



**Committee on the Elimination of Discrimination against Women**

**Information provided by the Commissioner for Human Rights of the Republic of Poland on the steps undertaken by Republic of Poland to implement the recommendations indicated in Concluding Observations on the combined seventh and eight periodic reports of the Republic of Poland, at the Committee's fifty-ninth session, held in October 2014 (CEDAW/C/POL/CO/7-8)**

**12 OCTOBER 2017**

## INTRODUCTION

1. The Commissioner for Human Rights is the constitutionally established authority responsible for protection of rights and freedoms guaranteed in the Constitution of the Republic of Poland, and in the ratified international human rights' treaties. In his activities, the Commissioner is independent from other state authorities. The Commissioner acts pursuant to the Constitution of the Republic of Poland and the Commissioner for Human Rights Act of 15 July 1987 (Dz. U. [Journal of Laws] of 2017, item 958). The Commissioner is appointed by the lower chamber of the Parliament (Sejm) and approved by the higher chamber of the Parliament (Senate) for a 5-year term of office.
2. The Commissioner for Human Rights safeguards human and civic freedoms and rights specified in the Constitution and other legal acts, including the guard of implementation of the principle of equal treatment. In order to fulfill these tasks, the Commissioner investigates whether actions undertaken or abandoned by the entities, organizations or institutions obliged to observe and implement human rights have not led to infringement of the law or the principles of social coexistence and justice, and undertakes appropriate measures.

### **Paragraph 17. The Committee recommends that the State party:**

**(a) Strengthen the mandate and authority of the Government Plenipotentiary for Equal Treatment, provide that office with the conditions enabling it to implement gender equality policies and ensure the implementation of a gender mainstreaming strategy in all government ministries and agencies, as well as at the municipal level;**

**(b) Increase the financial and human resources of the office of the Government Plenipotentiary for Equal Treatment, while providing it with a separate budget to support its gender equality activities and programmes and to ensure effective coordination of government policies on gender equality, and ensure that every ministry allocates a special budget for the effective implementation of the National Action Plan for Equal Treatment.”**

1. In its concluding observations, the CEDAW expressed its concern that, since 2006, there is no separate government authority in Poland responsible exclusively for gender equality policies. The Committee therefore expected the gap to be effectively filled by the Government Plenipotentiary for Equal Treatment. However, until the parliamentary elections in October 2015 no measures had been taken to extend the Plenipotentiary's powers and increase his/her resources. The mandate, authority and resources of the Government Plenipotentiary for Equal Treatment remained unchanged; further, no separate budget was allocated for its gender equality activities

and programs and for implementation of the National Action Programme for Equal Treatment<sup>1</sup>.

2. From 2008 to 2016, substantive, organisational and legal support to the Government Plenipotentiary for Equal Treatment was provided by the Office of the Government Plenipotentiary for Equal Treatment which operated within the Chancellery of the Prime Minister. At the end of 2015, the Office of the Plenipotentiary was closed down. At present, substantive support to the Plenipotentiary is provided by the Equal Treatment Unit (6 job positions) operating within the structure of the Civil Society Department of the Chancellery of the Prime Minister. This has, undoubtedly, reduced the significance of the Plenipotentiary's position and the possibilities of his/her effective work<sup>2</sup>. Person performing a role of the Government Plenipotentiary for Equal Treatment performs also a role of the Government Plenipotentiary for Civil Society.
3. Regrettably, the Commissioner for Human Rights is not aware of the Plenipotentiary's strong engagement in measures against discrimination on the grounds of gender or in combating violence against women. The Plenipotentiary's website does not contain information on his current activities combating discrimination on the grounds of gender. It only contains a list of Polish and international legal acts on the protection of women's rights. An example of the lack of the Plenipotentiary's involvement in this area is the lack of support for organizations that, for many years, were providing specialized support for women victims of domestic violence. The Ministry of Justice discontinued financial support to those organisations under the state budget for 2016 and 2017. The Ministry of Justice based its decision on the argument that the organisations' assistance offer was addressed solely to a specific group of victims, i.e. women victims of domestic violence. According to the Ministry of Justice, the activities of the organisations were non-comprehensive and even discriminatory as they refused to support all other victims of violence. The Government Plenipotentiary for Equal Treatment did not take any action in this matter.
4. The Governmental National Action Programme for Equal Treatment for 2013-2016 might be considered as a significant instrument which could shape governmental policy on counteracting discrimination. In the Commissioner's opinion, the Programme had only limited impact on the governmental policy. Currently (October 2017), the Government Plenipotentiary for Civil Society and Equal Treatment coordinates the preparation of the final report on the execution of the Programme that

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<sup>1</sup> A letter from the Government Plenipotentiary for Equal Treatment to the Commissioner for Human Rights of 18 July 2017 (ref. no.: DOB.RT.18.10.2017.BS).

<sup>2</sup> A letter from the Government Plenipotentiary for Equal Treatment to the Commissioner for Human Rights of 18 July 2017 (ref. no.: DOB.RT.18.10.2017.BS).

was finished in 2016. In compliance with the Act of 3 December 2010 on the implementation of some regulations of European Union regarding equal treatment (Dz. U. [Journal of Laws] of 2016, item 1219), the Plenipotentiary shall also develop and submit to the Council of Ministers a new Programme for the coming years, i.e. since 2017. Taking into consideration the Plenipotentiary's statements, it is still unclear whether such document will be prepared<sup>3</sup>. Additionally, to the Commissioner's knowledge relevant public consultations are not held yet.

5. It should therefore be noted that the Committee's recommendations on strengthening the position of the Plenipotentiary have not been implemented. Furthermore, his/her competences in the field of implementing the principle of equal treatment have been weakened. Moreover, the lack of a separate budget allocation to the work of the Plenipotentiary and the implementation of the National Action Programme for Equal Treatment, as well as the very limited human resources available to implement these activities will make it impossible for the Plenipotentiary to properly and fully implement the Committee's recommendations with regard to systemic activities for the implementation of the principle of equal treatment of women and men.
6. The Plenipotentiary, in his letter of 18 July 2017<sup>4</sup>, informed that work is continued by the network of 16 Voivodship Plenipotentiaries for equal treatment (operating in all Voivodships i.e. regions of the country) and by the Coordinators for Equal Treatment, appointed in 18 out of 19 ministries (except for the Ministry of Justice). Their role as the national mechanism for equal treatment is to implement activities regarding e.g. elimination of discrimination against women, as well as systemic gender mainstreaming into government policies. It should be noted, however, that there is no detailed information, even on the Plenipotentiary's website, about the Voivodship Plenipotentiaries and Ministry Co-ordinators, about their methods of work, competencies, mutual cooperation within the network or coordination of their activities. The Commissioner, in his current work, did not receive any information on systemic activities of the Plenipotentiaries and the Co-ordinators either.

**Paragraph 29. In line with its general recommendation No. 23 on women in political and public life, the Committee encourages the State party:**

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<sup>3</sup> A letter from the Government Plenipotentiary for Equal Treatment to the Commissioner for Human Rights of 25 July 2016 (ref. no.: BPRT.ZAPL.18.4.2016.MC), a letter from the Government Plenipotentiary for Equal Treatment to the Commissioner for Human Rights of 14 November 2016 (Ref. No.: DSO.SORT.0412.3.3.2016.MC) and 18 July 2017 (ref. no.: DOB.RT.18.10.2017.BS).

<sup>4</sup> A letter from the Government Plenipotentiary for Equal Treatment to the Commissioner for Human Rights of 18 July 2017 (ref. no.: DOB.RT.18.10.2017.BS).

**(a) To amend the Electoral Act with a view to placing candidates, women and men, in alternating positions on electoral lists (so-called “slide” or “zip” system in order to achieve parity);**

**(b) To adopt temporary special measures, in accordance with article 4 (1) of the Convention and the Committee’s general recommendation No. 25 on temporary special measures, including quotas, benchmarks with specific time frames and training, in order to achieve equal and full participation of women in political and public life and in decision-making at all levels, including in the judiciary, executive functions at all levels and in international organizations.”**

1. Currently, pursuant to the Act of 5 January 2011 - the Electoral Code (Dz. U. [Journal of Laws] of 2017, item 15), in proportional elections (to the Sejm of the Republic of Poland, the European Parliament and certain local government bodies: county councils [Polish: rada powiatu] and regional councils [Polish: sejmik wojewodzki]), on every list of candidates, registered by an electoral committee, at least 35% representatives of either gender have to be placed. In addition, with regard to elections to county councils the Act stipulates that any list with only 3 candidates has to include at least 1 woman candidate and at least 1 man candidate.
2. However, despite postulates of experts, no specific solution has been introduced with regard to the order of placement of candidates of both genders on candidate lists (e.g. the so-called “zippered list” in which women candidates and men candidates are placed on a list in alternating order, starting from the beginning of the list). Such a solution would be particularly important in Poland where voters’ common practice is to vote for candidates placed in the first places on candidate lists<sup>5</sup>.
3. It is noteworthy that the report of the Organization for Security and Co-operation in Europe, evaluating the 2011 parliamentary elections in Poland and the first use of the quotas, emphasized that although the introduction of the quota mechanism was fully consistent with the OSCE recommendations, the model adopted by Poland, without the electoral committees’ practice of placing candidates in the “zippered list” system resulted in only a modest increase in representation of women over 2007<sup>6</sup>.
4. In the seventh term of the Sejm (2011-2015), legislative work was carried out on a bill to introduce the “zippered list” system into the Electoral Code, but the bill was eventually not adopted.
5. The OSCE report on the subsequent 2015 elections reiterated the need to supplement the gender quota requirement with a legal solution to regulate positions between

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<sup>5</sup> M. Niewiadomska-Cudak, *Reprezentacja kobiet w parlamencie [Representation of women in the Parliament]*, Studia Wyborcze, vol. XIII, 2012, p. 15.

<sup>6</sup> Republic of Poland, Parliamentary Elections 11 October 2011. OSCE/ODHIR Election Assessment Mission Report, Warsaw 2012.

- genders on party lists<sup>7</sup>. However, in the Sejm's current term no such works are carried out.
6. The introduction of the quota mechanism had a clear effect in the form of a significant increase in the number of female candidates placed by electoral committees on candidate lists (an increase from approximately 23% of the candidates in 2007 to 42% in 2011 and 2015). However, women were often placed in lower places on the lists. This brought only a gradual increase in the number of women in the Sejm (20% in 2007, 24% in 2011, and 27% in 2015). The above-described quota mechanism is not used in single-mandate constituencies where majority voting system is used (in elections to the Senate of the Republic of Poland and to municipal councils).
  7. In elections to the Senate, the percentage of female candidates was only 14% in 2011 and remained the same in 2015. This translated into a 13% share of women senators in both terms of office of the Senate.
  8. According to the above data, the share of women in elected public authorities in Poland still remains low, particularly in relation to parliaments of other countries<sup>8</sup>.
  9. In view of the need to implement the CEDAW recommendations, the Commissioner for Human Rights requested the Government Plenipotentiary for Equal Treatment to take a position on the issue of the implementation of measures with regard to women's right to stand in elections, and to provide information on activities planned in this area.
  10. In his correspondence with the Plenipotentiary, the Commissioner pointed out that the phenomenon of underrepresentation of women in public life is comprehensive in nature and, therefore, a variety of activities should be undertaken to counteract it. It is appropriate to develop and implement extensive education and promotion initiatives, as well as to amend the electoral law. It is important to provide potential female candidates with information about their electoral rights because, as research shows, citizens' knowledge of the basic principles of the electoral system is low<sup>9</sup>. The Commissioner for Human Rights raised the need for such an education campaign already before the 2015 elections, pointing to the provisions of the National Action Programme for Equal Treatment for 2013-2016.
  11. In the opinion of the Commissioner for Human Rights, legislative work aimed at introducing the so-called "zippered list" system is necessary and would be an

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<sup>7</sup> Republic of Poland, Parliamentary Elections 25 October 2015. OSCE/ODHIR Election Assessment Mission Report, Warsaw 2016, p. 9.

<sup>8</sup> M. Fuszara (ed.), *Kobiety, wybory, polityka [Women, elections, politics]*, Warsaw 2013, p. 7.

<sup>9</sup> B. Roguska, J. Zbieranek, *Polacy o prawie wyborczym i mechanizmach kampanii wyborczych [Poles on the electoral law and election campaign mechanisms used in election campaigns]*, Warsaw 2011; B. Roguska, J. Zbieranek, *Polacy o ułatwieniach w głosowaniu. Wiedza, opinie i oczekiwania [Poles on voting facilitation measures: knowledge, opinions and expectations]*, Warsaw 2014.

expression of consistency of the legislator who has already introduced the quota mechanism, recognizing the important reasons for its application and expecting to achieve specific results. The amendments in the legislation should provide an actual guarantee of gender equality and increase the involvement of women in the electoral process. The to-date limited effectiveness of the quota mechanism would be increased by the introduction of the so-called “zippered list” system. Reference was also made to survey results as well as consistent recommendations of the OSCE in this area.

12. As regards the majority voting system used in elections to the Senate of the Republic of Poland, for several terms of office the share of female candidates has been very low (14% in 2015)<sup>10</sup>. Therefore, the government should carry out an analysis to identify potential obstacles faced by women in standing for elections in which the majority voting system is used, in order to indicate effective ways to eliminate them.
13. Regretfully, the Government Plenipotentiary for Equal Treatment did not share the arguments of the Commissioner for Human Rights<sup>11</sup>. As regards the postulated amendments to the Electoral Code, the Plenipotentiary expressed the view that the introduction of the “zippered list” system would be contrary to the principle of social justice, laid down in Article 2 of the Constitution of the Republic of Poland, as well as to the principle of proportionality, laid down in Article 31(3) thereof. In his opinion, it would lead to the omission of the whole process of selecting candidates based on fair competition, and to the elimination of candidates outstanding in terms of their range of achievements and specialist competences. This, according to the Plenipotentiary, would constitute candidates’ preferential treatment on the grounds of gender which is a criterion not significant in seeking a mandate of a Member of Parliament or Senator. The Plenipotentiary considered the introduction of the “zippered list” system as excessive and unjustified regulatory interference which may violate the constitutional rights and freedoms of citizens. The “zippered list” system would also limit the powers of political parties. Furthermore, it would also undermine the dignity of women and their competences, as women do not want to be elected solely on the grounds of their gender but on the grounds of their skills and abilities.
14. In the opinion of the Plenipotentiary, the lower rate of representation of women, as compared to men, is not a reflection of unequal opportunities and discrimination but may result from cultural determinants. The Plenipotentiary’s interpretation of election-related statistics is very different: in his opinion, the quota system has

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<sup>10</sup> J. Zbieranek, *Polski system wyborczy a równość płci – szkic aktualnych problemów [Polish electoral system and gender equality – an outline of existing problems]*, [w / in:] Z. Dąbrowska, K. Kądziała (ed.), *Bieda i strach w mieście kobiet [Poverty and fear in the women's city]*, Warsaw 2013.

<sup>11</sup> Letter of 13 May 2016 (ref. no.: BPRT.ZAPL.0411.1.2.2016.MC).

significantly reduced the chances of individual female candidates, given the declining proportion of women candidates placed on candidate lists to the number of women mandate holders actually elected for a given term of office.

15. As regards equal access to decision-making positions in public administration bodies, there are doubts as to whether, after the amendment of the Act on Civil Service<sup>12</sup> and the abolition of the competition-based procedure of recruitment to managerial positions, equal opportunities will be ensured for women and men in access to managerial positions.
16. According to the above-mentioned amendment, employment relationships with persons who, on the date of the Act's entry into force, hold senior positions in the civil service or the foreign service, shall expire 30 days after the entry into force of the Act, provided that no terms of further employment and pay are proposed to those persons within the expiry period or that the proposed new terms of employment and pay are rejected by them. The decisions on termination of such employment relationships were left to the sole discretion of heads of individual agencies, also with regard to persons subject to protection (e.g. pregnant women, women on maternity or persons in the pre-retirement period). Prior to the regulations' entry into force, recruitment to senior civil service positions was carried out in form of an open and competitive recruitment procedure. Currently, the open and competitive recruitment procedure has been replaced by the appointment procedure. Depending on the agency, persons holding managerial positions are appointed and dismissed e.g. by the competent minister, head of the central-level agency, head of the Chancellery of the Prime Minister, head of the Voivodship (i.e. regional) government, or director general of a given agency. It should be emphasized that the change is contrary to the constitutional standards of access to public service and of the operation of the civil service corps. The Constitution of the Republic of Poland stipulates that *A corps of civil servants shall operate in the organs of government administration in order to ensure a professional, diligent, impartial and politically neutral discharge of the State's obligations*. The civil service should thus be professional, diligent, impartial and politically neutral. However, due to the elimination of the competitive procedure, the ruling party may, at its sole discretion, determine the recruitment criteria for individual managerial positions.
17. Furthermore, the legislator excluded the right of citizens' access to information on vacant senior positions in the civil service. There is, therefore, no possibility to speak of the implementation of the right of equal access to public service as this right may only be exercised by those citizens who have exclusive access to non-public information on vacant civil service positions.

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<sup>12</sup> Act of 30 December 2015 amending the Act on the Civil Service and certain other acts (Dz. U. [Journal of Laws] of 2016, item 34).

18. In the light of the foregoing, the solutions give rise to great concern as they may, in particular, affect the access of women to senior positions. The appointment criteria may hence not be related to the competences and experience of the female and male candidates, but rather to stereotypes regarding, for example, the employer's concern over the parenthood plans of the future male/female employee.