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*Ms.  
Alice Jill Edwards  
Special Rapporteur on torture,  
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**Subject: Current issues and good practice in prison management – situation of women in prisons in Poland**

As a criminologist and a researcher on violence against women, I would like to express my concern that the National Torture Preventive Mechanism (NTPM) attached to the Ombudsman of The Republic of Poland and most prominent human rights organizations operating in Poland (i.e. Helsinki Foundation for Human Rights) are trying to introduce the principle of gender self-determination in prisons, so that any person who declares being transgender can serve their sentence in accordance with their perceived gender, which can have detrimental effects for female inmates, their safety and well-being.

The National Torture Preventive Mechanism and the Ombudsman intervened in the situation of a transgender person in Barczewo Prison. In the post-inspection report, published in January 2023, there is information about the situation of this person. This is about a person who has been serving a sentence since 2013 (till 2024). She started her transition in 2019. She has been in male "because, despite the duration of her hormonal therapy and visible physical changes, officially (on her identity card and other documents) she is still a man"(p.7).

Thus, that person has not legally changed gender, is formally a man and has been taking hormones irregularly for 4 years.

The authors of the Report indicated that housing that person in male prison in isolation from the rest of the inmates in order to protect her from possible violence by her fellow inmates (together with subjecting to personal search by male guards, inappropriate comments from the guards, not allowing to possess women's accessories, and not receiving psychological and medical support<sup>1</sup>) "may lead to inhuman or degrading treatment"<sup>2</sup>. Barczewo Prison is of interest to the NTPM

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<sup>1</sup> As Report indicates in Barczewo Prison there is 1 psychologist per 228 inmates due to staff shortages).

<sup>2</sup> Raport Krajowego Mechanizmu Prewencji Tortur z wizytacji Zakładu Karnego w Barczewie, Biuro Rzecznika Praw Obywatelskich, 17.01.2023, p.12.  
<https://bip.brpo.gov.pl/sites/default/files/2023-01/Raport%20-%20ZK%20Barczewo%202022.pdf> (access: 20.11.2023).



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because torture of detainees may have taken place there and which, in principle, was the main concern of the NTPM.

This person has already been under the care of the Ombudsman for several years, and a complaint has been submitted to the European Court of Human Rights on her behalf (case *W. v. Poland*)<sup>3</sup>. Ombudsman and Helsinki Foundation for Human Rights joined the case. In 2020, the Court took an interim measure and ordered the continuation of hormonal therapy<sup>4</sup>.

Although the case pending before ECHR is about access to “gender-affirming care” in prisons, in Poland the situation of “W” is used to claim that transgender persons shall have right to be housed in prisons according to their self-declared gender identity, regardless their legal gender and stage of transition<sup>5</sup>.

Such a solution is extremely threatening and creates great scope for abuse, as the Special Rapporteur Reem Alsalem wrote in November 2022<sup>6</sup>. I am deeply concerned that the Ombudsman, who should be the guardian of fundamental rights and freedoms (and so the sex-based discrimination of women of which violence against women is a part<sup>7</sup> and Poland have obligation to eliminate under the CEDAW) in his activities is aiming at such a drastic deterioration of the situation of women in prisons.

Making prison policies responsive to the situation of transgender people only takes into account the welfare of transgender individuals and LGTQ+ organizations agenda with complete disregard for the safety of female prisoners. Needless to say, the predicament of female-born transgender inmates is also disregarded in the policy-making process and humans rights organizations.

Apart from above mention risk of abusing of gender self-determination provisions by heterosexual, sometimes predatory, men who want to serve their time in better conditions and nearby women, there are several uncovered problems with housing

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<sup>3</sup> Opieka zdrowotna dla osób transpłciowych w zakładach karnych. HFPC składa opinię do ETPC, The Helsinki Foundation for Human Rights, 19.11.2021.

<https://hfhr.pl/aktualnosci/opieka-zdrowotna-dla-osob-transplciowych-w-zakladach-karnych-hfpc-sklada-opinie-do-etpc,l:165231000> (access: 20.11.2023)

<sup>4</sup> Trybunał w Strasburgu: Transpłciowa Weronika osadzona w Siedlcach ma dostać niezbędne leki, *Oko.press*, 30.07.2021

<https://oko.press/trybunal-w-strasburgu-transplciowa-weronika-osadzona-w-siedlcach-ma-dostac-niezbedne-leki> (access: 20.11.2023)

<sup>5</sup> Sytuacja osób transpłciowych w więzieniach. HFPC pisze do dyrektora generalnego Służby Więziennej, The Helsinki Foundation for Human Rights, 15.06.2022.

<https://hfhr.pl/aktualnosci/sytuacja-osob-transplciowych-w-wiezieniach,l:165231000> (access: 20.11.2023).

<sup>6</sup> The Statement of the Special Rapporteur on violence against women and girls, its consequences and causes, 29 November 2022, Ref.: OL GBR 14/2022.

[https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=27681&fbclid=IwAR0zew\\_PqgnLNPVv7gKDUgePlyQz1PMnyBV0XYGA\\_BlgwdZdDkO9my3IYEo](https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=27681&fbclid=IwAR0zew_PqgnLNPVv7gKDUgePlyQz1PMnyBV0XYGA_BlgwdZdDkO9my3IYEo) (access: 20.11.2023).

<sup>7</sup> General recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19 (1992), CEDAW/C/GC/35.



transgender inmates (born male) in females facilities, such as: preferential treatment then female inmates, violence towards female inmates, disrupting order and dominating other inmates, sexual relations (consensual and non-consensual), silencing women's voices and their intimidation. All these circumstances have been exposed by feminist organizations working in the field and so the official institutions managing prisons<sup>8</sup>.

I share all concerns expressed in the Special Rapporteur's on Violence Against Women statement and events from Scotland and other countries over the past year demonstrated the validity of these reservations. Available data from few countries show alarming sex offending rates among transgender inmates (born males)<sup>9</sup>. At the same time, I express my concern about the practice of authorities in selected countries of withholding information about the convictions of transgender people who request to serve sentences in female facilities as recently in Spain<sup>10</sup>.

To conclude, I ask the Special Rapporteur to take into account in her Report following considerations. Firstly, gender self-identification in prison policies poses a real risk of abuse the rule by men who opportunistically would declare transgender/nonbinary status to get to the women's spaces. That rule gives virtually no tools to verify the veracity of the declarations. Secondly, housing transwomen, particularly those convicted for sexual violence and violence against women should not be allowed in any case. Imprisoned women are remarkably vulnerable population with many of them with history of victimization from male violence. And thirdly, for those transwomen who wish not to be housed in men's facility, the prison administration shall establish separate facilities/sectors in prisons.

Sincerely,

Magdalena Grzyb

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<sup>8</sup> *Special Review of the California Department of Corrections and Rehabilitation's (CDCR) implementation of the Transgender Respect, Agency, and Dignity Act*, California Office of the Inspector General (OIG) Independent Prison Oversight Committee, August 2023.

<sup>9</sup> In 2019 58,9% of imprisoned transwomen in the UK were convicted sex offenders according to Ministry of Justice data and 44% in Canada.

Evidence and Data on Trans Women's Offending Rates, May 2020.

<https://committees.parliament.uk/writtenevidence/18973/pdf/> (access 20.11.2023).

Gender Diverse Offenders with a History of Sexual Offending, Correctional Service of Canada, 2022

[https://www.csc-scc.gc.ca/research/005008-r442\\_O-en.shtml](https://www.csc-scc.gc.ca/research/005008-r442_O-en.shtml) (access: 20.11.2023).

<sup>10</sup> Asesino, violador y preso trans... bajo la protección de datos, El Correo, 28.10.2023.

<https://www.elcorreo.com/politica/asesino-violador-presos-trans-bajo-proteccion-datos-20231028170859->

[ntrc.html?ref=https%3A%2F%2Fwww.elcorreo.com%2Fpolitica%2Fasesino-violador-presos-trans-bajo-proteccion-datos-20231028170859-ntrc.html](https://www.elcorreo.com/politica/asesino-violador-presos-trans-bajo-proteccion-datos-20231028170859-ntrc.html?ref=https%3A%2F%2Fwww.elcorreo.com%2Fpolitica%2Fasesino-violador-presos-trans-bajo-proteccion-datos-20231028170859-ntrc.html) (access: 20.11.2023).