

POLAND

Follow Up Report

Helsinki Foundation for Human Rights

(as of 15/02/2012)

CCPR/C/POL/CO/6

October 2010 (adoption of the Concluding Observations)

October 2011 (Deadlines for the follow-up report)

Current Status: State Follow-up report is overdue

Recommendation 10	Grade	Overview
The State party should amend the Law on Domestic Violence to empower police officers to issue immediate restraining orders at the scene.	B2	The Criminal Proceeding Code (Journal of Law 1997 No 89 Item 55) regulates the issue; restraining orders can be issued only by prosecutors or judge in the pre-trial. No amendment towards enabling police officers to issue immediate restraining orders was taken.
The State party should incorporate domestic violence issues into the standard training offered to law enforcement and judicial officials.	B1	Police officers have been encompassed into relevant trainings; no information shows that judicial officials are also included into similar training courses.
The State party should ensure that victims of domestic violence have access to assistance, including legal and psychological counseling, medical help and shelter.	B1	A new regulation was adopted to address the issue (including legal, medical, psychological supports and shelters), the effectiveness of which is not assessable yet.
Recommendation 12	Grade	Overview
The State party should conduct research into and provide statistics on the use of illegal abortion.	C	No relevant research has been done; no statistics on illegal abortion are available. There were data on the number of annual legal abortions available provided by the State's report, however its credibility is questionable.
The State party should introduce regulations to prohibit the improper use and performance of the "conscience clause" by the medical profession.	C	No measures or monitor mechanism have been implemented to prohibit the improper use of 'conscience clause'. Its usage is not limited to individual doctor, but by the entire health facilities.
The State party should also drastically reduce medical commissions' response deadline in cases related to abortions.	C	No amendment of the relevant law has been done. Therefore the deadline remains unchanged. This de facto delay, together with the heavy burden of proof imposed on patients, may discourage many patients from seeking for the procedure.
The State party should strengthen measures aimed at the prevention of unwanted pregnancies by inter alia making a comprehensive range of contraceptives widely available at an affordable price and including them on the list of subsidized medicines.	C	Contraceptive medicines and devices remain unsubsidized after the newest relevant act adopted in May 2011. Besides, access to such medicines is limited especially in cases of minors below the age of 16 since doctors refuse to prescribe it as the consent from their parents / legal guardians is required.

Legend

A: State party response / action largely satisfactory

B1: Substantive action taken, but additional information required

B2: Initial action taken, but additional information/action required

C: No action taken to implement the recommendation

Recommendation 18	Grade	Overview
The State party should take measures to ensure that the detention of foreigners in transit zones is not excessively protracted and that, if the detention is to be extended, the decision is adopted by a court.	N/A	No information on relevant facts is received.
The State party should ensure that the regime, services and material conditions in all deportation detention centers are in conformity with minimum international standards.	C	<ul style="list-style-type: none"> ✓ In general: legal assistance and health service are not sufficient (partially due to language problem) in detention facilities. Detention facilities resemble a lot of prisons; detainees are lack of diversity in spending free time. Detainees' health problem has become an obstacle for their release. ✓ Especially in case of children: Relevant domestic laws on child's rights are also applicable to migrant children. However in detention facilities migrant children cannot access to formal education. Classes taught by non-professional teachers are provided in most of facilities, but they are lack of standardization and not age-divided. ✓ Legal ground for detention: Detention of irregular migrants has been applied as a regular measure, not as the last resort. Justification for such decision from domestic courts is not always sufficient or clear.
The State party should ensure that detained foreigners have easy access to information on their rights, in a language they can understand, even if this requires the provision of a qualified interpreter.	C	Interpreters or related service are not provided. Guards and doctors have not received language trainings, and thus confronting with difficulties in explaining the rights of detainees and in providing medical care (both physical and psychological). Legal documents concerning the decisions on asylum procedures are partially translated; decisions on deportation are not translated into the native language of detainees.

Legend

A: State party response / action largely satisfactory

B1: Substantive action taken, but additional information required

B2: Initial action taken, but additional information/action required

C: No action taken to implement the recommendation

Paragraph 10

The Committee expresses its concern about: (a) the continued problem of domestic violence; (b) the high percentage of dismissals of domestic violence cases at the prosecution level; (c) lengthy prosecution procedures, preventing victims from filing a case and increasing the vulnerability of victims; and (d) an insufficient number of specialist support centers for victims of domestic violence. It also notes that, although the law provides for restraining orders against perpetrators, police do not have the authority to issue immediate restraining orders at the scene of an alleged crime (art. 3).

The State party should amend the Law on Domestic Violence to empower police officers to issue immediate restraining orders at the scene. It should incorporate domestic violence issues into the standard training offered to law enforcement and judicial officials. It should ensure that victims of domestic violence have access to assistance, including legal and psychological counseling, medical help and shelter.

Recommendations from the HR Committee	Grade	Action taken by the State	Additional measures needed	Other comments
The State party should amend the Law on Domestic Violence to empower police officers to issue immediate restraining orders at the scene.	B2	Prosecutors or judge in the pre-trial are now allowed issuing such order, following the amendment of Criminal Proceeding Code passed on 1 st of August 2010.	Amendment of relevant laws, enabling police officers to issue immediate restraining orders.	HFHR observes that under Polish law police officers are not allowed yet to issue restraining orders at the scene.
The State party should incorporate domestic violence issues into the standard training offered to law enforcement and judicial officials.	B1	According to the last Report on Implementation of National Program Against Domestic Violence, (concerning the 2010), police officers are one of the groups that are encompassed with specialist training on prevention of domestic violence. Analysis of the data indicates that in 2010 there were 5 519 officers (including police officers, curators and social workers) have completed the training.	Providing similar trainings to judicial officials as well. If there are already such programs, make the data available to public.	Specific data on the program of the course and the number of enforcement judicial officials participating in such trainings is not available.
The State party should ensure that victims of domestic violence have access to assistance, including legal and psychological counseling, medical help and shelter.	B1	On 22th of February, the Minister of Labour and Social Policy adopted the regulation concerning the standards of basic support for victims of domestic violence. The act specifies that the victim of domestic violence is provided with inter alia adequate protection against the perpetrator, immediate legal, medical and psychological counselling and shelter.	The assessment of the effectiveness of the new regulation may become necessary.	Due to short period of existence of the mentioned regulation in the Polish legal system, it is still impossible to assess its effectiveness.

Legend

A: State party response / action largely satisfactory

B1: Substantive action taken, but additional information required

B2: Initial action taken, but additional information/action required

C: No action taken to implement the recommendation

Paragraph 12

The Committee is concerned that, in practice, many women are denied access to reproductive health services, including contraception counseling, prenatal testing and lawful interruption of pregnancy. It notes with concern that procedural safeguards contained in article 39 of the Act of 5 December 1996 on the Medical Profession (“conscience clause”) are often inappropriately applied. It also notes with concern that illegal abortions are reportedly very common (with estimates of 150,000 illegal abortions per year), that unsafe abortions have, in some cases, caused women’s deaths and that those aiding or abetting abortions (such as husbands or parents) have been convicted. It finally notes with concern that a medical commission’s decision on a complaint relating to a dissenting medical opinion about an abortion can be unduly delayed because of the 30-day response deadline (art. 6).

The State party should urgently review the effects of the restrictive antiabortion law on women. It should conduct research into and provide statistics on the use of illegal abortion. It should introduce regulations to prohibit the improper use and performance of the “conscience clause” by the medical profession. The State party should also drastically reduce medical commissions’ response deadline in cases related to abortions. Finally, the State party should strengthen measures aimed at the prevention of unwanted pregnancies by inter alia making a comprehensive range of contraceptives widely available at an affordable price and including them on the list of subsidized medicines.

Recommendations from the HR Committee	Grade	Action taken by the State	Additional measures needed	Other comments
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Legend

A: State party response / action largely satisfactory

B1: Substantive action taken, but additional information required

B2: Initial action taken, but additional information/action required

C: No action taken to implement the recommendation

<p>The State party should conduct research into and provide statistics on the use of illegal abortion.</p>	<p>C</p>	<p>Pursuant to art. 9 of the Act on Family Planning, Human Embryo Protection and Conditions of Permissibility of Abortion (Journal of Law, 1993 No 17 Item 78, "Act on Family Planning"), the Government is obliged to present the report on the implementation of the Act and its consequences annually till 31th of July. The newest report of 2010 was sent more than two months later after this time limit passed (on 19th of October 2011); HFHR points out that the Report does not include any statistical data concerning illegal abortion in Poland.</p>	<p>Conducting research on current situation of illegal abortion at national level, and providing relevant information available to public.</p>	<p>HFHR would like to underline that</p> <ul style="list-style-type: none"> ✓ The statistic data contained in the Report are extremely laconic since they only mentioned the number of legal procedures carried out in Poland. ✓ The official number of legal procedures is very low. (In 2010, 641 procedures of legal abortion were carried out. No comprehensive analysis explaining such a small number of procedures was presented. ✓ The data collected by the Government highly questionable and unrealistic as it does not reflect the real situation. HFHR invokes the official statistics provided by the Polish National Police, according to which there were 1816 cases of rape reported in 2009, while there was only 1 legal abortion performed. <p>Consequently, HFHR would like to point out that the only thing proven by a low number of legal abortions presented by the Government is that women find it less complicated to terminate pregnancies illegally than to follow the procedure under the Act on Family Planning.</p>
<p>The State party should introduce regulations to prohibit the improper use and performance of the "conscience clause" by the medical profession.</p>	<p>C</p>	<p>HFHR observes no measures were undertaken in aim to prevent the abuse of "conscience clause" by the medical profession. Accordingly, no monitoring mechanisms were adopted.</p>	<p>Either legislative or administrative measures are necessary to address the issue.</p>	<p>HFHR notes the negative phenomenon of expanding the concept of "conscience clause" since it happens to be invoked by entire health facilities, not by individual physicians.</p>

Legend

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C: No action taken to implement the recommendation

<p>The State party should also drastically reduce medical commissions' response deadline in cases related to abortions.</p>	<p>C</p>	<p>No legal actions were taken by the State in order to introduce the amendments to Act on Patients' Rights and Patients' Spokesman (Journal of Law 2009 No 52 Item 417; "Act on patients' Rights") and as a result shorten the medical commissions' response deadline in cases in which women seek for legal abortion.</p>	<p>A gradually reduction of the temporal deadline is necessary either by the amendment of the law or by administrative measures. Meanwhile the burden of proof imposed on patient shall also be reviewed.</p>	<p>HFHR would like to underline that:</p> <ul style="list-style-type: none"> ✓ Due to the 30-day time limit for the Medical Commissions to review the doctor's decision, the procedure provided by the Act on Patients' Rights fails to answer the needs of women seeking legal abortion. ✓ It should be noted that as far as access to abortion is concerned, a 30-day time limit is excessive because, in most of the cases, a pregnancy may be legally terminated only during its first 12 weeks. ✓ HFHR further observes that since the duty to submit all relevant medical documents and provide the legal basis for objection is imposed on the patient, patients may be discouraged from using the review procedure. <p>As a conclusion, HFHR underlines that the review mechanism remains ineffective for women and girls seeking legal abortion and places them in the most humiliating position.</p>
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Legend

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B1: Substantive action taken, but additional information required

B2: Initial action taken, but additional information/action required

C: No action taken to implement the recommendation

<p>The State party should strengthen measures aimed at the prevention of unwanted pregnancies by inter alia making a comprehensive range of contraceptives widely available at an affordable price and including them on the list of subsidized medicines.</p>	<p>C</p>	<p>HFHR notes that newly introduced act concerning the refund of medicines does not provide any changes in the field of rules of subsidizing contraceptive means and devices. As a result they remain unsubsidized.</p>	<p>Taking either legislative or administrative measures to make contraceptive medicines available to public.</p>	<p>HFHR observes that</p> <ul style="list-style-type: none"> ✓ The access to contraceptives may be particularly limited as some doctors refuse to prescribe post-coital contraceptives on the ground of conscience clause. Such situation may also relate to pharmacists. ✓ It may be especially difficult for adolescents below the age of 16. According to the present regulations they cannot be prescribed any medication, as all the decisions concerning their health and medical treatment have to be made by their parents or statutory guardians. Accordingly, adolescents aged 16 to 18 may obtain emergency contraception only if the cumulative consent is submitted to the doctor.
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Legend

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B1: Substantive action taken, but additional information required

B2: Initial action taken, but additional information/action required

C: No action taken to implement the recommendation

Paragraph 18

The Committee is concerned about the absence of specific laws concerning the detention of foreigners after the deadline for their expulsion and that some have been detained in transit zones beyond the deadline of their expulsion without a court order. It also notes with concern reports of inadequate medical assistance in some detention centers for asylum-seekers, as well as of poor conditions in transit zones and deportation detention centers where foreign nationals awaiting deportation are held. Finally, the Committee is concerned about reports that detained foreigners are often unable to learn about their rights, as boards containing such information are often displayed only in offices and interrogation rooms and only in Polish, and some interpreters are not sufficiently qualified to translate (art. 12 and 14).

The State party should take measures to ensure that the detention of foreigners in transit zones is not excessively protracted and that, if the detention is to be extended, the decision is adopted by a court. The State party should ensure that the regime, services and material conditions in all deportation detention centers are in conformity with minimum international standards. Finally, the State party should ensure that detained foreigners have easy access to information on their rights, in a language they can understand, even if this requires the provision of a qualified interpreter.

Recommendations from the HR Committee	Grade	Action taken by the State	Additional measures needed	Other comments
The State party should take measures to ensure that the detention of foreigners in transit zones is not excessively protracted and that, if the detention is to be extended, the decision is adopted by a court.	N/A	None information available	N/A	HFHR does not have information on that the detention of foreigners in transit zones is excessively protracted. An alien may be detained for a period not exceeding 48 hours. Police or Border Guards should make a request to the court ASAP for placing an alien into the guarded centre or in the arrest for the purpose of expulsion.

Legend

A: State party response / action largely satisfactory

B1: Substantive action taken, but additional information required

B2: Initial action taken, but additional information/action required

C: No action taken to implement the recommendation

<p>The State party should ensure that the regime, services and material conditions in all deportation detention centers are in conformity with minimum international standards.</p>	<p>C</p>	<p>No measures taken towards the improvement of the conditions in detention facilities.</p>	<ul style="list-style-type: none"> ✓ In general: measures need to be taken to improve legal and health service provided in detention facilities. ✓ In case of children: besides above, possibility of access to formal education should be provided. ✓ Legal grounds for detention: a review and surveillance mechanism may be necessary. 	<p>HFHR observes that:</p> <ul style="list-style-type: none"> ✓ In general: <ul style="list-style-type: none"> ➤ The State has taken some measures towards the improvement of the conditions in detention centers. Though still prisonlike, new facilities are established; playgrounds are built for child. ➤ Legal guarantees during the detention period – including lack of access to free legal assistance are insufficient. Health care, psychological and psychiatric support to aliens cannot be considered as adequate. Beside the language problem will be mentioned below, doctors are not trained to work with people of a different cultural background, or able to work with victims suffering PTSD from traumatic experiences or tortures. This leads to the fact that very seldom can a foreigner be released from a detention facility due to his/her poor health condition, which constitutes a serious breach of one of the most basic rights vested to the foreigners. ➤ The CPT also recommends that the Polish authorities should take the necessary steps such as nursing service during weekend; availability of a regular psychologist; prevention of transmissible diseases; qualified interpreters for medical service; medical confidentiality shall be kept. ➤ There are limited activities and little diversity in possible ways of spending free time, as well as the bad state of the premises in which the detainees
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Legend

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B1: Substantive action taken, but additional information required

B2: Initial action taken, but additional information/action required

C: No action taken to implement the recommendation

				<p>are located and lack of equipment. Detainees ought to be able to take part in some cultural and educational meetings, entertainments; be able to contact unrelated people including people of the opposite sex; rooms should be always open and access to walks should be unlimited.</p> <p>✓ In case of children:</p> <ul style="list-style-type: none"> ➤ Domestic laws and policies on Children’s rights are applicable to migrant children, including children in the return procedure. Polish legislation refers explicitly to the Convention on the Rights of the Child (the CRC). ➤ All detention centers do not provide the possibility of enrolling minors in local public schools being considered. This is against both the CRC and the Polish Constitution. Although many of them organize classes for children (with the exception of Biała Podlaska and Lesznowola Guarded Centers), classes are conducted by employees, not by professional teachers. Classes are not organized with age division; nor uniform program allowing for standardization of the education provided in guarded centers. Therefore the Halina Nieć Legal Aid Center recommends introducing by the Ministry of Education specific guidelines on education of children in guarded centers for foreigners. ➤ The best interests of the child are not taken into consideration in a sufficient manner. There are no facilities specifically adjusted and
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Legend

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B2: Initial action taken, but additional information/action required

C: No action taken to implement the recommendation

				<p>only for children. The Polish Act on Aliens also does not stipulate that the best interests of the child should be considered by the court when ruling on the subject of detention. Immigration status of the family and securing the issuance and execution of the expulsion order predominates over the welfare of migrant children.</p> <p>✓ Legal ground for detention:</p> <ul style="list-style-type: none"> ➤ The detention of irregular migrants is applied as a regular measure, not as measure of last resort. Usually justifications of the court rulings on placing an asylum seeker in detention are insufficient and do not clarify, why detention was applied in a particular case
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Legend

A: State party response / action largely satisfactory

B1: Substantive action taken, but additional information required

B2: Initial action taken, but additional information/action required

C: No action taken to implement the recommendation

<p>The State party should ensure that detained foreigners have easy access to information on their rights, in a language they can understand, even if this requires the provision of a qualified interpreter.</p>	<p>C</p>	<p>No measures taken towards to ensure detained foreigners access to information in a language they can understand.</p>	<p>Interpretative service shall be provided, especially regarding their access to health care, communication with guards and access to legal proceedings and documentations.</p>	<p>HFHR observes that:</p> <ul style="list-style-type: none"> ✓ The situation of access to medical care is unsatisfactory, partially due to the difficulties in communication between doctors and patients. Psychologists have no knowledge of foreign languages, nor are qualified interpreters provided. ✓ All Border Guards working in direct contact with detainees should also have specialised training. It would be desirable for designated officers to receive language training in the most frequently spoken foreign languages (Russian and English). ✓ Foreigners ought to be provided permanent access to interpreters - mainly at the time of admitting them to the centre and informing them of the rules they must observe and rights that are vested in them. Though the decisions on detention are fully translated into the native language of detainees; decisions on asylum procedures are only partially translated; decisions on deportation are not translated. ✓ A big challenge to be dealt with is the problem of communication between detained migrants and Border Guards. The most crucial issue is to improve the language competence of the Border Guard officers so that they can communicate with the detainees at least in the basic languages.
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Legend

A: State party response / action largely satisfactory

B1: Substantive action taken, but additional information required

B2: Initial action taken, but additional information/action required

C: No action taken to implement the recommendation