

## Gender democracy in Poland: An empty shell?

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### Introduction

Democratisation in Central and Eastern Europe has for a long time occupied the attention of scholars in the context of the two most significant political processes in the region: democratic transformation and Europeanisation. The literature focuses on various outcomes of these processes, such as institutional make-up, along with economic, political and social changes. This chapter contributes to this scholarship by offering yet another perspective – assessing the functioning of democracy in Poland through the application of gender-sensitive criteria. The assessment will be done by scrutinising the process of policy-making transposing the Goods and Services Directive into Polish law.

The first part of this study provides a short background on the country, with special attention given to the existing institutionalised gender regime and the impact of both transformation and European integration on its evolution. This is followed by an overview of the political and institutional context in which the creation and implementation of the new law aiming to transpose the Directive took place in Poland. The third part of the text discusses the transposition, and is then followed by an analytical discussion, which applies a series of gender democracy indicators to the process under investigation. The final section discusses and interprets the results.<sup>1</sup>

### Transformation, Europeanisation and gender equality

The processes of transformation and democratisation that took place after 1989 radically reshaped the political, social and economic reality in Poland. These changes also held important implications for the gender order in Polish society. During the communist regime, official state ideology stressed gender equality and women's liberation. In practice, however, these assumptions were mostly declaratory. The representation of women in Communist party politics remained low, the relatively high participation of women in the labour market was not accompanied by equal pay, nor was there a redefinition of traditional gender roles in the domestic sphere (Fidelis 2004: 314; Fuszara 2005: 89; Sawa-Czajka 1996: 104). Moreover, the state socialist regime's attempts to introduce emancipation policies was viewed with suspicion, as the traditional gender roles had been tightly woven into the Polish national project in which women were perceived primarily as carers, responsible for the biological and cultural reproduction of the nation. Therefore, when the communist

authorities sought to redefine or reshape traditional gender identities these efforts were perceived as a threat to Polishness and viewed as attempts by the foreign (Soviet) power to destroy the nation. Consequently, embracing traditional gender identities was perceived as a cultural resource for both resistance against the imposed regime and survival of the nation. Paradoxically, the socialist state, by challenging the traditional gender regime, was in fact reinforcing it (Watson 1993: 472).

After the fall of communism, a qualitative change became visible in the nature of patriarchy and power in Central and Eastern Europe. In the new emerging democracies the distribution of power took place in a strictly gendered way, with women excluded from political power and the public sphere (Watson 1993: 473). The democratic transformations were accompanied by the reinforcement of traditional gender roles, sentimentalisation of home and family, and a strong backlash against feminism and women's emancipation, perceived as remnants of the previous discredited system. Commenting on this profound redefinition of gender roles and identities Valentine Moghadam (1995: 336) speaks of the 'women-in-the-family' model of revolution in Central and Eastern Europe that 'excludes or marginalises women from definitions and constructions of independence, liberation and liberty. Similarly, Peggy Watson (1993: 485) sees the degradation of feminine identity that took place in Poland (and in other countries of Central and Eastern Europe) at the beginning of the 1990s as 'a visible measure of the masculinism at the heart of Western democracy'. These general patterns of gender regime change were starkly visible in Poland.

Poland's accession to the EU in 2004 was another significant factor contributing to transformations in the institutional and political character of Polish democracy. Undoubtedly, the accession process strengthened the democratic consolidation of the country, especially by enforcing stable democratic institutions, the rule of law, the protection of minorities and human rights. However, its nature and speed also revealed the deficiencies of elite-driven and imposed democratisation, namely the absence of a civic culture and strong social actors (Rupnik 2007: 20), negligence of participatory and direct democracy (Malová and Dolný 2008: 68) and lack of a more profound change in political elites' attitude and commitment to the values of democracy (Gallina 2011: 80).

The EU accession was particularly important from the point of view of gender equality because of the striking contrast between the gender regime institutionalised at the EU level (Walby 2004) and its local understandings and institutionalisations. The pressure for adjustment seemed to be a natural outcome of this misfit. Therefore, at least initially, the EU accession was perceived as crucial for the transformation of the national context, and as an opportunity to introduce some measures of gender equality into Polish political and public life. Women's rights activists especially believed that the act of joining the EU would impose on the Polish state a need to adjust national laws to the EU's gender equality norms and standards (Matynia 2003: 503). Undoubtedly, the EU accession put demands on national policymakers to harmonise domestic law with the gender equality provisions, and to create the institutional support for monitoring and implementing gender equality into the national

system. Examples are the establishment of a Government Plenipotentiary for Equal Status of Women and Men in 2001 and inclusion of the substance of equality directives into the labour law. However, even at the negotiation stage it became evident that gender equality issues were not a priority in this process. They were included in the broad category of social policy and employment in Chapter 13 of the *acquis communautaire* that was fairly easily completed in all accessing countries (Anderson 2006: 108, Chiva 2009: 200). This did not contribute to the adoption of more profound changes in attitudes and values, but only initiated formal or legal adjustments. As a result, women's rights organisations in Poland became very disillusioned with the process, and claimed that not only was gender equality not taken seriously enough, but that it did not feature in the accession negotiations (Mizielińska 2008: 133).

Despite the failure of the EU conditionality mechanism to transform the existing gender order in Poland and the disenchantment of women's organisations, the EU was still perceived as the vanguard of gender equality in the region. As a result of accession, and similar to the case of the old member states, gender equality policy became a joint responsibility of the Polish state and the European Union (MacRae 2006: 522). The EU becoming a new political actor in the region also created new opportunity structures for domestic actors. Women activists viewed the EU as an alternative route to implementing gender equality at home and used the new structures as a tool for putting pressure on the government, politicians or local authorities to support women's interests (Mizielińska 2008: 135-138). It was also viewed as a provider of legal order and a new space for transnational cooperation between women's organisations (Regulska 2009).

### **Gender policy making in Poland: institutions, actors, contexts**

Poland is defined by the Constitution of 1997 as a parliamentary representative democratic republic. Executive power rests with the government, formed through parliament. Legislative power is exercised by the government and the two parliamentary chambers Sejm (lower house) and Senate (upper chamber). Legislative initiative is also given to the President and to the citizens (a minimum of 100,000 thousand petitioners). The judiciary is independent of both the executive and legislature.

The legislative process is described by the Constitution. A new bill needs to be submitted in writing, including a short justification and explanation regarding its social, economic and legal impact, to the Marshal of the Sejm. There are a number stages to the process. First, the bill is considered in three readings in the Sejm. The first reading takes place in a plenary sitting of the Sejm or at the sitting of a parliamentary committee with jurisdiction relevant for the subject matter of the proposal (the latter is the most common case). This includes the presentation of the bill, debate and proposals for changes or amendments. A committee may amend the wording of the bill, but it may also appoint a subcommittee from its members and invite specialists to work on the proposal in more detail. This stage may also bring a motion to reject the proposal. The report from the committee is later presented at a

plenary sitting of the Sejm, and this initiates the second reading of the bill. During the sitting, the proposal may be amended or other motions may be brought. In the case of any amendments, the bill is again sent back to the Committee; otherwise it enters the third reading phase, which is voting. After the bill is passed in the Sejm it is sent to the Senate, where it again goes through the relevant committees and plenary debates. If the bill is passed without amendments, the next stage is signature or rejection by the President. In the latter case, it is sent back to Sejm, where the presidential rejection may itself be outvoted by a two-thirds majority. If the Senate introduces any amendments, the proposal is sent back to the Sejm. This, in brief, is the formal process applying to all legislative acts, including the transposition of Directive 2004/113/EC .

Looking at the gender equality provisions, it becomes clear that there was no specific law on gender equality prior to the EU accession negotiations, with the exception of general declaratory provisions in the constitution. A number of attempts were made by women's rights activists to introduce a gender equality law during the accession period – in 1996, 1997 and 1998 – but were rejected each time . There was however, some movement to address gender equality through the labour law, and a new government office of Plenipotentiary was established in response to the accession requirements at the beginning of the 2000s. It was affiliated to the Prime Minister's office and was tasked with monitoring and shaping Polish government policies on the equal status of women and men (Rozporządzenie, 2002). However, in November 2005 the office was disbanded by the new prime minister, Jarosław Kaczyński (leader of the conservative Law and Justice Party), provoking protests by women's rights organisations. Its responsibilities were transferred to the Department for Women, Family and Counteracting Discrimination (hereafter the DWFCD) at the Ministry of Labour and Social Policy, which was established in January 2006. This new department became responsible for the government's gender equality policy (Rutkowska 2008: 92). In March 2008, the office of Plenipotentiary was revived by the centre-right coalition government of Donald Tusk under the new name of Government Plenipotentiary for Equal Treatment. The change of name was intended to reflect the wider scope of the new office, going beyond the issue of gender equality. For almost two years the Plenipotentiary and DWFCF were responsible for governmental equality policy. Both institutions – as the names suggested – were subordinating or attaching gender equality issues to what were more neutral areas in the Polish political context: family and non-discrimination. In winter 2009 the DWFCF was dissolved and its responsibilities for gender equality were transposed to the Plenipotentiary office (Monokos 2010).

Legislative institution-making on gender equality accompanied administrative institution-building. The Parliamentary Commission for the Equal Status of Women and Men existed from April to October 2005, when it was reconfigured under the new conservative government into the Sejm Commission for Family and Women's Rights, and finally dissolved in 2007. The responsibilities of the short-lived 2005 parliamentary commission involved 'dealing with issues resulting from the constitutional principle of equal rights of women and

men, including providing equal opportunities for both sexes in the political, economic and social life of the country' (Rutkowska 2008: 93). The focus of the Sejm Family and Women's Rights Commission was on 'issues resulting directly from the functioning of the family, fulfilment of its roles and aims' (Komisja Rodziny i Praw Kobiet). Additionally, it was also charged with proposing legal regulations to protect women's rights and their equal opportunities in professional and social life. It also dealt with issues related to the constitutional provision of equality between men and women. On its abolition in 2007, with the coming to power of the centre-right coalition, issues related to gender equality were included in the responsibilities of the Sejm Social Policy and Family Committee, whose main focus was on social policy.

Female politicians are generally expected to contribute to, and initiate, discussions on the promotion of gender equality issues. Although there were few women in the Sejm during the 1990s, the Parliamentary Group of Women, consisting of female members of various political persuasions, was established in the Polish Parliament in 1991. Since then it has been formed at the beginning of each parliamentary term with the aim of expressing and coordinating women's interests (Kicińska 2008: 21). The group was particularly active in promoting women's interests and lobbying for gender equality policies in the 1990s. In later terms (2005-2007 and 2007-2011 in particular), with right and centre-right parties coming to power, the group's role as a representative of women's interests was significantly weakened. It lost its visibility in parliamentary debates and the mass media, it ceased to play the role of organiser of awareness-raising campaigns (e.g. conferences), and cooperation with women's NGOs became rare. The group's focus shifted from potentially controversial or conflicting issues (e.g. reproductive rights, violence against women) to the less contentious issues of equal pay, activation of women in politics, promotion of women's entrepreneurship and protection of women's health (Kicińska 2008: 32-45). Despite the weakened role of the women's group, individual female parliamentarians, especially from left-wing parties were active in representing women's rights, and played an active part in the transposition of the directive.

This brief overview of the governmental and parliamentary institutions responsible for gender equality policies clearly shows their fluidity and lack of stability. The cause of this instability can be traced to the changing rule of ideological party interests, resulting in the subordination of women or gender issues under the broader and more neutral categories of family or social issues. The work of the DWFC and of the re-established Plenipotentiary office was marked by a lack of cohesion and effectiveness and with heavy emphasis on the family or social issues. Similar observations could be made in relation to the Parliamentary Commissions, especially during the 2005-2011 period. Their activities focused mostly on the family or on social issues, with a rather traditional understanding of gender relations and roles.

Finally, women's rights organisations have played an immensely important role in the promotion of gender equality principles and policies in Poland since the early 1990s. The

initial phase of democratisation in Poland after 1989 was marked by the masculinisation of the public sphere. Since women were excluded from formal politics, civil society became a new political space for women's political activities and mobilisation. The early 1990s were therefore marked by the emergence of a diverse range of women's organisations. Quite a few of these aimed to enhance women's descriptive and substantive political representation and advocated the introduction of women-friendly policies and a more inclusive form of democracy. They protested when the anti-abortion law was introduced, stressing in particular the exclusion of those mostly affected by the new regulations, women. By forming the Pre-Election Polish Women's Coalition with the aim of supporting women candidates for parliament and local authorities, they helped to strengthen the descriptive representation of women. The increased number of women in the Sejm and Senate (20% and 23% respectively) following the 2001 elections was attributed to the Coalition's activities (Nowosielska 2004). Moreover, women's NGOs, working alongside female politicians, prepared and proposed drafts of Acts on equality, submitted to parliament in 1996, 1997, 1998 and 2004, albeit without success.

### **Adopting the Goods and Services Directive into Polish law: A Brief Overview**

Work on preparing the measures to fully transpose five EU equality directives<sup>2</sup> including the Goods and Services Directive, started in the second half of 2006. Initially, the work took place in the DWFC in the Ministry of Labour and Social Policy. The first draft, entitled Act on Equal Treatment, was finalised and published in the Bulletin of Public Information on 2 April 2007 with the intention of introducing one complex set of regulations covering all aspects of equality policy and administrative provisions related to it. This initial draft, prepared solely by DWFC bureaucrats without consulting interested groups, sought to outlaw direct and indirect discrimination in access to social security, health care, education, and publicly available goods and services based on a wide range of grounds, including gender. It also proposed the introduction of a new administrative body which would be responsible for implementation, monitoring and execution of the proposed act (Ustawa o równym traktowaniu, 2007).

From the time of its introduction in 2007, five separate drafts<sup>3</sup> were publicly discussed with various governmental and non-governmental organisations until the final form was passed in December 2010 and came into effect in January 2011. In the process, the wide scope of the initial draft became limited (January 2008), and even narrowed to a simple transposition of the Racial Equality and the Goods and Services directives only in relation to gender, racial and ethnic origin (April 2008). The October 2009 draft returned to the original wide scope, while the version of May 2010 restricted once again the application of the draft law to a straightforward, yet incomplete, transposition of the Directives concerned (Bojarski 2011: 6). In the process the name of the act was also modified, and from September 2008 it was called the Act on the Implementation of Certain Provisions of the European Union in the field of Equal Treatment.

Various governmental institutions were involved in the consultation processes over this almost five year period. Particularly vocal in proposing amendments to the various versions, especially in 2009, were the Government Plenipotentiary for Equal Legal Status (then Ewa Radziszewska) and the Ombudsman (then Janusz Kochanowski). Their arguments mostly supported the need to establish a completely new equal treatment institution as proposed by the new draft act. Their main concern focused on the lack of a clear division of responsibilities and relations between the designated new institution and their respective offices.

The DWFCD also consulted on the proposed regulations in both 2007 and 2009 with the Legislative Council of the Ministry, the body of legal specialists and authorities (mostly professors of law) that advises and provides consultations to the government and the Prime Minister on legislative bills. The Legislative Council was very critical of the proposed drafts. It pointed to the vagueness and complexity of the proposed regulations in aiming to transpose a number of Directives in one law. More generally, the Council questioned the need to introduce the new law. In its opinion most issues addressed by the Directives which the new act aimed to transpose had already been partly integrated into the Polish legal system. Consequently, the Council suggested that work on the existing laws should be continued instead of introducing new ones. In its comments on the version from 2009, the Council was also critical about the wider interpretation of discrimination in the proposed law in comparison with the minimum set by the implementing directives.

Women's organisations did not play a major role in the initial drafting process of the new act. Only when the first draft was prepared did the DWFCD send it for consultation to various organisations, including a handful of women's organisations who were very critical of its contents. Their main objection was that the new body responsible for implementing and monitoring the equality law would be a governmental office. They argued that this body needed to be impartial and independent of the government in order to ensure full implementation of European equality law and fulfilment of the body's principles. Secondly, women's organisations pointed out that there were no provisions for financial resources to be allocated to the new body, making fulfilment of its new responsibilities impossible. Thirdly, the draft law did not provide an enforcement function – a further shortcoming, in their view. The new plenipotentiary or new body would not be able to offer legal help and legal representation to people suffering from discrimination. Fourthly, the organisations raised the issue of the process of selecting a candidate for the office, stressing the need to introduce more inclusive mechanisms. They pointed out that this new body should be appointed in consultation with equality organisations and those representing groups particularly exposed to discrimination. Finally, representatives of women's NGOs also feared that by combining in one act the issue of gender equality with minority issues and other types of discrimination, its significance as a piece of gender equality legislation was at risk of being diminished.

As a result of the series of criticisms above, especially those from governmental bodies, the act was repeatedly sent back to the DWFCDD for further amendments. As a consequence, three versions of the draft Act were created between 2006 and 2008. The fourth version was prepared in October 2009. The important change concerned the body responsible for the implementation of equality policies; in this draft these provisions were given to the Ombudsman, not to the Plenipotentiary for Equal Treatment. The draft was sent to the Council of Ministers, where it was discussed in greater detail. However, approval to send the draft legislation to the Sejm was not given, and in January 2010 the Council of Ministers decided that further work on the act should be carried out by the Governmental Plenipotentiary for Equal Treatment (then Ewa Radziszewska). On 21 May 2010, yet another draft version of the Act on Implementation of Certain EU Regulations on Equal Treatment was issued, but this time by the Plenipotentiary. The draft was sent for consultation to governmental bodies and to a broad range of social partners including women's organisations. It proposed that responsibility for monitoring equality and preventing discrimination should be shared between the existing Governmental Plenipotentiary and the Ombudsman. It envisaged that the former would monitor governmental activities as well as prepare a policy assessment to make sure that the existing and proposed Acts were in accordance with national and international laws on equality. It was proposed that the Ombudsman would deal with particular issues and complaints.<sup>4</sup>

The draft was finally accepted by the Council of Ministers on August 31, 2010 and sent to the Sejm. The first legislative discussion on its contents took place in October 2010 in the joint parliamentary Committees of Social Policy and Family and Justice and Human Rights. The invited members of a few NGOs took part in this discussion, including the Helsinki Foundation for Human Rights, Campaign Against Homophobia, Open Republic – Association against Anti-Semitism and Xenophobia, and also a representative of the Polish Society of Anti-Discrimination Law on behalf of the Coalition for Equal Opportunities.

In the discussion the draft bill was strongly criticised by left-wing parliamentarians and NGO representatives. They pointed to two major weaknesses of the draft bill: the failure to create a single body responsible for dealing with issues of discrimination independent from government and with sufficient financial resources to carry out its duties. They also pointed to the limited range of groups in relation to which the anti-discriminatory law was supposed to apply. Additionally, they demanded a public hearing on the draft bill to allow all interested parties and social actors to express their opinions. A special sub-committee further refined the draft and, after presenting the results of its work (with small, mostly editorial changes and voting out the propositions suggested during the first session of the committee), the draft was accepted by the joint Committee of Social Policy and Family and Human Rights at its October 26 meeting. It was then sent to the Sejm for plenary debate, where it was briefly discussed late in the evening of October 28. Representatives of each parliamentary club were asked to briefly summarise the standpoint of their party (each was given five minutes to do so). The bill was accepted on October 29, without any further



amendments. After that the draft bill was sent to the Senate, where a few small, again mostly editorial, amendments were suggested. The Senate draft returned again to the Joint Committee where it was again discussed and accepted. The bill was finally passed by the Sejm on December 3, and signed by the President on December 22, 2010. On 14 March 2011 the European Commission dropped the case against Poland for failure to transpose the Goods and Services Directive, thereby accepting the new anti-discriminatory law as being in line with the Directive.<sup>5</sup>

### **Gender democracy and the transposition process**

The long process of transposing the equality directives into the Polish legal system can be explained by three overarching factors. Firstly, successive governments did not put gender equality issues high on their agenda, and so the transposition of European directives on gender equality was delayed (Bojarski 2011, 5-6). Secondly, the change of government in 2007, after the landslide electoral victory of the centre-right Civic Platform, had a destabilising effect on the functioning of the DWFCD, responsible for preparing the drafts. Thirdly, the new government re-established the institution of Plenipotentiary. The absence of a clear division of responsibilities between those two government offices dealing with gender discrimination delayed the drafting process due to their open struggle for ownership of the equal treatment legislation (Interview 1, 2, 3). Finally, difficulties arose from the complexity of the proposed act since it aimed to transpose the provisions of five anti-discrimination directives and inevitably impacted on existing laws. Ultimately, according to equality law expert Elenora Zielińska, failure to legislate came from the persistence of traditional assumptions about gender roles among the drafters, and an absence of sensitivity to gender issues (Zielińska 2009: 80). In contrast, interventions from the EU (the procedures against Poland for lack of transposition of Goods and Services as well as Race and Recast Directives in 2008 and 2009) seemed to speed the work up.<sup>6</sup> Yet, the fear of financial penalties and pressure of time (as the transposition period had expired) was also a factor limiting the deliberations on the Act in the most democratic arena – the Parliament. Parliament finally agreed the measure in December 2010, three years after the transposition deadline, and the Commission dropped ECJ proceedings were dropped against Poland.<sup>7</sup>

In the next sections, the focus turns on exploring what this case reveals about the procedural and substantive quality of democracy in Poland from a gender equality perspective. It takes the three gender-sensitive thematic concepts in turn, analysing their manifestation during the transposition process. The final section discusses the prospects for gender democracy in Poland in the light of this study.

#### *Inclusion*

The single key requirement of democratic deliberation is that those affected by a law should be consulted about the content, as they are best situated to speak of its effects on their lives. In this long transposition process, those most affected by this law, women, were not

widely involved in consultative discussions with government. This fact was not due to women's lack of interest in engaging with government on the issue. Indeed, women's NGOs actively created channels through which they could make their views known to government. Firstly, they organised alternative places for deliberation: public meetings were arranged to discuss general issues related to equality and in particular, to discuss the issues related to the proposed equal treatment law. Representatives of the DWFCO were invited to these events, and often took part in them. However, this did not result in better communication or cooperation thereafter between DWFCO and civil society actors. Secondly, they actively sought access to the existing formal deliberative spaces. The initiative by the DWFCO Advisory Committee is illustrative. Consisting of civil society representatives and social partners, the Committee<sup>8</sup> was established by the Minister for Labour and Social policy as a consultative forum for the DWFCO on initiatives and campaigns relating to the 2007 European Year of Equal Opportunities (Government of Poland, undated: 16). The DWFCO was at the same time in the early stages of work on the first draft of the law transposing the equality directives. The Advisory Committee, not being invited to participate in this work, sent a letter to Minister Jolanta Fedak offering their expert knowledge in the field of equality issues and suggesting an extension of their terms of reference so as to participate in the drafting process with the Department. The offer was ignored, due to government unwillingness to extend the scope of the Advisory Committee's work, and the Committee was dissolved when the European Year of Equal Opportunities came to an end (Interview 1).

Another civil society attempt to be included in discussions of the draft law was the creation of the Coalition for Equal Opportunities, consisting of about 42 organisations dealing with equality issues, coordinated by the Polish Society of Anti-Discrimination Law. The coalition was established in autumn 2009 in response to the perceived inadequacies of the draft equality act. It aimed to put more pressure on the government, hoping that the voice of civil society would be more difficult to ignore (Interview 5). From the time of its establishment, representatives of the Coalition played an active role in monitoring the preparation of the Act and in the consultation process. When the law was finally passed, the Coalition response to it was distinctly cool, noting the differential scope of the Act and the limited reflection of NGO proposals for a more equitable law (PTPA-KPH 2012: 6). Reflecting on the process, the lack of involvement of experts from civil society (i.e. women's rights advocates) with experience in drafting earlier versions of equality laws was remarked on by a number of interviewees. This point was emphasised by one interviewee as a serious obstacle to constructing an effective equality law. She pointed out that it is easier to include certain interests and solutions when you are involved in the discussions from the beginning, an opportunity women's NGOs did not enjoy (Interview 1). Overall, interviewees stressed the point about the reluctance on the part of the DWFCO to conduct consultations or to cooperate with civil society partners (Interviews 1, 2, 3, 4). Those civil society organisations whose representatives were admitted to the consultative process (i.e. representatives of the Campaign Against Homophobia and the Polish Society of Anti-Discrimination Law) expressed

their disenchantment with the outcomes of their cooperation with governmental bodies (Interview 5, KPH communication).

Thirdly, in order to put pressure on the Polish government to accelerate the work being done on the new act and shift more attention to equality issues, women's and other organisations turned to the EU. In April 2008, the Federation of the Polish Women's Lobby organised a meeting with Vladimír Špidla, then Commissioner for Employment, Social Affairs and Equal Opportunities. Representatives of women's organisations pointed to the lack of reaction from the Polish government to their concerns regarding the equality policy. They also requested that the Commissioner monitor and enforce transposition of directives and EU law on equal treatment and prevention of violence against women. Almost a year later, in January 2009 the Federation of the Polish Women's Lobby sent a letter to the Commissioner expressing its concern at the government's negligence in the field of gender equality policy. It pointed out that its constituent organisations were particularly critical of the lack of transposition of the equality directives as well as the lack of an independent body responsible for monitoring and enforcement of the equality policies. In their opinion, neither the Governmental Plenipotentiary (re-established in March 2008) nor the DWFCO met that criterion.<sup>9</sup>

A similar topic was the subject of the letter signed by 35 women's organisations sent in February 2009 to DG Employment, Social Affairs and Equal Opportunities of the European Commission. The signatories expressed their concerns over the lack of government progress in the introduction of the equality law and implementation of the EU Directives (including the Goods and Services Directive).<sup>10</sup> In response to this letter, Belinda Pyke, Director of DG Employment, Social Affairs and Equal Opportunities, underlined the Commission's concern on equality issues. She also expressed her interpretation of the provisions stemming from the Directives in question and stressed that it was an explicit requirement of the European legislation that an independent body be established to implement and monitor the equality law.<sup>11</sup> The Act subsequently designated the Ombudsman as the equality body, extended the competences of this office in line with the grounds of discrimination provided for in the law, but did not allocate additional funds for carrying out these extra responsibilities (Bojarski 2011:7).

The collected data also showed that access by women's representatives to the arenas in which the draft law was discussed was quite limited. The DWFCO did not organise an open meeting, and women's NGOs were not informed about the progress of work on the draft. The DWFCO carried out the consultations via sending the draft acts to selected partners and collecting their written comments and suggestions. In sum, the lack of access to deliberative sites at national level and the experience of indifference on the side of the governmental institutions encouraged women's organisations to create new spaces and alliances with other social actors. It also led them to bring in a new, supranational actor supporting their interests to put pressure on government. However, the impact of these interventions was subsequently assessed by these actors as only modest, at best.

Other interested civil society representatives voiced similar disillusionment with the reluctance to meet equality advocates, and the absence of interest by government in their views. Correspondence with a representative of a gay rights organisation in the course of this study revealed that their experience was very much in line with the experience of women's organisations. Furthermore, comparison of the subsequent versions of the act shows that, in the process of consultation, more attention was given to governmental opinions and comments than to the input from women's or other equality organisations. For example, criticism made by women's groups regarding the lack of an independent body responsible for implementation and execution of the equality law was not addressed and did not find expression in the amended versions of the act (Ammer et al 2010: 121).

### *Accountability*

Our second principle for gender democracy is accountability for their positions and actions by all involved, but especially by legislative drafters and parliamentarians given their uniquely powerful positions in democratic decision-making. Being accountable requires the participants to provide information and explanation of views in a timely manner to the public in general, and to those with a relevant interest in a law. In this regard, the case in hand is instructive. Each draft of the proposed act was made available on the website of the DWFC in the Bulletin of Public Information section, thus meeting minimal information requirements.

Beyond that, however, documentary progress on the development of the law is scant. The consultation process is not documented on the Department's website. There is no information on the submissions received from the organisations and institutions taking part in the consultation process, their submissions are not posted online for public reading, nor is there information to assess whether, and to what extent, the comments were taken into consideration. Additionally, there is no complete list of organisations involved in the consultation process.<sup>12</sup> Restrictive procedures are in place to allow access to such documents. In order to gain this access, one needs to apply to the Ministry for Labour and Social Policy with a request for them to make particular information available to the applicant. However, in practice this does not work smoothly, if at all. Attempts to access such information from the Ministry were unsuccessful, with requests being redirected to the office of the Plenipotentiary, from which elicited the reply that the relevant materials were in the Ministry. Telephone conversations with the employees of the Ministry (after the department dealing with the draft bill was dissolved), were unhelpful, as no-one knew who to contact and how to access the documentary information relating to the formulation and drafting of the law.

The lack of information regarding the process of preparing the new act on equality, and about the stage of its advancement was also reported by the representatives of women's organisations interviewed for this research. Illustrative was the experience of one interviewee who, along with representatives of other organisations and associations dealing

with issues of equality, closely cooperated with the DWFCDD in the Ministry of Labour and Social Policy in 2007, during the European Year of Equal Opportunities for All. This was at the same time that the DWFCDD worked on the first draft of the new act. The interviewee learned about the work on the new equality act from the internet, since the DWFCDD did not inform the members of the Committee (Interview 1) about this legislative initiative, even though this knowledge was relevant to the work of the equal opportunities advisory committee. Another interviewee (Interview 2) stressed that the constant changes introduced to the draft, and the unsystematic handling of the dissemination of draft changes were a serious constraint on the involvement of her organisation:

Newspaper reporting on the development of the new act was scant, though there was coverage of specific events related to the drafting process. Conferences run by women's or LGBT organisations, or the publication of a new version of the draft attracted media attention. This was particularly the case when Poland was referred to the European Court of Justice in May 2009) for not fully implementing the Goods and Services Directive. At that time there was a noticeable intensification of discussions on the issue in the public sphere, and a growing public interest in the development of the new equality act. Greater attention was also accorded to the issue by various actors; politicians asked more questions in parliament, the Ombudsman wrote to the Minister of Labour and Social Policy responsible for drafting the law to inquire about the stage of development of the act, and the print media published more articles in the national dailies. Noticeable at that time too was the mobilisation of NGOs to organise more frequent meetings to discuss these issues, and to inform the public about the stage of the drafting process. Thus, the EU initiative in bringing Poland before the European Court of Justice for non-implementation of the Goods and Services Directive had the effect of raising awareness of, and prompting interest in, the draft equality bill.

Although equality organisations have extensive information on reports, conferences, activities and initiatives relating to equality for Poland and the EU, there was very little coverage of the transposition of the five equality directives that made up the new law. Furthermore, on the websites of the main women's organisations - Feminoteka, Centre for Women's Rights, Network of East West Women, National Women's Information Centre Ośka, Women's Foundation eFka, Federation of Polish Women's Lobby - there were no sections providing comprehensive information about the equality directives. Usually, only scarce information was made available regarding the lobbying activities of these and other civil society organisations in relation to the proposed act. Position papers and communications with the DWFCDD were not available on the internet for public perusal. Nonetheless, the NGOs organised various conferences and meetings, usually targeted at both NGOs and the wider public, addressing gender equality issues. These activities were usually limited to Warsaw, where most of these organisations are based.

A partial exception was the Polish Society of Anti-Discrimination Law, representing the Coalition for Equal Opportunities on whose website various documents on European

equality law as well as the materials documenting the Society's lobbying activities regarding the equality law and transposition of the Directive were made available. Organisations involved in the Coalition also held regular meetings to discuss the progress of work on the anti-discrimination law as well as monitor other activities of the government related to equality issues. There were also a number of meetings and conferences held by this organisation that were open to the wider public, especially in 2009, even before the Coalition was formally established. In sum, then, the scarcity of publicly-available information on the context, content of the proposed law from media, government and civil society sources meant that informed public engagement and discussion with the issues did not occur. Only after visibility was raised with the EU proceedings against Poland in the European Court of Justice was there any significant interest generated in the issue, highlighting the closed nature of Polish decision-making and the low salience afforded equality issues in Polish politics.

In giving a reasoned view for the necessity to adopt the proposed equality act, each draft included an explanatory preamble. The content included a brief discussion of the need to introduce the new regulations on equality, provided a brief overview of the existing regulations and pointed to the missing elements. Additionally, they also stressed that the proposed act aimed to transpose the records of the European Directives on equality into the Polish legal system. The preambles also included an impact assessment section commenting on the potential influence of the proposed act on the labour market, competitiveness of the market, enterprise and the development of the regions. However, these sections were only brief commentaries and were not accompanied by any research or analysis supporting these opinions. Nor did the preambles give explanations as to why successive drafts varied so widely from one to the next, making it difficult for anyone following this legislative process to understand the reasons behind the variations.

Not surprisingly, the preamble justifications for introducing the act were seen as insufficient by representatives of women's organisations. They complained about the incomprehensible language of the drafts, making it difficult to understand for non-specialists without a legal background, along with the lack of explanation on the contents provided by the DWFCD. In order to be able to better comprehend the consequences of the proposed solutions, representatives of various organisations occasionally met with those who had more expertise in the field such as lawyers from the Polish Society of Anti-Discrimination Law, and discussed the proposed regulations (Interviews 1, 2, 4). In this regard, the lack of capacity among women's civil society groups to interrogate the successive draft proposals hindered their formulation of constructive responses to the measure. Opinions and comments on the act prepared by the women's organisations differed significantly in terms of particularities and scope. In most comments women's organisations pointed out that the proposed act insufficiently transposed the equality directives. A point of consensus was on the lack of an independent body responsible for implementation of the new law: this function was ascribed to the Plenipotentiary in each draft. They also criticised the blurring of gender

discrimination with other discrimination grounds and issues, and stressed that the proposed bill was not sufficient to address the problems of inequality encountered in Poland and focused only on the limited provisions of the Directives (Interviews 1, 3 ).

At the same time, it seemed that women's organisations did not offer many proposals on what else should be included. The comments and opinions on the first drafts sent to the Ministry focused mostly on criticising the proposed regulations, but did not tend to offer or demand new, wider regulations. The situation was changed when the Polish Society of Anti-Discrimination Law (PTPA) representing the Coalition for Equal Opportunities started to take part in the consultations. Because of their legal expertise they were more proactive in proposing a wider scope for the draft bill. They were not alone this proposal – the UN Human Rights Council, in its concluding observations in 2010 encouraged Poland to adopt a comprehensive gender equality law (UN 2008: 16).

### *Recognition*

The principle of recognition requires that all affected by a proposed law can positively contribute to its formulation, and that all views are treated as valid once they are backed by informed argument. The outcome, being a bargained process, will necessarily mean compromise, and so no one group or individual gets all it seeks to achieve. The process, however, is one in which participants come to the policy-making discussion with an open mind, prepared to have their views modified. Since there are no published accounts of the deliberations that took place during the long drafting process it is not possible to assess if the principle of recognition was respected. Due to their limited scope (especially in plenary sittings), the debates in both Sejm and Senate provide only limited material for analysis. In the Sejm there were no specific references made to women or the issue of gender. However, there were some negative comments regarding demands for rights for gays and lesbians during the discussion in the joint committee sitting. During the plenary sitting in the Senate, the point regarding the burden of proof provoked some comments of ridicule implying potential misuses of the law by women or pitying men for their disadvantaged position in the company of women.

As regards the wider public, there seemed to be no evidence of a lack of respect and recognition for the groups affected by the proposed law. Some negative comments appeared in the right-wing daily *Rzeczpospolita*, calling the introduction of the equality law for gays and lesbians an example of imposition of the values of minorities on the majority (Wildstein 2009). However, the topic was not discussed that often in the print media.

### **Conclusion**

The application of gender-sensitive criteria to the process used to transpose the Directive on access to goods and services allows some conclusions to be drawn on the democratic quality of policy-making in Poland. The picture emerging from this analysis is quite negative. Generally speaking, it seems that the deliberation practices associated with this process

were quite limited, and that they barely followed the central principles of gender democracy: inclusion, accountability and recognition. Firstly, women's organisations were included in the consultation process only to a limited degree, and their views and criticisms were not much taken into consideration in the legislative process. Secondly, access to information and the quality of information was rather poor. On the government side, there was insufficient information about the progress and scope of work on implementation of European laws on equality. A similar claim may be made in the case of women's organisations – there was rather limited information available on their websites regarding their involvement in the process of drafting the equality law and on the more general issues of European equality law.

The research also seems to confirm that all deliberations had a somewhat limited scope and were restricted to enclaves of specialists, for example to NGOs dealing with equality issues or governmental bodies. There were no signs of inclusion of the wider public in discussions regarding the process of constructing the equality law, nor were those issues often present and discussed in the public sphere (i.e. mass media). Indeed, despite the legislation taking four years to come about, it did not prompt a collective public discussion on what equality means in Poland.

Looking at the involvement of women's organisations in the process of consultation, especially at the initial stage, they were very proactive in attempting to gain access to deliberation sites. At the same time, they did not advocate introducing more specific regulations reflecting women's interests to the discussed act. Their comments and remarks seemed to concentrate more on making sure that the proposed regulations would at least be in accordance with the EU directives. There seem to be plausible explanations for this strategy, however. Taking into account the reluctance of political elites to engage in issues of gender equality and the history of rejections of the proposed acts on equality, it would seem that women's organisations had become disillusioned and cynical regarding opportunities for cooperation with the government and for their opinions, suggestions and expertise to be taken into account (interviews 1,2,3) . The prolonged preparation of the bill and the government's lack of interest in the opinions of civil society were likely to have contributed to this disenchantment. However, the situation altered when women's organisations become part of the wider coalition led by the PTPA. The coalition, demanding that the scope of anti-discrimination issues covered in the proposal be broadened, and having the legal expertise, had a much more pro-active attitude and a stronger position. This is well illustrated by their initiative, along with some parliamentarians, to amend the act.

The findings also provide some observations regarding the process of Europeanisation. Strategies employed by women's organisations in using the EU to exert pressure at a national level could be interpreted as an example of the changing institutional opportunity structure resulting from the integration process. Women's organisations frequently appealed to the national institutions, but, not having serious partners at the national level interested in the equality policy and combating gender injustice, they referred to the EU



institutions in order to put pressure on the Polish government. It seems that, in light of the indifference of the national institutions and politicians, the EU is often perceived by women's and equality advocates as a more relevant level of governance for rectification of injustice and the elimination of gender inequality. The EU has become – despite the ambiguous attitude of women's organisations to its actions and equality polices – a new point of reference, a new scale for solving local problems and a source of values and laws considered to be crucial for a democratic system. This also seems to confirm earlier findings that 'it will be those interest organisations that are policy outsiders in the member states that will act at EU level in order to seek political compensation' (Eising 2008: 171).

On the other hand, resistance to introducing EU gender equality provisions to the Polish national legal system indicates the slow change of the national regime and underlines the filtering role of the national institutions, including their norms and shared understandings, in the face of exogenous change (Guiraudon 2008: 299). Attempts to subordinate women's and gender issues under the broader categories of family or social issues as reflected in the changing institutional make-up responsible for gender equality illustrates this mechanism well. Even the interventions of the EU to the European Court of Justice seem not to have significantly changed the pace of reform. However, there is some evidence to show that criticism of the 2010 law by civil society groups and the Ombudsman have led to the tabling of two draft laws amending and widening the scope of the Act. In the case of one law, civil society advocates with expertise in equality, along with independent experts, drafted the proposal presented in parliament by opposition MPs who had been former NGO representatives dealing with the transposition (Bojarski 2013:7). However, despite the appointment of a special parliamentary sub-committee in Autumn 2013 to work on the amendment, little progress is evident, despite interventions from the civil society coalition and the Ombudsman. Once again, a slow pace characterises reform of gender equality.

The observations stemming from the collected materials seem to confirm the findings from other research concluding that in Poland we can observe lack of participative governance and weak tradition of participation, deliberation and civic culture (Malová & Dolný 2008; Gallina 2011; Rupnik 2007). It is therefore difficult to say if the current findings show only a gender democracy deficit in Poland, or if this is simply a part of a much broader picture showing the consequences of elite-driven transformation and Europeanisation. The picture emerging from the collected material seems to fit the observation by Rupnik (2007: 22) that "[w]ithout a change in political culture, the formal adoption of institutions or norms may merely create an empty shell".

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<sup>1</sup> I would like to wholeheartedly thank Agata Młodawska for her research assistance in collecting materials and data for this chapter.

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<sup>2</sup> The bill, passed in December 2010, implemented the following directives: 86/613 EEC 2000/43/EC,, 2000/78/EC , 2004/113/EC, 2006/54/EC .

<sup>3</sup> Initial draft law April 2007; draft 21 January 2008; draft 24 April 2008; draft October 2009; draft 21 May 2010

<sup>4</sup> See: [http://bip.kprm.gov.pl/g2/2010\\_05/2702\\_fileot.pdf](http://bip.kprm.gov.pl/g2/2010_05/2702_fileot.pdf) (accessed 26.05.2010).

<sup>5</sup> The European Commission also closed the case concerning lack of conformity of the Polish law with the Race Directive as well as ending the infringement process against Poland for non-communication of all measures transposing the Recast Directive into Polish law (see: <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/11/311&format=HTML&aged=0&language=EN&guiLanguage=en>)

<sup>6</sup> Commission refers Poland to European Court of Justice on gender equality legislation, available at <http://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=511&furtherNews=yes> (accessed 7 March 2014)

<sup>7</sup> Commission drops three cases against Poland following new anti-discrimination law, available at [http://europa.eu/rapid/press-release\\_IP-11-311\\_en.htm](http://europa.eu/rapid/press-release_IP-11-311_en.htm) (accessed 7 March 2014)

<sup>8</sup> This Advisory Committee comprised 14 organisations representing human rights, workers unions, employers, gay and lesbian rights and women's rights. Altogether there were seven women's organisations represented – Feminoteka, PSF Women's Centre/Polish Feminist Association, Women's Foundation "eFKa", Network of East-West Women/NEWW-Polska, Democratic Union of Women and Federation of Polish Women's Lobby. Its terms of reference were 'to participate in the development of the implementation strategy for the European Year of Equal Opportunities in Poland and, in particular, of the National Strategy for the Organisation of the ERRSW [EYEO]' (EC DG EMPL 2008:40)

<sup>9</sup> See [http://dukrk.cal.pl/dokumenty/IIST\\_DO\\_SPIDLA\\_01\\_2009%20ang.pdf](http://dukrk.cal.pl/dokumenty/IIST_DO_SPIDLA_01_2009%20ang.pdf)

<sup>10</sup> See <http://www.lambdawarszawa.org/content/view/264/1/>.

<sup>11</sup> See <http://www.feminoteka.pl/news.php?readmore=4786>.

<sup>12</sup> For example, the Polish Society of Anti-Discrimination Law took part in the consultations from 2007, and it was not acknowledged in the documents of DWFCD available online. There was a similar case with the PSF Women's Centre Foundation in Warsaw. This meant that during the process of collecting the data it was often difficult to reach the organisations involved in the consultations.