

Report on Poland

27th session of the Universal Periodic Review – September 2015

This report is submitted by Trans-Fuzja Foundation, an organization founded in 2008 and working for the rights of, offering free of charge support services to and devoted to research on the situation of transgender people in Poland. The report is meant to describe the current human rights situation and makes special references to the issues of **gender identity** and **gender expression**.

A. Summary

1. This document compares current situation of transgender people in Poland to what has been stated in the last stakeholder report from the 13th session, reporting on important advocacy and political activities undertaken between November 2011 and September 2015 as well as drawing from recommendations received by Poland in the previous UPR cycle.

B. Human Rights Situation of Transgender People in Poland

2. **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 (see p. 16). 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 (sygn. I CSK 146/13), 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.

3. **Right to family life.** It is important to underline that contrary to many countries in the European region, Poland does not require sterilization as part of legal gender recognition.

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There have been, however, cases where this aspect has been challenged by state officials. In 2015, the media reported a case of a transgender man whose daughter could not obtain a birth certificate due to the fact that the Polish law does not recognize a birthing fatherⁱⁱ. The case was eventually solved and the man has been properly recognized as the father, however, an additional prosecutor's intervention has been launched, demanding that the man's legal gender recognition needed to be revoked on the grounds that "he still maintained female reproductive organs". As previously mentioned, there are no legal measures that would force trans people to undergo any sterilization procedures before or after legal recognition, hence the grounds of such demands are highly debate-able.

4. **Right to family life.** Additionally, rights of transitioning parents have so far not been safeguarded by the state, leading to a number of trans people delaying their legal gender recognition and medical transition in fear of losing parental rights. Within the same framework, there are no existing alternatives to trans people and their spouses who wish to remain in a relationship as Poland does not recognize neither same-legal-gender marriage, nor civil partnerships of any kind, hence couples are effectively subjected to force divorce as part of legal gender recognition. Often it would be the health care providers demanding divorce as a diagnosis prerequisite.

3. **Right to physical integrity.** As mentioned in the 2011 stakeholder report, gender recognition as well as gender reassignment practice are still non-transparent and unequal, as health care providers maintain different approaches to types of medical interventions as prerequisites for legal gender recognition. While both trans men and trans women are expected to undergo a period of hormone therapy to "physically resemble the gender they want to be assigned to", trans men are forced to undergo chest surgeries which is in deep violation of basic human rights, especially the right to physical integrity.

4. **Right to health.** At the same time, trans people willing to undergo surgery before legal gender recognition, do not have the possibility to access it due to existence of laws that prohibit body alterations leading to "loss of fertility" (Polish penal code, art. 156).

5. **Right to health.** Most gender reassignment procedures are still inaccessible for trans

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people in Poland. While it may be possible to access transition-related services on the national healthcare plan and receive a 30% reduction for hormone therapy, most costs related to medical transition such as surgery and regular checkups with different providers are not covered by the state.

6. **Right to health.** Trans people report trouble accessing state healthcare providers for services associated with gender due to the nature of the national healthcare plan insurance scheme. These have been especially problematic for trans men and trans masculine people seeking gynecological servicesⁱⁱⁱ.

7. **Equality and non-discrimination.** No policies or laws have been changed since last report cycle. As mentioned in 2011 stakeholder report, the anti-discrimination legislation does not cover grounds of gender identity nor gender expression. Similarly, these grounds are non-existent within measures aimed to combat hate speech or hate crime.

8. **Equality and non-discrimination.** Transgender people are still discouraged during job interviews, especially on the grounds of their gender expression or their legal status. No legal measures have been introduced to prevent this kind of discrimination.

9. **Right to privacy.** After leaving the workplace (for various reasons) transgender people who went through legal gender recognition often receive employment proving documents (certificates etc.) stating their previous legal status, endangering their right to privacy and very often forcing them to disclose their trans status. This particular aspect was included in the last legal gender recognition proposal processed by the Parliament between 2012 and 2015. (see p. 16)

10. **Right to education.** No new measures have been introduced to combat transphobic bullying in schools or to help transgender students socially transition in schools. During this period, Trans-Fuzja recorded cases of transgender students in need of changing their schools of choice due to the fact that neither the teaching staff nor their supervisors were willing to properly address the treatment of said individuals by their peers and/or teachers.

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C. Working Group Comments on UPR 13th Session and Implementation of Recommendations^{iv}

a. Comments

11. Although civil society has argued for introduction of new discrimination grounds into the Polish Equality Act, so far no action has been undertaken. Non-action concerns both previous (in power until September 2015) and current governments. Additionally, when it comes to grounds of gender identity and gender expression, both have been criticized by the authorities for not being properly defined by current legislation and/or not being “define-able”, although other countries both within the European region and beyond, such as Denmark, Malta, the Netherlands or Argentina do not seem to face similar trouble. (III. A. 15.)

12. As previously mentioned, neither gender identity nor gender expression are present in hate crime or hate speech laws nor are transgender people explicitly protected in anti-discrimination legislation. This is despite ongoing advocacy and political work on both issues by different NGO coalitions, including the Equal Chances Coalition. (III. A. 16.)

13. Unemployment of transgender people is still a matter that has not been recognized by Polish authorities as alarming, despite reports on various problematic aspects of legal gender recognition which can lead to long periods of unemployment with some individuals. (III. E. 40)

b. Recommendations

14. Within the last UPR cycle Poland received 5 recommendations concerning broad LGBTI issues and 1 recommendation strictly mentioning transgender people.

15. Guarantee the full enjoyment of the rights of the LGBT community (rec. 90.67). This recommendation has been accepted and was said to be “in the course of implementation”, which, as this report shows, is a subject of debate.

16. Adopt regulations recognising the rights of same-sex couples and of self-defined gender or transgender persons (rec. 90.69). Recommendation partially accepted. State reply did not

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mention any plans for a legal gender recognition legislation. Such legislation has been proposed to the Parliament, passed and finally vetoed by the Polish President. The veto remained, as Parliament decided to not act on it.

17. Strengthen anti-discrimination laws with regard to a better protection of LGBT persons and persons with disabilities (rec. 90.70.). This recommendation has been accepted. As this report shows, transgender people have still not been included in the Polish anti-discrimination law.

18. The adoption of policies that safeguard the rights of LGBT people and fight discrimination based on sexual orientation (rec. 90.71.). This recommendation has been accepted and was said to be “in the course of implementation”. Within this aspect two important policy changes need to be mentioned. During the work on a new gender recognition legislation, partial funding of hormone therapy has been introduced in 2015 by the Polish Ministry of Health, which Trans-Fuzja welcomed as a clear sign that at least some aspects of trans people's health care needs have been recognized by the Parliament. However, in 2016 a problematic draft of a new policy on diplomas and certificates of higher education has been introduced. The draft adds additional barriers for transgender people who have received legal gender recognition by forcing them to return “both the diploma and all official copies of it” received upon graduation, without which a new diploma or certificate cannot be issued. This change will without a doubt lead to more trans people not being able to prove their education.

19. Institute outreach by police and law enforcement to LGBT persons and communities to increase reporting of hate crimes (rec. 90.94.). Between 2011 and 2014 Trans-Fuzja Foundation recorded an elevated interest of law enforcement in training on transgender issues, especially trainings of young or soon-to-be officers. In late 2015 and throughout 2016, however, the organization noticed a significant decrease in willingness to organize such trainings.

D. Civil Society Recommendations

20. In light of this report, Trans-Fuzja Foundation proposes the following recommendations to Polish authorities:

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21. **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.

22. **Right to family life.** Ensure that within the legal gender recognition framework trans people's rights as parents are safeguarded (both before and after transition).

23. **Right to physical integrity.** Ensure that no medical interventions are required to access legal gender recognition.

24. **Right to health.** Ensure proper access to surgery before legal gender recognition is finalized based on individual needs.

25. **Right to health.** Introduce a proper financing mechanism of all aspects of medical transition.

26. **Right to health.** Ensure that services usually identified within a gendered framework are accessible to transgender people.

27. **Equality and non-discrimination.** Ensure that transgender people are included in anti-discrimination laws covering all aspects of life.

28. **Right to safety.** Establish hate crime and hate speech legislation covering gender identity and gender expression.

29. **Right to privacy.** Establish legal provisions to prevent forced outing of transgender people in all aspects of life, especially in the work place and when accessing state services of any kind.

30. **Right to education.** Establish policies to combat transphobic bullying and introduce

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Further information on legal gender recognition can be obtained in the “Gender Recognition in Poland” report available at http://transfuzja.org/download/publikacje/gender_recognition_in_poland.pdf

- ii Case reported by “Polityka” magazine, <http://www.polityka.pl/tygodnikpolityka/spoleczenstwo/1623227,1.zgwalcona-w-trakcie-zmiany-plci-co-sie-dzieje-z-jej-dzieckiem.read> (Polish only).
- iii As reported by Trans-Fuzja’s report on access to healthcare for trans people - “Transpłciowość a opieka zdrowotna w Polsce”. Translation of said report is available at <http://www.ilga-europe.org/sites/default/files/Attachments/poland.pdf>.
- iv This chapter refers to the 13th UPR Session Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, 13 April 2012 (A/HRC/WG.6/13/POL/2) as well as to Report of the Working Group on the Universal Periodic Review and Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review. All numbering in accordance with original documents.
- v More information can be found at http://transfuzja.org/en/artykuly/press_releases/presidential_veto_upheld_polish_parliament_did_not_vote_on_the_gender.htm

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