



Permanent Representative
of the Republic of Poland
to the United Nations Office
in Geneva

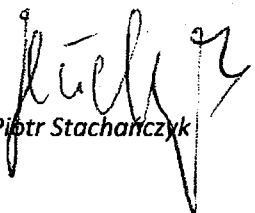
Geneva, 30 June, 2016

Excellences,

I wish to thank for your joint letter addressed to me 2 May 2016, concerning the civic draft law of the Legislative Initiative Committee "Stop Abortion" to amend the *Family Planning, Human Embryo Protection and Conditions of Permissibility of Abortion Act of 7 January 1993* and the *Criminal Code Act of 6 June 1997*.

In response to your request, let me kindly provide you with the detailed clarification from the Government of the Republic of Poland.

Please accept, Excellences, the assurances of my highest consideration.


Piotr Stachanczyk

H.E. Mr. Frances Raday, Chairperson-Rapporteur on behalf of the Working Group on the issue of discrimination against women in law and in practice;

H.E. Mr. Dainius Puras, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health;

H.E. Mr. Juan E. Mendez, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment;

H.E. Ms. Dubravka Simonovic, Special Rapporteur on violence against women, its causes and consequences

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Question no. 1

Please provide any additional information or comment you may have on the above mentioned allegations.

The Government of the Republic of Poland is not working on any draft law amending the *Family Planning, Human Embryo Protection and Conditions of Permissibility of Abortion Act of 7 January 1993*. The civic draft law of the Legislative Initiative Committee "Stop Abortion" to amend the *Family Planning, Human Embryo Protection and Conditions of Permissibility of Abortion Act of 7 January 1993* and the *Criminal Code Act of 6 June 1997* is a bill that has been initiated by citizens and has not as yet been submitted to the Speaker of the Sejm.

A detailed description of the procedure applicable to bills initiated by citizens, including the aforementioned bill, is presented later in the document.

I would also like to communicate that on 9 May, 2016, the Speaker of the Sejm received a notification regarding the establishment of the Legislative Initiative Committee "Save Women" – act on women's rights and planned parenthood. The Speaker of the Sejm has accepted the notification about the Committee's establishment.

The right of every citizen to take part in the conduct of public affairs, directly or through freely chosen representatives is enshrined, *inter alia*, in Article 25 of the International Covenant on Civil and Political Rights, as well as, in Article 21. 1 of the Universal Declaration of Human Rights. Moreover, the latter states that the will of the people shall be the basis of the authority of government.

Therefore, every government respecting the significant role of the civil society and committed to democracy, good governance and the rule of law, shall welcome all the citizens' legislative initiatives and treat them in impartial way. Those initiatives shall be examined by a competent authority, consisting of the freely chosen representatives of citizens.

It is worth mentioning that citizens' legal initiative is not just a Polish solution. In 2012, the European Union introduced the EU Citizens' Initiative – an instrument giving the European citizens the right to directly participate in setting the legislative agenda of the EU.

The protection of human life at every stage of its development is the overriding principle governing the Polish legal system (Article 30 in connection with Article 38 of the *Constitution of the Republic of Poland* and Article 1 of the *Family Planning, Human Embryo Protection and Conditions of Permissibility of Abortion Act of 7 January 1993*). It should be stressed that pursuant to the *Action Programme of the International Conference on Population and Development in Cairo in 1994*, and the *Beijing Declaration and Platform for Action of the Fourth World Conference on Women in 1995*, laws regulating abortion belong to the

exclusive competencies of the UN member states. The Polish legislator has provided for three circumstances which exempt a person who terminates pregnancy from criminal liability.

Question no. 2

Please provide detailed information on how the Government intends to proceed with regard to the aforementioned draft law, those revisions seem in contradiction with its international human rights obligation.

The draft law put forward by the Legislative Initiative Committee "Stop Abortion" to amend the *Family Planning, Human Embryo Protection and Conditions of Permissibility of Abortion Act of 7 January 1993* and the *Criminal Code Act of 6 June 1997* is a bill that has been initiated by citizens and, pursuant to Article 118(2) in conjunction with Article 4(2) of the *Constitution of the Republic of Poland*, the procedure for adopting it is provided for in the *Act on Exercising Legislative Initiatives by Citizens of 24 June 1999*.

Under the Act, a group of Polish citizens, who number at least 100,000 and who have the right to vote in parliamentary elections, have the right to exercise a legislative initiative by placing signatures under a bill.

Pursuant to Article 6(1) of the aforementioned Act, a plenipotentiary for the committee notifies the Speaker of the Sejm that a committee has been established. Such committee may be set up by a group of at least 15 Polish citizens, who have the right to elect deputies to the Sejm and who have submitted a written declaration that they have joined the committee, specifying their first name (names) and last name, residential address and their PESEL number. A bill with a list of 1000 citizens who support the bill is enclosed with the notification.

The Legislative Initiative Committee "Stop Abortion" set up to amend the *Family Planning, Human Embryo Protection and Conditions of Permissibility of Abortion Act of 7 January 1993* and the *Criminal Code Act of 6 June 1997* submitted a notification about the establishment of the *Committee to the Speaker of the Sejm on 14 March 2016*. The relevant decision accepting the notification was issued by the Speaker of the Sejm on 6 April, 2016.

Considering the above, pursuant to Article 10(2) of the aforementioned Act, the initiators of bill have time until 6 July 2016 to submit the draft law together with a list of signatures of citizens who support this bill.

The government will eventually specify its position on the bill, during the possible first reading of the civic bill, if submitted to the Speaker of the Sejm, together with the annexed list of signatures of citizens supporting the draft law.

Question no. 3

Please provide detailed information about the next steps the Government intends to take after the Ministry of Health's announcement to reinstate a prescription requirement for emergency contraception (ellaOne), despite the 2015 European Commission ruling.

On 7 January 2015, the European Commission issued an implementing decision amending marketing authorisation issued by decision K(2009)4049 for a medicinal product for human use, called ellaOne (ulipristal acetate). The above-mentioned decision changed the classification of ellaOne emergency contraceptives from the status of prescription drugs to OTC drugs.

Pursuant to *Directive 2001/83/EC*, the decision to possibly restrict its availability by keeping the requirement to possess a prescription to buy ellaOne, has been left to the competencies of member states.

On 30 April 2015, the Ministry of Health informed the European Commission that Poland exercised the option to enact additional domestic legislation regulating contraceptive and abortifacient products under Article 4(4) of *Directive 2001/83/EC* on the Community Code relating to medicinal products for human use. The *Ordinance of the Minister of Health of 2 April, 2015, amending the Ordinance on Distribution of Medicinal Products and Medical Devices by Pharmacies (Dz. U. item 477)* introduced a provision that medicinal products in the ATC G03A group – hormonal contraceptives for internal use (ellaOne among them), having the “OTC” availability category, shall only be issued to persons over 15 years of age.

The promotion and protection of everyone's right to health, with an emphasis on the health of children, pregnant women, handicapped people and persons of advanced age is a priority for the Polish government, enshrined in the *Constitution of the Republic of Poland*, as well as in the International Covenant on Economic, Social and Cultural Rights. Bearing in mind the above mentioned provisions of the European law, as well as, relying, *inter alia*, on the European Medicines Agency, CHMP assessment report for ellaOne¹ which indicates clearly that the drug should only be prescribed after a pregnancy test has been performed in case pregnancy is suspected, the Ministry of Health instituted the procedures on amending the *Act on Health Care Services Financed with Public Funds* and certain other acts. Pursuant to the draft law, all contraceptive products shall be issued on the basis of a prescription (added par. 1a to Article 23a of the *Pharmaceutical Act of 6 September 2001* (Dz. U. of 2008 r. No. 45, item 271, as amended)). Thus, if the above-mentioned bill enters into force, ellaOne will again be available only on prescription.

¹European Medicines Agency, CHMP ASSESSMENT REPORT FOR Ellaone

The draft law is currently being consulted with external entities.

Considering the current and projected legal situation, it should be noted that Poland remains (and will remain) in compliance with European legislation, because recital three of the preamble of the aforementioned Commission implementing decision of 7 January 2015 clearly states that provisions of the entire Directive 2001/83/EC should be taken into account. Recital three of the preamble to the above-mentioned decision (or any other) does not provide for exemption from the application of Article 4(4) of this Directive, which allows member states to develop their autonomous policies with respect to the availability of medicinal products as contraceptives or abortifacients.

It should be noted that the question formulated by the OHCHR does not appear to account for the freedom that member states have to develop their autonomous policy with respect to the availability of medicinal products as contraceptives or abortifacients under Article 4(4) of Directive 2001/83/EC.

Question no. 4

Please provide detailed information about the measures taken, or intended to be taken, to ensure that the rights of women and girls to sexual and reproductive health, including access to adequate health services, to physical and mental integrity, and to life, in light with international human rights standards.

Poland takes maternal health very seriously. The efforts of the Polish authorities have been noticed by the international community. According to the latest UN statistics², the number of maternal deaths per 100 000 live births in Poland amounts to 3, which is the best result in the world (*ex aequo* with Iceland, Greece and Finland). The maternal morbidity in Poland has been significantly lower than in other developed countries. (e.g. United States (14/100 000), United Kingdom (9/100 000), France (8/100 000), Germany (6/100 000)), and it has fallen by 82,4 percent since 1990.

Reproductive health is a significant element of a state's health policy, in which central and local government administration bodies ensure that citizens are provided with free access to methods and means helping conscious reproduction.

Abortion is not considered as a method of family planning in Poland, however there are three situations, prescribed by law, in which a pregnancy may be terminated.

² Trends in Maternal Mortality: 1990 to 2015 Estimates by WHO, UNICEF, UNFPA, World Bank Group and the United Nations Population Division
http://apps.who.int/iris/bitstream/10665/194254/1/9789241565141_eng.pdf?ua=1

Pursuant to Article 4a (1) of the *Family Planning, Human Embryo Protection and Conditions of Permissibility of Abortion Act of 7 January 1993* (Dz. U. item 78, as amended), pregnancy may be terminated only by a doctor under the following circumstances:

- when the pregnancy threatens the life or health of the pregnant woman,
- when prenatal tests or other medical evidence indicate a high probability of severe and irreversible disability to the foetus or an incurable illness threatening its life,
- when there is a warranted suspicion that the pregnancy resulted from a crime.

A woman's written consent is necessary to terminate her pregnancy. In the case of a minor or a completely incapacitated woman, a written consent of her legal guardian is required. In the case of a minor, who is older than 13 years, her written consent is also required. In the case of a minor under 13 years of age, the consent of a district (guardianship) court is also required, and the minor has the right to express her opinion. In the case of a woman, who is completely incapacitated, her written consent is also required, unless her mental health does not permit her to express such consent. In the absence of the legal guardian's consent, consent of the district (guardianship) court is required to terminate the pregnancy.

In the event that prenatal tests or other medical evidence indicate a high probability of severe and irreversible disability to the foetus or an incurable illness threatening its life, the pregnancy may be terminated before the foetus has reached the capability of life outside the body of the mother. If there is a warranted suspicion that the pregnancy is the result of a crime, pregnancy may be terminated, provided that not more than 12 weeks have elapsed since the beginning of the pregnancy.

The *Family Planning, Human Embryo Protection and Conditions of Permissibility of Abortion Act of 7 January 1993* provides that "persons who are covered by social insurance and persons who are eligible under separate legislative provisions to receive free medical care have the right to terminate pregnancy free of charge in medical establishments."

A list of the guaranteed services connected with termination of pregnancy is included in attachment no. 1 to the *Ordinance of the Minister of 22 November 2013 on Guaranteed Services in Hospital Treatment* (Dz. U. item 1520, as amended).

The *Ordinance of the Minister of Health and Social Welfare of 22 January 1997 on the professional qualifications of doctors, authorising them to terminate pregnancy and to state that a pregnancy threatens the life or health of a woman or that it indicates a high probability of serious and irreversible disability of the foetus or an incurable illness threatening its life* (Dz. U. item 49) provides that a pregnancy may be terminated by a doctor who holds first degree specialisation in obstetrics and gynaecology or the title of a specialist in obstetrics and gynaecology. Also a doctor who is a specialist in the field of medicine relevant to the illness of the pregnant woman may attest to the existence of circumstances indicating that her pregnancy threatens her life or health.

At the same time it should be noted that the aforementioned provisions of the applicable *Family Planning, Human Embryo Protection and Conditions of Permissibility of Abortion Act of 7 January 1993* specify the circumstances under which a pregnancy may be terminated, but the ultimate decision rests with the woman concerned.

It should also be clearly stressed that at present the Government of the Republic of Poland is not working on a bill to amend the *Family Planning, Human Embryo Protection and Conditions of Permissibility of Abortion Act of 7 January 1993*.

In the Republic of Poland, there are registered and available modern contraceptives in the form of medicinal products or medical devices as well as drugs and medical devices used during pregnancy and in taking care of the foetus, in medical care provided for pregnant women and those that are used for conscious reproduction. Over the last 20 years, the choice and accessibility of modern methods to prevent pregnancy have greatly increased.

Studies of women's expectations regarding contraception, show that the key criteria for choosing a method include its effectiveness, the lack of undesirable side effects, reversibility, acceptance and other benefits stemming from its use.

The *Family Planning, Human Embryo Protection and Conditions of Permissibility of Abortion Act of 7 January 1993* in its preamble states that it recognises the right to responsibly decide about having children and imposes an obligation on the state to make it possible to take decisions in this respect. Pursuant to Article 2(2) of the Act, central and local government administration bodies, in the scope of their competencies set out in special regulations, are obligated to ensure that citizens have free access to methods and means of conscious reproduction.

The *Act on Health Care Services Financed with Public Funds* and the *Ordinance of the Minister of Health of 6 November 2013 on Guaranteed Services in Outpatient Specialist Care* (Dz. U. item 1413 and of 2014 item 1442), guarantee health care to women which covers specialist medical services in gynaecology and obstetrics. There are two kinds of services: gynaecological and obstetric consultations and gynaecological and obstetric consultations for girls. Care in reproductive health is provided as part of such consultations. In the Republic of Poland there are now registered and available contraceptives, which are medicinal products or medical devices and drugs and medical devices used during pregnancy and necessary for the care of the foetus and for medical care of pregnant women.

In 2003, the Polish Gynaecological Society issued recommendations concerning contraception. On their basis, the following methods of regulating fertility are available in the Republic of Poland:

- methods of periodic sexual abstinence (natural methods),
- spermicide substances,
- condoms,
- intrauterine devices, including progesterone releasing IUD,
- combined or single hormone preparations in the form of oral pills, skin patches or injections.

The following medical criteria are used to evaluate a contraceptive method: effectiveness, reversibility, safety, acceptance, tolerance, and benefits other than contraceptive.

According to the *List of refunded drugs, special purpose alimentary foodstuffs and medical devices published by the Minister of Health on 1 January 2016*, among the refunded drugs are drugs that have a contraceptive effect: Levomine, Microgynon 21, Rigevidon, Stediril 30.

The above-mentioned list also covers refunded drugs which contain hormonally active substances and could have a contraceptive effect: Cyprodiol, OC-35, Syndi-35, Diane-35, Cyprest.

All these drugs are placed in a limited group "Hormonal drugs taken orally and containing cyproterone, ethinyloestradiol, levonorgestrel or medroxyprogesterone." These drugs are available at 30% of their price for all the registered indications as at the date of the Minister's decision. Products are available to the patient in the price range from PLN 2.47 to PLN 23.47.

At the same time, it should be noted that in addition to refunded drugs, there is a wide range of hormonal contraceptive products in the form of oral pills of different compositions and hormone content, including transdermal systems which are not refundable, that are sold on the Polish market. The prices of these substances vary depending on the retailer.

In addition, the National Health Fund also finances the introduction of intrauterine contraceptive device. In attachment no. 5a to *Order no. 82/2013/DSOZ of the President of the National Health Fund of 17 December 2013* that defines the conditions for concluding and implementing contracts for outpatient specialist care, the procedure of introducing intrauterine device was included in the group of gynaecological services for girls, obstetrics and gynaecology, treatment of AIDS and endocrinology.

In addition, spermicidal substances in the form of vaginal pills and condoms are available over the counter. Condoms are also the basic contraceptive method used by men.

In the area of reproductive health, the Polish Government is seeking to ensure that pregnant working women can benefit from the optimum health services, corresponding to their expectations and the current medical knowledge. Legislation guarantees that women during pregnancy, childbirth and puerperium are protected.

A number of legislative acts have been adopted concerning the health of children and women in order to ensure optimum services to women during pregnancy and childbirth, including:

- *Ordinance of the Minister of Health of 20 September 2012 on standard medical procedures in providing medical services in the scope of perinatal care provided to women during physiological pregnancy, physiological childbirth, puerperium and infant care.* Pursuant to the provisions of this ordinance, every woman who is physiologically pregnant, during physiological childbirth and puerperium has the right to receive medical care services that comply with the standard;
- *Ordinance of the Minister of Health of 9 November 2015 on standard medical procedures in lessening childbirth pain defines, in a generally applicable legislative act, standard medical procedures for lessening childbirth pain;*
- *Ordinance of the Minister of Health of 9 November 2015 on standard medical procedures in providing medical services in the field of obstetrics and gynaecology, perinatal obstetrical and gynaecological care provided to patient during pregnancy, childbirth, puerperium, in cases of the existence of certain complications and care provided to patient in gynaecological failures* – the standards specify the different elements of medical care intended to ensure the best possible health condition of the mother of a child about to be born, in the event of a twin pregnancy or if during pregnancy, childbirth or puerperium, the following complications occur: hypertension, premature birth, perinatal hypoxia and obstetrical haemorrhage. The standards also provide for procedures that include care for women in situations of gynaecological failures.

During the last few months, a special unit was created in the Ministry of Health - Section for Reproductive Health, which was entrusted with dealing with the said issue in a comprehensive way. A special group for reproductive health was set up to draft a relevant programme.

During the meetings of the group, the following elements of measures which should add up to a comprehensive policy in reproductive health were indicated:

1. defining the participation of doctors, nurses and midwives in basic health care (Polish acronym "POZ") in the promotion of reproductive health, prevention of reproductive health disorders, as well as relations between POZ doctors and specialist care and educational activities to be taken,
2. the need to adapt new standards of procedure in specialist care and to disseminate elements of such standards in POZs (including pre-contraceptive care),
3. introduction of changes in the organisation of health care – creation of reference centres which would become involved in specialist care of complicated health problems,
4. possible change in the basket of guaranteed services,
5. issues of quality/safety of perinatal care,
6. the issue of respecting patients' rights, including ensuring adequate care during childbirth.

Speaking about measures undertaken in Poland and related to reproductive health, it should also be said that one of the subjects taught at school is preparation for family life.

The Ministry of National Education is responsible for the implementation and effects of the application of *the Family Planning, Human Embryo Protection and Conditions of Permissibility of Abortion Act of 7 January 1993*, in the aspect of education.

Pursuant to Article 4(1) of the *Family Planning, Human Embryo Protection and Conditions of Permissibility of Abortion Act of 7 January 1993*, content dealing with human sexual life, rules of conscious and responsible parenthood, the value of the family, life in prenatal stage and methods and means of conscious reproduction was added to the curriculum of general education defined by Ordinance of the Minister of National Education regulating the curriculum of pre-school education and general education in different types of schools³.

This content is taught, among others, in "preparation for family life" classes, in grades five and six of elementary schools, in lower secondary schools, in vocational schools, in upper secondary schools and in grades 1 through 3 of technical secondary schools, including special technical schools, for children and young people, public and non-public schools with public school rights. Issues dealing with sexual education are also included in the core curricula of science, biology, and physical education, while ethical, social and legal aspects are included in the core curriculum of social studies and ethics. Core curriculum of early school education, taking into account the age, educational needs and sensitivity of pupils includes issues dealing with belonging to a family and relations between the next of kin and duties towards them.

The "preparation for family life" classes are to be conducted in a way that is described in the *Ordinance of the Minister of National Education of 12 August 1999 on the method of school teaching and the content of knowledge about human sexual life, rules of conscious and responsible parenthood, the value of the family, life in the prenatal phase and methods and means of conscious reproduction to be included in the core curriculum of general education*⁴.

The core curriculum sets the objectives and content of teaching the "preparation for family life" subject in a way that takes into account the age, the educational needs, the cognitive abilities and the sensitivity of pupils at a particular stage of their education. The implementation of the content of classes, pursuant to the above Ordinance, should represent a consistent whole with other educational and preventive activities of the school,

³ Ordinance of 27 August 2012 on the core curriculum of pre-school education and general education in different types of schools (Dz. U. item 977 as amended).

⁴ Dz. U. of 2014, item 395.

in particular it should support the upbringing role of the family, promote an integral approach to human sexuality, shape pro-family, pro-health and pro-social attitudes.

In each school year, prior to starting the "preparation for family life" classes, the teacher that conducts such class and the homeroom teacher, hold at least one orientation meeting with parents of pupils who are minors and with pupils who are of age. The teacher is required to present full information about the objectives and content of the implemented curriculum, textbooks and teaching aids. The school principal is responsible for holding such meetings.

A teacher or a group of teachers presents to the school principal a curriculum for the "preparation for family life" educational classes. It can contain teaching content that goes beyond the content set for such educational classes in the general education core curriculum. The said programme should be adjusted to fit the needs and possibilities of the pupils for whom it is intended⁵. A school principal, after asking for the opinion of the pedagogical council, admits the presented curriculum to be taught in his/her school.

Curricula admitted to be taught in a school, including the "preparation for family life" classes curriculum represent the school's set of curricula. The school principal is responsible for taking into account in the school's set of curricula, the whole core curriculum of general education set for a specific educational stage.

A teacher may decide to implement the curriculum for the "preparation for family life" classes using a textbook, educational materials or exercise materials or without using a textbook and the aforementioned materials⁶.

Pupils attend "preparation for family life" classes, if their parents, legal guardians, or pupils themselves, who are of age, do not notify the school principal in writing that they resign from participating in such classes. A written resignation from attending "preparation for family life" classes helps parents or legal guardians of pupils to take considered decisions about this matter. The classes are not graded and have no influence over the pupil's promotion to the next class or on his or her graduation from school.

Fourteen hours, including five hours for separate classes for girls and boys, are allocated to teach this class in public schools in the school teaching plan, every year, for pupils of different grades. The classes are organised in classes numbering not more than 28 pupils. In non-public schools with the rights of public schools, the number of hours allocated to such classes may not be less than the number of hours allocated for public schools.

Teachers who conduct "preparation for family life" classes in different types of schools

⁵ Art. 22a of the Education System Act of 7 September 1991 (Dz. U. of 2015, item 2156, as amended).

⁶ Art. 22aa of the Education System Act.

are required to disseminate full and reliable knowledge⁷, adjusting it to the development level of the pupils. In addition, education classes are to represent a consistent whole with upbringing and preventive activities of the school. These activities are supplemented by an upbringing programme and a preventive programme.

Pursuant to the aforementioned Ordinance of the Minister of National Education on the core curriculum of pre-school education and general education in different types of schools, the schools are required to draw up the school's upbringing programme, which covers all content and activities of upbringing nature addressed to pupils and implemented by teachers.

The starting point for setting up a school's upbringing programme is a diagnosis of upbringing problems encountered in a given school.

The upbringing programme and the preventive programme are the school's internal documents adopted by the parents' council in consultation with the pedagogical council, pursuant to Article 54(2) of the *Education System Act of 7 September 1991*. Their objective is to develop and deepen upbringing and preventive content included in the core curriculum, taking into account the school's specific profile (the educational stage, the pupils' environment, the parents' environment, the pupils' development needs, etc.). It also applies to the school's upbringing impact in areas specified in the *Family Planning, Human Embryo Protection and Conditions of Permissibility of Abortion Act of 7 January 1993*. This solution serves to ensure a systemic approach to the problems of children and young people as well as a consistency of the direction of upbringing activities applied in the home and school environments.

Teaching content guarantees pluralism of opinion, respect for world view differences, are reliable and correspond to the current stage of knowledge. Planned teaching content concerning knowledge about sexual life, rules of conscious and responsible parenthood, the values of the family, life in prenatal stage and methods and means of conscious reproduction will allow pupils to learn and understand the complexity of the subject matter, not only in its scientific aspect, but also in its social, cultural and ethical aspects. The implementation of teaching content of classes should represent a consistent whole with other upbringing and preventive activities of the school, in particular it should support the upbringing role of the family, promote an integral approach to human sexuality, develop pro-family, pro-health and pro-social attitudes. In addition, teaching content of widely understood human sexuality was also reflected in the teaching content of the following subjects: Natural Science, Biology, Physical Education and Ethics.

⁷ Such duty is also imposed under Article 6 of the Teacher's Charter Act of 26 January 1982 (Dz. U. of 2014, item 191, as amended). The pedagogical supervision of teachers employed in a school (including the implementation of the core curriculum), pursuant to Article 35(4) of the Education System Act, is exercised by its principal.