



## Implementation of Gender Recast Directive Poland

Wiktor Dynarski  
([wiktor.dynarski@transfuzja.org](mailto:wiktor.dynarski@transfuzja.org))

Based on questions/guidelines „Transgender People and the Gender Recast Directive. Implementation Guidelines” ILGA-Europe publication by Stefano Fabeni & Silvan Agius.

Please note that in Poland there is only one organization focused on trans issues only - Trans-Fuzja Foundation. Therefore if the document refers to LGBT organizations in the meaning of a politically lobbying group - it refers to already named organization and numerous LGBT initiatives, if not explicitly mentioned.

- The new Polish antidiscrimination law (2010) does not include gender identity nor gender expression as a possible discrimination ground, even though LGBT organizations were strongly lobbying for their inclusion. There are known a few cases where discrimination on grounds of a person transsexuality was treated as discrimination based on sex, however it seems to be a juridical practice, which is not common for every court

- The Polish Minister of Equal Treatment works in the field of discrimination based on sex and sexual orientation and explicitly mentions transgender people only when referring to the LGBT group, treating it, however, as a group consisting of gay, lesbian and bisexual people only. See [website](#) for more details.

- It is said that LGBT organizations are welcome to engage in a dialogue with government representatives, however - from Trans-Fuzja's experience - it is very difficult to do so, especially in the field of transgenderity, which in most cases is treated as an issue equal to sexual orientation and therefore passes unnoticed quite frequently. The subject of transgenderity seems uncomfortable to numerous politicians and often matters discussed between activists and government officials are not distributed as media-related information (e.g. press releases). On the other side, however, local political officials seem to be quite open to cooperate with LGBT NGOs. E.g. Warsaw City's Commission for Social Dialogue for Equal Treatment has an openly transgender person as its Vice-President - Anna Grodzka, president of Trans-Fuzja Foundation

- There has been no awareness-raising campaign about the content of the Directive that would touch the subject of gender reassignment



- Any kind of trans-related surgery is paid by trans people themselves - those kinds of procedure have been crossed out for social insurance during the 1990s. Current political situation seems to be very difficult when lobbying for that matter.
- When it comes to workplace related situations, there are no specific guidelines nor law that an employer should follow, if the employee needs to undergo a trans-related surgery. From what is known, most trans people do not explicitly inform their employers on what kind of procedure they plan to go through.
- Employees often face a lot of difficulties if they have changed their gender marker (and name) while working for one employer. There are no legal regulations that would force an employer to change the employees data within the company's system, which means that many trans people are referred to in those systems by their old names and old gender markers.
- Republic of Poland recognises the age of retirement for individuals based on the gender reflected in their documents (also after reassignment), however this is due to the understanding of a „man” and „woman” as what kind of mark is reflected in the official state documents, not due to trans-related law. This kind of law (embracing all trans-related issues) does not exist in Poland.
- Republic of Poland has not yet introduced an efficient gender reassignment act. Gender reassignment is based on juridical practice started in 1970s with additional changes in 1990s. The current procedure is very tiring, it includes going through a civil court case, where a transgender person is forced to confront their parents, who sometimes (depending on the court) play a major role in the case itself. They have the possibility to prolong the whole process and even affect the courts decision.
- It is important to note that the mentioned juridical practice along with other legal matters prevents trans people from forced sterilization. Which is a good sign, compared to some other countries in the EU. As any kind of sterilization is illegal - this process is available only after changing the gender marker, but only if a person chooses to do so. However, transmen are still forced to go through chest surgeries, mostly being told by their medical professionals that without undergoing this procedure, the court will dismiss their case. Transgender people are also forced - in that matter - to present before court a diagnosis of transsexuality and „resemble the gender they want to be assigned to”, which in practice refers to continuous hormonal treatment (a minimum of 6 months is said to be efficient).



– Transgender-related matters are also not covered within the family law. Transpeople having children before transitioning are referred to in their children's documents by their old names. Unfortunately, there are no cases known of trans people having children after transitioning - so there is no data on this subject. The same lack of transgender inclusiveness leads to forcing transgender people to divorce their spouse before going through gender reassignment. This is often explained by the fact that the Republic of Poland does not recognise nor same-sex nor same-legal-gender marriage.

– Transsexualism is explicitly mentioned as a condition discouraging individuals from applying to the military. The regulation dated June 25th, 2004 (attachment 2) states that "transsexualism and hermaphroditism" are both conditions discouraging a person from the military service. Listed in the index of "diseases and lamenesses, which require physical and psychological evaluation" transsexuality and intersexuality are recognized as conditions eliminating a person from military service in time of peace, mobilization and war. Trans-Fuzja Foundation and Campaign Against Homophobia inquired the Polish Ministry of National Defence on explaining the regulations discriminating against transsexual and intersex people. The reply stated that it is a decision based on „specific aspects of military service that may be psychologically difficult to cope for those groups”. The case will soon be reported to the Ombudsman and Minister of Equal Treatment

– Trans-Fuzja Foundation cooperates with Equality Bodies on the subject of transgenerity, however it has experienced a lot of misunderstanding, especially on the grounds of lobbying for bringing back trans-related surgeries to the national healthcare plan. Government officials see transgenerity as a matter of choice only (meaning a choice whether or not to change their gender marker) and do not consider transgender-related medical procedures as a matter of a person's well-being.

– The same organization has played the role of *amicus curiae* in some gender reassignment-related court cases, especially those where the parents' role (based on the already mentioned juridical practice) and the possibility to interfere with a person's choice to change their gender marker is being abused.

– The cooperation within the field of gender identity and gender expression as a legal issue has been established with the current Polish Ombudsman - Irena Lipowicz and the former - Janusz Kochanowski. Who seemed to be eager working on changing the current gender reassignment practice.