



HAUT-COMMISSARIAT AUX DROITS DE L'HOMME • OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS
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Excellency,

In my capacity as Special Rapporteur for Follow-up to Concluding Observations of the Human Rights Committee, I have the honour to refer to the follow-up to the recommendations contained in paragraphs 8, 24, and 32 of the concluding observations on the report submitted by Poland ([CCPR/C/POL/CO/7](#)), adopted by the Committee at its 118th session in October 2016.

On 10 November 2017, the Committee received the reply of the State party. The examination of the replies of Poland was originally scheduled for adoption at the 128th session, but was postponed to the 129th session due to COVID-19. At its 129th session (29 June to 24 July 2020), the Committee evaluated this information. The assessment of the Committee and the additional information requested from the State party are reflected in the Addendum 3 (see [CCPR/C/128/3/Add.3](#)) to the Report on follow-up to concluding observations (see [CCPR/C/128/3](#)). I hereby include a copy of the Addendum (advance unedited version).

The Committee considered that the recommendations selected for the follow-up procedure have not been fully implemented and decided to request additional information on their implementation. Given that the State party accepted the simplified reporting procedure (LOIPR), the requests for additional information will be included, as appropriate, in the list of issues prior to submission of the eighth periodic report of the State party.

The Committee looks forward to pursuing its constructive dialogue with the State party on the implementation of the Covenant.

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

Marcia V.J. KRAN

Special Rapporteur for Follow-up to Concluding Observations
Human Rights Committee

His Excellency Mr. Zbigniew Czech
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Report on follow-up to the concluding observations of the Human Rights Committee

Addendum

Evaluation of the information on follow-up to the concluding observations on Poland*

Poland

Concluding observations (118th session):	CCPR/C/POL/CO/7 , 31 October 2016
Follow-up paragraphs:	8, 24 and 32
Follow-up reply:	CCPR/C/POL/CO/7/Add.1 , 10 November 2017
Committee's evaluation:	Additional information required on paragraphs 8 [C], 24[C] and 32 [C]
Information from non-governmental organizations:	Ordo Iuris Institute for Legal Culture

Paragraph 8: Constitutional and legal framework within which the Covenant is implemented

The State party should ensure respect for and protection of the integrity and independence of the Constitutional Tribunal and its judges, and ensure the implementation of all its judgments. The Committee urges the State party to officially publish all the judgments of the Tribunal immediately, to refrain from introducing measures that obstruct its effective functioning, and to ensure a transparent and impartial process for the appointment of its members and security of tenure that meets all the requirements of legality under domestic and international law.

Summary of the State party's reply

The Constitutional Tribunal is independent. There have been no obstacles to hinder the Constitutional Tribunal from performing its duties. The legal acts adopted in late 2016 are consistent with European standards for constitutional courts, and take into account the recommendations made by the Venice Commission.

Information from the Ordo Iuris Institute for Legal Culture

Current Polish legislation poses no threat to the independence of the Constitutional Tribunal. The law of 13 December 2016 declared null and void all previous regulations regarding the Constitutional Tribunal. While there are controversies over the current composition of the Tribunal, the law itself provides for the full independence of judges.

The unpublished rulings of the Constitutional Tribunal concerned laws that have been repealed.

Committee's evaluation

[C]: The Committee regrets the lack of information provided by the State on the measures taken since the adoption of the concluding observations to ensure the integrity and independence of the Constitutional Tribunal and to ensure the publication of all of its judgments. The Committee requires additional information on the content of the law of 13 December 2016. It reiterates its recommendations.

* Originally scheduled for adoption at the Committee's 128th session but postponed to the 129th session (29 June to 24 July 2020) due to COVID-19.

**Paragraph 24: Voluntary termination of pregnancy****The State party should:**

(a) **Ensure that its legislation does not prompt women to resort to clandestine abortions that put their lives and health at risk. It should conduct research into and provide statistics on the use of illegal abortion. It should ensure women's effective access to safe legal abortion throughout the entire country and ensure that women are not obliged, as a consequence of conscientious objection or prolonged review of complaints about refusals to perform abortions, to resort to clandestine abortion that puts their lives and health at risk. It should do so by, inter alia: (i) as a matter of priority, establishing and regulating standardized guidelines in public health for the provision of legal abortion services throughout the country; (ii) enhancing the effectiveness of the referral mechanism to ensure access to legal abortion in cases of conscientious objection by medical practitioners; (iii) facilitating access to prenatal genetic testing in order to determine in accordance with the Act of 7 January 1993 whether a fetus suffers from a severe and irreversible fetal impairment or incurable illness that threatens the life of the fetus; (iv) ensuring timely review of appeals against a refusal for an abortion, including further reducing substantially the Physician's Commission decision deadline; and (v) ensuring that mechanisms for obtaining prosecutor certifications and regulations of individual hospitals do not obstruct access to legal abortion;**

(b) **Refrain from adopting any legislative reform that would amount to a retrogression of already restrictive legislation on women's access to safe legal abortion;**

(c) **Increase education and awareness-raising programmes on sexual and reproductive health rights and facilitate effective access to contraceptives.**

Summary of State party's reply

(a) The State party reiterates information provided in its replies to the list of issues prior to reporting (CCPR/C/POL/7, para. 72) regarding the absence of official data on illegal abortions. The State party also reiterates information provided in its replies to the list of issues prior to reporting (CCPR/C/POL/7, para. 76) regarding the "conscience clause" that allows medical practitioners to refrain from performing health services that are contrary to their conscience, except in case of emergency. The State party reiterates the information provided in its replies to the list of issues prior to reporting (CCPR/C/POL/7, para. 79) regarding objection to medical opinion before the Commissioner for Patients' Rights. The Commissioner for Patients' Rights was established through the relevant act adopted on 6 November 2008 as a way to implement the judgments of the European Court of Human Rights in the cases *Tysiac v. Poland*, *R.R. v. Poland* and *P. and S. v. Poland*.

The prenatal examinations procedure is regulated by the Regulation of the Minister of Health of 6 November 2013. Prenatal examinations are aimed at identifying or excluding a defect or disease of the child, and it is incorrect to assume that the only objective of the prenatal examinations is to provide grounds in order to justify an abortion based on the results.

(b) No information provided.

(c) No information provided.

Information from the Ordo Iuris Institute for Legal Culture

(a) Medical research indicates that limited access to abortion has the positive effect of lowering maternal mortality rates. A higher level of protection of the child's life correlates with a lower risk for the mother's life and health.



Reliable data estimate the number of illegal abortions in the range of 7,000 to 13,000 annually, which is significantly lower than the 80,000 to 200,000 illegal abortions annually reported in the media.

The right to freedom of conscience is guaranteed under article 53 of the Constitution, which states that “freedom of conscience and religion shall be guaranteed to everyone”. The availability of prenatal tests for the purpose of abortion is a form of discrimination against conceived children based on suspicion of a disease or risk of disability, which is contrary to constitutional, international and statutory standards of protection of children’s rights.

(b) On 30 November 2017, a draft law was submitted by the Legislative Initiative Committee “Stop Abortion” to amend the act of January 1993 on family planning, protection of human fetuses and the conditions under which pregnancy termination is permissible. The draft law aimed to amend the legislation and to prohibit abortion in the case of severe and irreversible fetal impairment or incurable illness that threatened the life of the fetus.

(c) No information provided.

Committee’s evaluation

[C]: a), b) and c): The Committee regrets that the State reiterated information provided in its replies to the list of issues (CCPR/C/POL/7) and that no information was provided on the measures taken since the adoption of the concluding observations. The Committee reiterates its recommendations.

The Committee regrets the lack of information provided on the measures taken to refrain from adopting retrogressive legislative reform, and requires information on the draft law submitted on 30 November 2017 to amend the act of January 1993 to prohibit abortion in case of severe and irreversible fetal impairment or incurable illness that threatens the life of the fetus. The Committee reiterates its recommendations.

The Committee regrets the absence of information provided on the measures taken since the adoption of the concluding observations to increase education and awareness-raising programmes on sexual and reproductive health rights and to facilitate effective access to contraception. The Committee reiterates its recommendations.

Paragraph 32: Rights of aliens

The State party should:

(a) **Refrain from detaining asylum seekers and migrants and implement alternatives, including before deportation, and in cases where individuals are detained, ensure that the detention is reasonable, necessary and proportionate in the light of the circumstances and reassessed as it extends in time;**

(b) **Ensure that children are not deprived of liberty except as a measure of last resort and for the shortest appropriate period of time, taking into account their best interests;**

(c) **Ensure that access to asylum is not obstructed on grounds of religious discrimination or other grounds prohibited by the Covenant, and establish a system of proper screening that ensures that asylum seekers are not returned to a country where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that set out in articles 6 and 7 of the Covenant.**

Summary of the State party’s reply

(a) The use of alternative measures increased in 2016. Meanwhile, the average period of stay in detention decreased. The lawfulness of detention is examined by penitentiary judges of district courts.



(b) Unaccompanied minors are placed in care and educational facilities or in foster families on the basis of a court ruling, or in guarded centres if they are over 15 years of age and have not requested international protection.

The infrastructure of guarded facilities for foreigners has been adapted to the needs of minors.

The Government began to cooperate with the Empowering Children Foundation in May 2017 to develop a policy for protecting children.

(c) The Border Guard submits all requests for international protection to the Head of the Office for Foreigners within 48 hours after a detailed and individual assessment of the conditions of entry. To fully implement the principle of non-refoulement, Border Guard officers are sensitized to signs that may indicate that a foreigner seeks international protection.

Information from the Ordo Iuris Institute for Legal Culture

(a) Independent studies have shown that migrants who are to be deported are detained less and less frequently, as non-custodial measures are being applied instead.

(b) No information provided.

(c) In 2016, 585,969 first residence permits were issued in Poland. Even though some migrants may face certain difficulties while crossing borders, the vast majority of them are granted the right to stay in Poland.

Committee's evaluation

[C]: (a), (b) and (c): Although the Committee notes the increase in the use of alternative measures in 2016, it requires the additional information, such as the actual number of detained asylum seekers and migrants and the alternative measures used in the past four years. The Committee also requires additional information on measures taken since the adoption of the concluding observations to ensure that detention is reasonable, necessary and proportionate. The Committee reiterates its recommendations.

The Committee notes the information provided on children deprived of liberty, but regrets that no information was provided on measures taken since the adoption of the concluding observations to ensure that children are not deprived of liberty. The Committee reiterates its recommendations.

The Committee regrets the lack of information on measures taken after the concluding observations to ensure that access to asylum is not obstructed on discriminatory grounds and to respect the principle of non-refoulement. The Committee reiterates its recommendations.

Recommended action: A letter should be sent to inform the State party of the decision to discontinue the follow-up procedure. The information requested should be addressed by the State party in its next periodic report.
