



ORDO IURIS

INSTITUTE FOR LEGAL CULTURE

Warsaw, 16th July 2018

Honorable Member
United Nations Committee
on the Rights of the Child

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

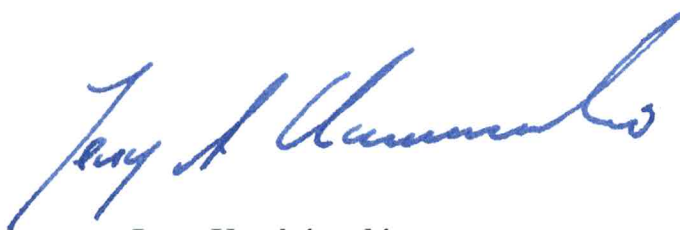
The *Ordo Iuris* Institute for Legal Culture together with **Europejska Federacja dla Życia i Godności Człowieka One of Us, Federacja Stowarzyszeń Rodzin Katolickich w Europie FAFCE, Fundacja Centrum Wspierania Inicjatyw dla Życia i Rodziny, Fundacja Jeden z Nas, Fundacja Pro – Prawo do życia, Fundacja Życie i Rodzina, Inicjatywa Stop Seksualizacji Naszych Dzieci, Polska Federacja Ruchów Obrony Życia, Stowarzyszenie Rodzice Chronią Dzieci, Vigilare Foundation** welcome the opportunity to assist the United Nations Committee on the Rights of the Child in its adoption of the List of Issues Prior to Reporting for Poland.

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

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. *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 on the Rights of the Child will find our intervention supportive.



Jerzy Kwaśniewski

President of the Board

Ordo Iuris Institute for Legal Culture

The Ordo Iuris Institute Submission
to the United Nations Committee on the Rights of the Child
for consideration when compiling the List of Issues Prior to Reporting
for the POLAND

the Pre-Sessional Working Group 81 (8-12 October 2018)

in cooperation with:

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I. General Principles:

a. Right to life, survival and development (art. 6) and Disability, basic health and welfare: Survival and development (art. 6 para. 2)

The Convention on the Rights of the Child (hereinafter: CRC) guarantees only the right to life for every human being. The preamble of the CRC explicitly recognizes the right to life of the unborn child.¹ 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 of the CRC, Article 1 that defines child as “every human being below the age of eighteen years” does not say thus that the status of a “child” attributes at the time of birth. Moreover, the Act of 6 January 2000 on the Ombudsman for Children states in Article 2 that “a child is every person from the moment of conception until the age of majority”². 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.”

In the context of the right to life it should be emphasized that neither the CRC, nor other international human right instruments excludes prenatal life from the scope of the protection, that contains only a right to life and not a “right to abortion”. International human rights instruments recognise life as a primary right.³ The right to life is the first to be guaranteed in 1948 in the UDHR⁴, but also in other instruments, such as the ICCPR⁵ or the European Convention on Human Rights⁶. Article 6 of the ICCPR impliedly 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

¹ 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.

² Article 2 section 1 of the *Act of 6 January 2000 on the Ombudsman for Children* (i.e. Journal of Laws of 2017 item 922).

³ Inter alia: *Universal Declaration of Human Rights*, G.A. Res. 217 (III) A. U.N. Doc A/RES/17 (III), 10 December 1948, [hereinafter: the UDHR]; *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.

⁴ See Article 3 of the UDHR.

⁵ See Article 6, Article 24 and Article 26 of the ICCPR.

⁶ See Article 2 of the European Convention on Human Rights.

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”⁷ and “was inspired by consideration for the interests of the unborn child”⁸. 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 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. Articles 30 and 38 of the Constitution of the Republic of Poland also confirm the principle of protection of human life at every stage, both before and after birth. This principle is referred to for instance in the ruling of the Constitutional Tribunal of 28 May 1997, file ref. no. K 26/96, where the court once again confirmed that “The value of constitutionally protected legal interest – human life – including life developing in the prenatal phase, cannot be differentiated. There are no sufficiently precise and justified criteria to allow such a differentiation depending on the development phase of a human being. Since its creation, human life is a constitutionally protected value. This also applies to the prenatal phase.”⁹

Furthermore, the obligation of the State Party to ensure to the maximum extent possible the survival and development of the child is in line with Article 38 of the Constitution of the Republic of Poland. According to this provision the Republic is obliged to ensure legal protection of life to every human being. This means that public authorities are not only obliged to refrain from activities that negatively impact life as constitutionally protected value, but they are also burdened with a positive duty to undertake such activities that fully lead to implementation of the constitutional safeguard of protection of the right to life. This view is confirmed by the Constitutional Tribunal in the verdict of 23 March 1999 in the case under file ref. no. K 2/984. The Tribunal stated that “since a certain objective system of values stems from the Constitution, the legislator is obliged to pass laws that make protection and implementation of these values in the broadest possible sense possible”¹⁰, and also that “irrespective of the «defensive» wording of the right to life, Article 38 obliges public authorities to undertake actions aimed at protection of life”¹¹. The Constitutional Tribunal reiterated also that “(...) the ban on violating human life, including the life of the unborn child, results from norms of constitutional character. In such a situation, ordinary legislator cannot be authorized to decide about the conditions of validity of such

⁷ See A/3764 § 18. Report of the Third Committee to the 12th Session of the General Assembly (5 December 1957).

⁸ See A/2929, Chapter VI, §10. Report of the Secretary-General to the 10th Session of the General Assembly (1 July 1955).

⁹ Ruling of the Constitutional Tribunal of 28 May 1997, K 26/96, item 3.

¹⁰ Ruling of the Constitutional Tribunal of 23 March 1999, file ref. no. K 2/98, item 3.

¹¹ Ibid.

a ban, thus making constitutional norms conditional.”¹² Moreover, it needs to be emphasised that neither Article 30 nor 38 of the Constitution of the Republic of Poland introduce any time limitations suggesting that the obligation to respect and protect human dignity and right to life becomes valid upon birth or at some later point in time. As a consequence, it means that public authorities are obliged to respect and protect human dignity and the right to life from the moment of conception.¹³

The said scope of duties means that actions need to be taken at the level of the Act, which in practice would mean adopting the proposed amendment to the Act presented in the citizens’ initiative of the “End Abortion” Committee¹⁴. The proposed amendment to the Act foresees abolishing discrimination on statutory level of unborn children with disabilities by ensuring them the same legal protection that is enjoyed by healthy children at present. Its purpose is to restore compatibility between the statutory and the constitutional protection of dignity and the right to life of unborn children with disabilities.

Suggested questions to the Government:

- 1. When will Polish Government initiate works on introducing amendments to Article 1 of the Act, which became invalid on 23 December 1997 in accordance with the ruling of the Constitutional Tribunal of 28 May 1997 in the case number K 26/96 within the scope in which it conditions protection of life in the prenatal phase from a decision of ordinary legislator?*
- 2. How is the Polish Government planning to legally regulate the legal status of an unborn child acknowledging that the child is a patient in the understanding of the Act of 6 November 2008 on Patients’ Rights and the Commissioner for Patients’ Rights¹⁵?*

¹² Ruling of the Constitutional Tribunal of 28 May 1997, K 26/96, item 4.1.

¹³ See A. Zoll, *Opinia prawna w sprawie oceny konsekwencji i skutków prawnych projektu zmiany art. 30 i 38 Konstytucji RP*, [in:] „Przed pierwszym czytaniem”, *Konstytucyjna formuła ochrony życia. Druk sejmowy nr 993*, Biuro Analiz Sejmowych Kancelarii Sejmu, Warsaw 2007, no. 3, p. 105.

¹⁴ On 10 January 2018 the draft of the bill proposed by the “End Abortion” Committee was accepted for further proceedings in the Sejm by a majority of votes 277:134.

¹⁵ Act of 6 November 2008 on Patients’ Rights and the Commissioner for Patients’ Rights (i.e. Journal of Laws of 2017 item 1318 as amended).

b. General Principles: Non-discrimination (art. 2)

Non-discrimination of the rights of children with disabilities is a natural consequence of the existing natural principle of inalienable human dignity. This universal principle is inherent to all human rights and all human beings without any distinctions and it states that all human beings have equal worth and dignity and that all human beings should enjoy equal rights. Thus, discrimination against any person on the basis of disability constitutes a violation of the inherent dignity and worth of the human person. This recognition of the universal principle was acknowledged in the UDHR and the UN Charter¹⁶ that are foundations for the CRC. A number of grounds on which discrimination is proscribed are outlined in Article 2 of the CRC, including explicitly the child's disability. Section 1 of Article 2 of the CRC points the legal obligation that "States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's (...) disability." Realization of this principle is especially important in assuring equal protection of human rights of all human beings with disabilities, including those who require more intensive support, namely disabled children before and after birth. This means that legal protection of children with disabilities starts with the very first moment of his or her existence. As to the beginning of existence and further development of the human being, it is undisputable that, from the point of view of science, human life begins at conception. It is then that every uniquely defined individual member of humanity is formed and begins to exist.¹⁷ This was also confirmed in the ruling by the Grand Chamber of the Court of Justice of the European Union in *Oliver Brüstle v. Greenpeace e.V.* (2011)¹⁸, where it was clearly stated, that "fertilisation is such as to commence the process of development of a human being".¹⁹ In this regard, discrimination against an unborn child on grounds of impairment and disability is an evident violation of the non-discrimination principle.

Violation of the above mentioned non-discrimination principle is currently taking place in the light of legally valid Article 4a section 1 item 2 of the Act of 7 January 1993 r. *on family planning, protection of human fetuses, and the conditions under which pregnancy termination is permissible*²⁰. In accordance with the wording of section 1 item 2 of the above mentioned Act, authorized person may in the light

¹⁶ United Nations, *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI, [hereinafter: UN Charter].

¹⁷ See e.g., Sadler, T.W. *Langman's Medical Embryology*, 7th edition. Baltimore: Williams & Wilkins 1995, p. 3 (noting that "the development of a human begins with fertilization, a process by which the spermatozoon from the male and the oocyte from the female unite to give rise to a new organism (...)"); Moore, Keith L. and Persaud, T.V.N. *The Developing Human: Clinically Oriented Embryology*, 7th edition. Philadelphia: Saunders 2003, p. 2 (noting that "the union of an oocyte and a sperm during fertilization" marks "the beginning of the new human being.").

¹⁸ *Oliver Brüstle v. Greenpeace e.V.*, C-34/10, decided on 18 October 2011 (hereinafter: *Oliver Brüstle v. Greenpeace e.V.*).

¹⁹ *Oliver Brüstle v. Greenpeace e.V.*, para. 35.

²⁰ Act of 7 January 1993 *on family planning, protection of human fetuses, and the conditions under which pregnancy termination is permissible* (i.e. Journal of Laws of 1993, No. 17, item 78 as amended), [hereinafter: the Act].

of the Act, perform an abortion if “prenatal tests or other medical premises indicate a high probability of severe and irreversible impairment of the foetus or an incurable disease threatening his life”. According to the *Report of the Council of Ministers on the implementation and the consequences of the application in 2016 of the Act of 7 January 1993 on family planning, protection of human foetuses, and the conditions under which pregnancy termination is permissible* in 2016 alone, 1098 unborn children were killed legally, 1042 of which because of suspected disabilities, mostly related to suspicion of trisomy 21 (so called “Down syndrome”)²¹. Statistical data for the period 2002-2016 presented in the aforementioned Report, due to the existence of statutory premises contained in Article 4a section 1 item 2 of the Act, unambiguously show a rising trend in abortions due to suspected disability of the unborn child.²² This lethal discrimination is based not only on evident grounds of impairment, disability or a disposition to them but also on presumption of a given health status, genetic or other predisposition towards illness. Such presumptions, as was rightly stated in paragraph 22 of the draft of the General Comment No. 6 on Article 5 of the Convention on the Rights of Persons with Disabilities, constitute also grounds of discrimination.²³ The rights granted in Article 4 section 1 item 2 of the Act make use of such a discriminating presumption of “high probability” of impairment or illness. However, a “high probability” both of a severe and irreversible impairment of the foetus as well as of an incurable disease threatening the child’s life is hard, or even impossible to state from the perspective of development of medical knowledge and technical capabilities. Above all, development of medicine points to the fact that as the child develops in the mother’s womb, his or her health condition improves in many cases, resulting in the illness not being a threat to the child’s life anymore.²⁴ Moreover, technical capabilities of contemporary medicine make it impossible to unambiguously state that a child is unable to survive outside of the mother’s body.

Human life cannot be deprived of protection simply because it is burdened with severe and irreversible impairment or an incurable and terminal illness. This was also confirmed by the Constitutional Tribunal in the verdict of 30 September 2008 in the case under file ref. no. K 44/07, stating that “human life is not subject to valuation because of age, health condition, expected duration, or any other criteria”²⁵. Premises based on Article 4a section 1 item 2 of the Act are not rooted in values, rights and freedoms expressed in the Constitution of the Republic of Poland. It is impossible to find in the Constitution

²¹ *Report of the Council of Ministers on the implementation and the consequences of the application in 2016 of the act of 7 January 1993 on family planning, protection of human foetuses, and the conditions under which pregnancy termination is permissible* – adopted by the Council of Ministers by circulation on 15 January 2018, transferred to the Sejm on 23 January 2018, <<https://bip.kprm.gov.pl/kpr/bip-rady-ministrow/informacje-i-sprawozda/4632,informacje.html>>, [last accessed: 11 June 2018].

²² *Ibid.*, Table no. 16 Pregnancy terminations in the years 2002-2016 (country-wide) –per reasons, p. 108.

²³ Par. 21 and 22 of the draft of the *General Comment No. 6 on art. 5 of the Convention on the Rights of Persons with Disabilities*, first draft as of 31 August 2017, [hereinafter: the CRPD].

²⁴ The justification of the project of the draft of the bill proposed by the “End Abortion” Committee, p.3.

²⁵ Verdict of the Constitutional Tribunal of 30 September 2008, file ref. no. K 44/07, item 7.5.

any norm that would justify treatment of people who are severely and irreversibly or incurably ill as unworthy of full protection of life and health. Quite on the contrary, Article 32 section 2 of the Constitution of the Republic of Poland confirms that discrimination “for any reason whatsoever” is prohibited, and moreover Article 68 section 3 of the Constitution of the Republic of Poland obliges public authorities to ensure special health care to children, also with disabilities and impairments. The fact that a premise taking away absolute safeguards of the right to life due to inborn defects leads to stigmatization of all persons with disabilities. The above view on discrimination and stigmatization of unborn children due to their disability or suspected disability is close to the position of the Committee on the Rights of Persons with Disabilities presented within the framework of the discussions on adoption of General Comment No. 36 on Article 6 of the ICCPR²⁶.

Widespread support for citizens’ initiatives aimed at protection of human life, as well as growing awareness of the bloody and brutal truth about abortion techniques, shamefully hidden until now, lead to the conclusion that the society has matured and is ready to restore full statutory protection of life and health to people discriminated against because of their health condition. Opinion polls show that the opposition of Poles to abortion grew significantly since the first citizens’ initiative foreseeing a ban on abortion was submitted in 2011. At the same time, there has been a drop in the number of people who opposed banning abortion, while at the same time ensuring their support for full protection of life. The number of opponents of eugenic abortion grew by almost a half, from 21% to 30%.²⁷ Furthermore, above mentioned citizens’ initiative “End Abortion” was supported by almost 830 thousand citizens, four times more than the opposite initiative²⁸.

In connection with the above, currently existing legal discrimination against an unborn child on grounds of impairment and disability as regards the right to life requires urgent repealing. The solution has already been presented in the proposed amendment to the Act in the “End Abortion” citizen’s initiative that ensure the same legal protection for children with disabilities and impairments that is enjoyed by healthy unborn children. Unfortunately, consideration of the civic project has been postponed for half a year. Recently, on 2nd July 2018 the Sejm Social Policy and Family Commission established a subcommittee to deliberate on the project. That is another inexplicable step in postponing adoption of the project.²⁹

²⁶ 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*, par. 1, available at < <http://www.ohchr.org/EN/HRBodies/CCPR/Pages/GC36-Article6Righttolife.aspx> >, [last accessed: 11 June 2018].

²⁷ Communiqué from CBOS poll no. 51/2016, Opinions on admissibility of abortion, Warsaw 2016, p. 5). Cf. Also IBRIIS poll of 6 October 2016.

²⁸ See <<http://zatrzymajaborcje.pl/>>, [last accessed: 11 June 2018].

²⁹ See < <https://www.pch24.pl/projekt-zakazu-aborcji-eugenicnej-zamrozony-metoda-na-podkomisje,61330,i.html> > and < <http://wyborcza.pl/7,75398,23625017,pis-przelozyl-aborcje-zzamazarki-do-lodowki.html> > [last accessed: 11 June 2018].

Suggested questions to the Government:

- 1. When is the Polish Government planning 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. When will the Polish Government 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)?*
- 3. How does Poland ensure particular healthcare to children with disabilities before their birth, to which the country is obliged based on Article 6 section 3 of the Constitution of the Republic of Poland?*

c. Best interests of the child (art. 3)

Some municipalities in Poland have recently adopted resolutions allowing for the formulation and conduct of additional classes at school in the field of education about sexual life of a man³⁰. In accordance with the programs constituting the annexes to these resolutions, the content and the manner of implementation these school activities, including the appointment of the person conducting the classes, is to be determined by non-governmental organizations.

It should be stressed, however, that the Municipal Council does not have the power to create classes with aforementioned content because it violates the principle of legalism that determines the division of competences between public administration authorities. According to art. 4 (1) of the Act “Knowledge about sex life of a man, conscious and responsible parenthood, family values, life in the prenatal phase and methods and means of conscious procreation is introduced into school curricula”. However, in accordance with art. 4 (3) of the Act, the authority to determine the manner and scope of content

³⁰ Resolution No. L 687/18 Słupsk City Council of 18 March 2018 on the adoption of the “Support Program for Health Education of Youth 2018-2020”; Resolution No. LV/1566/18 Gdańsk City Council of 20 June 2018 on the adoption in the city Gdańsk “Model of Equal Treatment”.

knowledge is the competent Minister of Education and Upbringing. The core curriculum of these classes is determined by the Minister by way of issuing a regulation.

This requirement is dictated by concern for the child's best interest. The formal protection of this interest is such as that the competent minister and not a non-governmental organization is responsible for determining core curriculum of education about sexual life of a man. Such a legal condition guarantees that the child's best interest is "appropriately integrated and consistently applied in action taken by a public institution (schools) that directly impact on child"³¹. This is even more important due to the fact that education about sexual life of a man affects the child's right to health (art. 24 of CRC). Moreover, "the Committee has stated that States Parties have the obligation to ensure that all adolescents, both in and out of school, have access to adequate information that is essential for their health and development in order to make appropriate health behaviour choices"³².

It is worth mentioning that education about sexual life of a man in Poland i.e. Family Life Education³³, fully implements the legal obligation arising from the art. 3 and 5 of the CRC. Program of the Family Life Education takes into account not only physical aspect but also the emotional (friendship, love), moral (the responsible choice) and social aspect (family, friends).³⁴ Beneficial effects of the Family Life Education on attitudes and choices of young people are confirmed by the researches³⁵. The effectiveness of the Family Life Education is expressed also in the decrease of the percentage of the number of sexual initiation at the age of 15.³⁶

³¹ *General Comment No. 14 (2013) on the right of the child to have his or her best interest taken as primary consideration (art. 3, para 1), CRC/C/GC/14*, 29 May 2013, par. 14 (a) and par. 19.

³² *Ibid.*, par. 78.

³³ 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 (i.e. Journal of Laws of 2014 item 395).

³⁴ See T. Król, *Skuteczność zajęć „wychowanie do życia w rodzinie” realizowanych od 15 lat w polskiej szkole*.

³⁵ 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.

³⁶ 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 studies published by Institute for Educational Research (IBE); *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, p. 46 only 5% of all respondents made sexual intercourse at the age of 15 years.

Suggested questions to the Government:

- 1. What kind of actions is the Polish Government intend to take to ensure that the right to education appropriate to child's age in the field of education about sexual life of a man together with the principle of legalism and educational law is observed by Municipal Councils in Poland?*

II. Family environment and alternative care:

a. Separation from parents (art. 9)

The current practice in Poland of separating children from their parents for socio-economic reasons in a significant way affects the rights contained in Article: 7 par. 1, 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 the child and their role to protect the 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. Only in situations when there is no other possibility of protection of the best interest of the child or when all available possibilities have been exhausted.

The last changes introduced by the act of 18 March 2016 amending the act – Family and Guardianship Code³⁷ according to which placing a child in foster care against the parent's will solely for reasons of poverty is inadmissible, still require most effective enforcement. There are credible data that show the number of children placed in foster care for that reason.³⁸ Moreover, in 2017 the *Ordo Iuris* Institute received 98 notifications regarding parental rights within the framework of Court Trial Intervention Programme – an internal programme of free legal assistance. About 60 notifications regarded applications for insight into family situation submitted by i.a.: school directors, institutions of emergency care and education, social assistance centres, representatives of the National Health Service. 90% of these

³⁷ Act of 18 March 2016 on amending the act – Family and Guardianship Code. (i.e. Journal of Laws of 2016, item 406).

³⁸ See <<http://rzecznikrodzicow.pl/telefon-wsparcia/sprawozdania/>>, [last accessed: 11 June 2018].

notifications concerned families whose situation was undoubtedly influenced by the socio-economic factor. In the received requests for insight into family situation, the most common argumentation was a laconic description that a given family is “inefficient, clumsy, dysfunctional, lacking in educational and care skills and there is a suspicion of the presence of violence in family”. One of the most flagrant situations of limitation or deprivation of parental authority for socio-economic reasons were cases such as: (a) initiation of proceedings against the family from Tarnów³⁹, after parents asked for funding for a school layette for children – it turned out that there were no reasons justifying the restriction of parental authority, (b) initiation of proceedings for limitation of parental authority against family from Tuczna⁴⁰ due to conducting building works without permission, (c) separation of the child from the deaf parents without proper identification and understanding of the situation of the family. It is worth noting here, that such families due to their financial situation often do not have the opportunity to use support of a professional plenipotentiary. It means that they have limited opportunities to resist unfounded allegations formulated in applications on insight into their situation, especially in the face of contact with judicial procedure.

Suggested questions to the Government:

- 1. When is the Polish Government planning to adopt the amendment to the law on supporting of the family and foster care system⁴¹ that introduced compulsory defender appointed by the court for parents whose children are at risk of being picked up from parents and placed in foster care?*
- 2. When is the Polish Government going to adopt provisions introducing legal responsibility of social workers who have submitted applications for insight into family situation without due checking of the family situation?*

³⁹ See <<https://www.ordoiuris.pl/rodzina-i-malzenstwo/ordo-iuris-udaremnia-bezprawne-odebranie-dzieci-w-tarnowie>>, <<https://www.ordoiuris.pl/rodzina-i-malzenstwo/ordo-iuris-stawia-przed-sadem-urzednikow-formulujacych-krzywdzace-i>>, <<https://www.ordoiuris.pl/rodzina-i-malzenstwo/urzednicy-opieki-spolecznej-winni-znieslawienia-rodziny-z-tarnowa>>, [last accessed: 11 June 2018].

⁴⁰ See <<https://www.ordoiuris.pl/rodzina-i-malzenstwo/samowola-budowlana-i-edukacja-domowa-przyczyna-proby-odebrania-dzieci-rodzinie>>, [last accessed: 11 June 2018].

⁴¹ Act of 9 June 2011 on supporting of the family and foster care system (i.e. Journal of Laws of 2018 item 998).

b. Family environment and parental guidance in a manner consistent with the evolving capacities of the child (art. 5) and Parents' common responsibilities, assistance to parents and provision of childcare services (18, paras. 1 and 2)

Both, the control of the Supreme Chamber of Control⁴² as well as the *Ordo Iuris* Institute's research⁴³ confirmed that in Polish schools the parents' councils cannot fully exercise their competences under the Polish Law on Education⁴⁴. The law confirms guaranteed in art. 18 and 5 of the CRC freedoms and at the same time responsibilities of parents for the upbringing and development of the child. Alarming restrictions on the rights of the parents' councils to express a positive opinion on the possibility of the schools' cooperation with non-governmental organizations, violate the best interest of the child as a consequence.⁴⁵ The State-Party is obliged to provide protection and care of the child taking into account the rights and duties of his or her parents.

Art. 86 of the Law on Education protects the interest of the child through the requirement to obtain a positive opinion of the parents' council on the undertaking of educational activities in schools by a given organization. However, in practice, this provision, in terms of obtaining positive opinion of parents, is not respected. Art. 86 of the Law on Education clearly indicates that the activities of associations and other organizations, with the exception of political parties and organizations, can be carried out in schools and other educational institutions after the fulfilment of two conditions. First of all, the statutory purpose of the organization should be educational activity or widening and enriching of the didactic, educational, caring and innovative forms of activity of schools or other educational institutions. Secondly, such an activity requires obtaining the consent of the director of school or other educational institution, that is made after prior receiving positive opinion of the parents' council and council of the school or other educational institution.

The above parents' rights guaranteed in the Law on Education are also confirmed in the General Comment No. 7 which clearly states that "States Parties should respect the primacy of parents, mothers and fathers. Parents or legal guardians have the primary responsibility for promoting children's development and well-being, with the child's best interests as their basic concern"⁴⁶.

⁴² See <<https://www.nik.gov.pl/plik/id,17004,vp,19563.pdf>>, [last accessed: 11 June 2018].

⁴³ See <https://www.ordoiuris.pl/sites/default/files/inline-files/ChD_wyd_2.pdf>, [last accessed: 11 June 2018].

⁴⁴ Act of 14 December 2016 – Law on Education (i.e. Journal of Laws of 2018 item 996), [hereinafter: the Law on Education].

⁴⁵ General Comment No. 7 *Implementing child rights in early childhood*, CRC/C/GC/7/Rev.1, 20 September 2006, par. 16.

⁴⁶ *Ibid.* Par. 18.

Suggested questions to the Government:

- 1. What kind of actions is the Polish Government intend to take to ensure that the right of the parents' councils to issue positive opinions on activities of associations and other organizations in schools and other educational institutions, in accordance with provisions of the Law on Education, is observed?*