



# International Covenant on Civil and Political Rights

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## Human Rights Committee

### Report on follow-up to the concluding observations of the Human Rights Committee\*

#### Addendum

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

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

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

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

#### Summary of the State party's reply

The Constitutional Tribunal is independent, and there have been no obstacles to hinder it in the performance of its duties. Legal acts adopted in late 2016 are consistent with European standards for constitutional courts, and take into account the recommendations made by the European Commission for Democracy through Law.

\* Adopted by the Committee at its 128th session (2–27 March 2020).

<sup>1</sup> See [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fNGS%2fPOL%2f29939&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fNGS%2fPOL%2f29939&Lang=en).



**Information from the Fundacja Instytut na rzecz Kultury Prawnej Ordo Iuris**

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

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

**Committee's evaluation**

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

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

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

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

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

**Summary of State party's reply**

(a) The State party reiterates information provided in its seventh periodic report (CCPR/C/POL/7, para. 72) regarding the absence of official data on illegal abortions. The State party also reiterates information provided in its seventh periodic report (*ibid.*, para. 76) regarding the "conscience clause", which allows medical practitioners to refrain from performing health services that go against their conscience, except in case of emergency. The State party echoes the information provided in its seventh periodic report (*ibid.*, para. 79) as it describes the right of patients to raise objections to medical opinion before the Ombudsman for Patients' Rights. The Commissioner for Patients' Rights was appointed through the relevant act adopted on 6 November 2008, and the right to raise objections to medical opinion was introduced as a way to implement the judgments of the European Court of Human Rights in the cases of *Tysiąc v. Poland*, *R.R. v. Poland* and *P. and S. v. Poland*.

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

- (b) No information provided;
- (c) No information provided.

#### **Information from the Fundacja Instytut na rzecz Kultury Prawnej Ordo Iuris**

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

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

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

(b) On 30 November 2017, a draft law was submitted by the Legislative Initiative Committee "Stop Abortion" to amend the Act of 7 January 1993 on family planning, protection of human fetuses and the conditions under which pregnancy termination is permissible. The draft law was aimed at prohibiting discrimination against conceived children suspected of having a disease or being at risk of disability;

- (c) No information provided.

#### **Committee's evaluation**

[C] (a), (b) and (c): The Committee regrets that the State has reiterated information provided in its seventh periodic report and that no information is provided on the measures taken since the adoption of the concluding observations. The Committee reiterates its recommendations.

The Committee regrets the lack of information provided on the measures taken to refrain from adopting retrogressive legislative reform, and requires information on the draft law submitted on 30 November 2017 to amend the Act of 7 January 1993. The Committee reiterates its recommendations.

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

#### **Paragraph 32: Rights of aliens**

##### **The State party should:**

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

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

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

**Summary of the State party's reply**

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

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

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

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

(c) The Border Guard submits all requests for international protection to the Head of the Office for Foreigners within 48 hours, following a detailed and individual assessment during border control procedures of whether the conditions of entry have been met. To fully implement the principle of non-refoulement, Border Guard officers are instructed and trained to be on the alert for signs that may indicate that a foreigner is seeking international protection.

**Information from the Fundacja Instytut na rzecz Kultury Prawnej Ordo Iuris**

(a) Independent studies have shown that the detention of migrants who are to be deported is becoming less and less common, as non-custodial measures are being applied instead;

(b) No information provided;

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

**Committee's evaluation**

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

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

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

**Recommended action:** A letter should be sent to inform the State party of the discontinuation of the follow-up procedure. The information requested should be included in the State party's next periodic report.

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