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**RESISTING GENDER RECOGNITION IN POLAND:  
A PROCESS OF SOCIAL EXCLUSION**

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**ORCID** no. 0000-0002-0501-4810**e-mail:** agnieszka.makarewicz-marcinkiewicz@uwr.edu.pl**Abstract**

This paper demonstrates that in Poland, a democratic state emphasizing the rule of law and equality under the law, we are dealing with the phenomenon of social (through legal) exclusion of transgender citizens. The paper presents the draft Act on Gender Recognition vetoed by the President of the Republic of Poland and the controversy associated with this fact. In addition, the consequences of the current legal status of transgender people in Poland, such as chronic and humiliating court proceedings and limited access to the health care system, have been identified. The paper attempts to demonstrate the indispensability of legislation in the field of gender recognition for the dignified, equitable social functioning of people with mental and biological gender incompatibility.

**Keywords:** social exclusion, legal exclusion, gender recognition, transgenderism**Introduction**

The concept of legal exclusion in scientific works appeared in the early XXI century. Legal exclusion is perceived as a part of the concept of social exclusion, which for years has been a subject of sociology, as a parent category to legal exclusion. The scope of legal exclusion is completely contained in the field of social exclusion. Law in this context is defined as a specific tool for preventing participation in social life and the performance of social roles (Majdzińska, 2010: 417).

Definitions of social exclusion describe many categories of excluded groups and are usually multidimensional. Today, the most frequently accented aspect of exclusion is the lack of access: "Lack of access includes access to factors such as social mobility, means

of communication, vital social systems, housing, public amenities, social security, health services, education services and social citizenship” (Peace, 1999: 398).

It is argued whether all the factors mentioned by Peace must be present together for there to be social exclusion, or if the presence of a few or even one factor is enough for social exclusion to exist, if it is severe enough. This makes it difficult to identify when social exclusion is being applied to certain groups. The studies on social exclusion previously carried out by the author led her to the conclusion that the term “social exclusion” is just a new name for old, unresolved social problems (poverty, unemployment) created and popularized in order to convince public opinion that there has been a radical change in the structure of these problems and reset time to solve them (Makarewicz-Marcinkiewicz, 2015). However, changes on the political scene in Poland introducing ideological criteria for social policy caused the author to change her views on the phenomenon of social exclusion. The presidential veto to the Act on Gender Recognition that resulted in exclusion from the legal and social system of transgender people is proof that democratic rule of law is not free from legal exclusion impacting other spheres of social life.

The derogation from the principle of legal equality can take many forms. First of all, exclusion is a result of a breach of equality in law, that is the exclusion of certain groups or denying them privileges under the law. The second source of legal exclusion is the entities’ inequality under the law, which refers to the application of law, an exercise of powers by individuals or their participation in law-making. In this respect, legal exclusion can be divided into factual exclusion, where fact has legal effects or when law is a barrier of access to social roles, rights, social support and participation in law-making (Majdzińska, 2010: 418).

In Polish law, the issue of normative gender discrepancies with the actual biological sex or mental gender – defined in the paper as gender identity – has never been explicitly regulated. In view of the requests addressed to courts by transgender and intersex people to establish their normative gender, the court judicature must have held procedures for rectification of an act of civil status, referring to what was applied under the Act on Civil Status.

The purpose of this paper is to show that in a state defined by the constitution as a democratic state of law and associated in a supranational organisation that emphasizes the rule of law and equality under the law, we deal with the legal exclusion of a whole group of citizens – the transgender community – by leaving them outside the legislature. The hypothesis of the paper has been included in the title: contemporary Poland resists gender recognition, which causes the social exclusion of transgender Polish citizens.

The paper presents the vetoed bill on gender recognition and some of the controversy associated with it. In addition, the consequences of the current legal status of transgender people in Poland have been identified. The author also attempts to demonstrate why legislation in the field of gender recognition is indispensable for the dignified, equitable social functioning of people with mental and biological gender incompatibility.

In order to verify the hypothesis and develop the issues signalled in the introduction, the following research methods and techniques have been applied: normative analysis, analysis of official documents and literature review, defined as a comprehensive study and interpretation of literature that addresses a specific topic (Aveyard, 2010).

## The concept of gender and gender recognition

Experts involved in studies and treatment of transgenderism identify 10 elements characterising gender (Dulko et al., 1997: 3–5):

- a) chromosomal gender;
- b) gonadal gender (determined by the gonads: testes by men and ovaries by women);
- c) internal genitals gender;
- d) external genitals gender;
- e) phenotypic gender (determined by the appearance of an adult human);
- f) hormone gender;
- g) metabolic gender (determined by the type of enzymatic apparatus of metabolic systems);
- h) social gender (normative, legal);
- i) cerebral gender (gender differentiation of the brain);
- j) mental gender (determined on the basis of the sense of belonging to particular gender, by the individuals identifying with male or female gender).

Analysis of the literature shows that divagations referring to gender are most frequently focused on the question of whether gender is a social construct, a legal or a biological fact. Very rarely examined is its mental aspect. Gender in legal terms is a sanction social construct, a social norm, which (at least in Poland) refers to biological sex, whereas the previously defined mental gender is based on a subjective feeling. This state of affairs seems to be the leading cause of the legal exclusion of transgender people. Therefore, unless there is a change in social mentality in the context of sexuality perception, it is difficult to expect changes in legislation. Once again, with regard to social phenomena, this situation confirms the thesis that social norms characterised by a specific value system, determine the rules (including the legal ones) of a society (in some definitions the legal standards are even treated as components of social norms).

What's more, even in definitions of a transgender person, there is a question of compliance with the social norm: transgender individuals have gender identities, expressions or behaviours that are inconsistent with social norms associated with their natal sex (Carey, Johnson et al., 2008).

The consequences of the social norm concerning gender perception present in society are the manifestations of discrimination, including these relating to the enforcement of the law: "Transgender people encounter extreme discrimination and prejudice in every facet of life, including employment, housing, public accommodations, credit, marriage, parenting and law enforcement" (Currah and Minter, 2000: 37). It has been shown that litigation consistently fails to win basic civil rights protection for transgender persons. The author cannot fully agree, however, that this kind of discrimination is rooted in the stereotypes that have fuelled unequal treatment of women, lesbians, gays, bisexual people and people with disabilities: "stereotypes about how men and women are supposed to behave and about how male and female bodies are supposed to appear" (Currah and Minter, 2000: 39). These are social norms, not stereotypes. Nevertheless, social norms can lead us to stereotypes and prejudices.

Gender determination does not rest on the appearance of genitalia alone. A host of factors inform an individual's sex, including genetic or chromosomal characteristics, gonad-

al appearance, internal reproductive morphology, external morphologic sex, genital appearance, hormonal levels, phenotypic characteristics or secondary sex features, assigned sex or gender of rearing and self-identified sex (Greenberg, 1999: 266–67). The last factor seems to play the main role in the phenomenon of intersexuality.

Gender incompatibility takes two forms. The first is transgenderism understood as a psychological incompatibility with other biological characteristics that determine gender. In this case, eight aspects that determine the biological sex in a consistent manner indicate specific gender; however, the person feels an affiliation to the opposite one (Dulko et al., 1997: 5). The other form of gender incompatibility is called intersexualism. "Intersex is a term used to denote a number of different variations in a person's bodily characteristics that do not match strict medical definitions of male or female. These characteristics may be chromosomal, hormonal and/or anatomical and may be present to differing degrees. Many variants of sex characteristics are immediately detected at birth, or even before. Sometimes these variants become evident only at later stages in life, often during puberty" (UE FRA, 2015: 2).

In countries where gender recognition procedures are not defined by law, but derive from established practice or case law, there are several drawbacks to not encoding gender recognition procedures. First of all, the applicant has no right to claim gender recognition. In the case of delays or negative decisions, there is no legal basis for an appeal. And when there is no possibility of appeal, the right to a fair trial is not enforced (Köhler, 2013:16).

Legal gender recognition is defined as the official recognition of a person's gender identity, including gender marker and name(s) in public registries and key documents. The European Court of Human Rights has repeatedly ruled on gender-identity recognition and its conditions, strengthening the human rights of transgender people (Köhler, 2013: 9)

According to the Committee of Ministers of the Council of Europe, a properly conducted procedure of gender recognition should be quick, transparent and accessible (CM, 2010).

1. Quick: the time span between applying for and being granted recognition should be as short as feasibly possible, since, as it has been emphasised, the time component is often highly relevant for the applicant and an unjustified extension of the procedure is cruel, as the transgender person's right to privacy continues to be violated for the duration of the proceedings.
2. Transparent: a clear procedure on how to change the name and recorded gender of a person. This includes clarification on how the law should be implemented and which bodies are responsible, e.g. to which institution an application needs to be addressed. Transparency allows the avoiding of legal uncertainty for the transgender individual, as well as for the authorities dealing with gender recognition.
3. Accessible: elimination of barriers that could distort the procedure. Accessibility needs to be ensured for all transgender people who seek it, independent of medical, age or other status.

The initiation of the gender recognition process in Poland is in line with the current diffusion of LGBTB rights norms in Europe and therefore it is a part of transnational dispersion of human rights. Gender recognition in the EU is about "how the politics of visibility impacts relations among states and the political power of marginalized people within them" (Ayoub, 2016, p. 4).

## The draft law on gender recognition

The issue of gender recognition by legal means was present in judgments before Poland's 1989 socio-economic transformation, when there was also no act regulating the status of transgender people. In a 1978 ruling, the Supreme Court accepted that it is not only external physical features and organs which define an individual's gender, but also a person's emotional association with the gender opposite to that assigned at birth. In this judgment, the court undertook the defining of gender, highlighting also its psychological ground. Furthermore, the Supreme Court found that no one could be forced to be a man or a woman if they internally deny it. However, this judgement was followed by several other judgments which created uncertainty regarding the procedures to be followed for officially changing one's gender.

Jan Lipski (2014: 33–34) analysed Polish judicature on gender recognition. In 1989, a resolution was taken by the Supreme Court which held that the prevalence of transgenderism does not give the rise to rectify the entry specifying gender in birth certificates. In an explanatory memorandum, the Supreme Court expressed the view that transsexualism is a change of mental state, and not the legal status of a person. It also stressed the fact that the Act on Civil Status does not provide the possibility for re-writing one's birth certificate in terms of gender. Neither is judicial reassignment specified in Polish law. On 22 March, 1991, the Supreme Court issued a decision in which it stated that a sense of belonging to a particular sex may be regarded as a personal right and as such is protected also in an action to establish. In a judgment of the Court of Appeal in 2004, it was indicated that gender determination via judicial decision cannot be based solely on a person's sense of belonging to particular gender, since the medical sphere was fundamental for the legal gender assessment.

Lipski (2014: 34) also relies on the judgment of the Supreme Court of 6 December, 2013, according to which gender determines the social roles that a person can only perform as a representative of a particular gender. For the law, the roles of husband or wife, father or mother are significant, since their proper fulfilment is important not only for the family community, but also for the state.

No court in these decisions took a position on the substantive issue of the importance of psychological aspects for gender determination in the act of civil status. Thus, a certain level of social consciousness (towards the acceptance of gender determination) was squandered as a result of the court decisions prior to the Polish political system transformation. In effect this could have been the introduction to Polish legal system of a belief that the internal sensations can determine human gender.

The draft bill on gender recognition titled the Act on Gender Recognition (the Parliament of the Republic of Poland, 2013) was the first attempt at statutory regulation of the conditions and procedures for changing the legal designation of a person belonging to a particular gender. The aim of this initiative was the incorporation of the gender's biological and mental discrepancies to the Polish legislative system, so that such an important issue would not be by customary judicial decisions. The need for regulation in this area is also confirmed by the scientific literature, which recommends guaranteeing the rights of the transgender persons to gender reassignment "for the effective restoration of transgender citizens a possibility of normal life". The significance of social acceptance and legal legitimacy are also emphasised in this context (Dynarski et al., 2010: 25).



Hitherto, evidentiary proceedings in most courts in Poland require the opinion of a psychiatrist, which implies that a person is suffering from sexual dysphoria. In many cases the court, regardless of the submitted opinions, appoints additional expert witnesses which increases the cost of the process. It should be added that some courts require that the expert issuing the opinion for the court is a sexologist or psychiatrist-sexologist and, since the sexological aid is paid in Poland, there is a cost in obtaining such an opinion. This requirement does not have a rational explanation, because transsexuality is not a sexological problem. It concerns the mental identity in terms of sexuality, therefore the diagnosis of transgender persons should not be a domain of sexology, but psychiatry and psychology (Grodzka and Podobińska, 2012: 204).

For some courts alongside the expert's opinion, crucial is the physical appearance of a transgender. In addition, depending on the composition of the judges, important is the testimony of the parties and witnesses. Some courts ask about the plaintiff's motivation to "change" gender, duration of the state of dysphoria or the course of hormone treatment. These proceedings are therefore not the same for all, which results in inequality under the law (Malczuk, 2012: 173).

The Act on Gender Recognition was prepared on the initiative of an independent member of parliament named Anna Grodzka. The Act specifies the procedures for gender recognition. It refers to people whose gender identity differs from their sex entered in their birth certificate. It applies only to legal procedures and does not touch medical issues.

The main aim of the draft law was to eliminate the currently applicable mode of the process requiring the claim against one's own parents; to create separate proceedings to enable the recognition of gender identity as a basis for determining the gender of people who suffer from disparity between gender identity and gender by register; and to provide legal protection of these persons against their dignity violations.

The most important provisions of the recent draft act of September 10, 2015 include (Sejm of the Republic of Poland, 2015):

## Chapter 2: Proceedings in cases of gender recognition

### Art. 5

1. For the gender recognition may request a person who has got full legal capacity and is not married, by whom the occurrence of gender identity different from sex entered in birth certificate has been stated.
2. To the application for gender recognition must be attached, issued no earlier than 12 months before the date of filing the application:

- 1) two judgments delivered independently by two doctors holding the title of specialist in psychiatry or sexology or second-degree specialization in the field of psychiatry, or by one of these doctors and psychologist certified by a Scientific Association, which indicate the existence of gender identity different from gender entered in birth certificate.

In article 5 of the draft law its initiators efficiently solved two problems often raised by the opponents of the law. First, they cautioned that a person initiating proceedings

of gender recognition may not remain married. Such statutory decision deprives the opponents of the law, defenders of the traditional model of the family based on marriage, the possibilities of arguing that the change of the legal status of a transsexual is contrary to their social roles. This solution also means that after the completion of the process of gender recognition, the court does not have to make a decision indirectly related to this procedure as the requirement for ending a marriage.

The second requirement relates to the presentation of two judgments delivered independently by two specialist physicians to prove that the process of gender recognition is not an “instantaneous, reversible desire to change”, as it seen by the leader of the party Law and Justice, Jaroslaw Kaczynski, who is against the law.

### Chapter 3 The consequences of gender recognition

#### Art. 10

3. The preparation of a new birth certificate on the basis of a final decision taking into account the request to gender recognition does not affect the existing legal relationship between the applicant and third parties, in particular between the applicant and their parents, children adopted before validation of the provisions taking into account the request to gender recognition. The preparation of a new birth certificate on the basis of a final, positive court decision has no consequences for the relations between the applicant and their biological children.

According to article 10 of the draft act, the fact of obtaining a new birth certificate with an altered sex does not eliminate the obligations towards the immediate family members, for e.g., the Maintenance obligation. It seems that these issues are obvious, and their recall in the draft law was primarily designed to negate the opponents of the law's argument on the possibility of avoiding responsibility for the family.

#### Art. 12

1. The assize conceding the application of gender recognition does not affect the entitlement of the applicant in respect of social security established at the time of validation.
2. If gender is an important criterion for establishing rights and the amount of social security benefits, the criterion is determined on the basis of a final decision taking into account the request of gender recognition. To determine the indemnity, applicable is the basis of calculation of the period before that decision became final.

The Act on Gender Recognition was supported by 252 members of Polish parliament (Sejm), 158 were against and 11 abstained. The Polish President, Andrzej Duda, vetoed the law. In the explanatory memorandum, the President's Chancellery reported that the law on gender recognition “makes the existence of the legal consequences of being a man or a woman only from experiencing one's own sexuality, which does not match the gender entered in the birth certificate. [...] It is not required to demonstrate the durability or the irreversibility of the sense of belonging to the opposite sex. [...] In accordance with the act,

gender can be changed repeatedly, and after the change it will be possible to marry a person formally of the opposite gender, however bio-identical" (Chancellery of the President of Poland, 2015).

The Chancellery of the President also stressed that the proposed law "does not require that the person feeling discomfort between body and psyche takes any steps to accept their anatomy with their own perception of sexuality, in particular if they undergo a pre-medical intervention, especially hormone therapy or surgery aimed to correct sex. [...] The person is also not required to fulfil social function according to the felt gender and after the formal change of gender they can function as before."

It is hard not to agree with the argument that the person after the correction of their birth certificate "can function as usual", since the process is about the formal gender recognition with which the person identifies themselves, and not about changing their behaviour, or permission to change their behaviour

The bill was created just in order to curb the customary interpretations of the courts in the so-called judicial practice of sex reassignment, so the reference to the President's Chancellery to the previous case-law is in contradiction with the idea of the law. On this occasion, it is worth noting how different is the nomenclature used by the two parties to the conflict. The authors of the draft law seek to formalize gender recognition, which is legal acceptance of belonging to a particular gender, with which the applicants have always identified. While the Polish President refers to gender reassignment as a "sex change", which, furthermore, can be reversible.

The issue of perception of the process of a sex change generates other planes of misunderstanding. In addition, the Chancellery of the President noted that "the determination of the father or mother belonging to a different gender than is indicated by the role filled by this person in the process of conception and birth is important for the child, because it refers to the child's origin. [...] The judgment taking into account the claim of a transgender to establish belonging to a different gender than the one determined by social role, which has been fulfilled at the conception and birth of a child, may have an effect on the future, because otherwise to the child should be attributed the origin of two women or two men".

The role of the parent in the process of conception obviously depends on the biological features and this fact remains unchanged even after the completion of gender recognition. The social role of raising a child depends mainly on psychological gender – the parent's identification with a particular gender. Thus, the process of upbringing also remains unchanged.

According to the Chancellery of the President, "allowing in the legislature the gender recognition only on the basis of the subjective criterion of gender identity, without taking into account the legal and biological circumstances, is a solution abstracted of the legal system. Marital status does not belong to the scope of self-determination of man and is always determined by the mandatory provisions, so it is not a subject to free disposal. [...] The admission of such situations will be a temptation to circumvent the rules according to which marriage is concluded between two people of different sexes and it will prejudice the rule of dichotomous division of society into two sexes, creating a kind of third sex in the form of people whose physical characteristics belong to one gender, and the legal status to the opposite gender".



Legislators in countries without same-gender marriages are faced with the same challenge – that formal gender recognition would result in legal same-sex unions. In order to avoid such situations, 34 countries in Europe require a divorce before fully recognising a transgender person's gender identity (Köhler, 2013: 21–22). The same solution has been adopted in the Polish draft law.

In conclusion of the statement of the Chancellery of the President it has been identified that the Act on Gender Recognition should take into account the possible consequences of such a significant change in people's lives, for both the events occurring prior to the change of gender and after a final court decision. The draft law on gender recognition does not meet this condition.

The Helsinki Foundation for Human Rights in its statement on President Duda declining to sign the Sex Reassignment Act emphasised that “sex recognition procedure implemented by the bill and the effects of the procedure set out therein were in line with the international standards. Up until now, the principles of sex recognition have only been determined by the case law and were not defect-free. With the rejection of the bill, the sex recognition procedure will continue to be unsuited to the specific nature of those issues (e.g. the need to sue parents), without clearly defined effects of the procedure and under conditions of uncertainty as to its course” (HFHR, 2015).

The draft law was submitted shortly before the alternation of power in Poland. The newly elected president Andrzej Duda comes from Law and Justice right-wing conservative political party. Despite the fact that the Committees of Health and Justice recommended the rejection of presidential objection, there was no voting because the committees failed to elect a rapporteur. The Act on Gender Recognition was not enacted in that term of Sejm in which it was initiated. The parliamentary elections won by the Law and Justice Party, which prevented further proceedings.

## **Why do we need the Act on Gender Recognition?**

Gender policy in Poland after the alternation of power in 2015 aims to simplify the categorisation of gender and sexual preferences, which in turn perpetuates the so-called traditional family model and serves the demographic policy. Furthermore, these actions are part of a wider policy, which can be described as a state of homogeneity strategy. Poland is a homogeneous country in terms of ethnicity, nationality and religion. The complementing of this specific type of social unity, according to the current government, shall be heterosexuality and the biologically determined division into two sexes.

What are the consequences of this ideological interference of state authorities in the choices of citizens regarding their private life? What aspects of social life are affected by the legal exclusion of transgender persons?

A key consequence is the limited access to social services in the field of health care. Transgender persons are experiencing this kind of exclusion from the very beginning of the gender recognition process. Polish healthcare policy excludes coverage for gender-confirming interventions and surgeries and, for transgender populations, legal recognition is usually closely tied to medical treatment. The transgender population's lack of access to care is all the more striking when considered alongside the group's elevated risk for a number of serious health problems (Khan, 2013: 376–383).

Limiting the access to services in the field of health care for insured citizens in case of a disease entity recognized in the International Classification of Diseases (ICD) is incompatible with the standards of the World Health Organisation. Poland has been a member of the World Health Organisation (WHO) since the establishment of the organization in 1946. Poland acknowledges the systems of disorders classification described in the ICD, which was developed by the WHO. Therefore, the ICD classification is applied in Poland in medical practice and required by official state institutions (the Social Insurance Institution). According to the International Statistical Classification of Diseases and Related Health Problems, transsexuality is a disorder of gender identity. ICD-10 describes transsexualism as follows: "A desire to live and be accepted as a member of the opposite sex, usually accompanied by a sense of discomfort with, or inappropriateness of one's anatomical sex, and a wish to have surgery and hormonal treatment to make one's body as congruent as possible with one's preferred sex" (WHO, 2016).

The content of article 68, paragraph 2 of the Polish Constitution shows the basis for the health care system – the principle of equal access to health care services financed from public funds. This provision enables the interpretation of a rule of jurisdiction, addressed to the legislature, that implements such a structure of a health care system that takes into account the basic directive of equal access to health care services. Therefore, the public authorities are responsible for creating the relevant departments (institutions) for diseases prevention and to create appropriate conditions for disease control and treatment.

Until 1999, gender-changing operations were in the basket of the reimbursed treatments. In accordance with the Act of 27 August 2004 on healthcare services financed from public funds, gender-change operations in Poland no longer qualify for refunding. Currently, the operation to adapt the mental gender to a physical one is not explicitly excluded from public funding. However, neither is the surgical treatment included to the basket of guaranteed benefits. The barrier to surgical treatment funding is often in the approach of physicians and their reluctance to give a referral due to the lack of transparency in the regulations and the fear of financial penalties for wrongly prescribed treatments.

The issues of legal and medical gender recognition are strongly interconnected. There were once doubts as to the admissibility of the judicial changes in cases of already made adaptive treatment. The number of operations significantly decreased because the doctors fearing legal consequences were refusing to operate without prior proceedings in this matter (Filar, 1996: 81).

Currently, a person seeking a decision on gender recognition cannot be subjected to surgery aimed to correct internal or external sexual characteristics before obtaining a court decision regarding their gender. Such surgery is prohibited by article 156 of the Polish Penal Code. Doctors who provide the operation face punishment for up to 10 years in prison for the reason of depriving a healthy individual the ability to procreate.

Another consequence of the absence of law on gender recognition are chronic and humiliating proceedings before the Polish courts. While the excessive length of proceedings is a pathological phenomenon generally concerning the whole judicial system in Poland and cannot be discerned as being discrimination against applicants, the fact that the legislation forces the person (at legal age) wanting to undergo the correction of gender to take legal action against their own parents is definitely a matter of unequal treatment. Transgender persons are in this situation treated as incapacitated. Courts ask whether a person who is a fully autonomous legal entity would want to undergo such an intimate

and personal process as gender reassignment. In addition, from the accounts of people who were forced to undergo this procedure, it is known that filing a lawsuit against their own parents may be in their eyes synonymous with burdening them with their fault for the problems of the child. The courts could be very scrupulous in this regard. There were reported cases where the court was able to find a parent who had lost a contact with their child in early childhood and Polish courts gave such parents the right to speak about the most intimate sphere of the unknown child's life.

The draft law provides a solution to these problems. Article 6 of the Act on Gender Recognition provides that the request for gender recognition should be adjudicated no later than three months from the date of the filing of the application to the competent court. Until now it took up to three years. The court immediately, after taking the final decision, was supposed to send its copy of the gender recognition request to the head of the registry office competent for the issuing of the birth certificate of the claimant. The draft law has also abolished the need to sue one's parents; the applicant was solely responsible for the entire evidentiary proceedings. The veto by President Andrzej Duda to the Act on Gender Recognition squandered the chance to implement these solutions.

## Conclusions

The Polish Draft Act on Gender Recognition was not perfect, and it was the result of numerous compromises, which was the only way, however, for the authors to get the support of both chambers of Polish parliament (Sejm). They hoped that, in the future, the law will be supplemented by the implementing executive acts. But even in the presented form, the act could have significantly altered the Polish legal system and, most importantly, improved the lives of transgender people. However, it did not happen. The reasons for the legal exclusion of transgender people should be sought in the ideological attitude of the authorities coming from a right-wing political party, *nomen omen* Law and Justice, not only to differences related to gender or sexuality, but to broadly understood social life.

Due to the ideological social norm covering the phenomenon of transgenderism, transgender citizens of a democratic state of law are offered judicial procedures far from their expectations, which deprive the applicant the right to claim gender recognition. A situation when there is no possibility of appeal is definitively a case of social exclusion, since the right to a fair trial is not enforced. Polish "sex correction" procedures are neither quick, transparent nor accessible, contrary to what is recommended by Committee of Ministers of the Council of Europe.

The course of the judicial proceedings for "sex change (correction)" is a clear violation of article 32 of the Polish Constitution of 1997, which guarantees the equality of all before the law and entitles to equal treatment by public authorities. However, it is difficult for the citizens of Republic of Poland (not only those transsexual) to assert their Constitutional rights.

It should be noted that the jurisprudence of the Supreme Court in this regard has been radicalized, paradoxically, after the transition towards a democratic system of rule of law. The definition of gender that indicates its psychological substrate present in a judgment of 1978 is to be found in the jurisprudence since the 1990s.

The main consequences of the president's veto are the limited access to social services in the field of health and the further approval for chronic and humiliating proceedings

before the Polish courts. Transgender individuals were the first victims of the “ideologisation” of social life that followed the alternation of power in 2015, but they are not the only ones. It has begun to restrict the rights of women to decide about their own body (the draft law introducing a total ban on abortion) and access to contraception. Women commenced to protest (so called “black protests”) with major support from the whole of Polish society, which led to a partial withdrawal of the government from the designed, ideological changes. It is hoped that social solidarity in Poland will strengthen and that society will come to support transgender Polish citizens, continuing the traditions of the Central and East European model of civil society in opposition to the state.

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