



ORDO IURIS

INSTITUTE FOR LEGAL CULTURE

Warsaw, 21st of June 2019

**Honourable Member
United Nations
Committee against Torture**

*Dear Madam or Sir, Member of the United Nations
Committee against Torture,*

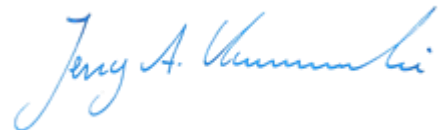
The *Ordo Iuris* Institute for Legal Culture together with **Europejska Federacja dla Życia i Godności Człowieka One of Us, Federacja Stowarzyszeń Rodzin Katolickich w Europie FAFCE, Fundacja Centrum Wspierania Inicjatyw dla Życia i Rodziny, Fundacja Jeden z Nas, Fundacja Mamy i Taty, Fundacja Małych Stópek, Fundacja Pro – prawo do życia, Fundacja Życie i Rodzina, Obywatelski Komitet Inicjatywy Ustawodawczej #Zatrzymaj Aborcję, Polska Federacja Ruchów Obrony Życia, Stowarzyszenie Rodzice Chronią Dzieci** welcome the opportunity to assist the United Nations Committee against Torture in its adoption of the Concluding Observation for Poland on its 67th Session (27 July - 29 August 2019).

The *Ordo Iuris* Institute for Legal Culture is an independent legal organization incorporated as a foundation in Poland. It gathers academics and legal practitioners aimed at the promotion of a legal culture based on the respect for human dignity and rights. The *Ordo Iuris* pursues its objectives by means of research and other academic activity as well as advocacy and litigation.

The *Ordo Iuris* Institute is among the organizations that are consulted by the Polish Government within the legislative process. Third party interventions (including *amici curiae* briefs) by *Ordo Iuris* Institute have been accepted by Polish courts of all levels, including the Supreme Court of the Republic of Poland. The Institute has been also permitted by the President of the European Court of Human Rights to deliver third party interventions and allowed by the President

of the European Committee of Social Rights to submit observations. The *Ordo Iuris* Institute submitted its opinions to the Venice Commission, the Secretary General of the Council of Europe, Commissioner for Human Rights, the Committee on Political Affairs and Democracy of the PACE and constitutional courts of numerous countries. The experts of the Institute are consulted and allowed to deliver interventions in matters of democracy and the rule of law i.a. by the Monitoring Committee of the Parliamentary Assembly of the Council of Europe and by the Department of State of the United States of America. Moreover, *Ordo Iuris* Institute has ECOSOC consultative status with the United Nations.

We hope the Committee against Torture will find our intervention supportive.



Jerzy Kwaśniewski
President of the Board
Ordo Iuris Institute for Legal Culture

**Alternative Report of the *Ordo Iuris* Institute
to the United Nations Committee against Torture
the 67th Session of the Committee (27 July - 29 August 2019)**

Supported by:

Europejska Federacja dla Życia i Godności Człowieka One of Us

Dignit Chaussée de Wavre 205
1050 Brussels

Federacja Stowarzyszeń Rodzin Katolickich w Europie FAFCE

19 Square de Meeus
1050 Brussels

Fundacja Centrum Wspierania Inicjatyw dla Życia i Rodziny

ul. Nowogrodzka 42/501
00-695 Warszawa

Fundacja Jeden z Nas

ul. Bernardyńska 3/55a
31-069 Kraków

Fundacja Mamy i Taty

ul. Patriotów 110/316
04-844 Warszawa

Fundacja Małych Stópek

ul. Św. Ducha 9
70-205 Szczecin

Fundacja Pro – prawo do życia

Pl. Jana Henryka Dąbrowskiego 2/4 lok. 32
00-055 Warszawa

Fundacja Życie i Rodzina

ul. Ogrodowa 28/30 lok.104
00-896 Warszawa

Obywatelski Komitet Inicjatywy Ustawodawczej #Zatrzymaj Aborcję

ul. Ogrodowa 28/30 lok.104
00-896 Warszawa

Polska Federacja Ruchów Obrony Życia

ul. Edwarda Dembowskiego 11
02-784 Warszawa

Stowarzyszenie Rodzice Chronią Dzieci

ul. Semaforowa 85/5
52-115 Wrocław

Contact:

Ordo Iuris Institute for Legal Culture

ul. Zielna 39, 00-108 Warszawa

tel.: +48 22 40438 50; e-mail: biuro@ordoiuris.pl

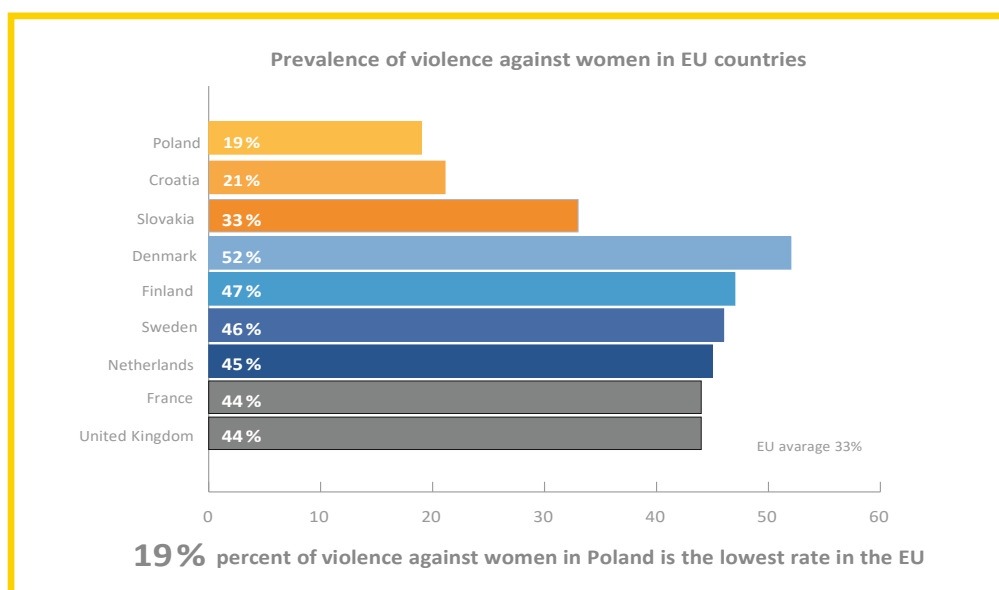
Table of Contents

I.	<u>Violence against women, domestic violence</u>	6
II.	<u>Abortion</u>	8
1.	<u>Abortion procedures</u>	8
2.	<u>Application of the “conscience clause”</u>	10
3.	<u>Objections to the medical opinion or report</u>	11
4.	<u>Accessibility of prenatal examinations</u>	13
5.	<u>Statistics on illegal procedures of abortion homicide of the unborn children</u>	13
III.	<u>Freedom from torture or cruel, inhuman or degrading treatment or punishment</u>	15

Warsaw, 21 June 2019

I. Violence against women, domestic violence

The system of counteracting domestic violence in Poland is one of the most effective in Europe. This fact is confirmed by the European Union Fundamental Right Agency's analysis of the phenomenon of the violence against women.¹ According to the research, only 19% of Polish women have been subject to violence with the EU-average 33%.²



Source: European Union Agency for Fundamental Rights, *Violence against women: an EU-wide survey. Main results*, Luxembourg 2014, <http://fra.europa.eu/en/publication/2014/violence-against-women-eu-wide-survey-main-results-report> (accessed on 19 June 2019).

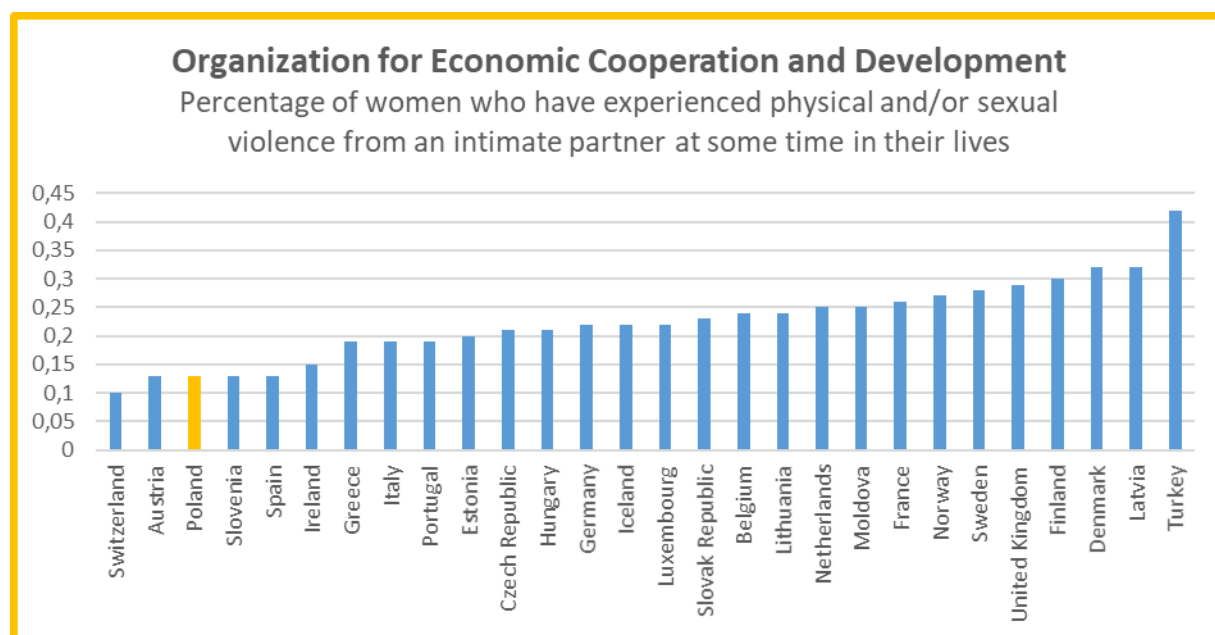
In comparison to the entire European Union, Poland is characterized by the lowest rate of violence experienced by women from the current or former partner. In addition, Poland has the highest reporting rate of violence in the European Union. Poland is also distinguished by a small number of cases of sexual abuse of women over the age of 15 and during the last 12 months preceding the interview (almost two times less than the European average, which is the third result in the Union, on a par with Slovenia). Poland also goes well in the light of statistic on violence against girls (compared to other EU countries, to beat girls is rare in Poland). Only 14% of surveyed

¹ European Union Agency for Fundamental Rights, *Violence against women: an EU-wide survey. Main results*, Luxembourg 2014 http://fra.europa.eu/sites/default/files/fra-2014-vaw-survey-main-results_en.pdf, p. 28–29 [last access: 19.06.2019].

² European Union Agency for Fundamental Rights, *Violence against women:..., Op. cit.*, Luxembourg 2014. see par. 4 in I part of the report from survey.

women said that they experienced physical violence in childhood. Data on psychological violence indicate that in the vast majority of Polish families, there are no such acts. Only 5% of surveyed women met in childhood with such a behavior from one of their family members. Also among adult Polish women, not much, 37 % declare that they experienced psychological violence from current or former partner. The research shows that Polish women feel safe. Most of them (over 60%) do not avoid specific places and situations because of the fear of becoming a victim of such acts. The research of the Fundamental Right Agency has the high degree of reliability due to the high degree of methodological correctness. Data was collected directly from people who belong to the research group, and not, for e.g. on the basis of police statistics. The research treats the studied area appropriately broadly – they focus not only on psychical violence but also on psychological and sexual violence.

A survey, conducted in the same year by another international organization – the Organization for Economic Cooperation and Development³ – confirms that in Poland violence against women is one of the lowest in European OECD countries.



Source: OECD Development Centre/OECD (2019), "Gender, Institutions and Development (Edition 2014)", *OECD International Development Statistics* (database), <https://doi.org/10.1787/data-00728-en> (accessed on 19 June 2019).

³ The Organization for Economic Cooperation and Development (hereinafter: OECD), *Violence against women (indicator)*, <https://data.oecd.org/inequality/violence-against-women.htm#indicator-chart>, [last access: 19.06.2019].

The survey confirmed that the prevalence of violence against women in Poland is among the lowest in Europe (13%)⁴. Poland is in the group of five European OECD countries with the lowest percentage of women who have experienced physical and/or sexual violence from an intimate partner at some time in their lives. It is significantly lower than in Sweden (28%), in Finland (30%) and in the United Kingdom (29%). Moreover, according to OECD data, Poland is among the countries with the lowest acceptance of domestic violence among women (1%).⁵

Proposed Recommendations for Poland:

- 1. To provide legal provisions that legally strengthen the family, that is the best development environment for all its members and the best environment for combating violence.*

II. Abortion

1. Abortion procedures

Access to abortion should be evaluated in the light of binding Poland international human rights instruments.⁶ They recognized the right to life as an attribute of every human being, also the unborn child. Article 6 of the ICCPR recognizes the right to life of the unborn child, which is being constituted by its full context. Article 6 (5) of the ICCPR acknowledges independent status of the unborn child in respect of his or her mother, which was explicitly confirmed during preparatory work on the ICCPR. The UN's reports clearly mentioned that the principal reason that death sentence should not be carried out on pregnant women was to "save the life of an innocent unborn child" and "was inspired by consideration for the interests of the unborn child". This approach reveals that Article 6 (5) of the ICCPR not only protects human beings during the pre-natal period of life but also recognizes them as holders of human rights. An unborn child, who is by nature a human being, can be considered as holder of such rights from the moment of conception. This moment, which is a matter of scientific fact, determines the beginning of a new

⁴ OECD, *Violence against women (indicator) – Poland – 2014 results*, <https://www.genderindex.org/country/poland-2014-results/>, [last access: 19.06.2019].

⁵ *Ibid.*

⁶ UN General Assembly, International Covenant on Civil and Political Rights, (16 December 1966), United Nations, Treaty Series, vol. 999, p. 171. [hereinafter: "the ICCPR"]; UN general Assembly, Convention on the Rights of the Child, (20 November 1989), United Nations, Treaty Series, vol. 1577, p. 3 [hereinafter: "the CRC"]; UN General Assembly, Convention on the Rights of Persons with Disabilities (24 January 2007), A/RES/61/10; European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols No. 11 and 14 (4 November 1950) [hereinafter: "European Convention on Human Rights"].

human life. The consequence of such reality is the formation of an individual right to life of the unborn child and corresponding obligation of the States Parties to protect this human life. Moreover, the preamble of the CRC explicitly recognizes the right to life of the unborn child. The preamble states that “the child, by reason of his physical and mental immaturity, need special safeguards and care, including appropriate legal protection, before as well as after birth.” In the context of the preamble, Article 1 of the CRC that defines child as “every human being below the age of eighteen years” does not say thus that the status of a “child” is attributed at the time of birth. Furthermore, the Article 6 of the CRC holds that “States Parties recognize that every child has the inherent right to life” and that “States Parties shall ensure to the maximum extent possible the survival and development of the child.”

Poland ensure the right to life of the unborn child to some extent. The Constitution of the Republic of Poland (Article 30 in conjunction with Article 38 of the Constitution of the Republic of Poland)⁷ ensures the protection of human life at its every stage. In 1997, the Constitutional Tribunal ruled in the case K 26/96 that there is no “sufficiently precise and justified criteria allowing for diversification of protection depending on the development phase of human life. Human life thus becomes a constitutionally protected value since its very onset. This also applies to the prenatal phase”. Situations which legally sanction abortion homicide of the unborn child performed during an abortion procedure are listed in Article 4a of the currently binding Act of 7 January 1993 on family planning, protection of human fetuses and the conditions under which pregnancy termination is permissible⁸. However, it should be noted that these premises cannot be considered legal norms constructing “the right of a woman to terminate pregnancy”. Due to the fact that they constitute an exception to the guiding principle of protecting human life at its every stage, they are considered as justification. The issue of the legal nature of circumstances permitting termination of pregnancy was unequivocally resolved by the Supreme Court in the resolution of 22 February 2006, III CZP 8/06. In this resolution, the Supreme Court indicated that Articles 4a and 4b of the FP Act cannot be the basis for deeming the “right to abortion” to be a personal right. What is more, the Supreme Court emphasized that abortion cannot in any case be considered an element of family planning, and the right to have a child must be interpreted only in the positive aspect. In addition, already in the above mentioned case K 26/96 the Constitutional Tribunal ruled that “one cannot decide about having a child if the child is already in the prenatal phase

⁷ *Constitution of the Republic of Poland* of 2 April 1997 (Journal of Laws No. 78, item 483 as amended, hereinafter referred to as the “Constitution of the Republic of Poland”).

⁸ The Act of 7 January 1993 *on family planning, protection of human fetuses and the conditions under which pregnancy termination is permissible* (Journal of Laws No. 17, item 78 as amended, hereinafter as: “the FP Act”).

and in this sense the parents already *have* the child. Therefore, the right to have a child can only be interpreted in the positive way and not as a right to annihilate a developing human foetus.” Exclusion of abortion as an element of family planning is also confirmed in the universal consensus of states contained in the Programme of Action adopted at the International Conference on Population and Development of 1994. Item 8.25. of the afore mentioned Programme clearly states that abortion should not be perceived as a method of family planning under any circumstances⁹.

At the same time, medical research indicates that limited access to abortion has a positive effect on lower maternal mortality rates. Thus, a higher level of protection of the child’s life correlates with lower risk for mothers’ life and health. Studies conducted by the University of Washington show that Poland is a country with one of the lowest maternal mortality rates in the world and one of the few who managed to implement the postulates of the Millennium Development Goals 2015¹⁰. In turn, according to the latest UN data, Poland – *ex aequo* with Iceland, Greece and Finland – is one of the top countries in terms of maternal mortality rates, which in 2015 amounted to only 3 in 100 000 births, which is currently the best result in the world¹¹. Poland has achieved this result i.a. through limiting the access to abortion. In comparison with the year 1990, when abortion homicide of the unborn children in Poland was available on request, mortality of mothers in Poland dropped by 82.4%. At present, in Poland we observe a much lower level of maternal mortality than in countries providing very broad access to procedures of abortion. Perinatal mortality in Poland is twice as low as in Germany (6/100 000) and in Canada (7/100 000), nearly three times lower than in France (8/100 000), three times lower than in Great Britain and nearly five times lower than in the US (14/100 000)¹².

2. Application of the “conscience clause”

The right to freedom of conscience is guaranteed in Article 53 paragraph 1 of the Constitution of the Republic of Poland, which states that “freedom of conscience and religion shall be guaranteed to everyone”. Recently, this question became the subject of a decision of the Constitutional

⁹ UN Population Fund, *Programme of Action adopted at the International Conference on Population and Development of 1994*, Cairo, item 8.25.

¹⁰ Kassebaum N.J. et al. *Global, regional, and national levels and causes of maternal mortality during 1990–2013: a systematic analysis for the Global Burden of Disease Study 2013*, [in:] “The Lancet” - vol. 384 September 13, 2014, p. 998, [http://www.thelancet.com/pdfs/journals/lancet/PIIS0140-6736\(14\)60696-6.pdf](http://www.thelancet.com/pdfs/journals/lancet/PIIS0140-6736(14)60696-6.pdf) [last access: 19.06.2019].

¹¹ *Trends in maternal mortality: 1990 to 2015 Estimates by WHO, UNICEF, UNFPA, World Bank Group and the United Nations Population Division*, World Health Organization 2015, pp. 70-77.

¹² See <https://data.worldbank.org/indicator/SH.STA.MMRT> [last access: 19.06.2019].

Tribunal¹³, which examined constitutionality of the provisions of the Act on the profession of doctor and dentist (Article 39 in conjunction with Article 30) with Article 53 paragraph 1 of the Constitution of the Republic of Poland and unequivocally stated that “the right to conscientious objection should be recognized as primary right towards its limitations (...) Freedom of conscience – including this particular element of it, i.e. the conscientious objection – must be respected irrespective of whether there are statutory provisions confirming it. The legislator cannot shape or abolish this “privilege” at will, but must respect constitutional conditions of imposing restrictions on rights and freedoms of the man and citizen”. Thus, the Constitutional Tribunal considered provisions requiring a doctor to act contrary to his or her conscience in “emergency cases” unconstitutional, and also showed that “Article 39, first sentence of the Act (...) to the extent that it obliges a doctor refraining from performing a health service inconsistent with his or her conscience to indicate real possibility of obtaining such a service from another doctor or another medical entity, is inconsistent with Article 53 paragraph 1 in conjunction with Article 31 paragraph 3 of the Constitution”. The Constitutional Tribunal unequivocally stated that “the freedom of conscience, including the freedom of religion associated with it, is now a universal standard and one of the fundamental rights and freedoms of the man, and is reflected in numerous acts of international law” .

In accordance with relevant national provisions, the right to conscientious objection has been taken into account also in the text of Article 10 paragraph 2 of the Charter of Fundamental Rights of the European Union, which confirms legal regulations in this area. In addition, the Parliamentary Assembly of the Council of Europe confirmed the primacy of freedom of conscience in Resolution 1763 on Conscientious Objection in Legal Medical Care of October 2010 (paragraph 1 of Resolution 1763) .

3. Objections to the medical opinion or report

On 6 November 2008, the Sejm of the Republic of Poland passed the Act on Patient Rights and the Patients’ Rights Ombudsman¹⁴, which guaranteed patients the right to request a second doctor’s opinion or to convene a medical consultation (Article 6 paragraph 3 item 1) and the right to lodge an objection to the doctor’s opinion to the Medical Commission (Article 31). In accordance with Article 31 paragraph 5 of the PR Act, the Medical Commission issues its decision immediately,

¹³ Judgment of the Constitutional Tribunal of 7 October 2015, Ref. K 12//14.

¹⁴ The Act of 6 November 2008 *on patient’s rights and the Patients’ Rights Ombudsman* (i.e. Journal of Laws of 2017 item 1318 as amended; hereinafter as the “PR Act”).

but no later than within 30 days from the date of the patient's lodging of the objection. In the period from 2014 to 31 December, 2016 the Office of the Patients' Rights Ombudsman received three objections to doctors' decisions regarding the circumstances referred to in Article 4a paragraph 1 of the FP Act. The Medical Committee considered all the above objections as unfounded.¹⁵ The above mentioned Act came into force after the issuance of judgments of the European Court of Human Rights against Poland in the cases of *A. Tysiąc v. Poland*, *R.R. v. Poland* and *P. and S. v. Poland*.¹⁶ Formal requirements of a legal remedy pursuant to Article 31 of the above mentioned Act have been set within the margin of the state's legislative freedom. Applicable remedy – lodging an objection to the doctor's opinion to the Medical Commission – corresponds to the ruling of the European Court of Human Rights, which in the case *P. and S. v. Poland* clearly stated that “Article 8 of the ECHR does not impose any procedural requirements”¹⁷ determining the provisions governing access to health services and other procedures such as abortion. In addition, timeliness of the decisions of the Medical Commission examining the objections to doctors' opinions is not questionable in the light of the available data. In one of the reports for the Council of Europe¹⁸, Polish authorities gave the example of a patient who filed an objection to the Patients' Rights Ombudsman on 30 July 2013, concerning refusal to carry out an abortion. On 1 August, the Ombudsman appointed the Medical Commission, which considered the matter within 5 days. This example proves that the institution of objection fully complies with the requirement of the existence of means, regulated in detail in the law and is effective in practice, to object to a medical opinion that is unsatisfying to a patient. One cannot forget the possibility of exercising the right to request a second opinion or to convene a medical consultation, which is available to patients regardless of whether objection was lodged or not.

¹⁵ Patients' Rights Ombudsman, *Report for 2014* (pp. 38-39), *2015* (p. 43) and *2016* (pp. 46-47), https://www.bpp.gov.pl/gfx/bpp/userfiles/public/bip/sprawozdania_roczne/sprawozdanie_2014_r..pdf, [last access: 19.06.2019].

¹⁶ Judgments of the ECHR: *R.R. v Poland*, *P. S. v Poland*; of 20 March 2007 *Tysiąc v. Poland*, no. 5410/03.

¹⁷ *P. and S. v. Poland* § 99.

¹⁸ *Report on the actions taken, Information on measures to enforce the judgment in the case of P. and S. v. Poland* of 29 November 2013, <https://rm.coe.int/1680596616> [last access: 19.06.2019].

4. Accessibility of prenatal examinations

The CRC and the Act on the Ombudsman for Children¹⁹ emphasise that firstly, in the prenatal phase we deal with a child, and secondly, the conceived child is entitled to exercise his or her patient's rights. The conceived child's patient's rights include first and foremost the right to information about health condition exercised on the child's behalf by the mother²⁰ and the right to support before delivery²¹. An element of the right to information is the right to diagnostic tests, including prenatal examinations. The guarantee of availability of prenatal testing formulated in this manner is wider than the current provisions of the FP Act, which require government and local government bodies to provide prenatal examinations to diagnose those features that currently constitute the grounds for admissibility of abortion. The right to reliable information about the child's health condition and access to medical support in the event of a disease or disability of a conceived child is guaranteed to the conceived child and to the mother in accordance with Article 12 paragraphs 1 and 2 and Article 10 paragraph 2 of the ICCPR. Moreover, in medicine all diagnostic activities are undertaken to enable preventive, medical or rehabilitation interventions. Abortion is none of them since it leads to the death of a previously diagnosed and treated patient because of suspicion of a disease or risk of disability. The availability of prenatal tests for the purpose of abortion is, therefore, a form of discrimination against conceived children based on suspicion of a disease or risk of disability. This is contrary to constitutional, international and statutory standards of protection of children's rights.²²

5. Statistics on illegal procedures of abortion homicide of the unborn children

The number of illegal procedures of abortion homicide of the unborn children given by the media, are estimated between 80 and 200 thousand per year. It is based on erroneous premises that significantly decrease credibility of the published data. This estimate is based on conclusions drawn from facts that are irrelevant to the number of illegal abortions. These include primarily: decline in the number of births in Poland (this trend is shaped in Poland by objective factors such

¹⁹ The Act of 6 January 2000 on the *Ombudsman for Children's Rights* (i.e. Journal of Laws of 2017 item 922; hereinafter as: "the CO Act"), Article 2 paragraph. 1 „In the understanding of the Act, a child is every human being from conception to coming of age”.

²⁰ Article 9 of the PR Act.

²¹ Article 6 of the PR Act.

²² Committee on the Rights of Persons with Disabilities, *Comments on the draft General Comment No 36 of the Human Rights Committee on article 6 of the International Covenant on Civil and Political Rights, 2017r. and UN General Assembly, Convention on the Rights of Persons with Disabilities : resolution / adopted by the General Assembly, 24 January 2007, A/RES/61/106.*

as unemployment, ineffective family-oriented policy of the state, significant increase in women's education and not by the number of illegal abortions), the scale of illegal abortions in Lithuania, Latvia and the Czech Republic, where the social and health situation of these countries is incomparable to the situation in Poland. It should also be added that authors of the report in which the number 80 – 200 thousand is given, have revised the data.²³ Currently, they estimate the scale of illegal procedure of abortion homicide of the unborn children from 80 to 100 thousand per year.²⁴ Nevertheless, the authors themselves indicate that the data they provide is based on data of poor scientific value. Moreover, the authors claim that “due to the fact that women perform abortions in different countries, it is impossible to thoroughly investigate the scale of the phenomenon of abortion tourism”²⁵. It is also worth noting that the author of the source quoted extensively in the report²⁶, himself puts in doubt scale of 100 thousand illegal procedures of abortion homicide of the unborn children.²⁷ The researcher, unequivocally stated that after 1993 the number dropped significantly and the real scale of illegal cases is probably 10 thousand per year. The above conclusion was based on facts: (1) continued decline in numbers of births; (2) only a slight (2%) rise in miscarriages in 1992-93, followed by continued decline; (3) no increase in pregnancy-related deaths; (4) aggressive actions by authorities to deter illegal abortion; (5) no evidence of abortion tourism in very large numbers.²⁸ Moreover, the most reliable source of estimates of the scale of the phenomenon in Poland is data from 1997 (the one-year long period during which the amendment to the FP Act of 30 August 1996 was in force, allowing the so-called abortion on request). The number of pregnancies terminated in 1997 amounted to 3047, under conditions of legality also of abortion on request, in good sanitary conditions and free of charge. The above number, including abortions made on request, was then multiplied by the ratio of the number of legal abortions to the number of illegal abortions in the conditions of admissibility of termination of pregnancy, developed by demographers.²⁹ Indices developed by demographers defined the ratio as 1:2 or as 1:4. According to the 1:4 ratio, the estimated number of illegal procedures of abortion

²³ W. Nowicka, M. Tajak, *Ustawa antyaborcyjna w Polsce. Funkcjonowanie, skutki społeczne, postawy i zachowania Raport – Wrzesień 2000*, Warszawa 2000; W. Nowicka (red.), *Prawa reprodukcyjne w Polsce – skutki ustawy antyaborcyjnej*, Warszawa 2007; A. Grzywacz and others., *20 lat tzw. ustawy antyaborcyjnej w Polsce*, Warszawa 2013.

²⁴ A. Grzywacz and others., op. cit.

²⁵ *Ibid.* s. 22.

²⁶ Wm. R. Johnston, *Abortion statistics and other data*, <http://www.johnstonsarchive.net/policy/abortion/index.html> [last access: on: 19.06.2019].

²⁷ Wm. R. Johnston, *Data on abortion decrease in Poland*, 26 May 2008, <http://www.johnstonsarchive.net/policy/abortion/polandlaw.html> [last access: 19.06.2019].

²⁸ *Ibid.*

²⁹ J. Józwiak, J. Paradysz, *Demograficzny wymiar aborcji*, *Studia Demograficzne PAN nr 1 (111) 1993* p. 37, M. Okólski, *Zapobieganie i przerywanie ciąży w Polsce*, *Studia Demograficzne PAN*, nr 2/76 rocznik 1984, K. Meissner, *Częstość poronień, Słowa Powszechne, XVI (1991)*, 85-86; 12-13-14 IV, to quote for: A. Zięba, *Podziemie aborcyjne w Polsce*, Kraków, 2006, p. 10, www.pro-life.pl/wp-content/uploads/2014/01/Podziemie-aborcyjne-w-Polsce.doc [last access: 19.06.2019].

homicide of the unborn children is 13 000, whereas assuming the ratio of 1:2, 7 thousand illegal procedures of abortion homicide of the unborn children are performed annually. Bearing in mind the above facts, reliable estimates place the number of illegal procedures of abortion homicide of the unborn children in the range of 7-13 thousand annually, which is significantly different from the 80-200 thousand illegal abortions annually reported in the media. It is also consistent with the conclusions of the analysis “Data on abortion decrease in Poland”³⁰.

Proposed Recommendations for Poland:

- 1. To restore full statutory protection of unborn children with presumed disabilities equal to full constitutional protection of dignity and the right to life of every human being irrespective of the phase of development (prenatal phase of human development) and irrespective of health condition (presumption of disability).*
- 2. To regulate more precisely the legal status of an unborn child acknowledging clearly that he or she is a patient in the understanding of the Act of 6 November 2008 on Patient’s Rights and the Patients’ Rights Ombudsman.*
- 3. To ensure in law and in practice that the Judgment of the Constitutional Tribunal of 7 October 2015, Ref. K 12/14 will be effectively applied and respected.*
- 4. To prosecute cases of illegal abortion more effectively and acts of aiding and abetting in a prohibited acts.*

III. Freedom from torture or cruel, inhuman or degrading treatment or punishment³¹

Rights and freedoms of born children with disabilities such as right to life and freedom from torture or cruel, inhuman or degrading treatment or punishment are also violated by killing them in situation of surviving late-term eugenic abortions. The information that the *Ordo Iuris* Institute was confidentially provided shows that at the end of August 2014 in the Independent Specialist Care Centre for Mother and Child in Opole a child, who survived late-term eugenic abortion, was killed

³⁰ *Ibid.*

³¹ Article 1, 2, 4 and 16 of the convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

by the medical staff.³² The information submitted shows that doctors undertook to perform an abortion on the child with Down Syndrome. During an abortion there have been complications and caesarean section was undertaken. The child was born alive. They cut the umbilical cord and weighed them (weighed approx. 600 g.) The child breathed independently and screamed very loud. Heart worked properly and the child manifested a strong will to live. The hospital staff decided to accept it officially on a ward and put in incubator. The child stayed there for about four hours, during which organs function like at healthy newborn's. Despite this, according to the acquired information, at the express request of the doctors carrying out abortions, a childcare and the rescue of his life was abandoned. Any steps to allow the infant to survive, including the activities resuscitation, were not taken. The infant died. In this case, criminal proceedings have been initiated by the District Public Prosecutor's Office in Opole. Furthermore, the Ombudsman for the Patient turned to Prosecutor with a request to answer whether the proceedings were instituted in this case and what are the arrangements for purpose to initiate possible proceedings before that body.³³

Unfortunately, this is not the only case. At the beginning of the 2014, a girl with Down Syndrome was born in the Provincial Specialist Hospital in Wrocław, who was to be killed as a result of the so-called "late-term abortion". The childbirth of the girl was induced in her 23/24 weeks of age. When the doctors realized that she was alive they started saving her life. Despite this, the child died one month later.³⁴ Another case took place in March 2016 at the "Holy Family" Specialist Hospital in Warsaw. The Hospital performed against the boy with Down Syndrome an abortion procedure of killing, but the child survived. The boy weighed 700 gram, showed signs of life activity, including screams, but was left without any care or medical help. He died after about an hour. The case was taken by the District Public Prosecutor's Office in Warsaw and also by the Ombudsman for the Patient.³⁵

On the basis of Polish criminal law protection of unborn child's life is reflected in Article 148 § 1 of the Criminal Code, which provides for criminal liability for killing a man. "Person" within the meaning of this provision is also a child born as a result of incorrectly performed abortions.

³² See < <https://www.ordoiuris.pl/ochrona-zycia/ordo-iuris-zawiadamia-prokurature-o-podejrzeniu-usmiercenia-dziecka-ktore-urodzilo> > [last access: 19.06.2019].

³³ See < <https://www.ordoiuris.pl/ochrona-zycia/prokuratura-w-opolu-objela-nadzorem-sluzbowym-postepowanie-w-sprawie-zabojstwa> > [last access: 19.06.2019].

³⁴ See < <https://wpolityce.pl/polityka/185473-to-wydarzylo-sie-naprawde-we-wroclawskim-szpitalu-przeznaczone-do-aborcji-dziecko-z-zespolem-downa-urodzilo-sie-zywe-wowczas-lekarze-zaczeli-je-ratowac> > [last access: 19.06.2019].

³⁵ See < <http://prawy.pl/28170-jest-zawiadomienie-do-prokuratury-w-sprawie-bestialskiego-mordu-na-dziecku-w-warszawskim-szpitalu/> >, [last access: 19.06.2019] < <https://fakty.interia.pl/mazowieckie/news-po-aborcji-dziecko-urodzilo-sie-zywe-minister-poruszony,nld,2165481> > [last access:19.06.2019].

The Polish Supreme Court rulings in this regard is clear and consistent. Leaving alone breathable child unattended in order to kill is a crime of murder.

Proposed Recommendations for Poland:

- 1. To amend the Act of 7 January 1993 on family planning, protection of human foetuses, and the conditions under which pregnancy termination is permissible by abolishing Article 4a section 1 item 2 discriminating persons with disabilities at the prenatal stage of their development.*
- 2. To ensure that children who survive an abortion will not be deprived of medical care, which belongs to them as a live-born persons under the European Convention on Human Rights and the Convention on the Rights of the Child.*