



Permanent Mission
of the Republic of Poland
to the United Nations Office
at Geneva

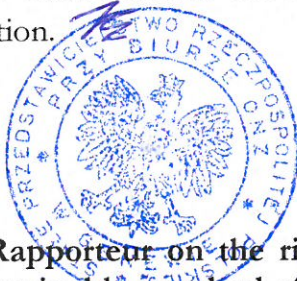
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The Permanent Mission of the Republic of Poland to the United Nations Office at Geneva presents its compliments to the Office of the UN High Commissioner for Human Rights.

With reference to a joint communication of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on violence against women, its causes and consequences and Working Group on the issue of discrimination against women in law and in practice (Ref: OL POL 1/2018) the Permanent Mission of the Republic of Poland has the honour to transmit to the Office of the High Commissioner for Human Rights its observations.

At the same time the Permanent Mission of the Republic of Poland would like to update the said observation with the information that on 2 July 2018 the Social Policy and Family Committee established extraordinary parliamentary subcommittee to examine the citizens' amendment bill to the Act of 7 January 1993 on Family-Planning, Human Embryo Protection and Conditions of Legal Pregnancy Termination of 4 January 2018 (print no 2146);

The Permanent Mission of the Republic of Poland to the United Nations Office at Geneva 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, 19 August 2019

Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health;
Special Rapporteur on violence against women, its causes and consequences;
Working Group on the issue of discrimination against women in law and in practice;
Office of the UN High Commissioner for Human Rights

Geneva

The reply of the Polish Government and the Polish Parliament (Sejm) to the Joint Communication from Special Procedures concerning the proposed amendment to the Act of 7 January 1993 on Family-Planning, Human Embryo Protection and Conditions of Legal Pregnancy Termination

The information by the Polish Ministry of Health and the Polish Ministry of Justice

a) Clarification of matters raised by the Representatives of the UN special procedures

Ad. 1. Additional information or comment including on the process of revision of this bill

The draft amending the Act of 7 January 1993 on family planning, protection of the human foetus and the conditions under which pregnancy termination is permissible, is a citizens' bill, brought by the Legislative Initiative Committee "Stop abortion" (Sejm Paper No. 2146) which was endorsed by more than 830 thousand people. It aims at repealing the current law which permits eugenic abortion. The bill was lodged under Art. 118(2) of the Polish Constitution and Art. 2, 7(2), 9(2) and 10(2) of the Act of 24 June 1999 on Executing the Legislative Initiative of Citizens, and Art. 32(1) of the Sejm Rules. Neither the legal basis under which the bill was lodged, nor the legislative process implemented so far raise any reservations because it is consistent with the applicable legislative regulations now in force.

The purpose of the draft, in accordance with the intention expressed in its justification, is to ensure that the constitutional right to life protection is not differentiated due to the health condition of the conceived child.

Pursuant to current wording of the Act of 7 January 1993 on family planning, protection of the human foetus and the conditions under which pregnancy termination is permissible, termination of pregnancy can be performed exclusively by a doctor when:

- 1) pregnancy poses a risk to the life or health of the pregnant woman;
- 2) prenatal tests or other medical reasons indicate that severe and irreversible foetal impairment or untreatable disorders threatening its life are highly likely;
- 3) it may be reasonably suspected that a pregnancy is the result of a crime.

The draft contained in the Sejm Paper No. 2146 proposes to repeal the condition indicated in point 2.

The draft, in accordance with the regulations in force in this respect, was a subject of parliamentary procedures:

- 1) 30 November 2017 - the draft was submitted to the Sejm of the Republic of Poland;
- 2) 4 January 2018 - the draft was referred to its first reading;
- 3) 10 January 2018 - the draft was the subject of first reading, as a result of which it was referred to the Social Policy and Family Committee, with the recommendation to consult its Justice and Human Rights Committee.

Referring to the part of the question regarding the amendment process, it needs to be indicated that in accordance with the provisions of the Constitution of the Republic of Poland of 2 April 1997 Sejm shall consider the draft in three readings. The Council of Ministers has the right to propose amendments to the bill during its second reading. The Sejm shall adopt laws by a simple majority of votes in the presence of at least half of the statutory number of deputies, unless the Constitution provides for a different majority. The same procedure applies to the resolutions adopted by Sejm, unless the Act or the resolution of the Sejm provides otherwise.

The act passed by the Sejm shall be forwarded by the Marshal of the Sejm to the Senate, who may adopt it without changes, adopt amendments or adopt a rejection thereof. A resolution of the Senate rejecting a bill or amendment proposed in the Senate's resolution shall be deemed adopted if the Sejm does not reject it by an absolute majority of votes in the presence of at least half of the statutory number of deputies. After completing the above proceedings, the Marshal of the Sejm shall forward the adopted Act to the President. The President signs the Act within 21 days from the date of presentation and orders its publication in the Journal of Laws of the Republic of Poland. Before signing the Act, the President may apply to the Constitutional Tribunal to determine the compliance of the Act with the Constitution. The President refuses to sign a law which the Constitutional Tribunal has declared incompatible with the Constitution. If the President did not apply to the Constitutional Tribunal, he may, with a reasoned request, pass the bill to the Sejm for reconsideration. After re-enacting the Act by the Sejm (by a 3/5 majority of votes in the presence of at least half of the statutory number of deputies), the President signs the bill within seven days and orders its publication in the Journal of Laws of the Republic of Poland. If the Sejm re-enacts the law, the President is not entitled to apply to the Constitutional Tribunal.

Ad. 2. Detailed information on how the Government intends to proceed with regard to the aforementioned bill which seems in contradiction with Poland's international human rights obligations

Due to the civic character of the draft, it should be pointed out that its further destiny depends solely on the result of parliamentary procedures and the decision of the President of the Republic of Poland. The procedure in this respect has been characterized above.

The Council of Ministers has the right to propose amendments to the bill during its second reading. If the Polish government decides to take a stand regarding the draft amendment, it will do so after its thorough analysis and with respect for the applicable legal norms.

b) Relation to international instruments:

There is no doubt that the international community regards each woman, man and child as a human being. For this reason (they being human) all these entities have human rights which are realized on the basis of the principle of equality.

Art. 6 of the International Covenant on Civil and Political Rights provides that “every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.” A similar principle is enshrined in Art. 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950. Art. 3 of the Universal Declaration of Human Rights is unequivocal in providing for the right of everyone to life, liberty, and security of person. The Declaration of the Rights of the Child, proclaimed by the UN General Assembly on 20 November 1959 in its Preamble also stipulates that everyone is entitled to all the rights and freedoms set forth in the Universal Declaration of Human Rights. There is no doubt that according to the definition set out in the Convention on the Rights of the Child proclaimed by the UN General Assembly on 20 November 1989, a child “means every human being below the age of eighteen years.” If we compare this definition to another provision from the Preamble of the Convention, which stipulates that “the child, by reason of his or her physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth,” it becomes unquestionably clear that all rights guaranteed to women and men are also addressed to every human being both before as well as after his or her birth, so also in the pre-natal phase of his or her life. For this reason the life and further physical, psychological, and spiritual development of a human being deserves to be protected. The need for special safeguards and care for the child was stated in the Geneva Declaration of the Rights of the Child of 1924 and its importance was reiterated in the Declaration of the Rights of the Child of 1959.

The Polish government is mainly criticized for allegedly putting women’s rights at risk by the possible entry into force of the amendment to the Act of 7 January 1993 on Family-Planning, Human Embryo Protection and Conditions of Legal Pregnancy Termination.

However, the above findings allow us to conclude that performing abortion or taking measures to prevent the development of a human being in a woman’s body is in fact contrary to the inherent human rights as set out in universally applicable international instruments.

It is worth noting in this context that Art. 24(1) of the Convention on the Rights of the Child recognizes the right of the child to the enjoyment of the highest attainable standard of health (...),

and the State Parties shall pursue full implementation of this right, in particular (...) to ensure appropriate pre-natal and post-natal health care for mothers. The quoted wording clearly shows that this right also applies to a child that has been conceived and is not yet born. Thus we can reasonably argue that the provision does not only ensure protection of the interests of pregnant women and mothers. The protection that States Parties to the Convention grant to human rights cannot be realized solely from the point of view of a mother/pregnant woman.

According to Art. 12 of the International Covenant on Economic, Social and Cultural Rights, “the States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health,” and the steps to be taken to realize this right shall include steps necessary for “the provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child.” We construe this provision to mean that while seeking to increase the live birth rate and the number of infants that are saved from death, for this reason possibilities to perform abortion should not be expanded.

Art. 7 of the International Covenant on Civil and Political Rights provides for the prohibition of torture, of cruel, inhuman or degrading treatment or punishment and the prohibition to subject a human being to medical or scientific experimentation without his or her free consent. Art. 5 of the Universal Declaration of Human Rights likewise prohibits torture or cruel, inhuman or degrading treatment or punishment.

It would be a gross over-interpretation to construe the lack of possibility to perform abortion as amounting to torture or degrading treatment. On the contrary, ignoring the opinion of the father of an unborn child about a possible treatment of the child, not to mention the termination of pregnancy could amount to degrading treatment. This also concerns the lack of respect for the prohibition of discrimination as set forth in Art. 14 of the European Convention on Human Rights. Taking into account only the opinion of the unborn child’s mother discriminates the man (the child’s father). It no doubt also discriminates the child who is deprived of the right to live and develop.

It needs to be highlighted that in Poland women’s rights are implemented to the fullest extent to make them comply with international instruments that bind us. Women are guaranteed universal access to health care, including maternity care (before and after giving birth to a child) and various welfare schemes to support families and single mothers. They are also guaranteed the assistance of specialists like psychological support.

Ad. 3. 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 line with international human rights standards.

Reproductive health is an important part of the definition of health, as an overall physical, mental and social wellbeing, not just the absence of disease or reproductive disorders in both sexes in all phases of life. Reproductive health concept contains such issues as puberty and menopause, fertility and infertility, family planning, health during pregnancy, childbirth and postpartum. The reproductive health determines the health of Poles, good health of the next generations and supports measures aimed at improving the demographic indicators.

In Poland everyone has the right for health protection. Polish citizens, regardless of their social or economic situation, have equal access to health care services financed by the public funds. The range of these services is defined by the law.

A special state protection is ensured in Poland to women in the period of pregnancy, childbirth and postpartum. The above mentioned protection is provided both in the national legislation as well as in the international agreements ratified by Poland.

The fundamental legal act of the Republic of Poland – the Constitution – ensures special protection by the State over pregnant women. Its article 68 (3) states that “Public authorities shall ensure special health care to children, pregnant women, disabled people and persons of advanced age”.

The public authorities are obliged to ensure special treatment to women in the period of pregnancy, childbirth and postpartum also by ratified international law acts. The range and terms of providing health care services financed by the public funds, as well as the tasks for public authorities to ensure an equal access to these services are defined in the Act of 24 August 2004 on health care services financed by the public funds. According to this Act the patient has ensured (and financed by the public funds) a certain range of services such as i.a. the health care given to women in the period of pregnancy, childbirth and postpartum, the infant care and the preliminary assessment of the infant health status and development. All women in the period of pregnancy, childbirth and postpartum are entitled to those services.

Given the need to provide women during pregnancy, at labour and postpartum with the best possible services, the Minister of Health issued a number of laws concerning the health of children and women, including:

- Regulation of 20 September 2012 on standards of conduct and medical procedures in providing health services in the area of perinatal care for women during physiological pregnancy, physiological childbirth, and postpartum and of infant care;
- Regulation of 9 November 2015 on standards of medical treatment for pain relief during labour;

- Regulation of 9 November 2015 on standards for obstetrics and gynaecology medical services in the field of perinatal care over the patient during pregnancy, childbirth, postpartum, in the cases of certain complications.

Bearing in mind the need to provide special care for pregnant women and their families, including, above all, the women in complicated pregnancies and in a situation of obstetrics failures, as well as children who were diagnosed with severe and irreversible disability or an incurable disease that threatens their lives (created in the prenatal period of the child's development or during childbirth) a comprehensive support provide to them. In this respect the Act of 4 November 2016 on the support of pregnant women and families "For Life" was adopted.

The solutions adopted in the Act result from the necessity to provide families with a sense of security, in particular when a situation of irreversible impairment or an incurable disease threatening the child's life may occur. State care within the scope of the Act includes access to appropriate health care services as well as to family policy instruments.

The comprehensive support program for families "For Life" adopted on the basis of the above mentioned Act includes a number of tasks defined under seven priorities. These tasks in the area of health include coordinated care for a pregnant woman, with particular emphasis on complicated pregnancies (including psychological care); diagnosis and prenatal therapy as well as palliative and hospice care.

Moreover, the provisions of the Act of 27 August 2004 on healthcare services financed from public funds and the Regulation of the Minister of Health of 6 November 2013 on guaranteed services in the field of outpatient specialist care, provide women with health care including specialized health services in the field of gynecology and obstetrics. There are two types of services: obstetric-gynecological advice and gynecological advice for girls. Reproductive health care is provided as part of these services.

Currently in Poland modern contraceptives are registered and accessible. Those contraceptives are medicinal products or medical devices, as well as medicines that are used during pregnancy and are necessary to take care of the embryo, provide the pregnant woman with medical care and used for purpose of conscious conception.

It is also worth noting that the issue of reproductive health is included in the National Health Programme 2016-2020. The National Health Programme is a core public health policy document. It identifies operational objectives which contribute to the overall strategic goal, which is increasing life expectancy, improving health and health related quality of life, including reproductive health, and

reducing social inequalities in health. One of the operational objectives is to improve reproductive health. In order to achieve this goal, a number of actions were planned within the National Health Programme, such as: health education as well as information and prevention activities addressed to different populations, educational activities for health care personnel, inclusion of reproductive health issues in medical, biological, psychological and pedagogical curricula, as well as in professional development programs for physicians, nurses and midwives, research on reproductive health and its social determinants.

A significant initiative worth to be mentioned in this field is the Programme for complex protection of reproductive health in Poland 2016-2020. This is a health policy programme established by the Minister of Health.

Additional information provided by the Polish Parliament (Sejm)

The last amendment to the Act of 7 January 1993 on Family-Planning, Human Embryo Protection and Conditions of Legal Pregnancy Termination was introduced by the Amendment of 17 December 2001 to the Act on Social Assistance, Act on Family-Planning, Human Embryo Protection and Conditions of Legal Pregnancy Termination, Act on Vocational and Social Rehabilitation and Employment of Persons with Disabilities, Act on the Social Insurance System as well as the Act on Old-Age Pensions and Disability Pensions Paid from the Social Insurance Fund. In its Art. 2(1) (2), which provides that central and local government organs, within their competencies laid down in special provisions, are obligated to ensure medical, social and legal care to pregnant women, the words "during the time of pregnancy and birth and after giving birth" were replaced by "according to the rules set forth in the Act of 29 November 1990 on Social Assistance."

During the 8th Sejm, two citizens' amendment bills were lodged:

1. Citizens' amendment bill to the Act of 7 January 1993 on Family-Planning, Human Embryo Protection and Conditions of Legal Pregnancy Termination and to the Act of 6 June 1997 Penal Code of 19 August 2016 (print no. 784). The bill was lodged on 19 August 2016 (submitted by Joanna Banasiuk). The goal of the bill was to introduce a complete prohibition of pregnancy termination. The justification of the bill reads: "The aim of the initiative is to restore all human rights with focus on the right to live to the most vulnerable people who cannot defend themselves. The bill also ensures the realization of the principle of equality before the law and aims at stopping legal discrimination of people in pre-natal stage of their development." The Sejm referred the bill to the Justice and Human Rights Committee for further work. In its report of 5 October 2016, the Committee asked the High Chamber to

reject the bill (print no. 907). On 6 October 2016, the Sejm voted against the bill (vote count: 352 in favour, 58 against, 18 abstained). The Sejm's Bureau of Research issued a certificate on the bill's conformity with EU law.

2. Citizens' amendment bill to the Act of 7 January 1993 on Family-Planning, Human Embryo Protection and Conditions of Legal Pregnancy Termination of 4 January 2018 (print no 2146). The bill was lodged on 30 November 2017 (submitted by Kaja Godek). Its objective is to repeal the admissibility of eugenic abortion. During the first reading in the Sejm on 10 January 2018, the bill was sent to the Social Policy and Family Committee with a recommendation to ask the Justice and Human Rights Committee for opinion (at the moment of handing over this information, the date of its session was not yet fixed). The Sejm's Bureau of Research issued a certificate on the bill's conformity with EU law. The goal of the bill is to:

- repeal point (2) of Art. 4a (1), which reads:

“1. Pregnancy may be terminated only by a physician, when:

2) prenatal examinations or other medical conditions indicate that there is a high probability of a severe and irreversible foetal defect or incurable illness that endangers the foetus's life.”

- and the consequences of repealing this provision.

In addition, the 8th Sejm received three bills which address a subject matter similar to the one covered by the said act:

- print no 830 – a citizens' bill on the rights of women and conscious parenthood, lodged on 4 August 2016 (submitted by Barbara Nowacka). The bill was aimed at regulating the right of women to self-determination as regards issues of procreation including access to sexual education and modern methods of family planning, and provided for the loss of force of the Act on Family-Planning, Human Embryo Protection and Conditions of Legal Pregnancy Termination. During the first reading in the Sejm on 23 September 2017, the bill was rejected in voting on the motion to reject the bill (tally: 230 in favour, 173 against, 15 abstained). The Sejm Bureau of Research issued a certificate on the bill's conformity with EU law.
- print no 2060 – citizens' bill on the rights of women and conscious parenthood, lodged on 23 October 2017 (submitted by Barbara Nowacka). The bill aimed at “creating a modern scheme that would allow a real (and not only declaratory) realization of reproductive rights and protection of reproductive health and regulating issues relating to the right of information,

education, counseling and facilitating measures”; The bill provided, among others, for the invalidation of the Act on Family-Planning, Human Embryo Protection and Conditions of Legal Pregnancy Termination. During the first reading in the Sejm on 10 January 2018, the bill was rejected in the vote on the motion to reject the bill (tally: 202 in favour, 194 against, 7 abstained). The Sejm’s Bureau of Research issued a certificate on the bill’s conformity with EU law.

- deputies’ bill on conscious procreation – lodged on 7 February 2018 by a group of deputies from the Nowoczesna, PSL, and UED parliamentary clubs. At the moment of handing over this information, the project was not given a print number. The grounds for this bill read: “the bill on the rights of women and conscious parenthood was drafted by the civic committee Ratujmy Kobiety (Save Women) 2017 and it was based on long-standing demands of non-governmental organizations that advocate women’s rights. The citizens’ bill was not referred to the Committee for work during the voting on 11 January 2018, so it is re-lodged as deputies’ bill.” The Sejm’s Bureau of Research issued a certificate on the bill’s conformity with EU law.