

PERMANENT MISSION
OF THE REPUBLIC OF POLAND
TO THE UNITED NATIONS OFFICE
AT GENEVA



MISSION PERMANENTE
DE LA REPUBLIQUE DE POLOGNE
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A GENEVE

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The Permanent Mission of the Republic of Poland to the United Nations Office at Geneva presents its compliments to the Office of the UN High Commissioner for Human Rights.

With reference to the joint communication sent on 23 April 2018 by the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; the Special Rapporteur on the right to privacy; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on the situation of human rights defenders (OL POL 3/2018), the Permanent Mission of the Republic of Poland has the honour to transmit herewith a response of the Government of the Republic of Poland, consisted of contributions from the Ministry of the Environment.

The Permanent Mission of the Republic of Poland avails itself of this opportunity to renew to the Office of the UN High Commissioner for Human Rights the assurances of its highest consideration.



Geneva, 23 May 2018

Special Procedures Branch
Office of the UN High Commissioner for Human Rights
Geneva

Reply of the Polish Government to the joint communication from the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; the Special Rapporteur on the right to privacy; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on the situation of human rights defenders.

Poland is preparing to host the most important global forum on world climate policy, the 24th session of the Conference of the Parties to the United Nations Framework Convention on Climate Change (COP24) with the 14th session of the Conference of Parties serving as the meeting of the Parties to the Kyoto Protocol (CMP 14) and the third part of 1st session of the Conference of Parties serving as a meeting of parties to the Paris Agreement (CMA 1-3).

The Act adopted by the Polish Parliament provides not only the opportunity of efficient organization and financing of conference, but also regulates how state institutions will cooperate during the preparatory period as well as during the conference itself to ensure full security for all its participants, both government delegations and observers, as well as residents of the Silesian agglomeration.

The provisions of the Act of 10 January 2018 on specific solutions related to the organization of the session of the Conference of the Parties to the United Nations Framework Convention on Climate Change in the Republic of Poland are in line with the International Covenant on Civil and Political Rights, ratified by Poland on 18 March 1977.

It should also be noted that all solutions are used for implementation and do not change the provisions of the basic agreement between the government of the Republic of Poland and the UNFCCC secretariat on hosting the conference (Host Country Agreement). The Minister of the Environment is responsible for the organization of the COP24 Conference on behalf of the Polish government.

The Ministry of the Environment noted that many organizations representing observers of climate negotiations expressed concerns that some of the adopted provisions may limit the right of social partners to manifest their views freely at the UN Climate Conference in Katowice and provide to services responsible for security unjustified access to data on conference participants.

The Ministry of the Environment wants to ensure that each COP24 participant will be warmly welcomed as a very important guest whose presence and activity will contribute to the most important aim of the COP24 Presidency, which is to provide a transparent, impartial and open for all parties negotiating process. According to the provisions of the Paris Agreement, the role of non-governmental partners in this process is extremely important and should be strengthened. The Government of the Republic of Poland assures that it is determined to run a continuous and open dialogue with organizations representing all environments of observers of the UNFCCC process.

Poland is a country with wide experience in chairing climate conferences and will do everything to uphold the excellent tradition of the three previous Presidencies in 1999, in 2008 and 2013. Poland was also the first COP presidency (in 2013), which invited to discuss on ministerial level representatives of two very important groups of observers - business and representatives of cities and regions.

In 2018, the COP will also be the place of Talanoa Dialogue. We fully share the view that the course of the dialogue, the widest possible participation of non-governmental organizations (NGOs) in its preparatory phase, and the inclusion of observer representatives in the ministerial political dialogue will be crucial to creating conditions for the COP24 Conference to adopt a package of guidelines implementing the Paris Agreement. We hope that all observer communities will support the Parties to the Agreement on the adoption of the necessary decisions that will enable sustainable economic transformation and fair change in the labor market, to provide a climate neutral development of all countries, especially developing ones.

Referring to specific issues raised in the joint communication from special procedures, we present the following explanations, which should dispel doubts about the intentions of the Polish authorities.

1. Participation of observer organizations in the COP24 Conference.

According to art. 7.1 letter f) of the draft Agreement¹ (HCA COP 24) between the Government of the Republic of Poland and the Secretariat of the United Nations Framework Convention, Poland will undertake initiatives aimed at promoting and facilitating the participation of observer organizations in preparations for the COP24 Conference.

The deliberations of the COP24 Conference will be open to observer organizations, providing non-governmental organizations with an active participation in the discussion, including access to information.

The organizers will provide the observer organizations with appropriate facilities, i.e. providing space for activity during the Conference, both in the conference facility and outside it.

2. Organization of assemblies during the COP24 Conference.

The regulations on public assemblies applicable in Poland do not differ from those applied in other EU Member States. The organizer of the meeting is obliged to submit such an intention to the competent authorities that register such an event. At the same time, the organizer is responsible for the lawful conduct of the manifestation.

The provisions of the Act of 10 January 2018 on specific solutions related to the organization of the session of the Conference of the Parties to the United Nations Framework Convention on Climate Change in the Republic of Poland do not limit the organization of meetings, subject to prior notification.

The Act introduced valid only in the city of Katowice from 0000 on November 26, 2018 till 2359 on 16 December 2018, a prohibition on participation in spontaneous assemblies referred to in art. 3(2) of the Act of 24 July 2015 - Law on the Assemblies (Journal of Laws item 1485, from 2017 item 579 and from 2018 item 138). Under the provisions of the Act - Law on the Assemblies, a spontaneous assembly is a gathering which takes place in connection with a sudden and impossible to predict event connected with the public sphere. The date of the COP 24 Conference is known. Therefore, it is possible to "book" in advance, by interested parties, organizing in Katowice from November 26, 2018

¹ Draft agreement between the Government of the Republic of Poland and the Secretariat of the United Nations Framework Convention on Climate Change, the Kyoto Protocol and the Paris Agreement on the 24th session of the Conference of the Parties to the United Nations Framework Convention on Climate Change, 14th session of the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol, the third part of the 1st Session of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement and the Session of the auxiliary bodies.

to December 16, 2018, meetings, marches, or other forms of public manifestation of their views by various groups of observers.

Bearing in mind the provisions of the Aarhus Convention, NGOs will have the right to submit their comments or opinions during the COP24 Conference.

Unfortunately, the modern world is not free from various threats of terrorist attacks and the international situation cause that services analyzing security threats on a regular basis have recommended the Polish parliament to adopt such a solution. The introduced ban is aimed at nothing other than ensuring security, for all participants of the Conference, persons participating in assemblies previously notified, as well as residents of Katowice.

3. Police powers

The COP24 conference is a special event which due to its international rank, substantive scope and persons involved in it may cause a temporary increase in terrorist, extremist and common crime threats.

As we have already mentioned, the security situation across Europe has changed. Additional, extraordinary authorization granted to the Police, serves only to ensure the safety of the COP24 Conference participants and will be valid for a limited time. The Act allows the Police to collect and process data about persons posing a threat to public safety and order. The Act also defines the scope and method of processing the collected data. The regulations also provide for the possibility, at the UN (United Nations Security Department) request, to check by the Polish Police whether a given person may pose a threat to public safety and order during the COP24 Conference. Police, based on the Act on the Police dated 6th of April 1990, has the right to download, obtain, collect, process and use information, including personal data, about:

- 1) persons suspected of committing offenses prosecuted by public indictment;
- 2) minors committing offenses prohibited by the Act as crimes prosecuted by public indictment

- also, without knowledge and consent of these persons.

Provisions of the Act of January 10, 2018 on *special solutions related to the organization of a session of the Conference of the Parties to the United Nations Framework Convention on Climate Change in the Republic of Poland* do not give the Police any new rights, but only define their own, directing them to activities related to ensuring protection and security during the COP24 Conference.

Activities carried out by the Police on the basis of the powers referred to in art. 17 of a/m Act will consist primarily of analysing information contained in police and non-police databases, both Polish and law enforcement agencies of other countries, and will primarily concern persons about whom information have been obtained that they may pose a threat or be an entity of prohibited acts.

Experience of the Polish Police resulting from securing, among others The NATO summit [Warsaw, 2016] and the World Youth Day [Krakow, 2016], where analogous regulations were applied, indicate the effectiveness and proportionality of this type of solutions. Both events took place without incidents, also since the introduced regulations allowed for taking appropriate actions in relation to the possible terrorist threat, as well as to eliminate several other dangerous situations, e.g. preventing engaging of persons related to the criminal environment to operate the project.

It should be remembered that the activities carried out by the Police will not directly affect the conference participants, nor will they violate their personal rights and dignity, and that the introduced provisions are of a temporary nature and are dictated only by the need to ensure public security and order.

Modern threats of attacks expose everyone to several nuisances. Anyone who travels by plane must accept the collection, keeping and processing by many countries of data sets much wider than those available to the Polish Police in connection with COP24. At airports, passports are scanned, pictures are made, and fingerprints are taken. Luggage is scanned, and travelers are subject to thorough checks. No one protests, because travelers understand that it serves their safety. We are counting on the fact that the participants of the negotiation process, who very often go through such security checks, will show understanding of the rules adopted in the interest of their safety. The tragic events in Paris shortly before COP21 resulted in the introduction of a state of emergency and a total ban on any manifestations at the time of COP21. The Paris Agreement was then adopted. In Katowice, however, we must implement this agreement together.

4. Polish activities supporting public participation in the COP24 Conference.

Poland will do everything to make the necessary, described above limitations as little as possible affect to the possibility of active and constructive participation of all observers, in accordance with the principles of the UNFCCC. Cooperation with NGOs and efforts to increase their participation in the whole COP24 Conference, in the Talanoa Dialogue and in accompanying events is one of the priorities of the Polish Presidency.

For this purpose, we plan to do the following.

- ✓ we will ask all UNFCCC accredited observers to suggest how to improve their participation in the Conference compared to previous climate summits;
- ✓ we will ask representatives of Polish NGOs to support foreign organizations (for example by indicating contact persons) when preparing applications for registration of meetings organized during COP24, as well as for all contacts with Polish authorities;
- ✓ we will ask the Mayor of Katowice to provide full information on the applicable procedures for the submission of assemblies in Katowice during the COP24 conference;
- ✓ we will organize periodic briefings and meetings with the representation of social partners to ensure full access to important information related to the COP preparations. We count on an active dialogue with all non-governmental partners of the UNFCCC process.