

Employment Discrimination and Sexual Harassment in Poland



July 2002

A Publication of:



Women's Rights
Center
Warsaw, Poland



Int'l Women's Human Rights Clinic
At Georgetown University
Law Center

Employment Discrimination and Sexual Harassment in Poland

July 2002

A Publication of:

Minnesota Advocates for Human Rights

310 Fourth Avenue South, Suite 1000

Minneapolis, MN 55415-1012

E-mail: hrights@mnadvocates.org

URL: <http://www.mnadvocates.org>

Women's Rights Center

00-679 Warsaw

ul. Wilcza 60 m 19

Poland

URL: <http://free.ngo.pl/temida/contents.htm>

International Women's Human Rights Clinic

Georgetown University Law Center

600 New Jersey Avenue, N.W., Suite 334

Washington, DC 20001

Copyright © 2002 by Minnesota Advocates for Human Rights

Printed in the United States of America

All rights reserved.

ISBN: 0-929293-53-3

Founded in 1983, Minnesota Advocates for Human Rights is the largest Midwest-based, non-governmental organization engaged in international human rights work. The organization has approximately 4,000 members, including more than 800 active volunteers who contribute an estimated \$1.4 million annually of in-kind services. Minnesota Advocates also has Special Consultative Status with the United Nations.

Minnesota Advocates has received international recognition for a broad range of innovative programs to promote human rights and to prevent the violation of those rights. Minnesota Advocates provides investigative fact-finding, direct legal representation, education and training.

Minnesota Advocates for Human Rights was formerly the Minnesota Lawyers International Human Rights Committee.

The Women's Rights Center in Warsaw, Poland, was founded in December 1994. The Center was created to ensure that a gender perspective is present during the law-making process and in the application of law, and that women and men are equal before the law. The Women's Rights Center is a diligent advocate for equal status and opportunities for women and men in public life and within the family.

The International Women's Human Rights Clinic (IWHRC) was established at Georgetown University Law Center in August 1998. The general mission of the IWHRC is to promote and advance women's human rights throughout the world.

The views expressed herein are not the views of Georgetown University Law Center but solely those of the authors.

TABLE OF CONTENTS

| | | |
|------|--|----|
| I. | PREFACE | 1 |
| A. | Summary of Findings | 2 |
| B. | Recommendations | 5 |
| II. | SEX DISCRIMINATION AND SEXUAL HARASSMENT IN EMPLOYMENT IN POLAND | 6 |
| A. | Introduction | 6 |
| B. | Historical Background | 8 |
| 1. | Communist Poland and its Policies Regarding Women.. | 9 |
| 2. | The Rise of Solidarity..... | 10 |
| C. | The Transition from Communism and its Effect on Women..... | 11 |
| 1. | Government and Women..... | 12 |
| 2. | Women and the New Economy..... | 13 |
| D. | Evidence of Sex Discrimination and Sexual Harassment Against Women in Employment in Poland..... | 15 |
| 1. | Obstacles to Obtaining Employment..... | 16 |
| 2. | Sex Discrimination Curtails Women's Opportunities for Advancement | 21 |
| 3. | Polish Women Experience Sexual Harassment in the Workplace..... | 22 |
| a. | Evidence of <i>Quid Pro Quo</i> Sexual Harassment.. | 25 |
| b. | Evidence of a Hostile Work Environment..... | 30 |
| III. | POLAND'S EXISTING CONSTITUTIONAL PROTECTIONS AND LAWS PROHIBITING SEX DISCRIMINATION AND SEXUAL HARASSMENT IN EMPLOYMENT | 32 |
| A. | Poland's Constitution..... | 33 |
| 1. | Anti-Discrimination Provisions..... | 33 |
| 2. | Constitutional Provisions Prohibiting Sexual Harassment..... | 33 |
| 3. | The Constitution and Constitutional Tribunal Decisions | 34 |
| B. | Poland's Labor Code..... | 35 |
| 1. | Employment Discrimination..... | 35 |
| a. | Night Work and Overtime Work Provisions..... | 36 |
| b. | Maternity Leave and Upbringing Leave..... | 37 |
| 2. | Sexual Harassment..... | 38 |
| 3. | Enforcement of the Labor Code..... | 39 |
| C. | Criminal Law..... | 41 |
| 1. | The Polish Penal Code..... | 41 |
| 2. | Criminal Procedures..... | 42 |
| a. | General Treatment of a Crime..... | 42 |
| b. | Procedures for Criminal Prosecution..... | 43 |
| 3. | Barriers to Effective Enforcement..... | 44 |

| | | |
|-----|--|----|
| IV. | INTERNATIONAL LAW ON SEXUAL DISCRIMINATION AND SEXUAL HARASSMENT IN THE WORKPLACE | 45 |
| A. | Overview..... | 45 |
| B. | Poland’s Responsibility for Acts of Private Entities Under International Law..... | 46 |
| C. | Poland Is Not in Compliance with its Obligations Under International Human Rights Instruments to Provide Safe and Healthy Working Conditions and to Protect Women Against Discrimination..... | 47 |
| 1. | Poland’s Obligations Under International Law..... | 47 |
| a. | United Nations Treaties and the International Labor Organization..... | 47 |
| 2. | Poland’s Obligations Under Regional Agreements..... | 51 |
| a. | The European Union..... | 51 |
| b. | The Council of Europe..... | 54 |
| c. | Women in Poland are Being Denied an Effective Remedy for Employment Discrimination and Sexual Harassment..... | 55 |
| V. | CONCLUSION | 56 |

AUTHORS

This report was written by Johanna Bond, Mary Ellingen, Sameera Hafiz, Robin Phillips, Meredith Rathbone, Malinda Schmiechen and Anna Wilkowska.

ACKNOWLEDGMENTS

Minnesota Advocates and Georgetown acknowledge with great appreciation the research and fieldwork carried out in Poland by Johanna Bond, Carolyn Chalmers, Mary Ellingen, Sameera Hafiz, Marlene Kayser, Robin Phillips, Meredith Rathbone, Malinda Schmiechen, Susan Strauss and Anna Wilkowska.

Special thanks to Erin Barclay, Margaret Chutich, Belinda Cooper, Elisabeth Duban, Marci Hoffman, Wally Mlyniec, Urszula Nowakowska, Susan Deller Ross, Mabel Shaw, John Showalter, Cheryl Thomas and Dr. Missy McDonald for their editing contributions. Thanks also to Andrzej Dominiczak, Kathryn Friedman, Elizabeth Glidden, Urszula Nowakowska, Sandra Szymoniak and Anna Wilkowska for their research.

Minnesota Advocates and Georgetown would like to acknowledge and thank the many organizations and individuals in Poland who assisted with this research. In particular, the report would not have been possible without the collaboration of the Network of East West Women – Washington, D.C., the Network of East-West Women – Polska, Women’s Rights Center in Warsaw and the Women’s Rights Center in Lodz.

Minnesota Advocates and Georgetown would also like to thank the following individuals and organizations for generously providing the financial support necessary to conduct the latter phase of the research:

- The Kosciuszko Foundation - An American Center for Polish Culture, Promoting Educational and Cultural Exchanges and Relations Between the United States and Poland since 1925.
- Mr. Alfred Puchala
- Hogan and Hartson
- Robins, Kaplan, Miller & Ciresi
- Steptoe and Johnson

EMPLOYMENT DISCRIMINATION AND SEXUAL HARASSMENT IN POLAND

I. PREFACE

Women in countries around the world experience sex-based discrimination and sexual harassment in the workplace. The United Nations, the European Union (EU), and the Council of Europe all recognize these abuses as violations of women's fundamental human rights.¹ These international and regional organizations condemn sex discrimination and sexual harassment and call upon governments to take active steps to prevent, investigate, and punish incidents of sexual harassment. Through various treaties, declarations, and directives, they seek to reform biased workplace conditions, address issues surrounding unfair wages, and remedy promotion and leave inequalities.

Sex discrimination in employment is generally described as unequal treatment affecting the terms and conditions of employment based on sex.² In countries experiencing economic difficulties, women are often the first fired and the last hired. Employers often force women to endure unwanted sexual advances and offensive sexual conduct to keep their jobs.

In countries that provide legal protections against sexual harassment, two types of conduct in the workplace are generally prohibited. The first type, sometimes referred to as *quid pro quo* sexual harassment, occurs when an employer or supervisor threatens negative employment consequences if an employee refuses requests for sexual favors or conditions a benefit of employment on the granting of sexual favors. The second type, commonly referred to as hostile environment sexual harassment, results when an employee is forced to endure a workplace made hostile by unwelcome sexual conduct. This conduct may consist of requests for sexual favors, inappropriate jokes of a sexual nature, sexual comments, stories, innuendos, or displays of sexually explicit or pornographic pictures or other materials.

The international community recognizes sexual harassment as a form of sex discrimination in employment.³ The United Nations defines sexual harassment as "such

¹ See sec. IV, *infra* p. 46.

² The most obvious form of sex discrimination is the use of sex classification in hiring or promotion decisions. For example, sex discrimination occurs if an employer refuses to consider a woman for certain positions or if the employer requires credentials or levels of performance of women not required of men. Employment discrimination based on sex can also take more subtle forms. For example, a seemingly gender-neutral employment practice is discriminatory if it has an unjustified adverse impact on the employment opportunities of women.

³ Declaration on the Elimination of Violence Against Women, Article 2(b), G.A Res. 104, U.N. GAOR, 48th Sess., Supp. No. 49, at 217, U.N. Doc. A/48/49 (1993) [hereinafter DEVAW]; General Recommendation 19, paragraphs 17-18 in *Report of the Committee on the Elimination of Discrimination Against Women*, U.N. GAOR, 11th Sess., Supp. No. 38, at 1, 3, U.N. Doc. A/47/38 (1993) [hereinafter General Recommendation 19]; Council Resolution 90/C157/02, 1990 O.J. (C157) 3 (Council of European Communities) [hereinafter Resolution on the Protection of the Dignity of Men and Women at Work].

unwelcome sexually determined behavior as physical contacts and advances, sexually colored remarks, showing pornography and sexual demands, whether by words or actions.”⁴ This behavior is discriminatory if a woman is targeted because of her sex.

The international community also considers sexual harassment to be a form of violence against women. The United Nations’ definition of violence against women includes physical violence as well as acts that result in “sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty.”⁵ The United Nations Committee on the Elimination of Discrimination Against Women confirms that “[e]quality in employment can be seriously impaired when women are subjected to gender-specific violence, such as sexual harassment in the workplace.”⁶ The United Nations Declaration on the Elimination of Violence Against Women recognizes violence against women as “one of the crucial social mechanisms by which women are forced into a subordinate position compared with men.”⁷ Sexual harassment can have serious consequences, including emotional and physical stress or injury.

Women in Poland face widespread discrimination in employment. Many Polish women also endure hostile, sexually charged work environments and unwanted sexual advances from coworkers or managers. Minnesota Advocates for Human Rights (Minnesota Advocates) conducted the research for this report as part of its continuing effort to document and report human rights abuses against women in Central and Eastern Europe. In collaboration with the Women’s Rights Center in Warsaw, Poland, (“WRC”) and with assistance from the International Women’s Human Rights Clinic at Georgetown University Law Center and numerous volunteers, Minnesota Advocates conducted research on sex-based employment discrimination and sexual harassment in the workplace in Poland.

Minnesota Advocates led delegations to Poland in March and December 1999, November 2000, and March 2001, to interview women and men in their individual capacities and representatives of small Polish companies and international corporations. The delegations interviewed managers, employees, trade union representatives, government officials, attorneys, judges, social workers, journalists, academics, psychiatrists, and human rights advocates.

A. Summary of Findings

Employment discrimination and sexual harassment are widespread problems in Poland. Polish women face employment discrimination throughout their working lives.

⁴ General Recommendation 19, *supra* note 3, para. 18.

⁵ DEVAW, *supra* note 3, art. 1.

⁶ *Id.*

⁷ *Id.* at preamble.

Many employers prefer to recruit and hire men, especially for management-level positions. When they do hire women, employers often first inquire into their family status and require young women to make a commitment not to become pregnant. The Labor Code restricts women in general, and particularly women who are pregnant or have young children, from engaging in entire categories of employment. Once employed, Polish women are often paid less than Polish men for work of equal value, face greater barriers in obtaining promotions than their male colleagues, are pressured to retire earlier than men, and receive lower pensions than Polish men. Many Polish women also face sexual harassment in the workplace, including unwelcome sexual comments and jokes, unwelcome pornography, and unwelcome demands for sexual contact made by male colleagues and supervisors.

The Polish government has failed to take sufficient steps to prevent, investigate, and punish incidents of employment discrimination and sexual harassment. The Polish government does not enforce the existing laws that are meant to protect women in the workplace, leaving women without effective legal remedies. Women who pursue cases of employment discrimination or sexual harassment not only fear losing their jobs and possibly their friends, but they also face a daunting legal process that often works against them. Polish trade unions have historically not supported women facing discrimination or harassment on the job. The Labor Code neither provides a clear remedy for employment discrimination nor explicitly recognizes or defines sexual harassment. The Criminal Code allows for prosecution of only the most extreme forms of sexual harassment. Additionally, victims have reported difficulty in convincing prosecutors to act on their employment discrimination and sexual harassment complaints. Women are then left with only the expensive alternative of pursuing a private prosecution, a difficult burden that dissuades many women from pursuing legal relief.

Poland, as a member of the United Nations and the Council of Europe, has committed itself to uphold international and regional human rights standards. Poland also currently seeks membership in the EU, which has unequivocally stated that in order to gain entrance, Poland must first ensure women the same economic opportunities as men.⁸ Poland has not implemented or enforced laws to prevent employment discrimination and sexual harassment in the workplace and has therefore failed to protect women's fundamental human rights to dignified and non-discriminatory working conditions. By failing to punish the perpetrators of employment discrimination and sexual harassment, Poland has not fulfilled its obligation under international human rights law to provide victims of human rights violations with adequate remedies.

By failing to respond effectively to sex discrimination and sexual harassment in the workplace, the Polish government has committed the following human rights violations:

⁸ Romano Prodi, Europe: A Family Governed by Common Rules, Speech before a Joint Sejm and Senate Commission on European Integration, Foreign Affairs, and European Law (March 8, 2001), in RAPID: Press Releases of the EU Institutions, at <<http://europa.eu.int/rapid/start/cgi/guesten.ksh?reslist>> (last visited Nov. 29, 2001) [hereinafter Prodi].

1. The Polish government has failed to ensure women's right to work and right to just and favorable working conditions. It has also failed to ensure women's right to be free from discrimination in the workplace, including the right to equal remuneration for work of equal value. Poland is obligated to uphold these rights under the Polish Constitution,⁹ the Polish Labor Code,¹⁰ and international and regional human rights law.¹¹

2. The Polish government has failed to protect Polish women from sexual harassment, a form of violence against women, and sex discrimination in the workplace. Poland has not fulfilled its obligations under its national laws¹² or under international¹³ and regional¹⁴ human rights law to take steps to eliminate sexual harassment.

⁹ POLISH CONSTITUTION ch. II, art. 32 and 33 [hereinafter POL. CONST].

¹⁰ POLISH LABOR CODE art. 11 [hereinafter POL. LAB. C.]. After the research for this report was complete, the Polish Parliament amended the Labor Code to add a section entitled "Equal Treatment of Women and Men." The new provisions comprise sections 18.3(a) – 18.3(e) of the Labor Code.

¹¹ Universal Declaration of Human Rights, Article 23(1)(2)(7), G.A. Res. 217A, U.N. GAOR, 3d Sess., pt. 1, at 71, 75, U.N. Doc. A/810 (1948) [hereinafter UDHR]; International Covenant on Civil and Political Rights, Articles 2(1) & 26, G.A. Res. 2200A, U.N. GAOR 21st Sess., Supp. No. 16, at 52, 53, 55, U.N. Doc A/6316 (1966), 999 U.N.T.S. 171, 173, 179, *entered into force* March 23, 1976. Ratified by Poland on March 18, 1977 [hereinafter ICCPR]; International Covenant on Economic, Social and Cultural Rights, Article 7(a)(b), 9(c), 2(2), G.A. Res. 2200 A, U.N. GAOR 21st Sess., Supp. No. 16, at 49, 50, U.N. Doc A/6316 (1966), 999 U.N.T.S. 3, 5-7, *entered into force* March 23, 1976. Ratified by Poland on March 18, 1977 [hereinafter ICESCR]; Convention on the Elimination of All Forms of Discrimination Against Women, Article 11, G.A. Res. 180, U.N. GAOR 34th Sess., Supp. No. 46 at 193, 195, U.N. Doc. A/Res/34/180 (1980), 1249 U.N.T.S. 13, 18, *entered into force* September 3, 1981 [hereinafter Women's Convention]; ILO Convention No. 111 concerning Discrimination in Respect of Employment and Occupation, Articles 1(3) & 2, 362 U.N.T.S. 31,34 *entered into force* June 15, 1960. Ratified by Poland May 30, 1961 [hereinafter Discrimination Convention]; ILO Convention No. 100 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, Article 2(1), 165 U.N.T.S. 303, 306 *entered into force* May 23, 1953. Ratified by Poland October 25, 1954 [hereinafter Equal Remuneration Convention].

¹² POL. LAB. C., *supra* note 10, art. 15, 94, 100 and 207 (relating to health and safety in employment, and "social coexistence"); POLISH PENAL CODE, art. 199 [hereinafter POL. PEN. C.]; POLISH CIVIL CODE, art. 23 and 24 [hereinafter POL. CIV. C.].

¹³ General Recommendation 19, *supra* note 3, para. 17; DEVAW, *supra* note 3.

¹⁴ *See* Resolution on the Protection of the Dignity of Men and Women at Work, *supra* note 3; European Union Resolution on Violence Against Women, 1986 O.J. (C176) 73 [hereinafter Resolution on Violence Against Women]; European Convention for the Protection of Human Rights and Fundamental Freedoms, 213 U.N.T.S. 221 as amended by Protocol No. 11, art. 5, 1994 Eur. T.S. No. 155 [hereinafter Convention on Human Rights and Fundamental Freedoms]; European Social Charter, 529 U.N.T.S. 89, 96, 104, Arts. 3 and 11(1) [hereinafter European Social Charter].) *See also* discussion, *infra*, sec. IV.

3. The Polish government has failed to fulfill its obligation under international human rights law to provide victims of sex discrimination and sexual harassment with adequate remedies through its legal system.¹⁵

B. Recommendations

Based upon their findings, Minnesota Advocates and Georgetown University Law Center International Women's Human Rights Clinic make the following recommendations:

1. The Polish government should enforce existing laws and institute policies to eliminate sex discrimination and sexual harassment in the workplace.
2. The Polish government should support the education efforts of non-governmental organizations to inform the public about sex discrimination and sexual harassment in employment and education and support training programs for employers, employees, unions, students, and others on the subject of employment discrimination and sexual harassment.
3. The Polish government should conduct or support research on employment discrimination and sexual harassment against women in the workplace and in educational institutions, including compiling information on the effects of employment discrimination and sexual harassment on women and the effects of sex discrimination and sexual harassment on the productivity of employees.
4. The Polish government should enforce national and international laws prohibiting discrimination against women by educating employers, employees, and unions about these laws and ensuring that employers who violate them are punished.
5. The Polish government should ratify the Revised European Social Charter and abide by its provisions to enable men and women with family responsibilities to take parental leave to care for a child, to promote daycare services, and to ensure that employers do not terminate employees due to their family responsibilities.
6. The Polish government should eliminate its laws that prohibit women from engaging in specific types of employment.
7. The Polish government should educate employers and employees that the law does not require Polish women to retire at age sixty or to obtain special approval from an employer to continue their employment beyond this age.
8. The Polish government should create an anti-discrimination standard for labor unions that requires unions to represent worker-members equally without regard to sex or age.

¹⁵ UDHR, *supra* note 11, art. 8; ICCPR, *supra* note 11, art. 2.3(a).

9. The Polish government should require employers to create, implement, and disseminate sexual harassment policies in the workplace.

II. SEX DISCRIMINATION AND SEXUAL HARASSMENT IN EMPLOYMENT IN POLAND

A. Introduction

*A woman was harassed by her boss for more than a year. Others were also harassed but were afraid to testify. . . . The woman said that she tried to be with her boss only when others were present. The boss touched her, exposed [his genitals], and attempted to rape her. The case occurred in a small town in Poland. Many women were angry that she would talk about it. Women who supported her were very quiet. The woman was fired when she complained to [her boss'] supervisors. The man was very influential in the town, as was his wife. The prosecutor discouraged her from pursuing the case.*¹⁶

Violations of women's human rights in the workplace pose a major barrier to the advancement of women in Poland. Throughout Poland's history, many employers have treated female employees as less important than their male counterparts, viewing women's primary responsibility to be the care of the home.

In Poland, employment regulations prevent women from entering certain professions and sometimes ban them from night work and jobs handling toxic chemicals.¹⁷ These employment policies are not based on legitimate job qualifications but rather on outdated gender stereotypes. These policies limit opportunities for women by discriminating against them based on sex.

As a particular form of sex discrimination, sexual harassment can affect a woman's physical and mental health, her family's economic security, and the success of her career.¹⁸ Sexual harassment takes many forms, including employment discrimination, humiliation, physical and sexual assault, sexual blackmail, and, in the most extreme cases, rape.¹⁹

¹⁶ Interview, March 30, 1999 (women's human rights lawyer).

¹⁷ See *infra* pp. 36-37.

¹⁸ Robin Phillips, *Violence in the Workplace: Sexual Harassment in WOMEN AND INTERNATIONAL HUMAN RIGHTS LAW* at 257, 259 (Kelley D. Askin & Dorean M. Koenig eds., 1999) [hereinafter Phillips]; see also, *A World Free of Violence Against Women*, in *VIOLENCE AGAINST WOMEN IN THE WORLD OF WORK 2* (International Labor Organization 1999) [hereinafter *A World Free of Violence Against Women*].

¹⁹ See Phillips, *supra* note 18, at 258.

Studies show that sexual harassment as a form of violence against women is rooted in attitudes and structures that subordinate and demean women.²⁰ Although the violation of victims' fundamental human rights is the most serious consequence of systemic sexual harassment, the direct victims of sexual harassment are not the only ones who experience its negative consequences. Employers also suffer the effects of increased absenteeism, inefficient teamwork, lack of motivation, and early resignation by women.²¹ Polish society at large also suffers through decreased economic efficiency and reduced productivity.²²

International human rights standards recognize sexual harassment as a form of violence against women.²³ Studies conducted throughout Europe have shown that certain categories of women are more vulnerable to sexual harassment than others. Women between the ages of twenty and forty and women who are in low-paying jobs with male supervisors are especially susceptible.²⁴ The Polish newspaper *Gazeta Wyborcza* conducted a survey in Poland in 1999 that confirmed these international patterns are consistent with women's experience in Poland. According to the Polish survey, young women are most often the victims, and co-workers, rather than supervisors, are usually the perpetrators.²⁵

Awareness of discrimination and sexual harassment is growing in Polish society. According to the Polish polling agency OBOP, in 1996, six percent of the women surveyed indicated that they had experienced sexual harassment in the workplace.²⁶ Three years later, the Polish daily *Gazeta Wyborcza* published the results of a survey indicating that twenty-eight percent of Polish women responded that they had experienced sexual harassment in the workplace.²⁷ According to one Polish scholar, the

²⁰ See *A World Free of Violence Against Women*, *supra* note 18, at 2.

²¹ *Gender! A Partnership of Equals: Sexual Harassment* at 1 (International Labor Organization 2000) at <<http://www.ilo.org/public/english/bureau/gender/beijing5/countribu/briefing/sexualha.htm>> (last modified May 29, 2000).

²² *Id.* at 2.

²³ *Sexual Harassment in the Workplace in the European Union*, European Commission Directorate-General for Employment, Industrial Relations and Social Affairs i (1998), at <http://europa.eu.int/comm/employment.social/equ.opp/documents/harassment98_en.pdf> (last visited Nov. 29, 2001) [hereinafter EU Sexual Harassment Report].

²⁴ *A World Free of Violence Against Women*, *supra* note 18; see also EU Sexual Harassment Report, *supra* note 23, at 6.

²⁵ See Urszula Novakowska & Anna Swedrowska, *Women in the Labor Market*, in POLISH WOMEN IN THE 90S 41, 54 (Urszula Nowakowska ed., Women's Rights Center, 2000) [hereinafter POLISH WOMEN IN THE 90S].

²⁶ Centrum Praw Kobiet, *Wplyw Procesu Prywatyzacji na Polozenie Kobiet: Kobiety Polskie w Gospodarce Okresu Transformacji* at 18 (Warsaw, 2000) [hereinafter Centrum Praw Kobiet].

²⁷ *Id.*

“recent emergence of career-orientated and more politically active women is related to an increased level of economic opportunities and more open dialogue about gender-related social conflicts.”²⁸ The Polish government recently stated in a report to the United Nations that discrimination exists in Polish society in the form of wage disparities and that “opinions about [the] lower intellectual potential of women and resulting discrimination are not uncommon in Poland.”²⁹ In addition, job benefits and state social programs continue to diminish, increasing women’s dissatisfaction in the workplace.³⁰

B. Historical Background

The Republic of Poland (*Rzeczpospolita Polska*) is located in central Europe bordering the Russian Federation, Lithuania, Belarus, Ukraine, Slovakia, the Czech Republic, Germany, and the Baltic Sea. It is the ninth largest country in Europe. Poland’s population of 38.7 million consists mainly of ethnic Poles (97.9 %), but also includes small minorities of Germans, Ukrainians, Belarussians, and Roma. Ninety-five percent of Poles are Roman Catholics.

Poland’s history is dominated by shifting borders and invasions from neighboring states. In 1918, at the end of World War I, an independent Poland emerged after more than a century of domination by foreign countries. The new Polish government, led by Jozef Pilsudski, attempted to repair a war-ravaged economy and to integrate the three geographical regions of Poland that had been kept separate by Russia, Prussia, and Austria. In 1935, after Pilsudski died, the Polish government resorted to authoritarianism.³¹ Despite improvements in Poland’s economy, education, and sense of national identity, democracy failed during this period. With this failure came a rise in anti-Semitism and the alienation of ethnic minorities.

After World War I, discrimination against women in Poland was evident. Women’s wages averaged thirty percent less than men’s. This disparity existed, in part, because employers valued women’s work less than men’s and because public sentiment supported the idea that “women had fewer needs and thus required less pay and that women were not supposed to work anyway.”³²

²⁸ Barbara Lobodzinska, *Polish Women’s Gender-Segregated Education and Employment*, 23 WOMEN’S STUD. INT’L F., 49, 51 (2000) [hereinafter Lobodzinska].

²⁹ WOMEN’S ASSOCIATION FOR GENDER EQUALITY-BEIJING 1995, IMPLEMENTATION OF THE PLATFORM FOR ACTION BY THE POLISH GOVERNMENT: ALTERNATIVE REPORT PREPARED FOR THE 44TH SESSION OF COMMISSION ON THE STATUS OF WOMEN 5 (2000) [hereinafter WOMEN’S ASSOCIATION FOR GENDER EQUALITY-BEIJING 1995].

³⁰ Lobodzinska, *supra* note 28, at 63.

³¹ A. Korbonski, *Civil-Military Relations in Poland Between the Wars: 1918-1939* in ARMED FORCES AND SOCIETY 14, 169-89 (1988).

³² Christine Czarnecki, *Women in Poland’s Workforce: Why Less Than Equal is Good Enough*, 11 COMP. LAB. L.J. 91, 96 (1989) (citing Renata Siemienska, *Women and the Family in Poland*, in THE

World War II marked one of the most devastating periods of Poland's history, beginning with Hitler's invasion in September 1939. During the war, the Soviet Union absorbed eastern Poland, forcing 1.5 million Poles into Soviet labor camps and murdering thousands of others. By 1941, Germany had gained control of all of Poland and proceeded to kill nearly all of Poland's Jewish population.³³ During this period, a total of six million Poles, over fifteen percent of the total population, were killed, including almost three million Jews.

Poland was ultimately freed from Nazi oppression by the Soviet Union. Once liberated, the Polish Committee of National Liberation, later known as the Lublin Committee, became Poland's provisional government. In January 1945, the Soviet Union recognized this committee. At the end of World War II, Poland's borders shifted westward to the rivers Oder and Neisse, leaving thousands of Poles in what is now Lithuania, Ukraine, and Belarus to emigrate to present-day western Poland

1. Communist Poland and its Policies Regarding Women

After World War II, Poland came under the political and military influence of the Soviet Union. Poland's communist government directed almost all of the country's political and social institutions. Except for the Catholic Church, civil society did not exist in Poland. Social services provided by the government included full employment, health care, day care, pensions, and food subsidies.³⁴

Poland's centrally planned economy was largely ineffective during the communist era, from 1947 to 1989. The economy emphasized production over distribution, creating shortages of basic goods while providing surpluses of items no one wanted to buy. Communist labor policies for women had two objectives: production and reproduction. The state prohibited pregnant women from working at night and prohibited all women from working with toxic materials. The state also encouraged women to take extended paid maternity leave and offered women incentives for giving birth.³⁵ These policies

CHANGING POSITION OF WOMEN IN FAMILY AND SOCIETY 279 (E.Lupri ed. 1983)) [hereinafter Siemienska].

³³ JAN T. GROSS, *POLISH SOCIETY UNDER GERMAN OCCUPATION: THE GENERAL GOVERNMENT, 1939-1944* (1979).

³⁴ Alicia Smith, *The Contradictions of Change: The Relative Status of Women in the Work Force After the Fall of Communism in Eastern Europe*, at <<http://titan.iwu.edu/~polysci/organizations/psa/ResPublica/smith.html>> (last visited Nov. 29, 2001) [hereinafter Smith].

³⁵ Siemienska, *supra* note 32, at 107. Even though government policy encouraged reproduction and maternity, abortions were legal under communism and were often used as a form of birth control. See Barbara Einhorn, *Democratization and Women's Movements in Central and Eastern Europe: Concepts of Women's Rights*, in *DEMOCRATIC REFORM AND THE POSITION OF WOMEN IN TRANSITIONAL ECONOMIES* 63 (Valentine Moghadam ed., 1993).

resulted in limited opportunities for women and “women earning lower salaries, occupying lower positions than men and being considered by employers as second-category, expensive and unreliable workers.”³⁶ In addition to being segregated into lower-paying fields, women were rarely able to attain managerial positions, in part because they lacked influence in the male-dominated communist party and in part because of the strong influence of Poland’s traditionally patriarchal society.³⁷

2. The Rise of Solidarity

Despite their focus on workers’ rights, Polish trade unions during this period did not actively promote women’s labor rights. Under communism, women made up a majority of trade union members, yet few held leadership positions.³⁸ Because Poles were not able to organize freely or legally strike, trade unions were largely powerless.³⁹ Despite this lack of power, labor unrest spread throughout Poland during the final decades of the communist era, and women played an active role in protesting low wages and the high cost of food during the 1970s.⁴⁰

In 1980, after the Polish government increased food prices, Lech Walesa led the workers of the Lenin Shipyard in Gdansk, Poland, in a strike, demanding labor reforms and greater recognition of civil rights.⁴¹ The Solidarity Trade Union formed out of the shipyard strikes, and over a quarter of the Polish population joined. With a large membership and support from both the public and the Catholic Church, Solidarity became the nationwide leader in lobbying for government reform.

The trade union’s recommendations for reform reflected the traditional views of Polish society. The recommendations emphasized the role of women in the family and ignored the lower salaries women earned compared to their male counterparts.⁴² In fact, in an economic plan published in April 1981, Solidarity suggested that up to two million

³⁶ Lobodzinska, *supra* note 28, at 52.

³⁷ Under communism, the government did not collect statistics on the workforce that were disaggregated by sex, making conclusions about the extent of discrimination or wage disparities difficult. Commentators attribute this failure to a lack of interest or an effort to manipulate data to promote the communist ideology. *See id* at 50.

³⁸ Siemienska, *supra* note 32, at 100.

³⁹ *Poland: Labor in Communist Poland*, United States Library of Congress Country Studies, available at <[http://lcweb2.loc.gov/cgi/egi-bin/query/r?frd/cstdy\(DOCID+p10058\)](http://lcweb2.loc.gov/cgi/egi-bin/query/r?frd/cstdy(DOCID+p10058))>.

⁴⁰ *See* Padraic Kenney, *The Gender of Resistance in Communist Poland*, 104 AM. HIST. REV. 399, 410 (1999).

⁴¹ *Poland: The Birth of Solidarity*, United States Library of Congress Country Studies, available at <[http://lcweb2.loc.gov/cgi/egi-bin/query/r?frd/cstdy\(DOCID+p10058\)](http://lcweb2.loc.gov/cgi/egi-bin/query/r?frd/cstdy(DOCID+p10058))>.

⁴² *See* Stefania Szlek Miller, *Solidarity Trade Union, Gender Issues, and Child Care in Poland*, 30 CANADIAN SLAVONIC PAPERS 417, 417-419 (1988).

jobs could be cut. They recommended that men who would lose their jobs take the jobs of women with young children, so that these women could stay at home.⁴³

Concerned that Solidarity was gaining too much power, in December 1981, the Polish government made the union illegal, imprisoned many of its leaders, and instituted martial law.⁴⁴ Solidarity agitation decreased for the next few years, and the Polish economy drifted back into depression. Beginning in 1988, however, workers throughout the country called strike after strike and asked Solidarity to take the lead. At the same time, Mikhail Gorbachev began liberalizing the Soviet government. Polish leaders, fearful of widespread social unrest in their own country, organized unprecedented “roundtable” discussions with Solidarity leaders and members of other opposition groups in 1989.⁴⁵

The roundtable discussions resulted not only in the legalization of Solidarity for a second time, but also in a plan to conduct open elections in which the government authorized Solidarity to post candidates for a number of seats. Solidarity candidates won nearly every seat for which they were eligible and succeeded in forming a coalition government. In 1990, the Polish people elected Solidarity leader Lech Walesa as the new President of Poland.⁴⁶

C. The Transition from Communism and its Effect on Women

Poland’s first democratically elected government sought to accelerate Poland’s transition to a market economy by instituting drastic economic stabilization measures recommended by economists and international financial institutions.⁴⁷ Along with the privatization of state-owned enterprises, these dramatic reforms included wage controls, a fixed exchange rate, and domestic price liberalization.⁴⁸ The results of these economic policies were initially severe but were later credited with helping Poland transition to a market economy more quickly than many of the other former satellite countries of the Soviet Union.⁴⁹

⁴³ *Id.* at 421.

⁴⁴ *Poland: Labor in Communist Poland*, United States Library of Congress Country Studies, available at <[http://lcweb2.loc.gov/cgi/egi-bin/query/r?frd/cstdy\(DOCID+pl0058\)](http://lcweb2.loc.gov/cgi/egi-bin/query/r?frd/cstdy(DOCID+pl0058))>.

⁴⁵ *Poland: Toward the Roundtable Talks*, United States Library of Congress Country Studies, available at <[http://lcweb2.loc.gov/cgi/egi-bin/query/r?frd/cstdy\(DOCID+pl0058\)](http://lcweb2.loc.gov/cgi/egi-bin/query/r?frd/cstdy(DOCID+pl0058))>.

⁴⁶ *Poland: The 1989 Elections and Their Aftermath*, United States Library of Congress Country Studies, available at <[http://lcweb2.loc.gov/cgi/egi-bin/query/r?frd/cstdy\(DOCID+pl0058\)](http://lcweb2.loc.gov/cgi/egi-bin/query/r?frd/cstdy(DOCID+pl0058))>.

⁴⁷ U. S. DEPT. OF STATE BACKGROUND NOTES ON POLAND (2000).

⁴⁸ See Jan Winiecki, *The Polish Transition Program: Underpinnings, Results, Interpretations*, 44 SOVIET STUD. 809, 811 (1992).

⁴⁹ *An Impressive Economic Performance*, 33 WORLD OF WORK 20 (2000).

The transition from communism improved many aspects of Polish society, but the change made the lives of many Polish women more difficult. One leading female politician noted, “Polish democracy is a masculine democracy.”⁵⁰ Traditional stereotypes of women, such as the Polish Mother, have resurfaced.⁵¹ Since the transition, the Polish government has adopted many Church teachings as state policies, demonstrating the pervasive influence of the Catholic Church. The Catholic Church has endorsed the notion that the family is the fundamental unit of Polish society and that women must silently bear the burdens of motherhood.⁵²

Despite the church’s influence, the societal view of pornography has also changed. One university professor recently remarked that soon after the fall of communism, there was a period in which many people began displaying pornography in their offices. This pornography, she said, once forbidden by the communist government and the Catholic Church, temporarily became a symbol of freedom.⁵³

1. Government and Women

Polish women continue to struggle to gain equal representation in government. The number and strength of governmental mechanisms for addressing women’s issues has decreased in recent years. The first Office of the Plenipotentiary for Women operated from 1986 to 1989 with an independent mandate and budget and was headed by a woman.⁵⁴ Since 1989, the Polish government has frequently changed both the name and the function of the Office of the Plenipotentiary- tellingly, the name has changed from “For Women” to “For Women and Family,” to “For Family and Women,” and then to “For Family.”⁵⁵ The Plenipotentiary for Family served a purely advisory role and focused specifically on family children’s issues.⁵⁶ After the election in September 2001, the new government created the office of the “Plenipotentiary for Equal Status of Men and Women.” The Prime Minister appointed Izabela Jaruga-Nowacka as the

⁵⁰ Frances Millard, *Women in Poland: The Impact of Post-Communist Transformation 1989-1994*, J. AREA STUD., 60 (1995) [hereinafter Millard].

⁵¹ During the 19th century, the emphasis on domesticity for women was evident in symbols such as the selfless “*Matka Polka*” (“Polish Mother”), who is honored for sacrificing her own ambitions to fulfill the needs and desires of her family.

⁵² See Urszula Nowakowska & Magdalena Jablonska, *Violence Against Women*, in POLISH WOMEN IN THE 90S, *supra* note 24, at 147.

⁵³ Interview, March 8, 2001 (university professor, Warsaw).

⁵⁴ See Urszula Nowakowska, *Government Mechanism for the Advancement of Women*, in POLISH WOMEN IN THE 90S, *supra* note 24, at 7.

⁵⁵ *Id.* at 8.

⁵⁶ See *id.* at 12.

plenipotentiary. Human rights activists are hopeful that this new position will improve the status of women in Poland.

2. Women and the New Economy

Some of the most severe hardships that Polish women have faced since 1989 have resulted from the changing labor market. The privatization process often began with an enterprise reducing its workforce, an action that primarily consisted of firing women.⁵⁷ In 1991, for example, women held two-thirds of the jobs that were eliminated in workforce reductions.⁵⁸ Employers justify the dismissal of women on the basis of their possible future need for maternity and child care leave. Employers perceive women to be more expensive and unreliable employees because they might have to leave work to take care of children.⁵⁹

Unemployment continues to affect women more than men in Poland. In 1990, 50.9 % of unemployed workers were women; in 1997, women constituted 60.4 % of the unemployed workforce.⁶⁰ These unemployment figures, however, do not adequately reflect the extent of women's unemployment.⁶¹ According to one non-governmental organization that assists unemployed women with job training, only half of the women they helped in 1995 had registered with the unemployment office.⁶² Employers and others often justify this disparity with rationales reflecting stereotypes of gender roles. For example, some claim that women should not work because they have children at home and that men will become alcoholics if they are unemployed.⁶³

The Polish government has not developed appropriate and effective job training programs for women as part of its economic plan. In fact, the majority of vocational courses organized by state labor offices concern jobs traditionally considered to be suitable for men, and few are addressed to women."⁶⁴ Programs that do focus on women train them for low-paying jobs such as nursing and do little to alleviate women's tenuous economic situations.⁶⁵ As a result, few women take advantage of government

⁵⁷ See Smith, *supra* note 34 (citing Barbara Einhorn).

⁵⁸ See Millard, *supra* note 50.

⁵⁹ See *id.* at 65.

⁶⁰ Centrum Praw Kobiet, *supra* note 26, at 25.

⁶¹ *Id.* at 64.

⁶² Lobodzinska, *supra* note 28, at 52.

⁶³ See Millard, *supra* note 50, at 66.

⁶⁴ Monika Wysocka, *Evening the Odds*, THE WARSAW VOICE, April 16, 2000, available at <<http://www.warsawvoice.com.pl/v599/Soci00.html>> (last visited Nov. 29, 2001).

⁶⁵ See WOMEN'S ASSOCIATION FOR GENDER EQUALITY-BEIJING, *supra* note 29, at 9.

employment training programs. For example, women comprised less than one percent of the participants in a recent government loan program for entrepreneurs.⁶⁶

Once unemployed, women take longer than men to find new employment. In 1997, seventy-two percent of Poles who had been unemployed for over twelve months were women.⁶⁷ Recent Polish surveys found that “family situation, status, and number of children are the most important factors influencing the decision to hire a person in industry, the banking sector, insurance companies, state administration and the justice system.”⁶⁸ Employers in the growing private sector prefer to hire young, mobile males with few family responsibilities. Employment advertisements frequently express a preference for male employees, even though Polish women are often more educated than Polish men.⁶⁹ Women over age thirty-five face additional barriers. Among these is the pervasive view that older women who were trained in the communist era have developed a stereotypical communist work ethic, characterized by a lack of motivation.⁷⁰

As under the communist system, Polish women continue to work primarily in female-dominated occupations. Stereotypes about women’s capabilities result in women being hired as “secretaries and assistants, because they are seen as able to organize things, or cleaners, because they do such activities at home.”⁷¹ In 1998, for example, 81.6 % of workers in the health care and social services sectors were women, compared with the construction industry, in which only 9 percent of workers were women.⁷² Typically, female-dominated professions pay less than those professions associated with men. Even within the same profession, women earn an average of eighty-two percent of men’s salaries.⁷³

Private-sector jobs generally pay higher wages than public-sector employment. The percentage of women hired in the private sector decreased between 1994 and 1998

⁶⁶ *Id.* at 22.

⁶⁷ *See id.* In addition, nearly twice as many men as women find new employment within a month of becoming unemployed. *See id.*

⁶⁸ WOMEN 2000: AN INVESTIGATION INTO THE STATUS OF WOMEN’S RIGHTS IN CENTRAL AND SOUTH-EASTERN EUROPE AND THE NEWLY INDEPENDENT STATES 324, *available at* <www.inf-hr.org/appeals/001109b.htm> (last visited Nov. 29, 2001) [hereinafter WOMEN 2000].

⁶⁹ *See* Renata Siemienska, *Gendered Perceptions: Women in the Labour Market in Poland*, WOMEN’S HIST. REV. 553-566 (1996) [hereinafter Siemienska II].

⁷⁰ Interview, March 8, 2001 (women’s rights advocate, Warsaw). Comparatively, the age limit for men is 40.

⁷¹ WOMEN 2000, *supra* note 68, at 324.

⁷² Biuro Rzecznika Praw Obywatelskich, Konferencja Naukowa, Zasada rownego traktowania kobiet i mezczyzn w dziedzinie zatrudnienia at 82 (Warsaw, August 2000).

⁷³ *See id.*

from 42.6 % to 40.9 %. During this same period, there was an overall rise in private-sector employment from 10.6 % to 24.5 %.⁷⁴

The overall percentage of women in management positions, however, has increased. In 1995, eighteen percent of the managers were women, but by 1998, the number had risen to twenty-eight percent.⁷⁵ Poland has also seen an increase in the number of women entrepreneurs and business owners. In 1989, 3.7 % of working women were entrepreneurs, but by 1993 this figure had risen to eleven percent.⁷⁶ In 1989, twenty-seven percent of working women owned businesses; by 1993, thirty-nine percent of working women were business owners.⁷⁷ One non-governmental organization recently noted that for nearly ten years they had provided job training for women, but they had ultimately realized that employers were no more likely to hire women who had completed the training. The organization is now training women to become entrepreneurs.⁷⁸

D. Evidence of Sex Discrimination and Sexual Harassment Against Women in Employment in Poland

Although Polish women, on average, are better educated than Polish men,⁷⁹ women often have fewer employment opportunities. Sex discrimination in the workplace undermines a woman's professional potential and has a harmful effect on women's self-esteem and morale. In Poland, discrimination against women in the workplace begins with the hiring process and continues to harm women at every stage of the workplace experience, including pay, promotion, termination, and retirement.

Many employers and other members of the community deny that sex discrimination and sexual harassment exist in Poland,⁸⁰ and social taboos prevent open discussion of sexual harassment.⁸¹ The few women who have pursued sexual harassment cases have contended with procedural and personal difficulties as Polish society struggles

⁷⁴ *Id.* at 323.

⁷⁵ Lobodzinska, *supra* note 28, at 64.

⁷⁶ The Polish Committee of NGOs, *The Situation of Women in Poland*, 22 (March 1995) (unpublished report, on file with authors) [hereinafter *Women in Poland*].

⁷⁷ *See id.*

⁷⁸ Interview, March 2001 (women's rights advocate, Warsaw).

⁷⁹ M. Knothe, E. Lisowska, *Kobiety na rynku pracy* at 22-23 [hereinafter Lisowska].

⁸⁰ Interviews, November 13, 2000 and November 15, 2000.

⁸¹ Interviews, November 15, 2000 and November 20, 2000.

to recognize that sexual harassment exists and that the government and employers must take steps to prevent it.⁸²

1. Obstacles to Obtaining Employment

A recent study of employment advertisements in newspapers from Gdansk and Warsaw found that approximately ten percent of the advertisements limited prospective applicants to one sex or the other.⁸³ Although the number of sex-specific job advertisements has declined in the past ten years,⁸⁴ evidence indicates that the hiring process itself remains an obstacle for women. Even if an advertisement does not express a specific preference for one sex, employers' preferences often become apparent during the recruiting process.⁸⁵ Many employers simply do not consider hiring women for certain jobs, particularly for top management positions.⁸⁶

Cultural attitudes toward gender differences still negatively impact women. A women's advocate at an employment center noted, "For [an] executive director position, often if a woman sends a better resume than a man, the man still gets the job. The reason is that for a long time, it was thought that women are the workers and men are the thinkers."⁸⁷ The human resources manager of a large bank in Warsaw openly acknowledged, "Men are always given preference. It is a part of Polish culture."⁸⁸

Employers frequently consider age in hiring and will rarely hire women who are older than thirty-five.⁸⁹ In fact, in order to avoid this trap, some women intentionally do not bring any evidence of age to job interviews.⁹⁰ Many employers reported that older women are seen as less malleable, more expensive, and harder for young male managers

⁸² Interviews, March 5, 2001 and March 9, 2001.

⁸³ Anna Wilkowska, Research on Job Offers: The Analysis of Job Advertisements in the Polish Print Media (January - March 2001) (unpublished survey on file with authors) [hereinafter Wilkowska]. Ms. Wilkowska participated in this research as part of a legal fellowship of the Network of East West Women.

⁸⁴ The Centrum Promocja Kobiet (Center for the Advancement of Women) conducted a study of job advertisements in Rzeczpospolita in 1992 and found that 45 percent of all ads requested men only and 25 percent requested women only.

⁸⁵ Interview, November 15, 2000.

⁸⁶ See Wilkowska, *supra* note 83.

⁸⁷ *Id.*

⁸⁸ Interview, November 17 2000 (human resources director).

⁸⁹ Interviews, November 15, 2000; March 8, 2001.

⁹⁰ Interviews, March 1999; March 2001.

to supervise.⁹¹ Explaining the maximum age at which women will be hired, a staff member at an organization working on women's employment issues said, "[the maximum age is] thirty-five to forty-five, with forty-five as the absolute maximum. This is a result of communism, because older people have very bad working habits because employment was guaranteed."⁹² This staff member noted that she viewed the maximum hiring age for men to be fifty-five, ten years older than the maximum age for women.⁹³

A recent study found that about thirteen percent of job advertisements in the Polish national daily newspaper *Gazeta Wyborcza* specified an age requirement, and, of these, employers most commonly used ages thirty to thirty-five as an upper age range.⁹⁴ Another survey of advertisements in the same newspaper noted that employers frequently used the words "young man" or "young woman."⁹⁵ A staff member of an employment agency in Warsaw stated, "Of course we don't put [an age requirement] in the advertisement . . . but the client often gives us a direct indication of what kind of age range is acceptable."⁹⁶ An employee of a fast food corporate office stated that although they do not ask people their age, "Age is definitely a consideration in hiring decisions." This preference for youth is reflected in some of their job advertisements that include the phrase, "if you are young and looking for a job . . ."⁹⁷

A further barrier for female job seekers is the perception that they are more expensive to employ during their childbearing years. Poland has "protective" legislation that prohibits pregnant women from working at certain jobs and requires employers to offer maternity leave, time during the workday to breast-feed, and time off to care for sick children under the age of fourteen.⁹⁸ Although it is illegal, employers have asked potential female employees for certification that they are not pregnant, and some women have been forced to sign statements that they will resign if they become pregnant⁹⁹ or sign contracts that they will not become pregnant for a certain period of time.¹⁰⁰ In one case, an employer asked a prospective employee to sign two papers: a dated employment agreement and an undated cancellation agreement, which would allow the employer to

⁹¹ *See id.*

⁹² Interview, March 8, 2001.

⁹³ *See id.*

⁹⁴ *See Wilkowska, supra* note 83.

⁹⁵ Lisowska, *supra* note 79, at 22-23.

⁹⁶ Interview, March 5, 2001 (employee of employment agency).

⁹⁷ Interview, November 13, 2000.

⁹⁸ POLISH WOMEN IN THE 90'S, *supra* note 25, at 45-48.

⁹⁹ Interview, November 17, 2000 (political journalist).

¹⁰⁰ Interview, March 8, 2001.

enforce it at any time. When she asked the reason, the employer said, “Just in case it turns out you are pregnant.”¹⁰¹

Such practices have forced some women to resort to subterfuge in order to obtain a job:

*Once there was a competition for a job, and it had to be a person without children and someone who was flexible. One woman had a child and decided to lie [about the child] and won the competition. She was a very good employee, but later it became known that she had a child. She was fired, and she had to go to court because she had cheated the employer.*¹⁰²

According to a prominent Polish feminist, “Women are asked questions men are never asked, such as if they will be married and have children. Employers think men will be more flexible and not have family obligations.”¹⁰³ In two recent studies of job advertisements, eleven percent of prospective employers expected “independence” or “disposition” (time flexibility).¹⁰⁴ Such phrasing is often a thinly veiled attempt to find a male employee or a female employee without children. An employment discrimination attorney in Warsaw noted, “Often employers fill positions with someone without family obligations- younger women without children or women with children who are grown.”¹⁰⁵

But age may simply serve as an excuse not to hire women at all. One advocate for women noted, “Women are not employable at any age in Poland.”¹⁰⁶ A representative of a trade union in Gdansk commented on the difficulty women often have in securing employment:

*There are twenty-year-old girls who come and say that they can't find work, because the potential employers say that they are too young because they are going to have a baby. Then the problem with the thirty-year-old woman is that she has children, and the problem for the forty-year-old woman is that she has one foot in the grave. These are the reasons why employers will not hire a woman.*¹⁰⁷

¹⁰¹ *Id.*

¹⁰² Interview, March 8, 2001.

¹⁰³ Interview, March 4, 2001.

¹⁰⁴ See Lisowska, *supra* note 79, at 22-23; Wilkowska, *supra* note 83.

¹⁰⁵ Interview, March 8, 2001 (attorney, Warsaw).

¹⁰⁶ Interview, March 1999.

¹⁰⁷ Interview, November 17, 2000 (volunteers and employees of a trade union, Gdansk).

Stereotypes about women compound the difficulties women face in obtaining employment.¹⁰⁸ An experienced employment counselor remarked:

*Stereotypes are the reason people do not trust women to be fully responsible as employees. Employers want to be more protective of the women than the women themselves. It is a rather artificial care. For example, when a woman with small children applies for a job that requires a lot of travel, the employer worries how the woman will manage and does not trust that it is possible for her to manage it.*¹⁰⁹

In addition to overcoming the prejudicial attitudes of their prospective employers, women job seekers must confront some of their own deeply rooted attitudes. An employment counselor noted,

*The psychological problems we meet when working with women have to do with the Polish mentality. In Poland it is not good to speak well of yourself or to try to persuade others of your value. This has its basis in the communist past . . . Women are more modest and often do not value their own futures. When looking for a job it is difficult for a woman to say . . . that she is the best applicant.*¹¹⁰

The present Polish economy, with its high rate of unemployment, has made matters worse for women. According to the Job Center in Warsaw, women are often desperate to get any job. Indeed, a high-ranking official with the Association for Equal Status of Women believes that there are forty percent fewer job offers made to women.¹¹¹ A psychologist and employment recruiter noted, "In this economy, women will take jobs they know they will not like, and they are sometimes given offers for jobs for which they are greatly overqualified."¹¹²

Despite denial that it exists, sex discrimination in the workplace is common in Poland. When asked to describe sex discrimination, a recruiter for management positions said, "It is a strong word and I am not sure it exists. I think instead there is a 'disproportion' between men's and women's salaries; also in politics and top management positions."¹¹³ The transition to a market economy has increased instances of sex discrimination, because many Polish citizens believe that capitalism means that an

¹⁰⁸ Interview, March 8, 2001.

¹⁰⁹ Interview, March 5, 2001 (employee of employment agency).

¹¹⁰ Interview, March 8, 2001.

¹¹¹ Interview, March 7, 2001 (official of the Association for the Equal Status of Women, Warsaw).

¹¹² Interview, November 15, 2000.

¹¹³ Interview, November 20, 2000 (psychologist and recruiter).

employer has the right to run his or her business with no restrictions, including restrictions on discrimination.¹¹⁴ A personnel director of a large hotel in Warsaw said, “We do not have a problem with discrimination, because if we talk about it that means people will expect it to occur. . . . We will not address the problem unless it exists first.”¹¹⁵ Yet, women members of a trade union echoed the sentiments of one colleague who declared, “There is a great deal of discrimination in the workplace, there always has been, there always will be.”¹¹⁶

Few of the companies the delegation interviewed had an employee handbook that specifically addressed the issue of discrimination, and fewer still offered training on this issue. A human resources manager remarked, “We do not have rules on discrimination, because there is no problem here and we do not think about it.”¹¹⁷

Poland does not appear to enforce the principle of equal remuneration for equal work. A Central Statistical Office report revealed that in 1998, an average Polish woman’s salary was just eighty-two percent of a Polish man’s for the same work.¹¹⁸ A National Work Inspection report surveying thirty-seven companies found that despite the fact that in 1999 women managers earned less than male managers, male managers’ salaries rose twenty percent over the previous year, while female managers’ salaries increased just seven percent during the same time period.¹¹⁹ The same study reported a similar trend among employees in the service sector of the economy.¹²⁰

Employment experts estimate that women on average earn thirty percent less than men for the same jobs.¹²¹ In fact, unequal wages are women’s major complaint.¹²² Foreign companies in Poland openly offer different levels of salaries to men and women for the same positions.¹²³ This inequity arises out of traditional attitudes. The vice president of a theater in one town said, “I can say that women make less money than men for the same work. Everyone knows that men are the head of the family and need to earn

¹¹⁴ Interview, March 4, 2001.

¹¹⁵ Interview, November 13, 2000 (personnel director).

¹¹⁶ Interview, March 31, 1999 (members of a trade union).

¹¹⁷ Interview, March 7, 2001 (human resources manager).

¹¹⁸ WOMEN 2000, *supra* note 68, at 324.

¹¹⁹ *Id.* at 325.

¹²⁰ *Id.*

¹²¹ Interview, March 8, 2001.

¹²² Interview, November 20, 2000 (Polish Labor Inspectorate).

¹²³ Interview, November 14, 2000 (professor).

more money.”¹²⁴ Others believe that the more desperate situation of women job seekers forces them to accept the difference in pay. One person commented, “Women cannot fight for their rights. Women do not have a choice to fight for their rights, because otherwise they might lose their job.”¹²⁵

2. Sex Discrimination Curtails Women’s Opportunities for Advancement

Despite recent gains, women still experience difficulty attaining management-level positions in Poland.¹²⁶ One employee of an employment agency in Warsaw, describing companies’ reluctance to hire women for managerial positions, stated, “My private opinion is that it is very difficult [for women] to make a career in a big company, because they would rather have men in managerial positions. They are not very keen to have women there.”¹²⁷ An employee of a job placement company agreed, saying, “top management positions go primarily to men.”¹²⁸ A manager of an employee services department remarked, “It is difficult for women to get promoted, but I can’t say exactly why.”¹²⁹ A human resources manager said, “It is easier for men to supervise men. This is not my personal opinion but rather the opinion of the company.”¹³⁰ The same professional noted, “It is difficult for the women to get promoted, and the lowest positions in the workplace have the lowest wages.”¹³¹

According to activists for the improvement of women’s working conditions, Polish law and tradition get in the way of women’s promotions. They believe that women have been socialized since birth to have lower expectations of their own possibilities for success.¹³² Yet, the expectations and attitudes of others also contribute to the lack of advancement opportunities. A prosecutor in Warsaw noted, “There are many more women in the regional office than men, but when it comes to promotion, men get promoted more quickly. . . . They say [it is because] work at the higher level is more stressful.”¹³³ A social science researcher agreed, saying, “Women do not want to waste their health to get to the top.”¹³⁴

¹²⁴ Interview, November 17, 2000.

¹²⁵ Interview, November 13, 2000.

¹²⁶ See POLISH WOMEN IN THE 90’S, *supra* note 25, at 63.

¹²⁷ Interview, March 5, 2001 (employee of employment agency).

¹²⁸ Interview, November 20, 2000 (psychologist and recruiter).

¹²⁹ Interview, November 15, 2000.

¹³⁰ Interviews, November 14, 2000 (legal and human resources manager).

¹³¹ *Id.*

¹³² Interview, November 16, 2000 (journalists, teachers and psychologist, Warsaw).

¹³³ Interview, March 6, 2001.

3. Polish Women Experience Sexual Harassment in the Workplace

Polish women experience both a hostile work environment and *quid pro quo* sexual harassment in employment in Poland. Although sexual harassment is a relatively new legal and social concept, in a recent survey, twenty-five percent of women report experiencing unwelcome sexual advances in the workplace from colleagues and eighteen percent of women report experiencing unwelcome sexual advances in the workplace from a supervisor. Of survey respondents in a school or university setting, eighteen percent of women report experiencing unwelcome sexual advances from a colleague and eleven percent of women report experiencing such advances from a teacher.¹³⁵ Over fifty percent of the respondents under age sixty-five believe that affairs in the workplace usually happen when a man uses his power and a woman agrees because she is afraid.¹³⁶ A director of an organization in Gdansk estimated that fifty percent of Polish women are victims of harassment in the workplace.¹³⁷

Poland does not have a general law prohibiting sexual harassment nor does it define the various kinds of harassment possible in the workplace. This gap may contribute to the low level of awareness and outright denial of the existence of harassment by people interviewed. Several employees of a power plant reported that they had never heard of a case of sexual harassment being filed, although they often heard sexual jokes at work.¹³⁸ A prosecutor said, "There is no . . . awareness that this is against the law."¹³⁹ When the delegation asked a scientific researcher if a woman could go to a union representative with a complaint of inappropriate touching, she replied, "Certainly not . . . I do not think it is possible, and there has been nothing like that here."¹⁴⁰ A marketing manager stated, "There are no issues about sexual harassment in Poland. If a woman is experiencing the problem, she will try to resolve it herself."¹⁴¹ A university professor agreed, "I think there is an expectation that you will solve this problem by yourself."¹⁴² A women's employment counselor agreed that Polish women think of

¹³⁴ Interview, March 8, 2001.

¹³⁵ Aneta Gornicka-Boratynska, *Niemoralne propozycje* in *Wysokie Obcasy*, GAZETA WYBORCZA at 30-33 (September 4, 2000).

¹³⁶ *See id.*

¹³⁷ Interview, November 17, 2000 (volunteers and employees of an NGO).

¹³⁸ Interview, November 15, 2000 (office manager).

¹³⁹ Interview, March 6, 2001 (prosecutor, Warsaw).

¹⁴⁰ Interview, March 6, 2001 (scientific researchers, Warsaw).

¹⁴¹ Interview, November 13, 2000 (marketing manager).

¹⁴² Interview, March 8, 2001 (university professor, Warsaw).

sexual harassment at work as conduct that they should be able to manage- some even believe that these women may be imagining the inappropriate conduct.¹⁴³

Some view the reluctance to report sexual harassment as an outgrowth of the Polish experience with authority. A university professor explained, “There is something in our culture against reporting officially to authorities. With sexual harassment, women feel they have to cope by themselves, but it is more complicated—it is hard to go against authority.”¹⁴⁴

The attitudes described by people in interviews show a misunderstanding of the problem of sexual harassment. Many of those interviewed explained that the failure to recognize sexual harassment as a problem is a result of Polish cultural mores. In Polish society, they explained, many women do not perceive specific behavior to be harassment. Men traditionally compliment women, and some women who are complimented appreciate the attention. Compliments, however, when they are welcome, are not sexual harassment. Laws prohibiting sexual harassment focus exclusively on unwelcome behavior.

One female office manager observed, “We do hear comments from men about physical appearances. We ignore these and make a joke about it. This happens frequently. A lot of men come here, and we think it is nice that they notice our short skirts and that we look nice. We feel that we get respect from the men.”¹⁴⁵ Yet, even when the comments are unwelcome and make women feel uncomfortable, the women feel pressure not to react to them.¹⁴⁶

Women encounter many additional obstacles when considering whether to report incidents of harassment. Some interviewees spoke of a taboo that exists against bringing these issues out into the open. An employment recruiter maintained, “Never have women talked about this [harassment].”¹⁴⁵ A judge noted, “The mentality of the society is to keep all issues of harassment and abuse secret.”¹⁴⁷ A human resources manager agreed, “This is a closed issue as it is taboo, similar to domestic violence.”¹⁴⁸ One union representative said, “Many women still will not admit that they have been sexually harassed, because they think it is shameful. They are afraid to talk about it.”¹⁴⁹ A psychologist noted, “Many women speak to me about sexual harassment during hypnosis.

¹⁴³ Interview, March 26, 1999.

¹⁴⁴ Interview, March 8, 2001 (university professor, Warsaw).

¹⁴⁵ Interview, November 15, 2000 (office manager).

¹⁴⁶ Interview, March 4, 2001.

¹⁴⁷ Interview, November 15, 2000 (Polish Supreme Court).

¹⁴⁸ Interview, November 15, 2000 (human resources manager).

¹⁴⁹ Interview, March 31, 1999 (members of a trade union).

They are ashamed and reluctant to talk about it in other circumstances.”¹⁵⁰ A prominent feminist said, “[Polish women] never talk about it with their partners or friends because they feel it is their fault.”¹⁵¹

Women often believe that it is futile to report incidents of harassment and that their employers and others would blame them if they did. An employee of a job placement agency said, “Women are afraid to talk about sexual harassment in Poland, so I have not heard women complain. I know women who have quit or been fired due to sexual harassment.”¹⁵² “Women would rather resign from work than seek justice,” said a representative of the Center for Advancement for Women.¹⁵³ “If [the harassment] was from my boss, I would quit my job,” agreed a secretary.¹⁵⁴ A human resources manager stated, “It is not appropriate for women to complain about these issues. There really are no consequences for the perpetrators of these crimes.”¹⁵⁵ The high rate of unemployment in Poland is also a factor, as women experiencing difficulty in finding employment are likely to ignore any problems when they finally secure a job.¹⁵⁶

Women are afraid to report sexual harassment for many reasons, and the few known examples of women who have pursued justice have not been encouraging. A political journalist described one case:

*A woman was harassed by her supervisor. He touched her sexually and put his hands under her skirt. She complained to his supervisor, but her complaint was completely ignored. After she complained, she was forced to leave her job. She went to the prosecutor’s office, but her complaint was dismissed. The first reason they cited was lack of evidence. Her colleagues did not want to be witnesses. Everyone knows about this case. Everyone accepts sexual harassment as part of normal everyday life. Society does not view these cases as dangerous; they are not seen as serious.*¹⁵⁷

¹⁵⁰ Interview, November 16, 2000 (psychologist).

¹⁵¹ Interview, March 4, 2001.

¹⁵² Interview, November 20, 2000 (with psychologist and recruiter).

¹⁵³ Interview, March 26, 1999.

¹⁵⁴ Interview, November 16, 2000.

¹⁵⁵ Interview, November 15, 2000 (human resources manager).

¹⁵⁶ Interview, March 8, 2001.

¹⁵⁷ Interview, November 17, 2000 (political journalist).

Another obstacle to reporting harassment is that women are afraid that they will have problems in their next job if they report it.¹⁵⁸ Members of the community often blame, rather than support, the victims. People believe that women's behavior provokes sexual harassment.¹⁵⁹ According to one social worker, "That subject is not very popular, and the social bias is that it is always the woman who is guilty."¹⁶⁰ Although some have accepted sexual harassment with resignation, saying that it is a natural part of the Polish workplace, others, especially women in the media, are fighting this idea.¹⁶¹ One psychologist suggests that the first step toward change must be for Polish women to begin to believe that they have a right to protest. Polish women, she said, have been taught to believe that they must silently endure their troubles.¹⁶²

Employers and other members of the community do not take claims of sexual harassment seriously. A prosecutor described one case in which commentators discussed the harassing behavior on the radio and portrayed the matter as trivial. Because of the ridicule in the media, it was harder for the victim to prevail.¹⁶³ An experienced politician, after relating the long history of the work of women's organizations in preparing a definition of sexual harassment, said, "This issue is a reason for humor with employers, because they see no basis for claims."¹⁶⁴ A female university professor agreed, stating, "If there is a gender dimension, people do not know how to talk about it seriously. It is hard to persuade people to act, because they think it is just a joke and we have no sense of humor."¹⁶⁵

a. Evidence of *Quid Pro Quo* Sexual Harassment

Quid pro quo sexual harassment in the workplace is common in Poland. The inferior status of women in the workplace in terms of salary and position contributes to their vulnerability. A social worker described the case of a male supervisor who had sexually harassed a woman for four years, including attempting to rape her. Because the man had a good position in the political party then in power, the woman was afraid to report the harassment and believed that no one could do anything to help her.¹⁶⁶ She was

¹⁵⁸ Interview, March 31, 1999 (members of a trade union).

¹⁵⁹ Interview, November 16, 2000.

¹⁶⁰ Interview, March 6, 2001 (social worker).

¹⁶¹ Interview, November 17, 2000 (human resources director).

¹⁶² Interview, March 6, 2001 (psychologist).

¹⁶³ Interview, March 6, 2001 (prosecutor, Warsaw).

¹⁶⁴ Interview, March 7, 2001 (official of the Association for the Equal Status of Women).

¹⁶⁵ Interview, March 8, 2001 (university professor).

¹⁶⁶ Interview, March 6, 2001.

afraid of losing her job at age thirty-six because she believed that she was too old to find another position.¹⁶⁷

In some cases, women find that their bosses arrange business travel with ulterior motives. One woman recounted her experience with such a boss:

*He was a supervisor. We went together as a delegation to another city. We rode on the bus together. He tried to hold my hand. He booked rooms next to each other. He gave me lots of compliments, offered to take me to dinner, and brought me a bottle of champagne. I felt very uncomfortable and left. He wanted to call me by [my first name, very informally.] I have no doubts about his intentions. I think that he arranged the whole trip for this purpose.*¹⁶⁸

Sometimes sexual harassment starts out in a joking or friendly manner but quickly escalates into threatening behavior when the woman refuses the advances. Some advise women to discourage any type of friendly compliments for fear that the behavior will become harassment if the woman allows it to continue.¹⁶⁹ An employment counselor discussed one case: “Her direct supervisor was pressuring her to have sex with him. At first he was polite about it, but later he pressured her more. When she turned him down, he became very unpleasant. She took a leave from the company and eventually quit.”¹⁷⁰

Some professionals blame the women themselves for allowing the conduct to develop into sexual harassment. A social worker commented:

*It shows that this woman did not set up the right distance between herself and her boss in the beginning. She was trying to make it insignificant and make a joke. In the beginning, he invited her for dinner, and he ordered a room. It was a sign of what was going on. She did not do it, but she did not recognize the signs of the situation. Often women who are victims do not recognize the signs until it is too late.*¹⁷¹

Frequently, women see no other recourse but to leave their jobs, despite the hardship such a move will cause them and their families. A lawyer described one case in which her client, a widow, was “harassed by her manager from a big Polish company in a

¹⁶⁷ See *id.*

¹⁶⁸ Interview, November 14, 2000 (business woman).

¹⁶⁹ Interview, November 17, 2000 (volunteers and employees of an NGO).

¹⁷⁰ Interview, November 15, 2000.

¹⁷¹ Interview, March 6, 2001.

small town. The manager would not take no for an answer, and she had two children depending on her. Ultimately she quit.”¹⁷²

In another case, a female supervisor asked her female receptionist to wear sexier clothes, because the president of the company wanted her to do so. It was a large multinational company. The receptionist left the job.¹⁷³

Even when women bring lawsuits, they often withdraw them before any formal legal action begins.¹⁷⁴ A suit against a company, whether Polish or international, can be time-consuming, complicated, and emotionally draining. Often, the proceedings are so protracted that women simply give up. A woman may also abandon her case if she fears that it will adversely affect other employment opportunities. One attorney reported such a case:

*A woman from a small town worked for a Dutch company. [Her supervisor] came around a lot and nearly raped her. She complained to [the Women’s Rights Center], who wrote a letter to the Dutch company and gave her case to the media. The company set up a meeting with everyone The company did not want the Women’s Rights Center involved. The woman eventually found a new job with a western company and stopped the case, [feeling that] it would hurt her new job because she lived in a small town and everyone, those in her new and old job, knew her.*¹⁷⁵

The Women’s Rights Center is one of the few places where a woman can seek assistance if she has experienced sexual harassment in Poland. The Women’s Rights Center was established in Warsaw in 1994 to provide legal assistance to women who have experienced violations of their fundamental human rights. The organization also advocates for law and policy reform to improve the human rights of women in Poland. The Women’s Rights Center received international press coverage when it brought the first Polish sexual harassment lawsuit.¹⁷⁶

Most women remain reluctant to seek redress when they have experienced sexual harassment in the workplace. The few women who have persevered have enjoyed limited success. A human resources manager reported:

¹⁷² Interview, March 26, 1999.

¹⁷³ *See id.*

¹⁷⁴ Interview, November 15, 2001 (Justice, Polish Supreme Court).

¹⁷⁵ Interview, March 1999.

¹⁷⁶ *See Jane Perlez, Central Europe Learns about Sex Harassment*, N. Y. TIMES, Oct. 3, 1996, at A3.

It was a situation of verbal harassment that went on during the course of one year and ended with a marriage proposal. Eventually the harasser told the woman that she was the worst employee whereas she had previously been one of the best. He was the main boss of a Polish-American company. She had a boyfriend in the company, and the main boss also harassed him. [The company] said “this is not really harassment, so we will give her three months salary,” but finally they agreed that she would be paid twelve months salary and could buy a car cheaply from the company. She agreed to this and agreed not to mention the name of the company.¹⁷⁷

Because the law is unclear and public awareness of sexual harassment is in the early stages of development, a case that seems simple at first may become more complicated. A lawyer described a recent case involving a powerful foreign company:

It happened in the headquarters of a firm in Warsaw. The young woman, twenty-two years old, worked as an assistant. Her boss was a man who displayed awful and improper behavior. He was very vulgar in front of the woman. . . . he also smacked her bottom in front of others. He told her that he wanted to have sex with her. He told a witness that she had to have sex with him to keep her job. [On one occasion] her boss . . . came up behind her, and suddenly she felt that he was close to her and that he was fondling her. He fondled her breasts and genitalia and put his fingers into her pants. She was in shock and started to cry. Her friend was there, and the victim asked her boss, “What are you doing?” The boss left the room, and soon after the victim left as well. The following Monday she asked her friend to make a statement, and the friend did. The victim went to the police with the statement from her friend.¹⁷⁸

The victim in this case demanded a large sum as compensation and wanted the case to become a public example against sexual harassment. In spite of strong evidence and credible witnesses, the lawyer experienced numerous difficulties with the case. These difficulties included evidence disappearing and witnesses who either changed their statements or could not be located.¹⁷⁹ At the time of the interview, the case had not yet been resolved.

Many women who complain about sexual harassment or initiate a lawsuit lose their jobs as a result. Those that remain in their jobs often endure continued harassment. The shame associated with sexual harassment is very strong in Poland and can be the most difficult obstacle for victims to overcome. When a hospital director harassed

¹⁷⁷ Interview, November 15, 2000.

¹⁷⁸ Interview, March 5, 2001.

¹⁷⁹ *See id.*

twenty of twenty-six nurses for more than a year, they were humiliated and ashamed. It took months before they were able to talk about it, even with each other. When four of the nurses decided to pursue a case against him, the details of their ordeal became public. The director's behavior had ranged from lewd comments to physical assault, all carefully perpetrated when there were no witnesses. One nurse remembered:

I started to clean the instruments and within a few seconds the director turned up and grabbed my breasts from behind and started to kiss my neck. I was shocked but managed to get away. Then, in very rude words, he said, "What are you afraid of? Nothing will happen to your pussy." I ran back to the emergency room and did not say anything to anyone, because I was very ashamed because this was the first time this had happened to me in my life.¹⁸⁰

Another nurse reported, "One day he closed the door and started to grab my breasts, buttocks, and other parts of my body. I was very surprised and unhappy."¹⁸¹ This doctor systematically harassed numerous female employees. According to another victim:

I was on duty with the director many times, and every time I was in fear of this happening. First there were subtle touches, and then he became more and more aggressive. When we were in the surgical room alone and the director was standing at the corner of the table, he rubbed his genitals against the table and grabbed my hand [forcing me to] touch them to show me how excited he was. When I resisted, he became very aggressive and rude Every time I resisted, he was so aggressive that sometimes he left bruises on my body.¹⁸²

It was only after a few nurses summoned enough courage to confide in one another that they were able to complain to the union and to find an attorney. Union representatives refused to believe them at first and only changed their minds when it became clear that the doctor had treated many nurses in this manner. Some of their colleagues questioned the truth of the accusations and were angry that the nurses spoke out against a doctor. The allegations also negatively affected the working relationships the nurses had with other doctors in the hospital.

The director continued to behave badly toward the nurses, calling them "whores" and accusing them of crimes. He threatened to ruin their lives. He fired the husband of one of the nurses. The hospital administration allowed him to continue as the nurses' supervisor until the hospital fired him for unrelated financial improprieties. In his first

¹⁸⁰ Interview, March 9, 2001.

¹⁸¹ *Id.*

¹⁸² Interview, March 9, 2001.

court appearance, the director glared at the nurses threateningly enough to intimidate them; one nurse claimed that his stare almost paralyzed her.¹⁸³ Some of the nurses who were originally part of the lawsuit withdrew because of the pressures they experienced.¹⁸⁴ The case was still pending when this report was completed.

A local paper publicized the case in an article entitled “Sexual E.R.” This publicity was the first time that many of the nurses’ families found out about the harassment, and the families reacted angrily. Some of the local children teased the nurses’ children. People did not want to talk to them, and the case divided the town.¹⁸⁵

Despite everything, the nurses have persevered. They believe that if the director is punished, other victims will come forward. They also hope that the Polish government and employers will begin to acknowledge that sexual harassment exists and will work to prevent it.¹⁸⁶

b. Evidence of a Hostile Work Environment

Many women in Poland experience hostile work environments. Co-workers make sexual comments and tell sexual jokes, use the Internet to view pornography, and display graphic cartoons.¹⁸⁷ Women reported many forms of inappropriate conduct, including bosses smelling their hair or trying to maneuver them through narrow doorways in order to brush up against them. In Poland, it is considered natural to talk about women’s legs and other body parts in the work environment.¹⁸⁸ When asked if she had heard sexual comments from co-workers, a member of a union in Gdansk gave a common response: “It does not matter, we have a lot of examples of this. We always hear this, particularly if a woman asks the man, the co-worker, to do something.”¹⁸⁹ Other women are less tolerant of such remarks.

For some, the boundaries of appropriate and inappropriate conduct are unclear. Some women struggle with the decision whether to object to conduct that crosses the line separating friendly from offensive behavior. One woman attempted to describe the indeterminate category of harassing conduct:

¹⁸³ *Id.*

¹⁸⁴ Interview, March 9, 2001.

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ Interview, November 14, 2000 (legal and human resources manager).

¹⁸⁸ Interview, November 16, 2000 (psychologist).

¹⁸⁹ Interview, November 17, 2000 (volunteers and employees of a trade union, Gdansk).

*It includes touching and “strange” words. It is difficult. It does not allow me to feel good with the person. It makes me feel like my rights have been taken away from me. It is making me feel like I am less than a male.*¹⁹⁰

Any woman may be the target of hostile environment sexual harassment regardless of her professional qualifications or level of experience. One woman said that in her previous position, her supervisor called her into his office six times a day. When she asked why he kept calling her to his office, he would say, “I just want to look at you.” She complained to her director, who was surprised at the complaint and did not do anything about it.¹⁹¹

Some employers require women employees to perform humiliating tasks. In one telemarketing business, the company required women to choose erotic names to use on the telephone. Their supervisors instructed them to target men and to sound desperate and helpless so that the men would feel like they would be helping the women if they bought the products.¹⁹²

Women have experienced harassment from clients of the company that their bosses may force them to tolerate. At one outdoor training session, clients continuously harassed the female employees of the leadership training company for a day and a half, comparing parts of the training with sexual organs. After the training, a male manager told one of his female employees that she should stop complaining about the harassment or else he would have to put his penis in her mouth.¹⁹³

Some workers display pornography in the workplace. One office manager described her workplace as follows: “All of the lockers are covered with pornography. There are seductive poses of women on the back walls of the office.”¹⁹⁴ At one office, a human resources manager stated that her employer did not allow pornography at work, yet a large beer advertisement with a woman in a string bikini holding a bottle of beer near her breasts was prominently displayed.¹⁹⁵

A female journalist from Northern Poland told this story:

There are jokes about blonds. A lot of managers like to tell these jokes to employees to make women feel intimidated. There is also harassment in

¹⁹⁰ Interview, November 13, 2000 (office manager).

¹⁹¹ Interview, November 17, 2000.

¹⁹² Interview, November 15, 2000.

¹⁹³ Interview, November 13, 2000.

¹⁹⁴ Interview, November 15, 2000 (office manager).

¹⁹⁵ Interview, November 14, 2000 (legal and human resources manager).

*the form of pornography in the workplace, such as calendars. My boss does this. He has fun with women getting embarrassed when they come to visit him in his office. When a woman comes to his office he asks, "Are you offended by this picture?" [The picture is of an apple that looks like female genitalia.] I am intimidated by this behavior.*¹⁹⁶

In its worst form, a hostile work environment includes physical misconduct. In one case, two women who worked in a mailroom were subjected to repeated attempts by a co-worker to touch and kiss them. The women visited a psychiatrist seeking help, and the psychiatrist in turn called attorneys in Warsaw who encouraged the women to make a formal complaint to the Labor Inspectorate.¹⁹⁷

A sexually-charged, hostile work environment can contribute to or cause an atmosphere that encourages *quid pro quo* sexual harassment. For example, in another case, a man working in an office where the use of vulgar language and the exchange of pornographic e-mails was commonplace, sexually assaulted a woman in front of witnesses.¹⁹⁸ In the above-mentioned case involving the nurses, the work environment included employees using vulgar language and making sexual jokes and accusations, women wearing overly revealing uniforms, and a male supervisor wearing only underwear at the office- these factors created an atmosphere that ultimately encouraged the *quid pro quo* sexual demands of the supervisor.¹⁹⁹

III. POLAND'S EXISTING CONSTITUTIONAL PROTECTIONS AND LAWS PROHIBITING SEX DISCRIMINATION AND SEXUAL HARASSMENT IN EMPLOYMENT

Polish law expressly prohibits sex discrimination, guarantees basic equality in the workplace, and protects the health and dignity of Polish workers. Although Polish law does not expressly proscribe sexual harassment, many laws and policies prohibit conduct that is commonly defined as sexual harassment in international and regional human rights law. Historically, Polish labor law has included protective legislation, banning women from certain types of work that is deemed harmful to them. Protective legislation often discriminates against women by excluding them from higher paying or more desirable positions. Recent amendments to the Polish Labor Code, however, have relaxed protective provisions, signaling a move away from protective legislation.²⁰⁰

¹⁹⁶ Interview, November 16, 2000.

¹⁹⁷ Interview, November 15, 2000.

¹⁹⁸ Interview, March 5, 2001 (attorney).

¹⁹⁹ Interview, March 9, 2001.

²⁰⁰ POL. LAB. C., *supra* note 10, art. 129.5 § 3; art. 178, § 1; and art. 178 § 2.

A. Poland's Constitution

1. Anti-Discrimination Provisions

Poland adopted a new Constitution in 1997.²⁰¹ The Constitution grants many individual rights and includes three articles that grant specific rights to women and workers:

Article 32 grants all persons equal treatment before the law and by public authorities, stating that persons shall not be discriminated against “in political, social or economic life for any reason whatsoever.”²⁰²

Article 33 guarantees women equal rights in the workplace and addresses other important workplace issues facing 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 honours and decorations.*²⁰³

Article 65 grants workers the right to freely choose and pursue their occupations and makes it the duty of the state to combat unemployment.²⁰⁴

2. Constitutional Provisions Prohibiting Sexual Harassment

The Polish Constitution contains several provisions that relate to the terms and conditions of employment:

Article 24 sets forth the general principle that “Work shall be protected by the Republic of Poland. The State shall exercise supervision over the conditions of work.”²⁰⁵

Article 66 entitles workers to safe and hygienic working conditions. Sexual harassment, defined as unwelcome conduct that may sometimes lead to sexual assault,

²⁰¹ CENTRAL INTELLIGENCE AGENCY, THE WORLD FACT BOOK 1999 391 (Central Intelligence Agency, 1999) [hereinafter FACTBOOK].

²⁰² POL. CONST., *supra* note 9, ch. II, sec. I, art. 32, § 2.

²⁰³ *Id.* at ch. II, sec. II, art. 33, §§ 1, 2.

²⁰⁴ *Id.* at ch. II, sec. IV, art. 65, §§ 1, 5.

²⁰⁵ *Id.* at ch. I, art. 24.

attempted rape, or rape, violates this guarantee of protection. Sexual harassment may also cause victims to suffer serious psychological trauma, as described by many attorneys representing victims of sexual harassment. The Polish government currently regulates the use of dangerous chemicals and protective clothing in the workplace and imposes standards for such things as building safety, but the government does not extend similar protections to guarding against potential threats to employees' mental health.

The second chapter of the Polish Constitution sets forth the freedoms, rights, and obligations of persons and citizens. The chapter opens with Article 30, which states that freedom stems from the inherent and inalienable dignity of the person.²⁰⁶ The article provides that public authorities must protect this inviolable dignity.²⁰⁷ Articles 41 and 47 further underline these principles, specifically addressing dignity and the protection of privacy.²⁰⁸

3. The Constitution and Constitutional Tribunal Decisions

Although the Polish Constitution does not clearly articulate procedures for enforcing individual rights, Article 8 declares that the "provisions of the Constitution shall apply directly."²⁰⁹

The Constitution creates the office of Commissioner for Citizens' Rights to safeguard freedoms and enumerated constitutional rights. An individual has the right to ask the Commissioner for Citizens' Rights for assistance in protecting her rights if public authorities have infringed upon them.²¹⁰

The Constitutional Tribunal also reviews constitutional claims. The Constitutional Tribunal consists of judges appointed by the *Sejm*, the lower house of Parliament, to nine-year terms.²¹¹ The Tribunal has jurisdiction over five kinds of cases, the most common of which are constitutional challenges to laws. In a provision that is seldom invoked, the Constitution also provides for Tribunal jurisdiction over cases involving individuals alleging violations of their constitutional rights.²¹² The

²⁰⁶ *Id.* at ch.II, art. 30.

²⁰⁷ *See id.*

²⁰⁸ POL. CONST., *supra* note 9, ch. II, sec. II, art. 41, § 1 & art. 47.

²⁰⁹ *Id.* at ch. 1, art. 8, § 2.

²¹⁰ *Id.* at ch. II, art. 80.

²¹¹ *See* FACTBOOK, *supra* note 201.

²¹² *See* POL. CONST., *supra* note 9, ch. VIII, sec. I, art. 188, § 5. The Tribunal also considers: the conformity of statutes and international agreements to the Constitution, the conformity of a statute to ratified international agreements whose ratification required prior consent granted by statute, the conformity of legal provisions issued by central State organs to the Constitution, ratified international

Constitutional Tribunal issues final and binding judgments that take effect upon publication.²¹³ Article 79 recognizes a citizen's right to appeal to the Constitutional Tribunal after having exhausted all other appeals mechanisms.²¹⁴ In practice, however, it may be difficult to exhaust other remedies as required before taking a case to the Constitutional Tribunal. The lack of a tradition of asserting individual rights through legal remedies also hinders women's ability to pursue employment discrimination or sexual harassment claims.

In 1991, the Tribunal issued a series of rulings that held different retirement ages for men and women to be unconstitutional. Traditionally, the retirement age for men was sixty-five, while women retired at sixty.²¹⁵ The Tribunal ruled that while retiring early might be an option, it is not a legal obligation. In practice, the Tribunal's judgments have not had a major impact. It was not until 1999 judgments became final and binding.²¹⁶ Some state and private employers continue to require women to retire at age sixty while allowing men to work until sixty-five.

The pension system, most recently updated in 1999, reaffirmed the traditional retirement ages of sixty for women and sixty-five for men in spite of the ruling that different retirement ages for men and women cannot be legally imposed.²¹⁷ Women are further disadvantaged by the formula for the calculation of pension benefits because it is based on the number of years worked. As a result, women retiring five years earlier than men may receive only thirty to forty percent of the benefits men receive.²¹⁸

B. Poland's Labor Code

1. Employment Discrimination

Article 1 of the Labor Code defines "the rights and duties of employees and employer."²¹⁹ Article 2 defines an employee as a person employed on the basis of an

agreements and statutes, and the conformity to the Constitution of the purposes or activities of political parties. *Id.* §§ 1, 2, 3, and 4.

²¹³ *See id.* at ch. VIII, sec. 1, art. 190, § 1.

²¹⁴ *Id.* at ch. II, sec. V, art. 79, § 1.

²¹⁵ WOMEN 2000, *supra* note 68, at 325.

²¹⁶ *See id.*

²¹⁷ POLISH FEDERATION FOR WOMEN AND FAMILY PLANNING, POLAND 1999: INDEPENDENT REPORT SUBMITTED TO UNITED NATIONS HUMAN RIGHTS COMMITTEE 9 (1999), at <<http://www.waw.pdi.net/~polfedwo/english/english1.htm>> (last visited Nov. 29, 2001).

²¹⁸ *See* U.S. DEPT. OF STATE, POLAND: COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES 2000 (2000) [hereinafter COUNTRY REPORTS].

²¹⁹ POL. LAB. C., *supra* note 10, art. 1.

employment contract, appointment, election, nomination, or cooperative contract of employment.²²⁰ Until recently, the Labor Code did not specifically include candidates for hire within its definition of employee.²²¹ In addition to including prospective employees within the purview of the Labor Code, recent amendments also expressly prohibit indirect discrimination based on sex.²²² Despite these protections in the Labor Code, employers often use gender-specific job advertisements, ask candidates intrusive personal questions, and require women candidates to sign certificates verifying that they are not pregnant.

Currently, the Labor Code contains specific exceptions to its provisions guaranteeing equality and prohibiting discrimination that allow protective regulations to be applied to women and young adults seeking work.²²³

Article 176 of the Code prohibits women from working in occupations that are “particularly onerous or harmful to their health.”²²⁴ The article assigns to the Council of Ministers the task of specifying and disseminating a list of occupations that are prohibited to women.²²⁵ The current list promulgated by the Council of Ministers contains a wide range of jobs, including work underground and heavy lifting.²²⁶

a. Night Work and Overtime Work Provisions

The Labor Code also specifically “protects” women who are pregnant or breastfeeding. The Code does not permit pregnant or breastfeeding women to work overtime, to go on business trips,²²⁷ or to work at night.²²⁸ The Code also prohibits women with children under the age of four from working more than eight hours per day, working overtime, or working at night, unless the employee has specifically agreed to do so.²²⁹ As a result, women’s earning potential decreases because employers generally

²²⁰ *Id.* art. 2.

²²¹ *See id.* art. 18(3)(a), § 1 (referring to the “establishment” of employment). The changes went into effect in January 2002, after this research was complete.

²²² *See id.* art. 18(3)(a), § 2 (stating “Equal treatment for men and women shall mean lack of any discrimination, direct or indirect, based on sex”).

²²³ POL. LAB. C., *supra* note 10, sec. VIII, sec. IX.

²²⁴ *Id.* art. 176.

²²⁵ *Id.*

²²⁶ *See* COUNTRY REPORTS, *supra* note 218, at 14.

²²⁷ *See* POL. LAB. C., *supra* note 10, art. 129.5, § 3 and art. 178, § 1.

²²⁸ *See id.* art. 178, § 2. A recent change to the Labor Code now provides that, although pregnant women may not work at night, a pregnant woman may be assigned outside the workplace if she consents to such an assignment. *See id.* art. 178, § 1.

²²⁹ *See id.* art. 129.5, § 3; *see also id.* art. 178, § 2.

compensate night work and overtime work at higher rates.²³⁰ Many countries have repealed similar bans on night work by women based on international norms of gender equity in employment and anti-discrimination provisions of national laws similar to Article 11.3 of the Polish Labor Code. These countries include Albania, Belgium, Bulgaria, Hungary, Ireland, Italy, and the United Kingdom.²³¹

b. Maternity Leave and Upbringing Leave

Article 180 of the Labor Code guarantees the right to maternity leave. The provision entitles women to twenty-six weeks of leave after the birth of a child and thirty-nine weeks after multiple births.²³² The Code entitles women to receive maternity benefits during the period of maternity leave.²³³ Although the Code defines maternity leave as an entitlement, both employers and employees often view maternity leave as mandatory.

Article 177 prohibits an employer from terminating an employment contract during an employee's pregnancy or maternity leave unless the employee is at fault and the woman's labor union consents to the contract termination.²³⁴ In practice, however, Article 177 does not provide sufficient protection for women. When a woman gives birth and takes maternity leave, the employer usually hires a replacement. According to an employment attorney in Warsaw, the employer will frequently fire the woman when she returns and keep the replacement worker because of fear that the original employee will continue to miss work to care for her child.²³⁵ Although the worker can sue the employer after such a move, generally the employer will have devised an alternative explanation, such as company restructuring or a performance problem.²³⁶ Laws such as Article 177 recognize that Polish workplaces discriminate against women, but without proper enforcement of such provisions, women cannot benefit from these legal protections.

²³⁰ *Ghana Night Work Report* at 8 (May 2000) (unpublished manuscript on file with *Georgetown University Law Center International Women's Human Rights Clinic*).

²³¹ *See id.* at 10.

²³² POL. LAB. C., *supra* note 10, art. 180, § 1. Art. 180, § 5 allows the leave time to be shortened to up to 16 weeks.

²³³ *See id.* art. 184.

²³⁴ *See id.* art. 177, § 1.

²³⁵ Interview, March 8, 2001 (Warsaw).

²³⁶ *See id.*

In addition to maternity leave, the Labor Code also provides for “upbringing leave.” Article 186 states, “At the request of the employee the employer shall be obliged to grant her an upbringing leave to take care of her child,”²³⁷ and Article 189 makes it possible for men to take upbringing leave.²³⁸ The prohibition against overtime can also be extended to male employees if only one parent uses the provisions.²³⁹

Although legislators likely designed these protections to benefit women, these regulations are based on traditional stereotypes of gender roles rather than on biological limitations, and the law often serves to limit women’s ability to earn a livelihood. Women’s human rights activists are working to repeal those regulations that do not relate to legitimate job qualifications to allow women equal access to employment opportunities.

2. Sexual Harassment

Chapter Two of the Polish Labor Code sets forth the basic principles of labor law in Poland, including the obligation of the employer to respect the personal dignity and other moral rights of employees, as articulated in Article 11.1²⁴⁰

Articles 15 and 94 of the Labor Code impose a duty upon employers to provide safe and hygienic working conditions for their employees.²⁴¹ The Polish Supreme Court has ruled that:

*The obligation to provide employees with safe and harmless working conditions covers not only respect for general standards in this field, but also individual constraints related to the health or inclination of the employee.*²⁴²

The court’s ruling calls for a broader interpretation of the meaning of safe and hygienic conditions of work. Article 207 of the Labor Code orders employers to protect the

²³⁷ POL. LAB. C., *supra* note 10, art. 186, § 1.

²³⁸ *See id.* art. 189.1:

§1. The provisions of Article 129.5, subparagraph 3 and Article 178, paragraph 2, Articles 186 and 188 shall also apply to male employees, provided that when both parents or guardians are employed, such right may be exercised by one of them only.

Article 129.5 subparagraph 3 prohibits employees with children under 4 from working more than eight hours per day; Article 178 paragraph 2 bans overtime or night work for *women* [emphasis added] caring for children under four; Article 186 grants employees upbringing leave; and Article 188 grants employees with a child under fourteen to two days of paid leave per year. *Id.*

²³⁹ *Id.*

²⁴⁰ *See id.* art. 11.1.

²⁴¹ *See id.* art. 15 and art. 94.

²⁴² POLISH WOMEN IN THE 90S, *supra* note 25, at 53.

“health and life” of employees by providing safe and hygienic working conditions.²⁴³ The provision does not explicitly limit this duty to the protection of physical health and therefore may require the protection of mental health. Workplaces with more than fifty employees must have a work safety and hygiene commission to monitor compliance with regulations and assist the employer in its duty to provide safe working conditions.²⁴⁴

Quid pro quo sexual harassment violates the right to dignity and the right to safe and hygienic working conditions. Hostile work environment sexual harassment also violates the right to safe and hygienic working conditions. A person who is experiencing a hostile work environment because of the conduct of a fellow employee may also argue that the employee is violating his duty under Article 100 of the Labor Code to behave properly in the workplace. Article 100 binds employees to several enumerated duties, including the duty to comply with: 1) workplace regulations and the order of the workplace;²⁴⁵ 2) the duty to abide by principles of safety and hygiene;²⁴⁶ and 3) the duty to follow the principles of social coexistence at the employing establishment.²⁴⁷

3. Enforcement of the Labor Code

The State Labor Inspectorate (Inspectorate) is the agency assigned to enforce workplace compliance with the Labor Code,²⁴⁸ and it reports directly to the Parliament.²⁴⁹ Workers may complain directly to the Inspectorate, and they generally do so after employers have fired them. Each year the Inspectorate receives approximately 30,000 complaints, but less than two percent of these complaints are officially connected to women’s issues.²⁵⁰ Of these complaints from women, most relate to illegal firings because of maternity leave. The Inspectorate reported that in 1999, only one sexual harassment complaint was filed.²⁵¹

The Inspectorate must investigate all the complaints it receives. When the Inspectorate finds that an employer has violated the labor laws, it can order back pay to the employee as a remedy but cannot demand reinstatement for the employee. If an

²⁴³ POL. LAB. C., *supra* note 10, art. 207, § 2.

²⁴⁴ *See id.* art. 237.12, § 1 and art. 237.13, § 1.

²⁴⁵ *See id.* art. 100, § 2.

²⁴⁶ *Id.*

²⁴⁷ *Id.*

²⁴⁸ *See id.* art. 18.4, § 1.

²⁴⁹ Interview, November 20, 2000 (government employee, Warsaw).

²⁵⁰ Report of the Labor Inspectorate, 2000.

²⁵¹ *See id.*

employer has committed an egregious violation, the Inspectorate can refer the violation for criminal prosecution. This type of referral is rare and generally results only from violations of material safety and health regulations.²⁵²

The Inspectorate can also investigate workplaces, and the Inspectorate has conducted focused research on sex discrimination since 1998. Based on its findings, the Inspectorate has concluded that sex discrimination exists in the Polish workplace, particularly involving wage disparities and lack of access to high-level management positions.²⁵³

Workers can also pursue mediation through proceedings with conciliation commissions designated by the employer and either the employee or employee's union,²⁵⁴ but in practice, employees rarely use these proceedings.²⁵⁵

Employees may also file claims in the Labor Court,²⁵⁶ which typically exempts employees from paying court fees.²⁵⁷ In Labor Court, employees can seek either reinstatement or compensation based on the nature of their claims.²⁵⁸ In practice, women rarely use the option of suing in Labor Court.

The burden of proof for sex discrimination and sexual harassment claims creates a larger problem for employees bringing claims.²⁵⁹ The Inspectorate has encouraged both the Parliament and the Ministry of Labor to adopt the EU standard of proof, because the current standard of proof for claims of discrimination often makes it impossible for a plaintiff to prevail.²⁶⁰ The EU standard provides that when a person who believes she has been the victim of discrimination can establish facts "from which it may be presumed that there has been direct or indirect discrimination," the burden shifts to the employer to prove that there has been no discrimination.²⁶¹

²⁵² *Id.*

²⁵³ *Id.*

²⁵⁴ POL. LAB. C., *supra* note 10, art. 244, § 1.

²⁵⁵ *See* POLISH WOMEN IN THE 90S, *supra* note 25, at 58.

²⁵⁶ *See* POL. LAB. C., *supra* note 10, art. 242, § 1.

²⁵⁷ *See id.* art. 263, §§ 1, 2, 3.

²⁵⁸ *See id.* art. 264, § 2.

²⁵⁹ Interview, November 20, 2000 (government employee, Warsaw).

²⁶⁰ *Id.*

²⁶¹ Council Directive 97/80/EC of 15 December 1997 on the burden of proof in cases of discrimination based on sex, 397L0080, *Official Journal L 014, 20/01/1998*, p. 0006-0008.

In summary, the labor system provides theoretical remedies for the problems facing women in the workplace. The system, however, has yet to minimize the barriers keeping women from using these judicial proceedings and has failed to address the larger problem of women's tenuous place in the labor market and national economy.

C. Criminal Law

1. The Polish Penal Code

The Polish Penal Code addresses behavior that may be classified as *quid pro quo* sexual harassment. Article 199 states:

*Whoever, abusing a relationship of dependence or taking advantage of a critical situation, subjects such a person to sexual intercourse or makes him/her submit to another sexual act or perform such an act shall be subject to a penalty.*²⁶²

If such a crime arises, prosecution will only take place if the victim files a complaint with the prosecutor.²⁶³

Sexual harassment that creates a hostile work environment violates criminal provisions protecting the rights of persons engaged in paid work.²⁶⁴ One such provision makes it an offense to "maliciously and persistently" infringe on the rights of an employee in the employment context.²⁶⁵ Another provision makes it a crime for employers to expose employees to safety and health hazards, including any "serious detriment to health."²⁶⁶

Since criminal convictions require higher standards of proof than civil proceedings, criminalizing sexual harassment may leave victims with no redress if they are unable to satisfy strict evidentiary burdens.²⁶⁷

²⁶² POL. PEN. C., *supra* note 12, art. 199.

²⁶³ *See id.* art. 205.

²⁶⁴ *See id.* ch. XXVIII.

²⁶⁵ *Id.* art. 218.

²⁶⁶ *Id.* art. 220.

²⁶⁷ *See Phillips, supra* note 18, at 271.

2. Criminal Procedures

a. General Treatment of a Crime

Under the Polish Penal Code, an act is only considered criminal if, in addition to being defined as a criminal offense, it has significant social consequences.²⁶⁸ The criteria for evaluating the social consequences of an act include the following:

*The type and nature of the infringed interest, the dimension of the caused or anticipated damage, the method and circumstances of perpetrating the act, the importance of the duties breached by the perpetrator as well as the intent and motivation of the perpetrator, the type of precautionary rules breached, and the degree of transgression.*²⁶⁹

Proving that the social consequences of an act were significant may be difficult for crimes involving female victims, especially in cases of sexual harassment, where transgressions are not viewed as serious social problems. Proving significant social consequences may be particularly difficult for a woman claiming hostile work environment sexual harassment, because the harasser's behavior often only impacts the plaintiff.

When prosecution occurs, defendants may be subject to certain enumerated penalties, including removal from employment situations. Article 41 articulates this form of punishment:

- (1) *If the perpetrator, at the time of committing the offense, has abused his post or profession, or has shown that by his continuing in the present post or profession he would threaten certain essential interests protected by law, the court may decide on an interdiction preventing the occupation of specific posts or the exercise of specific professions.*
- (2) *In the event that a perpetrator has been sentenced for an offense related to a certain economic activity, the court may decide on an interdiction preventing the engaging in this activity, if further continuing thereof would threaten certain essential interests protected by law.*²⁷⁰

The penalty of removing defendants from employment situations offers one method of criminally sanctioning persons who engage in sexual harassment. Many women, however, are reluctant to report sexual harassment when criminal penalties may result.

²⁶⁸ See POL. PEN. C., *supra* note 12, art. 1, § 2.

²⁶⁹ See *id.* art. 115, § 2.

²⁷⁰ *Id.* art. 41.

Often, women want the harassment to stop, but they do not necessarily desire criminal sanctions for their harassers.²⁷¹

b. Procedures for Criminal Prosecution

Because defendants accused of one or more offenses that could be deemed “sexual harassment” face mandatory sentences exceeding one month, the Code classifies these offences as crimes rather than misdemeanors.²⁷² An offense classified as a crime requires mandatory investigation by either prosecutors or police.²⁷³ A woman who claims that she was sexually harassed in violation of Article 199 of the Penal Code is, therefore, entitled to an investigation of her claim.

To initiate a prosecution, a woman can either appeal to a public prosecutor to take her case or proceed directly with a private prosecution. The accuser never incurs the cost of public prosecution, even if the defendant is not convicted.²⁷⁴ In contrast, if the accuser prosecutes the case privately, she must pay for representation,²⁷⁵ and parties to a private prosecution must engage in mediation before trial.²⁷⁶ These mediation proceedings are designed to aid the parties to reconcile.²⁷⁷ A public prosecution is therefore more advantageous for a woman pursuing a sexual harassment claim. She will not incur the costs of seeking justice, and the court will not coerce her into attempting to reconcile with her harasser if she feels such reconciliation is not possible. An attorney in Warsaw, however, stated that it is particularly difficult to engage state prosecutors in public prosecution of sexual harassment claims.²⁷⁸

A third option available to women is subsidiary prosecution.²⁷⁹ Such a prosecution allows the accuser to participate in the public prosecution alongside the state prosecutor.²⁸⁰ The state prosecutor, however, retains the right to withdraw his or her prosecution at any time.²⁸¹

²⁷¹ See Phillips, *supra* note 18, at 271.

²⁷² See POL. PEN. C., *supra* note 12, art. 7, § 2.

²⁷³ See POLISH CRIMINAL PROCEDURE CODE art. 309 [hereinafter POL. CRIM. PRO. C.].

²⁷⁴ See *id.* art. 630. If the defendant is acquitted the court costs are paid for by the State Treasury. See *id.*

²⁷⁵ See *id.* art. 621.

²⁷⁶ *Id.* art. 489, § 1.

²⁷⁷ *Id.* art. 490, § 1.

²⁷⁸ Interview, March 5, 2001 (attorney, Warsaw).

²⁷⁹ POL. CRIM. PRO. C., *supra* note 273, art. 53.

²⁸⁰ *Id.*

The evidentiary standards of proof for criminal sexual harassment are not clearly set forth.²⁸² A prosecutor in Warsaw remarked that in proving a sexual harassment claim, courts would examine:

*. . . . evidence, witnesses, documents, and experts' statements. Probably the most important would be witnesses . . . the difficulty here is it is very hard to prove [sexual harassment] cases. Witnesses make proof more relative—the judge can believe them or not.*²⁸³

In fact, witness testimony can become an insurmountable barrier for a woman trying to prove sexual harassment. Often witnesses still work for the accused and may fear retaliation by their employer.²⁸⁴ More often, the victim has no witnesses to corroborate her story because the harasser chose the time and place of the harassment and did not harass in front of witnesses. These evidentiary difficulties, when compounded by procedural and practical barriers, make criminal prosecutions largely inaccessible for many Polish women.

3. Barriers to Effective Enforcement

Police, prosecutors, and judges have not effectively addressed claims of sex discrimination and sexual harassment. Women do not commonly approach the police to complain about these issues, perhaps fearing retaliation from their employer. If they do pursue a case, it may be difficult to prove, because perpetrators often harass women in situations where there are no witnesses. Even when the harassment takes place in front of others, witnesses may be reluctant to imperil their own jobs by testifying.

Prosecutors rarely encounter discrimination or harassment cases, and when they do, they often question the victims' credibility. One attorney in Warsaw reported that the state prosecutor closely questioned his client, a sexual harassment victim, and forced her to undergo interrogation by a psychologist to assess her credibility.²⁸⁵ Although the Criminal Procedure Code allows prosecutors to authorize psychological examinations of defendants, the Code does not authorize such psychological examinations of victims.²⁸⁶

Even when sexual assault takes place in front of witnesses, a successful prosecution is not guaranteed. For example, in the case mentioned above, the lawyer

²⁸¹ See *id.* art. 54, § 2.

²⁸² See *id.* art. 167.

²⁸³ Interview, March 6, 2001 (prosecutor, Warsaw).

²⁸⁴ Interview, March 5, 2001 (attorney, Warsaw).

²⁸⁵ Interview, March 5, 2001 (attorney, Warsaw).

²⁸⁶ POL. CRIM. PRO. C., *supra* note 273, art. 202 & 203.

encountered numerous difficulties in preparing for the trial as the case progressed. The prosecutor agreed to hear only two of four witnesses, and the record of one of these witness' responses to the prosecutor's questions is missing. Another witness changed her address and could not be found. Two other witnesses changed their written statements at the prosecutor's office and have since taken paid vacations to another country and not returned. The state-appointed psychologist illegally questioned the victim's credibility. The prosecutor's initial positive response to the case has now turned into nervous avoidance. The proof of a timely appeal was misplaced. Ultimately, the lawyer for the victim was sued in disciplinary court for blackmail.²⁸⁷

IV. INTERNATIONAL LAW ON SEX DISCRIMINATION AND SEXUAL HARASSMENT IN THE WORKPLACE

A. Overview

The Polish Constitution provides that Poland will respect international law and its international treaty obligations.²⁸⁸ Poland is a member of the United Nations and the Council of Europe and has ratified all of the major human rights instruments. Poland is currently seeking membership in the EU²⁸⁹ and has pledged to harmonize its laws with EU standards.²⁹⁰ Poland is also a member of the International Labor Organization (ILO) and has ratified fundamental ILO conventions that prohibit sex discrimination and sexual harassment in the workplace.

Discrimination in general, including discrimination in employment, violates fundamental principles of international human rights law. Numerous international documents and agreements prohibit discrimination based on sex. Poland is obligated to act with due diligence to prevent, investigate, and punish human rights abuses, regardless of whether state or private actors perpetrate the abuse.²⁹¹

²⁸⁷ Interview, March 5, 2001.

²⁸⁸ See POL. CONST., *supra* note 9, art. 9.

²⁸⁹ Treaty Establishing the European Communities as amended by the Treaty of Amsterdam, *Official Journal of the European Communities*, Vol. 27, No. L. 331, Dec. 19, 1984, at 34-35, Article 141(1) (ex Art. 119) signed on the March 25, 1957, entered into force January 1, 1958; Proposal for a Directive of the European Parliament and of the Council amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion and working conditions at 4.

²⁹⁰ 2000 Regular Report from the Commission on Poland's Progress Towards Accession at 57, available at <http://europa.eu.int/comm/enlargement/report_11_00/pdf/en/pl_en.pdf> (last visited March 26, 2002) [hereinafter Poland's Progress Towards Accession].

²⁹¹ DEVAW, *supra* note 3, art. 4(c). The Human Rights Committee has also interpreted the ICCPR to obligate states to protect citizens against acts of private entities.

The United Nations, the EU, and the Council of Europe each prohibit sex discrimination and sexual harassment through regional and international human rights instruments, reflecting the worldwide recognition of these serious human rights abuses. These institutions require member states to take affirmative steps to eliminate sex discrimination and sexual harassment by enacting national laws, guidelines, principles and codes of conduct based on international human rights standards. The Polish government's failure to adopt and enforce such legislative measures to eliminate sex discrimination and sexual harassment violates Poland's international legal obligations.

B. Poland's Responsibility for Acts of Private Entities Under International Law

Poland must protect against human rights abuses perpetrated by both public and private actors. Poland is a party to the Convention on the Elimination of all Forms of Discrimination Against Women (Women's Convention). The Women's Convention requires parties to "take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise."²⁹² General Recommendation 19 to the Women's Convention also provides that a state may be held responsible for acts by private individuals if the state has not acted with due diligence to fulfill its obligations under the Women's Convention.²⁹³ The United Nations Declaration on the Elimination of Violence Against Women reaffirms this principle.

A regional human rights tribunal has held a state responsible for human rights abuses perpetrated by a private entity.²⁹⁴ Even though the state did not itself commit a human rights abuse, the Inter-American Court of Human Rights found that the state had failed to satisfy its legal obligation to protect the victim from the acts of others. In this 1988 decision, *Velásquez Rodríguez v. Honduras*, the Court held that "[a]n illegal act which violates human rights and which is initially not directly imputable to the State (for example, because it is an act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it."²⁹⁵ According to the Court, an adequate response to a human rights violation includes a serious investigation, an identification of responsible parties, imposition of an appropriate punishment on the perpetrators of the crime, and the provision of compensation to the victim(s).²⁹⁶

²⁹² Women's Convention, *supra* note 11, art. 2(e).

²⁹³ General Recommendation 19, *supra* note 3, para. 9.

²⁹⁴ *Velásquez Rodríguez Case*, Judgment of July 29, 1988, Inter-Am. Ct. of H.R. (Ser. C) No. 4, 9 HUM. RTS. L.J. 212 (1988) [hereinafter *Velásquez Rodríguez*].

²⁹⁵ *Id.* para. 172.

²⁹⁶ *Id.* para. 174.

One act in violation of international human rights law will not necessarily establish a state's lack of due diligence.²⁹⁷ A government may demonstrate that it has acted with due diligence to create a system that is adequate to prevent and address violations through the formation of educational programs, the implementation of legislation, and the introduction of judicial and administrative measures to address the problem.²⁹⁸ According to the *Velásquez Rodríguez* court, “[i]f the state apparatus acts in such a way that the violation goes unpunished and the victim’s full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty.”²⁹⁹

To fulfill its international human rights obligation to act with due diligence to protect its citizens from human rights abuses by state and non-state actors, Poland must improve its response to sex discrimination and sexual harassment. Possible actions include undertaking an educational campaign to inform employees, employers, unions, legal professionals, and governmental officials about the problems of sex discrimination and sexual harassment and the potential consequences of such behavior. These efforts might also include issuing clear definitions of and explicit prohibitions against sex discrimination and sexual harassment in the Labor Code and ensuring that the legal system provides victims with effective remedies.

C. Poland Is Not in Compliance with its Obligations Under International Human Rights Instruments to Provide Safe and Healthy Working Conditions and to Protect Women Against Discrimination.

1. Poland’s Obligations Under International Law

a. United Nations Treaties and the International Labor Organization:

A number of United Nations treaties and conventions provide that women are entitled to work, to legal equality, and to safe, equitable, and dignified working conditions without sex-based discrimination. As a member of the United Nations, Poland is bound by the provisions of the Universal Declaration of Human Rights (Universal Declaration). The Universal Declaration recognizes that “[e]veryone has the right to work” and the right “to just and favorable conditions of work.”³⁰⁰ It further states that “[e]veryone, without any discrimination, has the right to equal pay for equal work.”³⁰¹ In

²⁹⁷ *Id.* para. 175.

²⁹⁸ Women’s Convention, *supra* note 11, art. 4.

²⁹⁹ *Velásquez Rodríguez*, *supra* note 294, para. 176.

³⁰⁰ UDHR, *supra* note 11, art. 23(1).

³⁰¹ *Id.* art 23(2).

addition, the Universal Declaration declares that “[a]ll are equal before the law and are entitled without any discrimination to equal protection of the law.”³⁰²

Poland is also a party³⁰³ to the International Covenant on Civil and Political Rights. Article 2 of that covenant requires state parties to “ensure to all individuals within its territory . . . the rights recognized in the present Covenant, without distinction of any kind, such as . . . sex.”³⁰⁴ Article 3 provides that state parties must “undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights” in the covenant.³⁰⁵ Additionally, Article 26 provides that “[a]ll persons are equal before the law and are entitled without any discrimination to equal protection of the law.”³⁰⁶ Article 26 further provides that “the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as . . . sex.”³⁰⁷

The International Covenant on Economic, Social and Cultural Rights, to which Poland is also a party, requires Poland to provide “just and favorable conditions of work.”³⁰⁸ These conditions include fair wages and equal remuneration for work of equal value without distinction of any kind. In particular, that covenant guarantees women conditions of work not inferior to those enjoyed by men, with equal pay for equal work.³⁰⁹ The covenant also requires member states to provide workers with safe and healthy working conditions and equal opportunities for promotion based only on seniority and competence.³¹⁰ These rights must be applied without discrimination based on sex.³¹¹

Poland is also in violation of the Women’s Convention prohibition of employment discrimination.³¹² The Women’s Convention outlines the rights to the

³⁰² *Id.* art 7.

³⁰³ A state is a party to an international treaty if it has ratified or acceded to the treaty. Once the requisite number of states have ratified a treaty, the treaty enters into force and all parties are legally bound under international law to abide by the terms of that treaty.

³⁰⁴ ICESCR, *supra* note 11, art. 2(1).

³⁰⁵ *Id.* art 3.

³⁰⁶ *Id.* art 26.

³⁰⁷ *Id.* art 26.

³⁰⁸ *Id.* art. 7(a)(i).

³⁰⁹ *See* ICESCR, *supra* note 11, art. 7(a)(i).

³¹⁰ *Id.* art 7(b) & 9(c).

³¹¹ *Id.* art 2(2).

³¹² Women’s Convention, *supra* note 11, art. 11(1)(a).

“same employment opportunities, including the application of the same criteria for selection,” the right to equal pay and equal benefits, the right to equal treatment for work of equal value, the right to social security, and the right to protection of health and safety at work.³¹³ It requires states to “prevent discrimination against women on the grounds of marriage or maternity” by prohibiting “dismissal on the grounds of pregnancy or maternity leave,” to “introduce maternity leave with pay . . . without loss of former employment [or] seniority,” and to promote the establishment of child care centers.³¹⁴

Poland is also a member of the ILO, a specialized agency of the United Nations responsible for protecting human rights in the workplace. Poland has ratified ILO conventions requiring it to take steps to eliminate sex discrimination and sexual harassment. The ILO Discrimination (Employment and Occupation) Convention, which Poland has ratified, prohibits discrimination on the basis of sex and calls on member states to promote a national policy of equality of opportunity and equal treatment.³¹⁵ This convention applies not only to the terms and conditions of employment but also covers access to employment generally and access to particular occupations.³¹⁶ The ILO Equal Remuneration Convention, which Poland has also ratified, (C. 100) requires parties to “ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value.”³¹⁷

Polish law excludes women from employment that involves heavy, physical-labor-intensive tasks or exposure to high vibration levels or large amounts of noise and also prohibits women from filling positions that require working underground or at high altitudes.³¹⁸ Although health and safety regulations that apply to all workers are generally consistent with human rights standards, this type of legislation is discriminatory when, without a biological justification for the restriction, it limits women’s ability to choose their employment.

Further, sexual harassment is an unjust and unfavorable condition of work in violation of Article 23.1 of the Universal Declaration.³¹⁹ The United Nations Committee on the Elimination of Discrimination Against Women (CEDAW) issued General Recommendation 19, an interpretation of the Women’s Convention that recognizes sexual harassment as a form of discrimination against women, prohibits sexual

³¹³ *Id.* art 11(1).

³¹⁴ *Id.* art 11(2).

³¹⁵ Discrimination Convention, *supra* note 11, art. 2.

³¹⁶ *Id.* art 1(3).

³¹⁷ Equal Remuneration Convention, *supra* note 11, art. 2(1).

³¹⁸ POLISH WOMEN IN THE 90’S, *supra* note 25, at 45.

³¹⁹ UDHR, *supra* note 11, art. 23.1.

harassment, and underscores that sexual harassment impairs women's ability to function as equal members in the workplace.³²⁰

The United Nations also expressly condemns sexual harassment in a variety of other documents, including the Nairobi Forward-Looking Strategies for the Advancement of Women (Nairobi Strategies), the Declaration on the Elimination of Violence Against Women, and, most recently, the Beijing Declaration and Platform for Action (Beijing Platform for Action). The Nairobi Strategies state that “[a]ppropriate measures should be taken to prevent sexual harassment on the job . . . measures for redress should be provided by Governments and legislative measures guaranteeing these rights should be enforced.”³²¹ The Beijing Platform for Action proclaims that “gender-based violence, such as . . . sexual harassment . . . [is] incompatible with the dignity and the worth of the human person” and must be combated and eliminated.³²² The Beijing Platform for Action stresses that “Governments should take urgent action to combat and eliminate forms of violence against women . . . whether perpetrated or tolerated by the State or private persons.”³²³

The Polish government has not taken sufficient steps to meet these international standards. Poland has not instituted a policy to eliminate sex discrimination and sexual harassment in the workplace and, as a result, is in violation of its ILO and other international human rights commitments. The Polish Labor Code does not provide any recourse for victims of sexual harassment. Moreover, the Criminal Code only addresses limited instances of *quid pro quo* sexual harassment where a person in power commits a sexual act against a victim. This limited remedy is inadequate to cover the broad range of offensive conduct that employers in Poland force women to endure.³²⁴

Further, Poland has not designated a specific governmental agency to receive and investigate complaints of sexual harassment to ensure the proper punishment of harassers. Through its lack of governmental action to prevent and respond to sexual harassment, Poland has failed to uphold the principles embraced in the Universal Declaration, the Women's Convention, and other United Nations documents.

³²⁰ General Recommendation 19, *supra* note 3, para. 17. CEDAW was established in Article 17 the Women's Convention to monitor implementation of the Women's Convention, to review individual countries' compliance with the convention, and to make recommendations to concerned parties.

³²¹ *Nairobi Forward-Looking Strategies for the Advancement of Women, A Report of the World Conference to Review and Appraise the Achievements of the United Nations Decade for Women: Equality, Development and Peace*, U.N. Doc. A/CONF.116/28Rev.1 (85.IV.10) (1985) at para. 139.

³²² *The Beijing Declaration and Platform for Action, Fourth World Conference on Women*, UN Doc. A/CONF. 177/20, (1995) at para. 224.

³²³ *Id.*

³²⁴ POL. PEN. C., *supra* note 12, art. 199.

2. Poland's Obligations Under Regional Agreements

a. The European Union

The European Union (EU) has adopted a series of recommendations and resolutions that prohibit discrimination based on sex. Poland currently seeks to become a member of the EU, and the commission reviewing its progress towards accession has warned that in order to meet EU standards, Poland must revise its current Labor Code provisions regarding discrimination against women in employment.³²⁵ The European Commission's 2000 report on Poland's accession notes that previous reports have found that "equal treatment for women and men...[requires] urgent attention"³²⁶ and states that little progress had been made in improving the situation in the interim.³²⁷ The European Commission's report specifically points to overt discrimination in job advertisements.³²⁸ The treaty that establishes the EU includes a provision on wage discrimination. Article 141 (formerly Article 119) requires member states to ensure "equal pay for male and female workers for...work of equal value."³²⁹ The 1984 EU Recommendation on the Promotion of Positive Action for Women encourages member states to adopt policies to eliminate inequalities between men and women in the workplace with guidelines or codes of conduct.³³⁰

The EU has issued a series of binding directives prohibiting employment discrimination based on sex. These directives include provisions on: 1) prohibiting the dismissal of pregnant workers or new mothers; 2) supporting equality in granting male and female parenting leave; 3) providing equal treatment in social security schemes; 4) reducing a woman's burden of proof in sex discrimination cases; 5) ensuring equal treatment in access to employment and promotion; and 6) fostering the application of the equal treatment provision to self-employed women.³³¹

³²⁵ See Poland's Progress Towards Accession, *supra* note 290, at 57.

³²⁶ *Id.*

³²⁷ *Id.* at 55.

³²⁸ *Id.* at 20.

³²⁹ Treaty of Amsterdam Amending the Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Acts, Oct. 2, 1997, O.J. (C340) 1 (1997).

³³⁰ *Id.*

³³¹ Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding, 1992 O.J. (L 348) 5; Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave, 1996 O.J. (L145) 5; Council Directive 86/378, EEC of 24 July 1986 on the implementation of the principle of equal treatment for men and women in occupational social security schemes, 1986 O.J. (L225) 5; Council Directive 97/80/EC of 15 December 1997 on the burden of proof in cases of discrimination based on sex, 1998 O.J. (L014) 5; Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, 1976 O.J. (L039) 5;

In a recent speech before a joint commission on European integration in the Polish Parliament, the President of the European Commission stated, “Poland still has some way to go in adopting the Community [law] . . . I want to make it clear that the Commission is committed to ensuring women have the same social, political and economic opportunities as men throughout the EU. Equality is not negotiable.”³³² As part of its negotiations on accession to the EU, Poland acknowledged that it is not in total compliance with EU law prohibiting sex discrimination in employment.³³³ Poland pointed to a need to change its Labor Code provisions concerning ensuring equal pay for men and women doing equal work, providing equal treatment in access to and conditions of employment and parental leave, granting protection to pregnant workers and new mothers, extending the assurance of non-discrimination to self-employed women, and modifying the burden of proof in sex discrimination cases.³³⁴ Poland must also commit to strict enforcement of current and future laws. Unless Poland effectively addresses these issues, its lack of compliance with EU law will hinder its efforts toward accession.

The EU expressly condemns sexual harassment. In 1986, the European Parliament adopted the Resolution on Violence Against Women, urging member states to conduct studies and compile statistics on the problem of violence against women within their own countries.³³⁵ The Resolution explicitly names sexual harassment as a form of violence against women and calls on states to increase public awareness of the problem of sexual harassment through public education campaigns within the workforce and in schools.³³⁶ A main goal of these programs is for governments and labor unions to inform victims of sexual harassment of resources available to them and to encourage victims to report sexual harassment.³³⁷ The Resolution also calls on member states to take steps to ensure, through new legislation if necessary, that their national labor and anti-discrimination laws adequately address the problem of sexual harassment.³³⁸ In the same document, the EU called on the European Commission of Human Rights to conduct a study quantifying the costs of illnesses and absences from work caused by sexual

Council Directive 86/613/EEC on the application of the principle of equal treatment between women and men engaged in a self-employed capacity, 2000 O.J. (L266) 11.

³³² Prodi, *supra* note 8.

³³³ Poland’s Negotiation Position in the Area of Employment and Social Policy, Adopted by the Council of Ministers of Poland at 267-268 (May 25, 1999).

³³⁴ *Id.*

³³⁵ See Resolution on Violence Against Women, *supra* note 14, para. 1. The European Parliament is an organ of the EU that adopts budgetary and policy decisions, rather than making laws. It consists of over 600 representatives sent by member states in approximate proportion to their populations.

³³⁶ *Id.* para. 40.

³³⁷ *Id.* art 73-83.

³³⁸ *Id.*

harassment and the costs of loss of productivity caused by *quid pro quo* sexual harassment.³³⁹

When the resulting study found widespread sexual harassment with serious consequences, EU member states responded by adopting the Recommendation on the Dignity of Men and Women at Work. The Recommendation defines sexual harassment as encompassing both *quid pro quo* behavior and the creation of a hostile work environment and calls on member states to take action to create workplaces free from sexual harassment.³⁴⁰ The Recommendation describes unwanted conduct of a sexual nature and conduct, including that of superiors and colleagues, based on sex that affects the dignity of workers as intolerable. The EU called on member states to combat this harassment by condemning sexual harassment, adopting all recommendations in the code of conduct in the public sector, and encouraging private employers to follow the code of conduct.³⁴¹

The European Commission also drafted a Code of Practice on Measures to Combat Sexual Harassment in 1992.³⁴² The Code contains a detailed definition of sexual harassment similar to those in prior EU (formerly European Community) documents and identifies sexual harassment as a form of employment discrimination.³⁴³ The Code also recommends steps employers can take to reduce sexual harassment.³⁴⁴

In June 2000, the Commission adopted a proposed amendment to the Equal Treatment Directive, which would ban sexual harassment in the workplace. In adopting the proposed amendment, the Commission observed, “Sexual harassment . . . has so far been largely ignored by legislators, at both national and Community level.”³⁴⁵ The proposed amendment to Article 1 of the Directive categorically states, “Sexual harassment shall be deemed to be discrimination on the grounds of sex at the workplace when an unwanted conduct related to sex takes place with the purposes or effect of affecting the dignity of a person and/or creating an intimidating, hostile, offensive or

³³⁹ *Id.*

³⁴⁰ See Resolution on the Protection of the Dignity of Men and Women at Work, *supra* note 3, at 3-5.

³⁴¹ *Id.*

³⁴² See Proposal for a Directive of the European Parliament and of the Council amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, COM (00) 334 final at 4, available at europa.eu.int/comm/employment_social/equ_opp/news/harassment_en.html [hereinafter Proposal].

³⁴³ *Id.* para. 2.

³⁴⁴ *Id.* para. 5.

³⁴⁵ Proposal, *supra* note 342. _

disturbing environment, in particular if a person's rejection of, or submission to, such conduct is used as a basis for a decision which affects that person."³⁴⁶

b. The Council of Europe

The Council of Europe, founded in 1948, is responsible for overseeing inter-European cooperation on a variety of political, social, and economic issues. The European Commission on Human Rights, the European Court of Human Rights, and the Committee of Ministers are organized under the auspices of the Council of Europe. As a member of the Council of Europe, Poland ratified the European Social Charter, which outlines economic and social rights.

The Charter requires state parties to ensure the rights contained in those provisions "without discrimination on grounds of . . . sex."³⁴⁷ Several provisions of the Charter apply to employment discrimination, including the responsibility of states to protect the right of workers to "earn [their] living in an occupation freely entered upon," to "recognize the right of men and women workers to equal pay for work of equal value," and to "consider it unlawful for an employer to give a woman notice of dismissal during her absence on maternity leave or to give her notice of dismissal at such a time that the notice would expire during such absence."³⁴⁸

By restricting the types of employment Polish women may engage in, Poland does not allow women to freely enter into professions of their own choosing. Although Poland's laws formally comply with the equal remuneration and maternity leave obligations, Poland has not successfully ensured that women enjoy these rights in reality.

As a member of the Council of Europe, Poland is bound by the European Convention for the Protection of Human Rights and Fundamental Freedoms.³⁴⁹ The Convention does not specifically mention sexual harassment, but it does prohibit discrimination based on sex as it relates to any of the rights contained in the document.³⁵⁰ Among the rights recognized by the convention is the right to liberty and security of person, which can be interpreted to prohibit sexual harassment.³⁵¹

³⁴⁶ *Id.* art 15.

³⁴⁷ European Social Charter, *supra* note 14, Preamble.

³⁴⁸ *Id.* art 1(2), 4(3), and 8(2).

³⁴⁹ Convention on Human Rights and Fundamental Freedoms, *supra* note 14.

³⁵⁰ *Id.* art 14.

³⁵¹ *Id.* art 5(1).

As a party to the European Social Charter, Poland is further obligated to ensure its workers have “effective exercise of the right to safe and healthy working conditions.”³⁵² The Charter also requires parties to “remove as far as possible the causes of ill-health” and to “provide advisory and educational facilities for the promotion of health.”³⁵³ Sexual harassment can negatively affect the health of victims, with consequences ranging from loss of self-esteem to, in the most extreme cases, physical injury. In failing to protect against sexual harassment, the Polish government has failed to meet its obligation to ensure Polish women healthy working conditions.

c. Women in Poland are Being Denied an Effective Remedy for Employment Discrimination and Sexual Harassment

The International Covenant on Civil and Political Rights provides that all state parties shall “adopt such legislative or other measures as may be necessary” to ensure the application of the rights contained in the covenant.³⁵⁴ To be said to have an effective remedy for violation of these rights, persons claiming a violation should have access to “competent judicial, administrative or legislative authorities” to “enforce such remedies.”³⁵⁵

Article 8 of the Universal Declaration also requires member states to create an effective remedy for violations of the fundamental human rights encompassed in the document.³⁵⁶ By not providing victims with an effective remedy, Poland has violated its commitments under the Universal Declaration.

The Polish legal system currently does not provide women with an adequate remedy when, as a result of sex discrimination or sexual harassment, they are denied the right to work, the right to equality under the law, or the right to safe working conditions. Polish women face numerous legal obstacles when attempting to seek redress for violations of these rights, including a lack of awareness that such rights exist, inadequate legislation addressing these forms of discrimination, and a lack of enforcement by the legal system.

The Polish Criminal Code addresses only the most extreme cases of *quid pro quo* sexual harassment.³⁵⁷ Victims rarely file complaints under the statute, and no sexual harassment case has ever been successfully prosecuted under this provision.³⁵⁸ This lack

³⁵² European Social Charter, *supra* note 14, art. 3.

³⁵³ *Id.* art 11(1), (2).

³⁵⁴ *Id.* art 2(2).

³⁵⁵ *Id.* art 2(3)(a)(b)(c).

³⁵⁶ UDHR, *supra* note 11, art. 8.

³⁵⁷ POL. PEN. C., *supra* note 12, art. 199.

³⁵⁸ Interview, March 4, 2001 (women’s rights attorney, Warsaw).

of effective recourse for claims of sex discrimination in employment and sexual harassment violates Poland's legal obligations under the Universal Declaration, the International Covenant on Civil and Political Rights, and ILO conventions.

V. CONCLUSION

Women in Poland encounter sex discrimination and sexual harassment in the workplace. The Polish government, labor unions, and employers frequently ignore these abuses. Poland has not taken adequate steps to eliminate sex discrimination and sexual harassment in the workplace. Poland has not provided victims of sex discrimination and sexual harassment with an adequate remedy as required by its own Constitution and Labor Code as well as by various provisions of international human rights law. Poland has failed to meet its commitments as a United Nations member, a member of the Council of Europe, and a country seeking membership in the EU. Poland should take immediate steps to eliminate the human rights abuses faced by Polish women throughout their working lives.

Employment Discrimination and Sexual Harassment in Poland

Minnesota Advocates for Human Rights

310 Fourth Avenue South, Suite 1000

Minneapolis, MN 55415-1012

E-mail: hrights@mnadvocates.org

URL: www.mnadvocates.org

ISBN: 0-929293-53-3