**A comprehensive report to the General Assembly on progress made towards ending CEFM, including in the context of the COVID-19 pandemic**

**Poland’s input**

**Ad. 2**

According to article 10 § 1 of the Family and Guardianship Code from 25 February 1964 (hereinafter referred to as *the Code*) it is unlawful for a person younger than 18 to marry any individual. However, due to compelling reasons, a guardianship court may allow a woman who is at least 16 years of age to enter into marriage and the accompanying circumstances indicate that marriage will be beneficial to the well-being of the family. Article 10 § of *The Code* also states that each of the spouses can file for annulment of a marriage contracted by a man who is younger than 18 and a woman who is younger than 16 or she got married without a court’s consent after she turned 16 but before she turned 18. Furthermore, art 10 § 3 of *The Code* states that marriage cannot be annulled due to the minimal age requirement not being met if the spouse had met this age requirement before the petition for divorce was filed.

Should a woman get pregnant, her husband cannot file for annulment of marriage because of the minimal age requirement not being met (pregnancy is an exception – art. 10 § 4 of *The Code*).

The Ministry of Justice is currently preparing a draft law amending the Act – Code of Civil Procedure and certain other acts (UD297), which is at the stage of inter-ministerial consultations, opinions, and public consultations (UD 297).

The aforementioned draft includes, inter alia, a newly drafted Article 191b of the Penal Code which introduces directly into the Penal Code the prohibition of forced marriage or union that corresponds to marriage in the religious or cultural environment of the perpetrator.

This legislative change reflects the lack of acceptance of this type of behaviour against both adults and minors. The legislator takes the view that the celebration of a marriage (official or customary) may take place only when the declarations of will or actions of the nuptial couple, meeting the requirements of the domestic law as to the age for marriage, are the result of voluntary and conscious decisions.

**Ad. 3**

Children in Poland are under special legal protection. The provision of art. 68 sec. 3 of the Constitution of the Republic of Poland of April 2, 1997 (Journal of Laws of 1997, No. 78, item 483) provides that public authorities are obliged to provide special health care to children, pregnant women, people with disabilities and the elderly. The implementation of these provisions is ensured by the regulations of the Act of 27 August 2004 on health care services financed from public funds (Journal of Laws of 2021, item 1285, as amended) and its implementing acts. According to them, people under the age of 18:

a) having Polish citizenship or

b) who have obtained in Poland the refugee status or subsidiary protection or a temporary residence permit granted in connection with the circumstances referred to in art. 159 paragraph 1 point 1 lit. c or d of the Act of 12 December 2013 on foreigners, residing in the territory of the Republic of Poland,

have the status of recipients, and therefore the right to use health care services financed from public funds on the terms specified in the Act, regardless of whether they are covered by health insurance or not. The above means that children and adolescents, regardless of their social status, are provided with health care, including disease prevention, disease detection, treatment and disability prevention.

Moreover, it is worth to mention that regulations of the Minister of Health on guaranteed healthcare services define the lists and conditions for the implementation of such health-care services. It should be noted that the decision on the methods and manner of treatment is made only by the doctor. Each medical case should be individually tailored to the needs of a given patient, discussed and conducted by a physician.

In the light of the Act of December 5, 1996, a physician is required to practice in accordance with the indications of current medical knowledge, methods and means of preventing, diagnosing and treating diseases available to him, in accordance with the principles of professional ethics and with due diligence. The activities undertaken in this respect by the physician are individualized, refer to the specific situation and health condition of the patient or patient as well as his / her health needs. On the other hand, the patient has the right to health-care services that meet the requirements of current medical knowledge, provided with due diligence by entities providing health services under conditions that meet the professional and sanitary requirements specified in separate regulations. When providing health services, medical professionals follow the rules of professional ethics specified by the competent self-governments of medical professions.

The above-mentioned general rules apply to all circumstances of providing health services and to all patients , therefore also to sexual and reproductive health-care services.

The Polish Criminal Code states that sexual abuse is any sexual activity with a person younger than 15 (the age of consent). According to the law it does not matter whether a child consents to sexual activity or is the one asking for sex himself/herself or the fact that this child will not feel hurt in any way after engaging in sexual activity.

The crime of engaging in sexual activity with a minor belong to the crime group listed in chapter XXV of the Polish Criminal Code from 6 June 1997 (hereinafter referred to as *The Polish CC*) which are sexual offences (specifically offences against sexual liberty and decency) such as:

* rape or coercing a minor younger than 15 into engaging in a sexual act
* taking advantage of another person’s mental or physical vulnerability or disability

in order to engage in sexual act with a minor or subjecting a minor to other sexual acts or forcing such minor to perform other sexual acts

* contacting a minor on-line or grooming a minor on-line with malicious intent (pedophilia)
* presenting or distributing pornography involving minors

At this points it should be noted that according to art. 106a of *The Polish CC* if a minor younger than 15 was the victim of a sex offence committed by a perpetrator who in turn received an immediate prison sentence, then this sentencing will stay on all criminal records indefinitely (the conviction will never be expunged from the perpetrator’s record).

Furthermore, art. 211 of *The Polish CC* stipulates that any person, contrary to the will of the person appointed to take care of or supervise, abducts or detains a minor person under 15 years of age or a person who is vulnerable due to a mental or physical condition shall be subject to the penalty of imprisonment for up to 3 years.

Also, a witness or a victim who is younger than 15 and is testifying in court in a case that involved the use of violence or a criminal threat, a sex offence or a crime against the family or is a victim of any of the crimes against freedom category, will only be heard once in a court in a special room adapted for this purpose. The testimony of that person will be recorded. The testimony can also have the form of a video-conference. Second hearing is only possible in extraordinary circumstances (art. 185a, art. 185b, art. 185d of the Polish Code of Criminal Procedure).

According to art. 185c § 1 of the Polish Code of Criminal Procedure the witness/victim in a rape case or a child sexual abuse case (including minors below the age of 15) is heard in a court, and if he or she is reporting a crime to a prosecutor or a police officer – he or she is only required to give general facts and evidence. The hearing in court is recorded and should not be repeated (there should not be a second hearing). Should there be a need for a second hearing, the victim may file a request for the hearing to be carried out as a video-conference (art. 185c § 2 and 3 of the Polish Criminal Procedure Code).

If there is any threat to the life or health of the witness, the victim or their respective relatives, all those persons are eligible to receive Police protection for the duration of the proceedings and should the threat level be severe, they can receive personal protection or assistance in relocating from their place of residence to a safer location. All eligible persons can apply for personal protection to the Regional Police Commander via the government organ which is responsible for a particular court case or trial (art. 1-17 of the Act *on protection and assistance for victims and witnesses* from 28 November 2014).

Lastly, art. 43 § 8 (2a) of the Polish Criminal Code from 6 June 1997 states that witnesses and victims may receive legal aid and psychological help free of charge from the Aid Network for Victims of Crime (Polish: *Sieć Pomocy dla Osób Pokrzywdzonych Przestępstwem*).

**Steps taken to reduce the child/forced marriages in Roma communities**

In order to address the phenomenon of early /forced marriages Roma girls and women become a target group of the new Polish Roma inclusion strategy *Programme for Social and Civic Integration of the Roma Community in Poland for 2021-2030:*

*Both lessons learned from previous strategies and the experience of other European countries, as well as conclusions from performed evaluations, indicate that Roma women are more motivated to take up integration measures and in practice play the role of a conveyor belt motoring changes in the Roma environment. At the same time, they are a group exposed to intersectional discrimination on the grounds of their ethnic origin, gender, low social and economic status as well as the patriarchal model of Roma culture. Thus, Roma women should be provided with particular support under the current integration programme. This can be done, among others, by financing conferences, training, workshops and exercises for women and girls of Roma origin aimed at strengthening the broadly-understood potential of women and girls in all areas of community life as well as providing the appropriate tools and skills for smooth functioning in the modern world. Particular attention should be paid to limiting and preventing the phenomenon of early marriage and motherhood which reduces secondary education perspectives of Roma girls and thus pushes them out of the labour market.*

**Measures adopted to support Roma women and girls who are already married or in informal unions**

Government’s programme *Mother 4+*

Roma women and girls became a beneficiaries of the government’s programme Mother 4+ (since 2019), under which mothers who gave birth to and brought up at least four children are entitled to a so-called ‘parental supplementary benefit’ (in practice: the equivalent of the lowest pension). This programme fundamentally changes the situation of Roma women who often have no chance of earning a pension due to the phenomenon of early marriage.

Scholarships system for the secondary and tertiary level of education for Roma

To support the return to the education, Polish state offers scholarship system for secondary and tertiary education level – until the year 2021, 687 Roma were beneficiaries of secondary level scholarship and 941 Roma were beneficiaries of tertiary level scholarship, in both cases majority of them are girls.

Remarks presented below derives from informal contacts and exchanges with representatives of Roma communities, mainly girls and women.

Phenomenon of child/forced marriages most probably has different scale accordingly to the considered group. The most intensively this phenomenon might occur in two groups: the smallest and the most hermetic groups of Kelderari and Lovari.

The support offered to Roma in Poland since 2001 might influence on two biggest groups: Bergitka Roma and Polska Roma among whom the level of education has improved since two decades.

According to the Fundamental Right Agency data from 2011 survey – 18% of 670 Roma respondents in Poland declared abandoned of the school system before the age of 16 because of the marriage and pregnancy[[1]](#footnote-1).

It might be considered that those marriages are partly arranged by families with a kind of “consent” of minors, partly – arranged with a traditional “capture of a girl” (sometimes arranged in fact by minors themselves to “short the way” or make it more “romantic”), but sometimes - connected with violence, including sexual violence. The problem is strictly hidden within the community and families do not report the kidnapping to the police.

Early marriages are traditional form of marriage in these communities in Poland – even after the age of 18 the majority of those traditional marriages are not formalised (according the 2011 census - 48% of Roma declared as married/divorced/widow/widower).

Family is perceived by Roma as the most important value, much higher valued than education, professional perspectives or stability, so early marriages in those communities are still vivid practice. It might be considered that the age of spouses is nowadays higher than it used to be in previous generations, partly due to the improving education enrolment of Roma children. This is an observed tendency, although the age of those spouses is still under the age 18. It must be noted that those marriages are arranged between peers - there is no age gaps between spouses. The problem touches both girls and boys, although – in practical terms – causes more consequences for girls as it is connected with the school leaving, often final.

**Ad. 6.**

The Roma minority is the only ethnic minority group (“ethnic minority” in terms of the Act of 5 January 2005 on national and ethnic minorities and on regional language) threated by the phenomenon of the child/forced marriages.

The ethnic data collecting is forbidden in Poland thus there is no ethnic statistics concerning early marriages or early birth giving that might be a source of estimated data related to the child/forced marriages. Moreover, the Roma community in Poland is relatively small (according to national census of 2011 – 17.000 people, according to estimates - 20.000-25.000 persons maximally), dispersed all over the country living in a relatively small urban communities (usually between 200-300 persons in a town), divided into 4 different groups and hermetic - they are not “visible” as a subject of deep studies for academics. Moreover, taking into account very hermetic approach of Roma to the tabooed questions the decent scientific research seems to be unreachable so far. Thus – the scale of the phenomenon of child/forced marriages remains unrecognised.

**Ad. 10.**

Referring to the issue of access to sexual and reproductive health-care services during the SARS-CoV-2 virus epidemic, it should be noted that it is provided in a manner analogous to that of all other healthcare services.

**Report to the Human Rights Council on progress, gaps and challenges in addressing CEFM and measures to ensure accountability**

**Poland’s input**

**Ad. 1.**

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Should a woman get pregnant, her husband cannot file for annulment of marriage because of the minimal age requirement not being met (pregnancy is an exception – art. 10 § 4 of *The Code*).

**Ad. 3.**

The Ministry of Justice collects statistical data on the functioning of the judiciary through various systems and tools, based on the Act of 29 June 1995 on Public Statistics.

Statistical reports constitute the main source of data. The reports are filled out by employees of common courts in quarterly, semi-annual, and annual cycles on a cumulative basis through an IT system dedicated to statistical reporting.

However, it should be noted that within the framework of public statistics, information on forced marriages is not collected.

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**Ad. 4.**

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1. The European Union Agency for Fundamental Rights Survey on discrimination and social exclusion of Roma in EU (2011) [↑](#footnote-ref-1)