

QUESTIONNAIRE – RESPONSES OF THE REPUBLIC OF POLAND

„Gender Justice and Freedom of Opinion and Expression”

1.

a) What barriers, challenges and threats do women in the public sphere face in exercising their freedom of opinion and expression online and offline?

b) What are the distinct challenges faced by those who experience multiple and intersecting forms of discrimination?

As for barriers, challenges and threats women in the public sphere face in exercising their freedom of opinion and expression both online and offline, it has to be noted that there are no restrictions applicable in Poland which would introduce any dichotomous division between the rights of women and the rights of men, distinguishing the latter as better and broader than the former.

Much welcomed development is a growing awareness within the Polish society that equal treatment must be ensured, respected and that it is necessary to disassemble conflicts based on discriminatory practices.

c) How have the pandemic, economic crises and recent political unrests affected women’s ability to communicate, protest and access information online and offline?

The COVID-19 pandemic has had no negative impact on the ability of women to communicate, access information and protest. On the contrary, in October and November 2020 (during the peak of the second wave of the pandemic), mass protests of feminist organizations were organized to oppose the 22nd of October 2020 judgment of the Constitutional Tribunal, which found one of the provisions Law on Family Planning, Protection of the Human Foetus and the Conditions of Admissible Termination of the 7th of January 1993 as irreconcilable with the Constitutional right to protection of human life and dignity.

These demonstrations, although often not being peaceful in form, formally illegal gatherings (not registered) and contrary to then-existing extraordinary, proportional and time-limited measures introduced to combat the COVID-19 pandemic, were nevertheless protected by the Police from potential counter-demonstrators even in case of blocking emergency lanes for ambulances.

No restrictions limited publication of protest-related content on the Internet and generally in public space, what in part lead to escalation in form of widespread acts of vandalism, targeting government buildings, churches and other listed monuments. The largest Internet forums and Facebook groups, such as *Ogólnopolski Strajk Kobiet* (“Nationwide Polish Women’s Strike”) *Dziewuchy dziewczuchom* (“Gals for gals”) dedicated to support of the protests could account for over 100.000 active members^[1].

2.

Can you provide examples or information on ways in which freedom of opinion and expression has been abused or appropriated to undermine women’s human rights?

As for forms of abuse which involve making it more difficult or impossible for women to express their opinions, one cannot ignore vulgar and aggressive manifestations against those women who subscribe to the pro-life movement.

^[1] <https://pressto.amu.edu.pl/index.php/pk/article/view/23141/21784>

This problem is clearly visible in many countries of the world, involving attempts to silence and censor statements concerning the right to life from conception to natural death. Women who want to express their support for pro-life movements often have to deal with aggressive verbal and physical attacks, as well as with ridicule. This is a glaring problem, causing rights and freedoms of expression to be categorised, and certain groups of people being deprived of said rights. This leads to clear discrimination against women and hampers their freedom of opinion and expression.

3.

What in your view are the key elements of a gendered perspective on the human right to freedom of opinion and expression? What would a feminist perspective add to the understanding of this right?

When the Polish State was reestablished in 1918, women immediately obtained equal rights with men what regards access to education, labour, applying for public offices and holding political functions. Prominent personalities of the pre-World War II era include feminist journalist Irena Krzywicka, who fought i.a. for the abolishment of the death penalty and Zofia Seidlerowa, editor-in-chief of the women's weekly newspaper *Bluszcz* ("Ivy"), which debuted in 1865. During the communist rule (1944-1989), the then state authorities merged a systematic disrespect for human rights with emancipationist propaganda, including an iconic poster "women to the tractors!", matching the American wartime poster "we can do it!".

Currently, the Republic of Poland is a democratic state, granting women and men equal treatment and opportunities. Non-discrimination is embedded in Article 32 of the Constitution, while Article 33 is dedicated to women's rights. Special provisions of the Labor Code (Article 18^{3a}-18^{3c}) and other laws or conduct codes guarantee the practical application of this Constitutional standard. Sexism and misogyny is publicly condemned and sanctioned even in cases of prominent politicians invoking their immunity and freedom of expression. As an recent example, the libertarian Member of Parliament, Janusz Korwin-Mikke, was reprimanded on 22 April 2021 by the Parliamentary Commission of Ethics for his elucidations justifying rape on women, who do not verbally oppose the perpetrator^[2].

Taking the above into consideration, human right to freedom of opinion and expression is fully respected in Poland, in law and in practice, i.a. regardless of one's sex. Therefore, an idea introduction of legal provisions which would diverge from the current general set of standards relevant to all persons residing in the territory of the Republic of Poland in favour of its differentiation on the basis of sex, would not contribute to the universal respect for these freedoms.

4.

Do you see any legal gaps, inconsistencies or controversies that should be clarified in this report, e.g. between protecting the right to freedom of expression and protecting women from ICT violence? Please indicate any specific issues in the international legal framework that in your view would benefit from further analysis in this report.

Poland sees merit in adopting an appropriate, comprehensive international approach that will establish effective legal instruments and mechanisms to protect women against various forms of sexual exploitation and harassment.

^[2] [https://orka.sejm.gov.pl/opinie9.nsf/nazwa/eps_u9/\\$file/eps_u9.pdf](https://orka.sejm.gov.pl/opinie9.nsf/nazwa/eps_u9/$file/eps_u9.pdf)

An issue of international significance worth discussing further is the current tendency to make the image of women vulgarized through sexualised images, written texts and comments made in the public sphere, including on the Internet. One can note that current efforts in combatting such harmful content is not effective enough.

Initializing work on a joint document focusing on ensuring proper respect for women's image can positively contribute to advancing such approach. Given the growing risk of women exposure to exploitation through sexualised images or any form of objectification, also at the international level, justifies undertaking efforts to address this pressing problem.

In this context, efforts undertaken by the UN Special Rapporteur in this regard are a good opportunity to take steps in that direction. Since all rights to freedom of expression and to present one's own views are deeply grounded in the proper understanding of human dignity, the matter is of growing importance. Where the latter is distorted, other guarantees, such as equality in debate or the equal importance of individuals' opinions – in this case those of women expressing themselves on given topics in line with their own conscience – are at risk of not being adequately ensured or even ignored.

5.

a) What legislative, administrative, policy, regulatory or other measures exist in your State to promote and protect women's freedom of opinion and expression online and offline? To what extent do these measures take into account intersectionality?

b) In your view how effective are they in supporting women's empowerment and public participation? Please provide statistical data and judicial decisions, where available.

Freedom of speech in Poland is guaranteed both by the Constitution of the Republic of Poland and by statutes/legal acts. The Polish Constitution guarantees freedom of the press (Article 14) and freedom of expression, as well as the prohibition of censorship (Article 54). The rights and obligations of journalists have been comprehensively regulated in the Act of the 26th of January 1984 - Press Law (Journal of Laws of 2018, item 1914).

This law guarantees freedom of the press as well as freedom of journalism. Journalists are guaranteed the right to refuse to carry out an official order if such publication would violate the principles of honesty, objectivity and professional diligence.

Moreover, in 2017 a regulation according to which activity of a journalist violating the editorial office's programming line constituted a violation of the journalist's basic duties has been repealed. Thanks to the repeal of this regulation, it is not possible anymore to dismiss a journalist who reliably performs his/her duties but violated the editorial office's program line.

In addition, a journalist has also the right not to agree to the publication of a his/her press material if editorial changes have been introduced to an extent which distort its meaning and message. At the same time, it should be borne in mind that implementation of publisher's interest or the official instructions of the editors does not free journalist from the obligation to comply with the generally applicable legal order, in particular the provisions of the Press Law Act. In the event of a conflict between the law and the expectations of the publisher and editorial managers, the journalist is obliged to apply the law; in doing so, he/she may not incur any professional consequences. Moreover, pursuant to Article 15. paragraph 1 of the Press Law Act, the author of the press material has the right to keep his/her name secret.

Journalists are also obliged to keep confidentiality of all data enabling identification of the author of the press material, a letter to the editor or other material of this nature, and other persons providing information published or submitted for publication, if these persons have stipulated not to disclose the above data, as well as any information whose disclosure could violate the interests of third parties protected by law.

The above obligation also extends to other persons employed in editorial offices, press publishing houses and other press organizational units. The regulations provided for in Article 43 and 44 of the Press Law Act, according to which the use of violence or unlawful threats to force a journalist to publish or make him/her refrain from publishing press material or to take or refrain from intervening in the press is punishable by imprisonment of up to 3 years.

Moreover, anyone who tries to suppress press criticism risks a financial fine or imprisonment. The same penalty can also be imposed on anyone who, by abusing his/her position or function, acts to the detriment of another person due to press criticism published in a socially justified interest.

In addition, the main legal act regulating the activity of radio and television broadcasting in Poland, i.e. the Broadcasting Act (Journal of Laws of 2020, item 805), also provides a number of regulations in this area. Namely, pursuant to Article 16b paragraph 3 point 2, commercial communication (advertisements) may not contain discriminatory content due to race, sex, nationality, ethnic origin, religion or belief, disability, age or sexual orientation. The protected value in this case is the equality of people. Types of discrimination covered by the above-mentioned prohibition was mentioned exhaustively. Other types of discrimination, if they lead to the violation of human dignity, are prohibited by Article 16b paragraph 3 point 1.

Pursuant to Article 18 sec. 1, programs or other broadcasts may not contain content inciting hatred or discriminating on the basis of race, disability, sex, religion or nationality. The prohibition of incitement to hatred or discrimination by content contained in on-demand audio-visual media services is expressed in Article 47h. What needs to be emphasized, the prohibition expressed in Article 18 sec. 1 in fine of the Act referred to above also applies to radio programs.

The currently ongoing work on revisions to the Broadcasting Act will provide for an additional strengthening of the ban in Article 18 and will extend the prohibition of making broadcasts or other messages containing content inciting not only hatred and discrimination based on sex, race, colour, ethnic or social origin, genetic features, language, religion or beliefs, political views or any other views, belonging to a national minority, property, birth, disability, age or sexual orientation, but also to violence in relation to the above-mentioned groups. The same solution is to be introduced in Article 47h of this Act on the activities of entities providing on-demand audio-visual media services.

6.

What legal administrative, policy or other measures exist in your State to protect women from sexual and gender based violence and harassment online? How effective are they? What impact have they had on women's empowerment and public participation, including freedom of expression?

The amendments to the Broadcasting Act, which is currently underway of being finalized in Poland, will provide (in a prospective Article 47o of this Act) a prohibition from uploading broadcasts, user-generated videos or other broadcasts on video-sharing platforms that are:

- 1) threatening physical, mental or moral development of minors, in particular containing pornographic content or unjustifiably displaying violence, without the use of effective technical safeguards;
- 2) inciting to violence or hatred against a group of people based on sex, race, colour, ethnic or social origin, genetic features, language, religion or beliefs, political views or any other views, membership of a national minority, property, birth, disability, age or sexual orientation;
- 3) facilitating commission of a terrorist crime, pornographic content with the participation of a minor, content inciting to insult a group of people or a particular person because of their national, ethnic, racial, religious affiliation or because of their lack of religion.

Pursuant to the draft of this amendment, the provider of the video sharing platform will be obliged to apply measures against sharing the above-mentioned content. Moreover, in accordance with the proposed wording of Article 47t. paragraph 1, the provider of the video sharing platform will be required to provide the users of the video sharing platform with transparent and user-friendly mechanisms to report that the content posted on the video sharing platform is contrary to Article 47o. The provider of the video-sharing platform shall provide users with an answer immediately, but not later than within 48 hours from the notification referred to in paragraph. 1.

7.

What do you believe States should do to a) uphold women’s human right to freedom of opinion and expression b) protect women from violence, harassment and intimidation online and offline and c) promote women’s public participation?

“Freedom to express opinions acquire and to disseminate information”, granted by Article 54 paragraph 1 of the Constitution of the Republic of Poland is the bedrock of national legal framework in this area. It is strengthened by another article of the Constitution, Article 213 paragraph 1 which states that “The National Council of Radio Broadcasting and Television shall safeguard the freedom of speech, the right to information as well as safeguard the public interest regarding radio broadcasting and television”.

Subsequently, detailed provisions of the Law on radio broadcasting and television oblige public and private broadcasters to abstain from disseminating shows or even commercials, which include discriminant content (Article 18 paragraph 1 and Article 16b paragraph 3 of this law). Pursued discrimination criteria are race, sex, nationality, ethnic origin, religion or world view, disability, age and sexual orientation.

This strict and clear legal framework, preventing misogyny and sex-based discrimination, goes hand in hand with very strong support in Polish society to this value – Poles ranked second highest percentage of support for the principle of freedom of expression in a 2016 research on public support for freedom of expression done by the Pew Research Center^[3].

In parallel to legal framework and general public support (please see answer to Question 3) it worth noting that women in Poland are actively participating in shaping public sphere in our country, with numerous female members of parliament, central and local government and business. In addition, as of June 2021, chairwomen head a number of major non-governmental organizations in Poland,

^[3] <https://www.pewresearch.org/fact-tank/2016/10/12/americans-more-tolerant-of-offensive-speech-than-others-in-the-world/>

including Amnesty International (Ms Urszula Skonecka), Polish Helsinki Foundation for Human Rights (Ms Danuta Przywara), Polish Humanitarian Action (Ms Janina Ochojska) Fundacja Panoptykon, focusing on digital privacy (Ms Katarzyna Szymielewicz), as well as expert organizations covering human rights, i.a. the Polish Society for Antidiscrimination Law (Ms Karolina Kędziora) and the Prof. Zbigniew Hołda Society (Ms Maria Ejchart-Dubois). Their engagement, and of many other women who in various ways contribute to public life in spheres of politics, economy, education, social inclusion etc. is pivotal in achieving further progress in even greater participation of women in all spheres of public life in Poland.

8.

a) What specific measures have platform providers and intermediaries taken to i) protect women’s freedom of opinion and expression; ii) protect women from online gender based violence, harassment, intimidation and disinformation; iii) promote women’s equal access to the digital space; iv) address grievances and provide remedies to women users; v) ensure accountability of the intermediaries?

b) To what extent do you find these measures to be fair, transparent, adequate and effective in protecting women’s human rights and promoting women’s empowerment?

For anyone to be able to use of his or her freedom of opinion and expression online – a certain level of skills and digital literacy are required. In Poland no difference in school performance of girls and boys in science and mathematics in grade 4 could be detected, while the dataset shows a minor advantage of males at the age of 15^[4].

Recent data of the European Institute for Gender Equality (EIGE) report „*Gender Index Equality 2020 Poland*” referring to persons aged 16-74 shows, that in Poland, computer and information literacy among women and men is equal (68 % of women and 69 % of men are daily internet users, 21 % of women and 22 % of men have “above basic digital skills”, 64 % of women and 61 % of men represent “information skills”, while for “communication skills” the ratio is 59 % for women and 57 % for men). A gap can be observed at the level of university studies, where female ICT graduates amount to only 23 % of all graduates (still above the EU average), what implies an even smaller share of women working as ICT specialists (14 %) or as scientists and engineers in high-technology sectors (18 %)^[5].

As a reaction to the existing situation of difference in career choices between the sexes and in consequence the inequality of female and male labor force in specific sectors of the economy, Polish technical universities, where in the last academic years some 37 % of students were women^[6], engage in actions promoting female enrollment, such as women candidates’ open days, traditional and social media coverage and dedicated websites^[7]. The Government’s Plenipotentiary for Equal Treatment of the Republic of Poland has granted her patronage of the current, 11th annual edition of the “Girls as Engineers!” program^[8], encouraging young women to take on science, technology, engineering and

^[4] cf. Figure 35 on page 36, Figure 13 on page 24 and Figure 19 on page 29 of the UNESCO report, [Cracking the code: girls' and women's education in science, technology, engineering and mathematics \(STEM\) - UNESCO Digital Library](#)

^[5] <https://eige.europa.eu/publications/gender-equality-index-2020-poland>

^[6] <http://www.dziewczynynapolitechniki.pl/pdfy/raport-kobiety-na-politechnikach-2021.pdf> page 3, in Polish only

^[7] e.g. the Cracow University of Technology, [You can do it! Czyli studia techniczne są dla dziewczyn | Rekrutacja PK](#) in Polish only

^[8] <http://www.dziewczynynapolitechniki.pl/English>

math (STEM) studies at public technical universities, in order to close the gap and empower women to work in jobs with traditionally high remuneration and social esteem.

The most recent public statistical study concerning Polish society's digital transformation confirms the decrease in the difference between men and women regularly using the computer (65,8 % men and 63,8 % women in 2015, 73,5 % men and 72,2 % women in 2019). Over the examined period, women have outrun men as users of videoconferencing and other internet communication services (in 2015, 27,7 % of men and 27,6 % of women used these services, while in 2019, the figures were 47,1 % men and 50,0 % women) and catch up with them as users of on-line shops (in 2015, 40,0 % of men and 34,2 % of women used these services, while the indicators for 2019 were 54,0 % men and 53,9 % women)^[9]. This data has to be read in conjunction with the fact, that the population pyramid of Poland shows a significant excess of women over men in age groups 50+, which represent weaker computer skills. The cited study thus compares computer skills of excess men aged 16-50 and excess women aged 50-74 and not of equally sized samples.

9.

What do you think internet intermediaries should do to protect women's right to freedom of opinion and expression and make the online space safe for women?

10.

What role has legacy media played in aggravating or addressing the challenges women face in exercising their freedom of expression? What do you think the legacy media can do to empower women and make the public space safe for them, especially for women journalists?

Broadcasting Act of the 29th of December 1992 explicitly (Articles 16b, 18, 47h – please see attached), prohibit broadcasters from disseminating discriminatory content, including on a basis of sex.

As part of its strategy, the media regulator in Poland, the National Broadcasting Council (Krajowa Rada Radiofonii i Telewizji; KRRTV), considers promotion of equality between women and men and combatting negative stereotypes on women in media as its priority. As part of these activities, the KRRTV commissioned preparation of a comprehensive report on the image of women in TV series aired in Polish TV (please see attached). All stakeholders, including the Internet intermediaries, can play a valuable and positive role in fostering continuation of social digital transformation joined with efforts in eradicating still existing differences (please see reply to question 8) in actively using computer technologies and using their rights in online space. Moreover, there is potential to undertaking by the partners in the industry of targeted educational programmes which focus on users' safety online and providing information on how to prevent and defend oneself from existing risks in cyberspace. Media may positively contribute to protecting women against sexual exploitation, and they should be included in various programmes and projects that aim to achieve women-friendly policies. At the same time one cannot disregard the risk of media outlets being used as a transmitter of disseminating content that is demeaning to women.

While respecting an individual consent to appear in such sexualised programmes / images, one cannot ignore a broader damage exposure to such content may do. It may impinge the safety of all women, also in behaviours that manifest themselves in strictly criminal terms, i.e., rape, sexual abuse and

^[9]https://stat.gov.pl/download/gfx/portalinformacyjny/pl/defaultaktualnosci/5497/1/13/1/spoleczenstwo_informacyjne_w_polsce_-_wyniki_badan_statystycznych_z_lat_2015-2019.pdf

feelings of abasement experienced already by teenagers , as research has long evidenced (see: M. Flood, *The Harms of Pornography Exposure Among Children and Young People*, „Wiley InterScience” p. 384-400, p. 389; p. 392-393 - <http://xyonline.net/content/harms-pornography-exposure-among-children-and-young-people>). Therefore a number of safeguards has been introduced which limit the danger of exposure to inappropriate content in the media (content rating system, ban on airing programmes with explicit language / violence before certain hour, ban on advertising certain products before certain hour).

11.

Please provide examples of good practices by States, internet intermediaries or other stakeholders to enhance women’s right to freedom of opinion and expression and empowerment and public participation of women.

Ensuring fair and unhindered access to information and possibility of exercising freedom of expression regardless of one’s sex is a cornerstone of Poland’s legal framework. There are also no practical obstacles in access of women to media and any attempts to introduce such measures by an employer can be contested in court.

While women enjoy equal rights in social, economic and political life, they have been found to be more prone to become victimized by on-line harassment and exploitation. In order to combat these negative developments of the information society, the Polish Government has put in place amendments to the Criminal Code (k.k.), defining the crime of stalking (Article 190a k.k., introduced in 2011) and revenge pornography (Article 191a k.k., introduced in 2010). The number of criminal proceedings initiated under Article 190a k.k. show a growing awareness of the phenomenon equally among victims and representatives of the state: a constant grow from 4.455 in 2012 to 10.712 in 2019, with a slight decrease in the COVID-19 affected year 2020 (8.984 cases)^[10] . As for Article 191a k.k., the number of initiated criminal proceedings has been also growing between 2012 (139 proceedings) and 2020 (506 proceedings)^[11]. The Ministry of Justice has proposed a bill on protection of free speech in social media^[12]. The project aims at combating on-line harassment, disinformation and restricting access to users, who do not breach Polish law. As for June 2021, the project has not yet been transmitted to Parliament.

Moreover, within the domain of the media, there are examples of good practices promoting increasing social participation of women. On the 8th of March 2021 public broadcaster TVP has launched TVP Kobieta (TVP Woman) channel, which is dedicated to broadcasting lifestyle, guide and entertainment programs addressed mainly to female audience. It is available in both standard and HD image. Also major commercial media broadcasters in Poland – Polsat and TVN - have launched their respective TV channels which are dedicated to women and focus on women, their professional activities and empowerment, family, health and lifestyle - Polsat Café (broadcasted since the 6th of October 2008, since the 1st of October 2016 in HD format) and TVN Style (broadcasted since the 1st of August 2004, since the 4th of November 2011 in HD format).

^[10] Figures according to the National Police Headquarters’ statistics, <https://statystyka.policja.pl/st/kodeks-karny/przestepstwa-przeciwko-4/76586,Uporczywe-nekanie-i-wykorzystanie-wizerunku-art-190a.html>

^[11] <https://statystyka.policja.pl/st/kodeks-karny/przestepstwa-przeciwko-4/48035,Utrwalanie-wizerunku-nagiej-osoby-bez-jej-zgody-art-191a.html>

^[12] <https://www.gov.pl/web/sprawiedliwosc/zachecamy-do-zapoznania-sie-z-projektem-ustawy-o-ochronie-wolnosci-uzytownikow-serwisow-spolecznosciowych>