



Report on Poland

13th session of the Universal Periodic Review – November 2011

This report is submitted by Trans-Fuzja Foundation¹ and is meant to deal with **transgender rights** in Poland and makes special references to the issues of **gender identity** and **gender expression** as well as the current legal situation of transgender people in Poland.

1. Summary

The report describes the current legal situation of transgender people in Poland in relation to particular contexts – including discrimination, healthcare and employment. It also touches the subject of hate crime targeted to transgender people, especially the fact that violence based on gender identity or gender expression is still highly underreported. The report also mentions the problem of hate speech and the current developments in that matter. Each identified issue is followed by a recommendation for the Polish government.

2. Gender recognition in Poland

It is important to note that even though the Polish legal system does not require a person to undergo sterilization procedures nor genital surgery (this is due to the fact that sterilization is illegal in Poland and may not be performed unless medically necessary) in order to have their gender legally recognized (either as male or female), there is no actual law on gender recognition. The process itself requires a civil court case which leads to several complications, especially with the fact that the parents of an adult person are involved in the process and may sometimes delay the court decision on changing the gender marker.² This has been recognized as a problem by the Polish Ombudsman in 2011 who issued a letter in support of actions aimed to draft a new gender recognition law. The legal practice on the matter is also nontransparent and unequal. 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. This problem was reported to the Ombudsman but still remains a subject which is difficult to approach due to the lack of a gender recognition law. In November 2011 the Ministry of Justice acknowledged the need for such law and stated that an inter-ministry body will take care of the issue.

Recommendation for the government: make sure that the drafted legislation respects human rights of transgender people (by allowing non-governmental organizations to take part in the drafting process) and does not force a person to undergo any medical procedures or go through a real-life test. The gender recognition process should also be free of third person intervention and become an administrative matter.

¹ An organization devoted strictly to transgender rights, founded in 2008.

² Some of the aspects of legal gender recognition have been analyzed and commented in a recent publication, see: Iedzi ska-Simon, Anna, ed *Prawa osób transseksualnych. Rozwi zania modelowe a sytuacja w Polsce* Warszawa: Wolters Kluwer, 2010.



3. Discrimination

Transgender persons, particularly trans women, often face discrimination based on their gender identity and/or gender expression. Cases reported to Trans-Fuzja Foundation more often consider trans women as they are believed to be more visible in the Polish society due to different conceptualization of masculinity and femininity. However there have been also cases reported by trans men, most of them not being legally recognized as male, who have been either discriminated on the basis of believed sexual orientation (i.e. a heterosexual trans man was seen as a lesbian and therefore discriminated against) or sexually harassed in the work place. Discrimination of trans people in Poland (in any context) has been a major subject of concerns for all transgender and LGBT organizations since Polish law does not cover gender identity nor gender expression in any kind of law. The new Anti-Discrimination Act, even after a dramatic lobbying process, does not include those features as possible discrimination grounds. This leaves transgender people still unrecognized by the legal system and therefore prone to discrimination. It needs to be pointed out that the Republic of Poland recognizes their citizens on the basis of their legal status. This means that a trans person is able to enjoy all their rights as a gendered person only when they have been recognized in the preferred gender, i.e. a trans woman who has been discriminated against while still being recognized as male, cannot point out that she was discriminated on the basis of sex, because her legal status does not match her identity and/or expression. There are a few known cases of discrimination of a transsexual person being recognized as discrimination based on sex, however, this does not cover all trans people, particularly those who do not want to acquire a transsexual status, since it requires to undergo a long process of diagnosis.

Recommendation for the government: Review the current legal measures aimed to combat discrimination and complete them with gender identity and gender expression as possible discrimination grounds in any context.

4. Employment

Major issues are being faced by transgender people every day within the field of employment. In fact, a number of transgender persons face unemployment which is caused by numerous discriminatory actions often justified by the lack of a trans-inclusive law and/or discrimination faced by trans people in education or stigmatization in their families.

The causes of transgender unemployment differ throughout the country but a couple of points can be raised at this point:

- A number of trans people fail to finish their education on a level that would prepare them for the job market. This is often caused either by bullying, family or personal issues which force transgender individuals to drop out from schools.
- Transgender people are often discouraged during job interviews, especially on the grounds of their gender expression or their legal status (i.e. passing as a woman, but not being yet recognized legally as female). There are no legal procedures that would prevent those kinds of situations.
- After leaving the workplace (for various reasons) transgender people who went through legal gender recognition often receive employment proving documents stating their previous legal status, both the name and gender, which definitely closes the route to gain a job fitting their qualifications. These problems concern especially those who do not want to disclose their transgender status.

Another problem within the employment field is harassment which has been reported by both trans women and men. This is an issue that is difficult to approach mostly due to the fact that transgender people are not only afraid of losing their jobs when reporting the case but also are not educated on their rights as employees or legal measures that can be taken after such an incident occurs. It is also



crucial to note that in most reported cases harassment (also sexual) in the workplace starts after a person decides to come out as a transgender person, which would underline how being transgender is viewed within some spaces.

Recommendations for the government: start monitoring the situation of transgender employees and ensure that every trans person is protected in their workplace. An educational campaign on transgender employees rights should be launched and the problem of employment proving documents should be addressed as soon as possible.

5. Healthcare

The highly gendered healthcare system in Poland is known for its non-trans-inclusive services. Transgender women and men who went through legal gender recognition face problems registering to a doctor who specializes in issues seen as either male or female. There have been reports of trans women not being able to register for a visit to an andrologist, as well as trans men having the same issues with gynaecologists³.

Trans people who were, however, able to visit their chosen doctor often face medical professionals who are not only uneducated on trans issues, but also prejudiced and therefore not being able to provide trans people with needed health assistance.

A typical issue that trans people face in the healthcare system is the lack of state funding for gender reassignment procedures. This not only means not being able to afford surgeries but also problems with being able to pay for hormone therapy (extremely pricy for trans women), which every trans person needs to undergo before being legally recognized. This is also linked with problems faced in pharmacies, trans people (especially trans women) who were not yet recognized legally in their preferred gender have reported a few cases of pharmacists denying a person state-approved reimbursement, justifying their actions by the fact that a male cannot buy female hormones at a reduced price.

Recommendations for the government: Reinstate back the reimbursement of gender reassignment procedures as they are crucial to the transgender population's well-being. All gendered healthcare matters should be dropped or alter so that they reflect the needs of trans people and their access to healthcare and medicine.

6. Hate crime and hate speech

The state of Poland does not keep track of hate crimes targeted towards trans people or persons being perceived as transgender. There are also no special police programs aimed to help victims of transphobic hate crimes, which leads to a high underreport of the incidents.

Neither hate crime or hate speech of any kind is recognized by the Polish legal system, which leaves the LGBTQI and other sensitive groups vulnerable to violence and hatred.

Recommendations for the government: Adopt legal measures to combat hate crime and hate speech. Issue special trainings and programs aimed to educate armed forces on gender identity, gender expression, sexual orientation and multiple discrimination.

3 There have been no records on pregnant trans men so far.