

Human Rights Committee Secretariat  
8-14 Avenue de la Paix  
CH 1211 Geneva 10  
Switzerland  
Attention: Kate Fox and Sindu Thodiyil

22 September 2016

**Supplemental Information on Poland for the Periodic Review by the Human Rights Committee at its 118th Session (17 October 2016 - 4 November 2016)**

The Center for Reproductive Rights, Centrum Praw Kobiet (Center of Women's Rights), Federation for Women and Family Planning, Foundation Feminoteka, Foundation Pro Diversity, Foundation Trans-Fuzja, Fundacja im. Izabeli Jarugi - Nowackiej (Foundation in memory of Izabela Jaruga-Nowacka), Fundacja TUS (Foundation TUS), Fundacja Wolontariat Równości (Foundation Voluntary Service of Equality), Fundację na rzecz Równości i Emancypacji STER (Foundation for Equality and Emancipation STER), KARAT Coalition, Kongres Kobiet (Congress of Women), Obserwatorium Równości Płci Instytutu Spraw Publicznych (The Gender Equality Observatory in the Institute of Public Affairs), Polskie Towarzystwo Prawa Antydyskryminacyjnego (Polish Society of Antidiscrimination Law), Queer at the University of Warsaw, and Stowarzyszenia Miłość Nie Wyklucza (Society Love Does Not Exclude) respectfully present this submission to the Human Rights Committee in advance of its periodic review of Poland's compliance with the International Covenant on Civil and Political Rights.

Following its most recent review of Poland in 2010 the Human Rights Committee recommended that Poland "... should urgently review the effects of the restrictive anti-abortion law on women. It should conduct research into and provide statistics on the use of illegal abortion. It should introduce regulations to prohibit the improper use and performance of the "conscience clause" by the medical profession. The State party should also drastically reduce medical commission's response deadline in cases related to abortions."<sup>1</sup>

Poland has failed to take meaningful action in response to these recommendations. This submission highlights serious concerns about Poland's compliance with Articles 2, 3, 7, 17 and 26 as a result of its highly restrictive legal framework on abortion and its longstanding and ongoing failures to guarantee women's access to legal abortion services in practice.

In particular the submission will address 1) how Poland's restrictive legal framework on abortion fails to comply with the Covenant; 2) how the lack of effective procedures and mechanisms under which women could enforce their existing narrow entitlements to abortion services under Polish law often undermines and frustrates their access to services in practice; and 3) how Poland has failed to adequately regulate and establish effective mechanisms to ensure doctors' refusals, on grounds of conscience, to provide legal reproductive health services do not hinder women's access to abortion services.

## **1. Poland's legal restrictions on access to abortion undermine compliance with ICCPR Articles 2, 3, 7, 17 and 26**

Poland has one of the most restrictive abortion laws in Europe.<sup>2</sup> Access to abortion is regulated by the 1993 Family Planning Act and is permitted in three circumstances only: 1) when the pregnancy endangers the life or health of the woman; 2) when there is a high probability of a severe and irreversible fetal impairment, abortion is permitted until the fetus reaches viability; and 3) when the pregnancy results from a crime, abortion is permitted during the first 12 weeks of pregnancy.<sup>3</sup> Abortion is criminalized in all situations beyond these three circumstances and doctors or anyone else who helps a woman to obtain an abortion outside of the scope of the law is liable to a three-year prison sentence.<sup>4</sup>

Prior to the adoption of the 1993 Family Planning Act, in line with standard practice across Europe, women in Poland were legally entitled to access abortion services on request. As a result of Poland's introduction of retrogressive legislation in 1993, this entitlement was abolished, and women in Poland are now prohibited from making an autonomous decision to end a pregnancy safely and legally. As a result women who do not fall within the exceptional circumstances outlined above are faced with three choices: (a) undergo clandestine, and potentially unsafe, abortion in Poland; (b) source safe and legal abortion services in another country and travel out of Poland at their own expense to obtain those services; (c) carry an unwanted pregnancy to term.

Moreover, as further detailed below in Section 2, even women in Poland who do meet the very strict requirements for legal abortion are generally not able to access abortion services in practice. Their access to services is effectively curtailed by Poland's maintenance of criminal sanctions for abortions performed outside of the very limited circumstances allowed for by the law and by the highly restrictive nature of the law itself. These combine to generate a punitive and stigmatizing environment that undermines effective implementation of Poland's abortion law and creates a chilling effect for medical professionals. As outlined in Sections 2 and 3, the stark effects of the restrictive legal framework are compounded by a lack of effective regulation of conscience-based refusals of care by doctors and an absence of any semblance of guidelines and procedures that would facilitate women's access to legal abortion services. Indeed, as further outlined in Sections 2 and 3, the severe difficulties which women in Poland face in gaining access to legal abortion services, as a result of the chilling effect of the restrictive abortion law and the pervasive regulatory and procedural deficits, have repeatedly been addressed by the European Court of Human Rights, which has issued three judgments against Poland on the matter. Poland has failed comply with those judgments.

The Human Rights Committee has repeatedly called on states parties to the ICCPR to decriminalize abortion and, at a minimum, legalize abortion and enable access for women in practice in situations where there is a risk to a woman's life or health, severe fetal impairment, and when pregnancy results from sexual assault.<sup>5</sup> It has also recognized that highly restrictive abortion laws may result in violations of the Covenant,<sup>6</sup> and as outlined above in 2010 it specifically called on Poland to "urgently review the effects of its restrictive anti-abortion law on women."<sup>7</sup> Furthermore, the CEDAW Committee has called on states parties to CEDAW to decriminalize abortion and to reform abortion laws so as to "ensure women's autonomy to choose."<sup>8</sup> Where abortion laws premise women's entitlement to services on certification from medical professionals, the CEDAW Committee has expressed concern that their access to the reproductive health services they need as women is reliant upon "the benevolent interpretation

of a rule which nullifies their autonomy.”<sup>9</sup> It has repeatedly expressed concern about Poland’s restrictive abortion laws and has called on it to investigate the consequences of illegal abortions on women’s health and lives and to “[amend] the 1993 Act ... to make the conditions for abortion less restrictive.”<sup>10</sup>

Poland has failed to comply with these recommendations. Currently Polish law criminalizes abortion outside of those exceptional circumstances and prohibits women who fall outside of the three exceptions from making a decision to end a pregnancy safely and legally within Poland. As such it nullifies women’s autonomy to make decisions about their pregnancies, increases the rates of clandestine, and potentially unsafe, abortions, and causes women to continue unwanted pregnancies to term against their wish. Furthermore, while on its face Poland’s law allows women to undergo abortion in the minimum required circumstances of risk to a woman’s life or health, severe fetal impairment, and when pregnancy results from sexual assault, in practice the law does not enable women’s access to abortion services in those circumstances, but undermines it instead. As such the legal framework falls far short of even the minimum human rights requirements, and women’s entitlement to abortion services, even in the strictly defined circumstances in which it is legal, remains theoretical and illusory, instead of practical and obtainable.

Ultimately only through significant and meaningful reform of its abortion law, including decriminalization of abortion and legalization of abortion services on request, can Poland move towards compliance with the Covenant and the Committee’s recommendations.

## **2. Lack of effective procedures and mechanisms under which women can enforce existing narrow entitlements to abortion services under Polish law undermines compliance with ICCPR Articles 2, 3, 7, 17 and 26**

The European Court of Human Rights has issued judgments against Poland in three seminal cases that have arisen as a result of Poland’s failures to guarantee women’s access in practice to legal abortion services.<sup>11</sup> In each of these cases the Court has consistently found that Poland has failed to adopt a comprehensive and effective regulatory framework on abortion and establish effective procedures that, in the narrow circumstances in which abortion is legal, would enable women to access abortion services in practice. The Polish government has not addressed the many regulatory and implementation failures that exist and as a result has yet to comply with these judgments.

The State report mentions the existing complaint procedure under the Patient’s Rights Act as a way in which women can establish and enforce their entitlements to legal abortion services and challenge a doctor’s opinion that they do not qualify for a legal abortion under the Family Planning Act.<sup>12</sup> It also refers to ongoing work to amend the Patient’s Rights Act and potential proposals that would shorten the timeframe for a medical commission to decide on a woman’s complaint challenging a doctor’s opinion. However, the complaint procedure does not meet the requirements of an effective and timely procedure and the amendments to the law that are being considered would be entirely inadequate to improve women’s access to lawful abortion services in practice.

The current complaint procedure was introduced in 2008 (and came into force in May 2009) in order to respond to the European Court of Human Rights’ ruling in *Tysic v. Poland*,<sup>13</sup> in which the Court held that Poland had failed to establish a timely and effective procedure through which women could enforce their entitlement to legal abortion services. However,

instead of establishing a procedure tailored to the specific needs of pregnant women for timely and enforceable decision-making as to their eligibility for legal abortion services, Poland established a general complaints mechanism that is applicable to all patients, all health conditions and all medical procedures. As a result almost no pregnant women have used the complaints procedure to establish their legal entitlement to abortion services.<sup>14</sup>

Moreover the current complaint procedure establishes a deadline of 30 days for a decision to be issued by the medical commission on a patient's complaint. This lengthy timeframe clearly fails to meet the needs of pregnant women seeking to establish an entitlement to legal abortion services in a timely fashion.

These concerns, and many others, would not be diminished by draft amendments to the Patient's Rights Act that have recently been prepared by the Minister of Health.<sup>15</sup> The amendments propose, among other things, to shorten the deadline for the medical commission to examine a patient's complaint to 21 days. This would hardly improve the effectiveness of the complaint procedure for pregnant women who are seeking timely access to legal abortion services. The amendments do not propose to create a procedure specifically tailored to deal with pregnant women's access to legal reproductive health services.

In addition to the lack of effective procedures, the implementation of Poland's abortion law is marred by procrastination, obfuscation and arbitrariness by both medical professionals and prosecutors who play key roles in certifying and authorizing women's access to legal abortion services under the current legal framework. For example, there are no standardized guidelines for medical professionals on the provision of legal abortion services in accordance with the current law.

Recent research into hospital procedures and guidelines for the provision of legal abortion services found that these varied hugely and were often incomplete or arbitrary.<sup>16</sup> Many hospitals imposed restrictions beyond those specified in the law and required additional medical opinions of a specialist, joint consultation, or ward administrator to confirm that the requirements for a legal abortion were met. Moreover the current law requires that a prosecutor certify the sexual assault of a woman who has become pregnant as a result of the assault and wishes to end the pregnancy. There are regular reports of prosecutors refusing to issue certification of the assault, thus effectively preventing women's access to legal abortion services. Such requirements are not imposed by the law but prolong the procedure and places obstacles in the way of women's access to legal abortion.

Treaty monitoring bodies have consistently stated that where states make abortion legal they must ensure that it is accessible in practice. The Committee Against Torture has specifically called on Poland to "implement a legal and/or policy framework that enables women to access abortion where the medical procedure is permitted under the law."<sup>17</sup> In turn the CEDAW Committee has called on Poland to "establish clear standards for a uniform and non-restrictive interpretation of the conditions for legal abortion so that women may access it without limitations."<sup>18</sup>

### **3. Inadequate regulation and enforcement of conscience-based refusals of care fails to comply with ICCPR Articles 7, 17 and 26**

Conscience-based refusals of care are widespread and a key obstacle to women's access to legal abortion in Poland. There are entire regions of Poland where women are unable to find a doctor or hospital willing to perform an abortion under the law. This is the result of serious

deficits in the manner in which the practice is regulated and monitored, combined with the lack of enforcement of existing regulations, and an overriding lack of interest on the part of state authorities in ensuring women can access legal abortion services in practice. The European Court of Human Rights has held in the aforementioned cases against Poland that the right to privacy under the European Convention on Human Rights obliges the state to ensure that refusals of care on grounds of personal conscience do not impede women's access to legal reproductive health services, including abortion.<sup>19</sup> Treaty monitoring bodies have reiterated the same requirement and, among other things, have explicitly specified that the relevant regulatory framework must ensure an obligation on healthcare providers to refer women to alternative health providers<sup>20</sup> and must not allow institutional refusals of care.<sup>21</sup> Both the Committee Against Torture and the CEDAW Committee have expressed concern about extensive refusals of reproductive health care on grounds of conscience by medical professionals in Poland. The Committee Against Torture has called on Poland to “[i]n accordance with the 2012 World Health Organization technical and policy guidance on safe abortion ... ensure that the exercise of conscientious objection does not prevent individuals from accessing services to which they are legally entitled.”<sup>22</sup>

In its report to the Committee, dated 8 February 2016, the Polish government describes the manner in which health professionals' refusals to provide reproductive health care on grounds of conscience are regulated in Poland and it asserts that the Constitutional Tribunal is analyzing the compliance of the conscience clause in the Medical Profession Act with the Polish Constitution.<sup>23</sup> However this is inaccurate. In fact, on 7 October 2015, in a highly concerning development, the Polish Constitutional Tribunal issued judgment in a case filed by the National Board of Doctors, which has significantly changed the regulatory framework regarding conscience-based refusals.<sup>24</sup> Among other things the Court's judgment has removed doctors' referral obligation when refusing care on grounds of conscience.

*a. The Constitutional Tribunal expands the entitlements of doctors to refuse legal reproductive health care on grounds of conscience*

In its judgment, the Constitutional Tribunal ruled in favor of a claim by the National Board of Doctors that requiring medical professionals to refer patients seeking legal abortion services to other medical providers contravenes the protection afforded in the Polish Constitution to the right to freedom of thought, conscience and religion. As a matter of law the judgment has deemed unconstitutional the previous legislative requirement under Article 39 of the Medical Profession Act that doctors who refused to provide care on grounds of conscience had to refer patients to another practitioner.<sup>25</sup> In addition to repealing the referral obligation, the Tribunal also held that the requirement on doctors to provide health services in “urgent cases requiring immediate treatment” was unconstitutional. This means that doctors are no longer required to perform an abortion where a woman's health is at immediate risk.

Ensuring that an effective referral system is in place is a cornerstone of any regulatory system designed to ensure that women's access to legal reproductive health services is not jeopardized by practitioners' conscience-based refusals of care. Yet, doctors in Poland who refuse to provide legal abortion services on grounds of personal conscience are now no longer required to refer women to another doctor or medical facility. The Tribunal determined that the regulator should put in place other mechanisms by which women can access information about where they can obtain abortion services but it appears that the Minister for Health does not intend to pursue this instruction.<sup>26</sup> However, even if it were to be established, such mechanisms could not replace a referral obligation on medical professionals, which serves a number of purposes beyond the provision of information.

The judgment's implications will have severe consequences for women's access to legal abortion services in Poland, further undermining compliance with the ICCPR.<sup>27</sup>

*b. Prevailing deficiencies in the regulation of conscience-based refusals of care*

Even prior to the Constitutional Tribunal's judgment and the eradication of the referral obligation, serious regulatory and enforcement deficits concerning refusals of care on grounds of conscience prevailed.

- Lack of compliance with legal duties: Doctors routinely fail to comply with their legal obligations under the Medical Profession Act when refusing reproductive health care on grounds of personal conscience, including by failing to record their refusal of care in medical files and not notifying their superiors. Prior to the eradication of the referral obligation from Polish law, doctors were systemically failing to refer women to other providers.
- Lack of legal clarity: The law fails to specify that only individual medical professionals, not health care institutions, may refuse services on grounds of conscience. Although this seems to be the general interpretation given to Article 39 of the Medical Profession Act it is not explicit in the terms of the provision. This is critical given that institutional refusals of care appear to take place in Poland.<sup>28</sup> Indeed recent research has revealed that some hospitals have adopted an explicit policy of not performing abortions.<sup>29</sup>
- Enforcement failures and impartiality concerns: There are currently no effective procedures or mechanisms in place to ensure that doctors comply with their obligations under the Medical Profession Act when refusing care on grounds of personal conscience. State authorities have failed to take effective measures to enforce the law and sanction breaches of the Act and it is unclear to what extent doctors have been held accountable for failures to comply with relevant laws. These issues are compounded by the fact that under Polish law the National Board of Doctors is entrusted with conducting disciplinary proceedings against doctors who may have acted unlawfully in refusing care on grounds of conscience. Yet the Board's public positions on the matter call into question its impartiality. For example, in 2013 the Board issued an official public statement specifying its disagreement with the then legal obligation on doctors who refuse care on grounds of conscience to refer patients to an alternative health care provider.<sup>30</sup> Additionally the Board filed the recent constitutional claim before the Constitutional Tribunal in which it sought to expand doctors' entitlements to refuse health care on grounds of conscience.
- Lack of effective remedies: The remedies available to women in cases of conscience-based refusals of care are *post facto* and therefore by their very nature ineffective as they cannot enable timely access to legal abortion services or prevent damage to a woman's health.<sup>31</sup> As discussed in Section 2, the existing complaint procedure under the Patient's Rights Act is designed to assess the medical veracity of a doctor's medical opinion and the relevant medical commission is composed of doctors who are mandated to review medical opinions and evidence.<sup>32</sup> As a result it is not an appropriate mechanism through which to challenge refusals of care on grounds of conscience, which do not raise medical questions, but instead involve questions of law and legal rights.

#### **4. Pending legislative proposal to introduce a complete prohibition on abortion would contravene the ICCPR Articles 2, 3, 6, 7, 17, and 26**

In recent months an anti-abortion organization launched an initiative seeking the introduction of a complete ban on abortion into Polish law and the imposition of criminal penalties of up to five years imprisonment on anyone who performs an abortion. On 5 July 2016 the draft legislation was submitted to Parliament for consideration<sup>33</sup> and the first reading of the draft legislation began on 22 September 2016. Although a citizens' legislative initiative seeking to increase women's access to abortion in Poland has since been developed in response to the anti-abortion initiative, serious concerns regarding the proposed ban on abortion persist especially as the governing Law and Justice party has previously indicated that it supports greater restrictions on abortion.

If the proposed legislation were to be adopted it would have very serious implications for women in Poland and such legislation would clearly fail to comply with the Covenant and the Committee's recommendations.

#### **5. Recommendations**

We recommend that the Polish government:

- Reform its laws so as to decriminalize abortion and legalize abortion on request, at least up until 12 weeks of pregnancy, and adopt the necessary accompanying guidelines to ensure women can access safe abortion services in a timely manner and without unnecessary authorization or certification requirements.
- Taking account of international and comparative good practices, establish in law a new complaint procedure that sets out an effective and timely procedure tailored to the specific circumstances of pregnant women.
- Adopt a series of effective measures to guarantee that abortion services are available and accessible to women throughout Poland and that medical professionals' conscience-based refusals of care do not jeopardize women's access to reproductive health care. To this end the government should:
  - (a) amend its laws to explicitly prohibit medical institutions from refusing to provide legal reproductive health services;
  - (b) adopt new legislation, and as necessary amend the Polish Constitution, to enshrine a referral obligation on all medical providers refusing care on grounds of conscience into Polish law;
  - (c) take measures to ensure that all hospitals employ doctors willing to perform abortions;
  - (d) require hospitals to organize the provision of services in a manner that ensures women can access abortion services without undue delay;
  - (e) require hospitals to notify the Ministry of Health, on a quarterly basis, as to the number of practitioners in the hospital who are refusing care on grounds of conscience and regularly monitor the practice of conscience-based refusals of care.
- Adopt effective and comprehensive measures to ensure full compliance with the European Court of Human Rights' judgments in *R.R. v. Poland*, *P. and S. v. Poland*, and *Tysiaç v. Poland*.

---

<sup>1</sup> Human Rights Committee, *Concluding Observations: Poland*, para. 12, U.N. Doc. CCPR/C/POL/CO/6 (2010).

<sup>2</sup> CENTER FOR REPRODUCTIVE RIGHTS, *The World's Abortion Laws 2016* (Wallchart, 2016), available at <http://worldabortionlaws.com/map/>.

<sup>3</sup> Law of Jan. 7, 1993 on Family Planning, Human Embryo Protection, and Conditions of Legal Pregnancy Termination amended as of Dec. 23, 1997, art. 4a.1 (1-3) (Pol.).

<sup>4</sup> Criminal code, arts. 152-154 (Pol.).

<sup>5</sup> Human Rights Committee, *Concluding Observations: Ireland*, para. 9, UN Doc CCPR/C/IRL/CO/4 (2014); *Ireland*, para. 13, UN Doc CCPR/C/IRL/CO/3 (2008); *Ireland*, paras. 444-445, UN Doc. A/55/40 (2000); *Poland*, para. 8, U.N. DOC. CCPR/CO/82/POL (2004); *El Salvador*, para. 10, CCPR/C/SLV/CO/6 (2010); *Jamaica*, para. 14, CCPR/C/JAM/CO/3 (2011); *Honduras*, para. 8, U.N. Doc. CCPR/C/HND/CO/1 (2006); *Paraguay*, para. 10, U.N. Doc. CCPR/C/PRY/CO/2 (2006); *Dominican Republic*, para. 15, CCPR/C/DOM/CO/5 (2012); *Malta*, para. 13, U.N. Doc. CCPR/C/MLT/CO/2 (2014); *Sierra Leone*, para. 14, U.N. Doc. CCPR/C/SLE/CO/1 (2014); *Philippines*, para. 13, U.N. Doc. CCPR/C/PHL/CO/4 (2012); U.N. Doc. CCPR/C/CHL/CO/5 (2007); *Nicaragua*, para. 13, U.N. Doc. CCPR/C/NIC/CO/3 (2008).

<sup>6</sup> *Mellet v. Ireland*, para. 7.4, Human Rights Committee, Commc'n No. 2324/2013, U.N. Doc. CCPR/C/116/D/2324/2013 (2016).

<sup>7</sup> Human Rights Committee, *Concluding Observations: Poland*, para. 12, U.N. Doc. CCPR/C/POL/CO/6 (2010).

<sup>8</sup> CEDAW, *Concluding Observations: New Zealand*, para. 34(a), U.N. Doc. CEDAW/C/NZL/CO/7 (2012).

<sup>9</sup> CEDAW, *Concluding Observations: New Zealand*, para. 33, U.N. Doc. CEDAW/C/NZL/CO/7 (2012).

<sup>10</sup> CEDAW, *Concluding Observations: Poland*, para. 37 (a), U.N. Doc. CEDAW/C/POL/CO/7-8 (2014).

<sup>11</sup> *See R.R. v. Poland*, No. 27617/04 Eur. Ct. H.R., paras. 159-160 (2011); *P. and S. v. Poland*, No. 57375/0 Eur. Ct. H.R. (2012); *Tysi c v. Poland*, No. 5410/03 Eur. Ct. H.R. (2007).

<sup>12</sup> Human Rights Committee, *Consideration of reports submitted by States parties under article 40 of the Covenant, Seventh periodic reports of States parties due in 2015, Poland*, para. 79, U.N. Doc. CCPR/C/POL/7 (2016).

<sup>13</sup> The Court in the *Tysi c v. Poland* case found a violation due to Poland's failure to introduce an effective procedure for resolving conflicts or differences of opinion between doctors, or between a woman and her doctors. The judgment became final on 24 September 2007 and the new Patient's Rights Act was adopted in November 2008 introducing a complaint procedure. *See* DH-DD(2011)248, Communication from Poland concerning the case of *Tysi c v. Poland* (Application No. 5410/03), Action Report. In this Action Report the government expressed the view that the new complaint procedure would correspond to the requirements stemming from the Court's judgment. *See also* DH-DD(2014)103E 21, Communication from Poland concerning the case of *R.R. against Poland* (Application No. 27617/04), Action Report, p. 4, January 2014.

<sup>14</sup> In 2011-2012, one complaint concerning access to abortion was received; in 2013 one complaint was received;

<sup>15</sup> Ministry of Health, Draft amendments to Patients' Rights and Patients' Rights Ombudsman Act and Commissioner for Patients' Rights (Pol.), available at <http://legislacja.rcl.gov.pl/projekt/12287853/katalog/12367917#12367917>.

<sup>16</sup> Raport z Monitoringu, Federacja na rzecz Kobiet i Planowania Rodziny [Report of monitoring about procedures of access to legal abortion in Polish hospitals, FWWP for Women and Family Planning](Warsaw 2016); available at

[http://www.federa.org.pl/dokumenty\\_pdf/raporty/kontrola\\_praw\\_kobiet.pdf](http://www.federa.org.pl/dokumenty_pdf/raporty/kontrola_praw_kobiet.pdf).

<sup>17</sup> CAT, *Concluding Observations: Poland*, para. 23, U.N. Doc. CAT/C/POL/CO/5-6 (2013).

<sup>18</sup> CEDAW, *Concluding Observations: Poland*, para. 37 (b), U.N. Doc. CEDAW/C/POL/CO/7-8 (2014).

<sup>19</sup> *See R.R. v. Poland*, No. 27617/04 Eur. Ct. H.R. (2011); *P. and S. v. Poland*, No. 57375/0 Eur. Ct. H.R. (2012).

<sup>20</sup> *See, e.g., CEDAW, General Recommendation No. 24: Article 12 of the Convention (Women and Health)*, para. 11, U.N. Doc. A/54/38/Rev.1, chap. I ("It is discriminatory for a State party to refuse to legally provide for the performance of certain reproductive health services for women. For instance, if health service providers refuse to perform such services based on conscientious objection, measures should be introduced to ensure that women are referred to alternative health providers."); CESCR, *Gen. Comment No. 22*, paras. 14, 43; CEDAW, *Concluding Observations: Croatia*, para. 31, U.N. Doc. CEDAW/C/HRV/CO/4-5 (2015) (urging the State party to "ensure that the exercise of conscientious objection does not impede women's effective access to reproductive health-care services, especially abortion and post-abortion care and contraceptives"); *Hungary*, paras. 30-31, U.N. Doc. CEDAW/C/HUN/CO/7-8 (2013) (urging the State party to "[e]stablish an adequate regulatory framework and a mechanism for monitoring of the practice of conscientious objection by health professionals and ensure that conscientious objection is accompanied by information to women about existing alternatives and that it remains a personal decision rather than an institutionalized practice"); CESCR, *Concluding Observations: Poland*, para. 28, U.N. Doc. E/C.12/POL/CO/5 (2009) ("The Committee is particularly concerned that women resort to clandestine, and often unsafe, abortion because of the refusal of physicians and clinics to perform legal



---

operations on the basis of conscientious objection.... The Committee calls on the State party to take all effective measures to ensure that women enjoy their right to sexual and reproductive health, including by enforcing the legislation on abortion and implementing a mechanism of timely and systematic referral in the event of conscientious objection.”).

<sup>21</sup> See, e.g., CEDAW, *Concluding Observations: Hungary*, para. 31(d), U.N. Doc. CEDAW/C/HUN/CO/7-8 (2013); CRC, *Concluding Observations: Slovakia*, paras. 41(f), U.N. Doc. CRC/C/SVK/CO/3-5 (2016).

<sup>22</sup> CAT, *Concluding Observations: Poland*, para. 23, U.N. Doc. CAT/C/POL/CO/5-6 (2013); CEDAW, *Concluding Observations: Poland*, paras. 36 and 37 (b), U.N. Doc. CEDAW/C/POL/CO/7-8 (2014).

<sup>23</sup> Human Rights Committee, *Consideration of reports submitted by States parties under article 40 of the Covenant, Seventh periodic reports of States parties due in 2015, Poland*, para. 78, U.N. Doc. CCPR/C/POL/7 (2016).

<sup>24</sup> The Polish Constitutional Tribunal, case no 12/14, available at <http://trybunal.gov.pl/rozprawy/wokanda/art/8434-prawo-do-odmowy-wykonania-swadczenia-zdrowotnego-niegodnego-z-sumieniem/>.

<sup>25</sup> The Polish Constitutional Tribunal, case no 12/14, available at <http://trybunal.gov.pl/rozprawy/wokanda/art/8434-prawo-do-odmowy-wykonania-swadczenia-zdrowotnego-niegodnego-z-sumieniem/>.

<sup>26</sup> Letter from the Minister of Health to the Polish Ombudsman (Jan. 7, 2016) PRL.024.1.2016 (ABM) (Pol.).

<sup>27</sup> It is also the subject of concerns raised by the Council of Europe Commissioner for Human Rights in his recently issued report on his visit to Poland in February 2016. See Council of Europe, Commissioner for Human Rights, *Report by Nils Muižnieks following his visit to Poland from 9 to 12 February 2016*, p. 36, CommDH(2016)23 (Jun. 15, 2016), available at

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2924182&SecMode=1&DocId=2376250&Usage=2>.

<sup>28</sup> For example, in early 2014, a pregnant woman was diagnosed with a fatal fetal impairment (anencephaly). Under Polish law this qualified her for a legal abortion and her doctor sought permission from the hospital director to perform it. However, the director refused permission, invoking grounds of conscience, and he instructed everyone in the hospital not to perform the procedure. He failed to refer the woman, who was twenty-two weeks pregnant, to another hospital or doctor, as was required by the law at that time, or to inform her that abortion would be illegal after twenty-four weeks. He conducted unnecessary prenatal tests and examinations until the woman passed the gestational limit for a legal abortion. As a result, the woman had no choice but to carry the pregnancy to term and give birth to a child who died within a week. Subsequently the director of the hospital was dismissed from his position as hospital director and the hospital was fined 70,000 PLN (approximately 16,000 euros) by the National Health Fund. However, the National Board of Doctors subsequently dismissed disciplinary proceedings against the director of the hospital finding that he had not acted wrongfully. This finding was reached despite the fact that, in breach of Polish law at the time, he had failed to refer the woman to an alternative hospital or doctor and had extended his refusal of care to the entire institution.

<sup>29</sup> Raport z Monitoringu, Federacja na rzecz Kobiet i Planowania Rodziny [Report of monitoring about procedures of access to legal abortion in Polish hospitals, FWFP for Women and Family Planning] (Warsaw 2016) (Pol.).

<sup>30</sup> Stanowisko Nr 74/13/P-VI, Prezydium Naczelnej Rady Lekarskiej, z dnia 6 grudnia 2013 r., w sprawie korzystania z klauzuli sumienia w praktyce lekarskiej [National Board of Doctors, Position No. 74/13 / P-VI, on the use of conscientious objection in medical practice] (6 December 2013) (Pol.).

<sup>31</sup> *Tysic v. Poland*, No. 5410/03 Eur. Ct. H.R., para. 118 (2007).

<sup>32</sup> Patients' Rights and Patients' Rights Ombudsman Act, art. 32 (2008), available at [https://www.bpp.gov.pl/gfx/bpp/userfiles/\\_public/en\\_\\_wersja\\_anglojezyczna/ustawa\\_o\\_prawach\\_pacjenta\\_i\\_rzp\\_p\\_w\\_jezyku\\_angielskim.pdf](https://www.bpp.gov.pl/gfx/bpp/userfiles/_public/en__wersja_anglojezyczna/ustawa_o_prawach_pacjenta_i_rzp_p_w_jezyku_angielskim.pdf).

<sup>33</sup> In accordance with a co-called citizens' legislative initiative procedure, draft laws that have been signed by at least 100,000 supporters must be presented to the Polish Parliament review.