



ORDO IURIS

INSTYTUT NA RZECZ KULTURY PRAWNEJ

Warsaw, 08.09.2015

**Honorable Member
Human Rights Committee
Geneva**

Dear Madam or Sir, Member of the Committee on the Rights of the Child,

The *Ordo Iuris* Institute for Legal Culture together with Centrum Wspierania Inicjatyw dla Życia i Rodziny, Fundacja Pro – Prawo do życia, Fundacja Rzecznik Praw Rodziców, Stowarzyszenie Rodzin Katolickich Diecezji Legnickiej, Stowarzyszenie Stop Manipulacji, welcomes the opportunity to assist the Human Rights Committee in its preparations for the Third and Fourth Periodic Report on Compliance with the UN Convention on the Rights of the Child.

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. *Ordo Iuris* pursues its objectives by means of research and other academic activity as well as advocacy and litigation.

Ordo Iuris is among organisations consulted by the Polish Government within the legislative process. Polish courts, including Supreme Court of the Republic of Poland, have accepted our 'third parties interventions'. *Ordo Iuris* has also intervened before the European Committee of Social Rights and the European Court of Human Rights. We hope the Committee will find our intervention supportive.



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Poland NGO Alternative Report to the Committee on the Rights of the Child on Poland's Third and Fourth Periodic Report on Compliance with the UN Convention on the Rights of the Child

Ordo Iuris Institute for Legal Culture

in cooperation with

Centrum Wspierania Inicjatyw dla Życia i Rodziny

Fundacja Pro – Prawo do życia

Fundacja Rzecznik Praw Rodziców

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1. Introduction

The NGO Alternative Report (Report) was written by Ordo Iuris Institute for Legal Culture and supported by the Rzecznik Praw Rodziców, Stop Manipulacji, Fundacja Pro –Prawo do życia and Centrum Wspierania Inicjatyw dla Życia i Rodziny.

The Report is divided into sections based on various groups of rights in the UN Convention on the Rights of the Child (CRC). A list of recommendations is included.

2. General principles

a. Best interest of the child

The Committee stressed in its General comment No. 14 (2013)¹, that Article 3, paragraph 1 CRC gives the child the right to have his or her best interests assessed and taken into account as a primary consideration in all actions or decisions that concern him or her, both in the public and private sphere. Reference is also made to the child's best interests in the Optional Protocol to the Convention on the sale of children. On the 31th of July 2015 the **Act on the treatment of infertility (hereinafter "lti") was published in Journal of Laws.² Many of its provisions violate "the best interest of the child" principle. The most crucial violations take place in the section concerning the issue of a donation of human embryos.** The possibility of the donation of human embryos, provided in the *lti* law, constitutes an institutional circumvention from adoption provisions. While the institution of a adoption is subordinated to the principle of a good of a child and requires a thorough investigation of people who want to adopt biologically foreign children, in the case of a donation of embryos, anyone can become a parent of a child, without any preliminary investigation – including people with serious mental illness. Moreover, according to the Committee (General comment No. 15 (2013)) the Committee recognizes that a number of determinants need to be considered for the realization of children's right to health, including individual factors such as educational attainment, socioeconomic status and domicile; determinants at work in the immediate environment of families, peers.

¹ http://www2.ohchr.org/English/bodies/crc/docs/GC/CRC_C_GC_14_ENG.pdf

² The Act shall enter into force on 1th of November 2015; hereinafter: *lti*.



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Also, the applied law assumptions that follow a donation of embryos procedure enable and facilitate the development of a surrogacy. In accordance with Article 35 of the CRC and Article 2(a) of the Protocol,³ the practice of surrogacy, which reduces a child to be treated as a trade good, bears signs of the sale of children. As it is stated in Article 2(a) of the Protocol, “Sale of children shall mean any act or transaction, whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration.”

The Committee may wish to ask the State Party to provide the legal provisions that guarantee that:

- *assisted reproductive techniques may be used only if the well-being of the child is ensured;*
- *they may only be used in couples who, on the basis of their age and personal circumstances, are likely to be able to care for and bring up the child until it reaches the age of majority;*
- *surrogacy motherhood as sale of children is prohibited.*

b. Right to life, survival and development

The CRC guarantees the right to life for every human being. The preamble of the CRC explicitly recognizes the right to life of the unborn child.⁴ The preamble states that “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth.” In the context of the preamble of the CRC, Article 1 defines a child as “every human being below the age of eighteen years.” Thus, that the status of a “child” is not merely recognized 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.” Neither the CRC, nor other international human right instruments, excludes prenatal life from the scope of the protection; they contain only a right

³ Also the light of the Article 4 of the *Convention of the Council of Europe on action against trafficking in human beings* (2005) surrogacy bears all the hallmarks of trafficking of human beings. A surrogacy excludes also Article 5 and 17 of the *European Convention on the adoption of children* (1967 and 1993), and Article 21 *Oviedo Convention on human rights and biomedicine*.

⁴ According to Article 31 (2) of *Vienna Convention on the Law of Treaties* (United Nations, Treaty Series, vol. 1155, p. 331, [hereinafter: *the VCLT*]) the preamble of a treaty provides necessary interpretive context.



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to life and not a right to abortion. International human rights instruments recognize life as a primary right.⁵ The right to life is the first to be guaranteed in the 1948 *Universal Declaration on Human Rights*⁶, but also in other instruments, such as the *International Covenant on Civil and Political Rights*⁷ or the *European Convention on Human Rights*⁸. **In this respect Polish legal provisions arising from the Article 2.1. of the Children Ombudsman Law (a child is every human being from conception until they reach adulthood) and the Article 1.1. on family planning, human fetus protection and conditions of permissibility of abortion law (The right to life is protected, including the prenatal stage) fully implements the obligation arising from the Article 6 CRC.**

However, the right to life of the unborn child, explicitly recognized by CRC, is violated by *liti* law. The inalienable right to life has been primarily affected by bringing a human embryo to the level of thing-product. A reductionist definition of an embryo (Article 2 par. 1 item 28 of the *liti*) reduces it to “zygote” and “group of cells”, despite the fact that those are early forms of a separate human being with specific, separate genetic identity. Treatment of a human embryo only in the category of a “group of cells”, equally with other cells or tissues, ignores its objective and distinct identity, not only ethically but biologically, in relation to the biological parents. In the light of modern embryology, biology or genetics, the distinct identity of a human embryo does not raise any slightest concerns. Humiliating treatment of the child in the embryo stage of the development, is mainly reflected semantically, describing a child before a birth as a “thing”, which is subject to storage, transport and finally assessing the quality of such a ‘thing’. On numerous occasions wording such as: “testing embryos” (see e.g. Article 2 par. 1 pt 12 and 25 of the *liti*) and “distribution of embryos” (see e.g. Article 2 par. 1 pt 10 of the *liti*) is used in the text of the *liti*. These are terms which treat human beings in the embryonic stage of life in an unambiguously

⁵ Inter alia: *Universal Declaration of Human Rights*, G.A. Res. 217 (III) A. U.N. Doc A/RES/17 (III) (10 December 1948); *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999 at 171, [hereinafter: *the ICCPR*]; *United Nations Declaration of the Rights of the Child*, G.A. Res. 1386 (XIV)(10 December 1959); *Declaration of the Rights and Duties of Man*, 9th International Conference of American States, Bogota, Colombia, 1948; Council of Europe, *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*]; Organization of American States, *American Convention on Human Rights, “Pact of San Jose”, Costa Rica* (22 November 1969); Organization of African Unity, *African Charter on Human and Peoples' Rights (Banjul Charter) as amended by Protocol adopted in 1998* (27 June 1981); *Cairo Declaration on Human Rights in Islam* (5 August 1990).

⁶ See *Universal Declaration of Human Rights*, G.A. Res. 217 (III) A. U.N. Doc A/RES/17 (III) (10 December 1948) at Article 3 [hereinafter: *Universal Declaration of Human Rights*].

⁷ See Article 6, Article 24 and Article 26 of the ICCPR.

⁸ See Article 2 of the European Convention on Human Rights.



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degrading way. At the same time, there is language which refers to the “technological process”, rather than to medical treatment. There are similar connotations in language which limits protection to “embryos capable of proper development” (Article 23 of the *Iti*), which permits human embryos to be traded, and which does not resolve the situation of “extra embryos” – those that are considered either not meeting the criteria for their implementation or were not sent to prenatal adoption. It is beyond any doubt, that legal guarantees contained in the Article 6 of the CRC, interpreted in the light of its preamble refers to the prenatal stage of human life. Thus, it imposes on State-Parties an obligation to respect the inherent right of dignity and life of a child, without differentiation of protection depending on the phase of the development of a human life.

The right to life is also violated by killing children who survived late abortions. The information that the *Ordo Iuris* Institute was confidentially provided shows that at the end of August 2014 in the one of the hospitals in Opole a child, who survived late-term eugenic abortion, was killed by the medical staff. The information submitted shows that doctors undertook to perform an abortion on the child with Down Syndrome. During this abortion many complications took place and caesarean section was undertaken. The child was born alive. They cut the umbilical cord and weighed him or her (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 started to function like as healthy newborn’s. Despite this fact, according to the acquired information, at the explicit request of the doctors carrying out abortions, any further childcare and the rescue of child’s life was ceased. Any steps to allow the infant to survive, including resuscitation, were withdrawn. The baby died. On the basis of Polish criminal law, protection of an unborn child’s life is reflected in Article 148 § 1 of the Criminal Code⁹, which provides for criminal liability for killing a person. “Person” within the meaning of this provision is also a child born as a result of an incorrectly performed abortion. The Polish Supreme Court rulings in this regard is clear and consistent. Neglecting and depriving medical care for a newborn child in order to let it die is a crime of murder. In this case, criminal proceedings have been initiated by the District Prosecutor’s Office in Opole. Furthermore, the Ombudsman for the Patient also became interested in this issue.

The Committee may wish to ask the State Party what concrete steps the State Party will undertake:

⁹ The Act of 6 June 1997 – *Penal Code* (Dz.U. [Journal of Laws] of 1997 No. 88, item 553, as further amended).



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- *to respect the inherent right of dignity and life of a child, without differentiation of protection depending on the phase of its development;*
- *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 CRC.*

c. Non-discrimination

According to the Committee (General comment No. 15 (2013)), in order to fully realize the right to health for all children, States parties have an obligation to ensure that children's health is not undermined as a result of discrimination, which is a significant factor contributing to vulnerability. **A number of grounds on which discrimination is proscribed** are outlined in Article 2 of the Convention, including, for example, the **child's disability**. In this respect, the *liti* **allows** eugenic selection of human embryos. The law only in a very narrow scope prohibits selecting embryos within the framework of pre-implementation genetic diagnosis (PGD), due to the phenotypic characteristics such as gender (Article 26 par. 2 of the *liti*). At the same time, there have been no restrictions on the selections made for other reasons. In practice, this means the admissibility of an unlimited eugenic selection, on the basis of an arbitrary assessment of the results of genetic tests. Typically eugenic solution of the *liti* is "testing" in order to "determine the suitability of reproductive cells or embryos for use in assisted reproductive medical procedure" (Article 2 par. 1 pt. 25 of the *liti*). As a result, legal protection has been limited only to the group of "embryos capable of proper development" (Article 83 of the *liti*) leaving far-reaching discretion in interpreting this term. **The *liti* law thus creates the possibility of making eugenic selection of human embryos for factors that cause disabilities.**¹⁰

The Committee may wish to ask the State Party what concrete steps the State Party will undertake to ensure that unborn children conceived in vitro won't be discriminated on the grounds of disability.

¹⁰ In the light of the *Convention on the Rights of Persons with Disabilities*, United Nations, such solution should be treat as prohibited discrimination on the grounds of disability, which clearly violates human dignity.



3. Civil rights and freedoms

a. Birth registration, name and nationality

The principle of anonymity, introduced by the *lti* law, violates the Polish obligation to ensure that a child shall have the right from birth to know his or her parents pursuant to Article 7 par. 1 of the CRC. The *lti* provides merely that the person who was born as a result of the donation of reproductive cells other than the affiliate or embryo donation has the right, after reaching the age of maturity, to be given information only about the age and the state of health of his/her genetic parents or one parent. The right to know the full identity of the parents is a consequence of the right to their own identity, which is above all guaranteed by provisions of the Polish Constitution: Article 30 (human dignity), Article 47 (the protection of private life and the right to decide about your personal life) and Article 72 (protection of the rights of child). Thus, such a statutory regulation flagrantly violates the constitutional right of a child to properly-set family ties. The principle of anonymous donation may also lead to subsequent cases of incest and kinship marriages between persons related closely biologically, though, conceived through in vitro procedure (i.e. those from the same biological father/mother, not knowing about this, however). The health consequences of such a relationships are very serious.¹¹

The Committee may wish to ask the State Party to provide the legal provision that guarantees the child's right to know his or her parents by providing access to the data about gamete donors and collecting comprehensive information about donors.

¹¹ These include among others: sexual development disorders, intellectual disability, impaired fertility in offspring, increasing the risk of onset of congenital malformations and genetically determined diseases are inherited in an autosomal recessive.



4. Family environment and alternative care

a. Separation from parents

The current practice in Poland of separating children from parents for socio-economic reasons in a significant way affects the rights contained in Article: 9, 16 par. 1 and 18 of the CRC. These rules emphasize the primacy of parents in the responsibility for the upbringing and development of a child and protect a child from arbitrary or unlawful interference with his or her privacy, family or home. Separation of a child by the competent authority should be the final solution, when there is no other possibility of safeguarding interests of a child.

The data of presented by the Polish Ministry of Justice shows that in 2014, with respect to deprivation of parental authority, guardianship courts issued 10,236 judgments concerning 13,456 children, including only 301 judgments concerning 438 children due to the use of domestic violence. With respect to the limitation of parental authority, the proportions are similar (14,380 judgments concerning 23,720 children, including only 815 judgments concerning 1,431 children which were issued due to the use of domestic violence)¹².

Fundacja Rzecznik Praw Rodziców (Ombudsman for Parents' Rights Foundation, a non-profit and non-governmental organization with its registered office in Warszawa), has run Support Phone for Parents since February 2013 for families at risk or affected by the hasty removal of children. By the end of June 2015, the Foundation provided assistance to over 600 families from all over Poland. In over 150 of these cases concerned the removal of children, and the others concerned actions by institutions (courts, social welfare centres, schools, hospitals, etc.) which potentially could have led to the removal of children from their families, and were already far-reaching interferences in the family life. The analysis of the cases reported to the Support Phone allows the formulation of conclusions as to the most typical

¹² See *Sprawozdanie z realizacji działań wynikających z Krajowego Programu Przeciwdziałania Przemocy w Rodzinie mieszczących się w kompetencjach Ministerstwa Sprawiedliwości od 1 stycznia 2014 roku do 31 grudnia 2014 roku*, the Ministry of Justice; <http://www.ms.gov.pl/Data/Files/_public/ppwr/aktualnosci/sprawozdanie-ms-z-kppwr-za-2014-rok.pdf> (last accessed: 31 August 2015).



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reasons for the hasty removal of children from parents and the main problems of the systematic nature underlying the sources of these practices¹³.

About 70% of the cases reported to the Foundation were from parents, against whom the actions to limit or deprive parental rights on grounds of socio-economic nature have been taken. Among them, the most common are:

- **Low economic status, family poverty** – the charge against parents is the lack of satisfying living needs;
- **Poor housing conditions** (too small area and/or low standard), sudden loss of place of residence;
- **Unemployment of parents**, loss of job;
- **Social exclusion**: lack of access to institutional support, information, services, etc.¹⁴

Families in these difficult situations often do not receive the support that will solve their current problems. **Institutions, in the assumption to act for the benefit of the child and the family, do not present them with offers of help, but instead operate repressively and treating family problems as a premise to take away children.**

It should be noted that children from large families are most likely to be exposed to separation from their parents, which is not justified by actual necessity. This is due to the fact that in Poland, these families are the poorest social group (taking into account the income per person in the household), moreover, in relation to large families there exist negative stereotypes – including the assumption of the existence of a probable pathology.

Main systematic problems underlying the practice of taking away children for socio-economic reasons are:

¹³ In the Support Phone ended up cases of parents, who learned of its existence and decide to as the Foundation for help. This is only a fraction of all cases of the removal of children from their parents, therefore this information is not of a statistical nature. This is an analysis of the problems of a qualitative nature. Nevertheless, the rich cross-section of cases brought to the Foundation seems to accurately reflect the social reality with which families come into contact, threatened or affected by hasty taking away of their children.

¹⁴ An example of the consequences of social exclusion is the reduction or deprivation of parental rights in relation to children with previously unrecognized developmental disabilities or diseases, e.g., Asperger's syndrome, autism, ADHD. These children have difficulty in complying with social rules. In an environment exposed to social exclusion, parents do not have access to specialists. That is why they do not know the cause of the problems of their children. Institutions having contact with children e.g. schools, report to courts educational failure of parents, which results in decisions on the separation of children from families.



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- **Deficiencies in the area of institutional support** for families in a difficult life or economic situation:
 - insufficient funds provided for direct assistance in the form of financial or material benefits, very low income thresholds for entitlement to benefits;
 - lack of social housing in the resources of municipalities (long-term waiting lists);
 - far insufficient offer of social welfare centres and other institutions of family support in the way of various services (e.g. psychological help);

Deficiencies and failures in this area indicate a failure to comply with Article 27 par. 3 of the CRC.

- **Division of the financing of the tasks** from the scope of the social welfare and foster care between local government authorities of various levels: tasks from the social assistance are financed by the municipalities and the organization of foster care by *poviats*. Taking away a child from the family and making a transfer to foster care allows the municipality to avoid incurring the cost of family support. The financial mechanism reinforces the above mentioned problem of insufficient institutional support;
- **Defective law** – it is worth mentioning that against the existing Act on Counteracting Domestic Violence¹⁵ are raised serious allegations about its non-compliance with the Constitution of the Republic of Poland¹⁶ (in this case the application was submitted to the Polish Constitutional Tribunal); changes are also required i.e. the Family and Guardianship Code¹⁷ (e.g. in relation to very imprecise notion of “threat of welfare of a child”, which justifies taking him or her away from a biological family);
- **Insufficient competences** of a section of officials and representatives of institutions in the decision-making on the taking children away (judges for family cases, social workers)
- **Difficulties in enforcing by parents their rights in court proceedings:** e.g., the lack of mandatory representation before the court by a professional representative; excessive length of judicial proceedings; common acceptance by the court of institutions’ perspective (e.g. social welfare center, which imitated the procedure of taking away children) without

¹⁵ The Act of 29 July 2005 on *Counteracting Domestic Violence* (Dz.U. [Journal of Laws] of 2005 No. 180, item 1493, as further amended); [hereinafter: *the Act on Counteracting Domestic Violence*].

¹⁶ The *Constitution of the Republic of Poland* of 2 April 1997 (Dz.U. [Journal of Laws] No. 78, item 483, as further amended); hereinafter: *the Polish Constitution*.

¹⁷ The Act of 25 February 1964 - *Family and Guardianship Code* (Dz.U. [Journal of Laws] of 1964 No. 9, item 59, as further amended).



taking into account other independent sources of information about the family.

The Committee may wish to ask the State Party:

- *to provide a legal and extralegal provision in order to improve and enhance the institutional support for families in a difficult life and material situation;*
- *to provide a legal provision that guarantees an attorney for the parents at the stage of court proceedings;*
- *to provide a legal provision that in case of confirmed domestic violence, children if possible would stay at home and the person suspected of violence would be removed from the house where the children live.*

5. Disability, basic health and welfare

a. Social security and childcare services and facilities

As a result of the introduction of the Act on Counteracting Domestic Violence, social employees were burdened with control functions in relation to families, and for that reason they were prevented *de facto* (lack of resources and time) from real working with families and providing support to parents, in particular material support (especially food, clothing, and housing¹⁸). Under actual legal status, social employees have to pay exaggerated attention to incidental acts of negligence or child discipline¹⁹, which generates many rash decisions, e.g. restriction of parental rights, and in some cases taking children away from families that are dealing with temporary or incidental problems. As a result, children are placed in a foster care system mainly for trivial reasons. That constitutes a violation of the Article 16 of the CRC. Moreover, the Act on Counteracting Domestic Violence introduced the legal institution “interdisciplinary teams”. The Report of the National Audit Office (NAO) on the functioning of the Act on Counteracting Domestic

¹⁸ Within the Intervention Process Program, the *Ordo Iuris* Institute met with the case of Mrs. R. from Szymanów, where on the basis of groundless statements of family assistant initiated the procedure from the Act on Counteracting Domestic Violence, in case in which appropriate and effective solution would have been to place Mrs. R and her two children in a separate apartment (family live in difficult material conditions, together with relatives of alcoholics).

¹⁹ Article 12 par. 1 of the Act on Counteracting Domestic Violence.



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Violence²⁰ indicates, however, big passivity of the bodies, particularly where their active operation is required. In many cases, the “Blue Card” procedure has ended on its drafting or on a meeting with “interdisciplinary team”, but without taking any further actions. According to the NAO’s Report, the cause of this state of affairs are “the regulation solutions establishing excessively bureaucratic organizational structure, complex and lengthy procedures, basically prevented effective giving rapid assistance to victims of violence”. Often, work with families has been limited to administrative tasks of “interdisciplinary teams” and not to real social work.²¹ In addition, the lack of transparency of the operations of the “interdisciplinary teams” and their arbitrary assessments of parents’ behaviour towards children, contributes in some cases to the unjustified separation of children from families on a charge of using violence or isolation of the child from one parent considered to be the perpetrator (restraining order to approach the child). The consequence of the procedure of the “Blue Card” as well as practiced followed by “interdisciplinary teams” constitutes a violation of the fundamental rights of the child enshrined in Articles: 3, 5, 7, 9, 16 and 18 of the CRC. On the above manner of functioning of “interdisciplinary teams” indicate the experiences of the *Ordo Iuris* Institute. For example, in case of the “Blue Card” established for Mr W.B. by the ex-wife B.B., an application of the Social Welfare Centre W.-T. to court in order to issue a court order to leave apartment, was submitted to the court a month before summons to provide explanations about alleged use of domestic violence (the case ended with a final and valid judgement acquitting the accused of the allegations of use of violence against B.B). Similarly, in the case of Mr S.J., who was accused by “interdisciplinary team” of use of domestic violence against his daughters solely on the basis of testimony of his ex-wife. As a prosecutor of the District Prosecutor’s Office of W.-M. pointed out in the decision of discontinuance of an investigation: “version of sexual violence against minors based solely on claims of J.P.-J. (the wife of the accused), who *de facto* never explicitly formulated such a plea. In fact, this version was created by the Social Welfare Centre (...) .” In another case, conducted against Mr R.Ł. a part of “interdisciplinary team”, which questioned Mr. R.Ł., were persons, who testified against him in his divorce case. It should be emphasized that the presence of violent behaviour of adults towards children in legal institutions of foster care or educational institutions does not lead to such a serious consequences as in the case of parents. This is because the overriding principle towards persons involved in foster care is the principle

²⁰ See the Report of NAO (PL: NIK): *Przeciwdziałanie przemocy w rodzinie przez administrację publiczną*, identification No.: 143/2013/P/12/107/KPS, Warszawa, 2013, hereinafter: *the Report of NAO*.

²¹ See p. 17 of the Report of NAO.



of the presumption of innocence; in the case of family members, it is the welfare of the child.

The Committee may wish to ask the State Party:

- *to introduce the principle of transparency in the work of “interdisciplinary team” and assumption of those teams by the provisions of the Act on Personal Data Protection²²;*
- *to cover of the personal data, collected about the children in the procedure of the “Blue Card” by provisions of the Act on Personal Data Protection.*

b. Health and health services, in particular primary health care

On April 17th, 2015 a Regulation of the Minister of Health amending the regulation on the issue of dispensation by pharmacy, medicinal products and medical devices²³, which introduces the pill “ellaOne” for children over 15 years, without a prescription, entered into force. It is contrary to the guarantees protecting life from the moment of conception, it violates the right of the patient, in particular of a minor patient and ignores guarantees for the protection of the children’s rights and it infringes the right of parents with regard to the child’s upbringing and their rights deriving from parental authority.

Admission to the sale of the abortifacient preparation without prescription violates the right of the child to the enjoyment of the highest attainable standard of health. First of all, it should be noted that, as indicated by the manufacturer²⁴, the pill “ellaOne” has two-fold intended action. Its active substance - *ulipristal acetate* - can first delay ovulation or secondly, prevent implantation of the embryo, if ovulation and insemination has occurred. The second mode of action of the pill is equivalent to the killing of the embryo (abortifacient

²² The Act of 29 August 1997 on Personal Data Protection (Dz.U. [Journal of Laws] of 2014 No. 1182, as further amended).

²³ The Regulation of the Minister of Health of 2 April 2015 on *amending the regulation on the issue of dispensation by pharmacy, medicinal products and medical devices* (Dz.U. [Journal of Laws] of 2015 No. 477), hereinafter: *the Regulation*.

²⁴ The product characteristics “ellaOne”: <http://ec.europa.eu/health/documents/community-register/2015/20150107130448/anx_130448_pl.pdf> (last accessed: 31 August 2015).



action). **Taking the preparation “ellaOne” is associated with a significant risk of numerous side effects²⁵.**

The Committee may wish to ask the State Party to strengthen the legal provision in the field of the standard of child health:

- *by ensuring that access to medical products that causes the risk to one’s health or life will be protected by the obligation to obtain a prescription;*
- *by ensuring that medical products that causes the risk to one’s health or life will be accessible by children only in the presence of parents.*

6. Education, leisure and cultural activities

a. Right to education, including vocational training and guidance

It is worth mentioning positive effects achieved by Poland over 15 years of holistic sex education of type 3, i.e. Family Life Education²⁶, which fully implements the legal obligation arising from the Article 3 and 5, interpreted together. A fundamental principle of the CRC contains the Article 3 stating that “In all action concerning children, ... the best interest of the child shall be a primary consideration”, taking into account “the rights and duties of parents, legal guardians, or other individuals legally responsible for him or her”. This principle clearly affirms the Article 5 of the CRC, which states that “States Parties shall respect the responsibilities, rights and duties of parents ... to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.” Therefore, respect for parental rights is inseparable from each of the rights of the child, protected by the CRC. To put it bluntly, the CRC recognizes that the appropriate way to implement the rights of the child is to ensure the rights of parents and family. In this regard, the possibility of filing written communications (according to par. 4 of the Regulation of the Minister of National

²⁵ The Presidium of the Supreme Council of Pharmacists indicates that *the frequent use of these pills cause hormonal disorders, menstrual cycle dysregulation*. Frequent use may consequently cause problems with getting pregnant and even speed up a menopause.

²⁶ See *Standards for Sexuality Education in Europe*, the WHO Regional Office for Europe and Bzga, 2013; <http://www.bzga-whocc.de/?uid=20c71afcb419f260c6afd10b684768f5&id=home> (last accessed: 31 August 2015).



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Education of August 1999²⁷) is consistent with the above-mentioned fundamental principle protected in the CRC. Thus, any data provided by Poland with regard to this issue are the manifestation of the respect of the rights of the child enshrined in the CRC.

The core curriculum of the Program of the Family Life Education, established in 1998, takes into account not only the physical aspects but also the emotional (friendship, love), moral (the responsible choice) and social aspects (family, friends).²⁸ The beneficial effect of Family Life Education classes on attitudes and choices of young people confirm the research²⁹ and statistical resources represented by EUROSTAT. The effectiveness of the sex education of type 3 is expressed in the percentage decrease in the number of young people on sexual initiation at the age of 15 years. After 1998, since the introduction of the Family Life Education classes, this percentage decreased.³⁰ Decreasing the incidences of irresponsible sexual behaviour of teenagers has an obvious impact on reducing the number of unwanted pregnancies in this age group. Moreover, Family Life Education classes bring much improved results in areas such as: legally induced abortion by teenage girls, children born to teenage girls, diagnosed cases of HIV infections and AIDS cases, than sex education of type 2 carried out in Germany, Sweden or Great Britain. It is sufficient to compare the following statistical data published by EUROSTAT³¹ or WHO³²:

²⁷ See the Regulation of the Minister of National Education of 12 August 1999 on *the manner of school education and the scope of contents related to knowledge of human sexual life, the principles of informed and responsible parenthood, value of family, life in prenatal phase and methods and means of informed procreation, contained in the core curriculum of general* (Dz.U. [Journal of Laws] of 2014 No.395).

²⁸ See T. Król, *Skuteczność zajęć „wychowanie do życia w rodzinie” realizowanych od 15 lat w polskiej szkole*.

²⁹ S. Czarnik, *Uczniowie o wychowaniu do życia w rodzinie. Raport z badań w krakowskich gimnazjach*, Wychowawca No. 9/2012, p. 24-27 and *Wychowanie do życia w rodzinie w opinii uczniów szkół ponadgimnazjalnych. Wyniki badania uczniów liceów i techników w Krakowie i Białymstoku*, Wychowawca No 10/2014, p. 18-24.

³⁰ According to researches: *Odsetek młodzieży w wieku 15-stu lat po inicjacji seksualnej w związku z wprowadzeniem WDŻwR*, B. Woynarowska and others, “Ginekologia Polska” No. 8, p. 6220-632. S. Grzelak and others (2007) badania własne; the percentage of sexual initiation at the age of 15 years was respectively: 5% for girls and 17 % for boys in 1990, 10% for girls and 24 % for boys in 1994, 13 % for girls and 30 for boys in 1998, 9 % for girls and 21 % for boys in 2002, 8 % for girls and 18,5 % for boys in 2007. According to recent studies published by Institute for Educational Research (IBE) , *op. cit.*, p. 46 only 5 % of all respondents made sexual intercourse at the age of 15 years.

³¹ For Table I see <http://ec.europa.eu/eurostat/web/products-datasets/-/demo_fabort>, for diagram II see <http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=demo_fasec&lang=en> and <http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=demo_pjan&lang=en> (last accessed: 31 August 2015).

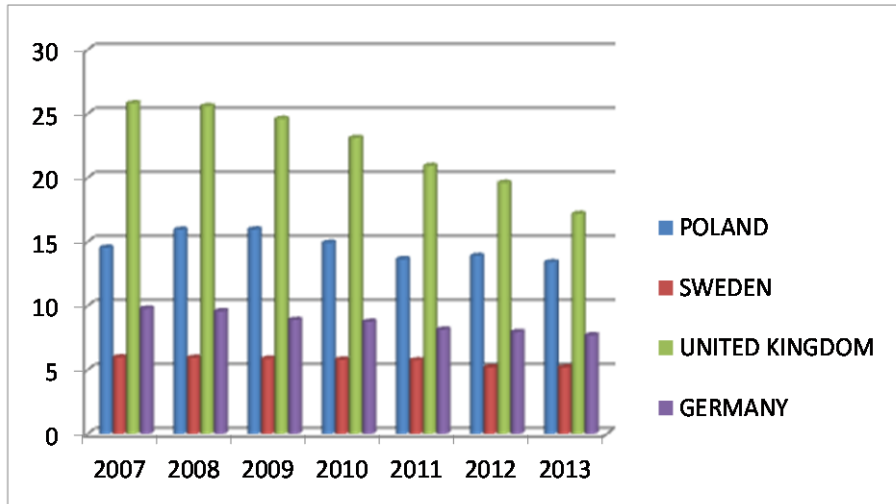
³² For diagram III see *HIV/AIDS surveillance in Europe 2013*, WHO and European Centre for Disease Prevention and Control (ECDC), p. 22-23 (HIV) and p. 52-53 (AIDS).



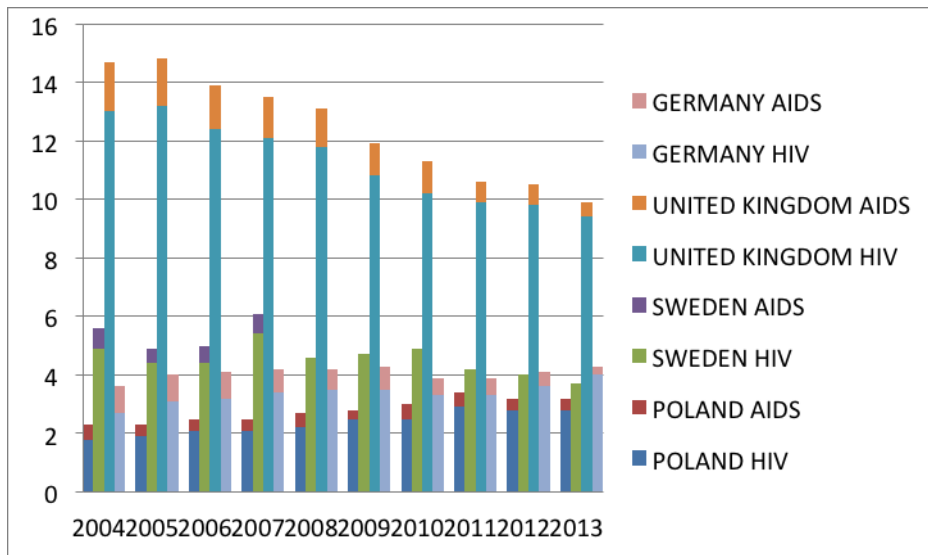
I. The number of legally aborted pregnancies by teenage girls at 15-19 years of age in the years 1999-2013

	Poland	Sweden	United Kingdom	Germany
1999	-	4,090	38,161	13,759
2000	-	5,001	39,881	14,930
2001	-	5,408	40,288	16,453
2002	-	6,240	38,490	15,948
2003	5	6,320	40,075	15,910
2004	4	6,400	42,382	16,737
2005	9	6,686	41,245	15,753
2006	24	7,296	43,617	15,209
2007	12	-	46,258	14,495
2008	42	7,338	44,994	13,300
2009	-	6,832	42,157	12,484
2010	18	6,199	40,230	11,502
2011	-	-	36,540	10,539
2012	23	-	32,967	10,116
2013	16	-	-	3,297

II. The number of live births by teenage girls at 15-19 years of age per 1000 teenage girls in the years 2007-2013



III. The number of diagnosed HIV/AIDS cases per 100.000 population in the years 1999-2013



Holistic sex education of type 3 which include talks about love, relationships, and dreams of young people, has a positive influence.³³ It encourages them to healthy living in different

³³ See the research of S. Grzelak, *Seksualizacja w przestrzeni publicznej i jej wpływ na młodzież*, Świat Problemów, No. 6, p. 27 – 31, 2013.



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areas at the same time – helping to prevent, for example, thoughts of suicide, getting drunk, and early sexual initiation. Moreover, the above-mentioned survey research conducted by Institute for Educational Research confirms the compromise among parents and students about the current core curriculum of the Family Life Education both in terms of discussed topics and in terms of spreading it over the next steps in learning.

The current program of the Family Life Education based on scientific knowledge corresponds to social expectations and is very close to optimal social compromise.³⁴ **Evaluating the performance of the obligation to provide adequately to all children Family Life Education, it is worth paying attention to the latest survey research conducted by the Institute for Educational Research³⁵.** We can learn from that survey that in almost 60% primary and secondary schools Family Life Education classes were organized. Whereas the availability of these classes in lower secondary schools amounted 90 %.³⁶

Analyzing the performance by Poland of the CRC, the negative phenomena in field of education should be noted. In 2008 the central government began to implement educational reform, consisting of lowering the compulsory school age from seven to six years. This change was accompanied by compulsory preschool preparation of the children of five years. Unfortunately imposition of stiff duties on younger children were not preceded by appropriate preparation of the educational system for such major changes. The method of reform has not secured welfare and rights of the child, but on the contrary, has violated these rights – in particular, the rights to education, upbringing and care appropriate to age and level of development of a child.

For this reason, the plans of the Ministry of Education and the parliamentary coalition met with great social opposition, expressed through the creation of the civil initiative "Ratuj maluchy" ["Save the kids!"]. In the period from 2011 until 2014 1.6 million signatures of parent were gathered in three civic projects (two bills and a request

³⁴ See S.Grzelak (Ed.), *Vademecum skutecznej profilaktyki problemów młodzieży*, 2015. Moreover, current program of Family life Education support such a organisations and initiatives as: *Stowarzyszenie Twoja Sprawa*, *Stop seksualizacji naszych dzieci*, *Stop Pedofilli*, *Centrum Wspierania Inicjatyw dla Życia i Rodziny*.

³⁵ See research report: *Opinie i oczekiwania młodych dorosłych (osiemnastolatków) oraz rodziców dzieci w wieku szkolnym wobec edukacji dotyczącej rozwoju psychoseksualnego i seksualności*, Institute for Educational Research (IBE), Warsaw 2015.

³⁶ The organisation of the education system in Poland is specified by bill: the Act of 7 September 1991 on *Education System* (Dz.U. [Journal of Laws] of 2004 No. 256, item 2572, as further amended).



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for a educational referendum) for the right of parents to decide in matters of education of their children. Nevertheless, the governmental coalition ignored the will of the majority of parents and led to the implementation of the reform. The problems it created imposed further on the already-existing negligence in the education system. Listed below are the major irregularities negatively affecting the situation of children subject to compulsory education:

- 1) **Lack of respect for the responsibilities, rights, and duties of parents towards their children** in such an important area of their lives: education. Besides the reform of lowering school age, the legislature also deprived parents the possibility of consulting curriculum and selection of textbooks;
- 2) **Polish schools do not provide children the right to education, upbringing, and care appropriate to their age and level of development.** The core curriculum for classes I to III, in force since 2009, does not take into account the harmonious development of the child in all its areas. In addition, the physical conditions prevailing in schools does not allow for teaching that takes into account the needs of six-year-old children (e.g. learning through play, movement, variable types of activity);
- 3) **The introduction of the virtual monopoly of the Government with respect to the issuance of textbooks** to primary education results in a reduction of the quality of textbooks and risk of ideologization of teaching processes;
- 4) **The lack of mandatory minimum standards in schools** - the conditions prevailing in schools remain unmonitored on many issues. Consequently, there is no legal basis to enforce appropriate standards. Underfunding of the education system and the lack of standards defined by the law results in a low level of school infrastructure and the organization of learning processes:
 - **Teaching shift** is commonly used in schools – a problem which also applies to kindergartens located in schools. In extreme cases, the children start learning at 6:30 a.m. and end at 7:00 p.m.;
 - **Poor conditions of day room care** - lack of suitable rooms and the lack of a standardized area for one student results in overcrowding, overloading children with noise, lack of conditions for resting or doing homework. For many children a day room care is not available due to the lack of places or a short time of operation. Sometimes, a day room care is not organized;
 - **The legislation does not require canteens in schools**, resulting in a lack of canteens in many institutions. In addition, over the last few years, a large number of local governments abandoned the maintenance of school canteens for the release of school rooms to private gastronomic or catering companies. This has led to a significant



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- increase in food prices and at the same time decline in its quality;
- **The organization of kindergartens in schools** – the authorities introduced a compulsory nursery schooling for five year olds, but did not provide facilities that could adopt these children. As a result, five-year-old children end up in kindergartens located in schools, most of which have much lower standards than normal kindergartens, and some of which were organized in provisional manner. The organization of their work makes that in practice, function of care it is often not realized;
 - **The organization of kindergartens and first classes in complexes where there are lower secondary schools.** Educational and discipline problems of these institutions impinge negatively on the conditions of early learning and the safety of the youngest children;
 - **Bad conditions for carrying out physical education,** lack of space for physical exercise (lessons are held in the corridors). The problem is also the lack of space for changing clothes, therefore the child's right to privacy is not respected;
 - **Lack of playgrounds and sport fields** - many schools do not have the proper places to play outside. Similarly, because there are too many children per teacher, the opportunity to go outside with the children at all is a problem.
- 5) **Lack of safety - the problem of violence in schools** is a serious violation of children's rights to safe learning environments³⁷. There is a lack of effective action in this field by the competent public authorities. The National Audit Office (NAO) appraised in 2014 that the government program “Bezpieczna i przyjazna szkoła” [“Safe and friendly school”] failed³⁸;
- 6) **Shortening time of the rehabilitation of children with disabilities and developmental disorders** – due to shortened time of kindergarten education and childcare, there has also been a significant reduction in the time in which children can enjoy free access to therapy in early intervention centres (classes are intended only for children who do not attend school yet).

³⁷ Researchers conducted among elementary school students show that about a quarter of them experienced serious violence than verbal aggression in school. For example, in 2013-2014 approx. 18 % primary school pupils were mugged at school, 12% - fell victim to the beat, 6% took part in a fight, in which a dangerous weapon was used, 8% were forced to donate money or buy something for their own money to other students. See G.Mazurkiewicz, A.Gocłowska, *Jakość edukacji. Dane i wnioski z ewaluacji zewnętrznych powadzonych w latach 2013-2014*, Jagiellonian University; <<http://www.npseo.pl/data/documents/4/338/338.pdf>> (last accessed: 30 August 2015).

³⁸ The result of the NAO control: <<https://www.nik.gov.pl/plik/id.6956,vp.8803.pdf>> (last accessed: 30 August 2015).



The Committee may wish to ask the State Party to guarantee:

- *the introduction of the statutory guarantee to ensure the impact of parents on basic matters relating to the school education of their children;*
- *the introduction of regulations determining mandatory standards in schools and kindergartens;*
- *the development and implementation of new core curriculum and methodology of teaching based on scientific grounds;*
- *the restoration of the right of option of a textbook by teachers (at the level of the Bill);*
- *the introduction of an effective program to improve safety in schools.*

7. Special protection measures

a. Physical and psychological recovery and social reintegration

In the Polish Code of Civil Procedure applies the rule that minors must have the appropriate mental development, state of health and level of maturity, and to be heard in court. In criminal cases relating to domestic violence and sexual harassment of minors, the issue of questioning children was settled in such a way: to question the child in friendly conditions in the so-called “Blue Room”, but the rule of taking into account the level of mental maturity of the child, has been not respected: children under five years old usually do not have yet sufficient language and conceptual skills so as to carry with them a full interview.³⁹

Studies of case files of criminal cases concerning sexual abuse of children, reported to the Association Stop Manipulation shows that children, alleged victims of harassment, are subject to procedure of a hearing before the age of 5 years old, in fact, sometimes even at the age of 2.5 and 3 years old. Minor Peter S. was on 12th October 2007 “questioned” in Olsztyn, in the presence of a judge at the age of 2 years and 2 months. Despite the fact that the child did not respond to questions, an expert appointed by the court who participated in the hearing, derived from the lack of response of the child the fact of tiredness and reluctance to repeat what he said earlier to his mother. In another case, minor Victoria R. was questioned in the “Blue Room” when she was only 3 years and 2 months old.

³⁹ See p. 216 of the M.J. Ackerman, *Basics of judicial psychology*, Gdańsk, 2005.



The principle of a single interrogation of a minor is unfortunately not respected. Nearly 4 years old Diana R. was twice questioned in the “Blue Room” in Poznań on the 9th July 2009 and 4th May 2010. Her sister, 5-year-old Julia, underwent a similar procedure.

Studies of case files, monitored by the Association Stop Manipulation also indicate that alleged victims of sexual abuse, even below 5 years of age, are subject to various psychological interactions described as: “diagnostic-consultative” meetings, psychological examination in the form of “hearing”, or talks with a child in places such as City Social Welfare Centres. 5-year-old Agnieszka, during such a meeting, drew the “home of her dreams”. On this basis, the social worker wrote: “Alarming were oval shapes, especially >> the bird which does poop<< and right next to it a heart. On another drawing made by the girl “disturbing were large hands (...). The above mentioned details aroused supposition, that sexual abuse might have occurred against the child.”. The Association Stop Manipulation is also familiar with the case of 6-year-old Jagna L. from Warszawy who has undergone therapy in one of the foundations. The psychologist leading diagnostic-consultative meetings with the child pointed out that “it was only at the third meeting that the girl revealed complete information”. The exact course of these meetings has not been registered, and it is unclear how she came to disclose the information expected by the psychologist.

There are cases of repeated psychological testing of children for sexual harassment, despite the fact that it is accepted that the more times a child is subject to tests, the less reliable the results are⁴⁰. For instance, Eve K., a child from Toruń, was first examined by a psychologist at the age of 2 and a half years, examined a second time 10 months later by a team of experts, and a third time after 3 years in a foundation.

Therapeutic assistance given to children is not subject to any control in terms of methods used. Use of some therapies in children, not proven scientifically as to their effectiveness, may lead to aggravation of problems and may, in fact, cause new disorders, e.g. inducing false memories or causing exhaustion and physical suffering (e.g. Doman Method applied to children with disabilities).

So-called ‘experts’ from the field of psychology, giving a opinion in family and criminal cases where a child is an alleged victim or a witness, are not subject to any institution except the judge conducting proceedings. Such judges often do not have special knowledge

⁴⁰ *Ibid.*



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to take the expert's actions under scrutiny. Because there are opinions by experts that do not meet the requirements of a fair psychological-pedagogical assessment⁴¹, as well as instances of false accusations of sexual harassment⁴², the decision taken in such circumstances can cause serious injury in psychological and moral sphere of a child (e.g. the loss of family ties).⁴³

The Committee may wish to ask the State Party to guarantee:

- *the introduction of the supervision of the Ministry of Justice on the activities of the experts and training of psychologists in the field of judicial examination of children in cases of domestic violence and sexual harassment;*
- *the requirement for the experts giving opinions concerning children to have special knowledge in the field of developmental psychology and pedagogy of young children;*
- *the introduction of supervision of paediatricians or doctors specializing in child psychiatry, over the course of therapy for children, in particular victims of violence and sexual harassment;*
- *the requirement to have paediatrician or psychologist diploma by children's therapists*
- *the obligation of a therapist to keep documentation relating to the methods of therapy, its duration, the course of the session, the mental state of the child, and the evaluation of effects;*
- *clarification of the qualitative and quantitative definition of "adequate mental development" and "a level of maturity" of the child and to determine the minimum age of a minor, in procedures of judicial hearings and / or interrogation, based on generally accepted scientific theories of intellectual and emotional development of a child (Piaget)⁴⁴;*
- *the introduction of legal regulations limiting the amount and frequency of psychological testing of a child relating to sexual harassment allegations.*

⁴¹ Stefan Batory Foundation, *Raport z działań strażniczych. Monitoring wybranych Ośrodków Diagnostyczno-Konsultacyjnych*, Warszawa, 2009.

⁴² B. Gujska, T. Witkowski, *Problem fałszywych oskarżeń. Molestowanie seksualne w polskim sądownictwie*, Forum Adwokatów. Toga., No. 15, 2009.

⁴³ See one of such a case < <http://www.ordoiuris.pl/dziennikarskie-sledztwo-o-naduzyciach-bieglej-sadowej-przeprowadzone-na-podstawie-materialow-instytutu-ordo-iuris,3634,i.html>> (last accessed: 31 August 2015).

⁴⁴ J. Piaget, *Talking and thinking in children*, PWN, Milanówek, 1992.



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8. Annex 1 – List of recommendations

The Committee may wish to ask the State Party to provide the legal provisions that guarantee that:

- assisted reproductive techniques may be used only if the well-being of the child is ensured;*
- they may only be used in couples who, on the basis of their age and personal circumstances, are likely to be able to care for and bring up the child until it reaches the age of majority;*
- surrogacy motherhood as the sale of children and child trafficking is prohibited.*

The Committee may wish to ask the State Party what concrete steps will the State Party undertake:

- to respect the inherent right of dignity and life of a child, without differentiation of protection depending on the phase of its development;*
- 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 CRC.*

The Committee may wish to ask the State Party what concrete steps the State Party will undertake to ensure that unborn children conceived in vitro will not be discriminated against on the grounds of disability.

The Committee may wish to ask the State Party to provide the legal provision that guarantees the child's right to know his or her parents by providing the access to the data about gamete donors and collecting the comprehensive information about donors.

The Committee may wish to ask the State Party:

- to provide a legal and extralegal provision in order to improve and enhance the institutional support for families in a difficult life and material situation;*
- to provide a legal provision that guarantees an attorney for parents at the stage of court proceedings;*



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- *to provide a legal provision that in case of confirmed domestic violence, children if possible would stay at home and the person suspected of violence would be removed from the house where the children live.*

The Committee may wish to ask the State Party:

- *to introduce the principle of transparency in the work of “interdisciplinary teams” and assumption of those teams by the provisions of the Act on Personal Data Protection;*
- *to cover of the personal data collected about the children in the procedure of the “Blue Card” by provisions of the Act on Personal Data Protection.*

The Committee may wish to ask the State Party to strengthen the legal provision in the field of the standard of child health:

- *by ensuring that access to medical products that causes the risk to one’s health or life will be protected by the obligation to obtain the prescription;*
- *by ensuring that medical products that causes the risk to one’s health or life will be accessible by children only in the presence of parents.*

The Committee may wish to ask the State Party to guarantee:

- *the introduction of the statutory guarantee to ensure the impact of parents on basic matters relating to the school education of their children;*
- *the introduction of regulations determining mandatory standards in schools and kindergartens;*
- *the development and implementation of new core curriculum and methodology of teaching based on scientific grounds;*
- *the restoration of the right of option of a textbook by teachers (at the level of the Bill;)*
- *the introduction of an effective program to improve safety in schools.*
- *the introduction of the supervision of the Ministry of Justice on the activities of the experts and trainings of psychologists in the field of judicial examination of children in cases of domestic violence and sexual harassment;*



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- *the requirement to have by the experts, giving opinions concerning children, special knowledge in the field of development psychology and pedagogy of a small child;*
- *the introduction of the supervision of a paediatrician or doctor specializing in child psychiatry, over the course of therapy for children, in particular victims of violence and sexual harassment;*
- *the requirement to have paediatrician or psychologist diploma by children's therapists;*
- *the obligation of a therapist to keep documentation relating to the methods of therapy, its duration, the course of the session, the mental state of the child and the evaluation of effects;*
- *clarification of the qualitative and quantitative definition of “adequate mental development” and “a level of maturity” of the child and to determine the minimum age of a minor, in procedures of judicial hearings and/or interrogation, based on generally accepted scientific theories of intellectual and emotional development of a child (Piaget);*
- *the introduction of legal regulations limiting the amount and frequency of psychological testing of a child for the fact of sexual harassment.*



9. Annex 2 – List of health complications due to in vitro fertilization

1. Merritt TA, Goldstein M, Philips R, Peverini R, Iwakoshi J, Rodriguez A, Oshiro B, Impact of ART pregnancies in California: an analysis of maternity outcomes and insights into the added burden of neonatal intensive care, “Journal of Perinatology” nr 34 (May 2014), p. 345-350.
2. Fisch B, Harel L, Kaplan B, Pinkas H, Amit S, Ovadia J, Tadir Y, Merlob P, Neonatal assessment of babies conceived by in vitro fertilization in California, “Journal of Perinatology” nr 17 (November 1997), p. 473-476.
3. Victoria M. Allen, MD, MSc, FRCSC, Halifax NS, R. Douglas Wilson (Chair), MD, MSc, FRCSC, Philadelphia PA, Pregnancy Outcomes After Assisted Reproductive Technology, JOINT SOGC – CFAS GUIDELINE, March 2006, p. 226.
4. J. Reefhuis, M.A. Honein, L.A. Schieve, A. Correa, C.A. Hobbs and S.A. Rasmussen, and the National Birth Defects Prevention Study, Assisted reproductive technology and major structural birth defects in the United States, Human Reproduction, Vol.24, No.2 p. 360–366, 2009.
5. Zwink, Nadine: Zwink N, Janetzky E, Schmiedeke E, Schmidt D, Märzheuser S, Grasshoff-Derr S, Holland-Cunz S, Weih S, Hosie S, Reifferscheid P, Ameis H, Kujath C, Rissmann A, Obermayr F, Schwarzer N, Bartels E, Reutter H, Brenner H; CURE-Net Consortium, Assisted reproductive techniques and the risk of anorectal malformations: a German case-control study. Orphanet Journal of Rare Diseases 2012, 7, p. 65.
6. Demars J, Shmela ME, Khan AW, Lee KS, Azzi S, Dehais P, Netchine I, Rossignol S, Le Bouc Y, El-Osta A, Gicquel C. Genetic variants within the second intron of the KCNQ1 gene affect CTCF binding and confer a risk of Beckwith-Wiedemann syndrome upon maternal transmission. J Med Genet. 2014 Aug, 51(8), p.502-11.
7. Gosden R, Trasler J, Lucifero D, Faddy M. Rare congenital disorders, imprinted genes, and assisted reproductive technology. „Lancet”. 361. 9373, p. 1975-7, 2003.
8. Cocchi G, Marsico C, Cosentino A, Spadoni C, Rocca A, De Crescenzo A, Riccio A, Silver-Russell syndrome due to paternal H19/IGF2 hypomethylation in a twin girl born after in vitro fertilization. Am J Med Genet 2013; 161A, p. 2652-2655.
9. Kannenberg K, Weber K, Binder C, Urban C, Kirschner H-J, Binder G. IGF2/H19 hypomethylation is tissue, cell, and CpG site dependent and not correlated with body asymmetry in adolescents with Silver-Russell syndrome. Clin Epigenetics. 2012; 4(1), p. 15.
10. Harold Chen: Atlas of Genetic Diagnosis and Counselling. Totowa, NJ: Humana Press, 2006; 899-902. ISBN 1-59259-956-7.
11. Odom LN, Segars J. Imprinting disorders and assisted reproductive technology. Curr Opin Endocrinol Diabetes Obes. 2010; 17, p. 517-22.



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12. Ørstavik KH, Eiklid K, van der Hagen CB, Spetalen S, Kierulf K, Skjeldal O, Buiting K. Another case of imprinting defect in a girl with Angelman syndrome who was conceived by intracytoplasmic semen injection. *Am J Hum Genet* 2003, 72(1), p. 218-219.
13. Mau Kai C, Juul A, McElreavey K, Ottesen AM, Garn ID, Main KM, Loft A, Jørgensen N, Skakkebaek NE, Andersen AN, Rajpert-De Meyts E. Sons conceived by assisted reproduction techniques inherit deletions in the azoospermia factor (AZF) region of the Y chromosome and the DAZ gene copy number. *Hum Reprod* 2008; 23(7), p. 1669-1678.
14. Ferraretti AP, Goossens V, Kupka M, Bhattacharya S, de Mouzon J, Castilla JA, Erb K, Korsak V, Nyboe Andersen A; *European IVF-Monitoring (EIM) Consortium for the European Society of Human Reproduction and Embryology (ESHRE)*. *Assisted reproductive technology in Europe, 2009: results generated from European registers by ESHRE*. *Hum Reprod*. 2013 Sep; 28(9):2318-31.
15. Joyce A. Martin, M.P.H.; Brady E. Hamilton, Ph.D.; Stephanie J. Ventura, M.A.; Michelle J.K. Osterman, M.H.S.; and T.J. Mathews, M.S., *Division of Vital Statistics. Births: Final Data for 2011* in: *National Vital Statistics Reports*. Volume 62, Number 1 June 28, 2013.
16. Victoria M. Allen, MD, MSc, FRCSC, Halifax NS, R. Douglas Wilson (Chair), MD, MSc, FRCSC, Philadelphia PA, *Pregnancy Outcomes After Assisted Reproductive Technology, JOINT SOGC – CFAS GUIDELINE*, March 2006, s. 227.