

# **POLAND**

**Government Plenipotentiary for Equal Status for Women and Men  
Ministry of Foreign Affairs**

**Republic of Poland, 2004**

**Questionnaire on Implementation of the Beijing Platform  
for Action (1995) and the Outcome of the Twenty-Third  
Special Session of the General Assembly (2000)**

## **Part 1.**

### **Overview of achievements and challenges in promoting gender equality and women's empowerment**

#### **1.1. Political background**

Polish legislation is based on the principle of equality of rights and non-discrimination on grounds of sex, which means that formally women have the same rights as men. Equality of women and men is guaranteed by the Constitution of the Republic of Poland. Poland is a party to the most important international human rights treaties. However, women's rights are still not generally recognized as human rights. As well as in many other countries the fundamental problem with regard to an equal status of women and men is a discrepancy between legislation (*de iure*) and real life (*de facto*). Over the last decade, Poland has undergone tremendous political, economic, and social changes, which in 1989 began the transformation of the system. It has also been a time of fundamental debates on human rights and of heated ideological disputes. Each governing force attempted to promote the values it considered as dearest. This was reflected by the climate of discussions on equality issues, the evolution of the institutional machinery for women and regulations on the permissibility of abortion.

#### **1.2. National Action Plan for Women**

*The National Action Plan for Women for 1997-2000* was prepared by the Government Plenipotentiary for the Family and Women together with experts and NGOs after the Government of the Republic of Poland signed *the Beijing Declaration* and *The Platform for Action*. The Government approved these documents in April 1997. *The National Action Plan* assigned specific tasks of the *Beijing Platform for Action* to ministries, local authorities and NGOs. It contained a timetable as well.

After the parliamentary elections in 1997, the implementation of the *National Action Plan* was stopped (as was proved by the *ex-post* evaluation carried out in 2002). The Government also failed to adopt a law on the protection of victims of violence. A Program prepared together with the UNDP *Against violence – to equalize the chances* (regional assistance centres for victims of domestic violence) was turned into a program of assistance to families and of fighting against alcoholism. Gender equality issues and actions related to women's promotion were reduced to the minimum necessary for compliance with the EU requirements.

A major change occurred after the parliamentary elections of September 2001. Actions for gender equality and assigning more power to women became one of the Government priorities. The Government Plenipotentiary for an Equal Status of Women and Men undertook work on the second stage of the implementation of the *National Action Plan for Women 2003-2005* as one of her first tasks.

The second stage of the Plan is promoting women's rights in the way stipulated by the UN documents, fulfilling the recommendations of the 23rd Special Session of the UN General Assembly. Its strategic assumption is a comprehensive approach to the solution of women's problems. It comprises many spheres of social life and women's activity and is addressed – first

of all – to the authorities as well as to Government and local administration. At the same time, it is based on the pattern of an open social dialogue and cooperation with research institutions, NGOs, local governments, trade unions, and the media. In order to implement the gender mainstreaming principle and in order to monitor the process, focal points are to be set up in government administration offices on the central and regional level. The Plan was adopted as a Government document by the Council of Ministers on 19 August 2003.

The second stage of the *National Action Plan for Women* comprises nine chapters corresponding to different spheres of women's life. These spheres were indicated by the UN in the *Platform of Action* and in the report "*Beijing+ 5*". These are (1) Women's rights as human rights, (2) Economic activity of women, (3) Violence against women, (4) Women's health, (5) Education, (6) Participation of women in public authorities and decision-making, (7) Women and the mass media, (8) Co-operation between state administration and NGOs, (9) Research and data collecting systems strategies.

Each chapter is preceded by quotations from the *Platform of Action* and by the information on the situation in the EU countries. Then the strategic goals are presented, which – if achieved – would speed up the improvement of women's rights and opportunities in society. Each strategic objective is accompanied by the actions to be taken which determine the scope of proposed changes.

In December 2003, a permanent team of experts monitoring the *National Action Plan* was set up within the Secretariat of the Plenipotentiary. The team consists of 48 persons. It is composed of representatives of the public administration i.a. State Committee for Scientific Research, Government Centre for Strategic Studies and Central Statistical Office and also of NGOs representatives. The team's task is to establish indicators determining the stage of the *National Action Plan* implementation and finally to prepare a monitoring report by the end of 2004.

### **1.3. The Convention on the Elimination of All Forms of Discrimination against Women**

On 18 July 1980 Poland ratified the *Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*. The text of the Convention – published in the Official Journal – is generally available. After the transformation of the political system, the reservation to Article 29 § 1 of the Convention was withdrawn. On 22<sup>nd</sup> of December 2003 Poland ratified the Optional Protocol to the Convention. Poland, being a party to the *International Covenant on Civil and Political Rights* and harmonizing its legislation with the EU equality directives, is implementing regulations which arise strictly from the provisions of the Convention. Since Poland has ratified six core international human rights instruments, women's rights can be defended before treaty bodies.

The last report on the implementation of the provisions of CEDAW considered by the Committee on the Elimination of Discrimination against Women covered the year 1990. In 2002, the Polish Government made efforts to catch up and in 2004 the Plenipotentiary has concluded the preparation of the periodical reports IV, V, VI covering the years 1990-2002. The Council of Ministers adopted them on the 30<sup>th</sup> of April 2004.

The ban on discrimination on grounds of sex has in several cases been used to question some regulations as unconstitutional and to bring them to the Constitutional Tribunal. The Tribunal in its ruling from 2000 (signature K.15/99) directly quoted provisions of the Convention - stating that the law on *Pharmaceuticals and medicals, pharmacies, warehouses and pharmaceutical inspection* is inconsistent with the Constitution of the Republic of Poland as well as with the Convention. The Supreme Court has on several occasions invoked the international human rights instruments, including the Convention on the Elimination of All Forms of Discriminations Against Women.

## **Part 2.**

### **Progress in implementation of the critical areas of concern of the Beijing Platform for Action and the further initiatives and actions identified in the twenty-third special session of the General Assembly**

#### **2.1. Prostitution and trafficking in human beings**

##### **2.1.1. Scope of the phenomenon**

The estimated number of women working as prostitutes in Poland has diminished from 13,500 in 1997 to 7,000 in 2001 and has remained at this level. Police actions and smaller demand due to economic difficulties and recession have contributed to this decrease. Foreign citizens make up to 50 % of prostitutes in Poland.

Meantime, the transfer of women and coercion to prostitution abroad has become the trans-border organized crime business. Poland, initially the country of origin of the victims, has come to be a transit country. This concerns mainly women attracted by work-abroad adverts and matrimonial announcements; they are transported and sold to nightclubs (both legal and illegal ones) in Western Europe.

At the same time, there is an increasingly common phenomenon of bringing women (Romanians, Bulgarians, and citizens of the former USSR) to Poland to work in illegal nightclubs or ones working under the guise of escort agencies. Part of them is working by transit roads, mainly in border areas.

##### **2.1.2. Prosecution of crimes**

Prostitution is not a punishable offence in Poland. It is treated as social pathology – Polish regulations penalise the exploitation of prostitution and trafficking in human beings. Police actions are then focused on establishing who profits from somebody else's prostitution, who organizes the transportation of women abroad and where the groups of prostitutes are located. In the case of foreign citizens, it is inquired whether they remain in Poland legally, and whether they stick to the declared purpose of stay. Legal action is taken against those who have broken the law or they are deported. Imprecise regulations concerning prostitution in practice facilitate trafficking in women. It is neither illegal nor legal. It is impossible to register prostitution as a profession, which would lead to its decriminalisation.

A crime consisting in supplying, luring or abducting a person for prostitution purposes, even with her consent, has been transferred from *the provisional regulations of the Penal Code* into the new Penal Code. These are, however, not regulations of identical contents. The legislator left out the phrase “even with their consent” included in interpretation suggesting that abduction with the consent of the abducted person is possible.

In the case of exploitation of prostitution with the consent of the wronged person, the perpetrator of the crime shall be subject to the penalty of imprisonment of up to 3 years. In the case of

enticement or abduction of a person in order to induce them to prostitute, the perpetrator shall be subject to the penalty of imprisonment from 1 to 10 years.

According to the new Penal Code, a person trafficking in human beings, even with their consent, is subject to the penalty of imprisonment of no less than 3 years. In that case, neither the purpose of trafficking in people nor the fact of the wronged person's consent matters. Usually, the formulation of charges involves a cumulative qualification of the deed. With regard to this, since trafficking in human beings is perpetrated for reasons, which deserve special condemnation, in the case of conviction, the court may consider on an additional punishment consisting in depriving the convicted person of his public rights.

### **2.1.3. Victim's position in penal proceedings**

Trafficking in human beings as well as crimes related to this phenomenon are prosecuted by virtue of the law. This is an obligation of law enforcement agencies. The victim's position is enhanced through the following regulations:

- the victim may act as an auxiliary prosecutor together with the public attorney,
- the victim of a crime may be supported by a representative of an NGO,
- witnesses can be heard by the court at the preparatory proceedings stage (in cases of trafficking in women the victims usually return to their home countries after having given evidence for the investigation purpose, and there is no guarantee that they will appear in court to testify again),
- the possibility of giving evidence by the victim with the assurance that the perpetrator is absent while the victim is providing evidence (whenever it is to be feared that his presence would limit the witness's liberty of testifying),
- the institution of an incognito witness (classifying the witness's identity in the case of substantiated fear that his or his close relatives' life, health, freedom or property of considerable value may be endangered),
- the possibility of legalizing the foreigner victim's residence in Poland (issuing a residence visa for a determined period), in order to enable her to testify against pimps, dealers and traffickers in persons.

### **2.1.4. International cooperation**

Trafficking in women and exploitation of prostitution (several dozen cases annually) still do not make a big number in the overall statistics of crimes committed in Poland. Nevertheless, information coming from different sources, including NGOs, indicates that these statistics embrace but a small part of this kind of crimes, a tip of the iceberg. Taking this into account, the Government is determined to combat this kind of practice as well as any other kind of slavery. National strategies as well as those of international cooperation are being prepared.

In 2001 the Republic of Poland ratified the UN Convention against Transnational Organized Crime. The same year Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially in Women and Children – the so-called Palermo Protocol was signed. Together with another additional protocol to the Convention (Protocol against the Smuggling of Migrants by

Land, Sea and Air) it was sent to the Sejm for ratification. On 18 December 2002, the Sejm passed a law which authorized the President to ratify both protocols (they were ratified by President on the 23<sup>rd</sup> of August 2003).

Poland has supported the Council of Europe initiative to prepare a draft European convention on combating trafficking in people and is actively participating in the CAHTEC special committee works. These preparations are scheduled to conclude by the end of 2004 and the Convention will be ready for signature in May 2005. It is going to be a period of the Polish presidency in the Council of Europe, whose one of the main priorities will be combating trafficking in people.

During the 60<sup>th</sup> session of the Commission on Human Rights Poland together with five other countries Costa Rica, Congo, Germany, Libyan Arab Jamahiriya and Philippines presented a draft decision on the appointment of a Special Rapporteur on Trafficking in human beings, especially in women and children. The draft decision was adopted by the Commission on the 19<sup>th</sup> of April 2004.

An international working team was set up in 2001, including representatives of the Ministry of Internal Affairs and Administration, Chief Headquarters of the Police, Chief Headquarters of the Border Guard, Office for Repatriation and Aliens, Ministry of Justice, Ministry of Foreign Affairs, Plenipotentiary for an Equal Status of Women and Men, NGOs (La Strada and others), and academic circles. The team has begun to work on the model of protection of the victim-witness. The plan assumes the enforcement of the victim-witness protection during the investigation process thanks to the possibility of using certain procedures and technical instruments (limitation of the number of hearings, use of special procedures to protect the witness). The establishment of a list of organizations and assistance centres to help the victims of trafficking in people is being planned, as well as the elaboration and implementation of programs monitoring the return of victims of trafficking in people to normal life.

### **2.1.5 Activities of the Police force and the Border Guard**

Since 1998, the Police have intensified measures aiming at the limitation of the exploitation of prostitution as well as of trafficking in people, women in particular. The following efforts were undertaken:

- controlling together with the Border Guard whether the foreigners working in so-called escort agencies in border areas stay legally,
- within the framework of the *Police Program to Support the Victims of Crimes*, since 2001 trainings of policemen in taking into account the needs of victims – women and children – have been organized and collaboration with NGOs and state institutions in the matter has been promoted,
- in 2002 guidelines were elaborated concerning reconnaissance activities of prostitution, combating crimes related to it, as well as dissemination of pornography through the Internet.

Since 2000, the Border Guard has been collecting data on crimes consisting in trafficking in persons, on the number of people arrested on suspicion of having committed such a crime, on the

number of initiated and held preparatory proceedings, on the number of suspects as well as on the way the proceedings have concluded.

The Police and the Border Guard are cooperating with the La Strada Foundation, exchanging information on those crimes, and organizing seminars, conferences and awareness campaigns.

International cooperation develops on an operational level. Representatives of the Police participate in the international Interpol group activities whose purpose is to combat trafficking in women and also in the activity of experts' groups created to eliminate the trafficking in women in the Baltic Sea Region countries (BALTCOM). Cooperation within the framework of Europol also comprises combating trafficking in people.

## **2.2. Violence against women**

Since the Beijing Conference, prevention and elimination of violence against women and girls has been an important part of the social policy of the Polish government. The first project, focused on assisting mistreated women and financed by the Government, was created in 1995. The State Agency for the Prevention of Alcohol Related Problems offered assistance to victims of family violence through the "Blue Line" phone line. The purpose of this venture was to inform mistreated women on different legal aspects of their interest, for instance to supply them with information on the kind of help they can expect from the Police. The "Blue Line" was also available for witnesses of violence, i.e. for persons who wanted the Police to intervene and assist the victims.

In 1996, after the *Conference on Violence Against Women* a document entitled *Declaration Against Family Violence* was adopted and signed by the Government Plenipotentiary for the Family and Women, the State Agency for the Prevention of Alcohol Related Problems, the Women's Parliamentary Group, and NGOs.

New police intervention procedures in cases of family violence, the so-called "Blue Cards", became an important tool designed to better recognize the family violence phenomenon. It was elaborated in cooperation with the NGOs providing assistance for victims of violence and implemented in 1998. This program has been modified and improved in order to make the interdisciplinary activities of the police, other agencies, institutions, and NGOs more useful and efficient in providing assistance for victims, and in pursuing and punishing the perpetrators. The "Blue Cards" have become an additional source of relevant quantitative data on the violence phenomenon. A huge number of policemen from all Voivodship Police Headquarters have been trained in this procedure.

At the end of 2001, the new Government was active in combating family violence in order to make up for the arrears of the period 1997-2001. Priorities of the *Program for the Prevention and Elimination of Crime* were formulated, assuming that countering domestic violence will be one of its major purposes. An implementation of legislation on the prevention of violence against women based on the Beijing Platform was assured.

Combating crimes against women, their prosecution and penalisation were taken into account in the “*Safe Poland*” Program for the Improvement of Citizens’ Security as especially relevant for the improvement of public security conditions. The Government included into this program the principle of laying aside financial resources to combat violence against women and children. This proves that Polish authorities respect international standards of the protection of women against violence. “Safe Poland” assumes also – regarding the gender perspective – the appearance of a system of collecting and processing statistical data on crime, which will make possible a better awareness of the phenomenon of violence against women in Poland.

The Ministry of Internal Affairs and Administration, together with the Ministry of Justice, elaborated a document entitled “The Polish Charter of the Victim’s Rights”. The Charter was published with an appended commentary on some of its regulations and excerpts of the most relevant Polish and international laws concerning the situation of victims of crimes. A list of institutions and organizations providing assistance to victims of crimes is also added to the text.

Since 2002, the Plenipotentiary for an Equal Status of Women and Men has held the campaign “Zero tolerance for Violence Against Women”. In the framework of this campaign, a “Sixteen Days Against Violence Against Women” event is organized. In 2003, the campaign was presided over by the Prime Minister, who appeared personally in a TV spot on violence against women broadcasted many times on public TV. Conferences, seminars and marches against violence against women were organized as well. The prevention of violence was included as one of the goals of the *National Action Plan for Women*.

The current procedures do not provide sufficient protection to victims of violence. A legal mechanism, which would assure the right to remain at home, is missing. Women and children – victims of violence – are often forced by the perpetrators to flee and seek safety in shelters for the homeless or other charities. Being aware of this problem the Polish Government has initiated the elaboration of a draft law on the protection of family violence victims. The Government’s agenda for 2004 comprises the preparation of a draft law *on the Protection of victims of violence in close relationships*, which means the transposition to the Polish legislation of such regulations as the order to leave home by the perpetrator of violence and the restraining order. The implementation of these procedures, advocated for years by individuals providing help to victims of violence, should ensure adequate protection to the victims and enable them to remain in their homes. It will also facilitate legal procedures in cases related to family violence and will comply with the public expectation that it is the perpetrator who should suffer the consequences of his behaviour.

### **2.3. Counteracting stereotypes**

In Poland, the traditional family model and the division of home duties into those specifically feminine (care for babies and elderly persons, cooking, ironing, cleaning) and masculine (earning money, repairs, renovation work) continue to function. Although women are professionally active, their financial input into the family budget is seen only as an addition to men’s incomes. These stereotypes are also reflected in the way women are portrayed in the media. Women are presented in advertisements as housewives or sexual objects. A report based on an independent

study “Women in Poland in the 1990s” shows that women are more suitable for the promotion of detergents, shampoos and soups, while men are better at promoting beer, computers and cars.

The task defined in the *National Action Plan* which consists in promoting the gender equality principle and the non-stereotypical presentation of women in the mass-media is being realized i.a. by the project supported by the EU “*Enhancement of Policies on Equal Treatment of Women and Men*”. The Plenipotentiary, in cooperation with the National Council of Radio and Television Broadcasting and the research Centre on Gender Equality of the Roskilde University (Denmark), organizes conferences and training sessions for media people on the standards of equal participation of women and men in the process of decision-making in the media and on women’s rights issues. In January 2004 the “The Gender in Media” conference was held in Warsaw, which was meant first of all to raise awareness among local and national paper’s journalists. The project also comprises study visits of Polish media people in Denmark in order to become acquainted with the relevant experiences of that country.

Every three months a Consultative-Programmatic Council of the Plenipotentiary grants “Equality Glasses” awards for persons and institutions who distinguish themselves with an acute perception of the problems related to the equal status of women and men. The Council also grants admonitions, known as “Prescriptions to the Eye-Doctor”, to those persons and institutions who in the Council’s opinion fail to see manifestations of discrimination or are themselves guilty of discrimination.

## **2.4. The labour market**

38% of managers and 30% of general directors and presidents of big corporations are women. Women make up 38% of those running businesses of their own. Among small and medium-size businesses, women run 35% and the huge majority of these firms operate in urban areas (approx. 82% according to a study held in 2002 by the Ministry of Economy). Most businesswomen are involved in trade or brokerage services (40% each), usually they are self-employed (app. 51%) or employ up to five employees (app. 30%). Over 40% of business loans offered by the Polish-American micro fund go to women.

Despite such a big scope of economic activity of Polish women and the high professional position achieved by them, there are still areas of real inequality between women and men in the labour market.

### **2.4.1. Areas of inequality**

Women are a decidedly better educated part of the labour force; nevertheless their better education has no impact on their employment opportunities. The average unemployment rate among women reached the level of 20.6%, while for men it is 18.3%. The phenomenon of long-term unemployment of women is getting worse. Among those unemployed for up to 24 months women constitute 47%, and among those over 24 months women make up 60%. Being permanently unemployed means the loss of the unemployment benefit; in the third quarter of 2003, 16.3% of unemployed men and 12% of women were on the dole.

The unemployment rate among women is to a greater extent dependent on age. There are still barriers preventing women rearing children (or those who might have children) from being employed. Reconciling family duties with work is even more difficult because institutions offering childcare and care over dependent persons are missing. Since there was a distinct drop in birth rate in the 1990s (after the baby-boom in the 1980s), the local authorities whose duty it is to subsidize kindergartens, diminished their number by 30% (over 40% in rural areas) and at the same time increased the size of these institutions. During the same period, the Ministry of Health liquidated over 50% of nurseries. Private institutions which were the only ones to fill that gap became available only for higher incomes families. In that situation, frequently the only way out for women was to give up work.

Women's incomes are approximately 20% lower than those of men. The pay gap is obvious and has a tendency to widen especially among high executive positions. The pay imbalance is also due to the feminisation of some usually low-paid professions (home aids, cleaners, laundresses, nurses, and midwives).

The main factors responsible for the worse situation of women in the labour market are the following:

- women are the first to lose jobs when enterprises undergo restructuring. Twice as many women have lost their jobs because of economic hardships affecting their workplace;
- professional roles of women and men are perceived in a stereotypical way;
- employers perceive women as less available;
- prolonged absence from employment (maternity, child-rearing leaves, care for disabled family members) make qualifications of women outdated;
- insufficiently developed institutional childcare infrastructure has an important negative impact on the professional mobility of women and men, in particular of single parents;
- employers fail to adopt flexible forms of employment which could make combination of profession and family life feasible.

The Government is undertaking some practical and legislative action in order to counter these unfavourable labour market trends related to women.

#### **2.4.2 Anti-discriminatory regulations**

Until 1996 the Labour Code did not comprise regulations related to an equal status of women and men. In 1996, a major amendment of the Labour Code was introduced. The new Article 11.2 obliges the employer to treat men and women equally and Article 11.3 states that discrimination of any kind in employment and specially discrimination with regard to sex, age, disability, race, nationality, beliefs – in particular political or religious and trade union membership – is unacceptable. For the first time, a new regulation was included which makes the employer see that the employee is not offended and respect his or her dignity – Article 1(1). The infringement of the ban on discrimination in employment was neither considered as a crime in the Penal Code, nor considered as an offence against employees' rights. Therefore, there were no legal grounds for the National Labour Inspectorate whose legal duty it is to supervise and control whether the Labour law is respected in enterprises, to intervene in cases of discrimination.

On 1 January 2002 a new Chapter II was appended to the Labour Code *Equal Treatment of Women and Men*, which includes the following regulations:

- obligation of equal treatment of women and men in employment and in hiring and firing, employment conditions, promotion and access to training and upgrading of professional skills,
- ban on direct and indirect discrimination as a breach of the equal treatment of women and men principle,
- definition of indirect discrimination,
- amount of damages in cases of the infringement of the equal treatment principle,
- shift of the burden of providing proof to the employer,
- equal pay for work of the same value,
- definition of work of equal value,
- relevant legal grounds (temporary diminishment – in favour of employees of one sex – of the size of existing inequalities), compatible with the equal treatment of women and men principle.

Since 1 January 2004, a new amendment of the Labour Code has been in force. Its purpose was to adapt the Polish Labour law to the law of the European Union through the establishment of general grounds of equal treatment in employment and the implementation of measures improving health and labour conditions of pregnant employees and female employees who have recently given birth or are breastfeeding. According to these changes, the Labour Code includes the following regulations:

- broadening the catalogue with a ban on discrimination in employment with regard to race, ethnic origin, religion, and sexual orientation and also with regard to employment for a limited period or permanent contracts or to full or part-time employment.
- introduction of the definition of direct discrimination (until then the notion of direct discrimination had been used in the Labour Code, but was not defined),
- definition of sexual harassment and recognition that it is a manifestation of discrimination in employment on grounds of sex,
- abolition of the upper limit of the damages paid to the person whose employer has breached the principle of equal treatment in employment and establishment that the damages (indemnification) cannot be lower than the minimum wage.

In the Regulation of the Minister of Labour and Social Policy of 9 February 2000 on specific rules of job centres management, a ban was introduced on including information which could be considered as discriminatory on the grounds of sex in adverts of available jobs. Advertisements addressed to persons of one sex had to disappear from employment offices.

In 2002 the Regulation of the Council of Ministers *on the Register of jobs forbidden for women* was radically revised. After that change, this notion concerns only pregnant women and those who have recently given birth or have been breastfeeding. The claim to reject the earlier discriminatory concept of the *Register of jobs forbidden for women* and to substitute it with providing safe labour conditions for all employees, while preserving some indispensable

limitations with regard to employment conditions for pregnant and breastfeeding women, was subsequently put forward by the Plenipotentiary and NGOs. The discriminatory paragraphs limiting women's access to employment were struck out from the Regulation and its title was changed to *the Register of jobs especially tiring and harmful for women's health*.

### **2.4.3 Parental rights**

Before 1995, only the mother had the right to a parental leave. Since 1995 until the end of 2001, only one of the parents – the father or the mother – was able to take advantage of a parental leave. Since 1 January 2002 the three-month parental leave may be taken by the mother or the father or by both parents or by child's guardians (if they have been working long enough to acquire the rights to such a leave).

Before 2001 the woman not only had the right to a maternity leave but also was obliged to take it. She was not able to give it up. Since 26 May 2001 (when the Labour Code was amended) a woman can get back to work earlier and can let the father (employee) to use the rest of this leave and take care of the baby. The title of this Part VIII of the Labour Code was changed as well from "Protection of women's labour" to "Employee's parental rights". This fundamentally new approach to parental rights reduced the exclusively women's rights to the 14-week obligatory maternity leave and to breast-feeding breaks.

### **2.4.4 Monitoring law observance**

At the beginning of 2002 the Plenipotentiary organized a seminar attended by representatives of all agencies responsible for the implementation and observation of the labour law, employers, trade unions, and NGOs related to the labour market. The seminar *Labour Code – an Opportunity For Women* was dedicated to new anti-discriminatory regulations included in the Polish labour law and to providing information on the way those new rules could contribute to the professional activization of women. According to the National Labour Inspectorate data presented at the seminar, the number of complaints on gender discrimination in employment until 2001 had been insignificant. In the following years, the Labour law amendments and the governmental awareness campaign contributed to broadening the National Labour Inspectorate's scope of control. It acquired the right to control whether the principle of non-discrimination on grounds of sex in employment as well as in parental social benefits system is respected. The Plenipotentiary, together with the All-Polish Alliance of Trade Unions (OPZZ), initiated a survey performed by the National Labour Inspectorate among employees asking them how often they encounter discrimination on grounds of sex, whether this kind of situations concerned them personally or whether they only have heard about them or have witnessed them. Provisional results of the survey show that over half of the enquired employees have come across discrimination – a full analysis of this enquiry will be included in the report of the National Labour Inspectorate for the year 2003. A brochure has been prepared informing what discrimination on grounds of sex is about and how to prevent it – the full text of the information is available at the National Labour Inspectorate's website.

Since 2002 the Ministry of Justice has been collecting data on crimes mentioned in Chapter II a of the Labour Code (Discrimination in employment). The forms of the reports filled by means of

cards in 2004 contain information on the sex of the persons whose labour rights have been breached.

## **2.5. Pension system**

The lower retirement age of women (60 years), as opposed to that of men (65 years) was perceived – especially at the beginning of the 1990s – as a privilege. The pension system in force until 1998 was a re-distributive one. Shorter contributory periods of women (i.a. free maternity leave) had a lower impact on the pensions level since they were partly compensated for by the system. Most women took advantage of the right to an earlier retirement, which due to the high rate of unemployment was encouraged by both the Government and the trade unions.

The new pension scheme implemented in 1999 is based on completely different rules. It might be financially less favourable for some women because it links closely the contribution amount with the final level of the pension. Nevertheless, it has to be stressed that the changes concerned persons under the age of 50 as of the moment of the new law taking effect. The other age groups are embraced by the old rules, including the possibility of earlier retirement. In the new system (composed of the pillar administrated by the Social Insurance Office and of the capital pillar operated by open pension funds) the pensions amount will be dependent on the amount of contributions paid to the system increased by the indexation (in the Social Insurance Office) and by the profits from investments (made by the Pension Funds). The pension calculated in this way is, then, determined mainly by the amount of contributions to social insurance and by the contributory period.

If the differentiation of the retirement age of women (60) and men (65) continues, women's pensions will be lower than those of men even if the wages are the same (although women are not obliged to retire when they become 60 years old). The amount of the pension, apart from the collected contribution, is also influenced by the average life expectancy after retirement. In that case – in order to lessen the impact of the different retirement age of men and women – the average retirement age is considered (average for women and men together). It should be noticed, however, that a retiring women will have her “capital” divided by the expected life time, which is five years longer than that of men who retire at 65.

Since 2003 the Government has started to work on an equal and flexible retirement age for both women and men. The final goal of this new system is to extend women's retirement age to 65 years by 2024, while enabling all the insured (men and women) to quit work, gradually or definitely between 62 and 65 years of age. This system, which is being widely debated now, is to be implemented step by step from 2014 and will concern only persons born after 1954.

### **Part 3.** **Institutional Development**

#### **3.1. Government Plenipotentiary for Equal Status for Women and Men**

The national machinery for women in Poland has been substantially transformed. Changes of the position and tasks of the office responsible for the Government's policy of an equal status of women and men and even significant changes of the name of the Government Plenipotentiary office have reflected the ideological dispute taking place in Poland since 1989 (1986 – Government Plenipotentiary for Women, 1991 – for Women and the Family, 1995 – for the Family and Women, 1997 – for the Family). The Plenipotentiary for the Family established after the 1997 parliamentary elections was responsible for initiating and coordinating the state's family policy based on the traditional role divisions between women and men. The implementation of the *National Action Plan* was stopped, as were also any attempts to establish regional structures for women's promotion such as plenipotentiaries for women, undertaken by the previous Government.

After the next parliamentary elections in 2001, a new coalition Government established the Government Plenipotentiary for an Equal Status for Women and Men, in accordance with its electoral program. The initial idea was to fit the office into the Ministry of Labour and Social Policy structure. Finally, the Council of Ministers established the Plenipotentiary in the rank of the Secretary of State, as a part of the Chancellery of the Prime Minister, yielding in this way to the pressure of women's NGOs. The new office's very name reflected a crucial change of approach to the issues of women and men rights. The main task of the Plenipotentiary was to see that the constitutional principle of equality between women and men is respected, to continue the implementation of the *National Action Plan*, and to revitalize public debate and cooperation with NGOs. In 2002 the Government enlarged the Plenipotentiary's scope of competence by adding such tasks as combating discrimination on the grounds of race, ethnic origin, religion and beliefs, age and sexual orientation.

The Plenipotentiary analyses and evaluates whether legislation complies with the standards of women's and men's equal rights principle and initiates amendments of discriminatory regulations (i.a. on such areas as labour law, social insurance, health care, family planning, finance, etc.). The Plenipotentiary takes part in the work of inter-ministerial committees, gets involved in Government legislative activity and undertakes actions aimed at i.a. equalizing women's opportunities on the labour market or counteracting trafficking in people. The Plenipotentiary organizes seminars and conferences on women's and men's equal opportunities on the labour market, education, health, decision-making process, etc.

The Plenipotentiary is assisted by the Secretariat, which is a part of the Chancellery of the Prime Minister and supplies the Plenipotentiary with expertise, organizational and office services. Its staff numbers 22 full time employees. Most of them, apart from three secretaries, provide expert assistance. The Secretariat's structure comprises a separate international cooperation department while the rest of the experts constitute the analysis and program team. Its annual budget supplied by the state budget amounts to 500,000 USD. The Plenipotentiary also spends 20,000 EUR on Community projects subsidized by the European Commission. Together with foreign partners,

the Plenipotentiary realizes the pre-accession programs financed by the European Commission with about 2,000,000 EUR (until 2004).

The Plenipotentiary gives financial support to those research centres which carry out research on the situation of women in Poland. In 2003, the research concerned i.a. the situation of women in the former state agricultural enterprises areas, the participation of women in structures of power, the barriers which rural women come across in the enjoyment of their rights, the “glass ceiling” phenomenon. The results of this research are published and enable the authorities and the public opinion to understand better the women’s rights situation.

The Plenipotentiary issues publications on women’s rights and gender equality in such areas of interest as: Labour Code, parity system, equality and tolerance in school textbooks, international health standards and reproductive rights, rights of sexual minorities, *in vitro* fertilisation.

### **3.2. The National Machinery Network**

Within the framework of the *National Action Plan for Women* (II stage), Voivod’s Plenipotentiaries for Equal Status for Women and Men were appointed in 12 from among 16 Voivodship’s Offices (the Government administration on the regional level) as well as in several counties (self-government administration units on the local level). At the same time 11 persons responsible for monitoring the implementation of the principle of gender equality in access to top positions took offices in the central administration (Ministry of Infrastructure, Ministry of Agriculture and the Development of Rural Areas, Ministry of Science and Information Technology, Ministry of Internal Affairs and Administration, Ministry of Culture, Ministry of Foreign Affairs, Ministry of State Treasury, Central Statistical Office and Office for European Integration). In this way was created for the very first time an institutional network for gender equality promotion and strengthening the position of women.

### **3.3 Gender segregated statistical data**

The first stage of the *National Action Plan* (1997-2000) assumed the monitoring and the evaluation of data concerning women’s participation in public life. A detailed report on access to top positions for women and men in both Government and self-government administration, the judicial system, Parliament, enterprises, banks, political parties, and trade unions was to be prepared. Still, the analysis made by the Plenipotentiary in 2002 showed the lack of progress in the implementation of the tasks of the *National Action Plan*. Neither the ministries nor the Central Statistical Office fully implemented research assumptions. With the exception of the data on women’s participation in the Parliament and local authorities (published in the statistical yearbook), other information was gathered and processed by NGOs, science institutes, and universities (often in the framework of gender studies).

Since the 2001, the monitoring of the situation and progress on women’s participation in public life and access to top positions, as well as the gathering of data on every sphere of life influencing women’s situation has become one of the most important tasks of the Plenipotentiary, who started intensive collaboration with the Central Statistical Office and with research and science institutions. Currently, the II stage of the *National Action Plan for Women*

(2003-2005) is being implemented, which includes i.a. the chapter “Research strategies and gender-segregated data collection system”. Its strategic goal is to get “*full data enabling the establishment and evaluation of the situation of women in Poland as well as the publication of a periodical summary entitled Women in Poland*”.

Every year the Plenipotentiary expresses opinions, orders independent research on women’s and men’s status in specific spheres of social life and demands this information to be taken into account in the programs of public statistical research centres.

*The National Action Plan* embraces also actions to be taken: *acquisition of gender balance in the appointment to the decision-making positions in public administration, the Government and the judicial system*. This task includes i.a. the preparation of biannual detailed reports on decision-making appointments with regard to women and men.

Since August 2003 the Plenipotentiary has implemented together with EU partner countries the project entitled the *Enhancement of Policies of Equal Treatment of Women and Men* (Phare 2002), which includes actions focused on analysing national needs of information, statistic and research on equal treatment of women and men, as well as on discovering the gaps in national statistics with regard to economic, social and political life. Training sessions are held for such professional groups as: specialists on equal treatment and opportunities employed in different political and social services areas; local administration, labour inspectorates, police, judicial system, employment offices, and educational sector. All these efforts will result in the establishment of the national system of monitoring the implementation of equal treatment policy.

### **3.4. Using international experience**

Since 2003 Poland has taken part in the program *Framework Community Strategy for Gender Equality 2001-2005*. The Strategy consists of i.a. specific actions to assure full enjoyment by women and men of human rights and fundamental freedoms – independently of their race and ethnic origin, religion and beliefs, disability, age and sexual orientation. It aims at the enhancement and improvement of the mechanism of the implementation of equality legislation, raises social awareness with regard to equality and women’s rights as human rights. This year the Program includes the project “overcoming obstacles in the way to gender equality”.

Poland is cooperating with countries such as Sweden and Norway with extensive experience in striving for an equal status of women and men. Joint conferences and seminars with the participation of equal status ministers from these countries are organized.

### **3.5. The role of NGOs**

There are about 260 women’s organizations in Poland. The majority of them are involved in such areas as women’s political activity, providing women with legal counselling, violence against women, women’s health, labour market and unemployment, education and training. The most important barrier the women’s organizations (as well as most NGOs in Poland) come across is the insufficiency of financial resources.

The cooperation undertaken by the Plenipotentiary for the Family and Women with NGOs in the framework of the Forum of the Women's Organizations, before the Beijing Conference in 1995, strengthened the movement and proved to both sides that a permanent dialogue helps solve women's problems and enhance the development of democracy.

In 1997-2000 there was a backlash of cooperation between the Government and the NGOs involved in women's promotion. At that time the Government abandoned the obligations of the Platform of Action and erased women's rights issues from the social agenda. Women's organizations subsequently took over in part the duty of promoting women's rights; they participated in international women's conferences and prepared reports on how specific pacts and conventions were respected in Poland (i.a. the report for the UN Human Rights Commission and the "Beijing + 5" report).

Since the parliamentary elections in 2001, women's rights and their participation in the social dialogue have been recognized as one of the conditions of constructing a democracy. The meeting of the Prime Minister with representatives of women's organizations concluded in the establishment of the Government Plenipotentiary for an Equal Status of Women and Men. The Plenipotentiary cooperates permanently with NGOs, i.a. exchanging experiences, opinions and views at the sessions of the Consultative-Programmatic Council, set up by the Plenipotentiary.

The Plenipotentiary supports the actions of women's organizations and groups by announcing – twice a year – contests for subsidies aimed to support equal status and women's rights activities. Joint programs and actions are also organized. A widespread action of support of the organizations promoting women's participation in decision-making processes is worth mentioning. For this sake a coalition of organizations was set up in the spring of 2001 – Pre-electoral Women's Coalition, which unites over 80 women's organizations and groups. The Coalition's purpose is to support women running for offices at all levels in parliamentary and local elections. The Plenipotentiary cooperated with NGOs in the pre-accession referendum campaign. Promotion of Polish accession to the EU was an opportunity to advocate women's rights and their participation in the decision-making process. A new *law on Public Benefit and Volunteer Work* will foster the efficiency of solving many problems. It makes more precise the principles and forms of the cooperation between public administration and NGOs and states in Article 4. § 1.p 8 that the *extension and protection of women's rights as well as actions for equal rights of women and men* are considered as a part of the public sphere tasks in the area of public interest.

The Government document on the principles on which the social dialogue is based anticipates the widening of the social dialogue and the state's support for women's organizations, since it declares that providing help for NGOs and the exchange of information are fundamental for the cooperation between NGOs and Government administration.

### **3.6. Parliamentary Women's Group**

There is no Committee on the equal status of women and men in the Polish Parliament. The Parliamentary Women's Group founded in 1991 is meant to be the first step to build an institutionalised women's lobby defending women's rights. Besides initiating new legislations, it

has been integrating Polish women's organizations and groups. Currently, the Group gathers 58 female deputies (out of the total of 93 females) and 17 female senators (out of the total of 23 women in the Senate).

Thanks to the Women's Parliamentary Group, the Constitution of the Republic of Poland adopted in 1997 includes *Article 33*, which states that:

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.*

Other legislative initiatives of the Group include i.a. proposals to facilitate adoption procedure, divorce, alimony execution improvement and the liberalization of the abortion law. The Women's Parliamentary Lobby has also drafted a law *on an equal status of women and men*.

### **3.7. The Law on Equal Status**

The attempts to adopt a law *on an equal status of women and men* have been a part of the national machinery for women. For the first time, the Group presented the draft law in the Parliament in 1996. The draft aimed at banning indirect and direct discrimination of women and men in all spheres of life (especially in professional life, access to social insurance, healthcare and judiciary system) and was based on Norwegian experiences. The most controversial part of the draft law was the provision that at least 40 % of representatives of one sex should participate in all the bodies nominated elected or appointed by public authorities. The draft was not discussed. It was recommended that amendments be introduced to it and then in 1997 it was submitted for parliamentary debate and sent to parliamentary committees. In 1997 the parliamentary term was over and new elections were convened, which meant that the whole procedure had to begin once again.

In 1998 the Women's Parliamentary Group brought a draft law on equal status again to the Parliament. The Government considered the new draft as unsubstantiated and the application of provisional measures to equalize opportunities as contrary to the European Union legislation. The Government criticized as well a proposal included in the draft law to revise school textbooks in order to eliminate stereotypes of women's and men's roles arguing that this could lead to the erasure of differences between female and male social roles. After the parliamentary elections in the autumn of 2001, it was again the Women's Parliamentary Group who prepared a new draft law. The current draft includes definitions of discrimination and sexual harassment as a specific form of discrimination on grounds of sex. As to public activity, the project guarantees parity in all collective bodies elected, appointed or nominated by public authorities. The draft law assumes the establishment of an independent central office for an equal status of women and men, which – according to the draft's authors – would assure independence and continuity of its actions. The draft was brought to Parliament in 2002 and is being worked on.

## **Part 4.**

### **Challenges and future actions**

#### **4.1. Women's health and reproductive rights**

Since 1990 a very agitated public debate has been held in Poland on the conditions under which abortion is permitted. All issues related to women's health and their right to a choice are regulated by the *law of 1993 on Family Planning, Protection of Human Foetus and Conditions under which Abortion is permitted*. Authors of this law's draft assumed that human life should be protected from the moment of conception. The law allows abortion only under three circumstances:

(1) when the mother's life or health is endangered, (2) in the case when prenatal tests or other medical assumptions indicate a high probability that the foetus is heavily damaged and irreversibly disabled or when it might suffer an incurable danger to its life, (3) when there is a substantiated suspicion that the pregnancy is a result of crime.

In 1994 after the governing coalition took over work on the liberalization of the law aiming at subsidizing contraceptives (50-70% of the price) as well as the possibility to perform an abortion in the case when the woman is confronted with hardships or when her personal situation is difficult started. The new law came into effect in January 1997 but the same year the Constitutional Tribunal announced that the law was incompatible with some articles of the Constitution and the Parliament approved this ruling.

Most of the society is discontent with the current legislation (CBOS study of 2003). 61% of the polled are supporting the liberalization of the law, 20% are in favour of making it even more restrictive, while 19% do not have an opinion.

According to the provisions of the existing law, the Government has to report annually to the Parliament on its implementation. These reports show that actually the law operates in an even more restrictive way than it is assumed in its provisions. The conscience clause is being abused by physicians to refuse to perform an abortion even when the law permits it. There are difficulties in obtaining a confirmation that the pregnancy is a result of a crime from law enforcement agencies. Physicians restrict access to prenatal tests because these might give indications for an abortion. The law has contributed to the increase of the number of mothers leaving their babies in hospitals, of the number of minors getting pregnant and giving birth and babies who get killed. It has also led to the emergence of an "abortion underground" and "abortion tourism", which is easily seen in press advertisements. Abortion, although illegal, is widespread in Poland. According to the estimates of the Federation for Women and Family Planning, from 80,000 to 200,000 illegal abortions are performed annually in Poland. The goals of the initiators of this law, i.e. a decrease in the number of abortions and an increase in the birth rate, have not been achieved.

The Government Plenipotentiary has given her opinion on the execution of the law and has proposed since 2001 the establishment of precise instruments to evaluate the functioning of the anti-abortion law and its social results.

The Prime Minister accepted the Plenipotentiary's motion to appoint an Inter-Ministerial Team for the evaluation of the law's execution. The Government's position is that, before any legislative work is undertaken in this very difficult and controversial field, it is necessary, first of all, to make all the provisions of the law work. This refers mainly to:

- access to methods and measures of conscious procreation,
- access to information and prenatal tests,
- introduction into schools' curricula education of human sexual life, of conscious and responsible parenthood principles, of the value of the family, of the prenatal stage of life and of the methods and measures of conscious procreation,
- providing women with the possibility of having an abortion when the law permits it.

In March 2001 the Health Minister addressed the voivodship heads to remind public health care institutions which deliver gynaecological and nursing services that they have to stick strictly to the provisions of the law. The heads of these institutions should provide conditions necessary to perform an abortion whenever the law permits it, supply full information on family planning, including access to methods and measures of conscious procreation and recommend their patients prenatal tests. The Minister of Health also pointed to the fact that the so-called conscience clause included in the law *on the Medical Profession* is applicable only to an individual physician and in no circumstances can it be invoked by the whole medical institution and by the management of the medical centre which calls upon a collective conscience.

The Government recognizes also a need to subsidize with public funds the treatment of infertility, which according to the World Health Organization is a disease, and due to its scope, a social one. In Poland the treatment of infertility, at every stage, is still dependent on the patients' financial resources. The Government made a decision in the *National Action Plan* that as of 2004 a wider range of medicines helping to fight infertility will be subsidized. The Government assumes that the right to have children should be universal and enjoyed by all families, not only by wealthy ones.

#### **4.2. Participation of women in the decision-making process**

The Polish experience shows that the mechanisms promoting the participation of women in power are efficient. Before the parliamentary elections of 2001, three parties (two of them, leftwing ones which created a Government coalition SLD-UP: Democratic Left Alliance-Labour Union, and a centre party UW: Freedom Union) decided to apply a quota system during the vote and guaranteed that no less than 30% of the candidates will be women. A Pre-electoral Women's Coalition composed of 80 women's NGOs also campaigned to increase women's participation in politics. The electoral result confirmed that the society is willing to give women a bigger share in power. Women's representation in the Parliament rose from 13% in the previous Sejm (lower chamber) to 20% in the current one, and from 12% to 23% in the Senate.

At the local level, after the 2002 election, the number of women elected also increased, but to a lesser degree than in the Parliament. The available data shows that the women participation in politics (high positions in political parties, high ranks in public administration), was less than 10%.

To address the problem of a low representation of women in public life, the Government is undertaking actions in the framework of the *National Action Plan*. One of the tasks is to achieve a gender balance in appointments to the decision-making positions in public administration, in Government and in the judicial system through i.a. the elaboration of principles and criteria of appointment which would respect equality of rights and opportunities of women as well as the promotion of a balanced participation of women and men in Government and local authorities. The *National Action Plan* assumes also that gender balanced lists of candidates for international agencies and institutions will be elaborated. Through adequate training, women will be also prepared to take high positions in corporate decision-making structures.

### **4.3. Participation of women in the labour market**

The *National Action Plan* (II stage) includes actions aiming at the execution of the current legislation in order to eliminate discrimination of women in employment, working conditions as well as the abolition of gender-based segregation and segmentation of the labour market. The Program includes i.a. the elaboration and implementation of projects aimed at countering stereotypes in education and vocational training.

After its EU accession, Poland will have access to structural funds, i.a. through the organization of operational programs.

One of the priorities of the *Sectorial Operational Programme Human Resources Development* (SOP HRD) is “Active labour market policy and social and professional integration” which includes an action entitled “Integration and re-integration of women in the labour market”. Its purpose is to provide women with a multidimensional assistance to improve their situation in the labour market in order to increase women’s employment level and improve their economic and social status. To realize this project in the years 2004-2006, as much as 81.9 million EUR are available, out of which 65.5 million EUR is the Community input (covered by the European Social Fund), 15.8 million EUR come from the national budget (state budget, local governments budgets, Labour Fund) and 0.6 million EUR from private funds.

The *Community Initiative EQUAL* (also financed by the European Social Fund) will be complementary to the SOP HRD. Its purpose is to test and promote – through international cooperation – new ways of eliminating discrimination and inequality in the labour market. In the framework of the priority “Equal opportunities for women and men” Poland has chosen the subject “Combining family and professional life and reintegration of women and men who have left the labour market through the development of flexible forms of employment and work organization”. Its goal is to elaborate solution patterns which would enable women and men to combine professional and family life, including the development of child care and depended persons care institutions fostering professional training and the promotion of flexible forms of

employment. The overall funding of the aforementioned actions from the ESF will amount to 12.05 million EUROS in the years 2004-2006 (9% of the EQUAL's budget).

The SOP HRD and EQUAL documents have been prepared by a special working group operating since 2002 which gathers representatives of ministries, NGOs, social partners, and the Plenipotentiary. The equal opportunities of women and men principle has become a part of each action scheduled in these programs. The Plenipotentiary will have a representative in all the collective bodies appointed to guide and monitor the programs.

#### **4.4. Gender sensitive budgets**

The construction of budgets respecting the gender perspective and the analysis of the existing budgets from the gender perspective is a challenge for Poland. The lack of methodology is an important obstacle in the implementation of this task. Having in mind the possibility of using other countries' experiences, a member of the Polish Government delegation (representative of the Ministry of Finance) at the Regional Symposium on Mainstreaming into Economic Policies (Geneva, 28-30 January 2004) put forward a proposal to organize a UNECE conference on practical aspects of *gender budgeting* with the participation of experts and representatives of finance ministries from all EU candidate countries. The proposal was welcomed by the representatives of the UNECE as well as by the representatives of the candidate states.