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Совет по правам человека
Четырнадцатая сессия
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Поощрение и защита всех прав человека, гражданских, политических, экономических, социальных и культурных прав, включая право на развитие

Вербальная нота Постоянного представительства Польши от 28 июня 2010 года в адрес Управления Верховного комиссара Организации Объединенных Наций по правам человека

Постоянное представительство Республики Польша при Отделении Организации Объединенных Наций в Женеве и других международных организациях свидетельствует свое уважение Управлению Верховного комиссара Организации Объединенных Наций по правам человека и имеет честь направить настоящим* исправления и комментарии правительства Польши к докладу Специального докладчика по вопросу о праве каждого человека на наивысший достижимый уровень физического и психического здоровья Ананда Гровера по итогам его миссии в Польшу (A/HRC/14/20/Add.3). Постоянное представительство Республики Польша было бы признательно за распространение настоящей ноты и приложения к ней в качестве документа четырнадцатой сессии Совета по правам человека по пункту 3 повестки дня.

* Приводится в приложении в полученном виде только на языке оригинала.

Annexe

Corrections and comments on the report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover

Introduction

The Government of Poland welcomed the visit of Mr. Anand Grover, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, to Poland in May 2009. At the same time, the Government of Poland underlines its recognition of the efforts of the Special Rapporteur in preparing a Report on his visit (A/HRC/14/20/Add.3, hereinafter referred to as "the Report").

Poland would like to underline its strong commitment to the promotion and protection of human rights both in domestic and foreign policy. Respect for and observance of all human rights is a guiding principle of all activities conducted by the Government of Poland. Moreover, Poland served as a founding member of the Human Rights Council from 2006 until 2007 and actively participated in the discussions on institutional building (IB) of the Council. We are convinced that the Council should become a more effective and credible intergovernmental forum with a mission to strengthen the promotion and protection of human rights in the world. Poland issued a standing invitation to all United Nations Special Procedures mandate holders in 2001. Accordingly, Poland has continued its cooperation with the United Nations special procedures by receiving visits, replying to communications and following up their recommendations. In 2009 alone Poland hosted not only Mr. Anand Grover but also the Special Rapporteur on trafficking in persons, especially women and children, Ms. Joy Ngozi Ezeilo.

Nevertheless, the Government of Poland would like to present some comments on the substance of the Report. The document often does not reflect the factual situation, which was exhaustively and objectively presented to the Special Rapporteur during his visit and also supplemented by documentation, analysis and legal acts sent to the Special Rapporteur after completion of his visit.

In the subsequent part of this annex detailed clarifications on each paragraph are provided.

1. Paragraph 4

The Report states that Ms Barbara Kozłowska was the Director of Patients' Rights in the Ombudsman's Office, however during the Special Rapporteur's visit Ms Barbara Kozłowska was in the post of Director of Patients' Rights within the Ministry of Health

2. Paragraph 13

The Special Rapporteur presents incorrect information that primary health care services are provided by local authorities, while in fact they are granted by health care units and medical practices.

3. Paragraph 15

In Paragraph 15, the Special Rapporteur states that "the budgetary allocations for health are insufficient to meet the growing needs of population". However, it is not then authorized to look for the reasons of malfunctioning of public health care system in insufficient financing from the source. This source on principle is only of subsidiary character, due to the fact that healthcare in Poland is financed mainly from universal health insurance and not from the state budget.

In the same Paragraph the Special Rapporteur refers to the long waiting lists sometimes resulting in complications and avoidable deaths, as an indication of insufficiency of funding available to the public health system. It is crucial to notice that there are many procedures, first of all saving lives, financed irrespectively from their quantity. Therefore it can hardly be said that insufficient financing generate queues of people awaiting these procedures. The main reasons for them are among others: demographical changes, development of medicine and medical technologies or demand for higher quality services, insufficient number of healthcare institutions, their uneven geographical location and differentiated provision, stimulating demand by contractors themselves (*fee for service*), preferring the reputation of certain contractors by patients to others, registering by patients to some contractors at the same time without informing about service obtained elsewhere. Furthermore, it should be also indicated that the problem of people awaiting medical attendance does not concern Poland only, it is presumably of universal character, independent on the level of financing.

4. Paragraph 17

The Special Rapporteur states that the question regarding sexual and reproductive health, including access to contraceptives and abortion, raises complex issues for the Polish Government. Nevertheless the question of access to contraceptives as well as the issue of termination of pregnancy in our understanding does not raise a problem for the Government, especially due to the fact that the latter is exhaustively legally regulated in the Act of 7 January 1993 on *family planning, protection of human foetus and conditions for admissibility of termination of pregnancy* (Journal of Laws 1993, No 17, item 78). Therefore the Government finds no obstacles to be overcome regarding these issues, as referred by the Rapporteur.

5. Paragraph 18

The Special Rapporteur referred to the Commission on Human Rights resolution 2003/28 as a source of the ascertainment that *rights to sexual and reproductive health* are integral elements of the right to health.

However this resolution does not contain any reference to sexual and reproductive health rights (SRHR). Exact quotation is provided below:

"[…] sexual and reproductive health are integral elements of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health" (please see also comments to Paragraph 22).

6. Paragraph 20

As regards cultural and religious factors, which according to the Rapporteur influence decisions of various persons pertaining to abortion and educational programmes on sexual and reproductive health and are obstacles to access to abortion, it needs to be pointed out that the provisions of the Programme of Action ICPD (PoA ICPD) in item 1.15 state that the common basis should be provided for the Programme of Action, fully respecting various religious and ethical values and cultural backgrounds.

7. Paragraph 22

The Special Rapporteur uses in the Report the concept of sexual and reproductive health and rights (SRHR), although it is not reflected in any international document, therefore the sentences which contain the term "*sexual and reproductive health and rights"* or *"SRHR"* should be modified to meet standards required for official documents.

The comprehensive concept of reproductive health, including family planning and sexual health was defined in the ICPD Programme of Action (PoA ICPD) and this notion should be used only in a direct reference to ICPD. According to *Principle 8* (PoA ICDP) *States should take all appropriate measures to ensure, on a basis of equality of men and women, universal access to health-care services, including those related to reproductive health care, which includes family planning and sexual health.* PoA ICPD also contains general definition of *reproductive health* and definition of *sexual health* (point 7.2) and emphasises the process of implementation of policies targeting at sexual and reproductive health. What is more, PoA ICPD contains references to the concept of „*reproductive rights*":

7.3. (...) *reproductive rights embrace certain human rights that are already recognized in national laws, international human rights documents and other consensus documents. These rights rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health.*

Bearing in mind the above-mentioned definition it should be underlined that this definition does not contain the concept of *sexual and reproductive health rights* used by the Rapporteur. Moreover, in line with the spirit of ICPD, all questions related to the rights, and in particular human rights, should be formulated with extreme caution, as the document states in its preamble:

While the International Conference on Population and Development does not create any new international human rights, it affirms the application of universally recognized human rights standards to all aspects of population programmes.

To sum up, as PoA ICPD does not define and does not contain the notion "*sexual and reproductive health rights*" quoted in the Report, the Rapporteur should refrain from using the concept which is not officially recognized.

8. Paragraph 23

Regarding the alleged difficulties with interpretation of the law concerning consent of parents for advice on contraception in the case of minors, it should be stated that pursuant to the legislation being in force before 1 September 2009 participation of students in the classes was not obligatory and the condition for participation was acquirement of a written consent from parents of under-age students or from adult students themselves.

The amendment of the regulation of the Minister of National Education of 12 August 1999 *on the manner of providing school education and the content related to the knowledge of the sexual life of human beings, principles of conscious and responsible parenthood, family values, life in pre-natal stage and methods and means of conscious procreation contained in the core curriculum of general education* (Journal of Laws, No 67, item 756, as amended) introduces provisions which define the condition of students' participation in the classes differently.

As of 1 September 2009 students are obliged to participate in classes on preparation to family life, unless their parents (statutory representatives) or adult students themselves submit a written resignation from participation in the classes to a headmaster of a school. Thus the right of parents and adult students of refusal to participate in the classes has been

retained, while at the same time the situation when the students did not participate in the classes due to failure to fulfil formal requirements has been eliminated.

Having in mind the supposed uncertainty of concepts of "assisted reproduction" and "conscientious objection", the Government of Poland reminds that "assisted reproduction" is carried out pursuant to civil law contracts and the right to „conscientious objection" is regulated by Article 39 of the Act of 5 December 1996 *on the professions of a physician and a dentist* (Journal of Laws 2008, No 136, item 857, as amended) and Article 23 of the Act of 5 July 1996 *on the profession of a nurse and a midwife* (Journal of Laws, No 91, item 410, as amended). Physicians, nurses and midwives – when claiming „conscientious objection" – have the possibility to refrain from providing health care services, which are against their conscience (if the delay in providing assistance does not result in danger of a loss of life, serious bodily injury or serious health disorder or in other urgent cases). The catalogue of such services includes – inter alia – abortion. In case when a physician refuses to perform the service, he or she is obliged to indicate another health care unit where the service will be delivered. Physicians are also obliged to notify this fact in medical documentation.

9. Paragraph 24

In the documents signed by the Polish Government (mentioned in Paragraph 18 of the Report): - International Conference on Population and Development (ICPD), - Fourth World Conference on Women, Beijing 1995, - United Nations Millennium Development Goals there are no provisions regarding the legalization of abortion on request.

Since 2005 The National Health Fund has been financing the pre-natal testing programme included in the basic benefits package in the field of health care programs. The Annex to the ordinance dated 30 August 2009 regarding the basic benefit package of health care programs (Journal of Laws, No 140, item 1148) stipulates that prenatal tests are conducted in pregnant women fulfilling at least three criteria from the list below:

- The mother is over 35 years of age,
- A chromosomal aberration of the foetus or child occurred in the previous pregnancy,
- Structural chromosomal aberrations are detected in the pregnant woman or the child's father,
- An incorrect result of a screening test in the 1st and 2nd trimester of pregnancy,
- Detection of a substantially higher risk of delivering a child with a mono- or polygenetic disorder,
- Detection during pregnancy of an incorrect result of a USG or biochemical tests indicating a higher risk of chromosomal aberration or defect of the foetus.

Therefore, there are specific guidelines as to when a pre-natal test should be carried out and it is an obligation for a physician to refer a patient for examination in situations described above. If this does not happen, patients have the right to appeal against an opinion or decision of a physician.

Data for 2008 available to the Ministry of Health contained in *The Report of the Council of Ministers on implementation of the Act on family planning, protection of human foetus and conditions for admissibility of termination of pregnancy for 2008* show that in the Poland 25 396 genetic consultations were given and 4 197 invasive pre-natal test were carried out, while 554 foetus pathologies were confirmed as a result.

In 2002-2008 district medical courts did not handle any proceedings related to genetic tests of foetus, while in the same period district ombudsmen for patients right handled 4 cases related to this question (3 in 2002 and 1 in 2008).

In the same Paragraph the Report states that "*the Special Rapporteur received allegations that young people were not permitted to buy condoms over the counter, despite no legal prohibition denying access to these*". The allegations contained in the Report on difficulties young people face, when buying contraceptives (including condoms) are not reflected in reality. In Poland condoms – as contraceptives – are available in all newsstands, chemists', pharmacies or supermarkets and there is no legal ban on sales of condoms to minors (as opposed to the ban on sales of alcohol or tobacco to minors, which is in force in Poland).

10. Paragraph 25

With reference to the Rapporteur's statement '*family life courses focus narrowly on marriage and family and touch only to a very limited extent on issues of sexuality and procreation, merely promoting abstinence and traditional methods of family planning*' we would like to remind that the Universal Declaration on Human Rights stipulates in Article 16 para 3 that '*the family is the natural and fundamental group unit of society and is entitled to protection by society and the State*' (see also comments to Paragraph 26).

The Rapporteur omitted to notice the fact that in Poland the number of pregnancies among persons aged 15-19 decreased from 30 (per 1000 live births) in 1989 to 13 in 2006 (source: Central Statistical Office).

In Poland the number of pregnancies among minors is 28% lower than the European average (source: *State of World Population 2008*, UNFPA).

Referring to the information provided in the Report that the family life courses simply promote abstinence and traditional methods of family planning, it is crucial to notice that the curriculum for the educational course "Family life education" is set in the Regulation of the Minister of National Education and Sport of 26 February 2002 *on Core Curricula for the Pre-school Education and General Education in Particular Types of Schools* (Journal of Laws, No 51, item 458, as amended).

The new core curriculum implements the provisions of the Act of 7 January 1993 on Family Planning, Protection of Human Foetus Protection and Conditions for Permissibility of Termination of Pregnancy (Journal of Laws 1993, No 17, item 78). As stipulated in the Act, school curricula include sex education - "Education for family life". Classes are conducted in the 5th and 6th grade of primary school, in junior high and high schools.

The new core curriculum for pre-school and general education was developed by a team of over 100 experts, composed of prominent representatives of Polish science, as well as experienced teachers, methodologists and specialist in the field of exam system. The draft curriculum prepared by this team underwent a widespread process of social consultation. The experts analyzed more than 2,5 thousand opinions and comments and over 200 reviews elaborated by experts in particular fields of learning and commissioned by the Ministry of National Education.

In the document special attention has been given to clear and comprehensive transfer of knowledge about physique and human body operation, occurring threats to health and deliberate and responsible prophylactic, the aim of which is to shape the right sexual attitudes of pupils/students. Moreover, information about sexual life, deliberate and responsible parenthood, family values, prenatal life and methods and means of conscious procreation, will let the young learn and understand the complexity of the issue, not only from scientific point of view but in social, cultural and ethical contexts as well.

Aims, objectives and content of subject "Family life education" provide for the notation derived from: Psychical Health Protection Programme, National Programme on Counteracting of Drug Addiction, National Programme on Counteracting HIV Infections and Delivering Care for People Infected by HIV and AIDS, Convention on the right of the child.

The Ministry of National Education regulation of 12 August 1999 on *the way of school teaching and the scope of information concerned knowledge about human being sexual life, principles of deliberate and responsible parenthood, family values, prenatal life, and methods and agents of wilful procreation included into core curriculum for general education* was amended on 10 August 2009 and came into force on 1 September 2009. Changes are due to the need to align with the revised core curriculum for general education in particular types of schools and to obtain optimal attendance of students in the classes. Under Article 53, paragraph. 3 of the *Constitution of the Republic of Poland* parents are granted the right to provide education to children in accordance with their convictions. Consequently the above-mentioned regulation contains a provision that students are required to attend educational classes, if their parents, legal guardians or mature students themselves have not raised the headmaster, in a written form, the resignation from participation in the activities.

Teachers of subject "Family life education", while conveying complete and reliable knowledge, adapted to the level of student development, integrate both school and parents actions in the field. The rate of pupils participation in the classes of "Family life education" has been raising (chart 1 – data as of 30 September 2008; chart 2 – data as of 30 September 2009):

Chart 1

School type (age of pupil)	*Number of pupils attending the classes "Family life education"*	*General number of pupils*	*% of pupils attending the classes "Family life education"*
Primary school (6/7-12/13)	526 809	813 923	64,7%
Gymnasium (12/13 – 14/15)	904 621	1 382 936	65,4%
Basic vocational school (14/15 – 16/17)	104 632	239 208	43,7%
General upper secondary school (14/15 – 18/19)	258 373	685 804	37,7%
Upper secondary specialised school (14/15 – 18/19)	31 679	72 543	43,7%
Upper secondary technical school (14/15 – 19/20)	220 696	437 253	50,5%

Chart 2

School type	*Number of pupils attending the classes "Family life education"*	*General number of pupils*	*% of pupils attending the classes "Family life education"*
Primary school (6/7-12/13)	539 366	779 506	69,19%
Gymnasium (12/13 – 14/15)	892 238	1 321 087	67,54%

School type	*Number of pupils attending the classes "Family life education"*	*General number of pupils*	*% of pupils attending the classes "Family life education"*
Basic vocational school (14/15 – 16/17)	112 598	235 676	57,78%
General upper secondary school (14/15 – 18/19)	260 785	655 865	39,76%
Upper secondary specialised school (14/15 – 18/19)	22 895	47 300	48,40%
Upper secondary technical school (14/15 – 19/20)	226 134	433 879	52,12%

The below mentioned entities cooperate with the Ministry of National Education on dissemination of sexual education of children and youth in Polish schools: *Federacja na rzecz Kobiet i planowania rodziny* (Federation on Women and Family Planning); *Fundacja Dzieci Niczyje* (Nobody's Children Foundation); *Fundacja Promocji Zdrowia Seksualnego* (Foundation on Promotion of Sexual Health); *Grupa Edukatorów Seksualnych „Ponton"* (Group of Sexual Educator 'Pontoon'), *Polskie Towarzystwo Seksuologiczne* (Polish Sexologist Association)*; Stowarzyszenie „W stronę dziewcząt"* (Towards Girls Association); *Towarzystwo Rozwoju Rodziny* (Family Development Association); *Związek Nauczycielstwa Polskiego* (Polish Teachers Association).

Regarding the allegations concerning teachers of the sexuality education it should be underlined that the qualifications of teachers, including those responsible for the "Family life education", are provided for in the Regulation of the Minister of National Education and Sport of 10 September 2002 on *Specific Qualifications Required from Teachers and Defining Schools and Cases, where it is Possible to Employ Teachers without University-level Education or a Completed Teachers' Education Institution* (Journal of Laws. No 155, item 1288).

Lectures on formation for family life are conducted by teachers qualified to be employed in the particular kind of school and completed a faculty at the university level in the area of the "Family life education" or post-graduate courses or qualification courses compliant with Programme contents. The teachers who completed a qualification course in the area of the "Family life education" have the qualification to conduct these classes in primary, lower secondary and basic vocational schools. In the other types of schools this course may be carried out by teachers who gained qualifications in the course of university-level education in the field of family studies or post-degree education compatible in scope with the curriculum of the course in question.

According to the *Act of the 26th of January 1982 – The Teachers' Charter* (Article 6), a teacher is, inter alia, obliged to reliably perform the duties connected with the entrusted post and main functions of the school; to educate youth in compliance with the Constitution of the Republic of Poland, in an atmosphere of freedom of conscience and respect for every human being; take care of shaping the moral and civic attitudes of students in accordance with the idea of democracy, peace and friendship between people of different nationalities, races and beliefs. Under Article 75 of the *Act*, teachers are subject to disciplinary responsibility for misconduct dignity of the teaching profession or duties referred to in Article 6.

11. Paragraph 26

With reference to the Rapporteur's call on the Polish Government to '*further eliminate possibility for parents to object to the provision of sexuality education in schools'* we would like to remind that the Universal Declaration on Human Rights stipulates in Article 26 para 3 that '*Parents have a prior right to choose the kind of education that shall be given to their children'*. The ICPD Programme of Action also states in Principle 10 that "*Education should be designed to strengthen respect for human rights and fundamental freedoms, including those relating to population and development. The best interests of the child shall be the guiding principle of those responsible for his or her education and guidance; that responsibility lies in the first place with the parents*".

12. Paragraph 27

Concerning the issue of the rates of use of modern contraceptive methods, surveys conducted in 2006 show that over half (58%) of sexually active women had used some contraceptive methods for the preceding 12 months (*Raport: Zdrowie kobiet w wieku prokreacyjnym 15 - 49 lat. Polska 2006*, published by UN Development Programme, Warsaw 2007). According to the statistical data, population growth rate in Poland in 2009 was 0,1% and was one of the lowest in Europe. Thus it is prerequisite to state that the methods of contraceptives used in Poland are effective.

In 2003, the Polish Gynaecological Society published *the recommendations on contraception* which state that the means of fertility regulation available in Poland are as follows: methods of periodic sexual abstinence (natural methods), spermicides, condoms, intrauterine devices, including devices releasing progesterone into the uterus, progestogen-only or combined hormonal contraceptives in the form of oral pills, skin patches or injections.

The conclusion of the Special Rapporteur pertaining to the fact that contraceptives are often too expensive, which results in their unavailability to many women, is not precise. The notion „*too expensive*" should be defined and referred to economic data, such as an average price of several selected hormone pills in comparison to average monthly remuneration or in comparison to other countries.

All modern methods of contraception are registered and accessible in Poland. On principle, available contraceptives are not financed from public funds in Poland, as well as in most countries in Europe. However, advice on selection of the most appropriate contraceptive method for a woman's needs is financed through National Health Fund. It should be pointed out that in 2008 the list of refunded medications included the following pharmaceutical preparations of the anatomical-therapeutic-chemical drug type G03AA07: Contraception-estrogen-gestagenic drugs: Microgynon 21 (Schering AG), Rigevidon (Jenapharm), Stedril (Wyeth).

They entered into the refund lists due to their application in the treatment of functional menstrual disorders and painful menstruation, they can also serve as contraceptives.

These medicines are available at 30% of the price limit, plus a surcharge over the limit in events when the reason of the treatment are functional menstrual disorders and not the contraceptive effect.

The data on misinformation provided by some doctors and imposition of judgmental and personal views regarding family planning are unconfirmed data and such cases could be incidental. So far neither the Ministry of Health nor the Offices of the Ombudsman for Patients' Rights have not received any complaints concerning the alleged situations.

13. Paragraph 28

Concluding the statement that "*Poland remains one of the few European countries that significantly restrict women's access to abortion"*, it must be stated that there is no

international legal regulation or right of the human being pertaining the legalisation of abortion on request. The statement that Poland significantly restricts access of women to abortion is groundless.

Moreover, the ascertainment that abortion is unsafe only when illegal is untrue. The termination of pregnancy has very often negative influence on both psychical and mental health of woman undergoing such procedure.

14. Paragraph 29

The quotation on consensus on restrictive nature of reasons for legal termination of pregnancy evokes the Concluding observations of the Committee on the Elimination of Discrimination against Women, CEDAW/C/POL/CO/6) and Memorandum to the Government of Poland-Assessment of the progress made in implementing the 2002 recommendations of he Council of Europe Commissioner for Human Rights (CommDH(2007)13). However, the aforementioned conclusions of the 37th CEDAW session as well as the para 98 of the Memorandum to the Government of Poland do not contain any reference to the restrictive nature of the *Act on family planning* of 1993.

15. Paragraph 31

Regarding the *„parallel consent"*, there is no legal gap in Poland pertaining to contraception and termination of abortion solely at the request of a minor.

The right of a child to information on health and to express consent or opinion on treatment is regulated by the provisions of the Act of 5 December 1996 *on the professions of a physician and a dentist* (Journal of Laws 2008, No 136, item 857, as amended) and the Act of 6 November 2008 *on patient's rights and on the Ombudsman for patient's rights* (Journal of Laws 2009, No 52, item 417, as amended). Pursuant to Article 32 (2) of the first Act „i*f a patient is under-age or incapable of conscious consent, the consent of his or her statutory representative is required and if a patient does not have a statutory representative or it is impossible to contact one – the consent of a Guardianship Court*". Article 32 (5) of the same Act provides that a patient above 16 years of age has the right to give consent to examination or provision of other health care services by a physician. It is an obligation of a physician to provide a minor above 16 years of age with comprehensive information on health condition, diagnosis, proposed or possible diagnostic and treatment methods, foreseeable consequences of their application or refraining from application, results of treatment and outlook. A patient below 16 years of age has the right to receive from a physician comprehensible information on health condition, diagnosis, proposed or possible diagnostic and treatment methods, foreseeable consequences of their application or refraining from application, results of treatment and outlook in the scope and form necessary for a correct diagnostic and therapeutic process. After receiving such information, a patient below 16 years of age has the right to provide his or her opinion in this respect to a physician.

In Poland the question of termination of pregnancy on request is legally regulated in case of both adults and minors.

16. Paragraph 38

Referring to the allegations concerning interference with access to legal and safe abortions of the non-state actors, it should be noted that most of health care facilities in Poland, including gynaecological wards, are open. This means that access to these facilities is free and is not subject to any specific control. The access to the rooms in the facilities is available both to persons using the healthcare service and to their visitors.

In accordance with the Act on Health Care Institutions the patient has the right to maintain personal contacts with the persons visiting them and to receive pastoral care during their stay at the hospital. It is up to patients to decide who they want to meet.

As regards pastoral care in hospitals: see Article 18 (1) and (3) of the International Covenant on Civil and Political Rights – each person staying in a health care facility has the right to host visits from priests or other persons related to the confession or religion of such patient.

18.1 *„Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching*".

18.3 *„Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others*".

17. Paragraph 44

Regarding the concerns of implementation of ruling of the European Court of Human Rights in *Tysiąc* case it is important to notice information about implemented acts and regulation below:

In order to guarantee its greatest possible level of professionalism, the Medical Board is composed of three doctors appointed by the Ombudsman for Patients' Rights (on the basis of Article 32 of the Act on the Patients' Rights and the Ombudsman for Patients' Rights of 6 November 2008) what ensures the objectivity of the decisions. The list of doctors is provided by the National Consultants in the field of given medical specialization. Moreover, with the aim of assuring impartiality and sovereignty of the Board considering an objection towards an opinion or judgement, the regulation on Medical Boards attached to the Ombudsman for Patients' Rights (on the basis of Article 32(5) of the Act of 6 November 2008 on the Patients' Rights and the Ombudsman for Patients' Rights) introduced a new mode of excluding a member of the Medical Board. In the situations involving the circumstances specified in the regulation that raise doubt as to the impartiality or sovereignty of any of the physicians appointed as a member of the Medical Board, a patient or their statutory representative has the possibility to apply for the exclusion of the doctor in question from participating in the proceedings. The composition of the Board in the particular case will be therefore decided by the Ombudsman for the Patient's Rights as an institution of public administration.

According to the Article 31 Paragraph 3 of the Act, an objection reported to the Medical Board requires justification that has to be submitted by a complaining woman and it should include her point of view. However, since the decision of termination of pregnancy is made upon medical criteria, the position of opposing a woman can not be binding for the Board.

Regulation of the Ministry of Health on Medical Boards attached to the Ombudsman for Patients' Rights introduced an obligation of issuing the decision in written form. Additionally, it should be underlined that the decision with justification should be delivered to the patient or to his statutory representative without any delay.

18. Paragraph 48

According to the Act of 7 January 1993 *on Family Planning, Human Foetus Protection and Pregnancy Termination Admissibility Conditions* (Journal of Laws, No 17, item 78, as further amended) there are three cases when pregnancy may be legally terminated:

Art. 4a. 1. Pregnancy may be terminated only by a medical practitioner, in cases when:

1) pregnancy constitutes a threat to the life or health of the pregnant woman,

2) prenatal examination or other medical reasons indicate a high risk that the foetus will be severely and irreversibly damaged or suffering from an incurable life-threatening disease,

3) there are strong grounds for believing that the pregnancy is a result of a criminal act,

In the cases specified in paragraph 1, point 2, pregnancy termination is allowed until the moment the foetus acquires the ability to survive on its own outside the pregnant woman's body; in the case specified in paragraph 1, point 3 – if no longer than 12 weeks have passed since the beginning of the pregnancy. In the case mentioned in paragraph 1, points 1 and 2, the pregnancy termination procedure is performed by the doctor in the hospital. The woman's written consent is required for the pregnancy to be terminated. In the case of a minor or a fully incapacitated woman, a written consent of her statutory representative is necessary. A written consent of such a person is also required if the woman is a minor under the age of 13. In the case of a minor under 13 years of age, also consent of the Custody Court is required, and the minor has the right to express her own opinion. If a woman is fully incapacitated, her written consent is also necessary, unless the woman's mental health condition prevents her from giving such consent. Should the statutory representative not grant consent, the consent of the Custody Court is required.

At the same time, in order to ensure the possibility of realising this right, and some others as well, Chapter 8 of the Act of 6 November 2008 *on the Patients' Rights and the Ombudsman for the Patients' Rights* introduced the right to raise an objection against doctor's opinion or expertise. Pursuant to these provisions, if a patient or their statutory representative disagrees with a medical diagnosis made by a doctor deciding on the patient's state of health, they may lodge an appeal against an opinion or decision which affects the patient's rights or duties provided for by law. Such an appeal is lodged with the Medical Board attached to the Ombudsman for Patients' Rights, through the Ombudsman for Patients' Rights, within 30 days from the date of issuing of an opinion or decision by a doctor deciding on the patient's state of health.

Contrary to the Special Rapporteur's suggestion, due to the comprehensive legal regulation of the matter of abortion in Poland there are no social, cultural or religious obstacles in this respect.

19. Paragraph 49

The Report states that the Polish health professionals do not have the opportunity to receive education and training in human rights. However, it is not possible to agree with this statement. Medical professionals are qualified on higher level of education or at least on secondary or second secondary level, therefore they are obliged to be acquainted with human rights issues during their secondary level of education. Moreover issues concerning professional ethics or medical law are included in educational standards for medical faculties. Doctors, dentists, pharmacists, nurses, midwives, laboratory diagnosticians and paramedics are obliged to undertake continuing professional development. International law on health and human rights can also be a part of continuing professional development for health professionals.

Furthermore, it is necessary to emphasize that issues concerning professional ethics are regulated not only in national law but also in professional codes of ethics.

20. Paragraph 51

The Special Rapporteur mentions "numerous reports" referring to the clause of conscientious objection applied by medical personnel while refusing to carry out abortion. Final remarks of the Committee on Economic, Social and Cultural Rights (CESCR) of December 2009 are evoked in a footnote. Nevertheless, neither the Report of the Special Rapporteur, nor final remarks of CESCR indicate names, authors or content of the mentioned reports.

For legal provisions concerning conscientious objection please see comments to Paragraph 23.

21. Paragraph 52

In 2008 the Patients' Rights Office of the Ministry of Health did not receive any complaint (neither written nor oral) on refusing a prenatal examination, and there was one procedure carried out by a district ombudsman for patient's rights on genetic examination of a foetus.

As mentioned above, for legal provisions concerning conscientious objection as well as the mechanism ensuring the requested abortion guaranteed by the law, please see comments to Paragraph 23.

22. Paragraph 56

Concerning the alleged limitations regarding access to reproductive health technologies, such as in vitro fertilization, the following medical procedures of assisted reproduction are available in Poland: - pharmacological treatment in the case of abnormal functioning of the hypothalamic–pituitary–ovarian–endometrial axis; - procedural treatment (mainly surgical laparoscopy) aimed at correcting anatomical abnormalities (for instance at removing post-inflammatory alterations in the lesser pelvis); - medically assisted reproduction techniques proposed either as the sole method giving the possibility of pregnancy, or as the last-chance method when all other options had failed (including the in vitro fertilisation).

Regardless of the method, technique or tendencies, the choice of an optimum treatment for an infertile couple is determined by the identified reason of infertility. Making a decision on the choice of a therapeutic method, based on the information given by the doctor, is the right of the persons with the problem of infertility.

It must also be stated that the quoted *Protection of the Human Genome and Embryo Act* is a parliamentary - not governmental - bill, currently under discussion in the Parliament. Moreover there are four more parliamentary bills on that issue, which are also discussed and the outcome of the deliberations is yet unknown. Unfortunately, the Special Rapporteur in the Report mentioned the assumptions of only one of the bills and misleadingly called it *the Act*.

23. Paragraph 60

Regarding the question of law proscribing syringe possession, the Polish criminal law does not include regulations forbidding the possession of syringe and needle, and such law has not been in force for the last 30 years. Moreover, it should be stressed that in Poland there is no collision between the criminal law and the harm reduction programmes, including the programmes of distributing syringes and needles to persons using drugs.

The provision of syringes and needles to drug addicts has been in force in Poland since 1988. As activities reducing harm caused by the use of drugs in Poland are considered very important, this view is reflected in Article 2(1)(3) of the Act of 29 July 2005 *on Counteracting Drug Addiction*.

24. Paragraph 74

The Special Rapporteur commends the decision of the local Government to start a methadone maintenance programme in Gdańsk by September 2009, but regrets that, as of March 2010, the programme has not yet been established.

Being fully aware of the health and social aspects of the problem, for several years the Voivodeship authorities have made efforts to introduce substitution therapy in the area of the Pomorskie Voivodeship.

The stationary drug free treatment has been conducted in the Pomorskie Voivodeship for many years, offering 19 places per 100 000 inhabitants (while in Poland the ratio is 7 per 100 000 inhabitants).

Only 10% of patients treated in outpatient clinics are opiate dependent qualifying for methadone therapy, while other patients require standard treatment. According to initial estimations, the need to introduce the therapy concerns 50 persons.

The Pomerania Expert Board for drug addiction prevention in the Pomorskie Voivodeship believes that there are no formal obstacles to extend the scope of activities aimed at reducing the drug use related damage and to expand the offer of substitution treatment programmes. The methadone programme in the Pomorskie Voivodeship should be created in line with the principle that the changes in treatment methods should be subject to the priority of the patient's wellbeing, while detailed solutions will be worked out based on standard procedures in this regard. According to the Board, methadone should not be used in persons under 18 years of age where other treatment may be used with prognosis for a total abstinence from opioids, where the patient is addicted to other substances than opiates and where the patient did not attempt treatment to stop heroine use in the past.

None of 52 outpatient clinics or 8 permanent centres for treatment of addicts, including 8 centres for patients with AIDS, expressed their wish to introduce a substitution therapy.

The proposed solutions consisting in establishment of a centre encountered difficulties in meeting the requirements of the *Regulation of the Ministry of Health on specific conduct procedure in substitution treatment and detailed conditions to be met by a health care unit which provides substitution treatment.*

In 2009 the authorities of the City of Gdańsk poviat (county) voiced their intention to establish a methadone therapy centre in the poviat. Due to the necessity to obtain financing and carry out adaptation works, the centre was to be launched in June 2010 and not in autumn 2009, as stated during the meeting with Mr. Grover.

Already in 2004, the authorities of the Pomorskie Voivodeship started negotiations with the Pomorskie Voivodeship Branch of the National Health Fund in order to plan an amount of money to be spent on substitution treatment of the patients, but due to organisational difficulties, no bids for providing such services were received in the tender procedure.

The Pomorskie Voivodeship Branch of the National Health Fund included methadone therapy in its financial plan for 2009 and for 2010.

From 2007, our voivodeship implements the "*AIDS Control and HIV Infections Prevention Programme for 2007-2011 for the Pomorskie Voivodeship*" based on the guidelines of the National Programme. The National AIDS Centre deemed the said programme to be the best local government programme in this regards and an example for other voivodeships. The Programme received a Red Ribbon prize granted by the Minister of Health.

Under the National Programme for Counteracting Drug Addiction local powiat and gmina (community) governments allocated 5 235 038 PLN for prevention of drug addiction.

We would like to emphasize that it is in the Pomorskie Voivodeship that the first AIDS treatment department in Poland was established in 1993, thanks to efforts of Professor Władysława Zielińska.

The Pomorskie Voivodeship was the first in Poland to introduce monitoring of drug addicts.

On 25 January 2010, the representatives of the Office of the Marshal of Pomorskie Voivodeship took part in a meeting organised by the Stanisław Brzozowski Association with a distinguished American expert on substitution therapy, the purpose of which was to solve the problem stemming from the lack of this form of therapy in the Pomorskie Voivodeship.

25. Paragraph 76

Recalling the small number of voluntary counselling and testing centers, their quantity indeed depends on financial resources, but those points are present in all bigger cities of Poland (at the end of 2009 there were 28 points), which is reasoned by the need to ensure anonymity to their clients. It would be difficult or even impossible to ensure such anonymity in small towns or rural communities.

26. Paragraph 77

All VCT centres are to some extent co-financed by the National AIDS Centre (NAC) and all work according to the testing standards indicated by the NAC. The NAC buys tests for all Polish VCT centres.