's "Europeanization" is now a question mark. He said the new Polish discourse on Europe has a meaning as it is heard in Poland and abroad.

He and several other intellectuals criticized PiS for incoherence in its messaging on the EU, stressing FM Waszczykowski named the UK as Poland's key EU partner in his annual expose, while Presidential Minister Szczerski talked about Berlin in these terms in a recent press interview. Buras noted this is a source of Poland's unpredictability on the international arena, which is weakening its position. He also criticized the GOP for its focus on a deep domestic change, taking place at the cost of Poland's international position. He listed Warsaw's policy vis-à-vis the migrant crisis as an example. Leszek Jazdzewski of the *Liberte* magazine complained about Poland's current transition "from sitting at the table to being a dish on it." He suggested a deeper EU integration would increase Poland's security, stressing it is more difficult to attack a Eurozone member. On Poland's relations with the European Commission (EC), Eugeniusz Smolar stressed that if Poland weakens the EC's position, Polish interests will clash with big EU net payers' egoisms.

Criticism of the Among the Seas Concept

Eugeniusz Smolar argued a rejection of a liberal model leads to a deep chasm between "the European mainstream" and Poland and Hungary and Western partners may look at Poland now as at "a culturally divergent" country. On the "Among the Seas" concept, he said while the project should at its assumption strengthen Poland vis-à-vis Russia, the Western partners see it as something directed also against them, Germany in particular. There is therefore a high risk of Poland's isolation, he added. For Aleksander Smolar, the Among the Seas concept shows that PiS foreign policy is a return to the traditional geopolitics of the 19th century. He said no country of the broad region seems to have endorsed Poland's role as such a leader. Szymanski responded by saying that the North-South concept (he said he did not like "the Among the Seas" name) does not replace any Polish strategies but supplements and enriches them. He argued that Berlin does not want to be a hegemon in Europe and needs strong partners, where Central Europe could play a role.

Dangers Related to PiS EU Rhetoric: Possible Move of Poles Towards Isolationism

Buras and others pointed out to the dangers of PiS rhetoric vis-à-vis the EU. Saying that a threat to Poland's sovereignty is now Jaroslaw Kaczynski's main message in EU context, Buras stressed it is a significant change in the Polish paradigm of thinking about Europe. Smolar added the PiS cacophony on the EU resulted from the fact that the decision-making center is outside the government. He defined PiS message as trying to portrait PiS members as "realists" while their critics as "idealists, on the leash of foreign empires."

Former close co-worker of Jaroslaw Kaczynski, now independent but leaning more towards PO, Ludwik Dorn described Szymanski's remarks and the content of the think-tank report as "two parallel worlds." He suggested that while some bad developments have happened in Poland after the change of power, PiS has been denying it. Recalling the recent Sejm's adoption of a resolution, which said the EU is a threat to Polish sovereignty, Dorn said it "is no longer an idea but a hard fact." Dorn but also Aleksander Smolar and former Polish Ambassador to NATO Jerzy M. Nowak found the impact of the anti-EU rhetoric of "PiS politicians and propaganda men" on the Polish society's thinking very disturbing. Dorn called it "a plowing of the Polish geopolitical thinking," in which the EU becomes a threat to Poland. He, Nowak, and Smolar warned that if this continues for the next four years, Poles may move towards isolationist tendencies. Smolar said that PiS rhetoric positions Poles not only traditionally against Russia but also against the South (Islam) and the West, which he saw as the language of "self-isolation."

The U.S. and Poland's Relations with Germany

Adam Traczyk of a new think-tank Global.Lab asked Szymanski how he imagines Poland's relations with the U.S. when it is obvious that for the U.S., Berlin and not London is the main EU partner. Leszek Jazdzewski of the *Liberte* magazine stressed Poland needs the EU to negotiate such agreements as TTIP. Szymanski stressed the GOP is fully aware of how Washington perceives Germany's stabilizing role, noting the U.S. positive role on energy and sanctions vis-à-vis Russia.

Szymanski's Response: Polish Policy in the EU Is Predictable

In his response to the criticism that came from the Polish intellectuals, Szymanski stressed the GOP's actions, e.g. on the UK-EU compromise and the migrant crisis, show that Polish policy is predictable. He suggested that thanks to Poland's approach, the EU changed its thinking on the migrant crisis. Poland, he said, very quickly reached agreement with the rest of the EU on strengthening EU external borders. On the crisis over the Constitutional Tribunal, Szymanski said the EU Treaty is not a blank authorization for the EU to interfere in

internal affairs and its dictating solutions for Poland is going too far. He believed though healing the relations with the EU is possible. Szymanski also argued Poles are still EU-enthusiasts but did not exclude it that if the EU does not respond to "justified expectations of the region, fatigue may appear."

Monika Świdorska

Political Analyst

U.S. Embassy Warsaw, Poland

al. Ujazdowskie 29/31

00-540 Warszawa

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New citizens or intruders – Ukrainian migrants in Poland – debate at Batory Foundation, May 10

Marcin Sosniak – section for Migrant Issues in the Ombudsman's office – we do not have many complaints from Ukrainian migrants; we do not have migration policy – the old one adopted by the previous government is not binding; the current government is working on the new document – we know that there will be a big focus on economic migration – incentives for Ukrainians to come to Poland. Ukrainians get refugee status very rarely – because Ukraine can provide safety to its own citizens in safe parts of the country;

Piotr Lewandowski – Institute of Structural Research

The last three years – we see a big change, previously – very few foreigners hired in Poland; We saw a huge increase in work declarations, and increase in the number of visas issued to Ukrainians; We may talk about 450 thousand Ukrainians coming to Poland annually; the main features of this migration: 1 – mainly temporary; not the whole families; concentrated in selected regions; - people come to work in concrete sectors – construction, retail, domestic help, farming; temporary stays – because work permits are temporary ones. We do not have so-called 'ethnic economy' for Ukrainians (Ukrainian stores, food, etc. – to meet migrants' needs). 50% of all work permits are issued in Mazowieckie province.

The Polish government is interested in economic migration; Morawiecki strategy estimates that by 2050 there will be 5 million fewer Poles at the labor market; the government economic police does not address this challenge – lowering the retirement age; we expect that there will be not sufficient workforce to meet the demands of the labor market (in the area of intellectual work, services, healthcare). Ukrainians mainly come and work in low-wage sectors and perform simple tasks – we may not expect that they will fill out the gap on the labor market. Poland also have some resources for unused workforce – women and the elderly.

Myroslava Keryk, Our Choice, Ukrainian House

In 2016 ZUS registered only 171 thousand Ukrainians; at the same time 1.3 million visas were issued; and ca. 1 million work declarations – it means that a lot of Ukrainian workers work illegally. Even if 1.2 million visas are issued, there is no data available on how many Ukrainians stay in Poland at a given moment; there are only estimates that it is between 300-500 thousand. In addition, there were 100 thousand Ukrainians with the residence permit at the end of 2016. The majority of Ukrainians come to Poland to make some money and return; on average Ukrainians come to Poland nine times for periods of several months. We recently see the new structure of migration – now we have people between 18-45 years of age with better qualifications, from bigger cities. We have the impression that the Polish state cannot use their skills and capabilities. Big problem – intermediaries – both Polish and Ukrainian – they offer everything from work declaration, visa to a job – people buy something and later it turns out that there is no job for them. We have ca. 30-40 NGOs which specialize in providing assistance to migrants – but we are concerned that many of them will cease to exist by the end of the year (no

funding from AMIF funds). Right now, ngos are limiting their activities, they try to survive – in such environment Ukrainians are even more vulnerable to become victims of fraud.

Piotr Tyma, president of the Union of Ukrainians in Poland

We see Ukrainians in various regions of Poland, not only in major cities but also in rural areas and smaller towns; we see that local governments and local communities are not always prepared for foreign workers; we see a new phenomenon – aggression against migrants and against Ukrainian citizens – it occurs not only in near border areas but also in other parts of Poland; there is an increase on the number of crimes when hate/attack is related to the person's origin. Part of it is related to historical memory and Polish-Ukrainian debate about Volhynia (since 2013); media/film – show a negative image of Ukrainians; and there is a general fear of migrants (we see it not only in extreme right web portals as in the 1990s, but also in mainstream media – TV Trwam, Radio Maryja – Stanislaw Michalkiewicz broadcast). The problem in Poland – history of Polish-Ukrainian relations; new forces in parliament (some groups propose building a wall on Poland's eastern border; ONR – a demonstration against Ukrainian migrants – that they spoil the labor market and take away our jobs).

From: Swiderska, Monika <SwiderskMX@state.gov>
Sent: Thursday, March 3, 2016 7:53 AM
To: Warsaw POL_ECON Americans (R) <WarsawPOL_ECONAmericans-R@state.gov>; Warsaw POL_ECON FSNs (R) <WarsawPOL_ECONFSNs-R@state.gov>
Subject: Batory Foundation Law Experts on TK Changes

RELEASE IN PART B6

FYI. We got this opinion from the Batory.

Monika Świderska
Political Analyst
U.S. Embassy Warsaw, Poland
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00-540 Warszawa
tel. + 48 22 504-2695
fax + 48 22 504-2678
email: SwiderskMX@state.gov

This email is UNCLASSIFIED.

From: Fundacja Batorego [<mailto:informacja@batory.org.pl>]
Sent: Thursday, March 03, 2016 12:10 PM
Subject: Stanowisko Zespołu Ekspertów Prawnych przy Fundacji im. Stefana Batorego w sprawie Nowelizacji Ustawy o Trybunale Konstytucyjnym

Informacja prasowa

„To próba zmiany ustroju konstytucyjnego RP, określonego w ustawie zasadniczej, a sposób tworzenia Nowelizacji to zaprzeczenie rzetelnego procesu tworzenia prawa” – działający przy Fundacji im. Stefana Batorego Zespół Ekspertów Prawnych przedstawił stanowisko w sprawie Nowelizacji ustawy o Trybunale Konstytucyjnym.

W związku ze zbliżającym się terminem posiedzenia Trybunału Konstytucyjnego, na którym rozpatrywana będzie ustawa o zmianie ustawy o Trybunale Konstytucyjnym (sygn. K 47/15), Zespół Ekspertów Prawnych działający przy Fundacji im. Stefana Batorego, opublikował stanowisko [[PDF 233 KB](#)] w sprawie Nowelizacji ustawy o Trybunale Konstytucyjnym.

W ocenie prawników, prace parlamentu nad Nowelizacją trwały rażąco krótko (zaledwie trzy doby). Poprawki do ustawy o TK zgłoszone w trakcie tych prac, znacznie wykraczały poza pierwotny zakres nowelizacji. Jako szczególnie godzące w dobrą praktykę i naukę prawa uznano niewprowadzenie *vacatio legis* (czas konieczny na dostosowanie do nowych przepisów uznaje się za konieczny z konstytucyjnego punktu widzenia). Lecz przede wszystkim nowelizacja, która zawarta jest w ustawie zwykłej, jest w opinii grupy ekspertów, próbą zmiany ustroju Rzeczypospolitej Polskiej, określonego w Konstytucji RP.

Szczegółowe omówienie wszystkich naruszeń Konstytucji RP powodowanych przez Nowelizację, zawarte jest w opinii prawnej [[PDF 366 KB](#)] członka Zespołu prof. dr. hab. Marcina Matczaka, którą Fundacja przekazała jako „opinię przyjaciela sądu” (*amicus curiae*) w sprawie Nowelizacji Ustawy o Trybunale Konstytucyjnym.

Zespół Ekspertów Prawnych (skład Zespołu [[PDF 134 KB](#)]) ukonstytuował się w grudniu 2015 roku przy programie Odpowiedzialne Państwo Fundacji im. Stefana Batorego. Jego zadaniem jest formułowanie stanowisk, opinii i

ekspertyz nt. przygotowywanych przez rząd i parlament zmian prawnych dotyczących ustroju państwa oraz miejsca instytucji publicznych i obywatelskich w systemie prawa. Członkowie zespołu prowadzą stały monitoring projektów aktów prawnych, analizując je przede wszystkim pod kątem zgodności wprowadzanych rozwiązań z Konstytucją RP, normami międzynarodowymi i demokratycznymi standardami państwa prawa. Oceniają też stopień ingerencji przepisów w prawa człowieka i obywatela i kierunek zmian ustrojowych jaki wytycza stanowione prawo.

Opinie, ekspertyzy i stanowiska Zespołu przedstawiane są rządowi, parlamentowi, instytucjom publicznym i organizacjom obywatelskim, mediom i opinii publicznej.

Dotychczas Zespół przygotował opinie prawne dotyczące *poselskiego projektu ustawy o zmianie ustawy o służbie cywilnej oraz niektórych innych ustaw*, a następnie uchwalonej już *ustawy o służbie cywilnej* autorstwa prof. dr. hab. Huberta Izdebskiego oraz *poselskiego projektu ustawy o zmianie ustawy o Rzeczniku Praw Obywatelskich oraz niektórych innych ustaw* autorstwa dr. Tomasza Zalasieńskiego.

Więcej informacji udzielają:

prof. dr hab. Marcin Matczak,

prof. dr Tomasz Pietrzykowski,

Grażyna Kopińska

B6

RELEASE IN FULL

From: Bremner, Steven A <BremnerSA@state.gov>
Sent: Thursday, August 23, 2018 6:41 AM
To: Hinton, Laura M <HintonLM@state.gov>
Cc: Warsaw Front Office <WarsawFrontOffice@state.gov>; Warsaw Travel <WarsawTravel@state.gov>; Duran, Tod E <DuranTE@state.gov>; Warsaw RSO Front Office <WarsawRSOFrontOffice@state.gov>; Warsaw Political Americans <WarsawPolAm@state.gov>; Zasun, Joanna <ZasunJX@state.gov>; Ranado, Charles (Foreign Commercial Service) <Charles.Ranado@trade.gov>; Davis, Adam N <DavisAN@state.gov>; Warsaw DAO <WarsawDAO@state.gov>; Layton, Marta <LaytonM@state.gov>; Kukla, Marcin <KuklaMX@state.gov>; Piekut, Malgorzata D <PiekutMD@state.gov>; Kolenbrander, Justin <KolenbranderJ@state.gov>; Finver, Frank J <FinverFJ@state.gov>; Armstrong, John L <ArmstrongJL3@state.gov>; Orton, David L <OrtonDL@state.gov>
Subject: CODEL Flores Final Schedule Warsaw and Krakow 082318
Attach: CODEL Flores Final Schedule Warsaw and Krakow 082318.docx

Dear All:

Attached is the final schedule for CODEL Flores arriving tonight and flying to Krakow on Sunday. Please let me know if you have any questions.

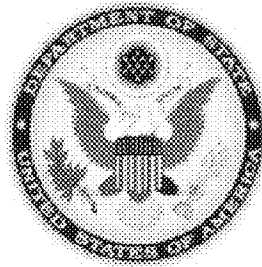
Thanks!

Steve

Official - SBU
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23 Aug 2018 – Post Version

RELEASE IN PART B5



CODEL Flores
House Democracy Partnership
Belgium, Poland, Macedonia, Tunisia
22-31 August 2018
Warsaw and Krakow Detailed Schedule
23-26 August 2018

CODEL Participants - 18 (5 Members, 4 Spouses, 4 Staff, 1 Physician, 4 Escorts)

1. Congressman Bill Flores (R-TX-17), House Democracy Partnership, Energy and Commerce Committee
2. Mrs. Gina Flores
3. Congressman David Price (D-NC-4), Ranking Member, House Democracy Partnership, Appropriations Committee
4. Mrs. Lisa Price
5. Congresswoman Susan Davis (D-CA-53), House Democracy Partnership, Armed Services Committee, Education and Workforce Committee
6. Dr. Steve Davis
7. Congresswoman Dina Titus (D-NV-1), House Democracy Partnership, Transportation and Infrastructure Committee, Foreign Affairs Committee
8. Dr. Thomas Wright (Spouse of Rep Titus)
9. Congressman Gerry Connolly (D-VA-11), House Democracy Partnership, Oversight and Government Reform Committee, Foreign Affairs Committee
10. Mr. Jeff Billman, House Democracy Partnership, Majority
11. Mr. Justin Wein, House Democracy Partnership, Minority
12. Ms. Catherine Huddleston, House Sergeant at Arms Office
13. Mr. Tim Meisburger, Director Center for Democracy, USAID
14. Capt Jacqueline Evans, Physician, USAF
15. Maj Rocky Checca, USMC Escort
16. LtCol Chris Meyers, USMC Escort (U/T)
17. Capt Tom Koch, USMCR Escort (Spouses)
18. Sgt Cristian Cepeda, USMC Escort



B5

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From: Swiderska, Monika <SwiderskMX@state.gov>
Sent: Tuesday, January 15, 2019 8:20 AM
To: Warsaw Political Section <WarsawPol@state.gov>
Subject: Conference on how to restore the rule of law after PiS

RELEASE IN
FULL

Colleagues,

Yesterday, I attended the opening session of the January 14-15 Batory Foundation conference on how to restore the rule of law in Poland after a change of power. Basia is attending the conference today.

The conference, which has attracted many law experts, NGO activists, and some politicians, has focused on the future -- on how to technically restore the rule of law -- "repair" the judiciary system in Poland after this government's reforms, which affected the Constitutional Tribunal (CT), the National Judiciary Council (KRS), the Supreme Court (SC), and ordinary courts. Human Rights Ombudsman Adam Bodnar and New York University Constitutional Law Professor Samuel Issacharof gave opening remarks. Bodnar admitted that the Polish justice system before the changes, which the PiS government had introduced, was not free of problems, which, in his view, was why the restoration of the rule of law in Poland should not only mean a restoration of the pre-2015 status quo but was a huge strategic intellectual and political challenge of making the restored rule of law fulfill its tasks and values, as defined by the Polish Constitution.

Prof. Issacharof stressed that stable democracies required the internalization of the concept of „democracy as the repeat play,” which meant that politicians and the society had to accept the fact that parties could gain or lose power again and again during elections, and that no single political party should consolidate the state power in order to prevent its political opponents from governing the country. He opposed it to populism, which says: “The people has spoken and this is it.” Prof. Issacharof also stressed the important role of NGOs as well as independent ombudsmen and courts, which could hold the governments accountable for their actions. He warned Poles against a criminalization of political opponents -- also when attempting to restore the rule of law, as in his view, only few democracies have managed to do it successfully. Giving the U.S. President Nixon case as an example, he stressed that U.S. voters punished the Nixon administration by giving power to the Democrats in democratic elections (an act of a “political repudiation”). Issacharof added that in order to restore the rule of law, one has to restore the proper role or centrality of the legislative power (parliament) and guarantee the independence of the judiciary, NGOs, media, and the Church in order to have the system of checks and balances. He warned against entering “a spiral of revenge after revenge.”

Polish law experts and intellectuals pointed out to the problem of the internalization by Poles of rule of law standards, which new democracies, like Poland, had imported from the old democracies, which had worked out those standards themselves. Many stressed the need for a better education of Poles, Polish media, and even young law students about the standards. The law experts admitted that the Polish intellectual, legal, and political elites would face a dilemma how to restore the rule of law in Poland after PiS lost power. Law Professor Fryderyk Zoll stressed, for example, he could not imagine that the Disciplinary Chamber and disciplinary justices could remain in the Supreme Court. He said one should not agree for the use of the PiS government's mechanisms by PiS successors in order “to restore the rule of law,” for example, agree for the situation when the Justice Minister served also as the Prosecutor General for that purpose. He also called for a creation of a transparent judicial system. PO Sejm Deputy Swiecicki, too, wondered how to restore the rule of law without using “the PiS methods” and whether the State Tribunal should be used for holding PiS politicians accountable for their actions. A political activist doubted whether the current opposition parties were actually capable of restoring the rule of law after PiS, arguing that they themselves had not reformed since 2015. She did not believe the current party system in Poland, in which parties were not governed in a democratic way but were

subordinated to party leaders, could lead to true reforms in Poland. A law expert agreed that political parties in Poland were demoralized and looked at what their leader would say and not at the impact of their legislation on ordinary citizens. Independent Senator Marek Borowski believed that illegal appointments made by PiS could be cancelled by ordinary acts of law (for example the elections of “double judges” to the CT or the appointment of the new KRS). He, too, thought though that the reversal of the PiS changes should not be about restoring the old system but about building new effective institutions.

Monika

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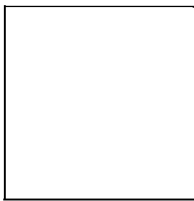
RELEASE IN FULL

From: Swiderska, Monika <SwiderskMX@state.gov>
Sent: Thursday, January 3, 2019 5:34 AM
To: Warsaw Political Section <WarsawPol@state.gov>
Subject: conference on the rule of law

FYI. An invitation to a Jan. 14-15 conference on the rule of law, which the Batory Foundation will host. It will feature Prof. Samuel Issacharoff of the New York University School of Law and many Polish law experts. The registration for the conference is online. The conference will be in Polish and English.

From: forumIdei Fundacji Batorego <debaty@batory.org.pl>
Sent: Friday, December 28, 2018 12:00 PM
To: Swiderska, Monika <SwiderskMX@state.gov>
Subject: Zaproszenie na konferencję forumIdei "Jak przywrócić państwo prawa?"

Problemy z wyświetlaniem? Zobacz ten e-mail w przeglądarce.



ZAPROSZENIE

Zapraszamy na konferencję forumIdei „Jak przywrócić państwo prawa?”, która odbędzie się w dniach 14-15 stycznia w siedzibie Fundacji im. Stefana Batorego przy ul. Sapieżyńska 10a w Warszawie.

Od 2015 roku rząd Prawa i Sprawiedliwości dokonuje kontrowersyjnych zmian dotyczących newralgicznych, ustrojowych instytucji demokratycznego państwa, m.in. sądu konstytucyjnego, najwyższych organów sądownictwa decydujących o karierze sędziów i nadzorujących działalność orzeczniczą sądów. Głębokie zmiany zaszły także w całym systemie sądownictwa powszechnego i prokuratury – doprowadziły one do znacznego podporządkowania trzeciej władzy rządowi i większości parlamentarnej.

Ważne jest, by już teraz wyjść w przyszłość i przedstawić propozycje wyjścia z kryzysu ustrojowego, w którym się znajdujemy i zastanowić się w jaki sposób, skutecznie i w zgodzie z obowiązującym porządkiem konstytucyjnym przywrócić prawidłowe funkcjonowanie głównych organów państwa, przede wszystkim Trybunału Konstytucyjnego, Krajowej Rady Sądownictwa, Sądu Najwyższego oraz sądownictwa powszechnego.

Wykład otwierający „Populizm i rządy demokratyczne” wygłosi **prof. Samuel Issacharoff** (New York University, School of Law).

W konferencji zaś głos wezmą:

- **prof. dr hab. Agnieszka Bień-Kacała** (Katedra Prawa Konstytucyjnego, UMK w Toruniu)
- **Łukasz Bojarski** (Instytutu Prawa i Społeczeństwa INPRiS)
- **Jacek Czaja** (Towarzystwo Prawnicze)
- **dr hab. Agnieszka Frąckowiak-Adamska** (Katedra Prawa Międzynarodowego i Europejskiego, Uniwersytet Wrocławski)
- **prof. Teresa Gardocka** (Wydział Prawa, Uniwersytet SWPS)
- **dr Wojciech Jasiński** (Katedra Postępowania Karnego, Uniwersytet Wrocławski)
- **Irena Kamińska** (sędzia NSA)
- **mec. Paulina Kieszkowska-Knapik** (#WolneSądy)
- **dr Jarosław Kuisz** (Instytut Historii Prawa, Uniwersytet Warszawski)
- **prof. Ewa Łętowska** (Instytut Nauk Prawnych PAN)
- **prof. Marcin Matczak** (Instytut Nauk o Państwie i Prawie, Uniwersytet Warszawski)
- **prof. Ryszard Piotrowski** (Instytut Nauk o Państwie i Prawie, Uniwersytet Warszawski)
- **prof. Anna Rakowska-Trela** (Zakład Prawa Konstytucyjnego Porównawczego, Uniwersytet Łódzki)
- **prof. Grażyna Skąpska** (Instytut Socjologii, Uniwersytet Jagielloński)
- **prof. Mirosław Wyrzykowski** (Zakład Praw Człowieka, Uniwersytet Warszawski)
- **prof. Jerzy Zajadło** (Katedra Teorii i Filozofii Państwa i Prawa, Uniwersytet Gdański)
- **prof. Fryderyk Zoll** (Katedra Prawa Cywilnego, Uniwersytet Jagielloński)

Zachęcamy do zapoznania się z programem konferencji.

Konferencja w języku polskim i angielskim. Zapewniamy tłumaczenie symultaniczne.

Prosimy o potwierdzenie udziału przez formularz rejestracyjny:

Rejestracja online

Grzegorz Makowski
forumIdei, Fundacja im. Stefana Batorego
tel. 22 536 02 07, gmakowski@batory.org.pl

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Gorąco zachęcamy do wsparcia naszej działalności darowizną: batory.org.pl/wspieraj

Zapis z przebiegu debaty w formie audiowizualnej będzie opublikowany i dostępny dla każdego na stronach internetowych Fundacji. Uczestnictwo w debacie oznacza wyrażenie zgody na jej nagrywanie oraz opublikowanie zapisów z jej przebiegu na zasadach licencji Creative Commons (CC) Uznanie autorstwa – na tych samych warunkach 3.0 Polska [CC BY-SA 3.0 PL].

Administratorem Pani/Pana danych osobowych w postaci: imię, nazwisko, adres kontaktowy jest Fundacja im. Stefana Batorego, ul. Sapieżyńska 10a, 00-215 Warszawa. Twoje dane osobowe przetwarzane są na podstawie wyrażonej przez Ciebie zgody w celu informowania Pani/Pana o działalności Fundacji i przesyłania zaproszeń na

organizowane przez Fundację spotkania.

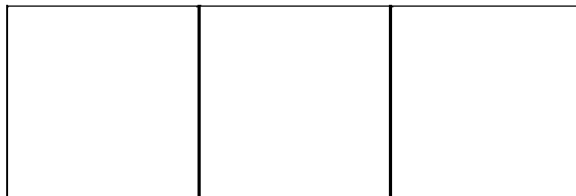
Pani/Pana dane osobowe będą przechowywane do momentu cofnięcia Pani/Pana zgody na ich przetwarzanie lub zgłoszenia sprzeciwu wobec ich przetwarzania. Twoje dane osobowe nie będą udostępniane innym odbiorcom.

Ma Pani/Pan prawo żądać dostępu do swoich danych osobowych, ich sprostowania, usunięcia, ograniczenia przetwarzania oraz do przenoszenia danych. W każdej chwili ma Pani/Pan prawo wycofać zgodę na przetwarzanie swoich danych osobowych. Wycofanie zgody nie będzie rzutowało na zgodność z prawem przetwarzania ww. danych w oparciu o zgodę przed jej cofnięciem.

Przysługuje Pani/Panu skarga do właściwego organu nadzorczego. Ma Pani/Pani prawo wniesienia sprzeciwu w związku z przetwarzaniem w/w danych na potrzeby przesyłania informacji o działalności Fundacji.

Jeśli nie chce Pani/Pan otrzymywać od nas żadnych informacji, zaproszeń i materiałów, prosimy kliknąć link Wypisz mnie ze wszystkich list wysyłkowych.

Więcej o sposobie przetwarzania danych osobowych przez Fundację Batorego w polityce prywatności.



Fundacja im. Stefana Batorego

Sapieżyńska 10a
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www.batory.org.pl

□

RELEASE IN FULL

From: Swiderska, Monika </O=SBUSTATE/OU=WARSAW AG/CN=RECIPIENTS/CN=SWIDERSKMX>
Sent: Tuesday, March 6, 2018 8:35 AM
To: Warsaw POL_ECON Americans (R) <WarsawPOL_ECONAmericans-R@state.gov>; Warsaw POL_ECON FSNs (R) <WarsawPOL_ECONFSNs-R@state.gov>
Subject: debate on Polish-Ukrainian relations

Here is a rough readout from a fascinating debate on Polish policy towards Ukraine (also in light of the IPN legislation), which the Batory Foundation hosted and in which the conservative think-tank – Jagiellonian Club, participated yesterday. The debate attracted a large crowd of Polish intellectuals, some politicians, and some diplomats, including Ukrainian Ambassador to Poland Deshchytysa.

The debate featured PO Sejm Deputy Tyszkiewicz, Pawel Musialek of the Jagiellonian Club, and Dr. Pawel Kowal, former PiS MEP and now an independent commentator. (Kukiz'15 Sejm Deputy Tomasz Rzymkowski cancelled his participation due to some urgent parliamentary commitments, probably related to the KRS candidates consideration in the Justice Committee). All the panelists agreed that the IPN legislation was bad and unnecessarily further strained relations with Ukraine. I particularly recommend Pawel Kowal's analysis while Musialek's arguments are very useful, too, to understand the approach of the conservatives/the political right to Ukraine.

Here are the highlights of the opinions:

Robert Tyszkiewicz (PO's expert on eastern policy / Deputy Chair of the Sejm Foreign Affairs Committee):

The current deep crisis in the Polish-Ukrainian relations has been an element of a process of Poland's departing from the foundations of its eastern policy strategy in the last two years. Right now, Poland is neither active in Eastern Europe nor in the EU, which decreases Poland's influence in both. Poland's lack of activity in the East created a political vacuum, which various nationalist political circles, focusing on revisionism and historical settlements of accounts, on both sides have started to fill. One should not agree for the "freezing" of Polish eastern policy and there should be more activity between Poland and Ukraine on parliamentary level, in people-to-people contacts, and among academics. Polish parliament should also engage foreign partners, including the Weimar Triangle format, to engage with Ukraine. Cooperation between local governments should also be boosted. PiS approach to Ukraine seems to be such that Ukraine should recognize Poland's dominance or special role for Ukraine. There is hope though that the voice of the Polish society, experts, but also foreign partners will have a sobering effect on the Polish authorities. Polish foreign policy is a entirely though a hostage of the domestic policy – FM Waszczykowski had to explain in Brussels the decisions in domestic politics (judiciary reform) while the Justice Minister caused the crisis over the IPN law, with which the MFA has to now deal. U.S. Secretary of State Tillerson's statement on the IPN law played a bigger role than Polish voices against the law.

Pawel Musialek, Expert on Polish foreign policy:

The Polish-Ukrainian historical dispute dangerously starts to enter other areas of the Polish-Ukrainian relations but the bilateral relationship should not be reduced to this historical dispute. The PiS government's policy towards Ukraine does not mean a fundamental change of Poland's policy but its correction to include "assertiveness" vis-à-vis Ukraine on historical issues. This assertiveness though is often ineffective as it is not very subtle. The IPN law is very unfortunate and total lacks any finesse. However, it is Ukraine that is more to blame in the bilateral dispute over historical issues as it has for years failed to put enough effort to understand the Polish sensitivity. Also, Ukraine does not see Poland's role as Poland would like Ukraine to see – it looked rather at Berlin as its advocate in the EU and did not want Poland at the negotiating table on the Russia-Ukraine conflict. (Former Ambassador Pelczynska-Nalecz intervened and said it was Poland that did not want to join the talks as it did not want to take the responsibility for their outcome.) Ukraine did not consider Poland as important as it took Poland's support for Ukraine for granted and unconditional. The current polarization of the Polish political scene might lower the Polish policy effectiveness too as Ukraine might not want to do progress on disputable issues hoping for a change of the situation under the next Polish government. Poland should be

assertive in historical policy vis-à-vis Ukraine but stress at the same time its will to cooperate with Kyiv on strategic issues such as security. Poland should also ensure that the historical dispute does not adversely affect the relations between the societies and should further facilitates stays of Ukrainians in Poland. The need for this assertiveness also results from changes in the Polish society as Poles expect it now from the government. It is true though that PiS is creating these expectations partly as well. Kukiz'15, which has even a tougher position on Ukraine, is also in parliament.

Dr. Pawel Kowal, an independent conservative expert on Polish eastern policy, former close co-worker of Lech Kaczynski:

Ukrainian public opinion polls, which show that Ukrainians like the Poles best as well as the fact that many Ukrainians decide to come to Poland indicate Poland's policy towards Ukraine after 1989 has been successful. A political operation is taking place in Poland right now to convince the Polish public that something has failed over the last decades – politicians take incidents and attach a propaganda meaning to them. Poland's current policy towards Ukraine is an attempt to break with the concepts of Jerzy Giedroyc, Lech Kaczynski, and Pope John II. (These concepts urged the need to rebuild Poland's good relations with Belarus and Ukraine, called for Poland to reject any imperial ambitions and controversial territorial claims, and support independence of Belarus and Ukraine.) There is an ideological strike in PiS at Giedroyc, less at Lech Kaczynski, and silence on the JP II. It is impossible to defend the IPN legislation as it is against common sense. Polish parliament adopted a bad law while the ruling party officials try to maintain now the law is excellent. The reason for the law's adoption was tactical – to break an internal political discussion in Poland about the TVN report on Polish Neo-Fascists. The consequences of the IPN Law's adoption will include:

- A legitimization of the Kresowianie circles (groups of Poles and their descendants from Poland's former lands in Eastern Europe, which are now in Ukraine, Belarus, and Lithuania), who now have their political representation, media, financial support, and some backing within the government. This trend will grow due to the process of a nationalist and anti-West mobilization in Poland. The nationalist mobilization is about anti-Semitism and anti-German and anti-Ukrainian attitudes. The anti-western mobilization is about anti-European, anti-American, and anti-Vatican attitudes, which is already happening.
- A mythologization of Polish history – there is a political allowance for it now and it will also affect future Polish government
- Lech Kaczynski's paradigm is on defense now in PiS (now Father Rydzyk is more important than Lech Kaczynski's political heritage)
- Implementation of Russia's goals irrespective whether Russia really interferes in Polish politics or not
-

All of this will weaken Poland's position in the West, including vis-à-vis the United States, and in consequence will lead to the Polish authorities' further frustration and radicalization.

Poland should look at the relations with Ukraine in the geopolitical context as it is impossible to isolate this relationship from this context. Poland cannot replace Ukraine with any other country and relations with Ukraine are also about Poland's independence. There is also a question whether Poland conflicted with Ukraine is a more or less credible partner for the U.S..

Monika Świdarska

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Official

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From: Piekut, Malgorzata D </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=79096CB8026E4C7CBDEC12C60B86DCEF-PIEKUT, MAL>
Sent: Wednesday, October 31, 2018 11:39 AM
To: Hinton, Laura M <HintonLM@state.gov>
Subject: draft schedule for Mr. Stoltenberg meetings next week
Attach: draft schedule_Steven Stoltenberg visit_Oct. 2018.docx

Laura,

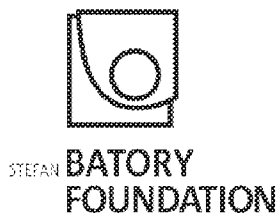
Just in case , here is draft schedule for Mr. Stoltenberg meetings next week. I have sent it to Brian. Kasia and Monika will follow up on two meetings on Friday. They also have this schedule.

I will submit access request for all the guests on Monday morning.

Have a great time at the party and nice weekend.

Gosia

Malgorzata Piekut | Political Office | U.S. Embassy Warsaw | Al. Ujazdowskie 29/31 | 00-540 Warsaw | Poland | /Email: PiekutMD@state.gov | Telephone: +48 22 504 22 94



ideaForum



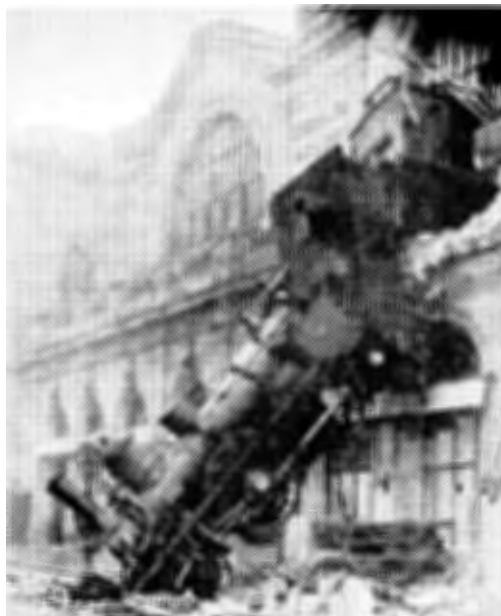
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Where the law ends

The collapse of the rule of law in Poland – and what to do

“Everyone is entitled to a fair and public hearing within a reasonable time by an *independent and impartial tribunal* previously established by law.”

(Article 47, EU Charter on Fundamental Rights)



Berlin – Warsaw
29 May 2018

Executive Summary

No member state of the EU has ever gone as far in subjugating its courts to executive control as the current Polish government has done. The Polish case is a test whether it is possible to create a Soviet-style justice system, where the control of courts, prosecutors and judges lies with the executive and a single party, in an EU member state.

In December 2017 the Commission proposed to the EU Council to determine that there was “a clear risk of a serious breach by the Republic of Poland of the rule of law.” It warned that in Poland the constitutionality of laws “can no longer be verified and guaranteed by an independent constitutional tribunal.” It expressed “grave concerns” over the lack of independent courts. In March 2018 an Irish High Court judge noted a “deliberate, calculated and provocative legislative dismantling by Poland of the independence of the judiciary, a key component of the rule of law.” She argued, in an extradition case involving a Polish suspect, that “the rule of law in Poland has been systematically damaged by the cumulative impact of all the legislative changes that have taken place over the last two years.”

Things are about to get even worse. On 3 April 2018 a new law on the Polish Supreme Court entered into force. The Council of Europe’s Venice Commission warned already at the end of 2017 that the changes bore “a striking resemblance with the institutions which existed in the Soviet Union and its satellites.” The law foresees the dismissal and new appointments of dozens of judges, so that a large majority of judges would be new. This will take place already in July, unless something is done before.

Concrete swift actions by the European Commission, member states and the European Court of Justice can still pre-empt the worst:

- the European Commission vigorously pursues the ongoing infringement procedure against the Law on the Ordinary Courts, which it launched in December 2017 before the Court of Justice of the European Union. The worst signal at this moment would be to withdraw this before it allows the Court of Justice to assess the state of courts in Poland today;
- the European Commission launches an infringement procedure against the Law on the Supreme Court immediately before the Court of Justice, with the aim to stop the mass dismissal of judges which is set to take place in early July and which would be almost impossible to reverse later;
- important EU member states voice their support for both steps. At the same time the Council must ensure that the European Commissions “reasoned proposal” on the rule of law in Poland, based on Article 7 of the EU’ treaty, is put to the vote as soon as possible, and receives broad backing from member states.

The Polish government’s assault on its judiciary represents a threat to the EU’s legal order and long-term political stability. The EU and national legal orders are now so intertwined as to make up a single patchwork quilt, from which so great a hole cannot be cut, without the whole unravelling. 328 years ago, the great English philosopher John Locke noted that “wherever the law ends, tyranny begins.” Poland is at this threshold now. The stakes could not be higher. The outcome of this conflict will determine whether the EU has a future as a community based on the rule of law.

Table of contents

Executive Summary	ii
Cast of characters	iii
The 20 percent revolution	1
Shock, awe and the courts	3
Life as a Polish judge – the story of Adam	8
Watchdogs without teeth.....	12
The Polish cat and the European mouse.....	15
The Court and the Commission what to do now.....	18
ANNEX: Further reading – key documents	22

Cast of characters



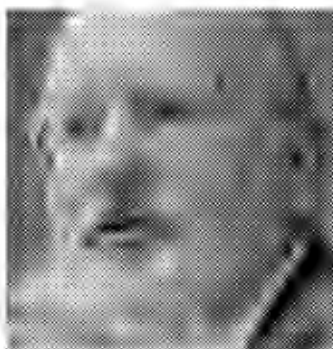
Party chairman (PiS)
Jaroslaw Kaczynski



President
Andrzej Duda



Minister of Justice
Zbigniew Ziobro



Commission Vice-president
Frans Timmermans



Irish High Court judge
Aileen Donnelly

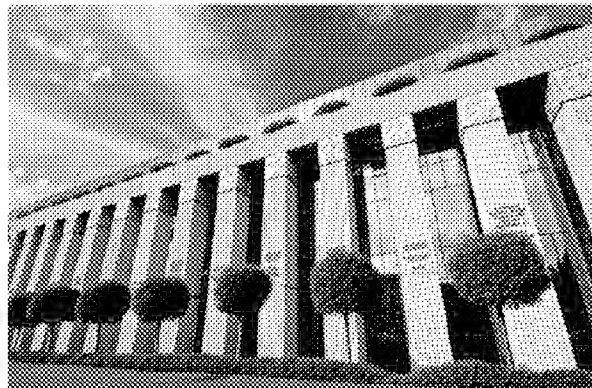


President European Court
Koen Lenaerts

The battlefield over the rule of law



Poland's Constitutional Tribunal: 15 judges



Poland's Supreme Court: currently 81 judges

Main authors: Piotr Buras and Gerald Knaus

This paper also greatly benefited from the expertise of numerous colleagues across Europe. For invaluable comments, suggestions and criticism at various stages of the work we thank Kristof Bender, Piotr Bogdanowicz, Adnan Cerimagic, Jakub Chromiec, John Dalhuisen, Paulina Kieszkowska-Knapik, Katharina Knaus, Marcin Matczak, Dariusz Mazur (Association of Judges Themis), Magdalena Milenkovska, Isotta Ricci Bitti, Andras Toth-Czifra, Rebecca Paulsson Vides, Michal Wawrykiewicz. The responsibility for the paper lies with the authors only.

The 20 percent revolution

Three years ago, in May 2015, Andrzej Duda, a young lawyer, former member of parliament and former undersecretary of justice, running as the candidate of the Law and Justice Party (PiS), won the Polish presidency with 51.5 percent of the vote. A few months later, in the parliamentary elections of October 2015, some twenty percent of Polish voters cast their ballot for the Law and Justice Party led by Jaroslav Kaczynski. As half of the electorate did not vote, PiS won 37.6 percent of all votes cast. This translated into a narrow parliamentary majority of 5 seats. By the end of the year PiS controlled the presidency, the parliament and the first single-party government since the end of communism.

PiS had a mandate to govern. Instead, the party proceeded to tear down the constitutional architecture of Poland. This has led to an unprecedented confrontation with the European Commission, the guardian of the EU treaties. In December 2017 the Commission proposed to the EU Council to determine that there was “a clear risk of a serious breach by the Republic of Poland of the rule of law.” It warned that in Poland the constitutionality of laws “can no longer be verified and guaranteed by an independent constitutional tribunal.” It expressed “grave concerns” over the lack of independent courts. After two years of fruitless dialogue with Warsaw, the Commission now turned to the member states for support.¹

In March 2018, meanwhile, an Irish High Court judge, Aileen Donnelly, noted a “deliberate, calculated and provocative legislative dismantling by Poland of the independence of the judiciary, a key component of the rule of law.”² She argued, in an extradition case involving a Polish suspect, that “the rule of law in Poland has been systematically damaged by the cumulative impact of all the legislative changes that have taken place over the last two years.”³ This Irish case is now before the Court of Justice of the European Union (CJEU) in Luxembourg.

On 3 April 2018, a new law on the Polish Supreme Court entered into force. The Council of Europe’s Venice Commission had warned at the end of 2017 that the changes bore “a striking resemblance with the institutions which existed in the Soviet Union and its satellites.”⁴ The law foresees a drastic change in the highest court in the country, including the dismissal and new appointments of dozens of judges, so that a large majority of judges would be newly appointed. This change would be the culmination of a frenzied process where “within the period of two years, more than thirteen consecutive laws had been adopted, affecting the entire structure of the judicial system in Poland: The Constitutional Tribunal, the Supreme Court, the Ordinary Courts, the National Council for the Judiciary, the Prosecution Office and the National School of the Judiciary.”⁵

This is a moment of truth for the European Union. As the Court of Justice of the European Union (CJEU), member states and the European Commission weigh their actions every

¹ European Commission, Reasoned Proposal under Article 7(1) for a Council Decision regarding rule of law in Poland, 20.12.2017, p. 21,
http://ec.europa.eu/newsroom/just/document.cfm?action=display&doc_id=49108.

² Ruaidhri Giblin, High Court judge seeks EU ruling on effect of Polish law changes, The Irish Times, 12.3.2018, <https://www.irishtimes.com/news/crime-and-law/courts/high-court/high-court-judge-seeks-eu-ruling-on-effect-of-polish-law-changes-1.3424530>.

³ Judgement of the Irish High Court, Minister of Justice vs. Artur Celmer, 12.3.2018,
<http://www.statewatch.org/news/2018/mar/ireland-Minister-v-Celmer-final.pdf>.

⁴ Venice Commission, Opinion No. 904/2017, 11.12.2017,
[http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2017\)031-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)031-e).

⁵ Judgement of the Irish High Court, Minister of Justice vs. Artur Celmer, 12.3.2018, *ibidem*.

decision now involves risks. The Court of Justice of the European Union will rule whether it agrees with the Irish High Court judge. Member states in the EU council will have to decide with a majority of at least 22 of 28 member-states whether they back the European Commission's warning. And the European Commission faces the immediate choice whether to take Poland to court over its terrifying Law on the Supreme Court, trying to block it before it leads to the dismissals and appointments of a large number of judges in July.

This paper makes two main arguments. First, no one should underestimate the seriousness of the current crisis over the rule of law in Poland or its implications for the EU as a whole. No member state of the EU has ever gone as far in subjugating its courts to executive control as the current Polish government has done. This includes Hungary under prime minister Viktor Orban, to which Poland is often compared.⁶ The Polish case is a test whether it is possible to create a Soviet-style justice system in an EU member-state; a system where the control of courts, prosecutors and judges lies with the executive and a single party. It remains to be seen whether this can be corrected before it inspires others, fatally undermining the idea of the EU as a community based on law and common values.

Second, the PiS government has pursued a shrewd and consistent strategy in the face of criticism by European institutions: to stall, to obfuscate and to avoid any meaningful concession. Poland's parliamentary majority has repeatedly expressed its strong determination to destroy any possibility for independent courts to control its actions; while simultaneously denying that there is any difference between the democracy it envisages and what exists elsewhere in the EU. The key protagonists – party leader Kaczynski, president Duda, minister of justice Ziobro – are all lawyers, the first two with a doctorate, who know what they are doing. The hope entertained in some EU capitals that current talks between the Commission and the Polish government might lead to a compromise preserving meaningful independence of courts is strongly contradicted by the experience of the past three years. This Polish government has made clear that it will not accept any outcome that curtails its control over courts, from the Supreme Court to the smallest of Poland's 321 district courts. PiS is about to achieve what it has long believed to be its legitimate objective: unchecked executive power.

The most important question now is what kind of strategy is most likely to defend the rule of law, not only in Poland but across the EU, not only now but for the foreseeable future. The Court of Justice of the European Union will necessarily need to play a central role, but the Court will be able to do this successfully only if there is also more engagement from both the Commission and from most member states. This means concretely that:

- the European Commission must vigorously pursue the ongoing infringement procedure concerning the Law on Ordinary Courts, which it launched in December 2017 before the Court of Justice of the European Union. The worst signal at this moment would be to withdraw this due to cosmetic changes on the part of the government in Warsaw, before the Court of Justice is able to assess the state of courts in Poland today;
- The European Commission must launch an infringement procedure concerning the Law on the Supreme Court immediately before the Court of Justice, with the aim to stop the mass dismissal of judges which is set to take place in early July and which would be almost impossible to reverse later.

⁶ Zoltán Fleck, Judges under attack in Hungary, *Verfassungsblog*, 14.5.2018, <https://verfassungsblog.de/judges-under-attack-in-hungary/>.

- EU member states should voice their support for both steps. At the same time the Council must ensure that the European Commissions “reasoned proposal” on the rule of law in Poland, based on Article 7 of the EU’ treaty, is put to the vote as soon as possible, and receives broad backing from member states.

The Polish government’s assault on its judiciary represents a threat to the EU’s legal order and long-term political stability. The EU and national legal orders are now so intertwined, both nationally and transnationally, as to make up a single patchwork quilt, from which so great a hole cannot be cut, without the whole unravelling.

328 years ago, the great English philosopher John Locke noted that “wherever the law ends, tyranny begins.” Poland is at this threshold now. The stakes could not be higher: does the EU have a future as a community based on the rule of law?

Shock, awe and the courts

Outside observers struggle to grasp the depth of change in Poland. They are, of course, mostly aware of controversies involving courts and judges in Warsaw. There are articles in international media; human rights organisations present reports; scholars discuss what to call the emerging Polish system (“Illiberal democracy”? “Plebiscitary autocracy”? “Authoritarianism by stealth”?). However, at a time of war in Ukraine, trade tensions with the US, worries about Iran, Brexit talks with the UK and concerns about the Irish border it is tempting to hope that Poland will sort itself out eventually. A recent article in the Economist referred to “PiS-style democracy” as a system which is “majoritarian” and about “rulers’ freedom of action.” It noted that PiS has “*neutered* the Constitutional Tribunal.” It noted that the prospect of PiS remaining in power for much longer “sends liberals *scrambling for a stiff drink*. It is a *headache for the EU*.”⁷ The article concluded that a worst-case outcome was still improbable:

“In the worst case, Poland may have started down the authoritarian road already travelled by Turkey and Hungary. Today few see this as likely.”

Any problem that can be overcome by “a stiff drink” does not seem too serious. In fact, most outside observers are unaware how much has already changed in Poland. This is in part due to the speed with which PiS proceeded. It took the new Polish government and president only one year to assert full control over the Constitutional Tribunal. It took another 1.5 years to assert control over much of the rest of the judiciary. To abolish independent courts and the rule of law in an EU member state is not well described as a “headache.” More appropriate medical analogies would be a serious stroke or cancer.

For most Europeans the idea that democracy in Poland may be at risk still seems alarmist. Polish democracy was long hailed as a model success story of Europe’s peaceful post-1990 transformation. Poland joined the Council of Europe in 1991, NATO in 1999, the EU in 2004 and became a member of Schengen in 2007. In 2002 a leading expert on democratisation considered Poland (and Hungary) the leaders among former communist countries “en route to

⁷ Poland’s ruling Law and Justice party is doing lasting damage, Economist, 21.4.2018, <https://www.economist.com/europe/2018/04/21/polands-ruling-law-and-justice-party-is-doing-lasting-damage>.

becoming successful, well-functioning democracies.”⁸ Before its most recent elections in October 2015 the Polish economy outperformed those of every other European country – in fact, Poland was the only EU member state that did not go into recession during the recent global economic crisis.

In May 2015 PiS’s presidential candidate Andrzej Duda obtained 34.8 percent in the first and 51.5 percent in the second round. In October PiS won an absolute majority of seats in the lower (Sejm) and upper (Senate) houses of parliament: 235 of 460 seats in the Sejm, 63 of 100 seats in the Senate. Again, though, few alarm bells rang. Having a president and prime minister from PiS was not unprecedented. One decade earlier, the party had won both parliamentary and presidential elections in 2005. For one year, Lech Kaczynski as president and Jaroslaw Kaczynski as prime minister ruled Poland as twins. Then, in 2007, PiS lost an early parliamentary election. In 2010 the crash of his official airplane killed president Lech Kaczynski in Russia. In the following elections PiS lost the presidency.

Back in opposition the message of PiS resembled that of other populist movements: defending the nation against outside interference and “Brussels”, protecting traditional values, rejecting Muslim immigration and refugees, promising a lower retirement age and increased support to families. During the recent election campaigns party leader Jaroslaw Kaczynski, aware that he was a polarising figure, stayed in the background. With one notable exception: in early October 2015 a few days before the parliamentary elections he delivered an aggressive speech on migrants, warning that these “have already brought diseases like cholera and dysentery to Europe, as well as all sorts of parasites and protozoa.”⁹ Kaczynski predicted that Poland might be forced to resettle more than 100,000 Muslims unless the government changed. A badly-thought through EU policy idea – which foresaw relocating a few thousand asylum seekers to Poland, an almost irrelevant number given the crisis at that time – helped PiS win an absolute majority.¹⁰

The determination and speed with which PiS set about dismantling judicial independence, however, took everyone by surprise. The first target was the Constitutional Tribunal, which had been in the crosshair of PiS for a long time, identified once by Jaroslaw Kaczynski as “the bastion of everything that is bad.”¹¹ Although the PiS majority in parliament was in a position to immediately replace two Constitutional Tribunal judges, whose mandates ended in late 2015, it would have taken PiS until almost the end of its mandate in late 2019 to replace a majority of judges. The party was not willing to wait that long.

On 2 December 2015 a PiS majority in the lower house of the Polish parliament nominated not two but five new judges to the 15-member Constitutional Tribunal, challenging three judges already elected by the previous parliament shortly before the end of its term. All five were immediately sworn in by president Duda. The Constitutional Tribunal ruled unanimously that this procedure was unconstitutional. What followed was a legal coup in which the government check-mated the tribunal’s majority in three moves. First, president Duda had already refused to swear in the three judges lawfully appointed earlier. Second,

⁸ Thomas Carothers, The End of the Transition Paradigm, Journal of Democracy, 2002, <https://www.journalofdemocracy.org/sites/default/files/Carothers-13-1.pdf>.

⁹ Jan Cienski, Migrants carry “parasites and protozoa,” warns Polish opposition leader, Politico, 14.10.2015, <https://www.politico.eu/article/migrants-asylum-poland-kaczynski-election/>.

¹⁰ More on why relocation was an unworkable idea at the time: ESI Newsletter, Getting results? How muddled thinking prolongs the refugee crisis, 14.12.2015, https://www.esiweb.org/index.php?lang=en&id=67&newsletter_ID=101.

¹¹ Jan Cienski, Poland’s constitutional crisis goes international, Politico, 24.12.2015, <https://www.politico.eu/article/poland-constitution-crisis-kaczynski-duda/>.

parliament passed a law on internal procedures within the Constitutional Tribunal which prescribed that the court could take decisions only with a quorum of 13 of 15 judges. It then claimed that as the Tribunal refused to accept the three judges illegally appointed by PiS, it did not meet the quorum and could no longer act at all. Finally, the government refused to publish judgements by the Tribunal in the Official Journal. The Constitutional Tribunal was turned from a guarantor of the constitutionality of laws into a hapless by-stander within a few weeks. Its president complained. He did not allow the illegally appointed judges to work. The Supreme Court backed the Constitutional Tribunal. The government did not budge.

In 2016 prosecutors opened a case (upon the request of the Helsinki Foundation for Human Rights) concerning the refusal of the prime minister to publish verdicts of the Constitutional Tribunal. Prosecutors responsible for this case were changed two times. Finally the minister of justice achieved the desired result and the case was discontinued.¹² In a decision published on 10 February 2017 a prosecutor argued that the Prime Minister – though obliged by the constitution to publish all verdicts of the constitutional tribunal – may have had justified concerns that the publication of those rulings would be illegal.¹³ A former president of the Constitutional Tribunal, Marek Safjan, noted that this was the point at which the rule of law in Poland ended.¹⁴

The fact that PiS wanted to silence the Tribunal was no surprise. Party leader Jaroslaw Kaczynski had long railed against “impossibilism”, the notion that courts had legitimate reasons to limit what governments could do. In June 2016 Kaczynski repeated that “the conflict with the Constitutional Tribunal is to a large extent a conflict over whether democratic mechanisms and elections are decisive in shaping public life or whether ... power remains in the hand of professional corporations or lobbies”.¹⁵ The Polish minister of Foreign Affairs compared the president of the Constitutional Tribunal to an “Ayatollah in Iran.”¹⁶ In September 2016 the minister of justice warned that unless something was done the Constitutional Tribunal would “block any changes that would cure the Polish judiciary”.¹⁷

In December 2016, PiS struck the final blow. The term of the president of the Tribunal came to an end. According to the Polish constitution an assembly of all judges, chaired by the Tribunal’s incumbent vice president, was to make a proposal for a successor. Instead the PiS majority in parliament adopted a law, creating a position not foreseen in the constitution: an “acting president of the Tribunal.” It gave president Andrzej Duda the right to appoint this “acting president.” Duda appointed Julia Przyłębska, one of the judges elected by PiS in late 2015. She moved fast, bringing on board the three judges rejected by the previous court president and the majority of judges, called a general assembly of judges on 20 December 2016, and – when a majority of judges objected – chaired a session where only six (PiS appointed) judges elected her the permanent Tribunal president. Duda immediately swore in

¹² Paweł Szaniawski, Kłątwa śledztwa w sprawie wyroku Trybunału? Zrezygnował kolejny prokurator, *Newsweek Polska*, 24.4.2016, <http://www.newsweek.pl/polska/remigiusz-krynke-rezygnuje-ze-sprawy-publikacji-wyroku-tk,artykuly,384327,1.html>.

¹³ Niepublikowanie wyroków TK: dokumenty z śledztwa, Helsińska Fundacja Praw Człowieka, 30.11.2017, <http://www.hfpr.pl/niepublikowanie-wyrokow-tk-dokumenty-z-sledztwa/>.

¹⁴ Quoted in Wojciech Sadurski, *How Democracy Dies (in Poland): A case study of Anti-constitutional populist backsliding*, p. 30.

¹⁵ Ibidem.

¹⁶ Adam Gaafar, Waszczykowski: Rzepliński jest jak ajatollah z Iranu, podobnie jak cały Trybunał Konstytucyjny, *Natemat.pl*, 10.3.2016, <http://natemat.pl/173935,waszczykowski-rzeplinski-jest-jak-ajatollah-z-iranu-podobnie-jak-caly-trybunal-konstytucyjny>.

¹⁷ Mateusz Wojtalik, PiS chce przejąć sądy. Ziobro przyznaje: Jest jeden problem, *Newsweek Polska*, 10.9.2016, <http://www.newsweek.pl/polska/zbigniew-ziobro-o-reformie-sadow-problemem-trybunal-konstytucyjny,artykuly,396878,1.html>.

Julia Przylebska.¹⁸ She, in turn, quickly forced the former vice president of the Tribunal to take a holiday which lasted until his regular retirement later that year. She also changed the composition of panels of judges, ensuring that PiS appointed judges had the majority in panels judging controversial cases. When justice minister Zbigniew Ziobro claimed, without evidence, in early 2017 that three other judges had been unconstitutionally elected in 2010 and should therefore not participate in court proceedings, she obliged.

By early 2017 the Tribunal was firmly under PiS's control. By June 2017 nine of the 15 members of the Tribunal had been appointed by PiS, including its president and vice president. In early 2018, a pro-government Polish magazine declared Julia Przylebska person of the year, arguing that she symbolised the "rebuilding of the justice system in Poland." At the award ceremony she was warmly congratulated and given flowers by PiS leader Jaroslaw Kaczynski.

Having silenced the Constitutional Tribunal, the government announced its next ambitious plans: to target how judges and prosecutors were trained; how ordinary courts operated; how judges were promoted, disciplined and dismissed. The focus shifted to the National School of Judges and Prosecutors (NSJP), the National Council of the Judiciary (NCJ), to ordinary courts and finally to the Supreme Court. No stone in the structure of the judiciary would remain unturned.

Dismantling judicial independence: four key laws

Law	In force since
on the National School of Judges and Prosecutors	June 2017
on Ordinary Courts	August 2017
on the National Council on the Judiciary	March 2018
on the Supreme Court	April 2018

Developments are now coming to a head. In April 2018 a new Law on the Supreme Court entered into force. 40 percent of Supreme Court judges, including the court's president, will be forced to retire after 3 July 2018, before the end of their legal terms. This is a dramatic blow to judicial independence. Only those judges of whom the Polish President approves may stay on at his mercy. At the same time many more new judges are to be chosen by a National Council of the Judiciary to staff two new super chambers inside the Supreme Court. In one swoop most Supreme Court judges (some 70 out of 120) will be newly appointed. The two new chambers will transform the court profoundly: one will be responsible for disciplinary actions against judges; the other will be able to set aside final court judgements reached in the past two decades as well as decide upon election disputes. Both will be filled completely with new judges appointed by the National Council of the Judiciary, most of whose members PiS replaced early in 2018 with its supporters.

The European Commission watched these developments with growing alarm. It stated in a first Rule of Law recommendation in July 2016 that "there was a systemic threat to the rule of

¹⁸ Maciej Pach, Powołanie, którego nie było, Konstytucyjny.pl, 10.2.2017, <http://konstytucyjny.pl/powolanie-kto-rego-nie-bylo-maciej-pach/>; Ewa Siedlecka, Prezes Przylebska nielegalna? Złamała przepisy, które uchwalil PiS, Gazeta Wyborcza, 5.1.2017, <http://wyborcza.pl/7,75398,21204828,prezes-przylebska-nielegalna-zlamala-przepisy-kto-rego-uchwalil.html>.

law in Poland.”¹⁹ It repeated this in December 2016.²⁰ A third Rule of Law recommendation in July 2017 warned that “the situation of a systemic threat to the rule of law has seriously deteriorated.”²¹ Indeed it has, and has continued to do so since.

PiS continues to argue that the reforms it promotes are both necessary and legitimate, taking on a dysfunctional judiciary that is inefficient and slow. As the minister for justice argued in February 2017: “In Poland we have the second highest number of judges in Europe per 100,000 inhabitants. We are on the top. We are also on the top when it comes to the inefficiency, duration and expiration of cases.”²² One problem with such claims is that existing comparisons, such as the EU’s Justice Scoreboard, show a different picture. In 2017 the Polish judiciary was the 12th most efficient system in Europe (among 28).²³ None of the reforms curtailing the independence of courts are designed to address concerns over inefficiency.

And then there is a second argument, which is not about efficiency but about the past. PiS argues that too many of Poland’s judges started their work when Poland was a communist country, representing a totalitarian mindset. In April 2017 minister Ziobro called for a radical break with the “mentality and pathology of the communist elites” in the judiciary.²⁴ A government White Paper published in early 2018 argued that the “Polish judiciary has never accounted for its communist past. Only some of the most compromised judges of the Supreme Court were expelled in 1990 – the majority in common courts remained unaffected.”²⁵

In fact, in 1990 81 percent of judges of the Supreme Court were dismissed; all those remaining were individually reviewed. Among the 82 judges in the Supreme Court in 2017 there were only 6 judges who had already worked at lower instance courts during the martial law era (1981-1983); and with no individual proof of immoral behavior.²⁶ The average age of Polish judges in 2017 was 44.²⁷ Ironically, one of the leading authors of the recent changes is

¹⁹ European Commission, Rule of Law: Commission issues recommendation to Poland, 27.7.2016, http://europa.eu/rapid/press-release_IP-16-2643_en.htm.

²⁰ European Commission, Rule of Law: Commission discusses latest developments and issues complementary Recommendation to Poland, 21.12.2016, http://europa.eu/rapid/press-release_IP-16-4476_en.htm.

²¹ European Commission, European Commission acts to preserve the rule of law in Poland, 26.7.2016, http://europa.eu/rapid/press-release_IP-17-2161_en.htm.

²² Interview with Minister of Justice Zbigniew Ziobro (in Polish), 20.2.2017, <https://vod.tvp.pl/video/kwadrans-polityczny.20022017.28862463>.

²³ 200 days are needed on average to resolve judicial disputes in Poland (compared to 100 days in Luxembourg, 150 days in the Czech Republic, 320 days in France and 510 days in Italy). This put Poland in 12th position among 28 EU member states. The same is true for the number of the pending cases: with 4 pending cases per 100 inhabitants Poland is EU average. Source: European Commission, The 2017 EU Justice Scoreboard, pp. 8-10, https://ec.europa.eu/info/sites/info/files/justice_scoreboard_2017_en.pdf.

²⁴ TOP 7 cytatów z wywiadu Ziobry dla “wSieci”: “Nie kryję, że planujemy bardzo poważne zmiany, jeśli chodzi o kształt Sądu Najwyższego”, Wpoltice.pl, 18.4.2017, <https://wpoltice.pl/polityka/336019-top-7-cytatow-z-wywiadu-ziobry-dla-wsieci-nie-kryje-ze-planujemy-bardzo-powazne-zmiany-jesli-chodzi-o-ksztalt-sadu-najwyzszego>.

²⁵ Chancellery of the Prime Minister, White Paper on the reforms of the Polish justice system, 8.3.2018, p. 1, https://www.premier.gov.pl/files/files/white_paper_en_-_executive_summary.pdf.

²⁶ Iustitia Polish Judges Association, Response of the Polish Judges Association Iustitia to the White Paper on the Reform of the Polish Judiciary presented to the European Commission by the Government of the Republic of Poland, 13.3.2018, https://www.iustitia.pl/images/pliki/response_to_the_white_paper.pdf.

²⁷ Leonid Bershidsky, Poland pitches Europe on its war on judges, Bloomberg, 26.2.2018, <https://www.bloomberg.com/view/articles/2018-02-26/poland-s-war-on-judges-faces-european-backlash>.

PiS parliamentarian Stanisław Piotrowicz, who had himself been a communist prosecutor preparing indictments against dissidents during the martial law period.²⁸ Now he argued that Polish “judges do not follow the will of the people but defend their own interests.”²⁹ Other statements by PiS leaders are reminiscent of communist justice, as when deputy minister of justice Łukasz Piebiak warned in February 2018:

“Judges should always be on the side of the state ... the conduct of judges is dangerous when the judges turn against the legislative and executive authorities. A body of 10,000 judges will always have black sheep, whereas our task is for there to be as few as possible, and to *mercilessly eliminate those that are found*.”³⁰

Life as a Polish judge – the story of Adam

Imagine a young lawyer – let us call him Adam – interested in becoming a judge in Poland today. Adam graduates from a Polish university this year. He applies to be admitted to the National School for Judiciary and Public Prosecution in Krakow.³¹

This school was established in 2009. At this moment it teaches 156 aspiring judges and prosecutors.³² It is completely controlled by the Ministry of Justice. The minister appoints all members of the board supervising the content of education. He can veto appointments of lecturers.³³ He appoints 7 of 9 members of the examination committee. He also chooses the school’s director. The current director, appointed in 2016, had been undersecretary of state in the Ministry of Justice under Ziobro one decade ago.

The education of judges in the National School takes 36 months. Graduates are then appointed by the minister of justice as junior judges for up to four years, a position reintroduced by PiS in 2017. They can become junior judges in any of Poland’s 321 district courts, deciding cases.³⁴ In case Adam gains the minister’s confidence he can be granted the right to work as a full judge before the end of his probation period.

While the position of junior judges had existed in the past it was abolished in 2007 by the Polish Constitutional Tribunal, which argued at the time that junior judges were too

²⁸ Kulisy kariery prokuratora Piotrowicza. “Jak można tak ludziom kłamać?”, TVN24, 15.11.2017, <https://www.tvn24.pl/wiadomosci-z-kraju,3/czarno-na-bialym-kariera-stanislawa-piotrowicza,790243.html>.

²⁹ Piotrowicz o sędziach: Nie kierują się wolą narodu, tylko bronią własnych interesów, Dziennik. Gazeta Prawna 16.05.2017, <http://wiadomosci.dziennik.pl/wydarzenia/artykuly/549884/piotrowicz-o-sedziach-nie-kieruja-sie-wola-narodu-tylko-bronia-wlasnych-intereso.html>.

³⁰ Interview with Deputy Minister of Justice Łukasz Piebiak (in Polish), 13.2.2018, <http://wpolsce.pl/magazyn/2495-prosze-to-wyjasnic-edyta-holdynska-rozmawiala-z-lukaszem-piebiakiem-wiceministrem-sprawiedliwosci>.

³¹ In Polish: KSSIP, <https://www.kSSIP.gov.pl/>.

³² Ruszyły aplikacje na sędziów i prokuratorów 2018, Rzeczpospolita, 5.3.2018, <http://www.rp.pl/Aplikacjeegzaminy/303059952-Ruszyly-aplikacje-na-sedziow-i-prokuratorow-2018.html>.

³³ Stanisław Skarżyński, Ustawa o Krajowej Szkole Sądownictwa to pięćset etatów sędziowskich dla ludzi Ziobry, OKO.press, 13.3.2017, <https://oko.press/ustawa-o-krajowej-szkole-sadownictwa-piecset-etatow-sedziowskich-dla-ludzi-ziobry/>.

³⁴ In Poland there are 321 district courts (sądy rejonowe), 41 regional courts (sądy okręgowe) and 11 appellate courts (sądy apelacyjne). See https://pl.m.wikipedia.org/wiki/Struktura_s%C4%85d%C3%B3w_powszechnych_w_Polsce.

dependent on the Minister of Justice, who not only appointed but could also dismiss them.³⁵ The European Court of Human Rights agreed in 2011, finding that the system of junior judges violated the right to a fair trial.³⁶

After his years as a junior judge Adam can apply to become a full judge. Unless the minister of justice or the president of the respective court object the National Judiciary Council can recommend Adam to the President of Poland. The ultimate decision is up to the president.

In January 2018 there were 408 vacancies in Polish courts, positions which have not been filled during the last two years.³⁷ In the past barristers and law professors would have competed with Adam for positions as judges. Following the new law on the National School from June 2017 graduates of the School are preferred as future judges as soon as they pass the final exam.

Once Adam becomes a full judge his future career continues to depend on the Minister of Justice in many ways. A new law on courts, which entered into force in August 2017, allowed the minister to dismiss 194 of 730 court presidents and their deputies during a period of six months without giving any justification.³⁸ Even now the Minister retains the right to replace court presidents unless blocked by a two-third majority in the National Council of the Judiciary (NCJ). This gives the minister huge influence over all court presidents, who in turn have a lot of influence over other judges. Adam's court president can move him from one section of the court to another without consulting him, decides about holidays, the assignment of assistants, and the workload. The Law on Courts introduced a "new disciplinary hierarchy" among court presidents, with the Minister of Justice on top of a pyramid, grading regular reports by court presidents and increasing and decreasing their allowances as a result ... a "blatant interference with judicial independence."³⁹

Another key role is played by the National Council for the Judiciary, which influences Adam's appointment, assessment, promotion and disciplinary proceedings. The nature of the National Council changed dramatically when a new law entered into force in March 2018. Before then 15 of its 25 members were judges chosen by other judges. Of the other ten, one was the representative of the President, one the Minister of Justice, six parliamentary deputies as well as the presidents of the Supreme Court and the Supreme Administrative Court ex officio.

In March 2018 the terms of all 15 serving judges-members were prematurely terminated, to be replaced by 15 judges-members chosen by the parliamentary majority. In the end only 18 judges were even put forward for the NCJ as candidates. All opposition parties but one boycotted the election of these new NCJ members in parliament. 267 deputies voted for nine

³⁵ Wyrok z 24 października 2007 r., Sprawowanie władzy sądowniczej przez asesorów, Trybunał Konstytucyjny, http://trybunal.gov.pl/filcadmin/content/omowienia/SK_7_06_PL.pdf.

³⁶ Helsińska Fundacja Praw Człowieka, Ważne orzeczenia ETPCz w polskich sprawach, 15.6.2011, <http://www.hfhr.pl/wazne-orzeczenia-etpcz-w-polskich-sprawach-3/>.

³⁷ Małgorzata Kryszkiewicz, Konkursy odblokowane. Coraz więcej wakatów w sądach rejonowych, Gazeta Prawna, 28.2.2018, <http://prawo.gazetaprawna.pl/artykuly/1107588,wakaty-w-sadach-rejonowych.html>. According to other sources there were even 800 vacancies in spring 2018.

³⁸ Rozmiary czystek w sądach (listę nazwisk) ujawniają sędziowie, Monitor Konstytucyjny, 17.5.2018, <http://monitorkonstytucyjny.eu/archiwa/3982>.

³⁹ Wojciech Sadurski, How Democracy Dies (in Poland): A Case Study of Anti-Constitutional Populist Backsliding, p 43

judges-candidates nominated by PiS and for six by the group of the party Kukiz'15.⁴⁰ In this way a political majority – with 21 of 25 members in the NCJ chosen by the legislature – will determine the future careers of all Polish judges.⁴¹

During his career Adam will need to avoid falling foul of the Minister of Justice for another reason. The new law on courts grants the Minister of Justice extensive competences in disciplinary proceedings.⁴² He can appoint a special disciplinary prosecutor to whom the minister gives personal instructions.⁴³ All members of a disciplinary first instance court are also nominated by him. The law allows the use of evidence obtained without judicial control and even in violation of laws, including telephone tapping. Ombudsman Adam Bodnar noted that the extensive disciplinary powers of the minister might have “a chilling effect on judges”.⁴⁴

A recent case in North Eastern Poland highlights the dangers of such a concentration of powers. On 4 March 2016 a group of citizens staged a political protest during an exhibition opening used by PiS as an electoral campaign event before a Senate election two days later.⁴⁵ They were prosecuted for “disturbing the public order.” In January 2017 a judge at the responsible first instance district court, Dominik Czeszkiewicz, found the protestors not guilty. The case went to the second instance court. It later became public that the responsible judge met the deputy minister of justice in secret before he overturned the *not guilty* verdict, ordering a re-examination of the case.⁴⁶ Another first-instance judge found the protesters *not guilty* a second time. The second-instance judge, however, was promoted by the minister of justice to be the next president of the regional court. He immediately opened a disciplinary case against Czeszkiewicz on an unrelated matter, accusing him of having conducted another interrogation with undue delay.⁴⁷

In January 2018 deputy Minister of Interior Jarosław Zieliński, who was among the politicians at the museum opening, explained in a radio interview that judge Czeszkiewicz had “encouraged the breaking of the law” by issuing the verdict finding the protestors not guilty.⁴⁸ An assembly of judges in Krakow warned in February 2018 that initiating these

⁴⁰ Kandydaci do KRS z poparciem PiS i Kukiz'15 – lista, Rzeczpospolita, 2.3.2018, <http://www.rp.pl/Sedziowie-i-sady/303029950-Kandydaci-do-KRS-z-poparciem-PiS-i-Kukiz15---lista.html>. Kukiz'15 is an opposition party which often supports government's legislative initiatives.

⁴¹ 12 of 15 new judges in the National Council of the Judiciary had been recently appointed by the current Minister of Justice to administrative positions in their courts (during the 6 months period when he had the right to exchange presidents of courts without any justification) or were judges seconded to the Ministry of Justice. Source: Patryk Wachowiec, Minister Ziobro – nowa KRS. Mapa powiązań, FOR, 20.2.2018, <https://for.org.pl/pl/a/5775-nowa-krs-zalezna-od-ministra-sprawiedliwosci-mapa-powiazan>.

⁴² The Minister of Justice can file a binding objection to a decision by a disciplinary proceedings representative not to initiate disciplinary proceedings. Art. 114 paragraph 9 of the Law on the System of Ordinary Courts.

⁴³ Małgorzata Kryszkiewicz, Zbigniew Ziobro, sędzia wszystkich sędziów. Postępowania dyscyplinarne w rękach polityków, Gazeta Prawna, 27.3.2018, <http://prawo.gazetaprawna.pl/artykuly/1112119-nowa-ustawa-o-sn-postepowanie-dyscyplinarne-wobec-sedziow.html>.

⁴⁴ Adam Bodnar, Europe can save Poland from darkness, Politico, 9.4.2018, <https://www.politico.eu/article/poland-judiciary-rule-of-law-europe-must-intervene/>.

⁴⁵ “To nie miejsce na wiel!” Awantura na otwarciu wystawy o gen. Andersie, 4.3.2016, <https://www.tvn24.pl/wiadomosci-z-kraju,3/krzyki-na-otwarciu-wystawy-o-gen-andersie.624650.html>.

⁴⁶ Mariusz Jąłoszewski, Sędzia, który uniewinnił działaczy KOD, ma zarzuty dyscyplinarne. Bo rzekomo źle sądzi, OKO.press, 20.4.2018, <https://oko.press/sedzia-ktory-uniewinnil-dzialaczy-kod-ma-zarzuty-dyscyplinarne-bo-rzekomo-zle-sadzi/>.

⁴⁷ Mariusz Jąłoszewski, Sędzia, który uniewinnił działaczy KOD, ma zarzuty dyscyplinarne. Bo rzekomo źle sądzi, OKO.press, 20.4.2018, <https://oko.press/sedzia-ktory-uniewinnil-dzialaczy-kod-ma-zarzuty-dyscyplinarne-bo-rzekomo-zle-sadzi/>.

⁴⁸ Interview with Jarosław Zieliński (in Polish), 2.1.2018, <https://radio5.com.pl/pierwszy-gosc-w-2018/>.

disciplinary proceedings was “retaliation for an earlier judgement rendered by judge Dominik Czeszkiewicz.”⁴⁹ In April 2018 Czeszkiewicz was charged by the disciplinary prosecutor with misconduct. The case is still open. If found guilty Czeszkiewicz might be removed from the bench.

In the past a judge like Czeszkiewicz would have faced disciplinary charges before an independent disciplinary court whose members would have been appointed by the National Council of the Judiciary. According to the new law on the Supreme Court (in force since 3 April 2018), if found guilty a judge will have to appeal to the Supreme Court. There, from July 2018, all disciplinary cases will be decided by a newly established disciplinary chamber whose judges are appointed by the new National Council of the Judiciary. There will also be lay judges, members of the public who do not need any legal training, chosen by the Senate, the upper chamber of parliament, where PiS has an absolute majority. This disciplinary chamber will be an entirely new body, independent from the rest of the Supreme Court, with its own president and budget and entirely composed of new judges. The new law on the Supreme Court includes no less than 580 references to disciplinary measures. And it is not only judges, such as Adam, who must fear this new disciplinary system. Other judicial professionals, such as barristers, may face disciplinary procedures before this new chamber as well.

Let us assume that Adam manages to navigate this system – he passes his exams at the National School, gets appointed junior judge, is promoted and assessed positively, gets on with the court presidents chosen and avoids disciplinary procedures. He thus reaches the retirement age of 65. He will then again be dependent on the new National Council of the Judiciary which decides whether he may keep working for a few more years “if this is justified by the interest of the judiciary system or other important interests of society.”⁵⁰ If Adam should ever become a Supreme Court judge this decision would be taken by the Polish president.

In short: the minister of justice has power over his education, over his appointment as a junior judge, over his court presidents who manage his work; the minister can punish him and has a lot of influence in disciplinary cases. The Minister is a member of the NCJ and a parliamentarian of the governing majority, which chooses the majority of NCJ members. He is also, since the law changed in February 2016, both Minister of Justice and General Prosecutor in charge of all prosecutions. In 2016, at a time when the Constitutional Tribunal was checkmated, the ability of the Minister/General Prosecutor to interfere in and direct specific prosecutions was strengthened. It is hardly surprising that the Venice Commission found this unprecedented concentration of powers troubling:

“Taken together, the merger of the office of the Minister of Justice and that of the Public Prosecutor General, the increased powers of the Public Prosecutor General vis-à-vis the prosecution system, the increased powers of the Minister of Justice in respect of the judiciary (Act on the organisation of Common Courts) and the weak position of checks to these powers (National Council of Public Prosecutors) result in the accumulation of too many powers for one person.”⁵¹

⁴⁹ Resolution of the Assembly of Representatives of Judges of the Regional Court in Kraków of 26 February 2018, 10.3.2018, <http://konstytucyjny.pl/resolution-of-the-assembly-of-representatives-of-judges-of-the-regional-court-in-krakow-of-26-february-2018/>. An assembly of judges at the appeals court in Kraków shared the same opinion in its resolution No 4 of 16 April 2018.

⁵⁰ Article 69 of the Law on the ordinary courts from 12.4.2017.

⁵¹ Venice Commission, Opinion No. 892 / 2017, 11.12.2017, Paragraph 115, [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2017\)028-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)028-e).

It is easy to imagine how in the polarised world of Polish politics, where the opposition is regularly accused of committing national treason and where critics are often described as enemies, such powers might be used. After all, Zbigniew Ziobro, the current minister and general prosecutor, was minister of justice before (2005-2007). In 2007 the Economist noted Ziobro's "fondness for announcing investigations and arrests at press conferences, and his enthusiasm for setting his prosecutors on to political opponents," warning then that Ziobro had "little regard for the separation of powers or for due process."⁵² That year, following the arrest of a doctor accused of corruption, Ziobro declared at a press conference before any trial had even started that "nobody will be killed by this guy anymore." In 2017, after a court exonerated the accused a prosecutor immediately initiated an investigation against the person providing legal expertise in the case.⁵³

Watchdogs without teeth

PiS managed to turn the Polish system of justice upside down without a constitutional majority in parliament. It did so despite strong domestic opposition. How was this possible?

The Constitutional Tribunal objected for a year and was ignored, until its composition was changed. The Supreme Court objected for more than two years and was ignored too; it will soon see most of its judges newly appointed. The National Council of the Judiciary objected until most of its members were dismissed and replaced. The Polish Ombudsperson keeps raising concerns. He has already been threatened by the PiS majority and by the (unlawfully) appointed new vice-president of the Constitutional Tribunal.⁵⁴ Concerns have also been raised by associations of judges, associations of lawyers, bar associations, the opposition in parliament and many civil society organisations. In the end none of these were able to stop the legal bulldozer of PiS. In the face of determination and ruthlessness domestic checks collapsed like a house of cards. Criticism was presented as treason in media supporting the government. The opposition in parliament was presented as unpatriotic. Critical NGOs were attacked.⁵⁵

Domestic opposition failed to have an impact until now. The same is true for international watchdogs and organisations. Poland signed the Paris Declaration on a new Europe in 1990, joined the Council of Europe in 1991 and became member of the EU in 2004. All these institutions have rules requiring respect for fundamental rights and the rule of law. All have been toothless until now. This raises a troubling question: what *is* the benefit of European conventions, treaties and courts when they cannot defend the independence of courts in the face of such a blatant attack?

There has been no shortage of analyses. In January 2017 the European Network of Councils for the Judiciary (ENCJ) found that recent changes were in violation of basic values:

⁵² Bad habits, 27.9.2007, Economist, <https://www.economist.com/nodc/9867255/print>.

⁵³ Mariusz Jąłoszewski, Sąd oczyścił doktora G. Prokuratura Ziobry nie odpuszcza: ściga biegłego, który wystąpił w tej sprawie, OKO.press, 1.6.2016, <https://oko.press/sad-oczyscil-doktora-g-prokuratura-ziobry-odpuszcza-sciga-bieglego-ktory-wystapil-tej-sprawie/>.

⁵⁴ "Sprzeniewierza się ślubowaniu". Muszyński podpowiada, jak odwołać Rzecznika Praw Obywatelskich, 5.5.2018, <https://www.tvn24.pl/wiadomosci-z-kraju,3/rzecznik-praw-obywatelskich-trybunal-konstytucyjny-i-ustawa-antyterrorystyczna,834607.html>.

⁵⁵ Jędrzej Bielecki, Szymański: Środowiska prawnicze blokują porozumienie z Brukselą, Rzeczpospolita, 7.5.2018, <http://www.rp.pl/Polityka/305079922-Szymanski-Srodowiska-prawnicze-blokuja-porozumienie-z-Bruksela.html>.

“The ENCJ standards are not met in several fields. These standards are not developed to serve the interests of the judiciary. The standards simply reflect the shared principles and values of the EU Member States which guarantee a proper functioning of a democratic systems based on the Rule of Law.”⁵⁶

In April 2017 the Consultative Council of European Judges (CCJE) concluded that “the pre-term removal of the judges currently sitting as members of the National Council of the Judiciary is not in accordance with European standards on judicial independence.”⁵⁷

In May 2017 the OSCE’s Office for Democratic Institutions and Human Rights (ODIHR) issued a strong opinion warning that the independence of the judiciary was jeopardised by changes “threatening the independence of the Judicial Council, and as a consequence, judicial independence overall as guaranteed by Article 173 of the Constitution.”⁵⁸ In July 2017 the Council of Bars and Law Societies of Europe (CCBE) addressed a letter to president Andrzej Duda urging him to veto the laws then already adopted:

“Violating or threatening the autonomy and independence of courts is not only an internal problem of Poland. It has consequences for international legal community as well and affects directly the application of European Union law.”⁵⁹

Duda did veto two of the three laws. It soon became clear that this above all to buy time: the Polish parliament later adopted these same laws again following only cosmetic changes and Duda signed them. In October 2017 UN Special Rapporteur for the Independence of Judges and Lawyers Diego Garcia-Sayan issued a scathing opinion following a mission to Poland.⁶⁰ In December 2017 he concluded bitterly that Poland experienced “a vicious attempt to place the whole judicial system under the control of the executive and legislative branches.”⁶¹

Meanwhile, in November 2017, the European Parliament adopted a resolution: it “believes that the current situation in Poland represents a clear risk of a serious breach of the values referred to in Article 2 of the TEU.”⁶² Finally, in December 2017 the Venice Commission issued another opinion which found that changes “puts at serious risk” the independence of all parts of the Polish judiciary. It referred to similarities with the former Soviet system of justice no less than five times:

⁵⁶ ENCJ’s opinions on the draft laws in Poland, European Network of Councils for the Judiciary, 30.1.2017, <https://www.ency.eu/articles/96>.

⁵⁷ Opinion of the CCJE Bureau following the request of the Polish National Council of the Judiciary, 7.4.2017, <http://krs.gov.pl/admin/files/rp2013/opinia%20ccje%20en%201%20april%202017.pdf>.

⁵⁸ Final opinion on draft amendments to the act on the National Council of the Judiciary and certain other acts of Poland, OSCE, 5.5.2017, <https://www.osce.org/odihr/315946?download=true>.

⁵⁹ CCBEInfo, #64, July-August 2017, http://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/Newsletter/CCBEINFO64/EN_newsletter_64.pdf.

⁶⁰ Preliminary observations on the official visit to Poland (23-27 October 2017), OHCHR, 27.10.2017, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22313&LangID=E>.

⁶¹ Poland reforms are part of plan that severely undermines independence of judiciary, says UN Special Rapporteur, OHCHR, 22.12.2017, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22564&LangID=E>.

⁶² Resolution of 15 November 2017 on the situation of the rule of law and democracy in Poland, European Parliament, 15.11.2017, <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P8-TA-2017-0442>.

“The proposed Polish system is not entirely identical to the old Soviet system but has a lot of similarities with it ... in one respect the proposed system is even worse than its Soviet predecessor.”⁶³

⁶³ Venice Commission, Opinion No. 904 / 2017, 11.12.2017,
[http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2017\)031-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)031-e).

The Polish cat and the European mouse

All these criticisms went unanswered and had no impact on policy. So far, the same is true for the warnings from the European Commission.

Recent years made obvious that the tools at the disposal of the Commission are weak, almost inviting any government determined to violate principles to play cat and mouse with the Commission: a “rule of law dialogue”, established in order to “prevent escalation of systemic threats to the rule of law”, relies on a counterpart interested in avoiding escalation. It is a slow mechanism: first assessments and an opinion are to be published, then recommendations, then a follow-up to these. None of this could stop the PiS juggernaut.

The Polish government made clear to the Commission how little it took it seriously. In the first recommendation in July 2016 the Commission invited the government to solve the problems identified **within three months**. In its reply three months later the Polish government “disagreed on all points ... and did not announce any new measures.”⁶⁴ In the second recommendation in December 2016 the Commission invited the government to solve the identified problems as a matter of urgency **within two months**. In its reply two months later the Polish government “disagreed with the assessments set out in the recommendation and did not announce any new action to address the concerns.” In the third recommendation in July 2017 the Commission invited the government to solve the problems identified **within one month**. In its reply one month later the Polish government “disagreed with all the assessments set out in the recommendation and did not announce any new action to address the concerns.”

Timmerman's struggle

In 13 January 2016 the European Commission launches a procedure for the protection of the rule of law towards Poland (dialogue).

On 1 June 2016 the Commission adopts a negative opinion on the rule of law in Poland.

On 27 July 2016 the Commission issues the first recommendation on the rule of law in Poland. It issues a warning that “there was a systematic threat to the rule of law in Poland”.

On 21 December 2016 the Commission issues the second recommendation on the rule of law in Poland.

On 26 July 2017 the Commission issues the third recommendation on the rule of law in Poland.

On 20 December 2017 the Commission triggers Article 7(1) of the TFEU against Poland. The Commission brings a complaint against Poland to the Court of Justice of the European Union in relation to the Law on the Ordinary Courts Organisation.

On 20 March 2018 Commission vice president Frans Timmermans notes that the 94-page response from Warsaw simply restates the government's position.

⁶⁴ European Commission, Reasoned Proposal under Article 7(1) for a Council Decision regarding rule of law in Poland, 20.12.2017, p. 6, http://ec.europa.eu/newsroom/just/document.cfm?action=display&doc_id=49108.

While the Commission struggled, the Council and member states looked on. A Council meeting in May 2017 noted:

“There was broad agreement within the Council that the rule of law is a common interest ... Member states call on the Polish government to resume the dialogue ... and look forward to being updated.”

The next Council meeting in September 2017 concluded in exactly the same manner:

“There was broad agreement on the fact that the rule of law is a common interest and a common responsibility and on the need for Poland and the Commission to engage in a dialogue in order to find a solution.”

While the Commission finally triggered Article 7 in December 2017 one third of member states could have triggered Article 7 as well. Member states were aware of the detailed analyses by the Commission. They chose not to act.

This is the background against which to assess recent negotiations between Warsaw and the European Commission. On 8 December 2017 Mateusz Morawiecki, an anglophone ex-banker, became Polish prime minister.⁶⁵ On 9 January Morawiecki met Commission President Jean Claude Juncker.⁶⁶ Juncker declared then that he looked forward to “making progress by the end of February.”⁶⁷ On 14 February Juncker repeated: “I think there is a good chance the Polish positions will move toward ours.”⁶⁸ On 18 March German chancellor Angela Merkel visited Poland and explained: “I hope that the issue of Article 7 proceedings ... can be settled.”⁶⁹

There was no progress and nothing was settled. On the contrary: the President signed the laws on the National Council of the Judiciary and on the Supreme Court on 21 December 2017, just a few hours after the Commission triggered Article 7. A Polish government White Book explaining on 8 March that triggering of Article 7 was “groundless.” The judges-members of the NCJ were dismissed in April 2018, when the new law on the Supreme Court also entered into force.

Nonetheless, some in the Commission did not give up. On 3 April Juncker announced that he viewed promises of concessions by the Polish government “with a lot of sympathy.”⁷⁰ In early

⁶⁵ Christian Davis, Poland’s prime minister sacks ministers in move to mend ties with EU, Guardian, 9.1.2018, <https://www.theguardian.com/world/2018/jan/09/poland-prime-minister-dismisses-senior-cabinet-members-law-and-justice-relations-eu-mateusz-morawiecki>.

⁶⁶ Barbara Bodalska, Polish PM Morawiecki to meet Juncker over dinner for the first time, Euractiv, 9.1.2018, <https://www.euractiv.com/section/justice-home-affairs/news/polish-pm-morawiecki-to-meet-juncker-over-dinner-for-the-first-time/>.

⁶⁷ Martin Banks, Juncker and Polish leader meet in “friendly” atmosphere, The Parliament Magazine, 10.1.2018, <https://www.theparliamentmagazine.eu/articles/news/juncker-and-polish-leader-meet-friendly-atmosphere>.

⁶⁸ Robert-Jan Bartunek, EU’s Juncker says “good chance” of rapprochement with Warsaw, Reuters, 14.2.2018, <https://www.reuters.com/article/us-eu-poland-juncker/eus-juncker-says-good-chance-of-rapprochement-with-warsaw-idUSKCN1FY1MR>.

⁶⁹ Pawel Sobczak, Marcin Goettig, Merkel hopes Poland can satisfy EU concerns over judicial reform, Reuters, 19.3.2018, <https://www.reuters.com/article/us-germany-poland/merkel-hopes-poland-can-satisfy-eu-concerns-over-judicial-reform-idUSKBN1GU11M>.

⁷⁰ Florian Kellermann, Polen will Justizreform nachbessern, Deutschlandfunk, 3.4.2018, http://www.deutschlandfunk.de/streit-mit-der-eu-polen-will-justizreform-nachbessern.795.de.html?dram:article_id=414611.

May the Financial Times and other international media wrote that “Poland offers fresh concessions to the EU over legal reforms.”⁷¹ They referred to “concessions” presented by the Polish government on 22 March.⁷² A closer look reveals that these did not change anything to preserve the independence of Polish courts.

The government agreed to publish three verdicts of the constitutional court from 2016 (all of them declaring that PiS’s changes in the constitutional court had violated the Polish constitution). However, this would *not* mean that the verdicts would be implemented. Instead, the government would declare that the rulings of the court were issued under violation of the law.⁷³ On 21 May the rulings were still not published. But even if they were, nothing would change.

The government accepted that both male and female judges would retire at the same age (65). This is positive; however, it does not stop the mass early retirements of Supreme Court judges in July 2018. The government also accepted that the minister of justice would after all not be able to remove court presidents without any justification (it was possible between October 2017 and March 2018). Instead, the minister needs to ask for the opinions of the college of judges of the respective court and of the NCJ. However, his decision to dismiss a court president can be prevented only if the NCJ opposes it with a 2/3 majority of votes. In the meantime (in March 2018) the NCJ was completely restructured and is now controlled by members chosen by PiS.

The government tweaked its idea that already closed court cases might be reopened before a new chamber of the Supreme Court (to be staffed with new judges). Now only two institutions will be able to introduce such extraordinary appeals: the Ombudsperson and the minister of justice.⁷⁴

Finally, the Commission had demanded that the government refrain from actions which would undermine the legitimacy of the judiciary. The opposite has happened, as seen with cases like the one of judge Czeszkiewicz as well as the state-financed campaign “Fair Courts” aiming to discredit judges.⁷⁵

Foreign Minister Jacek Czaputowicz was open about the point behind these cosmetic “concessions” on 4 May: “We want to show some openness to the Commission’s demands in

⁷¹ James Shotter, Evon Huber, Poland offers fresh concession to EU over legal reforms, Financial Times, 3.5.2018, <https://www.ft.com/content/8311fe36-4eda-11e8-a7a9-37318e776bab>. See also Der Standard, Polen will in Justizstreit mit EU teilweise nachgeben, 4.5.2018, <https://derstandard.at/2000079178721/Polen-will-im-Justizstreit-mit-der-EU-teils-nachgeben>; Marcin Goettig, Pawel Sobczak, Poland plans new concessions to EU over contested court reforms, Reuters, 4.5.2018, <https://uk.reuters.com/article/uk-eu-poland/poland-plans-new-concessions-to-eu-over-contested-court-reforms-idUKKBN1I524B>.

⁷² Poland plans concessions on judicial reforms to assuage EU concerns – lawmaker, Reuters, 22.3.2018, <https://uk.reuters.com/article/uk-eu-poland-judicial/poland-plans-concessions-on-judicial-reforms-to-assuage-eu-concerns-lawmaker-idUKKBN1GY2OU>.

⁷³ “Mała niespodzianka od klubu PiS”. Rząd opublikuje wreszcie niekorzystne dla PiS wyroki TK, Gazeta Wyborcza, 22.3.2018, <http://wiadomosci.gazeta.pl/wiadomosci/7,114884,23177621,rzad-opublikuje-wreszcie-niekorzystne-dla-pis-wyroki-tk-projekty.html>.

⁷⁴ The bill introducing these changes still needs to be signed by the President. The extraordinary appeal is already in force as adopted in the original law on the Supreme Court.

⁷⁵ Ewa Siedlecka, Grillowanie sędziów, Polityka, 16.05-22.05.2018. The Polish National Foundation to launch its “Fair Courts” campaign abroad, TVN24, 31.10.2017, <https://www.tvn24.pl/tvn24-news-in-english,157,m/the-polish-national-foundation-to-launch-its-fair-courts-campaign-abroad,786067.html>.

order to close this case and deal with other important European matters like the budget.⁷⁶ This should surprise no one. The White Book presented on 8 March 2018 was unapologetic.⁷⁷ On 22 March the Polish prime minister was equally blunt:

“The essence, the most important elements of the reform remain untouched. At the same time we are looking at what would allow the other side to say: Oh, one can reach a compromise with Poland.”⁷⁸

The Polish Secretary of State for EU affairs told a German radio on 3 April: “We make a concession regarding issues which do not play any central role in the judiciary system.”⁷⁹

The Polish government can also rely on allies in other EU member states. Hungarian prime minister Viktor Orban repeatedly assured Kaczynski that Hungary would use its veto power to prevent any sanctions under Article 7, if the procedure ever got that far. The two leaders flaunted their alliance publicly. On 7 September 2016, Kaczynski and Orban gave a joint press conference in Southern Poland. The Financial Times reported some of their statements:

“Orban: ‘There is a saying in Hungary that if you trust somebody, we say “you can steal horses together”.’ Kaczynski: ‘There are a few stables, and one particularly large one called the EU, where we can steal horses with Hungarians.’”⁸⁰

The leaders of PiS ignored the advice of the Venice Commission, the Parliamentary Assembly of the Council of Europe (PACE), ODIHR, the UN, international legal NGOs and the European Commission. They know what they want. They managed to prevail in the face of the combined opposition of most of the legal establishment and all courts in Poland. Ruthless determination had worked. It is a rational expectation from PiS that it will continue to do so.

The Court and the Commission – what to do now

The European Commission has asked the member states to state clearly that they are concerned about the collapse of the rule of law in Poland. Member states are to urge Poland to restore the independence of the Constitutional Tribunal and to ensure that the law on the Supreme Court, on ordinary courts, on the National Council for the Judiciary and on the National School for judges and prosecutors are amended. The leadership of PiS has instead made clear its objective: to carry out its reconstruction of society and of all public institutions. As PiS leader Kaczynski put it in January 2018:

⁷⁶ Marcin Goettig, Pawel Sobczak, Poland plans new concessions to EU over contested court reforms, Reuters, 4.5.2018, <https://uk.reuters.com/article/uk-eu-poland/poland-plans-new-concessions-to-eu-over-contested-court-reforms-idUKKBN1I524B>.

⁷⁷ Tomasz Bielecki, Premier Morawiecki przedstawił w Brukseli “białą księgę” ws. TK i sądów. Ani kroku wstecz, Gazeta Wyborcza, 8.3.2018, <http://wyborcza.pl/7,75399,23117570,premier-morawiecki-przedstawil-w-brukseli-biala-ksiega-ws.html>.

⁷⁸ Marcin Goettig, Polish PM – concessions to EU will preserve essence of judicial reforms, Euronews, 23.3.2018, <http://www.euronews.com/2018/03/23/polish-pm-concessions-to-eu-will-preserve-essence-of-judicial-reforms>.

⁷⁹ Florian Kellermann, Polen will Justizreform nachbessern, Deutschlandfunk, 3.4.2018, http://www.deutschlandfunk.de/streit-mit-der-eu-polen-will-justizreform-nachbessern_795.de.html?dram:article_id=414611.

⁸⁰ Duncan Robinson, Horse stealing in Warsaw, Budapest and Brussels, Financial Times, 7.9.2016, <http://blogs.ft.com/brusselsblog/2016/09/07/horse-stealing-in-warsaw-budapest-and-brussels/>.

“Poland will not make any concessions in its dispute with the European Union over the country’s judicial reforms ... The program of deep changes in our country will not slow down, on the contrary – there cannot be any talk about reaching an agreement with powers that for years treated Poland as their own private loot.”⁸¹

It is a matter of a few more weeks before the reconstruction of the Polish judicial system will be complete by July, while Poland’s prime minister tells other EU leaders that the dispute with the European Commission is just a “misunderstanding”:

“All year, we have struggled with the widespread misunderstanding of our plans to reform Poland’s deeply flawed judicial structure ... It is time for us to explain ourselves better, because our cause is just.”⁸²

So what is to be done? Here are a number of concrete steps that can be taken now.

First, the European Commission must not withdraw the infringement procedure it initiated on 20 December 2017 on the law on the ordinary courts.

Second, the European Commission, based on the Article 258 of the Treaty on infringement procedures, should take the law on the Polish Supreme Court to the CJEU for violating the fundamental EU principle of independence of courts, enshrined in the EU Treaty and the Charter of Fundamental Rights of the EU.⁸³ The CJEU has recently stated that it has the right to assess threats to the independence of national courts. In a recent landmark verdict on salaries of Portuguese administrative court judges (C-64/16 *Associação Sindical dos Juizes Portugueses*) the CJEU argued that it had the right to assess whether courts in member states operated in line with common EU rule of law principles:

“The European Union is a union based on the rule of law in which individual parties have the right to challenge before the courts the legality of any decision or other national measure relating to the application to them of an EU act ... It follows that every Member State must ensure that the bodies which, as ‘courts or tribunals’ within the meaning of EU law, come within its judicial system in the fields covered by that law, meet the requirements of effective judicial protection ...

The concept of independence presupposes, in particular, that **the body concerned exercises its judicial functions wholly autonomously**, without being subject to any hierarchical constraint or subordinated to any other body and without taking orders or instructions from any source whatsoever, and **that it is thus protected against external**

⁸¹ Kaczyński: Nie zmieniamy kursu, *Gazeta Polska Codziennie*, 26.1.2018, <https://gpcodziennie.pl/79632-kaczynskiniezmieniamykursu.html>.

⁸² Mateusz Morawiecki, Why my government is reforming Poland’s judiciary, *Washington Examiner*, 13.12.2017, <https://www.washingtonexaminer.com/prime-minister-mateusz-morawiecki-why-my-government-is-reforming-polands-judiciary/article/2643279>. He continued: “In the 1989 Roundtable Talks between Poland’s Communists and the democratic opposition, then-president General Wojciech Jaruzelski – the man who ran Poland’s martial law government for the Soviets – was allowed to nominate an entirely new bench of Communist-era judges to staff the post-communist courts. These judges dominated our judiciary for the next quarter century. Some remain in place.”

⁸³ Article 258: “If the Commission considers that a Member State has failed to fulfil an obligation under the Treaties, it shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations. If the State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the Court of Justice of the European Union.” See also: Maciej Taborowski, CJEU Opens the Door for the Commission to Reconsider Charges against Poland, *Verfassungsblog*, 13.3.2018, <https://verfassungsblog.de/cjeu-opens-the-door-for-the-commission-to-reconsider-charges-against-poland/>.

interventions or pressure liable to impair the independent judgment of its members and to influence their decisions.”⁸⁴

Two provisions in the new law on the Supreme Court, which entered into force in April 2018, clearly violate these principles: the enforced early retirement of judges before the end of their tenure and the discretionary power of the President of Poland to allow them to continue to work after retirement (twice for 3 years) without any clear criteria or any possibility to appeal.⁸⁵ Stopping the dismissal of dozens of judges of the Supreme Court on 3 July is of utmost importance. Otherwise the parliamentary majority will be able to install around 70 new judges and form the majority in the new Supreme Court at one stroke. Once the new judges are in place, their nomination will not be reversible even by a new government.

In accordance with the rules for infringement procedures the Commission should send a notification letter to Warsaw, calling on it to amend or repeal the laws. In the letter the Commission would give the government two weeks to respond, instead of the usual two months. This shortening of the deadline would be easily justified by the fact that the Commission has repeatedly and in detail informed Warsaw about its reservations regarding the law as part of the rule of law supervision and sanction procedures. If the government does not change the provisions listed in the notification letter the Commission should send a reasoned opinion to the government on the violation of EU law by Poland. The government will be given a two-week response period.⁸⁶ Then the case will be dealt with by the CJEU.

At the same time the European Commission should file a motion for interim measures to suspend the application of the regulations on the dismissal of retired judges until the case has been decided on by the CJEU. This is possible within the framework of the infringement procedure if the application of the disputed law gives rise to practically irreversible effects. The forced early retirement of dozens of sitting judges is undoubtedly such a case. This move might still prevent the demolition of the Supreme Court.

The recent CJEU verdict on the Portuguese administrative court from February 2018 opened the door for a ruling by the Luxembourg court on recent changes to the Polish judicial system. The main challenge is that the Commission acts quickly. A motion needs to be filed until the beginning of June – which means in the coming days. If it does not happen by then, it will be too late to stop the dismissal of judges.

At the same time the CJEU in Luxembourg will need to issue a verdict on the Irish case brought by Judge Aileen Donnelley in March 2018. When it submits its own position to the court the Commission should support the judgement of the Irish judge, which is based on its own analysis of the situation in Poland.

⁸⁴ Judgment on Associação Sindical dos Juizes Portugueses v Tribunal de Contas, CJEU, 27.2.2018, <http://curia.europa.eu/juris/document/document.jsf?text=&docid=199682&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=545683>.

⁸⁵ Piotr Buras, Katarzyna Pelczyńska-Nalecz, Nasz trybunał w Unii, Gazeta Wyborcza, 25.5.2018, <http://wyborcza.pl/7,75968,23449635,nasz-trybunal-w-unii-zostaly-dwa-tygodnie-na-obronie-niezaleznych.html>.

⁸⁶ Joanna Popielawska, How Brussels can stop changes to the judiciary, Polityka Insight, 21.5.2018, <https://www.politykainsight.pl/en/europe/polandintheeu/1749338.1.how-brussels-can-stop-changes-to-the-judiciary.read>.

Of course, the Commission and the CJEU cannot be the only actors in this drama. Until now member states have outsourced the defense of the rule-of-law to the Commission in the hope that it would sort itself out. By now it should be clear that it will not.⁸⁷

What is required is for the CJEU and member states to act in the mutual expectation that they are committed to uphold the rule of law and will do whatever they can. The CJEU must arbitrate – and be afforded the opportunity to arbitrate – in a manner consistent with the EU’s core legal principles and requirements; while member States, the Commission and the European Parliament must express, through the political levers at their disposal, their profound attachment to the rule of law.

The rule of law is central to the very existence of the European Union. The second article of the Treaty of the European Union states confidently: “The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights.” The EU’s Charter of Fundamental Rights states: “Everyone is entitled to a fair and public hearing within a reasonable time by **an independent and impartial tribunal** previously established by law.”⁸⁸ What is at stake in Poland today is the future of the EU as a project based on core principles such as the rule of law, separation of powers and human rights. There is no more time to lose to protect it.

⁸⁷ Piotr Buras, Europe, stand up to Poland, Politico, 3.1.2017, <https://www.politico.eu/article/europe-stand-up-to-poland-rule-of-law-commission-recommendations-pis-jaroslav-kaczynski/>.
⁸⁸ Article 47 of EU’s Charter of Fundamental Rights.

ANNEX: Further reading – key documents

European Commission Reasoned Opinion on art. 7 2017/0360,
<https://ec.europa.eu/transparency/regdoc/rep/1/2017/PL/COM-2017-835-F1-PL-MAIN-PART-1.PDF>.

Court of Justice of the European Union verdict on the Portuguese judges which opens the door for the ECJ to decide directly on the breach of rule of law in any member state. C-64/16 Associação Sindical dos Juizes Portugueses,
<http://curia.europa.eu/juris/document/document.jsf?text=&docid=199682&pageIndex=0&doclang=PL&mode=lst&dir=&occ=first&part=1&cid=545683>.

Irish judgement on preliminary question to the Court of Justice of the European Union (Judge Donnelly – Artur Celmer case),
<http://www.statewatch.org/news/2018/mar/ireland-Minister-v-Celmer-final.pdf>.

Marcin Matczak, 10 Facts on Poland for the Consideration of the European Court of Justice, Verfassungsblog, 13.5.2018, <https://verfassungsblog.de/author/marcin-matczak/>.

Association of Polish Judges Iustitia, Response to the White Paper compendium on the reforms of the Polish justice system, presented by the Government of the Republic of Poland to the European Commission, 16.3.2018,
<https://www.iustitia.pl/informacje/2172-response-to-the-white-paper-compedium-on-the-reforms-of-the-polish-justice-system-presented-by-the-government-of-the-republic-of-poland-to-the-european-commission>.

About us

European Stability Initiative (ESI) is a non-profit association providing analysis and solutions to strengthen European democracy (www.esiweb.org).

ideaForum is a pro bono think tank of the Stefan Batory Foundation (www.batory.org.pl).

Piotr Buras is the head of the Warsaw Office of the European Council on Foreign Relations.

Gerald Knaus is chairman of the European Stability Initiative based in Berlin.

From: Swiderska, Monika </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8685F94516C94FAB8DC554A08B6B4FA9-SWIDERSKA.>
Sent: Friday, December 14, 2018 8:33 AM
To: Warsaw POL_ECON Americans (R) <WarsawPOL_ECONAmericans-R@state.gov>; Warsaw POL_ECON FSNs (R) <WarsawPOL_ECONFSNs-R@state.gov>
Subject: experts discuss Russian threats

RELEASE IN FULL

Polish and Russian Experts Discuss Russian Threats; Stress the West Should Focus on "Soft [Hybrid] Threats"

At a December 13 Batory Foundation debate, Polish and Russian experts discussed the nature of threats, which Russia posed to Poland, Europe, and the West. Katarzyna Pelczynska-Nalecz (P-N), former Polish DFM for eastern policy and former Polish Ambassador to Russia, argued that while Poles had a tendency to talk more about Russian military (hard) threats, Poland was more exposed to Russian "soft threats" as Russia no longer perceived Poland as its sphere of influence but part of the West. P-N said though that countries like Ukraine, Georgia, Belarus, or Moldavia were exposed to military threats from Russia. She believed that while Russia's military aggression in the West was not very likely as Russia was not interested in a big scale war (also because the Russian political elite was financially rooted in the West), Moscow was using its military force in some other places (Crimea, Syria) in order to gain influence on the international decision-making process. P-N stressed the West should pay attention though to Russia's "soft aggression," which manifested itself through information war, political provocations, and cyber aggression. She said Russia's goal was to weaken the West through introducing chaos as Russia was aware of its economic and technological inferiority to the West. She warned, however, that the Russian non-military involvement in western countries, might decide on election outcomes in those countries, including the U.S., and on moving those countries towards a chaos. P-N emphasized there was no one EU strategy towards the "soft aggression" and EU countries had adopted divergent approaches to the threat. For example, she said, France and Spain were holding behind-the-scenes talks with Russia on mutual non-aggression, while the U.K. was boldly addressing the problem publically. Poland, in her view, is one of the countries, which wait and do nothing to address the threat. Ernest Wyciszkievicz of the Center for Polish-Russian Dialogue believed Russia wanted to be perceived as a threat by the West as it gained that way a psychological advantage over the West, which disliked unpredictability, risks, or a likelihood of a new world war. This is why, he argued, Russian rhetoric occasionally makes references to a world war III (to threaten democratic societies and thus influence western politicians). Wyciszkievicz also stressed Russia would use arising opportunities to weaken or even topple certain states, which it had unsuccessfully tried to do with Monte Negro. He added that such Russian involvement triggered difficulties for institutions like the EU or NATO, which are based on rules and procedures, to react adequately. He highly appreciated though the EU's ability to maintain sanctions against Russia. Wyciszkievicz projected that other countries – China, North Korea, or Turkey, too, would develop the soft (meddling) tools while for now, Russia was the most daring of all to use those tools.

Maksim Samorukov of Carnegie.ru believed Putin intervened in Ukraine and Syria in order to increase the domestic support for him but because of the current deterioration of the Russian economy due to Russia's involvement in those conflicts, those war campaigns started to threaten the domestic support for Kremlin. Russia is, in his view, very much engaged though in hybrid-type activities and is not even hiding it. Samorukov said it was very likely that former Defense Minister Macierewicz's circle included someone, who worked for Russians but was not sure to what extent that could have had impact on Polish politics. A Russian expert, Oksana Antoninko of Control Risk in the UK, stressed Russia had been a revisionist power, questioning the current world order. P-N agreed with her, noting that for Russia, the world order should be based spheres of influence and Russia's veto right on global issues.

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UNCLASSIFIED

From: Armstrong, John L <ArmstrongJL3@state.gov>
Sent: Tuesday, May 14, 2019 5:53 AM
To: Hinton, Laura M <HintonLM@state.gov>
Cc: Marvin-Stillman, Sharon <Marvin-StillmanS@state.gov>
Subject: FOIA F-2019-00364

RELEASE IN PART B6

Official
UNCLASSIFIED

From: Dragan, Katarzyna E <DraganKE@state.gov>
Sent: Tuesday, October 16, 2018 3:38 PM
To: Warsaw POL_ECON FSNs (R) <WarsawPOL_ECONFSNs-R@state.gov>; Warsaw POL_ECON Americans (R) <WarsawPOL_ECONAmericans-R@state.gov>
Subject: FW: Kto i jak zgłosuje w wyborach samorządowych? - sondaż i opracowania ekspertów Fundacji Batorego

FYI: an interesting analysis from Batory Foundation – I think Basia and Brian are attending this conference right now.
Kasia

From: Fundacja im. Stefana Batorego <informacja@batory.org.pl>
Sent: Tuesday, October 16, 2018 3:34 PM
To: Dragan, Katarzyna E <DraganKE@state.gov>
Subject: Kto i jak zgłosuje w wyborach samorządowych? - sondaż i opracowania ekspertów Fundacji Batorego

Problemy z wyświetlaniem? Zobacz ten e-mail w przeglądarce.



Kto i jak zgłosuje w wyborach samorządowych?

Badania CBOS zrealizowane na zamówienie Fundacji Batorego pokazują, że aż 81 proc. uprawnionych do głosowania respondentów planuje wziąć udział w wyborach samorządowych, ale eksperci szacują, że frekwencja wyborcza wyniesie 49 proc. Aż 76 proc. osób deklarujących, że pójdą do urn jest przekonanych, że udział w wyborach jest obowiązkiem każdego Polaka.

Jarosław Flis przeanalizował wyniki wyborów samorządowych od 2002 roku i porównał je z wynikami

wyborów parlamentarnych i europejskich. Dane te posłużyły do stworzenia obrazu dotychczasowych zachowań wyborczych Polaków.

*„Analiza pokazuje, że frekwencja w wyborach samorządowych jest mocno uzależniona od wielkości miejscowości – im mniejsza miejscowość, tym frekwencja jest wyższa. To odwrotna zależność niż w przypadku wyborów parlamentarnych i europejskich” – tłumaczy **Jarosław Flis**, ekspert Fundacji Batorego.*

Ekspert podzielił wyborców na trzy grupy: „totalnych”, „medialnych” i „lokalnych”. Ci pierwsi biorą udział we wszystkich wyborach, wyborcy „medialni” – tylko w wyborach, które dotyczą instytucji obecnych w mediach, czyli np. Sejmu, a wyborcy „lokalni” biorą udział w wyborach samorządowych, ale nie chodzą na wybory europejskie.

Adam Gendźwiłł na podstawie sondaży opinii publicznej publikowanych przed wyborami od 2002 do 2014 przewiduje ilu Polaków zgłasza w zbliżających się wyborach samorządowych, czym będą wyróżniać się głosujący, a także co może kierować ich decyzjami. Analiza pokazuje rosnący trend udziału w wyborach.

*„W prowadzonych wcześniej sondażach respondenci mogą na wyrost deklarować chęć uczestnictwa w wyborach, ale biorąc pod uwagę tendencje – szacowana frekwencja w tych wyborach może wynieść 49 proc.” – ocenia **Adam Gendźwiłł**, ekspert Fundacji Batorego.*

W wyborach samorządowych podobnie jak w wyborach parlamentarnych większą mobilizację do udziału w wyborach deklarują osoby wykształcone i o wyższych dochodach. W wyborach samorządowych bardziej niż w parlamentarnych zauważalna jest mobilizacja elektoratu lewicowego. Wyborcy największą wagę przywiązują do wyborów najniższego szczebla, najbardziej spersonalizowanych – na wójtów, burmistrzów i prezydentów miast. Jednocześnie niewielki odsetek uznaje wybory do sejmików za najważniejsze, co stoi w kontraście do tego, jaką wagę do wyborów do sejmików przywiązują politycy największych partii i część publicystów.

Marta Żerkowska-Balas przyjrzała się motywacjom osób deklarujących udział w wyborach na podstawie wyników sondażu CBOS zrealizowanego na zlecenie Fundacji Batorego w październiku 2018.

*„Badania pokazują, że frekwencja w najbliższych wyborach może być rekordowa. Według deklaracji 21 października aż 81 proc. uprawnionych do głosu planuje odwiedzić lokale wyborcze. Są przesłanki pozwalające twierdzić, że wysoki odsetek osób deklarujących swój udział w wyborach wiąże się z faktem, że jest to działanie społecznie pożądaną” – podsumowuje **Marta Żerkowska-Balas**, ekspertka Fundacji Batorego.*

Najistotniejszym elementem różnicującym jest wykształcenie, poziom dochodów i aktywność religijna. Odsetek osób wahających się lub przekonanych o tym, że nie pójdą do urn jest wyższy wśród respondentów z niższym wykształceniem, niezadowolonych ze swojej sytuacji materialnej i nieregularnie uczestniczących w nabożeństwach.

Według Marty Żerkowskiej-Balas ze skłonnością do udziału w wyborach samorządowych wiąże się silna tożsamość lokalna. Poczucie związku z samorządem jest wyższe u osób zdecydowanych pójść na wybory niż u osób wahających się i deklarujących, że nie wezmą udziału w wyborach. Decyzja o

udziale w wyborach jest mocno zdeterminowana przez czynniki o naturze politycznej. Osoby deklarujące pójście do urn są przekonane, że udział w wyborach jest obowiązkiem każdego Polaka (76 proc. wskazań respondentów). Wśród najczęściej wybieranych odpowiedzi na pytanie o przyczyny chęci udziału w wyborach pojawia się również przekonanie o tym, że głosując na swoich reprezentantów można poprawić sytuację w swojej miejscowości. Popularność tej odpowiedzi wiąże się z rosnącym przekonaniem, że mamy wpływ na to, co dzieje się w naszym najbliższym otoczeniu.

Znaczący odsetek badanych deklaruje, że zgłoszuje w zbliżających się wyborach po to, by poprzeć konkretną osobę (47 proc. respondentów), partię (34 proc.) czy komitet wyborczy (23 proc.). Taki wynik świadczy o dużej personalizacji wyborów samorządowych. Najczęściej wybieraną odpowiedzią na pytanie o to, dlaczego respondent waha się lub nie zamierza wziąć udziału w wyborach samorządowych jest brak zainteresowania polityką (45,3 proc.).

Badanie CAPI zrealizowane na zlecenie Fundacji Batorego przez CBOS na losowej próbie reprezentatywnej 1016 dorosłych Polaków. Badanie zrealizowano w dniach od 4 do 11 października 2018 roku.

Do pobrania:

„Kto i jak zgłoszuje w wyborach”, Adam Gendźwiłł

„Wybory samorządowe – wzory zaangażowania”, Jarosław Flis

„Rekordowa frekwencja”, Marta Żerkowska-Balas

Noty o autorach:

Marta Żerkowska-Balas – socjolożka, politolożka, iberystka, adiunkt w Instytucie Nauk Społecznych na Uniwersytecie SWPS w Warszawie. Zajmuje się badaniem mechanizmów kierujących decyzjami wyborców, relacjami między obywatelami a partiami politycznymi oraz zagadnieniami związanymi z praktyką i teorią demokracji.

Jarosław Flis – socjolog, dr hab. Wykładowca na Wydziale Zarządzania i Komunikacji Społecznej Uniwersytetu Jagiellońskiego. Komentator polityczny. Współpracuje z „Tygodnikiem Powszechnym”. Publikował w „Dzienniku. Polska. Europa. Świat”, „Gazecie Wyborczej”, „Polska. The Times” i „Rzeczpospolitej”. Autor książek: Obywatel, biznes, władza. Powiązania międzysektorowe w Małopolsce (1999), Samorządowe public relations (2007), Złudzenia wyboru. Społeczne wyobrażenia i instytucjonalne ramy w wyborach do Sejmu i Senatu (2014).

Adam Gendźwiłł – doktor socjologii, adiunkt w Katedrze Rozwoju i Polityki Lokalnej na Wydziale Geografii i Studiów Regionalnych Uniwersytetu Warszawskiego; obecnie na stypendium naukowym na Wydziale Nauk Politycznych i Zarządzania Publicznego Southern Denmark University w Odense (Dania); członek zespołu ekspertów Fundacji Batorego, autor publikacji dotyczących samorządów terytorialnych, polityki lokalnej, partii politycznych i systemów wyborczych.

Więcej informacji:

Wojciech Chaber

forumIdei
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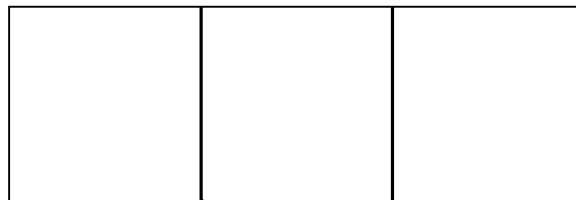
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Ma Pani/Pan prawo do wniesienia sprzeciwu w związku z przetwarzaniem swoich danych na potrzeby wysyłania informacji o działalności Fundacji. Przysługuje Pani/Panu skarga do właściwego organu nadzorczego.

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Więcej o sposobie przetwarzania danych osobowych przez Fundację Batorego w polityce prywatności.

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▣

From: Armstrong, John L <ArmstrongJL3@state.gov>
Sent: Tuesday, May 14, 2019 5:41 AM
To: Hinton, Laura M <HintonLM@state.gov>
Cc: Marvin-Stillman, Sharon <Marvin-StillmanS@state.gov>
Subject: FOIA F-2019-00364

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From: Armstrong, John L
Sent: Friday, January 18, 2019 3:08 PM
To: Teplica, Brian W <teplicabw2@state.gov>
Cc: Fedkiw, Yuriy R <FedkiwYR@state.gov>
Subject: RE: Highlights from Batory Foundation discussion re: Poland-EU, from Thurs, Jan 17

Dzieki.

Radze wyslac DASowi Boyse'mu (ktory dobrze zna Radka) oraz Johnowi i Patrickowi.

John

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From: Teplica, Brian W <teplicabw2@state.gov>
Sent: Friday, January 18, 2019 1:44 PM
To: Armstrong, John L <ArmstrongJL3@state.gov>; Davis, Adam N <DavisAN@state.gov>; Frisbie, Sonnet A <FrisbieSA@state.gov>; Behling, Alison L <BehlingAL@state.gov>; Wypyski, Sheri A <WypyskiSA@state.gov>
Subject: FW: Highlights from Batory Foundation discussion re: Poland-EU, from Thurs, Jan 17

+ ECON, FYI

Brian

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From: Teplica, Brian W <teplicabw2@state.gov>
Sent: Friday, January 18, 2019 1:32 PM
To: Warsaw Political Americans <WarsawPolAm@state.gov>; Zia, Thomas S <ZiaTS@state.gov>; Rawinska, Barbara <RawinskaBX@state.gov>; Dragan, Katarzyna E <DraganKE@state.gov>; Swiderska, Monika <SwiderskMX@state.gov>
Subject: Highlights from Batory Foundation discussion re: Poland-EU, from Thurs, Jan 17

FYI, some topline judgments from yesterday's discussion ("Poland in the European Union: a Stowaway or a Co-Driver?") that Monica and I attended at the Batory Foundation, drawn primarily from the comments made by

keynote speaker and former Foreign Minister (2007-14) Radoslaw Sikorski:

- **Deeper European integration is vital to Poland's national security interests.** Sikorski said that Poland has far more clout (vis-à-vis Russia on security, and vis-à-vis the United States on trade, for example) when it pools sovereignty with other EU states. He viewed Brexit as an unmitigated disaster and the result of migration pressures combined with the emergence of a Romantic vision of national sovereignty detached from historical and geopolitical realities. He warned that these undercurrents were present in Poland, too, and noted that enthusiasm among Poles for the EU was broad but "very shallow" and regrettably viewed too often through a lens of "money from Brussels." He dismissed the argument that the EU was a tool for projecting and masking German power; on the contrary, Sikorski argued that the EU was a forum that enabled other states, like Poland, to shape German power.
- **Poland must advocate for more – not less – integration, particularly on defense and economics.** He lamented that the Weimar Triangle (Paris-Berlin-Warsaw) had not become the "avant-garde" of the EU, but suggested that Poland should aim for its restoration as the motor of European integration. He called for a more robust security integration (in the form of stronger external border defense and EU military operations in places like Africa) and deeper economic integration, including eventual Polish membership in the Eurozone. He said that President Andrzej Duda's contention that the EU was an "imaginary community" was regrettably true, adding that the EU needed a new narrative to build a "European superpower." He noted that perceived uncertainty surrounding U.S. military decision-making and commitment to NATO made closer European cooperation on security all the more important.
- **Dialing back European integration is both institutionally unsustainable and not in Poland's national interest.** Sikorski said that the Law and Justice Party (PiS) vision for the EU ("a union of homelands") was both a meaningless concept and politically impossible to sustain. Sikorski pointed out that loose political confederations throughout history have either moved steadily toward closer cooperation (e.g., postbellum United States), or they have been pulled apart by centrifugal forces. He called the Kaczynski-Orban model for the EU "an oxymoron," and said that a confederation project based on "what's mine is mine, and what's yours – we'll see" cannot be sustained over the longer term. He rejected the argument that the perceived "democratic deficit" within the EU was an institutional design flaw, noting that only through deeper political integration would such a perceived deficit be overcome.

Happy to discuss in more detail with anyone who is interested.

Brian W. Teplica
Political Officer - U.S. Embassy, Warsaw
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Sent: Tuesday, May 14, 2019 1:30 PM
To: Hinton, Laura M <HintonLM@state.gov>
Cc: Marvin-Stillman, Sharon <Marvin-StillmanS@state.gov>
Subject: FOIA F-2019-00364

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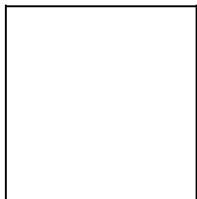
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From: Swiderska, Monika <SwiderskMX@state.gov>
Sent: Friday, January 11, 2019 1:41 PM
To: Warsaw POL_ECON Americans (R) <WarsawPOL_ECONAmericans-R@state.gov>; Warsaw POL_ECON FSNs (R) <WarsawPOL_ECONFSNs-R@state.gov>
Subject: FW: Zaproszenie na debatę Warszawskiego Biura ECFR i Fundacji Adenauera "W poszukiwaniu bezpieczeństwa. Między Trumpem a Putinem".

FYI. Very interesting debate with fairly high-level panelists. I plan to attend but the Batory Foundation is always open to our Embassy's bigger representation.

From: Fundacja im.Stefana Batorego <batory@batory.org.pl>
Sent: Friday, January 11, 2019 1:05 PM
To: Swiderska, Monika <SwiderskMX@state.gov>
Subject: Zaproszenie na debatę Warszawskiego Biura ECFR i Fundacji Adenauera "W poszukiwaniu bezpieczeństwa. Między Trumpem a Putinem".

Problemy z wyświetlaniem? Zobacz ten e-mail w przeglądarce.



ZAPROSZENIE

Fundacja Batorego zaprasza na debatę Warszawskiego Biura ECFR i Fundacji Konrada Adenauera "W poszukiwaniu bezpieczeństwa. Między Trumpem a Putinem". Wydarzenie odbędzie się we wtorek, 22 stycznia, w godzinach 17:00-18:30 w siedzibie Fundacji przy ul. Sapieżyńskiej 10a w Warszawie.

Dwa czynniki wpływają na bezpieczeństwo Europy Środkowej: z jednej strony – historyczny rewizjonizm Rosji, który znalazł wyraz w aneksji Krymu w 2014 r. i grozi wywróceniem

regionalnego porządku; z drugiej – polityka Stanów Zjednoczonych pod przywództwem Donalda Trumpa wbijająca klin między kraje regionu. Różnice są widoczne zwłaszcza w polityce Polski i Niemiec: podczas gdy polski rząd pokłada nadzieje w sojuszu ze Stanami Zjednoczonymi, Berlin dąży do ściślejszej współpracy w ramach UE i budowy europejskiej autonomii strategicznej. Ten rozdźwięk może mieć poważne konsekwencje dla naszego regionu, utrudniając przyjęcie spójnej i skutecznej strategii bezpieczeństwa odpowiadającej na wyzwania ze strony Rosji. Widać to już teraz w dyskusjach na temat wzmocnienia wschodniej flanki NATO, wycofania się przez Stany z traktatu rozbrojeniowego INF czy europejskich projektów obrony, takich jak PESCO i Europejska Inicjatywa Interwencyjna.

Jak państwa regionu postrzegają zagrożenia i jak dbają o swoje bezpieczeństwa? Jak głębokie są w tym wymiarze różnice między krajami Europy Środkowej i Zachodniej? Czy Polska może pogodzić bliski sojusz ze Stanami Zjednoczonymi ze współpracą z europejskimi partnerami? Jak powinien wyglądać wkład Polski i Niemiec w bezpieczeństwo regionu?

W debacie udział wezmą:

- **Bartosz Cichocki**, podsekretarz stanu w Ministerstwie Spraw Zagranicznych Polski.
- **Gustav Gressel**, Senior Policy Fellow w ECFR.
- **Rolf Nikel**, ambasador Niemiec w Polsce.
- **Riina Kajlurand**, radczyni w Departamencie Planowania Ministerstwa Spraw Zagranicznych Estonii.

Spotkanie poprowadzi **Piotr Buras**, dyrektor Warszawskiego Biura ECFR.

Dyskusja odbędzie się w języku polskim i angielskim. Zapewniamy tłumaczenie symultaniczne.

Udział w debacie jest bezpłatny, ale uprzejmie prosimy o rejestrację:

Rejestracja online

Andrzej Mendel-Nykorowycz
Fundacja im. Stefana Batorego
tel. 22 536 02 38, warsaw@ecfr.eu

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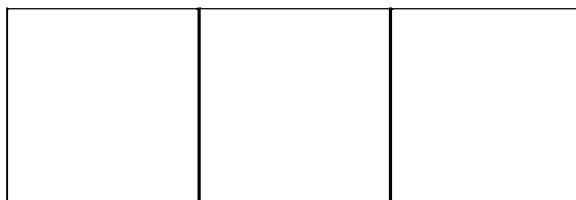
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Przysługuje Pani/Panu skarga do właściwego organu nadzorczego. Ma Pani/Pani prawo wniesienia sprzeciwu w związku z przetwarzaniem w/w danych na potrzeby przesyłania informacji o działalności Fundacji.

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Więcej o sposobie przetwarzania danych osobowych przez Fundację Batorego w polityce prywatności.



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□

From: forumIdei Fundacji Batorego <[\[redacted\]](#)>
Sent: Tuesday, July 17, 2018 5:44 AM
To: Swiderska, Monika <SwiderskMX@state.gov>
Subject: Funkcjonowanie Trybunału Konstytucyjnego w latach 2014-2017

B6

Problemy z wyświetlaniem? Zobacz ten e-mail w przeglądarce.

 Fundacji Batorego. Wspieraj z nami demokrację w Polsce!

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Eksperci krytycznie oceniają funkcjonowanie TK

Zespół Ekspertów Prawnych Fundacji Batorego opublikował raport przedstawiający funkcjonowanie Trybunału Konstytucyjnego w latach 2014-2017: spadek liczby rozpatrywanych spraw i wydawanych orzeczeń oraz manipulowanie składami orzekającymi.

Wbrew zapowiedziom przedstawicieli partii rządzącej, że zmiany legislacyjne oraz zmiany osobowe w Trybunale mają poprawić jego działanie, dane przedstawione w raporcie wskazują na istotne pogorszenie efektywności działania polskiego sądu konstytucyjnego.

Raport pokazuje niespotykany wcześniej spadek liczby spraw wpływających do Trybunału Konstytucyjnego oraz znaczne zmniejszenie jego aktywności orzeczniczej. „*W porównaniu do poprzednich lat do TK wpływa obecnie niemal o połowę mniej spraw, a spadek ten dotyczy nie tylko spraw z wniosków posłów opozycji czy innych instytucji publicznych, ale także pytań prawnych zadawanych Trybunałowi przez sądy oraz skarg konstytucyjnych wnoszonych przez zwykłych obywateli. Spadek liczby spraw należy interpretować jako spadek zaufania do Trybunału Konstytucyjnego*”, stwierdza członek Zespołu, prof. Marcin Matczak.



Dane przedstawione w raporcie wskazują też na odejście od reguły alfabetycznego przydziału spraw uwzględniającej kolejność ich wpływu do Trybunału na rzecz ręcznego sterowania składami przez prezes TK Julię Przyłębską. **Tylko w styczniu i lutym 2017 roku Prezes TK wydała 53 zarządzenia zmieniające składy orzekające w 49 sprawach, w niektórych sprawach składy zmieniane były dwukrotnie.** Przy czym, aż 49 spośród 53 wspomnianych zarządzeń nie wskazywało ustawowej podstawy prawnej kompetencji prezesa TK do zmiany składu, a **21 nie zawierało w ogóle żadnego uzasadnienia.** W efekcie, w 80% spraw funkcję sprawozdawcy przydzielono albo sędziemu TK wybranemu przez Sejm VIII kadencji albo osobie wybranej przez Sejm VIII kadencji na stanowisko sędziego Trybunału legalnie obsadzone przez Sejm VII kadencji.

„Opisana w raporcie praktyka wyłączenia z orzekania niewygodnych sędziów TK, obsadzania składów orzekających osobami nieuprawnionymi do orzekania oraz dokonywania w sprawach w toku dowolnych zmian w wyznaczonych już składach orzekających pokazuje skalę patologii, która ma miejsce w Trybunale Konstytucyjnym. Tego rodzaju praktyki nie mieszczą się w jakichkolwiek standardach demokratycznego państwa prawa” – ocenia prof. Monika Florczak-Wątor z Zespołu Ekspertów Prawnych.

„Praktyka taka może stanowić poważne naruszenie prawa i prowadzić do kwestionowania bezstronności wydawanych przez Trybunał wyroków” – dodaje prof. Marcin Matczak.

W 2017 roku złożono 20 wniosków o wyłączenie sędziego ze składu orzekającego. Dziewięć z nich – po raz pierwszy w historii Trybunału – uzasadniono brakiem uprawnienia do zasiadania w składzie orzekającym. Żaden z tych wniosków nie spowodował wyłączenia członka składu orzekającego. Czternastokrotnie wnioskowano o wyłączenie ze składu orzekającego osób wybranych przez Sejm VIII kadencji na stanowiska sędziów TK legalnie obsadzone przez Sejm VII kadencji. Najwięcej, aż siedem razy, wnioskowano o wyłączenie z udziału w rozpoznaniu sprawy Mariusza Muszyńskiego.

Autorzy raportu wyrazili obawy związane z wykorzystaniem przez Prokuratora Generalnego Zbigniewa Ziobro jego podwójnej roli w postępowaniu przed TK jako inicjatora kontroli oraz uczestnika postępowania. W 2017 roku Zbigniew Ziobro złożył wniosek do Trybunału o ocenę konstytucyjności podstaw wyboru przez Sejm VI kadencji sędziów TK: Piotra Tulei, Stanisława Rymara oraz Marka Zubika, a następnie wykorzystał swoje kompetencje uczestnika postępowania, wnioskując o wyłączenia tych sędziów ze składów orzekających. Konsekwentne stosowanie takiego zabiegu może, zdaniem ekspertów, doprowadzić do niedopuszczalnego w świetle zasady niezależności Trybunału Konstytucyjnego udziału Prokuratora Generalnego w kształtowaniu składów orzekających.

Raport „Funkcjonowanie Trybunału Konstytucyjnego w latach 2014-2017”

Kontakt:

Katarzyna Łakomiec,

Wojciech Chaber, '

B6

Zespół Ekspertów Prawnych przy Fundacji im. Stefana Batorego prowadzi monitoring projektów aktów prawnych, analizując je pod kątem zgodności wprowadzanych rozwiązań z Konstytucją RP, normami międzynarodowymi i demokratycznymi standardami państwa prawa. Ocenia też stopień ingerencji przepisów w prawa człowieka i obywatela oraz kierunek zmian ustrojowych, jaki wytycza stanowione prawo.

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Więcej o sposobie przetwarzania danych osobowych przez Fundację Batorego w polityce prywatności.



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From: Swiderska, Monika <SwiderskMX@state.gov>
Sent: Thursday, August 23, 2018 6:48 AM
To: Fedkiw, Yuriy R <FedkiwYR@state.gov>
Cc: Saha, Trina D <SahaTD@state.gov>; Anderson, Jonathan R <AndersonJR3@state.gov>
Subject: FW: Russia and Polish "Good Change"

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B5

Yuriy,

This is the readout from a debate featuring Russian experts [REDACTED]

B5

Monika

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From: Swiderska, Monika
Sent: Tuesday, December 13, 2016 4:44 PM
To: Warsaw POL_ECON Americans (R) <WarsawPOL_ECONAmericans-R@state.gov>; Warsaw POL_ECON FSNs (R) <WarsawPOL_ECONFSNs-R@state.gov>
Subject: Russia and Polish "Good Change"

On December 6, the Batory Foundation hosted three Russian experts – Alexei Chadaev of the Russian Presidential Academy of National Economy and Public Administration, Ivan Preobrazhensky of Rosbalt news agency, and Pavel Puchkov, who cooperates with the Progress Party in Russia, to discuss the Russian perception of a Polish “good change.” The three experts agreed that on the state level, there are practically no bilateral relations between Poland and Russia right now while some painful issues such as the Smolensk crash and the wreckage’s return to Poland continue. Preobrazhensky said Russia gets irritated when Poles raise Smolensk and refuses to talk about it. To a question whether Russians are interested in the developments in Poland and whether the actions of the current GOP unintentionally serve Russian interests, the experts generally agreed that Russians – both the government and the society, with their imperialist approach to the world do not see Poland as an independent player and Kremlin will continue to ignore Poland as a state. Preobrazhenski said though the current Poland can be an ideal state [tool] to help Russia demolish all the structures Moscow dislikes. He stressed the Russian goal is to create as much chaos and destruction in the EU as possible. Deputy Director of the MFA’s Eastern Policy Department, Jan Hofmokr, attended the debate but did not speak at it.

Russian Conservatives Welcome the Activities of “the Polish Conservatives” on the Domestic Scene

Chadaev, who stressed he represents the views of the Russian conservatives and not liberals, said Poland is a riddle for the Russian conservatives since unlike the conservatives such as Trump in the U.S. or French presidential candidates, the Polish conservatives, now in power, do not speak favorably about Russia. He said though that what the Polish conservatives do in domestic politics is very well received by their Russian counterparts, who, too, speak about traditional values and stress the role of the [Orthodox] church. Chadaev also saw many similarities between the PiS party platform and the platform of the United Russia with the exception of foreign policy. Chadaev welcomed though the toughening of the Polish authorities’ stand on historical policy in Polish-Ukrainian relations, recalling that he himself was earlier surprised that only Russia, and not Poland, was critical of Bandera. He welcomed the fact that all the arguments concerning Bandera that he

himself had presented earlier are now coming from Warsaw. He said that despite differences on Smolensk and NATO, for many officials at Kremlin, the new Polish leadership is paradoxically closer in terms of mentality. Former Polish Ambassador to NATO, Jerzy Nowak stressed to Chadaev though Russia should not count on it that the criticism of the Ukrainian Rising Army (UPA) could become the field of understanding between Russia and Poland. "The Ukrainian government has not sufficiently condemned the ethnic cleansing on Poles but it would not be good if we cooperated with Russia on this issue," he said.

Moscow Opens Champagne after Trump's Victory

Chadaev did admit that when Donald Trump won the U.S. presidential election, Kremlin and other circles in Moscow were opening champagne. He argued that recent developments such as Brexit and the referenda in the Netherlands and Italy have shown that Francis Fukuyama's argument made in the "End of History" is no longer valid as there is, in his view, no one vector of development but many complex processes, which have been ignored and vis-à-vis which each country needs to adopt an approach. Chadaev welcomed this course of events with optimism. Puchkov disagreed with Chadaev by saying it was too early to say there is an alternative to democracy and free market. He recalled that socialism seemed to be such an alternative in the 20th century but failed. He said too that for now, Kaczynski, Trump or the Brexit team have not proposed an alternative model of development. Also Preobrazhensky believed the current developments in the West are only a stop (short break in) and not the end of the liberal world.

Russian Opposition Looks Again at Polish Opposition Experience

Preobrazhensky argued that with the exception of "black protests" in Poland, developments in Polish politics do not generally resonate in Russia. He said though Russia is interested in Poland's foreign policy but not vis-à-vis Moscow but Poland's neighbors – e.g. with Ukraine, and Poles should therefore pay attention to this. In his view, Moscow initially paid attention to the Constitutional Tribunal issue but no longer does it as it is focusing more now on elections in other EU countries. Puchkov believed though that the Russian opposition may find it interesting how the current Polish opposition will consolidate the society under new political conditions. This, in his view, may lead to new contacts between the Polish and Russian opposition. "We thank Jaroslaw Kaczynski for renewing the Russian liberal society's interest in Poland," Puchkov said.

Magdziak-Miszewska: Polish Current Authorities Cannot Be Called "Conservatives"

Former Polish Ambassador to Israel and Consul General in NYC Agnieszka-Magdziak Miszewski strongly protested against calling the current Polish authorities "conservatives," noting they should rather be named "national socialists." She contrasted Lech Kaczynski, who, she said, respected the Polish Constitution with Jaroslaw Kaczynski's actions. She also said that the Russian regime, the regime that is shaping in Poland, and Trump's announcements belong to the same trend.

What Next Russian Internet Trolls Will Do in Poland?

Former Polish DFM and Ambassador to Russia Katarzyna Pelczynska-Nalecz wanted to know what to expect next from the Russian Internet trolls in Poland, who exploit the difficult Polish-Ukrainian history and post anti-EU and -NATO opinions. Preobrazhensky said the Russian trolls will do what they are told to do and that Moscow's goal is to create as much chaos and destruction in the EU. He added the Russian propaganda machine will try to harm Polish-Ukrainian relations and create chaos.

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From: Dragan, Katarzyna E <DraganKE@state.gov>
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To: Warsaw POL_ECON FSNs (R) <WarsawPOL_ECONFSNs-R@state.gov>;
Warsaw POL_ECON Americans (R) <WarsawPOL_ECONAmericans-R@state.gov>
Subject: Human Rights News
Attach: Raport Zespolu Ekspertow Prawnych - Konsekwencje dzialan legislacyjnych.pdf

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For information purposes

Batory Foundation responds to the government white paper on judiciary reform

Batory Foundation's team of legal experts published a report in which it criticizes the government white paper on judicial reform. In their report, they criticized the changes implemented by the current government, pointing out the lack of independence of courts (which are now subordinate to the executive branch), the destruction of the Supreme Court, the introduction of so-called extraordinary complaints in the Supreme Court procedures and the flawed process of selection of judges to the Constitutional Court. Full report attached.

<http://prawo.gazetaprawna.pl/artykuly/1111196,fundacja-batorego-odpowiada-na-biala-ksiege.html>

Iustitia responds to the government white paper on judiciary reform

In its document, Iustitia comments on all allegations presented by the government in its white paper on the judiciary. The document points out the studies presented by the government (which showed a very low trust in courts) were biased and selective and point out 50 percent of those who had contact with the judiciary have positive opinion about the judges. Iustitia also argues that the low trust in the judiciary is the result of the low trust of the legal system, which is caused by the so-called inflation of the law (a huge number of legal acts adopted every year).

<http://www.rp.pl/Sedziowie-i-sady/303159978-lustitia-odpowiedziala-na-zarzuty-z-tzw-bialej-ksiegi-wymiaru-sprawiedliwosci.html>

Human rights ombudsman withdraws his motion on police surveillance law from the Constitutional Court

Yesterday, human rights ombudsman Adam Bodnar announced he withdrew his motion to the Constitutional Court to review the revised law on police and other law enforcement agencies which considerably expanded the surveillance powers of the agencies. Bodnar questions the panel which was appointed to review his motion, and argues the current Constitutional Court does not guarantee an unbiased and proper revision of his motion.

<http://www.rp.pl/Dobra-osobiste/303149929-RPO-wycofuje-wniosek-do-TK-ws-inwigilacji.html>

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RAPORT

Zespołu Ekspertów Prawnych przy Fundacji im. Stefana Batorego dotyczący konsekwencji działań legislacyjnych w obrębie władzy sądowniczej w Polsce w latach 2015-2018

1. Wstęp

Artykuł 45 ust. 1 Konstytucji gwarantuje każdemu prawo do sprawiedliwego i jawnego rozpatrzenia jego sprawy bez nieuzasadnionej zwłoki przez właściwy, niezależny, bezstronny i niezawisły sąd. Tak skonstruowane prawo do sądu jest podstawowym środkiem ochrony obywatela przed działaniami państwa ingerującymi w sferę jego wolności. Warunkiem skuteczności tej ochrony jest konsekwentna realizacja zapisanej w art. 173 Konstytucji zasady odrębności i niezależności władzy sądowniczej od władzy ustawodawczej i władzy wykonawczej. Sądy i trybunały podporządkowane obu tym władzom i przez nie kontrolowane tracą przymiot niezależności, a obywatele, którzy przed takimi sądami dochodzą sprawiedliwości, tracą szansę na jej uzyskanie.

Trwający obecnie w Polsce kryzys konstytucyjny rozpoczął się od ataku władzy ustawodawczej i władzy wykonawczej na władzę sądowniczą. Atak ten został precyzyjnie przemyślany i zaplanowany, a także skutecznie, choć niekiedy chaotycznie, zrealizowany. Doprowadził on do całkowitego sparaliżowania Trybunału Konstytucyjnego, który obecnie nie jest w stanie chronić obywatela przed niezgodnymi z Konstytucją działaniami parlamentu. Dotychczas perspektywa zakwestionowania niekonstytucyjnych przepisów przez ten organ często mobilizowała ustawodawcę do dbałości o jakość stanowionego prawa. Teraz coraz częściej Trybunał jest postrzegany jako sojusznik wspierający większość parlamentarną w realizacji jej programu wyborczego. Organ ten zaczął interpretować Konstytucję na korzyść władzy (i tym samym na niekorzyść obywateli), wydając rozstrzygnięcia spójne z uzasadnieniami projektów ustaw przygotowywanych przez rząd. Taka sytuacja niewątpliwie ułatwiła obecnej większości parlamentarnej przyjęcie ustaw, które bezpośrednio godzą w niezależność sądów i niezawisłość sędziów. Pozwoliły one Ministrowi Sprawiedliwości na przeprowadzenie w sądach powszechnych wymiany kadry zarządzającej na skalę niespotykaną w demokratycznym państwie prawa. Rozpoczęto również proces demontażu Sądu Najwyższego i Krajowej Rady Sądownictwa. Co istotne, zmiany ustrojowe dotyczące tych organów przeprowadzane są poza Konstytucją w drodze zwykłych ustaw przyjmowanych przez większość parlamentarną, bez jakichkolwiek konsultacji ze społeczeństwem. Efekt mrozący wśród sędziów już dziś wywołują postępowania dyscyplinarne wszczynane z inicjatywy polityków niezadowolonych ze sposobu orzekania w sprawach, w których osobiście są zaangażowani.

~~~~~ Fundacja im. Stefana Batorego jest organizacją pożytku publicznego  
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Celem niniejszego raportu nie jest kompleksowe omówienie zmian dokonanych w Polsce w latach 2015-2018 w obrębie władzy sądowniczej, lecz wskazanie najważniejszych zagrożeń, które ze zmian tych wynikają dla praw i wolności obywateli. Opisane poniżej nowe regulacje prawne dotyczące Trybunału Konstytucyjnego, Krajowej Rady Sądownictwa, Sądu Najwyższego i sądów powszechnych pokazują spójną i przemyślaną strategię niszczenia fundamentów demokratycznego państwa prawa.

## **2. Kryzys wokół Trybunału Konstytucyjnego**

Pierwszym organem władzy sądowniczej, który stał się przedmiotem ataków ze strony obecnie rządzącej większości parlamentarnej, rządu i głowy państwa był Trybunał Konstytucyjny. Organ ten orzeka o niekonstytucyjności ustaw uchwalanych przez parlament oraz aktów prawnych wydawanych m.in. przez Radę Ministrów, Prezesa Rady Ministrów, ministrów i Prezydenta. Jego orzeczenia mają moc powszechnie obowiązującą i są ostateczne.

W latach 2015-2017 uchwalono kilka ustaw dotyczących Trybunału Konstytucyjnego, które następnie były przedmiotem rozstrzygnięć tego organu zawartych m.in. w wyrokach z 3 grudnia 2015 r., sygn. K 34/15, z 9 grudnia 2015 r., sygn. K 35/15 oraz 9 marca 2016 r., sygn. K 47/15. Niektóre przepisy wspomnianych ustaw zostały uznane za niekonstytucyjne. Z punktu widzenia obecnego stanu prawnego orzeczenia te mają walor historyczny, bo nie obowiązują już ustawy będące przedmiotem kontroli w tych sprawach. Warto jednak zwrócić uwagę na to, że stwierdzający niekonstytucyjność w najszerszym możliwym zakresie wyrok z 9 marca 2016 r., sygn. K 47/15, nigdy nie został opublikowany w Dzienniku Ustaw. Prezes Rady Ministrów odmówił również publikacji dwóch innych orzeczeń TK zawierających rozstrzygnięcia niekorzystne dla obecnej większości parlamentarnej, tj. wyroku z 11 sierpnia 2016 r., sygn. K 39/16 oraz z 7 listopada 2016 r., sygn. K 44/16. Kilka innych orzeczeń TK wydanych w latach 2016-2017 zostało opublikowanych ze znacznym opóźnieniem, choć zgodnie z art. 190 ust. 2 Konstytucji orzeczenia TK „podlegają niezwłocznemu ogłoszeniu”. Odmowa publikacji orzeczenia TK stanowi delikt konstytucyjny godzący w zasadę trójpodziału władzy, zasadę odrębności i niezależności władzy sądowniczej oraz zasadę ostateczności orzeczeń TK. Brak publikacji orzeczeń TK uniemożliwienie ich wejście w życie i tym samym pozwala na utrzymywanie mocy obowiązującej niekonstytucyjnej regulacji prawnej.

W chwili obecnej istotne i nadal nierozwiązane pozostają dwa problemy, które zostaną omówione poniżej. Pierwszy z nich dotyczy zasiadania w składzie Trybunału Konstytucyjnego trzech osób nieuprawnionych do orzekania, a drugi – kierowania Trybunałem przez osobę powołaną w sposób niezgodny z prawem na stanowisko Prezesa TK. Oba te problemy, wzajemnie ze sobą powiązane, spowodowały obniżenie autorytetu Trybunału Konstytucyjnego i spadek zaufania społeczeństwa do tej instytucji, czego wyrazem jest niewielka liczba wnoszonych obecnie przez obywateli skarg konstytucyjnych.

### **2.1. Wybór sędziów TK i osób nieuprawnionych do orzekania**

Trybunał Konstytucyjny składa się z 15 sędziów, wybieranych indywidualnie przez Sejm na 9 lat spośród osób wyróżniających się wiedzą prawniczą. Udział Prezydenta w procedurze wyboru sędziów nie jest

przewidziany. Ustawa stanowi jedynie, że osoby wybrane na stanowiska sędziów TK składają ślubowanie wobec Prezydenta.

Uchwalona przez Sejm poprzedniej kadencji ustawa z 25 czerwca 2015 r. o Trybunale Konstytucyjnym zawierała przepis przejściowy (art. 137) wyznaczający 30-dniowy termin od dnia wejścia w życie ustawy na zgłoszenia kandydatów na sędziów TK w miejsce sędziów, których kadencja upływała w 2015 r. Na podstawie tego przepisu Sejm wybrał 8 października 2015 r. pięciu sędziów TK na miejsca sędziów, których kadencja upływała 6 listopada oraz 2 i 8 grudnia 2015 r. Konstytucyjność art. 137 została zakwestionowana przez grupę posłów partii Prawo i Sprawiedliwość we wniosku złożonym do TK 23 października 2015 r. (dwa dni przed wyborami parlamentarnymi). Wniosek ten został wycofany 10 listopada 2015 r. (dwa tygodnie przed wyznaczonym terminem rozprawy), co spowodowało umorzenie postępowania przez TK (zob. postanowienie z 25 listopada 2015 r., sygn. K 29/15).

Wniosek o niemal identycznej treści został jednak ponownie złożony do Trybunału Konstytucyjnego 17 listopada 2015 r. przez grupę posłów opozycji w Sejmie obecnej kadencji, a postępowanie w tej sprawie zostało zakończone wyrokiem z 3 grudnia 2015 r., sygn. K 34/15. Trybunał stwierdził wówczas zgodność z Konstytucją wspomnianego art. 137 „w zakresie, w jakim dotyczy sędziów Trybunału, których kadencja upływa 6 listopada 2015 r.” oraz niekonstytucyjność tego przepisu „w zakresie, w jakim dotyczy sędziów Trybunału, których kadencja upływa odpowiednio 2 i 8 grudnia 2015 r.” Odnosząc się do skutków tego wyroku, TK podkreślił, że: „Wątpliwości konstytucyjnych nie budzi (...) podstawa prawna wyboru trzech sędziów Trybunału na miejsce sędziów, których kadencja upłynęła 6 listopada 2015 r. Zakresowa derogacja art. 137 ustawy o TK nie wpłynęła na skuteczność ich wyboru. Zgodnie z zasadą, że sędzia Trybunału jest wybierany przez Sejm tej kadencji, w trakcie której zostało opróżnione jego stanowisko, wybór oparty na tej podstawie był w tym wypadku ważny i nie ma przeszkód, aby procedura została sfinalizowana złożeniem ślubowania wobec Prezydenta przez osoby wybrane na stanowisko sędziego Trybunału”. Skutkiem tego wyroku było zatem potwierdzenie zgodności z Konstytucją podstaw prawnych wyboru trzech sędziów TK przez Sejm poprzedniej kadencji. Należy jednocześnie wyjaśnić, że w Trybunale Konstytucyjnym może zasiadać tylko 15 sędziów, stąd wybór sędziów w takiej właśnie liczbie odbiera Sejmowi kompetencję do wyboru kolejnych sędziów aż do czasu, gdy kadencja sędziów wcześniej wybranych będzie dobiegać końca lub zostanie stwierdzone jej wygaśnięcie przed upływem kadencji.

Mimo że żadne z tych zdarzeń nie miało miejsca, Sejm obecnej kadencji 2 grudnia 2015 r. wybrał pięć osób na zajęte w momencie wyboru stanowiska sędziów TK, a Prezydent przyjął od nich ślubowanie. Jednocześnie Prezydent odmówił przyjęcia ślubowania od trzech sędziów wybranych zgodnie z Konstytucją przez Sejm poprzedniej kadencji mimo, że przepis ustawy dotyczący tej kompetencji Prezydenta (tj. art. 21 ust. 2 ustawy z 25 czerwca 2015 r.) został uznany w wyroku TK z 3 grudnia 2015 r., sygn. K 34/15, za niekonstytucyjny w razie jego rozumienia „w sposób inny, niż przewidujący obowiązek Prezydenta Rzeczypospolitej Polskiej niezwłocznego odebrania ślubowania od sędziego Trybunału wybranego przez Sejm”.

Spośród trzech osób wybranych przez Sejm z naruszeniem art. 194 ust. 1 Konstytucji dwie osoby zmarły (Lech Morawski i Henryk Cioch), a jedna (Mariusz Muszyński) została następnie powołana przez Prezydenta RP na stanowisko Wiceprezesa TK. Powołanie to nie wywołuje skutków prawnych, bo zgodnie z art. 194 ust. 2 Konstytucji tylko sędzia TK może zostać powołany na stanowisko Wiceprezesa TK. Na miejsce dwóch zmarłych

osób zostały wybrane kolejne osoby nieuprawnione do orzekania (Justyn Piskorski i Jarosław Wyrembak). Podobnie jak dwie wcześniej zmarłe osoby są to bowiem osoby wybrane ponad dopuszczalną przez art. 194 ust. 1 Konstytucji liczbę 15 sędziów TK, których może wybrać Sejm. Trzem sędziom TK zgodnie z Konstytucją wybranym przez Sejm poprzedniej kadencji (Romanowi Hauserowi, Krzysztofowi Ślebzakowi i Andrzejowi Jakubeckiemu) do dnia dzisiejszego Prezydent nie umożliwił złożenia ślubowania i nie zostali oni dopuszczeni do orzekania.

Należy dodać, że przedstawiciele partii rządzącej podejmowali różnego rodzaju akty pozornej legalizacji opisanych wyżej naruszeń Konstytucji.

25 listopada 2015 r. Sejm obecnej kadencji podjął uchwały o stwierdzeniu braku mocy prawnej uchwał o wyborze sędziów podjętych przez Sejm poprzedniej kadencji. Uchwały te nie miały podstaw prawnych ani w ustawie o TK z 2015 r. (która dla stwierdzenia wygaśnięcia mandatu sędziego TK wymagała podjęcia uchwały przez Zgromadzenie Ogólne Sędziów TK, co nigdy nie nastąpiło) ani w świetle Konstytucji (która nie zna procedury wygaszenia wyboru skutecznie dokonanego przez organ konstytucyjny).

12 stycznia 2017 r. Prokurator Generalny, będący jednocześnie Ministrem Sprawiedliwości, złożył w TK wniosek o stwierdzenie niekonstytucyjności uchwały w sprawie wyboru trzech sędziów TK z 2010 r. (zob. sprawa o sygn. U 1/17). TK nie ma kompetencji do kontroli jednorazowej czynności z zakresu funkcji kreacyjnej Sejmu, bowiem kognicją TK są objęte akty podejmowane w ramach realizacji funkcji prawodawczej. Zatem wniosek ten jest bezzasadny, co potwierdza dotychczasowe orzecznictwo TK (zob. postanowienie o sygn. U 8/15). Pomimo tego sprawa ta od ponad roku nie została rozpoznana. Jest natomiast wykorzystywana do wyłączenia sędziów, których dotyczy, od orzekania w niektórych sprawach – na żądanie Prokuratora Generalnego (zob. sprawy o sygn. Kp 4/15, K 24/14 i Kp 1/17).

## **2.2. Wybór Prezesa TK z naruszeniem prawa**

Drugim aktualnym obecnie problemem dotyczącym Trybunału Konstytucyjnego jest wadliwość wyboru Prezesa tego organu. Zgodnie z art. 194 ust. 2 Konstytucji Prezesa Trybunału Konstytucyjnego powołuje Prezydent spośród kandydatów przedstawionych przez Zgromadzenie Ogólne Sędziów Trybunału Konstytucyjnego. Regulacja ta precyzowana jest w przepisach ustawowych.

Procedura wyboru Julii Przyłębskiej na stanowisko Prezesa TK została uregulowana przez ustawę z 13 grudnia 2016 r. – Przepisy wprowadzające ustawę o organizacji i trybie postępowania przed Trybunałem Konstytucyjnym oraz ustawę o statusie sędziów Trybunału Konstytucyjnego. Ustawa ta została ogłoszona w Dzienniku Ustaw w dniu, w którym upływała kadencja poprzedniego Prezesa TK, sędziego Andrzej Rzeplińskiego, tj. 19 grudnia 2016 r., i następnego dnia po jej ogłoszeniu weszła w życie. Wprowadziła ona nieznanie Konstytucji stanowisko „sędziego pełniącego obowiązki Prezesa Trybunału”, na które to stanowisko Prezydent powołał Julię Przyłębską. Przepis ustawowy regulujący tę procedurę narusza art. 194 ust. 2 Konstytucji, który nie przewiduje możliwości powołania p.o. Prezesa TK, a tym bardziej przekazania osobie zajmującej to stanowisko kompetencji organu konstytucyjnego, którym to organem jest Wiceprezes TK. Przepis ten narusza również art. 173 Konstytucji ustanawiający zasadę odrębności i niezależności Trybunału od innych władz. Zgodę na powołanie Julii Przyłębskiej na wspomniane stanowisko musiał bowiem wyrazić Prezes Rady

Ministrów, gdyż wspomniany akt urzędowy Prezydenta był objęty wymogiem uzyskania kontrasygnaty. Tymczasem Konstytucja nie przewiduje jakiegokolwiek wpływu rządu na procedurę wyboru Prezesa TK (zob. art. 144 ust. 3 pkt 21 Konstytucji). Zwołane na dzień 20 grudnia 2016 r. przez Julię Przyłębską Zgromadzenie Ogólne Sędziów TK było nieważne nie tylko dlatego, że nie zostało zwołane przez osobę do tego uprawnioną w świetle Konstytucji, tj. Wiceprezesa TK, ale również dlatego, że wzięły w nim udział osoby nieuprawnione w świetle Konstytucji, które nie są sędziami TK, tj. M. Muszyński, L. Morawski oraz H. Cioch, a także dlatego, że uniemożliwiono udział w tym Zgromadzeniu sędziemu TK Stanisławowi Rymarowi, który w dniu zwołania Zgromadzenia był na urlopie i z tego powodu wnosił o zmianę terminu Zgromadzenia. Skoro w Zgromadzeniu nie uczestniczyli wszyscy „sędziowie TK, którzy złożyli ślubowanie wobec Prezydenta RP”, to należy stwierdzić, że nie było to „posiedzenie Zgromadzenia Ogólnego w sprawie przedstawienia Prezydentowi Rzeczypospolitej Polskiej kandydatów na stanowisko Prezesa Trybunału” w rozumieniu art. 21 ust. 2 ustawy z 13 grudnia 2016 r. Dodatkowo należy zauważyć, że większość członków Zgromadzenia Ogólnego Sędziów TK nie poparła kandydatury J. Przyłębskiej (za tą kandydaturą opowiedziało się 6 osób z 14 osób obecnych na Zgromadzeniu, w tym 3 osoby niebędące sędziami TK). Nie została również podjęta uchwała o przedstawieniu jej kandydatury Prezydentowi. Należy przy tym wyjaśnić, że wspomniana wyżej ustawa, kreująca epizodyczną procedurę wyboru Prezesa TK, wyraźnie wymagała – i to aż w trzech ustępach art. 21 (zob. ust. 7, ust. 9 i ust. 10) – podjęcia przez Zgromadzenie Ogólne Sędziów TK uchwały o przedstawieniu Prezydentowi kandydatów na stanowisko Prezesa TK. Uchwała ta – mimo jej niepodjęcia – została przygotowana i podpisana przez J. Przyłębską, a następnie przedstawiona Prezydentowi jako uchwała Zgromadzenia Ogólnego Sędziów TK. Na podstawie tej uchwały nastąpiło niezgodne z prawem powołanie J. Przyłębskiej na stanowisko Prezesa TK.

Należy dodać, że od czasu wadliwego powołania J. Przyłębskiej na stanowisko Prezesa TK podjęła ona szereg decyzji, które w oczywisty sposób naruszają obowiązujące prawo. Przez kilka miesięcy uniemożliwiała orzekanie Wiceprezesowi TK Stanisławowi Biernatowi odsyłając go na rzekomo zaległy urlop, włączyła do orzekania osoby niebędące sędziami TK, dowolnie i bez uzasadnionych powodów dokonywała zmian w składach orzekających TK i zmian sprawozdawców tak, by sprawy ważne dla obecnej większości parlamentarnej były rozstrzygane przez sędziów powołanych przez tą większość lub przez osoby niebędące sędziami TK. Dodatkowo w tych sprawach jako sprawozdawcę najczęściej wyznaczała M. Muszyńskiego, choć nie jest on sędzią TK.

### **3. Zmiana sposobu powoływania członków Krajowej Rady Sądownictwa**

Drugim organem, który znalazł się w obrębie reformatorskich zainteresowań obecnej większości parlamentarnej stała się Krajowa Rada Sądownictwa. Organ ten zgodnie z art. 186 ust. 1 Konstytucji stoi na straży niezależności sądów i niezawisłości sędziów, a ponadto – stosownie do treści art. 179 Konstytucji – wnioskuję do Prezydenta o powołanie konkretnych osób na stanowiska sędziów wszystkich szczebli i rodzajów sądów. Krajowa Rada Sądownictwa składa się z Pierwszego Prezesa Sądu Najwyższego, Ministra Sprawiedliwości, Prezesa Naczelnego Sądu Administracyjnego i osoby powołanej przez Prezydenta Rzeczypospolitej, piętnastu członków wybranych spośród sędziów Sądu Najwyższego, sądów powszechnych, sądów administracyjnych i sądów wojskowych oraz czterech postów i dwóch senatorów. Takí skład Krajowej

Rady Sądownictwa uregulowany w art. 187 ust. 1 Konstytucji wyraża intencje ustrojodawcy, by w organie tym zasiadali przedstawiciele wszystkich trzech władz, lecz największy wpływ na jego działalność mieli najliczniej reprezentowani przedstawiciele władzy sądowniczej. Jest to rozwiązanie racjonalne, które dotychczas nie było co do istoty krytykowane. Organ, w którym większość członków stanowiliby przedstawiciele władzy ustawodawczej i wykonawczej nie mógłby wszak bronić niezależności sądów i niezawisłości sędziów przed atakami ze strony obu tych władz. Dodać należy, że dotychczas sędziów do składu Krajowej Rady Sądownictwa wybierali ze swojego grona przedstawiciele sędziów różnych szczebli i rodzajów sądów, co gwarantowało względną reprezentatywność w tym organie całego środowiska sędziowskiego.

Uchwalona 8 grudnia 2017 r. ustawa o zmianie ustawy o Krajowej Radzie Sądownictwa oraz niektórych innych ustaw zmieniła sposób wyboru sędziów do Krajowej Rady Sądownictwa. Obecnie to Sejm wybiera spośród sędziów piętnastu członków tego organu na wspólną czteroletnią kadencję, przy czym nie ma on obowiązku zapewnienia reprezentacji w Radzie sędziów poszczególnych rodzajów i szczebli sądów. Rozwiązanie to wydaje się sprzeczne z art. 187 ust. 1 pkt 2 Konstytucji, z którego wynika wymóg wyboru członków Krajowej Rady Sądownictwa „spośród sędziów Sądu Najwyższego, sądów powszechnych, sądów administracyjnych i sądów wojskowych”.

Zgodnie z nowymi przepisami kandydatów na członków Krajowej Rady Sądownictwa może zgłaszać grupa co najmniej 2.000 obywateli albo grupa co najmniej 25 sędziów, z wyłączeniem sędziów w stanie spoczynku. Zgłaszane w ten sposób osoby de facto są kandydatami na kandydatów, bo tych ostatnich mają wskazywać kluby poselskie oraz – jeśli liczba zgłoszonych kandydatów będzie mniejsza niż 15 – Prezydium Sejmu. Następnie o tym, którzy kandydaci znajdą się na liście kandydatów będzie decydować komisja sejmowa, a wyboru członków dokona Sejm większością 3/5 głosów w obecności co najmniej połowy ustawowej liczby posłów. W razie niedokonania wyboru w tym trybie, co przy obecnym układzie sił politycznych w Sejmie jest wysoce prawdopodobne, wywodzący się spośród sędziów członkowie KRS zostaną wybrani bezwzględną większością głosów w obecności co najmniej połowy ustawowej liczby posłów. Opisana procedura zmienia charakter Krajowej Rady Sądownictwa, bowiem przynajmniej władzy ustawodawczej wyłączne prawo wyboru 21 członków (na ogólną liczbę 25 członków), pozbawiając władzę sądowniczą prawa wyboru swoich przedstawicieli do tego organu. Wątpliwości konstytucyjne budzi również przepis dotyczący wspólnej 4-letniej kadencji wybieranych członków Krajowej Rady Sądownictwa. Powoduje on, że osoba wybrana na miejsce innej osoby przed upływem tej kadencji nie będzie zasiadała w Krajowej Radzie Sądownictwa 4 lata, choć 4-letnią kadencję wybieranych członków tego organu gwarantuje art. 187 ust. 3 Konstytucji

Konsekwencją wejścia w życie nowelizacji ustawy o Krajowej Radzie Sądownictwa jest również wygaśnięcie kadencji obecnych jej członków. Mandat członków Krajowej Rady Sądownictwa wybranych spośród sędziów na podstawie przepisów dotychczasowych ma trwać bowiem do dnia poprzedzającego rozpoczęcie kadencji nowych członków Krajowej Rady Sądownictwa, nie dłużej jednak niż przez 90 dni od dnia wejścia w życie ustawy, chyba że ustał wcześniej w związku z upływem kadencji. Rozwiązanie to jest niezgodne ze wspomnianym wcześniej art. 187 ust. 3 Konstytucji, który stanowi o kadencji 4-letniej.

Uruchomiona tuż po wejściu w życie omawianej ustawy procedura wyboru sędziów do Krajowej Rady Sądownictwa już w chwili obecnej unaocznia wadliwość nowych rozwiązań. Wśród zgłoszonych kandydatów dominują sędziowie sądów rejonowych, powołani przez obecnego Ministra Sprawiedliwości na stanowiska



funkcyjne w sądach oraz sędziowie delegowani do Ministerstwa Sprawiedliwości. Są to zatem osoby bezpośrednio lub pośrednio podlegające Ministrowi Sprawiedliwości lub zależne od niego. W gronie kandydatów nie ma sędziów sądów apelacyjnych, Sądu Najwyższego i Naczelnego Sądu Administracyjnego, co rodzi wątpliwości z punktu widzenia art. 187 ust. 1 pkt 2 Konstytucji oraz oznacza, że kandydatów na sędziów będzie przedstawiać Prezydentowi Krajowa Rada Sądownictwa z udziałem sędziów o najmniejszym stażu w zakresie orzekania.

#### **4. Demontaż Sądu Najwyższego**

Ustawą z dnia 8 grudnia 2017 r. o Sądzie Najwyższym dokonano kompleksowego demontażu Sądu Najwyższego. Do najważniejszych zmian należą: zmiana struktury SN, wprowadzenie skargi nadzwyczajnej jako nowego środka zaskarżenia, obniżenie wieku emerytalnego sędziów oraz zwiększenie wpływu władzy wykonawczej na funkcjonowanie SN.

Zmiany strukturalne w Sądzie Najwyższym wiążą się z utworzeniem dwóch nowych izb: Izby Dyscyplinarnej oraz Izby Kontroli Nadzwyczajnej i Spraw Publicznych. Do właściwości Izby Kontroli Nadzwyczajnej i Spraw Publicznych należą tak istotne z perspektywy ustrojowej sprawy, jak stwierdzenie ważności wyborów i referendum oraz inne sprawy z zakresu prawa publicznego, rozpoznawanie protestów wyborczych, a także skargi dotyczące przewlekłości postępowania przed sądami powszechnymi i wojskowymi. To tej izby należało będzie również rozpatrywanie skarg nadzwyczajnych, co czyni ją właściwą do orzekania w sprawach, które były przedmiotem rozpoznania przez Sąd Najwyższy na skutek skargi kasacyjnej lub kasacji. Do właściwości Izby Dyscyplinarnej należą postępowania dyscyplinarne, m.in. sędziów (w tym sędziów SN), prokuratorów, radców prawnych i adwokatów.

Nowe izby, a w szczególności Izba Dyscyplinarna, charakteryzują się dużą autonomią opartą na odrębnym strukturalnym i personalnym ich ukształtowaniu. W wypadku Izby Dyscyplinarnej jej odrębność w ramach struktury Sądu Najwyższego jest szczególnie widoczna przez częściowe wyłączenie zwierzchnictwa Pierwszego Prezesa SN w aspektach organizacyjnych i finansowych. Ponadto ustawa o SN w przepisach przejściowych wprowadza zakaz przenoszenia sędziów z innych izb do Izby Dyscyplinarnej do czasu obsadzenia wszystkich stanowisk sędziów Sądu Najwyższego w tej izbie. Również skład Izby Kontroli Nadzwyczajnej i Spraw Publicznych zostanie wyłoniony na nowych zasadach określonych w ustawie o SN. Biorąc pod uwagę efekt nowelizacji ustawy o KRS, wprowadza to bezprecedensowy wpływ władzy ustawodawczej i wykonawczej na władzę sądowniczą i tym samym doprowadza do zaburzenia równowagi władz oraz ograniczenia niezależności sądów i niezawisłości sędziów. Rodzi to również wątpliwość, czy tak ukształtowany SN będzie w stanie bezstronnie i niezależnie od innych władz realizować kluczową dla funkcjonowania demokracji w Polsce kompetencję, która została mu przyznana przez Konstytucję, a mianowicie kompetencję do orzekania o ważności wyborów parlamentarnych i prezydenckich.

Ustawa o SN wprowadza instytucję korygującą prawomocne orzeczenia sądowe w postaci skargi nadzwyczajnej. Może ona zostać wniesiona od prawomocnego orzeczenia kończącego postępowanie w sprawie, jeżeli jest to konieczne dla zapewnienia praworządności i sprawiedliwości społecznej. Ustawa o SN stanowi, że wniesienie skargi nadzwyczajnej jest dopuszczalne, jeśli orzeczenie narusza zasady lub wolności i prawa człowieka i obywatela określone w Konstytucji; orzeczenie w sposób rażący narusza prawo przez błędną

jego wykładnię lub niewłaściwe zastosowanie; zachodzi oczywista sprzeczność istotnych ustaleń sądu z treścią zebranego w sprawie materiału dowodowego. Tak sformułowane przesłanki, oparte w dużej mierze na klauzulach generalnych budzą wątpliwości co do realizacji wymogu określoności, który w szczególnym wymiarze odnosi się do przepisów dotyczących konstytucyjnie determinowanego statusu jednostki. Co więcej, przesłanki dopuszczalności skargi nadzwyczajnej wskazują na brak wyraźnej linii demarkacyjnej między nią a innymi środkami zaskarżenia (jak skarga konstytucyjna czy skarga kasacyjna). Sprawia to, że zaproponowana koncepcja skargi nadzwyczajnej czyni wątpliwym zrealizowanie jednego z deklarowanych celów reformy, jakim jest zapobieganie przewlekłości postępowań sądowych. Dodatkowym elementem zwiększającym ryzyko destabilizacji porządku prawnego jest udział ławników w rozstrzyganiu spraw, w których złożono skargę nadzwyczajną. Ustawa o SN przewiduje pięcioletni termin na wniesienie skargi, a na podstawie przepisów przejściowych pozwala ponownie rozpatrzyć sprawy zakończone w ciągu ostatnich dwudziestu lat. Przywołane terminy budzą wątpliwości w świetle zasady zaufania do państwa i stanowionego przez nie prawa, pewności obrotu i prowadzą do naruszenia konstytucyjnej wartości, jaką jest stabilność orzeczeń. Skarga, biorąc pod uwagę jej bardzo szeroki zakres i to, że orzekać o niej będą osoby wyłonione na opisanych wyżej zasadach, może stać się podważającym zasadę pewności prawa narzędziem weryfikacji orzeczeń, które z przyczyn politycznych, a nie merytorycznych nie będą odpowiadać władzy.

Jeśli chodzi o obniżenie granicy wieku, którego przekroczenie powoduje przejście sędziego Sądu Najwyższego w stan spoczynku, to samo to rozwiązanie mieści się w ramach swobody regulacyjnej ustawodawcy i trudno stawiać zarzuty naruszenia Konstytucji, z tego względu, że ustawa określa ten wiek na poziomie 65 lat. Istotnym problemem natury konstytucyjnej jest jednak brak przepisów przejściowych pozwalających sędziom na zakończenie czynnej służby na wcześniej obowiązujących zasadach. Ten deficyt jest szczególnie widoczny w odniesieniu do Pierwszego Prezesa Sądu Najwyższego, którego kadencja zgodnie z art. 183 ust. 3 Konstytucji trwa sześć lat. Przerwanie tej kadencji na podstawie przepisów ustawy stanowi naruszenie Konstytucji.

Rozwiązania przyjęte w ustawie o SN stanowią również ingerencję w określony konstytucyjnie status sędziego. Sędziowie Sądu Najwyższego po osiągnięciu wieku emerytalnego mogą bowiem dwukrotnie wnioskować do Prezydenta RP o przedłużenie ich czynnej służby sędziowskiej o trzy lata. Świadomość sędziów co do nieuchronności podejmowania przez Prezydenta tego rodzaju decyzji może podważać gwarancje ich niezawisłości zarówno w rozumieniu wewnętrznym, jak i zewnętrznym. Sytuacja w której sędzia musi ubiegać się u Prezydenta o przedłużenie czynnej służby po osiągnięciu określonego wieku czyni wątpliwą aktualność art. 179 Konstytucji, który przewiduje powoływanie sędziów na czas nieoznaczony. Wreszcie, należy zauważyć, że zgodnie z art. 144 ust. 2 Konstytucji każda decyzja Prezydenta wymaga dla swojej ważności podpisu Prezesa Rady Ministrów, który przez podpisanie aktu ponosi odpowiedzialność przed Sejmem (wyjątkiem są prerogatywy wymienione w art. 144 ust. 3 Konstytucji). Oznacza to, że decyzja o przedłużeniu czynnej służby sędziowskiej, jak niemal każda z nowych kompetencji Prezydenta przyznawanych mu w ustawie o SN, będzie wymagała porozumienia Prezydenta z Prezesem Rady Ministrów.

Nowa ustawa o SN przewiduje zwiększenie wpływu władzy wykonawczej na funkcjonowanie Sądu Najwyższego. Prezydent ma określić, w drodze rozporządzenia, regulamin Sądu Najwyższego, obejmujący tak istotne kwestie, jak liczba stanowisk sędziego Sądu Najwyższego, w tym ich liczba w poszczególnych izbach,

wewnętrzna organizacja Sądu Najwyższego czy zasady wewnętrznego postępowania. Prezydent może również wyznaczyć z grona sędziów Sądu Najwyższego, sędziów sądów powszechnych lub sędziów sądów wojskowych Nadzwyczajnego Rzecznika Dyscyplinarnego do prowadzenia określonej sprawy dotyczącej sędziego Sądu Najwyższego. W sprawie przewinień dyscyplinarnych wyczerpujących znamiona umyślnych przestępstw ściganych z oskarżenia publicznego lub umyślnych przestępstw skarbowych, Prezydent może wyznaczyć Nadzwyczajnego Rzecznika Dyscyplinarnego także spośród prokuratorów Prokuratury Krajowej wskazanych przez Prokuratora Krajowego. Ustawa stanowi, że wyznaczenie Nadzwyczajnego Rzecznika Dyscyplinarnego jest równoznaczne z żądaniem podjęcia czynności wyjaśniających. Powołanie Nadzwyczajnego Rzecznika Dyscyplinarnego będzie przy tym wymagało kontrasygnaty Prezesa Rady Ministrów.

## **5. Zmiany dotyczące sądownictwa powszechnego**

### **5.1. Uwagi wprowadzające**

Zmiany dotyczące sądownictwa powszechnego przebiegały etapowo na przestrzeni lat 2016-2018 r. i polegały na wielokrotnym nowelizowaniu ustawy z dnia 27 lipca 2001 r. Prawo o ustroju sądów powszechnych.

Przyjęty przez ustawodawcę sposób nowelizacji należy ocenić z dwóch powodów negatywnie. Po pierwsze, utrudnia on merytoryczną dyskusję na projektowanymi zmianami, a także racjonalne planowanie ustroju i organizacji sądownictwa powszechnego. Po drugie, szkodzi on również przejrzystości procesu legislacyjnego, w tym w szczególności utrudnia weryfikację rzeczywistych intencji towarzyszących przeprowadzanym zmianom.

Dokonane przez ustawodawcę zmiany w sferze sądownictwa powszechnego rodzą kontrowersje nie tylko co do ich faktycznego uzasadnienia i celowości wprowadzenia, ale przede wszystkim co do zgodności ze standardami konstytucyjnymi i prawnomiędzynarodowymi. Dopiero całościowa ocena modyfikacji wprowadzanych kolejnymi ustawami nowelizującymi przyjętymi w latach 2016-2018 pozwala na zobrazowanie rzeczywistych przeobrażeń polskiego sądownictwa powszechnego i wskazanie na zagrożenia, jakie niosą one dla fundamentów demokratycznego państwa prawnego, którymi są zasada podziału władzy oraz niezależność sądownictwa i niezawisłość sędziowska. Poniżej przedstawione zostaną zatem chronologicznie i ocenione najważniejsze zmiany w zakresie ustroju i organizacji sądownictwa powszechnego.

### **5.2. Zmiany wprowadzone ustawą z dnia 30 listopada 2016 r. o zmianie ustawy - Prawo o ustroju sądów powszechnych oraz niektórych innych ustaw**

Ustawa zawiera dwie istotne zmiany dotyczące sędziów sądów powszechnych. Po pierwsze, wprowadzono nią jawność oświadczeń majątkowych sędziów sądów powszechnych. W motywach do projektu ustawy ograniczono się do jednego zdania uzasadnienia powyższej nowelizacji, a mianowicie wskazano, że „wprowadzenie jawności oświadczeń majątkowych sędziów ma na celu wzmocnienie zaufania do sądów jako instytucji oraz do samych sędziów”. Nie negując potrzeby składania takich oświadczeń i ich weryfikacji należy wskazać, że projektodawca w żaden sposób nie wykazał, iż wprowadzenie jawności oświadczeń w jakikolwiek

sposób przyczyni się do realizacji celu, w jakim są one składane. Nie wykazano również, że istniejące metody weryfikacji oświadczeń majątkowych przez wyspecjalizowane służby państwowe nie pozwalają na efektywną kontrolę majątku sędziów i ujawnienie ewentualnych nieprawidłowości w tej mierze. Ponadto wskazane przez ustawodawcę uzasadnienie, a więc wzmocnienie zaufania do sądów, trudno uznać za przekonujące. To bowiem czy obywatele mają zaufanie do sądów zależy w decydującej mierze od ich pracy oraz obrazu sądownictwa w mass mediach, a nie od tego, czy oświadczenia majątkowe sędziów zostaną ujawnione czy też nie.

Po drugie, w omawianej ustawie wprowadzono ważną z perspektywy postępowania dyscyplinarnego sędziów zmianę dotyczącą wydłużenia okresu przedawnienia deliktów dyscyplinarnych z trzech do pięciu lat, a w wypadku wszczęcia postępowania w powyższym okresie z pięciu do ośmiu lat od momentu popełnienia czynu. Ustawodawca zmiany tej nie uzasadnił w żaden przekonujący sposób, choćby przez odwołanie się do statystyk wskazujących, że w praktyce istnieje problem licznych umorzeń postępowań dyscyplinarnych ze względu na przedawnienie karalności. W motywach projektu ustawy wskazano jedynie enigmatycznie na potrzebę „racjonalizacji” przepisów dotyczących postępowania dyscyplinarnego. Przyjęte rozwiązanie trudno uznać za spójne systemowo, gdyż wprowadza terminy przedawnienia dłuższe niż w przypadku popełnienia przestępstwa ściganego z oskarżenia prywatnego. Tymczasem czyny dyscyplinarne najczęściej w ogóle znamion przestępstwa nie wyczerpują. Nie można też zapominać, że nieproporcjonalnie długi okres przedawnienia deliktów dyscyplinarnych może w praktyce być wykorzystywany do inicjowania spraw dyscyplinarnych sędziów, np. o odległe w czasie czyny, w celu wywierania pośrednio presji na te osoby. Biorąc pod uwagę bardzo daleko idące uprawnienia Ministra Sprawiedliwości do ingerowania bezpośrednio w przebieg postępowania dyscyplinarnego (por. uwagi w pkt VI) powyższe zagrożenie wydaje się realne.

### **5.3. Zmiany wprowadzone ustawą z dnia 23 marca 2017 r. o zmianie ustawy - Prawo o ustroju sądów powszechnych**

Ustawa doprowadziła do daleko idącego podporządkowania dyrektorów sądów, a więc osób kierujących bieżącą działalnością administracyjną sądu, Ministrowi Sprawiedliwości i pozbawiła prezesa sądu oraz samorząd sędziowski jakiegokolwiek wpływu na obsadzanie stanowiska dyrektora sądu. Przyjęto w niej bowiem, że dyrektora sądu powołuje i odwołuje Minister Sprawiedliwości. Ustawodawca odszedł zatem od wcześniejszej zasady, że powołanie to odbywa się na wniosek prezesa danego sądu, po przeprowadzeniu postępowania konkursowego, a także od zasady, że odwołanie możliwe jest w enumeratywnie wymienionych w ustawie przypadkach. Po drugie, w ustawie przyjęto, że Minister Sprawiedliwości, a nie jak było to wcześniej prezes sądu, jest zwierzchnikiem służbowym dyrektora sądu. Powyższe rozwiązania należy ocenić negatywnie. Jest prawdą, że kwestia administrowania sądami jest sferą, w którą może ingerować Minister Sprawiedliwości. Nie jest ona jednak całkowicie odseparowana od sfery, w którą władza wykonawcza ingerować nie może, a mianowicie sfery orzeczniczej. Wprowadzanie różnorodnych pozornie administracyjnych rozwiązań w funkcjonowaniu sądu może być przy braku dobrej woli wykorzystane jako pośredni sposób utrudniania prawidłowego wykonywania wymiaru sprawiedliwości przez sędziów. Zgromadzenie ogólne sędziów danego sądu i prezes sądu powinni mieć zatem zapewniony istotny wpływ na powołanie dyrektora, gdyż w systemie naczyń połączonych jakim jest sądownictwo płynna i merytoryczna współpraca między dyrektorem sądu a

innymi jego organami i sędziami jest niezbędna. Brak jakiegokolwiek udziału osób, które mają na co dzień współpracować z dyrektorem sądu, w proces jego wyboru stanowi zatem nie tylko przejaw jawnej dysproporcji w zakresie wpływu poszczególnych władz na sposób zarządzania sądownictwem (uprzywilejowanie władzy wykonawczej), ale także jest nieracjonalne z perspektywy sprawnego wykonywania przez sąd swoich obowiązków. Nie znajduje również uzasadnienia rezygnacja z procedury konkursowej wyboru dyrektora sądu na rzecz arbitralnego wyboru dokonywanego przez przedstawiciela władzy wykonawczej. Rozwiązanie to nad wybór najlepszego kandydata w toku jawnej i powszechnie dostępnej procedurze konkursowej stawia selekcję opartą na wyborze nietransparentnym, którego Minister Sprawiedliwości w żaden sposób nie musi nawet uzasadniać. Podobnie należy ocenić uprawnienie Ministra Sprawiedliwości do arbitralnego odwoływania dyrektora sądu i brak jakiegokolwiek wpływu prezesa sądu oraz samorządu sędziowskiego na powyższą procedurę.

#### **5.4. Zmiany wprowadzone ustawą z dnia 11 maja 2017 r. o zmianie ustawy o Krajowej Szkole Sądownictwa i Prokuratury, ustawy - Prawo o ustroju sądów powszechnych oraz niektórych innych ustaw**

Ustawa przywraca do polskiego systemu prawnego instytucję asesora sądowego, która z założenia ma stanowić swoisty wstępny etap kariery sędziowskiej. Należy przy tym wyjaśnić, że Trybunał Konstytucyjny w wyroku z 24 października 2007 r., sygn. SK 7/06, stwierdził, że instytucja asesora sądowego zależnego od Ministra Sprawiedliwości narusza konstytucyjne prawo do sądu obywateli, co skutkowało usunięciem tej instytucji z polskiego porządku prawnego. W świetle nowych przepisów Minister Sprawiedliwości mianuje asesora, wyznacza jego miejsce służbowe (siedzibę) oraz odbiera od niego ślubowanie. Wprowadzone rozwiązanie budzi zasadnicze wątpliwości konstytucyjne. Ustawa zasadnicza nie przewiduje bowiem instytucji asesorów sądowych, a w odniesieniu do sędziów zakłada, że są powoływani przez Prezydenta Rzeczypospolitej, na wniosek Krajowej Rady Sądownictwa, na czas nieoznaczony. Co prawda obecnie Krajowa Rada Sądownictwa może zgłosić sprzeciw wobec mianowania danej osoby na stanowisko asesora, jednak biorąc pod uwagę to, że większość jej członków będą już wkrótce stanowić osoby wybrane przez większość parlamentarną, z której wywodzi się także Minister Sprawiedliwości, rozwiązanie to ma czysto fasadowy charakter.

#### **5.5. Zmiany wprowadzone ustawą z dnia 12 lipca 2017 r. o zmianie ustawy – Prawo o ustroju sądów powszechnych oraz niektórych innych ustaw**

1. Omawiana ustawa przewiduje daleko idącą zmianę w sposobie wyboru prezesów sądów i przyznaje szerokie kompetencje w tej materii Ministrowi Sprawiedliwości. Ten właśnie organ uzyskał prawo swobodnego powoływania prezesów sądów powszechnych wszystkich szczebli. W ustawie brakuje określenia kryteriów powyższego wyboru, a także nie jest przewidziana jakakolwiek forma udziału przedstawicieli samorządu sędziowskiego w tych wyborach. Warto podkreślić, że przed wejściem w życie ustawy prezesi sądów byli powoływani przez Ministra Sprawiedliwości po zasięgnięciu opinii zgromadzenia ogólnego sędziów danego szczebla, a w przypadku sądów okręgowych także prezesa sądu apelacyjnego. Jeżeli opinia samorządu

sędziowskiego o kandydacie była negatywna, to jego powołanie było możliwe wyłącznie po uzyskaniu pozytywnej opinii Krajowej Rady Sądownictwa. Negatywna opinia Krajowej Rady Sądownictwa była dla Ministra Sprawiedliwości wiążąca. Natomiast prezesów sądów rejonowych powoływał prezes sądu apelacyjnego po konsultacji z przedstawicielami samorządu sędziowskiego. Podobne były zasady powoływania wiceprezesów sądów powszechnych. Wprowadzone rozwiązania są sprzeczne z zasadą podziału władzy i niezależności sądów, z których Trybunał Konstytucyjny wywodzi zakaz przyznania Ministrowi Sprawiedliwości dominującej pozycji w wyborze osób do piastowania stanowiska prezesa sądu, bowiem nie jest możliwe jednoznaczne odseparowanie pełnionej przez te osoby funkcji orzeczniczej i administracyjnej. Wprowadzone rozwiązanie zagraża niezawisłości sędziowskiej, gdyż prezes sądu uzależniony od przedstawiciela władzy wykonawczej ma daleko idące możliwości wpływania na sprawowanie urzędu przez sędziów (począwszy od kwestii związanych ze stosunkiem pracy sędziego, a skończywszy na możliwości oceny jego pracy mającej znaczenie dla rozwoju zawodowego sędziego – np. stwierdzenia uchybienia w zakresie sprawności postępowania sądowego, wnioskowania o wszczęcie postępowania dyscyplinarnego przez prezesa sądu okręgowego albo apelacyjnego).

2. Omawiana ustawa umożliwia Ministrowi Sprawiedliwości odwołanie prezesa lub wiceprezesa sądu m.in. w przypadku „uporczywego niewywiązywania się z obowiązków służbowych” lub stwierdzenia „szczególnie niskiej efektywności działań w zakresie pełnionego nadzoru administracyjnego lub organizacji pracy w sądzie lub sądach niższych”. Rozwiązanie pozostawiające organowi o ściśle politycznym charakterze, jakim jest Minister Sprawiedliwości, swobodę w zakresie ustalania w praktyce treści tych niedookreślonych zwrotów nie jest zgodne ze standardami rzetelnej legislacji, a jego stosowanie może stać się źródłem ingerencji w niezależność sądów i niezawisłość sędziów. Również na negatywną ocenę zasługuje osłabienie pozycji Krajowej Rady Sądownictwa w procedurze opiniowania zamiaru odwołania prezesów i wiceprezesów sądów z pełnionych funkcji. Wydanie opinii negatywnej nie jest już w każdej sytuacji dla Ministra Sprawiedliwości wiążące, a tylko wtedy, gdy decyzja ta zapada większością 2/3 głosów.

3. Ustawa w przepisie przejściowym przyznaje Ministrowi Sprawiedliwości nieograniczone prawo do odwołania prezesów i wiceprezesów sądów w toku ich kadencji przez okres sześciu miesięcy od dnia wejścia w życie ustawy. Skorzystanie z tego uprawnienia nie wymaga nawet podania uzasadnienia. Tym samym ma charakter całkowicie arbitralny. Ponadto prezesi sądów apelacyjnych i okręgowych, sprawujący funkcje w dniu wejścia w życie ustawy, jak i nowo powołani w trybie przewidzianym w ustawie, są zobowiązani do dokonania — w okresie sześciu miesięcy — przeglądu stanowisk funkcyjnych (przewodniczących wydziałów i ich zastępców kierowników sekcji, wizytatorów) w podległych im sądach i w tym czasie mogą odwołać z tych funkcji każdego sędziego, bez możliwości złożenia wyjaśnień i bez opinii kolegium właściwego sądu. Zezwolenie na arbitralne przerwanie kadencji prezesów i wiceprezesów sądów godzi w niezależność sądownictwa, bowiem trwałość kadencji prezesów i wiceprezesów sądów powszechnych jest jednym z czynników wzmacniających niezależność osób bezpośrednio odpowiedzialnych za funkcjonowanie sądownictwa — zarówno w aspekcie wewnątrzśrodowiskowym, jak i w relacjach z innymi władzami. Kadencyjność tworzy więc ustawowe gwarancje swobody zarządzania sądami, nawet w sytuacji konieczności podejmowania decyzji niepopularnych w środowisku sędziowskim. W relacjach z władzą ustawodawczą i wykonawczą kadencyjność pozwala na „odseparowanie” sądów od świata polityki i wzmocnienie władzy sądowniczej, kontrolującej dwie pozostałe władze. Przyjęte rozwiązanie umożliwia Ministrowi Sprawiedliwości dokonanie doboru kadr sądowniczych

według własnych niejasnych i nieujawnionych kryteriów. Natomiast brak obowiązku przedstawienia jakiegokolwiek uzasadnienia dokonywanych zmian świadczy o braku szacunku dla zasady podziału władzy oraz postrzeganiu władzy sądowniczej jako swoistego przedłużenia władzy Ministra Sprawiedliwości, co przywodzi negatywne skojarzenia z czasami PRL. Jak stwierdził Trybunał Konstytucyjny w wyroku z 18 lutego 2004 r. (K 12/03) kompetencja Ministra Sprawiedliwości do odwołania prezesa sądu nie zawiera ryzyka nadmiernego i arbitralnego wkraczania organu władzy wykonawczej w obszar funkcjonowania sądu tylko wówczas, gdy opiera się na dających się określić, przewidywalnych przestankach. Wprowadzone rozwiązanie w sposób jawny ignoruje to zalecenie.

Efekt mrożący w odniesieniu do środowiska sędziowskiego ustawodawca wzmocnił przez zastosowanie mechanizmu czasowego powiązania okresu swoistego „namysłu” Ministra Sprawiedliwości nad zmianami na stanowiskach prezesów i wiceprezesów sądów z nałożonym na nich obowiązkiem przeglądu stanowisk funkcyjnych (przewodniczących wydziałów i ich zastępców, kierowników sekcji, wizytatorów) w podległych sądach. Ów przegląd wywołał podwójnie negatywny skutek, bowiem z jednej strony rodził pokusę odwoływania z funkcji sędziów tylko w celu zadośćuczynienia oczekiwaniom Ministra Sprawiedliwości, a z drugiej strony osłabił autorytet wymiaru sprawiedliwości, gdyż opinia publiczna takie działanie odbierała jako formę „czystki” w sądownictwie.

4. Kolejnym zagadnieniem, które wymaga oceny, jest zmiana reguł wykonywania wewnętrznego nadzoru administracyjnego nad działalnością administracyjną sądów w zakresie przeprowadzania wizytacji poszczególnych wydziałów sądu i trybu powoływania wizytatorów, jak też uchylenie przepisów o systemie oceny pracy i planowania rozwoju zawodowego sędziego. Przed wejściem w życie ustawy wizytacje poszczególnych wydziałów sądów przeprowadzano co cztery lata, zaś według nowego rozwiązania będą się one odbywać „stosownie do potrzeb”, w szczególności przy uwzględnieniu wyników sprawowanego nadzoru administracyjnego, o czym każdorazowo decydować będzie prezes sądu. Podkreślić trzeba, że w ramach wizytacji wydziału sądu przeprowadzano ocenę pracy sędziego obejmującą między innymi badanie efektywności pracy, kompetencji zawodowych w zakresie metodyki pracy i kultury urzędowania, jak również specjalizacji w rozpoznawaniu poszczególnych rodzajów spraw. W omawianej ustawie odchodzi się od zasady, że raz na cztery lata każdy wydział sądu podlega ocenie, na rzecz arbitralności decyzji o zarządzeniu wizytacji, której kryteria nie zostały określone, poza ogólnikowym stwierdzeniem „stosownie do potrzeb”. Ponadto wprowadza się nowe zasady wyboru sędziów wizytatorów, zawierające wymóg uzyskania opinii Ministra Sprawiedliwości dotyczącej kandydatów.

5. Omawiana ustawa wprowadza model silnego systemu nadzoru Ministra Sprawiedliwości nad sądownictwem powszechnym, którego władza opiera się zarówno na własnych uprawnieniach nadzorczych, jak i mocnym wpływie na osoby pełniące funkcje w sądach, co — w zamyśle projektodawców — ma być czynnikiem oddziałującym na poprawę efektywności sądów. Wprowadzenie silnej władzy Ministra Sprawiedliwości nie zostało jednak poparte rzeczową analizą, więc nie wiadomo na czym oparte są pozytywne prognozy o „przywróceniu sądów obywatelom” i końcu „sędziokracji”. Założenia te ma realizować kadra zarządzająca, dobrana na nowo przez Ministra Sprawiedliwości, który doraźnie będzie miał bezpośredni (prezesi i wiceprezesi sądów) lub pośredni (inni funkcyjni) wpływ na powierzenie funkcji w odniesieniu do prawie 4 tys. stanowisk funkcyjnych w sądownictwie powszechnym. Skala potencjalnych zmian budzi obawy o przyszłość sądownictwa i



poważne wątpliwości co do granic dopuszczalnej ingerencji władzy wykonawczej w ustrój i funkcjonowanie władzy sądowniczej. Wskazane zmiany niweczą także wdrożony w 2012 r. system oceny pracy sędziów zakładający funkcjonowanie stałego i cyklicznego procesu oceny pracy każdego sędziego, w którym między innymi kultura urzędowania, poszanowanie praw stron i doskonalenie zawodowego są istotnymi kryteriami oceny.

6. Poddana analizie ustawa przewiduje, że w przypadku osiągnięcia przez sędziego wieku przejścia w stan spoczynku Minister Sprawiedliwości może wyrazić zgodę na dalsze zajmowanie stanowiska sędziego, mając na względzie racjonalne wykorzystanie kadr sądownictwa powszechnego oraz potrzeby wynikające z obciążenia zadaniami poszczególnych sądów. Powyższy tryb uruchamiany jest z inicjatywy danego sędziego, który oświadczy Ministrowi Sprawiedliwości wolę dalszego zajmowania stanowiska i przedstawi zaświadczenie stwierdzające, że jest zdolny, ze względu na stan zdrowia, do pełnienia obowiązków sędziego. Przed wejściem w życie ustawy o możliwości dalszego orzekania przez sędziego rozstrzygała w sposób wiążący treść zaświadczenia lekarskiego. W aktualnym stanie prawnym niezależnie od stanu zdrowia sędziego, całkowicie arbitralną decyzję podejmuje Minister Sprawiedliwości. Rozwiązanie to zasługuje na jednoznacznie negatywną ocenę, także w świetle wyroku Trybunału Konstytucyjnego z 24 czerwca 1998 r. (K 3/98), który wprost uznał, że niedopuszczalne jest przyznanie uprawnienia do wyrażenia wskazanej powyżej zgody, jak w okresie PRL, organowi o charakterze politycznym.

#### **5.6. Zmiany wprowadzone ustawą z dnia 8 grudnia 2017 r. o Sądzie Najwyższym**

1. Należy zwrócić uwagę na bardzo daleko idące kompetencje Ministra Sprawiedliwości – będącego politykiem, a także osobą piastującą funkcję Prokuratora Generalnego wyposażonego w szeroką władzę wpływania na funkcjonowanie prokuratury, włącznie z możliwością bezpośredniej ingerencji w przebieg każdego postępowania karnego toczącego się w sprawie karnej – dotyczące organizacji i przebiegu postępowania dyscyplinarnego. Przyjęte rozwiązania radykalnie zaburzają właściwe relacje między uczestnikami toczącego się postępowania oraz stwarzają zagrożenie dla niezawisłości i bezstronności (zwłaszcza obiektywnej) organów postępowania dyscyplinarnego.

2. Omawiane regulacje przewidują, że Minister Sprawiedliwości kontroluje dobór sędziów orzekających w sprawach dyscyplinarnych. Minister powierza bowiem obowiązki sędziego sądu dyscyplinarnego przy sądzie apelacyjnym sędziemu sądu powszechnego posiadającemu co najmniej dziesięcioletni staż pracy na stanowisku sędziego. Odbyna się to po zasięgnięciu niewiążącej opinii Krajowej Rady Sądownictwa, która zostanie wybrana przez rządzącą większość parlamentarną. Minister Sprawiedliwości określi także, w drodze rozporządzenia, liczbę sędziów w sądach dyscyplinarnych przy sądach apelacyjnych.

3. Minister Sprawiedliwości ma również bardzo duże kompetencje w zakresie powoływania oskarżycieli w sprawach dyscyplinarnych sędziów sądów powszechnych. Powołuje on bowiem Rzecznika Dyscyplinarnego Sędziów Sądów Powszechnych oraz dwóch Zastępców Rzecznika Dyscyplinarnego Sędziów Sądów Powszechnych. Rzecznik Dyscyplinarny Sędziów Sądów Powszechnych powołuje natomiast zastępców rzecznika dyscyplinarnego działających przy sądach apelacyjnych i przy sądach okręgowych. Wybór dokonywany jest spośród trzech kandydatów przedstawionych przez samorząd sędziowski. Na tym kończy się wpływ samorządu



sędziowskiego na proces wyłaniania oskarżycieli w sprawach dyscyplinarnych. Ponadto Rzecznik Dyscyplinarny Sędziów Sądów Powszechnych oraz jego Zastępcy mogą przejąć każdą sprawę prowadzoną przez innego oskarżyciela i decyzja ta jest dla tego ostatniego wiążąca. Minister Sprawiedliwości może również powołać Rzecznika Dyscyplinarnego Ministra Sprawiedliwości do prowadzenia jakiegokolwiek sprawy dyscyplinarnej dotyczącej sędziego, a powołanie to wyłącza innego rzecznika od podejmowania czynności w tej sprawie. Oznacza to w praktyce, że Minister Sprawiedliwości dysponuje dyskrecyjną władzą wszczynania postępowania dyscyplinarnego w każdej sprawie dyscyplinarnej, może sam w arbitralny sposób wskazać oskarżyciela w takiej sprawie, a ponadto sędziowie będących członkami składu orzekającego w sądzie dyscyplinarnym pierwszej instancji pochodzą także z wyboru Ministra Sprawiedliwości. Warto też zauważyć, że Rzecznikiem Dyscyplinarnym Ministra Sprawiedliwości może być jakikolwiek sędzia sądów powszechnych lub Sądu Najwyższego, a sposób i kryteria jego wyboru są całkowicie arbitralne. Co więcej w sprawie przewinień dyscyplinarnych wyczerpujących znamiona umyślnych przestępstw ściganych z oskarżenia publicznego, Rzecznikiem Dyscyplinarnym Ministra Sprawiedliwości może zostać powołany również prokurator wskazany przez Prokuratora Krajowego. Tym samym prokurator, który jest stroną postępowania karnego toczącego się przed sądem, a także mogący inicjować i wstępować do toczących się przed sądami postępowań cywilnych, zyskuje możliwość oskarżania sędziego w postępowaniu dyscyplinarnym.

4. Daleko idący wpływ Ministra Sprawiedliwości na postępowaniu dyscyplinarne sędziów widoczny jest także w odniesieniu do jego przebiegu. Rzecznik dyscyplinarny nie jest bowiem samodzielny w badaniu prowadzonej przez niego sprawy. Jeżeli uzna on, że nie ma podstaw do ścigania sędziego, to od wydanego rozstrzygnięcia sprzeciw może złożyć Minister Sprawiedliwości, co będzie obligowało rzecznika do kontynuowania postępowania i wykonania wiążących zaleceń Ministra. Będzie on zatem zmuszony do prowadzenia postępowania nawet w sytuacji, w której jest przekonany, że badane zachowanie sędziego nie wyczerpuje znamion deliktu dyscyplinarnego.

5. Obok sposobu organizacji sądownictwa dyscyplinarnego, należy wyraźnie podkreślić rażące i systemowe naruszenia prawa do rzetelnego procesu w toku postępowania dyscyplinarnego.

Po pierwsze, przewiduje się, że sąd dyscyplinarny prowadzi postępowanie pomimo usprawiedliwionej nieobecności zawiadomionego obwinionego lub jego obrońcy, chyba że sprzeciwia się temu dobro prowadzonego postępowania dyscyplinarnego.

Po drugie, w postępowaniu dyscyplinarnym wprowadzono nieznaną postępowaniu karnemu w takim kształcie prekluzję dowodową. Przewiduje się bowiem, że doręczając zarzuty rzecznik dyscyplinarny wzywa obwinionego do przedstawienia na piśmie wyjaśnień i wszystkich wniosków dowodowych, w terminie czternastu dni od dnia doręczenia zarzutów dyscyplinarnych. W razie uchybienia temu obowiązкови rzecznik dyscyplinarny może pozostawić bez rozpoznania wnioski dowodowe zgłoszone przez obwinionego po upływie tego terminu, chyba że obwiniony wykaże, iż dowód nie był mu wcześniej znany. Zbliżone rozwiązanie przewidziane jest także w postępowaniu przed sądem dyscyplinarnym.

Po trzecie, w postępowaniu dyscyplinarnym przewidziana została możliwość wyznaczenia obwinionemu sędziemu obrońcy z urzędu, przy czym czynności związane z wyznaczeniem obrońcy z urzędu oraz podjęciem przez niego obrony nie wstrzymują biegu postępowania. Tym samym w czasie, w jakim obrońca dowie się o wyznaczeniu i podjęcie czynności mające na celu zapoznanie się z aktami sprawy, skontaktowanie z klientem, a

także przygotowanie obrony, postępowanie może toczyć się dalej, a nawet zakończyć się. Nie tylko zatem obwiniony sędzia jest pozbawiany możliwości wzięcia udziału w postępowaniu w sytuacji, gdy z obiektywnych przyczyn nie może tego zrobić, ale gwarancja poszanowania jego praw w postaci wyznaczenia obrońcy z urzędu jest w rzeczywistości iluzoryczna, skoro obrońca nie dostaje nawet możliwości przygotowania się do podjęcia obrony.

6. Nowelizacja znacznie rozszerzyła zakres kary dyscyplinarnej obniżenia wynagrodzenia zasadniczego obwinionego sędziego. W miejsce maksymalnie 20% obniżenia tego wynagrodzenia wprowadzono rozwiązanie przewidujące możliwość ograniczenia do 50% na okres od sześciu miesięcy do dwóch lat. Orzeczenie takiej kary automatycznie pociąga za sobą m.in. pozbawienie możliwości awansowania na wyższe stanowisko sędziowskie przez okres pięciu lat. Oznacza to zatem, że skutki rozstrzygnięcia dyscyplinarnego mogą dla sędziego okazać się bardzo dolegliwe finansowo.

## 6. Podsumowanie

Opisane w raporcie działania większości parlamentarnej, rządu i Prezydenta ukierunkowane na podporządkowanie egzekutywie i legislatywie organów władzy sądowniczej już w chwili obecnej rodzą poważne wątpliwości co do tego, czy zasada odrębności i niezależności sądów i trybunałów nadal jest realizowana w Polsce tak, jak tego wymaga art. 173 Konstytucji. Wprowadzenie do Trybunału Konstytucyjnego osób nieuprawnionych do orzekania oraz kierowanie tą instytucją przez osobę powołaną z naruszeniem prawa na stanowisko Prezesa TK doprowadziły do zaniku scentralizowanej kontroli konstytucyjności prawa w Polsce. Działalność orzecznicza TK jest dziś ograniczona do minimum, a sprawami rozpatrywanymi w pierwszej kolejności nie są sprawy obywateli, lecz te wnoszone przez przedstawicieli rządzącej większości. Niepokój budzi również wdrożona już reforma Sądu Najwyższego, która zmierza do zniszczenia instytucji posiadającej bogatą, ponad 100-letnią tradycję, i utworzenia w jej miejsce sądu podporządkowanego władzy wykonawczej i przez tę władzę kontrolowanego. Obniżenie wieku emerytalnego sędziów Sądu Najwyższego spowoduje przejście w stan spoczynku sędziów najbardziej doświadczonych w zakresie orzekania i obsadzenie Sądu Najwyższego sędziami delegowanymi przez Ministra Sprawiedliwości. Wygaszenie w drodze ustawy konstytucyjnie określonej 6-letniej kadencji Pierwszego Prezesa Sądu Najwyższego oraz 4-letnich kadencji członków Krajowej Rady Sądownictwa wybranych spośród sędziów stanowi niebezpieczny precedens, który może doprowadzić do upowszechnienia się praktyki odwoływania przez parlament organów konstytucyjnych, które parlamentowi nie podlegają i przed nim nie odpowiadają. Obsadzenie Krajowej Rady Sądownictwa 19 osobami wybranymi przez Sejm oznacza całkowite podporządkowanie tego organu izbie niższej parlamentu. Krajowa Rada Sądownictwa, w której zasiadać będą sędziowie negatywnie oceniani przez swoje środowisko zawodowe i wybrani dzięki poparciu konkretnej opcji politycznej, nie będzie w stanie stać na straży niezależności sądów i niezawisłości sędziów, jak tego wymaga art. 186 ust. 1 Konstytucji.

Również zmiany w ustroju i organizacji sądownictwa powszechnego, wprowadzone na przestrzeni lat 2016-2018, jednoznacznie zmierzają do naruszającego zasadę trójpodziału władzy podporządkowania sądów, jako instytucji, oraz sędziów, przedstawicieli władzy wykonawczej, jakim jest Minister Sprawiedliwości. Całościowa ocena wprowadzonych nowelizacji ustawy – Prawo o ustroju sądów powszechnych wskazuje, że Minister Sprawiedliwości uzyskał bardzo daleko idące, a w wielu przypadkach całkowicie dyskrecjonalne,

uprawnienia do ingerowania w obsadę organów sądów powszechnych, a także pośredniego wpływania na pracę sędziów tych sądów i kształtowania ich kariery zawodowej. W pierwszej kolejności Minister Sprawiedliwości uzyskał, niezgodne z ustawą zasadniczą, kompetencje w zakresie mianowania asesorów sądowych. W ten sposób, biorąc pod uwagę także wpływ Ministra Sprawiedliwości na przebieg kształcenia przyszłych asesorów i sędziów w Krajowej Szkole Sądownictwa i Prokuratury, organ ten zyskuje daleko idące uprawnienia w zakresie dopuszczania do sprawowania wymiaru sprawiedliwości. Po drugie, należy zauważyć, że Minister Sprawiedliwości poza przysługującymi mu narzędziami kontroli pracy administracyjnej sądów ma szerokie kompetencje w zakresie kreowania organów sądów powszechnych, w tym zwłaszcza prezesów i wiceprezesów oraz dyrektorów sądów. Tym samym wywiera bardzo silny wpływ na to, kto będzie kierował pracą sądów, a pośrednio także na sytuację zawodową poszczególnych sędziów i ich środowisko pracy. W tym zakresie na podkreślenie zasługuje arbitralność podejmowanych przez Ministra Sprawiedliwości rozstrzygnięć i całkowita niemalże marginalizacja głosu samorządu sędziowskiego. Po trzecie, Minister Sprawiedliwości ma także bardzo duży wpływ na kwestie istotnie wpływające na status sędziego sądu powszechnego. Przejawiają się one chociażby w możliwości podjęcia arbitralnej decyzji w zakresie wyrażenia zgody na dalsze pełnienie funkcji sędziego po osiągnięciu wieku uprawniającego do przejścia w stan spoczynku. Najbardziej istotne znaczenie ma jednak całkowita niemalże kontrola nad kreowaniem organów odpowiedzialnych za prowadzenie postępowań dyscyplinarnych w stosunku do sędziów oraz za oskarżanie w tych postępowaniach, jak również możliwość bezpośredniego wpływu na jakąkolwiek sprawę dyscyplinarną, od żądania wszczęcia postępowania po żądanie jego prowadzenia, nawet w sytuacji, gdy rzecznik dyscyplinarny nie widzi zasadności takiego kroku. Do powyższego obrazu należy dodać naruszające elementarne standardy rzetelności proceduralnej ukształtowanie przebiegu postępowania dyscyplinarnego oraz systemowo nieracjonalnie długi okres przedawnienia deliktów dyscyplinarnych. Całokształt wprowadzonych zmian jasno zatem świadczy o tym, że Minister Sprawiedliwości uzyskał rażąco nieproporcjonalny do uzasadnionych potrzeb wpływ na działalność sądownictwa jako całości. Co jednak równie istotne stworzone mechanizmy wpływu generują realne niebezpieczeństwo zaistnienia nadużyć i prób nieformalnego wywierania nacisków na sędziów albo wywoływania efektu mrozącego osiąganego dzięki samej świadomości wśród sędziów zakresu potencjalnej władzy jaka przysługuje Ministrowi Sprawiedliwości, chociażby w ramach sądownictwa dyscyplinarnego, które w obecnym stanie prawnym może być z łatwością wykorzystywane jako mechanizm represji w stosunku do sędziów niespełniających oczekiwań przedstawicieli władzy politycznej. Nieproporcjonalny wpływ władzy wykonawczej na sądownictwo ma charakter systemowy, gdyż widoczny jest na każdym etapie przebiegu kariery sędziowskiej (od mianowania na asesora, przez pracę na stanowisku sędziego, ewentualne pełnienie funkcji organu sądu powszechnego, aż po możliwość orzekania pomimo osiągnięcia wieku przejścia w stan spoczynku). Tego całościowego obrazu nie da się pogodzić z fundamentami demokratycznego państwa prawnego w postaci zasad trójpodziału władzy i separacji władzy sądowniczej, a także z zasadami niezależności sądów i niezawisłości sędziowskiej.

**Zespół Ekspertów Prawnych przy Fundacji im. Stefana Batorego**

**dr Ryszard Balicki** — adiunkt w Katedrze Prawa Konstytucyjnego Wydziału Prawa, Administracji i Ekonomii Uniwersytetu Wrocławskiego

**Łukasz Bojarski** — prezes zarządu i współzałożyciel Instytutu Prawa i Społeczeństwa INPRIS

**Jacek Czaja** — prezes zarządu Towarzystwa Prawniczego

**dr hab. Monika Florczak-Wątor**, adiunkt w Katedrze Prawa Konstytucyjnego Uniwersytetu Jagiellońskiego

**dr Wojciech Jasiński** — adiunkt w Katedrze Postępowania Karnego Wydziału Prawa, Administracji i Ekonomii Uniwersytetu Wrocławskiego, członek Biura Studiów i Analiz Sądu Najwyższego

**dr Piotr Kładoczny** — docent na Wydziale Prawa i Administracji Uniwersytetu Warszawskiego. Członek Zarządu Helsińskiej Fundacji Praw Człowieka

**dr hab. Marcin Matczak** — profesor w Katedrze Filozofii Prawa i Nauki o Państwie Uniwersytetu Warszawskiego, partner w Kancelarii Domański, Zakrzewski, Palinka sp.k.

**dr hab. Tomasz Pietrzykowski** — profesor w Katedrze Teorii i Filozofii Prawa Wydziału Prawa i Administracji Uniwersytetu Śląskiego w Katowicach

**dr Anna Śledzińska-Simon** — Wydział Prawa, Administracji i Ekonomii, Katedra Prawa Konstytucyjnego, Uniwersytet Wrocławski

**dr Tomasz Zalasinski** — członek zarządu Stowarzyszenia im. Prof. Zbigniewa Hołdy, Kancelaria Domański Zakrzewski Palinka sp.k.

**prof. zw. dr hab. Fryderyk Zoll** — profesor Uniwersytetu Jagiellońskiego i Uniwersytetu w Osnabrück

**Katarzyna Łakomiec** — sekretarz Zespołu Ekspertów Prawnych

**Zespół Ekspertów Prawnych** działający od 2016 roku przy Fundacji im. Stefana Batorego zajmuje się oceną przygotowywanych przez rząd i parlament zmian prawnych dotyczących ustroju państwa oraz miejsca instytucji publicznych i obywatelskich w systemie prawa. Członkowie Zespołu prowadzą monitoring projektów aktów prawnych, analizując je przede wszystkim pod kątem zgodności wprowadzanych rozwiązań z Konstytucją RP, normami międzynarodowymi i demokratycznymi standardami państwa prawa. Oceniają też stopień ingerencji przepisów w prawa człowieka i obywatela oraz kierunek zmian ustrojowych, jaki wytycza stanowione prawo.

**From:** Dragan, Katarzyna E <DraganKE@state.gov>  
**Sent:** Tuesday, May 9, 2017 3:45 AM  
**To:** Warsaw POL\_ECON FSNs (R) <WarsawPOL\_ECONFSNs-R@state.gov>;  
Warsaw POL\_ECON Americans (R) <WarsawPOL\_ECONAmericans-R@state.gov>  
**Subject:** Human Rights News

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**The office of LGBT organization vandalized**

Over the weekend, unknown perpetrators broke windows in the office of Campaign against Homophobia, the largest NGO which promotes the rights of LGBT persons in Poland. Police are looking for perpetrators. The office of KPH was vandalized three times during 2016 – police discontinued these investigations because they failed to find the offenders.

<http://warszawa.wyborcza.pl/warszawa/7,54420,21780030,atak-na-siedzibe-kampanii-przeciw-homofobii-znow-wybite-szyby.html>

**The Norwegian government on distribution of EEA funds**

The Norwegian authorities do not agree with the Polish proposal on the new method of distribution of EEA funds. When talking to the Norwegian News Agency NTB, Norwegian PM Erna Solberg warned “intolerant forces”, who do not understand the need for the existence independent civil society. “We will not allow the Polish and Hungarian governments to control these funds. We must ensure that independent organizations will be responsible for funds distribution”, said Norwegian PM. Last Thursday, she notified Jean-Claude Juncker, the president of the European Commission, about her government position on the issue.

<http://wiadomosci.onet.pl/swiat/norwegia-o-sporze-z-polska-w-sprawie-funduszy-norweskich/5lfdy2g>

*Katarzyna Dragan  
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B6

**Official  
UNCLASSIFIED**

**From:** forumIdei Fundacji Batorego <debaty@batory.org.pl>  
**Sent:** Thursday, March 21, 2019 6:11 AM  
**To:** Swiderska, Monika <SwiderskMX@state.gov>  
**Subject:** Jak tłumaczyć Unię w Polsce? Poradnik "Unia. Czy ją znamy?"

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Problemy z wyświetlaniem? Zobacz ten e-mail w przeglądarce.

 Fundacji Batorego. Wspieraj z nami demokrację w Polsce!

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## Jak tłumaczyć Unię w Polsce? Poradnik „Unia. Czy ją znamy?”

Poradnik "*Unia. Czy ją znamy?*" pod redakcją Jana Jakuba Chromca i Katarzyny Pełczyńskiej-Nałęcz przedstawia 16 kluczowych tez o Unii Europejskiej obecnych w polskiej debacie publicznej.

Publikacja adresowana jest do wszystkich osób chcących skutecznie tłumaczyć Unię w Polsce. W kontekście tegorocznych wyborów do Parlamentu Europejskiego może ona zainteresować:

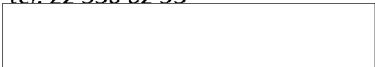
- Sztaby wyborcze i kandydatów
- Dziennikarzy i komentatorów
- Organizacje społeczne
- Obywateli zaangażowanych w sprawy europejskie

Pokazujemy Unię przystępnie i barwnie, poprzez jej działania, na konkretnych przykładach. Bez biurokratycznego żargonu, nudnych opisów instytucji i wyliczania paragrafów.

Zapraszamy do lektury!

## Publikacja „Unia. Czy ją znamy?”

**Katarzyna Pełczyńska-Nałęcz**  
Dyrektorka forumIdei Fundacji im. Stefana Batorego  
tel. 22 536 02 53



B6

**Jan Jakub Chromiec**

*Ekspert forumIdei Fundacji im. Stefana Batorego*

tel. 22 536 02 69



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Gorąco zachęcamy do wsparcia naszej działalności darowizną: [batory.org.pl/wspieraj](http://batory.org.pl/wspieraj)

.....

Administratorem Pani/Pana danych osobowych w postaci: imię, nazwisko, adres kontaktowy jest Fundacja im. Stefana Batorego, ul. Sapieżyńska 10a, 00-215 Warszawa. Pani/Pana dane osobowe są przetwarzane na podstawie wyrażonej przez Pana/Panią zgody w celu informowania Pani/Pana o działalności Fundacji i przesyłania zaproszeń na organizowane przez Fundację spotkania.

Pani/Pana dane osobowe będą przechowywane do momentu cofnięcia zgody na ich przetwarzanie lub zgłoszenia sprzeciwu wobec ich przetwarzania. Pani/Pana dane osobowe nie będą udostępniane innym odbiorcom.

Ma Pani/Pan prawo żądać dostępu do swoich danych osobowych, ich sprostowania, usunięcia, ograniczenia przetwarzania oraz do przenoszenia danych. W każdej chwili może Pani/Pan wycofać zgodę na przetwarzanie swoich danych osobowych. Wycofanie zgody nie będzie rzutowało na zgodność z prawem przetwarzania Pani/Pana danych w oparciu o zgodę przed jej cofnięciem.

Ma Pani/Pan prawo do wniesienia sprzeciwu w związku z przetwarzaniem swoich danych na potrzeby wysyłania informacji o działalności Fundacji. Przysługuje Pani/Panu skarga do właściwego organu nadzorczego.

Jeśli nie chce Pani/Pan otrzymywać od nas żadnych informacji, zaproszeń i materiałów, prosimy kliknąć link **Wypisz mnie** ze wszystkich list wysyłkowych.

Więcej o sposobie przetwarzania danych osobowych przez Fundację Batorego w polityce prywatności.

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[www.batory.org.pl](http://www.batory.org.pl)

**From:** forumIdei Fundacji Batorego <forumidei\_info@batory.org.pl>  
**Sent:** Tuesday, July 24, 2018 3:33 AM  
**To:** Swiderska, Monika <SwiderskMX@state.gov>  
**Subject:** Komentarz "Przemyslec sojusze"

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Problemy z wyświetlaniem? Zobacz ten e-mail w przeglądarce.

 Fundacji Batorego. Wspieraj z nami demokrację w Polsce!

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## "Przemysleć sojusze" - komentarz Katarzyny Pełczyńskiej-Nałęcz i Piotra Burasa

Zachęcamy do lektury najnowszej analizy Katarzyny Pełczyńskiej-Nałęcz, dyrektorki forumIdei Fundacji Batorego, oraz Piotra Burasa, dyrektora Warszawskiego Biura Europejskiej Rady Stosunków Międzynarodowych (ECFR), na temat konsekwencji lipcowego szczytu NATO i spotkania prezydentów USA i Rosji w Helsinkach dla polskiej polityki zagranicznej.

Jak piszą autorzy, ostatnie wydarzenia są symbolem głębokich zmian geopolitycznych. W ich świetle polska polityka zagraniczna - determinowana wyobrażeniem naszego kraju jako "frontowego" i stale zagrożonego ze wschodu - staje się anachroniczna. Ryzyka związane z Rosją pozostają aktualne. Jednak największe zagrożenia i niepewności dla Polski związane są dziś ze zmianami zachodzącymi w świecie zachodnim, zwłaszcza w Unii Europejskiej, która ewoluować będzie w kierunku „Unii chętnych”, opartej na twardych negocjacjach i transakcjach zamiennych.

### Komentarz "Przemysleć sojusze"

Krzysztof Mrozek  
forumIdei  
Fundacja im. Stefana Batorego  
e-mail:

B6

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Gorąco zachęcamy do wsparcia naszej działalności darowizną: [batory.org.pl/wspieraj](http://batory.org.pl/wspieraj)

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Pani/Pana dane osobowe są przetwarzane w celu informowania Pani/Pana o działalności Fundacji i przesyłania zaproszeń



na organizowane przez Fundację spotkania

Pani/Pana dane osobowe są przez nas przetwarzane do celów wynikających z prawnie uzasadnionego interesu Fundacji jakim jest informowanie opinii publicznej o działaniach podejmowanych przez Fundację w ramach realizacji jej celów statutowych. Pani/Pana dane osobowe zostały przez nas zgromadzone w ramach wcześniejszych kontaktów bezpośrednich lub ze źródeł powszechnie dostępnych tj. stron internetowych instytucji, firm, mediów. Pani/Pana dane osobowe nie będą udostępniane innym odbiorcom.

Ma Pani/Pan prawo żądać dostępu do swoich danych osobowych, ich sprostowania, usunięcia, ograniczenia przetwarzania oraz do przenoszenia danych. Ma Pani/Pan prawo wniesienia sprzeciwu w związku z przetwarzaniem w/w danych na potrzeby wysyłania informacji o działalności Fundacji. Przysługuje Pani/Panu skarga do właściwego organu nadzorczego.

Jeśli nie chce Pani/Pan otrzymywać od nas żadnych informacji, zaproszeń i materiałów, prosimy kliknąć link **Wypisz mnie** ze wszystkich list wysyłkowych.

Więcej o sposobie przetwarzania danych osobowych przez Fundację Batorego w polityce prywatności.



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[www.batory.org.pl](http://www.batory.org.pl)

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FULL

|   | A                          | B              |
|---|----------------------------|----------------|
| 1 |                            |                |
| 2 |                            |                |
| 3 | Row Labels                 | Sum of DLLR_AM |
| 4 | Kampania Przeciw Homofobii | \$15,000.00    |
| 5 | Grand Total                | 15000          |

|   | A         | B            | C                          | D  | E    | F           |
|---|-----------|--------------|----------------------------|----|------|-------------|
| 1 | VEND_CD   | VEND_ADDR_CD | VEND_NM                    | FI | FISC | DOC_NUM     |
| 2 | 264KPHOMO | 26401        | Kampania Przeciw Homofobii | 02 | 2016 | 2646PSU0037 |
| 3 | 264KPHOMO | 26401        | Kampania Przeciw Homofobii | 02 | 2016 | 2646PSU0037 |
| 4 | 264KPHOMO | 26401        | Kampania Przeciw Homofobii | 02 | 2016 | 2646PSU0037 |
| 5 | 264KPHOMO | 26401        | Kampania Przeciw Homofobii | 08 | 2016 | 2646PSU0818 |
| 6 | 264KPHOMO | 26401        | Kampania Przeciw Homofobii | 08 | 2016 | 2646PSU0818 |
| 7 | 264KPHOMO | 26401        | Kampania Przeciw Homofobii | 08 | 2016 | 2646PSU0818 |

|   | G  | H    | I     | J     | K       | L       | M           | N        |
|---|----|------|-------|-------|---------|---------|-------------|----------|
| 1 | CA | DTYP | ACTG_ | ITMZ_ | DLLR_AM | POST_CD | REF_DOC_NUM | DOC_ACTN |
| 2 | IP | DI   | 1     |       | 4000    | 264     |             | O        |
| 3 | IP | DI   | 1     |       | 4000    | 264     |             | R        |
| 4 | IP | DI   | 1     |       | 4000    | 264     |             | R        |
| 5 | IP | DI   | 1     |       | 1000    | 264     |             | O        |
| 6 | IP | DI   | 1     |       | 1000    | 264     |             | R        |
| 7 | IP | DI   | 1     |       | 1000    | 264     |             | R        |

|   | O         | P  | Q             | R        | S    | T    | U   | V    |
|---|-----------|----|---------------|----------|------|------|-----|------|
| 1 | SYS_DT_TM | TT | FUND          | FUND_CAT | BBFY | EBFY | DIV | PROG |
| 2 | 2-Nov-15  | 01 | 19__X02090000 |          | 2015 |      | ECA | 2371 |
| 3 | 4-Nov-15  | 01 | 19__X02090000 |          | 2015 |      | ECA | 2371 |
| 4 | 5-Nov-15  | 01 | 19__X02090000 |          | 2015 |      | ECA | 2371 |
| 5 | 20-May-16 | 01 | 19__X02090000 |          | 2015 |      | ECA | 2371 |
| 6 | 20-May-16 | 01 | 19__X02090000 |          | 2015 |      | ECA | 2371 |
| 7 | 23-May-16 | 01 | 19__X02090000 |          | 2015 |      | ECA | 2371 |

|   | W    | X        | Y    | Z    | AA        | AB   |
|---|------|----------|------|------|-----------|------|
| 1 | ORGN | ORGN_TYP | PROJ | BDOB | BDOB_CLAS | ACTG |
| 2 | 1072 | SE       |      | 4121 | 41        | NE01 |
| 3 | 1072 | SE       |      | 4121 | 41        | NE01 |
| 4 | 1072 | SE       |      | 4121 | 41        | NE01 |
| 5 | 1072 | SE       |      | 4121 | 41        | NE01 |
| 6 | 1072 | SE       |      | 4121 | 41        | NE01 |
| 7 | 1072 | SE       |      | 4121 | 41        | NE01 |

|   | AC                                                 |
|---|----------------------------------------------------|
| 1 | TITL                                               |
| 2 | Grant SPL900-15-GR067, Kampania Przeciw Homofobii  |
| 3 | Grant SPL900-15-GR067, Kampania Przeciw Homofobii  |
| 4 | Grant SPL900-15-GR067, Kampania Przeciw Homofobii  |
| 5 | F, SPL90015GR067, 9/28/15-9/30/16, KAMPANIA PRZECI |
| 6 | F, SPL90015GR067, 9/28/15-9/30/16, KAMPANIA PRZECI |
| 7 | F, SPL90015GR067, 9/28/15-9/30/16, KAMPANIA PRZECI |

| AD |                                                                                                         |
|----|---------------------------------------------------------------------------------------------------------|
| 1  | LINE_DSCR                                                                                               |
| 2  | Grant SPL900-15-GR067, Kampania Przeciw Homofobii                                                       |
| 3  | Grant SPL900-15-GR067, Kampania Przeciw Homofobii                                                       |
| 4  | Grant SPL900-15-GR067, Kampania Przeciw Homofobii                                                       |
| 5  | F, SPL90015GR067, 9/28/15-9/30/16, KAMPANIA PRZECIW HOMOFOBII, STRONG AND PROUD-HATE CRIME STORYTELLING |
| 6  | F, SPL90015GR067, 9/28/15-9/30/16, KAMPANIA PRZECIW HOMOFOBII, STRONG AND PROUD-HATE CRIME STORYTELLING |
| 7  | F, SPL90015GR067, 9/28/15-9/30/16, KAMPANIA PRZECIW HOMOFOBII, STRONG AND PROUD-HATE CRIME STORYTELLING |



|   | AE        |
|---|-----------|
| 1 | DOC_STUS  |
| 2 | PROCESSED |
| 3 | PROCESSED |
| 4 | PROCESSED |
| 5 | PROCESSED |
| 6 | PROCESSED |
| 7 | PROCESSED |

|    | A                                               |
|----|-------------------------------------------------|
| 1  | fundacja batorego                               |
| 2  | federacja na rzecz kobiet i planowania rodziny  |
| 3  | federa                                          |
| 4  | kampania przeciw homofobii                      |
| 5  | polskie towarzystwo prawa Antydyskryminacyjnego |
| 6  | aleksander smolar                               |
| 7  | Fundacja Batorego                               |
| 8  | Federacja na rzecz Kobiet i Planowania Rodizny  |
| 9  | Federa                                          |
| 10 | Kampania przeciw Homofobii                      |
| 11 | Polskie Towarzystwo Prawa Antydyskryminacyjnego |
| 12 | Aleksander Smolar                               |
| 13 | FUNDACJA BATOREGO                               |
| 14 | FEDERACJA NA RZECZ KOBIET I PLANOWANIA RODIZNY  |
| 15 | FEDERA                                          |
| 16 | KAMPANIA PRZECIW HOMOFOBII                      |
| 17 | POLSKIE TOWARZYSTWO PRAWA ANTYDYSKRYMINACYJNEGO |
| 18 | ALEKSANDER SMOLAR                               |

|    | B                                                                  | C |
|----|--------------------------------------------------------------------|---|
| 1  | OR t.vend_nm = 'fundacja batorego',                                |   |
| 2  | OR t.vend_nm = 'federacja na rzecz kobiet i planowania rodziny',   |   |
| 3  | OR t.vend_nm = 'federa',                                           |   |
| 4  | OR t.vend_nm = 'kampania przeciw homofobii',                       |   |
| 5  | OR t.vend_nm = 'polskie towarzystwo prawa Antydyskryminacyjnego',  |   |
| 6  | OR t.vend_nm = 'aleksander smolar',                                |   |
| 7  | OR t.vend_nm = 'Fundacja Batorego',                                |   |
| 8  | OR t.vend_nm = 'Federacja na rzecz Kobiet i Planowania Rodzinny',  |   |
| 9  | OR t.vend_nm = 'Federa',                                           |   |
| 10 | OR t.vend_nm = 'Kampania przeciw Homofobii',                       |   |
| 11 | OR t.vend_nm = 'Polskie Towarzystwo Prawa Antydyskryminacyjnego',  |   |
| 12 | OR t.vend_nm = 'Aleksander Smolar',                                |   |
| 13 | OR t.vend_nm = 'FUNDACJA BATOREGO',                                |   |
| 14 | OR t.vend_nm = 'FEDERACJA NA RZECZ KOBIET I PLANOWANIA RODIZNY',   |   |
| 15 | OR t.vend_nm = 'FEDERA',                                           |   |
| 16 | OR t.vend_nm = 'KAMPANIA PRZECIW HOMOFOBII',                       |   |
| 17 | OR t.vend_nm = 'POLSKIE TOWARZYSTWO PRAWA ANTYPDYSKRIMINACYJNEGO', |   |
| 18 | OR t.vend_nm = 'ALEKSANDER SMOLAR',                                |   |

|    | D                                                                  |
|----|--------------------------------------------------------------------|
| 1  | OR t.vend_nm = 'fundacja batorego',                                |
| 2  | OR t.vend_nm = 'federacja na rzecz kobiet i planowania rodziny',   |
| 3  | OR t.vend_nm = 'federa',                                           |
| 4  | OR t.vend_nm = 'kampania przeciw homofobii',                       |
| 5  | OR t.vend_nm = 'polskie towarzystwo prawa Antydyskryminacyjnego',  |
| 6  | OR t.vend_nm = 'aleksander smolar',                                |
| 7  | OR t.vend_nm = 'Fundacja Batorego',                                |
| 8  | OR t.vend_nm = 'Federacja na rzecz Kobiet i Planowania Rodzin',    |
| 9  | OR t.vend_nm = 'Federa',                                           |
| 10 | OR t.vend_nm = 'Kampania przeciw Homofobii',                       |
| 11 | OR t.vend_nm = 'Polskie Towarzystwo Prawa Antydyskryminacyjnego',  |
| 12 | OR t.vend_nm = 'Aleksander Smolar',                                |
| 13 | OR t.vend_nm = 'FUNDACJA BATOREGO',                                |
| 14 | OR t.vend_nm = 'FEDERACJA NA RZECZ KOBIET I PLANOWANIA RODZINY',   |
| 15 | OR t.vend_nm = 'FEDERA',                                           |
| 16 | OR t.vend_nm = 'KAMPANIA PRZECIW HOMOFOBII',                       |
| 17 | OR t.vend_nm = 'POLSKIE TOWARZYSTWO PRAWA ANTYPDYSKRIMINACYJNEGO', |
| 18 | OR t.vend_nm = 'ALEKSANDER SMOLAR',                                |

|    |                                                                                                                                                     |
|----|-----------------------------------------------------------------------------------------------------------------------------------------------------|
|    | E                                                                                                                                                   |
| 1  | OR t.vend_nm = 'fundacja batorego',OR t.vend_nm = 'federacja na rzecz kobiet i planowania rodziny',OR t.vend_nm = 'federa',OR t.vend_nm = 'kamp     |
| 2  | 'fundacja batorego','federacja na rzecz kobiet i planowania rodziny','federa','kampania przeciw homofobii','polskie towarzystwo prawa Antydyskrymin |
| 3  |                                                                                                                                                     |
| 4  |                                                                                                                                                     |
| 5  |                                                                                                                                                     |
| 6  |                                                                                                                                                     |
| 7  |                                                                                                                                                     |
| 8  |                                                                                                                                                     |
| 9  |                                                                                                                                                     |
| 10 |                                                                                                                                                     |
| 11 |                                                                                                                                                     |
| 12 |                                                                                                                                                     |
| 13 |                                                                                                                                                     |
| 14 |                                                                                                                                                     |
| 15 |                                                                                                                                                     |
| 16 |                                                                                                                                                     |
| 17 |                                                                                                                                                     |
| 18 |                                                                                                                                                     |

|    | F                                                                                                                                                   | G | H | I | J | K | L | M | N | O | P | Q | R |
|----|-----------------------------------------------------------------------------------------------------------------------------------------------------|---|---|---|---|---|---|---|---|---|---|---|---|
| 1  | nia przeciw homofobii',OR t.vend_nm = 'polskie towarzystwo prawa Antydyskryminacyjnego',OR t.vend_nm = 'aleksander smolar',OR t.vend_nm = 'F        |   |   |   |   |   |   |   |   |   |   |   |   |
| 2  | acyjnego','aleksander smolar','Fundacja Batorego','Federacja na rzecz Kobiet i Planowania Rodzin','Federa','Kampania przeciw Homofobii','Polskie To |   |   |   |   |   |   |   |   |   |   |   |   |
| 3  |                                                                                                                                                     |   |   |   |   |   |   |   |   |   |   |   |   |
| 4  |                                                                                                                                                     |   |   |   |   |   |   |   |   |   |   |   |   |
| 5  |                                                                                                                                                     |   |   |   |   |   |   |   |   |   |   |   |   |
| 6  |                                                                                                                                                     |   |   |   |   |   |   |   |   |   |   |   |   |
| 7  |                                                                                                                                                     |   |   |   |   |   |   |   |   |   |   |   |   |
| 8  |                                                                                                                                                     |   |   |   |   |   |   |   |   |   |   |   |   |
| 9  |                                                                                                                                                     |   |   |   |   |   |   |   |   |   |   |   |   |
| 10 |                                                                                                                                                     |   |   |   |   |   |   |   |   |   |   |   |   |
| 11 |                                                                                                                                                     |   |   |   |   |   |   |   |   |   |   |   |   |
| 12 |                                                                                                                                                     |   |   |   |   |   |   |   |   |   |   |   |   |
| 13 |                                                                                                                                                     |   |   |   |   |   |   |   |   |   |   |   |   |
| 14 |                                                                                                                                                     |   |   |   |   |   |   |   |   |   |   |   |   |
| 15 |                                                                                                                                                     |   |   |   |   |   |   |   |   |   |   |   |   |
| 16 |                                                                                                                                                     |   |   |   |   |   |   |   |   |   |   |   |   |
| 17 |                                                                                                                                                     |   |   |   |   |   |   |   |   |   |   |   |   |
| 18 |                                                                                                                                                     |   |   |   |   |   |   |   |   |   |   |   |   |

|    | S                                                                                                                                               | T | U | V | W | X | Y | Z | AA | AB | AC | AD | AE |
|----|-------------------------------------------------------------------------------------------------------------------------------------------------|---|---|---|---|---|---|---|----|----|----|----|----|
| 1  | undacja Batorego',OR t.vend_nm = 'Federacja na rzecz Kobiet i Planowania Rodzinny',OR t.vend_nm = 'Federa',OR t.vend_nm = 'Kampania przeciw Hor |   |   |   |   |   |   |   |    |    |    |    |    |
| 2  | warzystwo Prawa Antydyskryminacyjnego',Aleksander Smolar','FUNDACJA BATOREGO','FEDERACJA NA RZECZ KOBIET I PLANOWANIA RODIZNY','FED             |   |   |   |   |   |   |   |    |    |    |    |    |
| 3  |                                                                                                                                                 |   |   |   |   |   |   |   |    |    |    |    |    |
| 4  |                                                                                                                                                 |   |   |   |   |   |   |   |    |    |    |    |    |
| 5  |                                                                                                                                                 |   |   |   |   |   |   |   |    |    |    |    |    |
| 6  |                                                                                                                                                 |   |   |   |   |   |   |   |    |    |    |    |    |
| 7  |                                                                                                                                                 |   |   |   |   |   |   |   |    |    |    |    |    |
| 8  |                                                                                                                                                 |   |   |   |   |   |   |   |    |    |    |    |    |
| 9  |                                                                                                                                                 |   |   |   |   |   |   |   |    |    |    |    |    |
| 10 |                                                                                                                                                 |   |   |   |   |   |   |   |    |    |    |    |    |
| 11 |                                                                                                                                                 |   |   |   |   |   |   |   |    |    |    |    |    |
| 12 |                                                                                                                                                 |   |   |   |   |   |   |   |    |    |    |    |    |
| 13 |                                                                                                                                                 |   |   |   |   |   |   |   |    |    |    |    |    |
| 14 |                                                                                                                                                 |   |   |   |   |   |   |   |    |    |    |    |    |
| 15 |                                                                                                                                                 |   |   |   |   |   |   |   |    |    |    |    |    |
| 16 |                                                                                                                                                 |   |   |   |   |   |   |   |    |    |    |    |    |
| 17 |                                                                                                                                                 |   |   |   |   |   |   |   |    |    |    |    |    |
| 18 |                                                                                                                                                 |   |   |   |   |   |   |   |    |    |    |    |    |

|    | AF                                                                                                                                           | AG | AH | AI | AJ | AK | AL | AM | AN | AO | AP | AQ | AR |
|----|----------------------------------------------------------------------------------------------------------------------------------------------|----|----|----|----|----|----|----|----|----|----|----|----|
| 1  | hobofobii',OR t.vend_nm = 'Polskie Towarzystwo Prawa Antydyskryminacyjnego',OR t.vend_nm = 'Aleksander Smolar',OR t.vend_nm = 'FUNDACJA BATO |    |    |    |    |    |    |    |    |    |    |    |    |
| 2  | ERA','KAMPANIA PRZECIW HOMOFOBII','POLSKIE TOWARZYSTWO PRAWA ANTYDISKRYMINACYJNEGO','ALEKSANDER SMOLAR',                                     |    |    |    |    |    |    |    |    |    |    |    |    |
| 3  |                                                                                                                                              |    |    |    |    |    |    |    |    |    |    |    |    |
| 4  |                                                                                                                                              |    |    |    |    |    |    |    |    |    |    |    |    |
| 5  |                                                                                                                                              |    |    |    |    |    |    |    |    |    |    |    |    |
| 6  |                                                                                                                                              |    |    |    |    |    |    |    |    |    |    |    |    |
| 7  |                                                                                                                                              |    |    |    |    |    |    |    |    |    |    |    |    |
| 8  |                                                                                                                                              |    |    |    |    |    |    |    |    |    |    |    |    |
| 9  |                                                                                                                                              |    |    |    |    |    |    |    |    |    |    |    |    |
| 10 |                                                                                                                                              |    |    |    |    |    |    |    |    |    |    |    |    |
| 11 |                                                                                                                                              |    |    |    |    |    |    |    |    |    |    |    |    |
| 12 |                                                                                                                                              |    |    |    |    |    |    |    |    |    |    |    |    |
| 13 |                                                                                                                                              |    |    |    |    |    |    |    |    |    |    |    |    |
| 14 |                                                                                                                                              |    |    |    |    |    |    |    |    |    |    |    |    |
| 15 |                                                                                                                                              |    |    |    |    |    |    |    |    |    |    |    |    |
| 16 |                                                                                                                                              |    |    |    |    |    |    |    |    |    |    |    |    |
| 17 |                                                                                                                                              |    |    |    |    |    |    |    |    |    |    |    |    |
| 18 |                                                                                                                                              |    |    |    |    |    |    |    |    |    |    |    |    |



|    | AS                                                                                                                                 | AT | AU | AV | AW | AX | AY | AZ | BA | BB | BC | BD | BE |
|----|------------------------------------------------------------------------------------------------------------------------------------|----|----|----|----|----|----|----|----|----|----|----|----|
| 1  | OREGO',OR t.vend_nm = 'FEDERACJA NA RZECZ KOBIET I PLANOWANIA RODIZNY',OR t.vend_nm = 'FEDERA',OR t.vend_nm = 'KAMPANIA PRZECIW H0 |    |    |    |    |    |    |    |    |    |    |    |    |
| 2  |                                                                                                                                    |    |    |    |    |    |    |    |    |    |    |    |    |
| 3  |                                                                                                                                    |    |    |    |    |    |    |    |    |    |    |    |    |
| 4  |                                                                                                                                    |    |    |    |    |    |    |    |    |    |    |    |    |
| 5  |                                                                                                                                    |    |    |    |    |    |    |    |    |    |    |    |    |
| 6  |                                                                                                                                    |    |    |    |    |    |    |    |    |    |    |    |    |
| 7  |                                                                                                                                    |    |    |    |    |    |    |    |    |    |    |    |    |
| 8  |                                                                                                                                    |    |    |    |    |    |    |    |    |    |    |    |    |
| 9  |                                                                                                                                    |    |    |    |    |    |    |    |    |    |    |    |    |
| 10 |                                                                                                                                    |    |    |    |    |    |    |    |    |    |    |    |    |
| 11 |                                                                                                                                    |    |    |    |    |    |    |    |    |    |    |    |    |
| 12 |                                                                                                                                    |    |    |    |    |    |    |    |    |    |    |    |    |
| 13 |                                                                                                                                    |    |    |    |    |    |    |    |    |    |    |    |    |
| 14 |                                                                                                                                    |    |    |    |    |    |    |    |    |    |    |    |    |
| 15 |                                                                                                                                    |    |    |    |    |    |    |    |    |    |    |    |    |
| 16 |                                                                                                                                    |    |    |    |    |    |    |    |    |    |    |    |    |
| 17 |                                                                                                                                    |    |    |    |    |    |    |    |    |    |    |    |    |
| 18 |                                                                                                                                    |    |    |    |    |    |    |    |    |    |    |    |    |

|    | BF                                                                                                            | BG | BH | BI | BJ | BK | BL | BM | BN | BO | BP | BQ |
|----|---------------------------------------------------------------------------------------------------------------|----|----|----|----|----|----|----|----|----|----|----|
| 1  | MOFOBII',OR t.vend_nm = 'POLSKIE TOWARZYSTWO PRAWA ANTYDYSKRYMINACYJNEGO',OR t.vend_nm = 'ALEKSANDER SMOLAR', |    |    |    |    |    |    |    |    |    |    |    |
| 2  |                                                                                                               |    |    |    |    |    |    |    |    |    |    |    |
| 3  |                                                                                                               |    |    |    |    |    |    |    |    |    |    |    |
| 4  |                                                                                                               |    |    |    |    |    |    |    |    |    |    |    |
| 5  |                                                                                                               |    |    |    |    |    |    |    |    |    |    |    |
| 6  |                                                                                                               |    |    |    |    |    |    |    |    |    |    |    |
| 7  |                                                                                                               |    |    |    |    |    |    |    |    |    |    |    |
| 8  |                                                                                                               |    |    |    |    |    |    |    |    |    |    |    |
| 9  |                                                                                                               |    |    |    |    |    |    |    |    |    |    |    |
| 10 |                                                                                                               |    |    |    |    |    |    |    |    |    |    |    |
| 11 |                                                                                                               |    |    |    |    |    |    |    |    |    |    |    |
| 12 |                                                                                                               |    |    |    |    |    |    |    |    |    |    |    |
| 13 |                                                                                                               |    |    |    |    |    |    |    |    |    |    |    |
| 14 |                                                                                                               |    |    |    |    |    |    |    |    |    |    |    |
| 15 |                                                                                                               |    |    |    |    |    |    |    |    |    |    |    |
| 16 |                                                                                                               |    |    |    |    |    |    |    |    |    |    |    |
| 17 |                                                                                                               |    |    |    |    |    |    |    |    |    |    |    |
| 18 |                                                                                                               |    |    |    |    |    |    |    |    |    |    |    |