6. Poland

Statistics

GENERAL

Population

- The total population of Poland is 38.7 million.1
- The proportion of the population residing in urban areas is estimated to be 65%.2
- Between 1995 and 2000, the annual population growth rate is estimated at 0.1%.3
- In 1999, the gender ratio was estimated to be 106 women to 100 men.4

Territory

- The territory of Poland is 120,728 square miles.5

Economy

- In 1997, gross national product (GNP) was USD $138.9 billion.6
- In 1997, gross domestic product (GDP) was USD $135,659 million.7
- The average annual growth between 1990 and 1997 was 4.1%.8
- From 1990 to 1995, public expenditure on health was 4.8% of GDP.9

Employment

- Women comprised 46% of the labor force in 1997, compared to 45% in 1990.10

WOMEN’S STATUS

- In 1999, the life expectancy for women was 76.9 years, compared with 68.2 years for men.11
- In 1997, the illiteracy rate among youth between the ages of 15 and 24 was 0% for females and 0% for males.12
- In 1998, gross primary school enrollment was 97% for girls and 99% for boys; gross secondary school enrollment was 81% for boys and 85% for girls.13

ADOLESCENTS

- 20% of the population is under 15 years of age.14

MATERNAL HEALTH

- Between 1995 and 2000, the total fertility rate is estimated at 1.53.15
- In 1998, there were 23 births per 1,000 women aged 15-19.16
- In 1998, the maternal mortality ratio was 10:100,000.17
- Infant mortality was at 15 per 1,000 live births.18
- 99% of births were attended by trained attendants.19

CONTRACEPTION AND ABORTION

- The contraceptive prevalence for any method (traditional, medical, barrier, natural) is estimated at 75%, and that for modern methods at 26%.20

HIV/AIDS AND STIs

- In 1999, the estimated number of people living with HIV/AIDS was 13,000.21
- In 1997, the estimated number of women aged 15–49 living with HIV/AIDS was 25.22
- In 1997, the estimated number of children aged 0-14 living with HIV/AIDS was 3.23
- In 1999, the estimated cumulative number of AIDS deaths among adults and children was 500.24
ENDNOTES
2. Id.
3. Id.
5. UNITED NATIONS POPULATION FUND (UNFPA), THE STATE OF WORLD POPULATION 1998, at 810.
7. Id. at 213.
8. Id. at 211.
9. Id. at 203.
10. Id. at 195.
11. THE WORLD BANK, WORLD DEVELOPMENT INDICATORS 1999, at 83.
12. Id.
13. Id.
16. Id.
17. Id.
18. Id.
19. Id.
20. Id.
23. Id.
In East Central Europe, Poland borders the Czech Republic and Slovakia to the south, Germany to the west, and Russia, Lithuania, Belarus, and Ukraine to the east. The official language is Polish. Poland was among the first countries in East Central Europe to introduce open market reforms in 1990, and it now possesses one of the most successful “transition” economies in the region. Currently Poland is being considered for membership in the European Union (EU), and its prospects seem assured.

Poland is distinctive in the region for its strong Catholic affiliation, with 95% of the population being Roman Catholic and 75% defining themselves as practicing Catholics. The remaining 5% are a mix of Protestant, Eastern Orthodox and other denominations. Ethnically, Poland is relatively homogeneous, with 97.6% of the population Polish, 1.3% German, 0.6% Ukrainian, and 0.5% Byelorussian. As of July 1999, there were 38.61 million people living in Poland — 1985 million women.

1. Setting the Stage: the Legal and Political Framework

Poland is a democratic republic with a legal system that is a mixture of Continental (Napoleonic) civil law, with some persistence of the previous state socialist regime. Its Constitution was ratified in October 1997.

A. THE STRUCTURE OF NATIONAL GOVERNMENT

The government of Poland is based on a separation and balance of power between the executive, legislative and judicial branches.

Executive branch

The power of the executive branch is vested in the president of the republic and the Council of Ministers (Rada Ministrov). The president is elected by secret ballot in universal and direct elections and serves a maximum of two five-year terms. A president must receive more than half of the valid votes. The president of the republic reviews bills passed by the legislative branch and can either sign them, return them to the House of Representatives (Sejm) for reconsideration, or submit them to the Constitutional Tribunal for a review of their constitutionality. If a bill is returned to the Sejm and re-passed by a three-fifths majority vote of at least half the statutory number of deputies, then the president must sign the bill and may no longer refer it to the Constitutional Tribunal. If the Constitutional Tribunal finds that the bill conforms to the Constitution, the president must sign it. If the Tribunal finds the bill unconstitutional, the president cannot sign it. As Poland’s representative in foreign affairs, the president of the republic has the authority to ratify and renounce international agreements, appoint and recall representatives of Poland, and receive diplomatic representatives of other states, but the president is required to cooperate with the prime minister with respect to foreign policy. The president of the republic is also the Supreme Commander of the Armed Forces. He grants Polish citizenship and consents to its renunciation, confers orders and decorations, and has the power of pardon.

The Council of Ministers conducts the internal affairs and foreign policy of Poland and is responsible for affairs of state not reserved to other state organs or local governments. In particular, the Council of Ministers implements statutes, issues regulations, ratifies international agreements, coordinates the organs of state administration, adopts a draft state budget, and implements the budget after its adoption by the House of Representatives.

The president of the Council of Ministers is the prime minister, who is appointed by the president of the republic and the House of Representatives. The prime minister proposes the composition of the Council, manages the work of the Council, implements the Council’s policies, and, like other ministers, issues regulations. The Sejm oversees the activities of the Council of Ministers. The Minister of Health and Social Assistance is responsible for health care policy and management.

Legislative branch

The power of the legislative branch is vested in the House of Representatives and the Senate. All representatives serve four-year terms that can be shortened by a vote of at least two-thirds of the statutory number of deputies or by order of the president of the republic. The Sejm, which has much greater powers than the Senate, is composed of 460 deputies, elected by secret ballot in universal, direct, and proportional elections. The Senate is composed of 100 senators elected by secret ballot in universal and direct elections.

Legislation may be introduced by deputies, the Senate, the president of the republic, the Council of Ministers, or a petition signed by 100,000 citizens able to vote in Sejm elections. The Sejm passes bills or resolutions by a simple majority vote of at least half of the statutory number of deputies, unless the Constitution requires a different majority for certain kinds of bills, or a statute or resolution requires a different majority for a given resolution. Once passed by the Sejm, the Senate may amend it, adopt it, or reject it by simple majority vote. The Sejm can amend or reject a Senate resolution by a majority vote. The Sejm, by a majority vote of deputies present, can order a nationwide referendum on a matter of particular importance to the state. The president of the republic, with the consent of a majority vote of the Senate, can also order a referendum. A nationwide referendum is binding if more than half
of Poles eligible to vote have participated in it. A referendum’s validity is subject to Supreme Court review.31

Judicial branch

The judicial branch consists of the Constitutional Tribunal,32 the Tribunal of State,33 the Supreme Court, the common courts, administrative courts and military courts.34

The Constitutional Tribunal adjudicates on the conformity to the Constitution of statutes, international agreements, actions of central state organs, and activities of political parties. It also hears individual complaints concerning constitutional infringements35 and settles disputes over authority between central state organs.36 The Constitutional Tribunal is composed of 15 judges chosen by the Sejm for non-renewable nine-year terms.37 Rulings of the Constitutional Tribunal are final and binding.38

The Tribunal of State adjudicates cases involving normative acts initiated by the president of the republic, the prime minister, and certain other state officials.39 The Supreme Court has appellate jurisdiction over common and military courts.40 The Chief Administrative Court and other administrative courts exercise control over public administration and determine the conformity of local government resolutions.41 Judges are appointed for an indefinite period by the president of the republic on the suggestion of the National Council of the Judiciary.42

The common courts are organized into three tiers below the Supreme Court: regional, provincial and appellate. Regional courts are courts of first instance, provincial courts have original jurisdiction over the most serious offenses, while also handling appeals from regional courts, and appellate courts handle only appeals from the provincial level. The Supreme Court handles appeals only about questions of law. In addition, common courts are divided into civil, criminal, labor and family jurisdictions.43

The government is further monitored by the Supreme Chamber of Control and the Commissioner for Citizen’s Rights (Ombudsman). The Supreme Chamber of Control audits the organs of government administration, the National Bank of Poland, state legal entities, local government agencies, and other state organizational units to ensure the legality, economic prudence, efficacy and diligence of their activities.44 The Ombudsman45 reports annually to the Sejm and the Senate about the state of the freedoms and rights of the people of Poland.46 The Commissioner is appointed by the Sejm, with the consent of the Senate, for a period of five years.47 The Ombudsman may act when, upon the complaint of an individual or organization, violations of human rights and freedoms by public agencies and authorities are called to its attention.48

B. THE STRUCTURE OF TERRITORIAL DIVISIONS

Regional and local governments

The 1998 administrative reform significantly reduced the central government’s administrative presence at the local level.49 Local government has been reconstructed into 16 provinces (Województwa),50 and the provinces are divided into districts (Powiats), each of which consist of several communes (Gminas), the basic units of local self-government.51 Local governments perform all public tasks not reserved to other public authorities by the Constitution or statutes.52 They have their own constitutional and executive organs,53 property rights, and the right to levy local taxes.54 Matters concerning the local community can be decided by referendum.55 Gminas have their own elections, which give them relative independence from central government. The Gmina Council is the legislative body, the mayor and municipal council are the executives.56 The 350 democratically elected Powiats may also promulgate local regulations.57 They also may execute at the local level some administrative and financial tasks of the state.58 The Powiat is governed by its own legislative body (the Council), and an executive board.59

The highest level of local government is the Vóivod, members of which are appointed partly by the central government and partly by newly created, democratically elected, regional assemblies (Sejmiks). The self-governing Vóivodship Sejmiks are responsible for the development and implementation of regional economic policies and, like Powiats, have independent legal identities and independent budgets.60 The Vóivods concentrate on regional policies that relate to cultural life and local activities, including health and pro-family policies.54 Acts of local governments (Gmina and Powiat) are subject to review by the courts,62 the prime minister, Vóivod, and regional audit chambers.63

C. SOURCES OF LAW

Domestic sources of law

Poland has a civil law system.64 The sources of universally binding law are the Constitution, statutes, regulations and ratified international agreements.65 The Constitution is the supreme law and is directly applicable.66 Ratified international agreements become part of the domestic law and are directly applicable.67 They have precedence over domestic law and are second in the hierarchy of laws.68

Regulations implement statutes.69 Resolutions of the government and orders of the premier and ministers are binding only on subordinate officials. They may not, therefore, constitute the basis of decisions concerning citizens, legal entities, and other subjects.70 Resolutions and orders must comply with
universal binding law. Acts of local bodies are a source of universally binding law in the territory of the organ issuing such acts. According to Article 190(1) of the Constitution, judgments of the Constitutional Tribunal also have universal binding application. Finally, common law, when not in contradiction to statutory law, is another source of binding law.

**International sources of law**

International agreements are concluded by the Council of Ministers and are ratified by the president. If an international agreement concerns peace, alliances, political or military treaties; constitutional freedoms, rights or obligations of citizens; Poland’s membership in international organizations; considerable financial obligations; or matters normally regulated by statute, then consent must be granted by statute before the agreement can be ratified. The state may, by virtue of international agreements, delegate to an international organization the competence of state organs in relation to certain matters. The ratification of such international agreements requires consent through a statute passed by two-thirds of the Sejm and by two-thirds of the Senate. Such statutes may also be passed by a nationwide referendum.

Since 1980, Poland has been a state party to the Convention on the Elimination of All Forms of Discrimination Against Women. Poland has also ratified the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the First Optional Protocol to the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, the International Convention for the Elimination of All Forms of Racial Discrimination, and the European Convention on Human Rights. The European Agreement, signed on December 16, 1991 by the Republic of Poland to associate with the EU, obliges Poland to “harmonize” its law with that of the EU.

## II. Examining Health and Reproductive Rights

Reproductive rights were not discussed during the period of state socialist rule, and unfortunately, little has changed since the transition. Generally, all governments have ignored in official state strategies, policies and program issues of women’s reproductive health and rights, with the exception of abortion. Access to abortion has become considerably more difficult since 1989.

### A. HEALTH LAWS AND POLICIES

The Constitution guarantees every citizen the right to health care financed by the state. The Constitution also obliges authorities to pay special attention to the health of children, pregnant women, disabled persons and the elderly.

Reform of the health care system is one of four major reforms implemented in Poland since January 1, 1999. The others are reform of the social security system, education and state administration. Its cornerstone is the elimination of direct state financing of the health service. In 1998, there were 8,461 medical clinics and health care centers in Poland, 5,256 situated in urban areas and 3,205 in rural areas. There are 715 general hospitals, and eight have specialized maternity departments, representing a marked decrease since the early 1980s. Poland has a high ratio of health care professionals per inhabitants: one doctor is responsible for 424 persons, while one nurse is responsible for 178. There are 6,341 gynecological specialists, while 24,434 midwives work in hospitals and other medical centers. In 1998 there were 727 hospital beds per 100,000 inhabitants.

A number of laws regulate the provision of health care services: the law on health care institutions; the law on national health insurance; the law on the medical profession; the law on care of the mentally disabled; the law on family planning, protection of the human fetus and conditions of legal abortion; and the law on the profession of nurse and midwife.

### Objectives of the health policies

The Polish government first set forth a National Health Program (NHP) in an interministerial document signed on September 3, 1996. The NHP is based on the World Health Organization (WHO) strategy of “Health for All in the Year 2000.” The strategic goal of the NHP is to better public health by focusing on improving access to health care services and reforming lifestyle and environment risks. The NHP addresses women’s health and reproductive rights only insofar as two of its goals are to prevent premature births and to detect and prevent breast cancer.

A women’s health policy was taken up in the 1997 National Program of Actions for Women, under the governmental Office of Plenipotentiary for Family and Women. The program was never implemented. In 1997, the Office became the Plenipotentiary for Family Affairs, and according to the legal act adopted by the government on November 7, 1997, the new office’s mandate no longer includes women’s issues and gender equality. As a result, the women’s health policy has been left to languish.

Poland has had in place since 1993 a National Program for Development of Prenatal Care. Its goal is to reduce the number of illnesses and deaths among mothers and newborn children; its actions are carried out on the regional level. The national health policy of Poland therefore considers women
principally as mothers and devotes most of its women’s health resources to pre-, peri- and postnatal care. The health care needs of women who wish to avoid childbearing and of post-menopausal women are not well met.

**Implementing agencies**

The Ministry of Health is charged with organizing and implementing public health care services and is in the process of reforming the health sector to promote decentralization and privatization. Under these reforms, responsibility for outpatient primary and specialty care services, as well as some inpatient care, has been transferred from the central government to large cities and local government service areas. Furthermore, authority previously held by central government officials has been delegated to managers of independent and relatively autonomous health institutions, including hospitals and publicly owned integrated health care maintenance organizations known as ZOZs. The National Health Program is largely implemented by local governments, local communities and NGOs. The National Health Institution is in charge of negotiating contracts with health care providers and paying for treatment provided to insurance holders.

**Infrastructure of health services**

Almost all primary care services are provided through polyclinics. A polyclinic is typically staffed by a multi-specialist team, consisting of an internist, pediatrician, gynecologist, and a dentist, with frequent use of referrals to other specialists after an initial consultation. Clinics located in the urban areas have a larger number of physicians and support staff than rural facilities. Outpatient clinics in urban areas usually have superior equipment and facilities, such as analytical or diagnostic laboratories, and many have separate dispensaries for children and women. They may also have dental or other specialist dispensaries. In 1991, there were 3,311 outpatient clinics, 1,903 of which were in urban districts.

Approximately 95,000 people — 14% of all public health service employees — work in primary health care. However, their distribution among health facilities is uneven. The number of doctors per 10,000 inhabitants ranges from 11.4 in the rural Siedlce Voivodship to 38.4 in the Warsaw area. The ratio of physicians employed in primary health care relative to those working in hospitals or in specialized care appears to be insufficient: of all physicians in Poland, only 16% (14,000 doctors) are involved in the primary health care sector.

Much of Polish health care is provided through publicly owned integrated health care maintenance organizations known as ZOZs, which combine primary and specialist care and, in some cases, inpatient services. The central government devolved ownership of public sector health care providers to local and provincial governments in 1993, so that now most hospitals are owned by provincial governments. Under a provision of a 1995 law, Poland’s 46 large cities (“Gmina”) were offered ownership over primary care providers, including polyclinics, specialist clinics, public health providers and a few hospitals that were included in the related ZOZs. Local governments outside of large cities (also called Gmina) were given authority over primary care facilities in their jurisdiction. Inpatient care is provided by the Löwendhüpf through hospitals, and each hospital has a minimum of four wards: internal medicine, surgery, gynecology and obstetrics, and pediatrics. Legislation from 1991 allowed hospitals to function as “independent units,” operating according to commercial law.

A significant development for patients in the current health care reforms is the creation of family practitioners (FPs) who act as “gatekeepers.” Patients are no longer permitted to go straight to a specialist. They must first register with an FP, who will assess the need for additional services. Although patients can visit FPs and hospitals of their choice, they must select doctors and institutions within their own province. This applies only to ZOZs, not to private clinics.

**Cost of health services**

Before 1989, the state socialist government provided all health care services. These were financed out of the national budget and managed by the Ministry of Health. Private practice was officially legal, but available only to those who had connections and could pay. Since 1989, government reforms created a system of national health insurance based on payment of premiums that entitle the contributor to a defined package of benefits. Eligibility is no longer automatic for all citizens, although coverage is intended to be virtually universal. Health care services are provided through state-owned or autonomous hospitals, clinics, and ZOZs that receive contracts and payments from a system of insurance funds. Private health care providers may also be approved and receive payments through insurance, under certain conditions.

The government no longer fully finances the operations of the health care system. Since January 1999, all employed citizens were obliged to pay 75% of their income in the form of a mandatory, tax-deductible health insurance premium. Those who are unemployed must register at the Bureau of Unemployment and Social Welfare Centers in order to obtain a waiver and receive insurance coverage. Family members are considered dependents and receive coverage under the insured principal. Retired pensioners make no contribution but are covered. The Ministry of Health pays for the care of orphans, persons on permanent welfare, and the poorest agricultural workers. Additionally, article 8 of the Law on Health
Insurance guarantees to every insured person the use of public health services at no charge. Under this article approximately 97% of the population is entitled to free medical care.

The new health insurance system is executed through 16 fully autonomous funds known as “Sick Funds” (Kasa Chorych), one for each Voivodship. There is also one nationwide fund for individuals in the uniformed services. The Funds’ main purpose is to provide the best possible medical care, as far as their budget will permit, to all insured persons, and thus cover the costs of medical consultations, diagnostic services, medical treatment, medical rehabilitation, nursing assistance, pre-, peri- and postnatal care, preventive care, and basic medicines.

While these health care reforms have been implemented only starting in 1999, already there are concerns related to accessibility of specialized medical services and the ability of the poor to access quality health services. The Ombudsman has raised serious questions about the constitutionality of the Law on Health Insurance, and it is expected that the government will take up this matter eventually. In 1994, the health budget was 13.8% of the total state budget, increasing to 15.4% in 1996 and falling to 13.3% in 1998. The health expenditure per capita increased from USD $111.50 in 1994 to USD $167 in 1996. Total public expenditures for the health care system constituted 4.24% of Poland's GNP in 1997. Private health insurance was not possible until 1999 — foreign companies were not allowed to sell it, and Polish companies did not offer health coverage.

One irony in Poland’s health care system reforms involves the government’s inattention to EU directives. Poland was among the first wave of East European countries to apply for EU membership, but it participates in none of the four EU projects on health: health promotion; prevention and treatment of AIDS; prevention of cancer; and prevention of alcoholism. Moreover, there is limited financing of health clinics for women, particularly those specializing in the prevention of women’s illnesses (including cancers). This limited financing directly affects the availability of professional counseling and treatment for such diseases. Finally, although family planning services are included in the package of free health care services available to women, the government dropped five of the eight contraceptives designated for reimbursement from the schedule of covered medications.

**Regulation of health care providers**

The Law on the Medical Profession and the Code of Ethics regulate health care professionals, who are obliged to respect human rights and protect the dignity of individuals who use their services. The Law on the Medical Profession defines the conditions under which one may practice medicine. To become a physician, one must study medicine at a university, and upon graduation, pass the state examination. Physicians are required to register with the National Court of Physicians. They also have an obligation to continue their education and to take post-graduate courses designed for this purpose.

All doctors are required to join the Chamber of Physicians, which is organized both nationally and regionally. The highest authority in this medical self-government is the National Congress of Doctors; each regional chamber has its own congress as well. The National Court of Physicians, regional courts, the National Spokesman for Professional Responsibility and regional spokespeople also operate within the medical profession’s self-governing structures. The professional self-governing bodies of physicians are supposed to regulate the quality of work and ethics of medical services. Any person dissatisfied with medical service rendered can complain and press charges with regional chambers or can directly exercise his or her rights in a court of law. The Ombudsman is also entitled to lodge a complaint or initiate any form of legal action where there is a possibility of a rights violation.

The professions of nursing and midwifery are regulated by Law No. 410/1996 and the Midwifery regulations, which were part of the broader health care reform. The law established a new three-year nursing curriculum that emphasized the professional aspects of the nurse’s role and fostered the development of a curriculum that met European nursing and midwifery standards of education and training. The new curriculum includes many new subject areas, such as mental illness, health promotion and research. In 1999 a new Institute of Postgraduate Education for nurses and midwives was established.

Polish pharmacists are organized into the Polish Pharmaceutical Chamber, whose organization is regulated by a 1991 law. The main bodies of this Chamber are its Council, Commission, Court and Spokesperson. Similarly to physicians, pharmacists in 1993 adopted their own Code of Ethics.

**Patients’ rights**

There is no single document concerning patients’ rights. Regulations on specific rights are included in different documents: the laws on health care and insurance; the law on the medical profession; regulations for specific clinics and hospitals; and the general codes of medical ethics. Article 39 of the Constitution forbids scientific experimentation, including medical experimentation, without the voluntary consent of the individual.

The Law on the Medical Profession provides that the patients have the right to medical care, delivered in accordance with modern prevailing medical standards, treatment, and professional ethics. Patients have the right to all information on
the state of their health, the physicians’ diagnosis, and all possible courses of treatment; patients are entitled to know the possible negative consequences, as well as positive, of such treatments.\textsuperscript{153} Patients have the right to consent to or refuse examination or other treatments.\textsuperscript{154} The patient’s informed consent for operations or other interventions must be obtained.\textsuperscript{155} Patients have a right to any information about modifications a doctor has made during a course of treatment, due to risks of health or life.\textsuperscript{156} A physician must respect the privacy and dignity of the patient.\textsuperscript{157} Patients have the right to consent to, or refuse, the presence of persons other than a physician or medical staff.\textsuperscript{158} All medical professionals must keep confidential any information about a patient gathered during the course of medical treatment.\textsuperscript{159}

The consent of the patient is required for all diagnostic, therapeutic, and preventive procedures. If the patient is unable to give informed consent, it should be given on his or her behalf by the patient’s statutory representative or a person having permanent care of the patient. If the patient refuses to give consent for a proposed procedure, the physician should, as far as possible, continue to provide medical care for the patient.\textsuperscript{160} Should a patient successfully prove that a violation of his or her rights has occurred, courts can fine doctors, although actual damages are limited to losses.\textsuperscript{161} Responsibility for medical malpractice can be criminal and civil as well as involving discipline meted out through a professional body.\textsuperscript{162}

The Criminal Code punishes any person who performs a medical procedure without the patient’s consent with a fine, limitation of freedom, or imprisonment for up to two years.\textsuperscript{163}

General provisions cover cases where serious harm was done to another person’s health, and these carry possible prison terms of between one and ten years.\textsuperscript{164} The provisions of the Criminal Code on battery, assault, manslaughter, murder, or physical or psychological mistreatment of family members or dependent persons also apply.

It is the duty of the Chamber of Physicians to supervise and discipline their members on issues of medical ethics.\textsuperscript{165} Physicians must answer to medical courts for any conduct contrary to principles of professional ethics or laws regulating the practice of medicine.\textsuperscript{166} Medical courts can issue a reprimand or a warning, can suspend the right to practice the medical profession for a period of six months to three years, and can permanently deprive the physician of the right to practice the profession.\textsuperscript{167} Disciplinary proceedings do not exonerate doctors from separate civil or criminal responsibility.\textsuperscript{168} An accused physician has the right to designate defending witnesses and to seek counsel from among physicians and attorneys.\textsuperscript{169}

There are some policies that may conflict with the guarantee of patient rights, particularly where the right to information\textsuperscript{170} concerning family planning is concerned.\textsuperscript{171} The head of the National Court of Physicians has given clear direction that doctors may refrain from prescribing contraception if it is against the dictates of their consciences,\textsuperscript{172} and doctors are under no obligation to refer or provide patients with additional information and alternatives.\textsuperscript{173} There are additional concerns regarding patients’ rights as rights to privacy and respect of patient’s dignity are systematically violated.\textsuperscript{174} Moreover, health care workers receive no human rights education in their professional training.\textsuperscript{175}

**B. POPULATION POLICY**

As is the trend in many European nations, there is an observable decline in Poland’s birth rate. Families are having fewer children: in 1980, there was an average of 2.27 children per family; in 1995, that dropped to 1.61 children per family,\textsuperscript{176} a rate that demographers estimate falls below the level needed to maintain current population numbers.\textsuperscript{177} Since 1992 the average life expectancy of men and women has been increasing — in 1997, it was 77 years for women and 68.5 for men. Infant mortality has decreased. The number of infant deaths per 1,000 live births dropped from 19.3 in 1990 to 10.2 in 997\textsuperscript{178} and 9.5 in 1998.\textsuperscript{179} In 1998, there were 22,000 more births than deaths.\textsuperscript{180}

In response to a perceived population decline, the Polish government has adopted a pronatalist ideology. This ideology is reflected in the Polish Constitution, which states that “marriage, being a union of a man and a woman, as well as the family, motherhood and parenthood, shall be placed under the protection and care of the Republic of Poland.”\textsuperscript{181} Article 71 of the Constitution specifies that “(1) The state, in its social and economic policy, shall take into account the good of the family. Families, finding themselves in difficult material and social circumstances — particularly those with many children or a single parent — shall have the right to special assistance from public authorities; and (2) A mother, before and after birth, shall have the right to special assistance from public authorities.”

Poland’s restrictive abortion and family planning laws constitute a de facto population policy that is both Catholic and pronatalist. Its employment laws and policies promote motherhood and make it difficult for women who do not take advantage of these state benefits to raise their children and to reenter the labor force on the same footing as men. Most recently, the government submitted a pro-family tax relief bill to the Sejm. The bill would reform the current tax code to give preferential treatment to families with at least two children and low incomes.\textsuperscript{182}

The government’s pronatalist position is also expressed through a very restrictive abortion law, a lack of policies that promote and subsidize family planning programs, and its
withdrawal of support for modern hormonal contraceptives for women while considering state-supported access to the male impotence drug Viagra. Family planning services are generally not provided in the public health system and sterilization is illegal.183 There are inconsistencies in this position, however. For instance, the allowance for extremely poor pregnant women is symbolic, and not all entitled women have received it.

C. FAMILY PLANNING

The Polish government committed itself to the 1994 International Conference on Population and Development Programme of Action, but has taken no practical action to fulfill this commitment. Family planning is officially included on the list of basic health care services provided by the state, but there are no systematic family planning services offered in its public health care institutions.184 The United Nations Human Rights Committee has recently noted the insufficiency of public family planning programs and recommended Poland introduce policies and programs that would promote full and non-discriminatory access to all methods of family planning and that it reintroduce sex education in public schools.185

The NHP aims to improve health in the sphere of women’s reproduction, including in particular health services and counseling for women about family planning. Financed by the government and by funds from the United Nations Development Program (UNDP), a program called “Promotion of the Health of Mother and Child With Special Focus on Family Planning” was implemented by Poland. Its long-term aim is to improve the health of mothers and children as well as to reduce the number of unplanned pregnancies through the improvement of reproductive health services, including information, education, and communication about family planning.186 NGOs were critical of this program due to its strong bias toward natural family planning. Another government program, “Perfecting Care of Mother and Child,” seeks to reduce infant mortality to less than 10 deaths per 1,000 live births by the year 2000 (it was achieved in 1998). It also aims to reduce prematurity and the frequency of births of low-birth-weight babies. The program created local coordinated systems of care for pregnant women and newborn babies.187

Services provided by NGOs/private sector

The only institutions in Poland providing a full range of reproductive health services are non-governmental organizations: a small network of Centers for Family Development (“Towarzystwo Rozwoju Rodziny,” an International Planned Parenthood Federation affiliate offices with 10 branches, five specialized clinics and eight counseling centers) and the Federation for Women and Family Planning.

The branches of the Centers for Family Development organize regular information and education courses for young people, teachers, parents, and professionals on different aspects of sexual health and human reproduction. Recently, youth groups have been set up in five branches, aiming to develop youth-to-youth activities. The clinics provide free-of-charge psychosocial, legal, and family counseling.188 The Ministry of Health and Social Welfare partially subsidizes some of these services so they can be offered free of charge by the network.189

The Federation for Women and Family Planning defends women’s reproductive rights through lobbying and advocacy activities. The Federation provides information and services on reproductive health — mainly family planning, prevention of sexually transmissible infections (STIs) and HIV/AIDS, reproductive tract infections, post-abortion counseling, and prevention of female cancers. Its publications on sexuality, women’s reproductive rights and health, family planning, sex education, and other related issues are distributed through NGOs and health care centers.

D. CONTRACEPTION

Prevalence of contraceptives

Official data concerning the use of different family planning methods by married women older than 15 years reveal that 29.3% use no form of birth control, 27.4% use the rhythm method, 22.6% practice sexual intercourse without ejaculation (coitus interruptus), 14.2% use condoms, 5.1% use hormonal contraceptives, and 4.4% use IUDs.190 Mass media opinion polls, on the other hand, indicate that most people favor coitus interruptus (45.8%) as their primary means of contraception.191 They also found that natural family planning is used by 35% of all Poles and that 31.8% use condoms. Some less common methods are the basal body temperature method (7.7%), ovulation control (7.3%), and spermicidal IUD (71%). Hormonal contraceptive pills are used by 6.3% of women, spermicide by 5.3%.192 Although there are no official statistics on the use of family planning services,193 there are some data on the sale of contraceptives: in 1997 there were 3,321 packs of hormonal contraceptives sold in pharmacies; in 1998 this number grew about 278%, to 4,243 packs.194

Legal status of contraceptives

There are more than 20 hormonal contraceptives approved and registered for sale in Poland.195 Up until 1998, eight brands of oral contraception were completely subsidized by the state budget. In 1998, the government withdrew subsidies for five of these contraceptives.196 The types of oral contraceptives that receive subsidies are high estrogen and do not meet the needs of most women. The Federation for Women and Family Planning made an official complaint to the Polish Ombudsman for
Human Rights about the withdrawal of state subsidies. Despite the Ombudsman’s finding that this withdrawal constituted a discriminatory practice, the government has not reversed its decision.207

The legal status and use of contraceptives is influenced by the position of the Catholic Church. Catholic media and organizations promote natural family planning and campaign against contraceptives by using the arguments that contraceptives are sinful and harmful.198 The Church’s propaganda against family planning in sermons, confessions, and religious classes affects even doctors, who do not prescribe contraceptives for fear of being criticized by the Church.

Contraceptives have the same legal status as any other pharmaceutical product.99 All pharmaceutical products and medical articles, other than those specified, must be entered in a register overseen by the Commission on the Registration of Pharmaceutical Products and Medical Articles. Before they can be entered in the register, they must undergo laboratory and clinical trials. The manufacture of articles and products must be authorized by the Ministry of Health. The law also regulates the importation of products, requirements for pharmacies, the State Pharmacy Inspectorate, and penalties. Pharmacies can apply for a special exemption from carrying specific products, contraceptives included.200

**Regulation of information on contraception**

There are no formal restrictions on advertising contraception and birth control methods. However, there is not much of a climate for the dissemination of such information as there are no official programs or guidelines regulating professional counseling on family planning matters.203 Many physicians do not know about, or are personally opposed to family planning and do not inform their patients about birth control methods.202 Consequently, 45% of women have never been encouraged by their gynecologists to use birth control.203 Physicians are shielded by the Code of Medical Ethics, which obliges them to inform patients about contraception only if asked directly.204

**E. ABORTION**

Statistics on the number of abortions conducted in Poland are not available. Official data comes only from public health care institutions, and most abortions take place in private clinics. Unofficial documents suggest that between 30,000 and 200,000 abortions are performed, most illegally. More accurate figures put the estimate at 40,000 to 50,000 illegal abortions.205 Based on official documents alone, the number of abortions would appear to be declining. After implementation of the Abortion Law in 1994, the official number of abortions performed in public hospitals was 847; in 1995, it was 570; in 1996, 505.206 When the law was liberalized in 1997, there were 3,047 officially registered abortions at public health care institutions,207 but the official number of abortions declined abruptly again in 1998, to 310.208 These statistics suggest that women go to private clinics for abortions, whether or not they are authorized by law, or terminate their pregnancies abroad.

**Legal status of abortion**

Abortion had been legal in Poland since 1956. From 1956 to the early 1990s, abortion in practice was available upon request up to 12 weeks from the presumed date of conception if the woman faced “hard life conditions,” or had a “difficult personal situation.”209 Abortions were free of charge when performed in public hospitals and were subject to a fee if done in private clinics.210

In 1990, Catholic groups initiated a campaign against abortion. Physicians, too, declared themselves to be against abortion, and in 1992 adopted a Code of Medical Ethics that permitted abortion only to save the mother’s life and health or when pregnancy resulted from a criminal act.210 Because of these Code revisions, legal abortion became practically inaccessible in public hospitals and extremely expensive in private clinics. In 1993, the government adopted an anti-abortion law that was similar restrictive. According to this law, abortion was legal only if a woman’s life and health were threatened, when the pregnancy was the result of a crime, or in cases of severe fetal abnormality.212 After more than three years of debate, however, the Sejm in 1996 passed the Act on Family Planning, Human Embryo Protection and Conditions of Permissibility of Abortion, commonly known as the Polish Abortion Law.213 It significantly liberalized the 1993 law, permitting abortion for social and economic reasons.214 The Constitutional Tribunal in 1997 restricted the Polish Abortion Law,215 reasoning that the “social indicators” mentioned were unconstitutional.216

Currently, abortion is allowed in Poland only in three situations:

1. The pregnancy endangers the health or life of the mother. This must be diagnosed by a physician who will not be conducting the abortion.
2. A prenatal examination shows a high probability that the fetus has irreversible and severe disabilities or an incurable disease which endangers its life. These conditions must be diagnosed by a physician who will not be conducting the abortion.
3. The pregnancy is due to a criminal act. This must be established by the state prosecutor.217

Abortions for reasons of life and health or fetal impairment are permissible only until the fetus is capable of living outside the
womb. Abortions where pregnancy results from a criminal act are possible only during the first 12 weeks of the pregnancy.\(^{208}\)

**Requirements for obtaining legal abortion**

The woman must consent in writing to have an abortion.\(^{209}\) In case of a minor girl or a completely “incapacitated” woman, the written consent of her legal guardian is necessary. Girls over 13 years of age can give their own written consent. Incapacitated women must give their written consent as well, unless their mental state renders them incapable of consenting. If there is no consent of the legal representative, the consent of the guardianship court is required.\(^{220}\)

Abortion is legal only if conducted by a doctor in a hospital, except when the pregnancy was due to a criminal act. In such cases, abortions may be performed in private clinics.\(^{221}\) Women who are insured have the right to an operation free of charge in a public health care institution.\(^{222}\) Abortions can be also conducted in a private clinic provided they meet the legal criteria.\(^{223}\) Doctors who perform abortions and doctors who ascertain the necessity of abortion must meet professional qualifications set by decree of the Ministry of Health.\(^{224}\)

There is room for interpretation of the law; however, hospital administrators often narrowly construe provisions.\(^{225}\) There is no central or effective mechanism for overseeing hospital policies, and hospital administrators who do not approve of abortion may ignore the opinion of doctors. Sometimes directors promulgate policies that make it nearly impossible for women to access abortion services.\(^{226}\) The conscience clause gives an individual doctor the right to refuse to perform abortion. Although it requires the doctor to direct the woman to a physician who will perform one, in practice, these referrals are rarely made.\(^ {227}\)

**Prenatal testing**

The Polish Abortion Law also requires authorities to provide information and free prenatal screenings for all pregnant women, particularly if there are high risks of genetic defects or possibilities of incurable diseases.\(^{228}\) Prenatal examinations that do not significantly enhance the risk of miscarriage are permitted if the child comes from a family with genetically transmitted defects, if it is suspected that the fetus suffers from a genetic disease that can be cured, controlled or limited during the fetal period, or if it is suspected that the fetus is seriously injured.\(^{229}\)

Nonetheless, prenatal screenings are rare, as most physicians do not refer women to those examinations for a variety of reasons, including objections on the basis of conscience. Moreover, a provision to punish anyone (including physicians) who threatens or provokes physical harm to a fetus was signed into law on July 29, 1999. It carries a sentence of up to two years in prison.\(^{230}\)

**Government funding/subsidizing of abortion services**

Legal abortion for women who are insured is covered by health insurance when it takes place in public health care institutions.\(^{231}\) Since the law on abortions is so restrictive, however, most abortions that take place are illegal. Women seeking abortion either find a doctor who will perform it illegally, or they go abroad. The average price of an illegal abortion is USD $400, but the procedure can cost as much as USD $800. Abroad, an abortion can be as much as USD $1,300.\(^{232}\)

**Penalties for abortion**

Performing an abortion outside of the framework of the Polish Abortion Law is illegal.\(^ {233}\) Anyone who conducts an abortion with the prior consent of a woman, or who assists a pregnant woman in obtaining an illegal abortion or persuades her to do it,\(^{234}\) can be punished with up to three years of imprisonment.\(^ {235}\) If an illegitimate abortion causes a woman’s death, the jail term is between one and ten years.\(^ {236}\) If an abortion is performed on a fetus capable of living outside of the womb, the sentence is increased up to an additional eight years of imprisonment.\(^ {237}\)

Anyone who uses physical or psychological force upon a pregnant woman to cause a miscarriage or abortion, without her prior consent, can be sentenced to between six months and eight years in prison.\(^{238}\) If such force causes the death of a fetus capable of living outside of the womb, an additional sentence of between one and ten years of imprisonment is imposed.\(^ {239}\) If such actions cause the death of the woman, the sentence may be increased to up to 12 years of prison.\(^ {240}\) A woman who seeks or undergoes an illegal abortion cannot be criminally prosecuted.\(^ {241}\) A mother can be punished if she kills her child while giving birth.\(^ {242}\)

Should an abortion seriously damage a woman’s capacity to procreate, there can also be criminal liability.\(^ {243}\) Harming the body of the fetus or upsetting its health and endangering its life is subject to a fine or imprisonment of up to two years.\(^ {244}\) These acts are not crimes if they are performed by a doctor during medical procedures that are carried out to remove the threat to the life or health of the pregnant mother.\(^ {245}\)

**Regulation of information on abortion**

There is no specific legislative prohibition on advertising legal abortions, and hidden advertisements exist. Individual doctors and cooperatives regularly place advertisements such as “Gynecological services — full range” in both the national and the local press.\(^ {246}\)

**Religious definitions/restrictions**

The Catholic Church has been the driving force of the campaign against abortion and family planning. It has also
played a crucial role in the failure to implement sex education programs. The Church acts through sermons, media campaigns, and close cooperation with Christian National parties and pro-life organizations. The crusade against abortion began during the state socialist period. Between 1970 and 1980, the Church established organizations such as Concern for Life and Gaudium Vitae (Joy of Life), which launched a campaign against abortion and family planning. In the 1980s, these organizations were supported by trade unions and Lech Walsza.247

The key role the Church played in bringing down state socialism assured its lasting influence on legislators and the government. The majority of the society, despite its Catholicism, does not support the ban on abortion. However, the direct involvement of the Church — particularly the role of Pope John Paul II — obstructs the establishment of a stronger, better organized and more effective pro-choice movement.248 An amendment has been offered to the Law on the Medical Profession that would replace the world “fetus” with “conceived child.” Along with other proposed amendments to establish a definition of “life” from the moment of conception, this is an attempt to criminalize all abortions.249

F. STERILIZATION

Sterilization as a method of family planning is illegal. Even with the written consent of the patient, sterilization is considered to be a criminal injury, and carries a penalty of up to 10 years in prison.250 However, sterilization operations used to be performed under various pretenses, usually when the doctor viewed the patient’s situation as non-conducive to having children, such as when the mother has a mental disability.251

G. HIV/AIDS AND SEXUALLY TRANSMISSIBLE INFECTIONS (STIs)

Prevalence of HIV/AIDS and STIs

There were 5,591 cases of HIV infection officially registered in Poland by the end of 1998.252 Of the 794 people diagnosed with AIDS by June 30, 1999, 431 have died.253 The Ministry of Health officially estimates that there are between 25,000 and 30,000 people in Poland living with HIV/AIDS,254 most not officially registered. Women make up 24% of HIV-positive individuals;255 86% of HIV-positive individuals are drug addicts.256 Official statistics report 2,152 cases of STIs for 1998, out of which 843 are women.257 The number of STIs has decreased in the last three years — from 2,788 in 1996 to 2,340 in 1997, and 2,152 in 1998.258

Laws affecting HIV/AIDS and STIs

The revised Criminal Code makes it a crime to directly and knowingly expose a person to HIV infection or another sexually transmissible infection.259 Individuals with HIV/AIDS, identified by anonymous testing, must be informed about their status, and about legal consequences of infecting other people. Anyone who knowingly infects another person with the HIV virus can face three years of imprisonment.260 Any person who knowingly infects another person with an STI can be fined or imprisoned for up to one year.261

Mandatory screening for HIV takes place whenever blood is donated262 and during all hospital and clinic admissions,263 even though there are no legal requirements to do so. Examination is also obligatory for people working in schools and other educational institutions.264 Some employers demand that employees be tested. A doctor has no legal or ethical right to refuse to treat an infected patient. Women infected with HIV/AIDS do have a right to be informed about consequences for children should they become pregnant.265 Presumably, positive HIV status should be grounds to obtain a legal abortion.

Policies on prevention and treatment of HIV/AIDS and STIs

In 1996, the Ministry of Health introduced the National Program for the Prevention of HIV Infection and the Care of Persons Living with or Suffering from HIV/AIDS (National Program). The National Program’s main task is to prevent transmission of HIV.266 An order of the Ministry of Health and Social Welfare established the AIDS Council as an advisory body to the Ministry of Health. The Council’s functions include implementing the National Program, analyzing epidemiological data and social needs with regard to diagnosis, treatment, prevention and social issues, and formulating systems for evaluating the quality of programs. It is also to serve as a coordinating body between the Polish government and NGOs.267 The work of the Council and of the National Program leaves something to be desired. There are no public education campaigns promoting condom use and safe sex. There is no sex education in the schools. There is no reliable source of information about immediate prevention of HIV/AIDS, or how to behave when there is a possibility of infection.

Conclusions

Reproductive health care in Poland is in a particularly critical situation. Abortion remains effectively illegal under the 1993 law, and although such a restriction should make access to family planning services a high priority, such services are generally not provided in the public health care system. Women do not have adequate access to contraception due to lack of the state subsidies, insufficient knowledge of the medical community, and the lack of any public education programs.
III. Understanding the Exercise of Reproductive Rights: Women’s Legal Status

A. LEGAL GUARANTEES OF GENDER EQUALITY/ NON-DISCRIMINATION

The Polish Constitution grants men and women full and equal rights and freedom from discrimination on the basis of sex. Article 32(1) affirms the principle of equality before the law and public authorities. The second paragraph bans discrimination in political, social, or economic life “for any reason whatsoever.” Article 33 guarantees equality between men and women: “(1) Men and women shall have equal rights in family, political, social, and economic life in the Republic of Poland. (2) Men and women shall have equal rights, in particular, regarding education, employment, and promotion, and shall have the right to equal compensation for work of similar value, to social security, to hold offices, and to receive public honors and decorations.” To implement these provisions, the Parliamentary Group of Women introduced a bill on the equal status of the sexes, but it was rejected in March 1999 by the Polish Parliament.

B. CIVIL RIGHTS WITHIN MARRIAGE

Marriage laws

The Polish Constitution defines marriage as “a union of a man and a woman, as well as the family, motherhood and parenthood.”269 The Family and Custody Code, dating from February 25, 1964, is still in force.270

The legal age for first marriage is 18 years of age.271 With court permission, however, girls may be married at age 16.272

Prohibited from marrying are individuals who are deprived of civil rights, who are mentally ill or disabled, who are already married, who want to marry those within two degrees of relation, or who want to marry an adopted child.273 An exception can be made for an individual with mental or physical disability if it can be shown that the disability will not affect any future children’s health.274 Bigamy is punished with a fine or up to two years of imprisonment.275 A 1998 Concordat with the Vatican has put religious marriage on the same footing as civil marriage.276 Other religious marriage ceremonies can have the same status as civil ones provided they are so authorized by the law. Priests are obliged to report church weddings to the registrar’s office.

Both the Constitution and the Family Code affirm the equality of men and women in marriage.277 This includes sharing responsibility for the home and property, earning a living, and making important decisions together.278 Decisions regarding property must be made by both spouses together.279 Spouses are obligated to cohabitation (including physical relationship),280 mutual help and faithfulness, and cooperation for the benefit of the family.281 Each spouse has to contribute to the family needs according to his or her earnings.282 Spouses have equal rights and obligations with regard to their children.283 A woman may retain her family name or add her husband’s family name to her own, provided that she declares so when she agrees to marry; a man need not make such a declaration.284 Children of a married couple automatically receive the father’s family name unless a declaration is otherwise made.285 Children born to unmarried couples take the mother’s family name unless the father otherwise agrees.286

The Polish Family Code does not regulate the status of a heterosexual couple living together outside of marriage. There are no specific regulations concerning the rights of these domestic partners with regard to property or custody,287 but some legal protections exist. For example, the housing law permits a partner to assume the lease of his or her deceased partner.288 If both partners legally acknowledge parenthood, they both have custody over their children.289 If either partner dies without a will, however, the property will not pass to the surviving partner.290

Divorce and annulment laws

Under the Family Code, marriage ends when one of the partners dies, the marriage has been annulled, or the parties divorce. Annulment is possible only if the marriage, when contracted, was unlawful (see list in previous section).291 The result of the annulment with regard to children and financial matters is determined according to principles set out for divorce cases.292

Divorce is the most common way to end a marriage. A divorce is granted only after a trial in a provincial court.293 Legal grounds for divorce require that there is a complete and permanent rupture between the spouses.294 “Permanent rupture” is generally understood to mean that all economic, psychological and physical relations have ceased, but the Polish Supreme Court has allowed that there can be permanent rupture even when economic ties are ongoing.295 Generally, fault is an element of any legal action for divorce and a spouse who is at fault for breaking up the marriage (for example, by having an extramarital relationship) may not file for divorce.296 Only the wronged party may initiate a suit for divorce. There is “no fault” divorce if both parties mutually consent, or on the basis of overriding social norms.297 Women who seek divorce because of domestic and sexual violence often find themselves in a bitterly paradoxical situation. To obtain a divorce, there must be proof...
that all physical and sexual relations have stopped, but courts have sometimes considered rape in marriage as evidence of an ongoing conjugal relationship. The rape, although a criminal offense, could bar an action for divorce. A court may also refuse to grant a divorce if it decides that it is in the children’s best interests that the parents remain together.

The court, in its divorce order, determines who was at fault in the marriage, who has custody of the children, who pays child support, and who retains the family apartment. A court may also decide about spousal maintenance, housing matters, and division of property.

Article 43(1) of the Family Code says that “both spouses have the right to an equal share of the joint marital property,” but article 43(2) allows the property to be unequally divided if one of the spouses demands an evaluation by the court of his or her contribution to the marital property. This evaluation includes wages and housework. Parties can also divide marital property by contractual agreement. If there is no agreement, a civil court will decide on the division of property after the divorce. Article 58 uses the “best interest of the child” standard to direct the disposition of the family apartment. In case of domestic violence, women can seek eviction of the abusive spouse during divorce proceedings. Similarly, articles 133 and 135 of the Family Code define the needs of the child as paramount when deciding child custody, visitation, and support matters. The non-custodial parent retains his or her parental rights with regard to the children’s upbringing.

The Family Code obliges spouses to support their children and ex-spouses. Parents have an obligation to financially support their children until the children are able to do so themselves (unless the children’s property is enough for their needs). The level of imposed child support depends on the needs of the child and on the potential earnings and property of the parent. Needs of the child include food, shelter, clothing, medical costs and education. Alimony for ex-spouses can be decided during or after the divorce. The entitlement to alimony depends upon whether there was a finding of fault in the divorce proceedings. A wronged ex-spouse who is in financial need is generally entitled to claim alimony. Upon divorce, the former spouses are considered to be single persons. The regime of common property ends. The former spouses may change their surnames.

Separation

In April 1999, the Sejm passed a law on marital separation. The conditions for separation are identical to those of divorce, and the only difference from divorce is that neither separated party may remarry. For instance, courts can reject an application for separation if there will be harm to minor children. Many suspect the law on marital separation to be a concession to the Catholic Church as an alternative to divorce.

C. ECONOMIC AND SOCIAL RIGHTS

Property rights

The Polish Constitution protects private property ownership and the right of succession. The Civil Code states that every owner has the right to freely use, profit from, and dispose of his or her own property. Polish law does not discriminate on the basis of gender regarding property ownership or inheritance.

Labor rights

The Constitution guarantees equal rights for men and women with regard to employment and promotion. Men and women have the right to equal compensation for work of similar value. Everyone is free to choose and pursue his or her occupation and to choose his or her place of work. The Constitution pays special attention to families in difficult material and social situations, especially families with many children or a single parent, by entitling them to special assistance from public authorities. Mothers, before and after birth, also have the constitutional right to special assistance from public authorities.

The guarantee of constitutional equality is translated into employment relations through the Labor Code. The Labor Code guarantees women and men equal rights when engaged in comparable work. The Code clearly bans discrimination on the basis of sex, age, disability, race, nationality, religious and political beliefs, and trade union membership in labor relations. The Labor Code, however, lacks specific provisions and mechanisms to enforce legal claims. Moreover, it does not specifically cover discrimination in hiring.

While discrimination is forbidden, exceptional or protective labor regulations are permitted. The Labor Code prohibits the employment of women in work that is particularly onerous or harmful to their health, and the Council of Ministers has enumerated such occupations. A 1979 order of the Council of Ministers banned women from more than 90 occupations in 20 fields of employment (including bus and truck driving). The list was changed in September 1996 and divides professions into those prohibited for all women and those prohibited only for pregnant women. All women are banned from professions that require intensive physical labor, exposure to high noise, vibration, electromagnetic fields or radiation, work underground, or work at high altitudes. Pregnant and breast-feeding women are barred from work in areas of extreme
climate changes, as well as jobs that would expose them to even low levels of electric energy, such as from unfiltered computer screens. In addition, they cannot work around chemicals or biological matter that may cause injury to their physical or mental health.327

Pregnant women enjoy special protection under the Labor Code. A woman who is pregnant or on maternity leave cannot be fired unless she defaults in complying with the terms of her contract; her labor union must agree to her firing.328 A pregnant woman also can be dismissed if her company goes bankrupt or out of business.329 Pregnant women cannot work overtime or at night. A pregnant woman cannot work outside her usual work place without her consent.330 Employers must transfer a pregnant woman to another position if she performs work forbidden to pregnant women331 or if she presents a medical certificate stating that her condition requires a transfer of duty.332

Until 2000, the Labor Code granted women the right to paid maternity leave for a duration of 16 weeks for the first birth, 18 weeks for the second birth, and 26 weeks in the case of a multiple birth.333 Women who are raising adopted children are also entitled to 18 weeks of maternity leave for the birth of their first biological child.334 Women who adopt children and who have filed with the guardianship court for adoption are entitled to leave amounting to 14 weeks or until the child reaches four months of age.335 In 1999, the Sejm amended the maternity leave to six months, to be phased in over two stages: in 2000, women are entitled to four weeks of additional leave. In 2001, they can take nine weeks for a multiple birth.336 Maternity leave begins two weeks prior to a woman’s due date.337 The law also grants a breast-feeding mother the right to two 30-minute breaks (or two 45-minute breaks in the case of twins) from work, included in her working time.338 During maternity leave, women are entitled to maternity benefits339 of symbolic value paid from a maternity leave fund established by the government.340

The Labor Code states that at the request of the employee, the employer has to grant unpaid parental leave of up to three years to parents employed for a period of at least six months. Both parents, while employed, are equally entitled to this leave, but they cannot take advantage of parental leave at the same time. Parental leave may be taken once the maternity leave period ends. The three-year leave — until the child turns four years old — can be extended for another three years if the child has a chronic disease, disability, or mental deficiency which requires parental care.341 Employers may not terminate an employee’s contract during parental leave.342

A woman raising a child under four years old cannot be forced to work overtime, at night, or outside her usual work place.343 Furthermore, the woman is entitled to health benefits for herself and her family members.344 In addition, some women are entitled to a child care financial benefit.345 Parents of children up to age 14 are also entitled to two days of paid leave per year.346 A 1995 Social Security Law also grants both parents leave with 80% pay if they are caring for a sick child for up to 60 days.347 Despite legal guarantees of equal treatment, many practices to the contrary are so prevalent and tolerated that they are the general rule in Poland. Employers prefer to hire men whom, given all the potential leaves, are perceived as costing them less money.348 Women are frequently asked about their marriage plans and their plans for having children,349 and there are documented cases of women who have been forced to submit to gynecological examinations before job offers were made. Such practices contradict many laws and regulations of the Ministry of Health, which expressly forbid examination in order to verify a woman’s state of non-pregnancy for employment purposes.350 Additionally, one of the main causes for the pervasiveness of sex discrimination in Polish employment is a lack of legal means for addressing rights violations.351

The economic transition brought an overall increase in unemployment.352 The number of women employed in 1988 and 1995 decreased from 57% to 51%, while the number of men employed in that period dropped from 74% to 67%. In 1990, women made up 51% of the overall unemployment rate, with this number growing to 57% by 1996353 and 61% by June 1998.354 Another trend is that women aged 35 to 44 risk losing their jobs at a higher rate than younger women.355 Women over 35 years old face sharply limited employment opportunities.356 In addition, employment patterns have not changed over the last few years. As in the past, female employment is concentrated in the service sector and in light industries. Many women working in agriculture are unpaid family workers.357

**Retirement**

A 1999 pension system reform reestablished different retirement ages: 60 years of age for women and 65 years of age for men. (Women must also have an employment history of at least 20 years; men, 25 years.)358 The new system links the amount of retirement pension to the years of employment and amount of savings. The new legislation also forbids employers from dismissing women who reach retirement age but who still want to work. Instead, employers must employ them on the same basis as men.359

**Access to credit**

The 1997 Bank law defines credit relationships.360 Access to bank credit depends upon the personal ability to repay one’s obligations, irrespective of sex.361 Each bank has its own specific requirements which are gender neutral.
Access to education

The Polish Constitution guarantees each person, regardless of gender, the right to education. Education is compulsory until 18 years of age, and public education is free of charge. There is a choice between public and non-public schools, and public funding is provided for educational institutions.

Among the employed, women attain higher levels of education than men: 66% of employed women and only 39% of employed men have a mid-level or higher education. Women constituted 60% of university students in 1998-99. Nonetheless, the educational system perpetuates gender stereotypes by promoting women's roles in the family as primary. In a majority of public grammar schools, boys and girls take separate practical knowledge classes, where boys learn ironwork and carpentry, and girls learn cooking, baking and knitting. Textbooks are rife with gender stereotypes. Many vocational schools for women have been closed in recent years, and some technical schools do not accept girls. As a result, more girls than boys attend schools that do not prepare them for any particular profession.

National machinery for the promotion of women's equality

Currently, no national executive office exists for the advancement of women. In 1986, a decree of the Council of Ministers created the Government Plenipotentiary for Women, renamed in 1991 the Plenipotentiary for Women and Family. The office was last filled in May 1995. The Plenipotentiary's tasks included analyzing the social situation of women, participating in projects related to improving social and economic conditions of families, supporting women's organizations and activities, cooperating with international organizations, and securing the execution of international obligations as written in ratified conventions and documents. The Plenipotentiary also initiated a program on domestic violence prevention.

In 1995, the office was renamed Plenipotentiary for Family and Women, and it functioned until October 1997, when it was closed down by the new government. In November 1997, the Plenipotentiary for the Family Affairs was established, but its mandate does not include working for the advancement of women and instead advises the government mainly on matters relating to the family and children. The office may not initiate legislation, but with the consent of the Council of Ministers, it may submit draft legislation. The Plenipotentiary is responsible for implementation of conventions and international agreements; there is a separate budget for the implementation of selected programs. It is also responsible for implementing the government's Nation Plan of Action, and in 1999 it launched a program to assist victims of domestic violence.

The only group working on behalf of women's equality in the Sejm is the Parliamentary Group of Women (PGW). The group is currently composed of 34 deputies and four senators — 64% of all women parliamentarians, drawn mainly from the Democratic Left Alliance and the Freedom Union. Women currently make up 13% of the Sejm deputies. The current Parliament has rejected a draft law on the equal status of men and women as well as a bill on establishment of the parliamentary commission on equal status, both proposed by the PGW.

D. RIGHT TO PHYSICAL INTEGRITY

Among the goals of the National Plan of Action are working to eliminate acts of violence against women; analyzing the causes and effects of violence against women and the effectiveness of preventive methods; eliminating trafficking in women; and providing assistance to victims of violence linked with this trade and prostitution. Many ministries and governmental institutions share responsibility for meeting these goals. The Ministry of Justice monitors the crimes against family and women and also trains Wójewódzki family trustees. A special group in the Main Police Office was set up to deal with violence issues. The police do participate in the implementation of the Program of the Foundation against Trafficking in Women. The Polish Telecommunication Company created special, toll-free telephone numbers for the victims of violence and sexual molestation.

Rape

Rape is defined as the use of force, threats, or deceit to force another person to engage in sexual intercourse. It carries a penalty of between one and ten years imprisonment. Additionally, anyone who uses force, threats, or deceit to force a person to engage in any kind of sexual activity, not necessarily sexual intercourse, may be sentenced to jail from three months to five years. If the rape is committed with particular cruelty or with the aid of another, the penalty is two to twelve years. Murders in connection with rape carry a sentence of 12 to 25 years in prison or penal servitude for life. If the perpetrator takes advantage of a person's mental disability in order to bring about sexual activity, the sentence can be six months to eight years of imprisonment. Sexual relations between brother and sister incur a sentence of three months to five years of imprisonment. Abuse of power to force sexual relations can also be a criminal offense, carrying up to three years in prison.

Marital rape exists as a criminal offense, but remains difficult to prove because of cultural stereotypes. If a woman decides
to report a marital rape, it is usually in the context of domestic violence. Cases of rape and enforced sexual intercourse occur fairly often in marriages, but many women do not report the crime, and convictions for marital rape are rare.

To initiate a criminal investigation of rape, the woman must lodge a written complaint with the police. The district attorney’s office can then open an investigation. This procedural requirement presents a needless impediment to the prosecution of rape. For example, even if an eyewitness to the rape reports the crime to the police, the police cannot begin an investigation until the woman herself presses the charges. In the case of rape, once a complaint has been filed, the charges may not be withdrawn. There have been some modifications in legal procedures and methods of investigation to render the process more “woman-friendly.” Generally, however, there is little effective legal advice and psychological and social counseling offered to rape survivors. There are other problems with the administration of justice in rape trials. Stereotypes abound, and testimony relating to how the woman was dressed, whether she behaved “provocatively” or was intoxicated is frequently admitted as evidence.

There is no accurate data, but it is estimated that the number of rapes is actually 10 times higher than what is reported to the police, although this too is an unavailable figure. The only statistics available concern sentencing. Most rapists receive the minimal statutory sentences.

**Domestic violence**

The Penal Code classifies domestic violence as a crime of abuse against family members and states: “Whoever abuses physically or psychologically a member of a family, a dependent of the perpetrator, a physically or mentally disabled person, or a juvenile may be found guilty and sentenced to three months to five years in jail.” If the perpetrator acts with cruelty, the punishment is from one to ten years. If the woman attempts suicide because of the abuse, the punishment is from two to twelve years. Abuse is defined as behavior intended to cause either physical or mental (emotional) injury to another person. “Physical abuse” is defined as, among other things, punching, kicking, slapping, stabbing, or grabbing another person with the intent to harm. “Mental abuse” may be threats, insults, and words that degrade and humiliate, which are intended to create low self-esteem and a sense of worthlessness in another person. An “intimate relation” is a person whom the perpetrator is either materially or emotionally connected to in some way. Men and women who live in domestic partnerships without marrying, divorced couples who still live together, as well as married couples are covered by this code provision.

Domestic violence is publicly prosecuted in Poland and there is a legal obligation for the police and/or prosecutor to begin an investigation when they suspect domestic violence has occurred. The survivor need not press charges, but, in fact, domestic violence cases tend to be prosecuted only at the request of the survivor. The police have erected many obstacles, such as obtaining numerous medical certificates (which women have to obtain and often pay for themselves). But at the same time, police and prosecutors who are unwilling to develop a case against the perpetrator usually base their decision on the lack of evidence.

There is no “order of protection” to keep the perpetrator away, and there are very few shelters where survivors of domestic violence can go during the court procedures. The unresponsiveness and ineffectiveness of the criminal justice system means that there is serious underreporting of domestic violence. When a case goes to trial and ends in conviction, the sentence is often suspended or is of extremely short duration. Domestic violence is considered a normal element of family life.

As already mentioned, a government program against domestic violence was launched by the former Plenipotentiary for the Family and Women’s Affairs in 1997. The new Plenipotentiary for Family and Women’s Affairs suspended its implementation without any substantive reason, but in 1999 it initiated a new project to help domestic violence survivors and perpetrators, including proposing the creation of 12 Crisis Intervention Centers to assist women, children, and men find safe housing and counseling. Only a few of the Centers have been opened and run by local governments to date. Since 1997, the Polish government has cooperated with United Nations Development Program (UNDP) in the execution of the program “Countering Violence — Equalizing Chances” to try to eliminate some of the causes of family violence.

**Sexual harassment**

Sexual harassment is not recognized by law in Poland. However, the Criminal Code places criminal liability on any person who takes advantage of his or her power in a relationship with the intent to obtain sexual gratification. The sentence for a violation can range from six months to three years. Use of these criminal provisions is rare; the Ministry of Justice has no record of any cases. This crime is investigated only if the victim reports it, and only where there is a relationship of dependency and a power differential, such as with a supervisor and an employee.

The Labor Code obliges employers to respect the dignity of an employee and to create a friendly work environment. It would be more likely for sexual harassment claims to be
brought under that provision, as a 1980 Supreme Court ruling stated that employers had a broad obligation to provide their workers with a safe environment. In a 1999 poll by the Warsaw-based newspaper Gazeta Wyborcza, 67% of women reported that they experienced sexual harassment during social occasions — 52% in public places and 43% at work.

**Trafficking in women**

Poland is highly visible in international trafficking and is a sending country, a country of destination and a transit country, all at the same time. The Criminal Code defines trafficking in women as using a position of power to lead a person into prostitution by means of violence, threat, or trickery. It carries a penalty of one to ten years of imprisonment. Coercing another person into prostitution or facilitating this activity for financial gain is subject to a prison term of up to three years. Enticing or abducting another person to perform prostitution abroad can bring a prison term of one to ten years. Trafficking in individuals, even with consent, can be punished by up to three years in prison. To “entice” is defined as coercing or tricking another person into moving to a new town, or relinquishing his or her passport or other important documents, by promising legitimate employment and then forcing that person into prostitution. The term “abduct” means taking a person somewhere against his or her will. Under Polish Law, these two terms are used interchangeably. It does not matter if this person was previously a prostitute.

Very few cases have been prosecuted under the trafficking provisions of the Criminal Code. It is known that organized crime plays a large role in trafficking in women. Since 1995, an NGO called La Strada has worked exclusively on the issue of trafficking.

Prostitution is not a crime in Poland, but forcing someone else into prostitution or “pimping” is criminal. Pimping is defined as using violence, threats, deceit, or a relation of dependence to force someone into prostitution. It carries a penalty of one to ten years of imprisonment.

### iv. Focusing on the Rights of a Special Group: Adolescents

Currently, 20% of the Polish population consists of children 15 years of age or younger. The Constitution of the Republic of Poland guarantees all children equal protection of their rights, and all citizens have the right to demand that the state protect children from violence, neglect, and immorality. The Constitution bans the permanent employment of children under the age of 16. As a special measure of protection, the Constitution established an office of the Commissioner for Children’s Rights. In January 2000 the Parliament passed a new law regulating the Commissioner for Children’s Rights. That law could have grave implications for women’s reproductive autonomy and health as it grants to a fetus rights that could be interpreted to constrain women’s choice.

## A. Reproductive Health and Adolescents

The state is obliged to provide appropriate medical and health care services for children. All pediatric and adolescent health care services occur in local hospitals and clinics, and nurses, rather than physicians, are stationed in educational institutions, but not uniformly.

Every year, teenagers — defined as people under 19 years of age — give birth to about 40,000 to 50,000 children. Since 1993, the number of teenage pregnancies significantly increased so that in 1994 the number of births by mothers under age 18 constituted almost 4% of all births. There is a growing concern that young, unmarried girls are abandoning their unwanted infants and are more prone toward committing infanticide. It should be noted that the penalty for infanticide has been increased. A woman can now be sentenced from between three months to five years in prison.

## B. Marriage and Adolescents

By law, a person under 18 years of age cannot consent to marriage, however, a court can grant permission for a 16-year-old girl to marry, provided there are indications that marriage will serve the welfare of the future family. A marriage may be annulled if a man is younger than 18 or a woman younger than 16, and if there was no permission from the court. Annulment can be demanded by either spouse. In the case of pregnancy, however, a husband seeking to end the marriage cannot use the legal age requirement as grounds for an annulment.

## C. Sexual Offenses Against Adolescents and Minors

Polish Law criminalizes sexual activity with children. Sexual molestation of a minor under 15 years of age carries up to 10 years of imprisonment, as does using children in pornography. Under a bill passed by Parliament on March 3, 2000, criminal penalties for child pornography were increased but the law was subsequently vetoed. Showing pornography to a child under 15 years of age can result in a fine and imprisonment of up to two years. Anyone who induces a minor into prostitution can be imprisoned for up to 10 years. Anyone who mistreats or neglects a minor can face up to five years of imprisonment.
D. EDUCATION AND ADOLESCENTS

Since Poland’s political and economic transition, enrollment in secondary schools has increased and enrollment in vocational schools has decreased — a result of the government’s policy to eliminate vocational schools whose curricula are not adapted to the needs of the new market. Children and adolescents living in rural areas tend to be disadvantaged in their education in post-primary schools. Boys and girls have equal access to schools. More girls than boys attend secondary schools, but technical schools are more often chosen by boys. In 1997–98, girls represented 48.7% of primary schools pupils, 66.1% percent of secondary school pupils, 44.6% of pupils in technical schools, and 41% of students in specialized schools. Schools must assist a pregnant student in completing her education.

As already mentioned, the educational system in many ways perpetuates gender stereotypes and promotes the patriarchal model of the family and the world. The 1999 education reforms did not address the issue of gender-sensitive revision of text books.

E. SEX EDUCATION

The Abortion Law had required the Minister of Education to prepare and introduce special school curricula on sex education, and on April 21, 1998, the Ministry of Education introduced a new curriculum on “Human Sex Life.” However, after the elections in December 1998, Parliament removed the educational provisions from the Abortion Law, and sex education has been amalgamated into a Catholic “pro-family” curriculum. Before introducing any course on sex education, the local school authorities must organize at least one meeting for all parents where the goals and content of a proposed course are presented, and parental approval for participation in the course is necessary.

The government has made no attempt to provide secular, neutral information. Instead, all curricula and manuals present the Catholic Church’s views of human sexuality, gender roles and contraception. Nevertheless, a 1997 survey found that 88% of respondents favored sex education in school, focused on teaching children, among other things, about how to avoid STIs and unwanted pregnancy.

F. TRAFFICKING IN ADOLESCENTS

There has been a growth of trafficking in teenaged women, especially those between the ages of 15 and 18. Coercing a minor into prostitution, facilitating prostitution for financial gain, or gaining financially from the prostitution of a minor is subject to one to ten years in prison. Enticing or abducting a person to perform prostitution abroad is subject to the same punishment, regardless of the victim’s age.

Conclusions

Numerous forms of gender discrimination exist in Polish legislation as well as in the government’s policies and programs. This has been noted independently by two United Nations committees on human rights — the Committee on Economic, Social, and Cultural Rights in 1998 and the Human Rights Committee in 1999 — which both recommended the Polish government take action to stop and prevent gender discrimination.

NOTE ON SOURCES

The information in this chapter is drawn from primary sources of law in Polish and secondary sources in English and Polish. All primary sources of national law are in Polish. Unless otherwise noted, they are available at [http://orka.sejm.gov.pl/PRAWO.nsf?OpenDatabase] (database of the Polish Parliament). Unofficial English translations of some laws and regulations provided by The Federation for Women and Family Planning are on file with The Center for Reproductive Law & Policy. The chapter conforms to THE BLUEBOOK (16th ed. 1996). Blue book footnote style may show variations due to production incompatibilities with certain character fonts.

GLOSSARY OF ABBREVIATED TERMS

K.P.: Labor Code
K.K.: Criminal Code
Dz.U.: Journal of Laws
K.P.: Family and Custody Code
K.K.: Criminal Code
Dz.U.: Journal of Laws
K.P.: Labor Code

ENDNOTES

3. WORLD FACTBOOK, supra note 1.
4. Id.
5. Id.
7. WORLD FACTBOOK, supra note 1.
49. World Factbook, supra note 49.
56. The Protocol enables individuals to petition the Human Rights Committee set up by the Covenant about alleged violations of any of the rights set forth in the Covenant. The Protocol covers states that are a party to both the Covenant and the Protocol.
64. The Protocol enables individuals to petition the Human Rights Committee set up by the Covenant about alleged violations of any of the rights set forth in the Covenant. The Protocol covers states that are a party to both the Covenant and the Protocol.


104. WORLD HEALTH ORGANIZATION, GLOBAL STRATEGY FOR HEALTH FOR ALL BY THE YEAR 2000 (visited Jan. 20, 2000) <http://policy.who.int>

105. NATIONAL HEALTH PROGRAMME, supra note 103.

106. Id. “Inequality in Health” focuses on the gender gap in mortality rates-men live 8.6 years less on average than women; see Poland - Church and State Assail Reproductive Rights, in RISKS, RIGHTS AND REFORMS 164-165 (WOMEN’S ENVIRONMENT AND DEVELOPMENT ORGANIZATION WEB) (1999).


108. CHURCH AND STATE ASSAIL REPRODUCTIVE RIGHTS, supra note 106, at 164.


110. CHURCH AND STATE ASSAIL REPRODUCTIVE RIGHTS, supra note 106, at 165. See CHURCH AND STATE ASSAIL REPRODUCTIVE RIGHTS, supra note 106, at 165.


113. Law on the Medical Profession, arts. 5-20.


115. CHURCH AND STATE ASSAIL REPRODUCTIVE RIGHTS, supra note 106, at 166.


118. Id.


120. Chwala, supra note 115, at 4.


123. Berman, supra note 116, at 8.


126. Id.


128. CORE DOCUMENT, supra note 48, ¶ 29.

129. Wsiewoł, Health, supra note 96, at 91.

130. Church and State Assail Reproductive Rights, supra note 106, at 164.


132. Church and State Assail Reproductive Rights, supra note 106, at 164.


134. Church and State Assail Reproductive Rights, supra note 106, at 164.

135. See CHURCH AND STATE ASSAIL REPRODUCTIVE RIGHTS, supra note 106, at 164.

136. See CHURCH AND STATE ASSAIL REPRODUCTIVE RIGHTS, supra note 106, at 164.

137. See CHURCH AND STATE ASSAIL REPRODUCTIVE RIGHTS, supra note 106, at 164.

138. See CHURCH AND STATE ASSAIL REPRODUCTIVE RIGHTS, supra note 106, at 164.

139. See CHURCH AND STATE ASSAIL REPRODUCTIVE RIGHTS, supra note 106, at 164.
154. 15
155. 15. art. 34(1), (2).
156. 15. art. 35.
157. 15. art. 36(1).
158. 15. art. 36.
159. 15. art. 40.
160. 15. art. 15.
162. See State Treasury to Pay Compensation in Medical Malpractice Case, POLISH NEWS BULLETIN, Nov. 10, 1999, available in LEXIS, Poland Country Files. On 27 October 1999, the Krakow District Court awarded a 5-year-old boy zł 80,000 plus a monthly zł 500 annuity for losing his sight as a result of the negligence of the Gabriel Narutowicz Memorial Hospital staff in Krakow. The child was admitted to the hospital in January 1995 and was not diagnosed with an advanced eye disease until several months later. A prosecutor filed criminal charges against the director of the ward and two doctors for not ordering the proper eye examination. The criminal court found two of the defendants guilty, but the verdict was overturned on appeal on a procedural technicality. An appeal to the Supreme Court by the prosecutor is pending. Since the event took place before the health care reforms carried out in 1999 the State Treasury, must pay the judgement in the civil case.
164. 16. art. 156(1).
165. CODE OF MEDICAL ETHICS art. 5.
166. Ustawa z dnia 17 maja 1989 r. o izbach lekarskich [Law of May 17, 1989 on the Chamber of Physicians], art. 41, Dz.U. No. 30/1989, Pos. 158. Members of medical courts are independent regarding adjudication in professional responsibility cases and subject only to legal acts and binding principles of professional ethics (art. 54). The Minister of Health and Social Welfare, together with the Minister of Justice and the Head Physicians Council define by means of decree specific regulations on the organization and makeup of medical courts, conduct of professional responsibility proceedings, rights and obligations of parties and witnesses, procedure of executing punishments and the costs of proceedings (art. 57(2)).
167. 16. art. 42(1).
168. 16. art. 48.
169. 16. art. 53.
170. Patients’ right to information is also provided by art. 13 of the CODE OF MEDICAL ETHICS. Also relevant are other provisions of the Code. Under art. 23, the duty of confidentiality does not end with the death of the patient. Art. 25 states cases when a physician may be released from the duty of confidentiality: if the patient expresses his or her consent, if the maintenance of confidentiality constitutes a threat to health or life of the patient or other persons, or if this is a duty in law. There is no violation of confidentiality to agencies with statutory authority (art. 26). Physicians have the right to reveal any human rights violations which are a threat to health or life and which come to their notice (art. 27). Physician and persons who collaborate with them have the duty to ensure confidentiality of information contained and stored in DNA samples taken from patients and their families (art. 29).
172. See Bożena Krakowska, Obowiązki i prawa w praktyce lekarskiej [Rights and Obligations in Medical Practice], GAZETA LEKARSKA No. 4, 1999 at 38.
173. REPRODUCTIVE HEALTH OF WOMEN IN POLAND, supra note 171, at 9-10.
174. 17. Id.
175. 17. art. 14.
176. 17. art. 15.
177. FUNDACJA OŚKA, WOMEN’S HUMAN RIGHTS 18 (1998)
180. See Church and State Assail Reproductive Rights, supra note 106, at 165.
181. KONST. art. 18.
183. Church and State Assail Reproductive Rights, supra note 106, at 165.
184. See WOMEN’S HUMAN RIGHTS, supra note 176, at 34
188. The Centers are IPPF affiliates, see <http://www.ippf.org/regions/countries/pol/index.htm> (visited Jan. 25, 2000).
192. Id.
197. INDEPENDENT REPORT, supra note 109.
198. Church and State Assail Reproductive Rights, supra note 106, at 165.
200. Id.
201. INDEPENDENT REPORT, supra note 109.
202. Id.
205. 20. Id. at 4.
207. Id.


214. Id. art. 4a.1.

215. Orzeczenie Trybunału Konstytucyjnego z dnia 28 maja 1997 r. [Decision of the Constitutional Tribunal from May 28, 1997]. At the time of the decision, there were in force the ‘Constitution’ from Oct. 17, 1992 (visited Jan. 26, 2000) <http://www.wcn-uenzburg.de/law/pl02000_html> and selected provisions from the 1932 Constitution (visited Jan. 26, 2000) <http://www.wcn-uenzburg.de/law/pl01000.html>. The Tribunal argued that, even though the Constitution contained no provisions relating directly to the protection of life, the constitutional protection of life could be deduced from art.1, that stated that Poland was a democratic state ruled by law. The Tribunal concluded that in a democratic state of law, life at every stage of its development, must be protected by the Constitution.

216. Id.

217. Law of 1993 on Abortion, art. 4a.

218. Id. art. 4a.2.

219. Id. art. 4a.4.

220. Id.

221. Id. art. 4a.1, 4a.3.

222. Id. art. 4b.

223. Id. art. 4a.8. Private clinics have to meet certain standards with regard to professional and sanitary conditions, medical documentation and management.

224. Id art. 4a.9.

225. See THE EFFECTS OF THE ANTI-ABORTION LAW, supra note 204, at 6.

226. Id.

227. Id. offen, women are sent from hospital to hospital while the twelve-week period when abortion is legal elapses. See Poland: Reproductive Rights, supra note 208, at 226, 228.

228. Law of 1993 on Abortion, art. 2(1), 2(2).

229. Id. art. 7(2).


232. EFFECTS OF THE ANTI-ABORTION LAW, supra note 204, at 3.


234. Id. note 262, at 5.

235. K.K. art. 156.


238. K.R. art. 33(1); K.R. art. 23.

239. K.K. art. 154(2).

Rozporządzenie Rady Ministrów z dnia 28 maja 1996 r. w sprawie urlopów i

Women in the Labor Market

AND PRACTICE, violence, alcoholism, and adultery. POSITION OF WOMEN IN THE FAMILY: LAW AND

301. K.R. art. 59.

310. K.R. art. 59.

309. Additionally, each partner has an equal right to custody and an equal obligation to sup-

port the children. POSITION OF WOMEN IN THE FAMILY: LAW AND PRACTICE, supra note 278, at 9.

290. If one partner dies or is terminally ill, the other partner is entitled to support or main-

tenance if the court agrees that the surviving partner is a "close friend." Under art. 92(1) of the

Civil Code, a close friend who lived with the deceased is entitled to remain in the shared

apartment for a period of three months. Id. at 15.

291. A marriage can also be annulled if one of the spouses, for whatever reason, was unable

to consciously declare his or her true will, or due to an error of identity of the other person,
or under threat that unless the marriage was concluded, serious personal injury might come
to one of the spouses or another person. K.R. art. 151(1).

292. Id. at 21.

293. Id. art. 56(1).

294. Id.


296. K.R. art. 56(3).

297. Id. The most common reason in divorces based on mutual consent is the incompatibil-
yty of spouses' personalities. In fault based divorces, the most common reasons are domestic

violence, alcoholism, and adultery. POSITION OF WOMEN IN THE FAMILY: LAW AND

PRACTICE, supra note 324.

298. Id. at 10.

299. K.R. art. 56(2).

300. WINIARZ, supra note 295, at 131.

301. Id. at 135.

302. POSITION OF WOMEN IN THE FAMILY: LAW AND PRACTICE, supra note 278, at 10. This is rare in practice. See Women in the Family, supra note 280, at 123.

303. POSITION OF WOMEN IN THE FAMILY: LAW AND PRACTICE, supra note 278, at 10-11.

304. Id. at 11.

305. KONST art. 48(2). The constitutional regulation of termination of parental rights is a rare occurrence. In practice, it is very difficult to terminate parental rights. Usually some kind of joint custodial or visitation scheme is approved. Very rarely, in the most extreme cases of negligence or abuse, the court can grant sole custody to only one parent. POSITION OF WOMEN IN THE FAMILY: LAW AND PRACTICE, supra note 278, at 11-12.


307. POSITION OF WOMEN IN THE FAMILY: LAW AND PRACTICE, supra note 278, at 13. According to an advisory opinion of the Supreme Court, both parents are obliged to use their income to support their children, regardless of how much they earn. A parent may not be relieved of this obligation unless he or she is incapacitated and not earning money at all.

308. K.R. art. 60.

309. Id.; POSITION OF WOMEN IN THE FAMILY: LAW AND PRACTICE, supra note 278, at 14.

310. K.R. art. 59.

311. Id. arts. 611 - 616.

312. Id. art. 644(2).

313. Id. art. 611(2).

314 Women in the Family, supra note 280, at 122.

315 KONST art. 21(1).

361. K.C. art. 140. See generally Razem, de selva [Together, but Separately], YCIE, April 24, 1999.

316. KONST art. 33(2).

317. Id. art. 65(1).

318. Id. art. 71(1).

319. Id. art. 72(1).


321. Id. art. 112.

322. Id. art. 113.

323. THE WOMEN’S RIGHTS CENTER, WOMEN ON THE LABOR MARKET (visited Jan. 31, 2000) <http://frec.nog.pl/temasy/jobreport.htm: There has been a recent amendment increasing a ban on sex specific advertisements. Also, claims of gender discrimination can be addressed in Labor Courts. Implementation of the Beijing Platform of Action, supra note 179, at 13.

325. K.P. art. 176.

326. Rozporządzenie Rady Ministrów z dnia 10 września 1996 r. w sprawie wykazu prac


327. WOMEN ON THE LABOR MARKET, supra note 324 (observing that these provi-
sions are inconsistent with EU standards).

328. K.P. art. 177(1).

329. Id. art. 177(4). In this case, the employer has to agree with the trade unions on the date of the dissolution of the contract with the pregnant woman. If there is no possibility of providing another job for a woman she is entitled to temporary benefits and the time without employment is included in her tenure.

330. Id. art. 178(1).

331. Id. art. 179(1).

332. In this case, the woman is entitled to compensatory allowance if the transfer to anoth-
er job results in lower remuneration (art. 179(2)).

333. Id. art. 180(1).

334. Id. art. 180(2).

335. Id. art. 183(1).

336. Urszula Nowakowska & Anna Swędrzowska, Women in the Labor Market, in POLISH


337. K.P. art. 180(3).

338. Id. art. 187(1).

339. Id. art. 188.

340. WOMEN ON THE LABOR MARKET, supra note 324.

341. Id.


343. K.P. art. 178(2).

344. Order of May 28, 1996 of the Council of Ministers on Parental Leave and Family Ben-

efit.

345. The qualification requirement is that the family income per person should not exceed

25% of the average monthly income in the past year. The assessment of the benefit is based

on the average remuneration from the year before the leave. The period for which the ben-

efit is granted varies, and amounts to: 24 months in the case of a one child under parental

care, 36 months if there is more than one child born at the same time, and for single par-

tners. Payment of the benefit can be extended for up to 72 months if a child, under care, suf-

fers from a chronic disease or mental deficiency. The child care benefit cannot be granted

if income per person in the family exceeds 25% of an average salary from the previous year.

WOMEN ON THE LABOR MARKET, supra note 324.

346. K.P. art. 188. Until 1996 men were entitled to this right only if they were the sole

guardians of children. WOMEN ON THE LABOR MARKET, supra note 324.

347. WOMEN ON THE LABOR MARKET, supra note 324. For many years, however,

fathers were entitled to this benefit only in exceptional situations: when the mother was

absent or if she was not able to care for the child because of sickness or birth.

348. Id.

349. Id.

350. Nowakowska & Swędrzowska, supra note 336, at 60.

351. WOMEN ON THE LABOR MARKET, supra note 324

352. Between 1992 and 1996, the overall unemployment rate ranged from a minimum of
supra in 1996 to a maximum of 16.4% in 1993. Since the beginning of 1997, the overall unemployment rate has been approximately 13%. Id.

385. Id.

386. K.P. arts. 111, 15, 94(4); see also Nowakowska & Swędrowska, supra note 336, at 53.

387. Id.


389. VIOLENCE AGAINST WOMEN - RAPE, supra note 378.


392. Id. at 164.

393. Id. at 165 - 167.

394. Id.

395. VIOLENCE AGAINST WOMEN - DOMESTIC VIOLENCE, supra note 395.

396. Id.

397. Id.

398. Id.

399. Id.

400. Id.

401. Id.


403. FEDERATION REPORT, supra note 357.


407. K.K. art. 199.

408. Id.


410. VIOLENCE AGAINST WOMEN - SEXUAL HARASSMENT, supra note 406.

411. K.P. arts.111, 15, 94(4); see also Nowakowska & Swędrowska, supra note 336, at 53.


413. Id. at 54.

414. FEDERATION REPORT, supra note 357.

415. K.K. arts. 203, 204.

416. Id. art. 203.

417. Id. art. 204(1).

418. Id. art. 204(4).

419. Id. art. 253.


421. Nowakowska & Jabłonowska, Violence against Women, supra note 385, at 162. La Strada cooperates with Interpol and other similar organizations abroad to combat trafficking in women. It runs a hotline, monitors investigations and helps individual women. The organization is also trying to educate the public, especially young women. The problem of trafficking especially concerns regions in poorer parts of Poland and near the border with Germany.

422. K.K. art. 203.

423. WORLD FACTBOOK, supra note 1.

424. KONST. art. 72(1).

425. Id.

426. Id. art. 69(3).

427. Id. art. 72(4).


429. KONST. art. 69(3).


431. Id. at 151.


433. K.K. art. 149.

434. K.K. art. 10(1).

435. Id. art. 10.

436. Id. art. 10(2).

437. Id. art. 10(4).

438. K.K. art. 200(1).

439. Id.

440. Id.

441. Id.

442. Id.

443. Id.

444. Id.

445. Id.

446. Id.

447. Id.

448. Id.

449. Id.

450. Id.

451. Id.

452. Id.

453. Id.

454. Id.

455. Id.

456. Id.

457. Id.

458. Id.

459. Id.

460. Id.

461. Id.
439. Id. art. 200(2).

440. Polish Parliament Bans All Pornography, RFE/RL NEWSLINE Vol. 4, No. 46, Part II, March 6, 2000. The bill was adopted 210 to 197 votes, with 19 abstentions. It was promoted by pro-Catholic legislators from the ruling Solidarity Electoral Action (AWS), and was opposed by the leftist Democratic Left Alliance and the liberal Freedom Union, the AWS’s coalition. Polish President Vetoes Ban on All Pornography, RFE/RL NEWSLINE Vol. 4, No. 62, Part II, March 28, 2000. The president’s aide said the president decided to veto the draft law because he believed its provisions were so far-reaching that it would have been ignored, thereby damaging the prestige of the state and the law. A recent poll showed that 48 % of Poles disapproved of the ban on pornography, while 42 % supported it.

441. K.K. art. 202 (2).

442. Id. art. 204 (3).

443. Id. art. 207 (1).


445. Id. ¶ 207.


448. FEDERATION REPORT, supra note 357, ¶ 22.

449. Law of 1993 on Abortion, art. 4.


452. See Women’s Reproductive Rights, supra note 208, at 238 –241.

453. FEDERATION REPORT, supra note 357, ¶ 24.

454. IZDEBSKI, supra note 254, at 98.

455. K.K. art. 204(3).

456. Id. art. 204(4).

457. Concluding Observations of the Human Rights Committee - Poland, supra note 185.