

The response of the Government of the Republic of Poland to the Report of the Commissioner for Human Rights of the Council of Europe following the visit to Poland from 11 to 15 March 2019

Introduction

The Government of the Republic of Poland should like to thank the Commissioner for Human Rights of the Council of Europe, Ms Dunja Mijatović, for paying a visit to Poland from 11 to 15 March 2019. A number of meetings with representatives of the Polish authorities, organised at the Commissioner's request, were intended to gain comprehensive knowledge about the situation in Poland.

Underlining, during the dialogue conducted with the Committee of Ministers of the Council of Europe, while presenting a quarterly report on her activities on 19 June 2019, the very good cooperation with Poland in the scope of organization of the Commissioner's visit, is the reaffirmation that Polish authorities cooperate with the Commissioner, just as they do with other Council of Europe bodies.

The Government of the Republic of Poland supports the Commissioner's efforts and activities carried out pursuant to her mandate. The constructive dialog with the national authorities is of a particular importance. The Government of the Republic of Poland take the possibility of presenting their position to the Commissioner's Report following the country visit as a part of the dialogue with the Commissioner.

The response presented below expresses general comments as well as refers to the particular paragraphs of the Report in accordance to the classification adopted in the document.

1. INDEPENDENCE OF THE JUDICIARY AND THE PROSECUTION SERVICE

Comment to Chapter 1.1 The situation of the Constitutional Tribunal

Detailed information regarding the situation in the Constitutional Tribunal has been presented in the White Paper on the Reform of the Polish Judiciary. In this context, it should be noted in particular as follows.

All judges of the Tribunal were appointed lawfully. It was the previous term of Sejm that broke the law – current term remedied the breach. Resolutions of the 7th term of Sejm undertaken to nominate 5 judges (1/3 of the Tribunal) were made "in the dark", as the Sejm could not have known when its term would end and the new would begin. It also breached the rule of legislative silence, under which no amendments to statutes regarding elections to major official posts should be made less than 6 months before these elections (this rule was established by the Constitutional Tribunal).

The 8th term Sejm lawfully declared that the resolutions of the 7th term Sejm were null and void from the beginning – and properly nominated 5 judges to the Constitutional Tribunal. All these resolutions (of 7th and 8th term of Sejm) were subject to a review by the Tribunal under its previous President – and the proceedings were discontinued (case no. U 8/15; contrary to some often repeated claims the judgments of December 2015, case no. K 34/15 and K 35/15 did not pertain to these resolutions, but the law on the Constitutional Tribunal).

For some time, the Tribunal under the previous President was issuing rulings while seating in composition that was contrary to the Constitution and statutes. Major infringements were: wrong composition of adjudicating panel, resolving cases on closed door sessions (in camera) instead of public hearings, groundless renouncement of the rule to adjudicate in full court.

Despite that, Sejm decided that for the sake of stability of the legal system these judgments should be published. All of the Constitutional Tribunal judgments – including those issued with breach of procedure - were published in the Official Journal of Laws. Only those verdicts which concerned non-binding acts have not been published - their publication would have no impact on the legal system, because their only effect was the loss of the binding force by the legal provisions being their subject (which in that case already have lost their binding force).

The election of the current President of the Constitutional Tribunal was also in line with the law – it took place on the basis of the statute of 13 December 2016, later deemed to be constitutional by the Tribunal (case no. K 1/17). Moreover, the election was acknowledged also by the former deputy President of the Tribunal (critical of most of the reforms).

The Tribunal under the current President carries out its duties in line with the Constitution and the statutes. Claims and motions are presented by citizens and public bodies, and they are actively participating in proceedings - including the ones nominated before current term of Sejm and critical of the reforms, like the Polish Ombudsman.

Comment to Chapter 1.2. Changes affecting the National Council for the Judiciary

The adopted amendments to the Act on the National Council for the Judiciary executed the Constitutional Tribunal's judgement of 20 June 2017 (case no. K 5/17), which found the provisions of the Act on the National Council for the Judiciary then in force concerning the election of members to the National Council for the Judiciary from among judges of common courts and administrative courts to be unconstitutional. The Tribunal pointed out that the provision of the Act on the National Council for the Judiciary concerning the terms of office of members of the National Council for the Judiciary (hereafter also the "Council", "NCJ") elected from among judges of common courts interpreted to mean that the term of office is individual in nature was unconstitutional. However, what is particularly important in this case is that, according to the Constitutional Tribunal, Art. 187(4) of the Constitution gives a rather wide margin of discretion to the lawmaker in determining the procedure of electing members of the National Council for the Judiciary. The limits of this discretion are set by the contents of the constitutional provisions. Pursuant to Art. 187(1)(2) of the Constitution, the right to stand in elections is exercised by judges of the Supreme Court, common courts, administrative courts and military courts. Since the Constitution does not set criteria which the lawmaker could adopt to differentiate the possibility of standing for election to the National Council for the Judiciary by judges listed in Art. 187(1)(2), the lawmaker may not freely determine them in a law. The composition of the National Council for the Judiciary is a constitutional matter and without a constitutional authorisation it may not be modified. The lawmaker is required to determine the mechanism of electing members of the National Council for the Judiciary in such a way as to guarantee proper representation of judges without introducing additional criteria for carriers of rights.

The Constitutional Tribunal recalled that the Council is not part of the judiciary and does not represent it. It is an organ that does not fit into a simple take on the division of powers referred to in Art. 10 of the Constitution. The constitution maker placed it between the three branches of government (legislative, executive and judicial) making it an instrument that will implement the constitutional principle of checks and balances between these branches of government, a forum for cooperation and reciprocal checks between the branches of government. Since this is how the NCJ's position was set in the Constitution, and the tasks and powers it was assigned, it is not possible to apply to it the same guarantees as those that apply to constitutional organs of the judicial branch of government. The lawmaker has wide discretion in determining the system of the NCJ, as well as the scope of its activities, its work procedure and how its members are elected. However, the power of the lawmaker is limited by the Council's constitutional tasks, the constitutionally determined composition and the requirement of terms of office of the elected members of the Council. In the latter case, the interpretation of Art. 187(3) of the Constitution has to be uniform – the terms of office of all elected members of the Council must be set jointly (collective term of office), because only such interpretation of the provision is constitutional.

Therefore, it was necessary to draft provisions in such a way as to create a legal situation that complies with the Polish Constitution.

The new rules for electing members of the Council from among judges were reviewed by the Constitutional Tribunal in its judgement of 25 March 2019 (case no. K 12/18). The Constitutional Tribunal observed that even though the National Council for the Judiciary is of course a constitutional organ, the laconic nature of the constitutional provision that applies to it shows that the constitution maker transferred the fundamental issues relating to its operation to be regulated by a statute, while leaving in the text of the Constitution only a certain minimum standard of constitutionality of the National Council for the Judiciary. However, the fact that it is a representation of the legal community does not derive from the way members of the NCJ are elected, but from the fact that judges elected to it form a great majority, something that is covered by a constitutional guarantee.

It should be underlined that 15 members elected by the Sejm are judges, who are equipped with guarantees of independence. Any claim that the judges elected by the Sejm might lose their independence on that account, and be at the disposition of the parliamentary majority, constitutes in fact a vote of no-confidence for the internal independence of most of the judges. There are no grounds for the claim that the mere act of election by parliament leads to a politicisation of the elected body. What is more, such a claim should be then applied also to other constitutional bodies elected by the Sejm, such as the Constitutional Tribunal, the Ombudsman or the President of the Supreme Audit Office. One should therefore differentiate between the act of election by the competent organ and the subsequent functioning of the Council. The systemic position of the main organs of the state, including the National Council for the Judiciary, is constructed not only by the rules of its establishment, but also on the basis of the regulations pertaining to the scope of their competences, oversight over them, the possible ways of influencing their members or legally or factually exerting influence on the members' decisions. No provision of the amended Act on the National Council for the Judiciary provides for the subordination of the members of the Council to any external body.

As it was noted above, the National Council for the Judiciary was appointed in accordance with the provisions of the Constitution of the Republic of Poland (as confirmed by the judgment of the

Constitutional Tribunal of 25 March 2019). The appointment of its judicial members does not have to be made, as some would argue, solely by judges, as it is not required by any provision of the Constitution. What is more, the way of selecting members of the National Council for the Judiciary does not infringe on any standards of European law, as it does not regulate the issue of the authority tasked with recommending candidates for judges, nor the modalities for such a procedure. One should note that in the Polish legal system this procedure is at any rate further away from political influence than in many other European Union Member States.

It should also be pointed out that in Poland the National Council for the Judiciary does not perform any judicial or court-related functions. As it was stated above, the Council is an organ separate from the judiciary which safeguards the independence of courts and of judges. It does not settle court disputes or perform the role of a disciplinary court for judges, which is common in other legal orders.

The National Council for the Judiciary in the majority consists of judges – the First President of the Supreme Court, the President of the Supreme Administrative Court and of 15 judges elected from among judges of the Supreme Court, common courts, administrative courts and military courts. The Sejm selects to the Council 15 judges only from the candidates supported by either a group of at least 25 judges or by a group of at least 2000 citizens. Thus, these judicial members of the Council are vested with guarantees of independence regardless of the will of the parliamentary majority.

What should be further underlined is the lack of a common and binding European standard in respect of judiciary councils. The regulations in place in various states differ considerably and in many states there is no similar body to the National Council for the Judiciary, tasked with the assessment and selection of the candidates for vacant judicial posts. In the countries where similar bodies with similar competences exist, their composition varies and there is no rule requiring their composition to be determined by groups of judges. Moreover, other branches of the government – the executive and legislative branches – have a say on the composition of members of such bodies. As an example, in four EU Member States (Austria, the Czech Republic, Germany, Luxembourg) there are no judiciary councils, while these countries continue to enjoy the highest trust in their systems of justice, according to Eurobarometer. In three EU Member States (Denmark, the Netherlands and Sweden) members of judiciary councils are appointed by the governments. In Denmark all the members are formally appointed by the Minister of Justice and in the Netherlands they are formally appointed by a royal decree upon a motion of the minister of security and justice.

With regard to the issue of shortening the terms of office of the previous members of the National Council for the Judiciary and the start of a new joint term for the currently serving members, it should be stressed that it was aimed at bringing the provisions of the Act on the National Council for the Judiciary in compliance with the Constitution of the Republic of Poland. The possibility for such a solution was indicated in the judgment of the Constitutional Tribunal of 18 July 2017 (case no. K 25/07), on condition that extraordinary and constitutionally justified circumstances could be shown. The Constitution envisages a joint term of office the members of the National Council for the Judiciary, as confirmed by the previously mentioned judgment of the Constitutional Tribunal of 20 June 2017. In that judgment, the Constitutional Tribunal found the regulations existing so far in respect of the election of the judicial members of the Council – in particular, the cluster election (separate election for different groups of judges) and the quotas of judicial members to be elected by each of the group of judges – to be unconstitutional. Therefore, the said judgment of the

Constitutional Tribunal had to be implemented urgently in order to make the regulations concerning the functioning of the Council comply with the Constitution and to replace the members of the Council elected on the basis of the unconstitutional provisions with the members selected in accordance with the new regulations.

It should be further underlined that the challenged provisions entered into force during the period, when the term of office of the majority of the Council's judicial members appointed on the basis of the previous regulations was about to expire (January-March 2018). Thus, the postulate to extend in time the entry into force of the new regulations until the expiration of the last individual term of office (that is up until March 2020) would result in an over two-year period of systemic instability of the National Council for the Judiciary, with different legitimacy of its members, including those members selected in an unconstitutional procedure, which could have led to the possibility of questioning the legitimacy of the whole Council. Moreover, if one questions the right to shorten the 4-year constitutional term of office, the proposal to select during the transition period new judicial members for individual and different terms, and still shorter than 4 years, should be questioned as well. The solutions adopted with regard to the National Council for the Judiciary respect the principle of continuity of functioning of a constitutional body, as the terms of office of the former members of the Council expired on the day the joint term of office of the new members of the Council started.

In conclusion, one cannot find it justified, or necessary, to modify the currently existing procedure for electing the judicial members of the National Council for the Judiciary, as it does not infringe on the Council's independence or the independence of its judicial members, and it is not unconstitutional.

Comment to paragraph 14 of the Report

The argument that the vote was boycotted by the entire parliamentary opposition is incorrect. Deputies from the Kukiz '15 parliamentary club, which are also part of the parliamentary opposition, took part in the vote.

Comment to Chapter 1.3.1 The early retirement of the Supreme Court's Judges

In respect to the changes to the retirement age of the Supreme Court's judges, including the First President of the Supreme Court, introduced by the Act on the Supreme Court of 8 December 2017 (Journal of Laws of 2018, item 5 as amended) – as it was noted in the Report – the consequences of the said changes were eliminated through the amendment to the Act on the Supreme Court of 21 November 2018 (Journal of Laws of 2018, item 2507), adopted in connection to the interim order of the Court of Justice of the European Union of 17 December 2018 in the case of the European Commission against the Republic of Poland (case no. C-619/18).

According to the aforementioned amendment, all of the Supreme Court's judges who assumed office before 1 January 2019 will serve as judges until they reach the retirement age stipulated in Art. 30 of the repealed Act on the Supreme Court of 23 November 2002 (Journal of Laws of 2016, item 1254 as amended), that is until 70 years of age. They can ask for an extension until 72 years of age (by declaring their wish to do so to the First President of the Supreme Court and by providing a medical certificate confirming the ability for reasons of health, to perform one's duties). Only the

judges appointed after 1 January 2019 will retire earlier, that is upon reaching 65 years of age, in accordance with the new wording of Art. 37 (1) of the Act on the Supreme Court currently in force.

What is more, in accordance with Article 2 (1) of the amendment of the Act on the Supreme Court of 21 November 2018, the judges of the Supreme Administrative Court who retired pursuant to Art. 37(1-4) or Art. 111(1) or Art. 111 (1a) of the Act on the Supreme Court, including by applying Art. 5 of the amended Act on the Common Courts of 10 May 2018, returned to their offices at their previous positions upon entry into force of the amended Act on the Supreme Court. Their judicial duty is counted as uninterrupted. Therefore, the above amendment has reversed the consequences of the regulations which raised concerns.

Comment to Chapter 1.3.2 The Supreme Court's composition and new chambers

With regard to the issue of establishing two new chambers of the Supreme Court, it is not clear why it should raise any concerns, especially due to the fact, that they were introduced within a framework of the new Act on the Supreme Court, which has changed the organisational structure of that court by reassigning tasks between the chambers of the Supreme Court.

It should be kept in mind that the judges of the Supreme Court, including the judges of the two chambers recently established by operation of this law, are appointed in the procedure that guarantees the judges' independence from the legislative and executive branches of government. All of the candidates to the Supreme Court must fulfil high requirements, specified in the law, as to their formation, professional experience and an impeccable reputation. The candidates who meet the formal requirements have the possibility to actively participate in the selection procedure in support of their application by presenting their candidacy, recommendations and other documents confirming their qualifications. The fact that it is the National Council for the Judiciary, which consist of inter alia politicians and judges selected by the Sejm, that finally submits a request for judicial appointment to the President of the Republic of Poland, has no impact on the decision-making and independence of the judges appointed by the President. The Polish model of appointing judges to the Supreme Court does not differ from other Member States' models and it does respect the guarantees of the judges' independence.

With regard to the issue of the organisational separation, to some extent, of the Disciplinary Chamber within the Supreme Court and to its different status, it does not seem clear why such a solution might be perceived negatively. The regulations pertaining to the status of the said chamber should lead to the opposite conclusion of reinforcing the sense of independence of the judges of the Disciplinary Chamber.

The fact that certain tasks of the Supreme Court's First President in respect to the Disciplinary Chamber are performed by the President of this Chamber (appointing and removing heads of divisions, performing some of the tasks, stipulated in the law, connected to the appointment of lay-judges, presenting the President of the Republic of Poland with an opinion as to the number of vacancies in the chamber, the possibility to request the Minister of Justice to second a judge or an assistant to judge to the work in the chamber), as well as the fact that the draft budget of the Disciplinary Chamber, as adopted by the assembly of the chamber's judges, is included in the Supreme Court's budget with no possibility for the Supreme Court's First President to modify it, and to the fact that in respect of implementing the Disciplinary Chamber's budget, the President of this

Chamber is enshrined with the competences of the Minister of Finance, does not raise any doubts, nor concerns - both in connection with the organisational differences and to the changes in the appointment of judges to the Disciplinary Chamber. Reinforcement of the independence of the Disciplinary Chamber, even in the administrative and organisational area within the Supreme Court, combined with the lack of dependency on other state organs in the area of judicial functions, show that any conclusion pointing to the lack of independence and impartiality of the said Chamber is unfounded. Moreover, taking into account the principle of irremovability of judges, including the Supreme Court's judges, it should not raise any concerns that the judges sitting on and seconded to the Disciplinary Chamber are entitled to a supplement in the amount of 40% of their earnings, as it is connected to broader – in comparison to other judges – limitation of the possibility of taking up additional employment or other activity. The allowance is a type of compensation for increased burden for reasons of considerable limitation of the Disciplinary Chamber's judges' ability to take up other activities, including gainful employment, and is aimed at securing the judges' external impartiality to the broadest extent. An exception to this ban is the possibility to take up employment as an academic and teacher upon receiving consent, but then these judges are no longer eligible for the 40% allowance added to their earnings.

Lastly, referring to statement contained in the Report that „...*the Supreme Court's new internal rules had been unilaterally determined by the President of the Republic, pursuant to the presidential regulation of 29 March 2018 amended on 11 February 2019, without consultation with the Court's judges*” - the oversimplification of such a presentation should be pointed out. It should be underlined that the President's ordinance of 29 March 2018 concerning the Rules of the Supreme Court (Journal of Laws of 2018, item 660 as amended) constitutes a legal act, issued on the basis of Art. 4 of the Act on the Supreme Court. The same model applies to the administrative courts, where the President determines, by way of an ordinance, the rules of procedure of regional administrative courts, in accordance with Art. 23 (1) of the Act on the System of Administrative Courts (Journal of Laws of 2018, item 2107 as amended).

Comment to paragraph 25 of the Report

It was erroneously indicated that deputies may lodge an extraordinary appeal. Pursuant to Art. 89(2) of the Act on the Supreme Court of 8 December 2017, an extraordinary appeal may be lodged by the Prosecutor General, the Ombudsman, and within the scope of his competence, by the President of the General Counsel to the Treasury of the Republic of Poland, the Commissioner for Children's Rights, the Commissioner for Patients' Rights, the President of Financial Supervision Authority, the Financial Ombudsman, the Commissioner for Small and Medium-Sized Entrepreneurs, and the President of the Office for the Protection of Competition and Consumers.

Comment to paragraph 28 of the Report

Pursuant to the then in force Art. 44(1b) of the Act on the National Council for the Judiciary of 12 May 2011, if a resolution on individual matters concerning appointment to the post of a Supreme Court judge was not challenged by all the participants of the proceedings, it became final in the part dealing with the decision on presenting a motion for appointment to the position of a Supreme Court judge, and also in the part dealing with a decision on non-presentation of a motion to appoint as

Supreme Court judges those participants of the proceedings who did not lodge an appeal. This means that the resolution delivered to the President of the Republic of Poland was final in the part that concerned the motion to appoint the candidates indicated in it to hold the office of a Supreme Court judge.

Comment to paragraph 30 of the Report

The discontinuation by operation of law of the aforementioned proceedings was necessary because of the Constitutional Tribunal's ruling of 25 March 2019 (case no. K 12/18), in which the Tribunal found that the provision providing for the possibility of lodging an appeal against a resolution of the National Council for the Judiciary to the Supreme Administrative Court was unconstitutional. Keeping the possibility of the Supreme Administrative Court reviewing appeals would mean that this Court would be acting without a legal basis and thus would exceed the admissible scope of its own cognition.

Comment to Chapter 1.4 Role of the combined functions of Minister of Justice and Prosecutor-General

With regard to the part of the Report concerning the unification of the functions of the Minister of Justice and the Prosecutor General, it should be recalled that the solutions introduced by the 2009 amendment to the Law on the Public Prosecution Service (Journal of Laws of 2009, item 1375 as amended) aimed at making the prosecution service independent from the executive and the judiciary, as well as indicating that the prosecution service constitutes a legal protection authority.

However, these solutions were strongly criticised by some of the members of the legal doctrine. As early as in 2009, when the amendment was drafted, it was argued that the separation of the functions of the Minister of Justice and the Prosecutor General might violate Art. 146 (4) (9) of the Constitution of the Republic of Poland, which sets the competences of the Council of Ministers and its subordinate bodies. One of the fundamental functions of the state – which, at the same time, constitutes a duty of the government – is guaranteeing the internal security and the legal order. The 2009 amendment had considerably limited these constitution-based competences of the Council of Ministers in favour of a body that is not mentioned in the Constitution, but which gained independence from the Council of Ministers. This change was made through a legislative act, which seems unacceptable.

Also the functioning of the prosecution service under the new systemic framework adopted on 31 March 2010 (that is when the 2009 amendment entered into force), had met with widespread criticism from the mass media and numerous legal groups. One of the main reasons for such a reaction were the regulations that strongly limited the position of the Prosecutor General, both internally and externally. Even the Prosecutor General himself Andrzej Seremet publicly criticised the competences and the systemic position of that office.

It was argued that the lawmaker did not have the authority to make the Prosecutor General an individual and independent body within the state system of government. The partiality of the then-introduced solutions was also pointed out inter alia due to the continuing financial dependency of the prosecution service on the executive or by reason of the lack of precise provisions regarding the

Prosecutor General's reporting to the Prime Minister. During the functioning of the provisions of the 2009 amendment other negative consequences of limiting the power of the Prosecutor General emerged, such as too broad competences invested in the National Council of Public Prosecutors whose members included politicians. As a result, the functioning of the prosecution service under the 2009 amendment led to an insufficient realisation of the state's functions in fighting crime and guaranteeing internal security and legal order.

The prosecution service lost legal means enabling it to consistently implement its activities in the field of fighting crime. At times, the organizational units of the prosecution service have been reaching different conclusions or differed about the direction of investigations, or even about indicting. Oversight by superior organizational units over investigations was deprived of real possibilities of influencing the conduct of investigations by the lower organisational units, which led to pathologies, including the most prominent example of the widely mediatised Amber Gold case. In that case the district prosecution (the lowest in hierarchy) failed to conduct evidentiary activities and made several procedural errors, which led to a considerable financial loss on the part of many individuals and to impunity of the offenders.

Moreover, a total exclusion of the prosecution service from the executive power led to limiting its influence over the functioning of the institutions directly connected with the prosecution – mainly the Police, but also the Institute of Forensic Research in Cracow or the National School of Judiciary and Public Prosecution, which is responsible for training new prosecutors.

Return to a personal union between the Minister of Justice and the Prosecutor General led to the reinstatement of the effectiveness of the prosecution service and to the possibility of assigning the person holding that office political and legal responsibility for this institution's activity. What is more, the systemic model of oversight competences of the Minister of Justice, introduced by the Law on the Public Prosecution Service of 2016, does not differ from the solutions existing in some EU Member States and does not violate the Council of Europe's standards. The choice of an appropriate model of relations between the prosecution service and the executive is often linked to the systemic and legal tradition of a given state. In the case of Poland, the choice of its existing model is backed by the way in which the competences of the Council of Ministers are shaped in Art. 147 of the Constitution of the Republic of Poland, with simultaneous lack of mention of the prosecution service in the Constitution. Therefore, similarly to Belgium, France, Germany or Luxembourg, it is the minister who is responsible for the penal policy and guaranteeing internal security and legal order, whereas the prosecution serves as an important means in realisation of these tasks. Moreover, in the case of Poland, the unification of the function of the Minister of Justice and the Prosecutor General is based on a historical tradition, dating back to the interwar period, when on the basis of the President's order of 1928, the Minister of Justice exercised oversight over the prosecution service as the Chief Prosecutor.

Thus, given the way the competencies have been determined, applying the term Prosecutor General to the Minister of Justice is admissible and makes it possible to assign responsibility for actions by the prosecution service in a transparent way.

The new Law on the Public Prosecution Service was introduced to improve the efficiency of the prosecution service in fighting crime and the solutions provided therein serve this purpose. The prosecution service is by nature a hierarchical institution. The Prosecutor General as the superior and at the same time someone who takes full responsibility for the proper functioning of this institution

must have the power to implement his statutory duties. To this end, the Prosecutor General issues orders, guidelines and instructions, which does not infringe on the prosecutor's independence. This procedure is transparent and provides for appealing against a decision of the superior prosecutor.

Comment to Chapter 1.5 – Mass dismissals and disciplinary proceedings affecting judges and prosecutors

Before discussing in detail the current model of disciplinary proceedings, it needs to be emphasized that amendments introduced by the Act on the Supreme Court of 8 December 2017 (Journal of Laws 2018, item 5 as amended), the Act on the National Council for the Judiciary of 12 May 2011 (Journal of Laws 2018, item 389 as amended), the Act on Common Courts of 27 July 2001 (Journal of Laws 2018, item 23, as amended) did not limit or affect judicial independence provided for in Art. 173 and Art. 178 of the Polish Constitution according to which "courts and Tribunals are the authority separate and independent from other authorities" and "judges in the exercise of their office are independent and subject only to the Constitution and statutes".

As regards claims made in paragraph 41 of the Report, it should be pointed out that although the Minister of Justice (the Prosecutor General) appoints the Disciplinary Attorney of Judges of Common Courts and his/her deputies (Art. 112 (3) of the Act on Common Courts, hereafter the "CC Act") at no stage are the disciplinary proceedings referred to in the CC Act subject to politicians or their influence.

According to the legal provisions in force (as well as under the previous law), throughout the disciplinary proceedings, covering clarificatory proceedings, conducted by a disciplinary attorney (deputy disciplinary attorney), as well as during proceedings before a disciplinary court, all decisions on merits are taken by independent judges. Pursuant to Art. 110(1) of the CC Act, disciplinary cases involving judges are adjudicated in the first instance by disciplinary courts at appellate courts in a bench composed of three judges or the Supreme Court composed of two judges of the Disciplinary Chamber and one lay judge of the Supreme Court - in disciplinary offenses having the features of intentional offenses publicly prosecuted or intentional tax offences or in cases where the Supreme Court requested the recognition of a disciplinary case together with an indication of the failure and in the second instance - the Supreme Court composed of two judges of the Disciplinary Chamber and one lay judge of the Supreme Court.

Furthermore, prosecutors acting before disciplinary courts are the Disciplinary Attorney of Judges of Common Courts and Deputy Disciplinary Attorneys and deputy disciplinary attorneys before appellate courts and deputy disciplinary attorneys before regional courts (Art. 112(1) of the CC Act). The above functions may only be exercised by judges. The only exception from the above rule is Art. 112b (2) of the CC Act. According to those provisions, in cases of disciplinary offenses having the features of intentional crimes prosecuted by public indictment, the Disciplinary Attorney of the Minister of Justice may also be appointed from among prosecutors indicated by the National Prosecutor. Admittedly, the Disciplinary Attorney of Judges of Common Courts and two his/her Deputy Disciplinary Attorneys are appointed by the Minister of Justice, but after their appointment they are fully independent from the Minister of Justice. They do not report to the Minister of Justice, nor they are linked to the Minister by service or organisation relations. They are attached to the National Council for the Judiciary, not to the Minister of Justice (Art. 112 (4) of the CC Act). Deputy disciplinary attorneys at appellate courts and deputy disciplinary attorneys at regional courts are

appointed by the Disciplinary Attorney of Judges of Common Courts (Art. 112 (11) and Art. 112 (13) of the CC Act) from among candidates put forward pursuant to Art. 112 (6) and Art. 112 (10) of the CC Act, namely by the competent general assembly of judges.

Pursuant to Art. 114 (1) of the CC Act, the disciplinary attorney undertakes explanatory actions (thus not strictly disciplinary) at the request of the Minister of Justice, the president of a court of appeal or the president of a regional court, a board of a court of appeal or a regional court, the National Council for the Judiciary, and on his/her own initiative, after a preliminary establishment of the circumstances necessary to confirm the disciplinary offense. This legal provision was also known under the previous Act on the Common Courts and it was not previously questioned in any way.

Referring to the claims concerning the Disciplinary Attorney of the Minister of Justice, it must be noted that the CC Act clearly specifies the Attorney's powers that he/she can initiate proceedings at the request of the Minister of Justice or join ongoing proceedings. Thus, this institution deals only with this stage of clarificatory proceedings that does not end in a decision on the merits of the competent deputy disciplinary attorney, namely at its initial stage. Contrary to the opinion expressed in paragraph 41 of the Report, it does not serve to supervise any concrete disciplinary cases – and the proof of that is the fact that the Minister of Justice in only one case exercised his right arising from Art. 112 b (1) of the CC Act.

As concerns the claims regarding presidents and vice presidents of courts of the first instance, and the appointment by the Minister of Justice of judges to disciplinary courts in the first instance, it should be noted that pursuant to Art. 110a (1) of the CC Act, the Minister of Justice entrusts the duties of a disciplinary court judge at the court of appeal to a judge of the common court who has served as a judge for at least 10 years, after consulting with the National Council for the Judiciary. This concerns not only experienced judges, but according to this provision, also judges who were appointed to the office under the previously applicable laws. Moreover, these are judges who benefit from all constitutional guarantees of independence, that is also ensured by the fact that they are elected for a 6-year term of office, and the presidents of disciplinary courts – for a 3-year term of office (Article 110a (3) and Art. 110b (1) of the CC Act). The term of office of the disciplinary court judge at the appellate court expires before its term only in the case of termination or expiry of the service, retirement of a judge or his/her punishment with a disciplinary penalty specified in Art. 109 (1)(2-4) of the CC Act. Contrary to the claims made in the Report, the president of the disciplinary court at the appellate court is appointed by the President of the Supreme Court who manages the Disciplinary Chamber from among judges of the disciplinary court.

Claims to the effect that the Minister of Justice appoints judges to benches of disciplinary courts are also incorrect. Pursuant to Art. 111 of the CC Act, the composition of the disciplinary court (that consists of independent judges with at least 10-year professional experience as a judge) is determined by drawing a list of all judges of that court. The court is however composed of at least one judge adjudicating in criminal matters. The bench of the disciplinary court is chaired by a judge constantly adjudicating in criminal matters, the oldest one in the service. Furthermore, according to Art. 114 (7) of the CC Act, simultaneously as the charges are served, the disciplinary attorney requests the President of the Supreme Court managing the Disciplinary Chamber to designate a disciplinary court to hear the case in the first instance. These are the guarantees that prevent any influence on judges adjudicating in disciplinary courts - whether political or coming from judges.

As concerns the claim made in paragraph 42 of the Report, it should be noted that a condition for the exercise by the Minister of Justice of his right under Art. 114 (1) of the CC Act is a justified suspicion of a judge (judges) committing a disciplinary offence. The features of such a disciplinary offence are indicated in Art. 107 (1) of the CC Act: obvious and blatant offense of the law or impairment of the dignity of the office. In order to make a fact of committing a disciplinary offence probable, it is necessary to demonstrate that the judge has individually insulated a specific legislative provision by a clearly identified action (act or omission) in an obvious and blatant manner. Moreover, in accordance with the position consistently presented in the Supreme Court – Disciplinary Court’s case-law, which is worthy of approval, the sphere of adjudication, as covered by the independence of judges, is excluded – as a rule – from disciplinary responsibility. The legitimacy of a judgment cannot be assessed in disciplinary proceedings (see the Supreme Court judgment of 29 June 2007, case no. SNO 39/07 and judgment of 13 September 2011, case no. 34/11). Disciplinary offence concerning procedural actions of the court made in the course of the proceedings can only consist of a violation of provisions that do not involve the adjudication itself, but are aimed at ensuring the correct and efficient course of the proceedings (see the Supreme Court’s judgment of 29 June 2015, case no. 39/15). Judicial activity consisting of conducting evidence proceedings and assessing evidence, making factual findings, interpreting the law and its final application – due to the constitutional rule of judicial independence in adjudicating, is not assessed in the context of disciplinary responsibility.

Referring to other claims it needs to be clarified that in accordance with Art. 115a of the CC Act, the disciplinary court conducts proceedings despite a justified absence of the notified defendant or his defense attorney, unless it is contrary to the interest of the conducted disciplinary proceedings. Thus, each time this condition is examined by an independent court composed of independent judges.

The statement that “in specific cases, defendants convicted in the first instance of the disciplinary proceedings may not be entitled to an appeal” is also incorrect. It needs to be clearly emphasized that, in accordance with the applicable Act on the Common Courts, such specific cases do not occur. Pursuant to Art. 121 (1) of the CC Law, a disciplinary court judgment and decisions or orders closing the way for delivering a judgment that were issued in the first instance may be appealed against by the defendant. The second instance judgment of the disciplinary court may be appealed to another bench of that court, if with that judgement a disciplinary penalty was imposed on the defendant, despite the previous judgment of acquittal or discontinuation of the proceedings delivered in the first instance (Art. 122 (2) of the CC Act).

Referring to the observations made in paragraphs 42 and 43 of the Report stating that the new model of disciplinary proceedings has to serve (serves) as the weapon for use against those judges who are critical of the government’s reform of the judiciary it needs to be clearly stated that the disciplinary responsibility serves primarily and only to protect the image of the judicial service in the sense that it indicates the functioning of increased standards for judges and their reliable enforcement in the event of they are violated.

When analysing the rulings handed down so far by the Disciplinary Courts and the Disciplinary Chamber of the Supreme Court, it can be unequivocally stated that the contents of these judgments indicate that the Disciplinary Courts as well as the Disciplinary Chamber of the Supreme Court guard the image of the judicial service and the high standards of its performance, counteracting and stigmatizing unworthy behaviour of judges and they have never been used against judges exercising

their right to express their views on issues of public interest, including on issues related to the justice system and the courts.

Comments to Chapter 1.6 - Effects of the reform of the judiciary on judicial independence and efficiency in general

Referring to the merits, it needs to be pointed out that paragraph 57 of the Report is mainly based on press reports and general information that is largely outdated. There is no information on a valid blocking of the extradition to Poland of those arrested under the European procedure of the European Arrest Warrant. As concerns information presented in the Report, it is publicly known that the Irish court made a reference for a preliminary ruling in proceedings relating to the execution of three European Arrest Warrants issued by the Polish courts in order to prosecute a Polish citizen residing in Ireland. In the course of proceedings, the defendant and his defence attorney alleged an infringement of right to a fair trial. They indicated that the changes in the judiciary and the public prosecution system in Poland cause a risk of the denial of legal protection if the wanted person is transferred to Poland for the purpose of conducting criminal proceedings. According to them, the legislative changes in the Polish judiciary system undermine the basis of mutual trust between courts issuing and executing European Arrest Warrants. The main evidence in support of this allegation was the European Commission reference of 20 December 2017 concerning the alleged violation of the rule of law in Poland. In the judgment of 25 July 2018 (case no. C-216/18), the Court of Justice of the European Union (the Court of Justice of EU) did not share the Irish court's position that the sole fact of initiation of proceedings concerning Article 7 of TEU against Poland can be a basis for denial of the execution of the European Arrest Warrant. The Court of Justice of the European Union, admitting that the initiation of such a procedure may raise doubts regarding the state of the rule of law in Poland, clearly stated that it is an insufficient circumstance for taking such a decision. The Court of Justice of EU found that the domestic court that is facing allegations regarding deficiencies in the judicial system of another EU Member State, must primarily carry out an assessment of the real risk of breach of such person's right to a fair trial. Simultaneously, the Court of Justice of EU stated that the executing judicial authority must assess whether the alleged violations of the rule of law in a Member State issuing European Arrest Warrant may have a negative impact on the person's situation, if he/she is transferred to that Member State. Those assessments cannot be of a general character, they must be specific and precise. The Court of Justice of EU found that the realities of a particular case as well as the nature of the offence for which the person is being prosecuted and the factual context that form the basis of the European Arrest Warrant must be taken into account. The court executing the European Arrest Warrant must contact the court issuing the warrant in order to assess whether the threat to the rights of the accused is real or only theoretical. As a consequence, the court in Ireland, having examined the case in accordance with the Court of Justice of EU recommendation, decided to transfer the arrested person to Poland.

Other rulings: Dutch, Spanish or others undefined, most likely did not take on the validity of legitimacy. The Report refers to press articles, but it is difficult to address these issues on their merits as there are no confirmations of the validity of those judgments. It should be noted that the very laconic manner in which the above issues were treated makes it impossible to address them comprehensively on their merits.

2 WOMEN’S RIGHTS, GENDER EQUALITY AND DOMESTIC VIOLENCE

2.1 Women’s sexual and reproductive health and rights

Comment to Chapter 2.1.1 Access to safe and legal abortion care

It should be pointed out in the first place that it is not possible to correctly reconstruct a human rights norm from which to derive the right to abortion. This was the position taken by the Polish constitution maker, who in Art. 30 of the Constitution of the Republic of Poland declared that every human being enjoys inherent (that is naturally linked to every human being) and inalienable dignity. Also, Art. 38 of the Constitution of the Republic of Poland guarantees the legal protection of the life of every human being.

The Constitutional Tribunal handed down a ruling on 28 May 1997 which is of fundamental importance for the protection of life. The Tribunal noted then that: “The value of a constitutionally protected legal interest, including life developing in the prenatal stage, cannot be differentiated. There is a lack of sufficiently precise and warranted criteria that would allow for making such a distinction depending on the stage of development of human life. From the moment it is created, human life becomes a constitutionally protected value. This also applies to the prenatal stage.” Moreover, “Extending constitutional protection to cover this stage of human life is reaffirmed by the Convention on the Rights of the Child which the Republic of Poland ratified on 30 September 1991. Point ten of its preamble indicates, invoking the Declaration of the Rights of the Child, that “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth. The fact that this rule was made part of the Convention’s preamble has to lead to the conclusion that the guarantees provided for in the Convention also refer to the prenatal stage of human life.” It can then be assumed that the requirement of legal protection of the life of a human being who is in the prenatal stage of his/her life is also an international standard.

The Tribunal also found that: “The constitutional guarantees of protection of the health of a conceived child should be derived first and foremost from the constitutional value of human life, also in the prenatal stage. The protection of human life cannot be understood solely as protection of the minimum biological functions needed to exist, but as guarantees of proper development, as well as the attainment and preservation of a normal mental and physical condition, adequate for a given development age (stage of life). No matter how many factors are considered significant from the point of view of such condition, there is no doubt that it covers a certain optimal, from the point of view of life processes, condition of the organism of a human being, both in the aspect of physiological and mental functions. Such condition can be compared to the notion of mental and physical health. Thus, the constitutional guarantees of protection of human life must necessarily also cover the protection of health; regulations that form the basis of such guarantees also constitute the basis for concluding that there is a constitutional obligation to protect health, irrespective of the stage of physical, emotional, intellectual or social development. Because human life is a constitutional value also at the prenatal stage, any attempt to limit the subjects of the legal protection of health at this stage would have to demonstrate a non-arbitrary criterion to justify such differentiation. The existing state of empirical sciences does not provide a basis for introducing such criterion.”

As noted above, it is not possible to derive a human right to abortion. However, freedom of conscience is a human right and it includes the freedom to act based on one's conscience. This freedom is based not only on the Constitution of the Republic of Poland, but also on international law. The standard of freedom of conscience and the right to act in accordance with it is based on Art. 18 of the International Covenant on Civil and Political Rights whose par. 1 provides "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." There is an additional guarantee in par. 2: "No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice." The Constitutional Tribunal inferred the right to conscientious objection on the grounds of this act at a time when the current Constitution of the Republic of Poland had not yet been in force. The Tribunal concluded that "Freedom of conscience does not mean only the right to represent a specific worldview, but first and foremost the right to conduct oneself according to one's conscience. This understanding of the freedom of conscience is reaffirmed by the Covenant of Civic and Political Rights adopted by the UN General Assembly on 16 December 1966 and ratified by Poland on 3 March 1977 (Journal of Laws, items 167 and 168) (Ruling of the Constitutional Tribunal of 15 January 1991, case no. U 8/90).

Art. 10(2) of the Charter of Fundamental Rights is also important in the context of the conscience clause. It provides that: "The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right."

The doctrine of constitutional law shows that it is warranted to say that the principle of the freedom of conscience can be derived from the Constitution of the Republic of Poland and that this principle is linked to the right to make life choices and to take decisions about everyday life on the basis of a conscientious judgement. The right to act in accordance with one's conscience may be limited provided premises expressed in Art. 31(3) of the Constitution of the Republic of Poland are met that is the limitation was provided for in a law (formal premise) and is justified by public security, public order, public health as well as the freedoms and rights of other persons. However, the limitation may not infringe upon the nature of the freedom of rights, which means that the lawmaker may not completely exclude the right to act in accordance with one's conscience. The lawmaker's decision to limit a right or freedom needs to be argued by showing how the test of proportionality was performed. However, it is not an easy task to identify – except for two other interests that are fundamental for human beings – interests that conflict with the freedom of conscience, which collide with it and, first and foremost, those that would justify its limitation. The life and health of a human being can have such nature. This argument can be justified by referring in Art. 31(3) of the Constitution of the Republic of Poland to public health as one of the criteria that allows to limit a right or freedom. Yet, it should be borne in mind, as indicated above, that giving preference to one interest as an outcome of resolving a conflict cannot signify that the second interest is deprived of any protection.

The above was reaffirmed by a judgement of the Constitutional Tribunal of 7 October 2015 (case no. K 12/14). What is especially important is that in this ruling, the Tribunal found that the right of a physician to invoke the conscience clause in medical law relations is derived not from a law, but directly from the Constitution and acts of international law.

Comment to paragraph 67 of the Report

The estimated data in the said paragraph, provided by NGOs, claims that between 80,000 and 150,000 pregnancy terminations are performed in Poland annually. It should be noted, however, that the data on the number of pregnancy terminations is collected through annual reports prepared within the *Program of Public Statistics*. The respective numbers were referred to in Paragraph 66 of the report. For objective reasons such as the non-legal character of the phenomenon, the data does not cover the number of clandestine pregnancy terminations. The phenomenon is therefore difficult to survey. It can be only partially reflected by the activities of the law enforcement and the judiciary, as it only covers cases that had already been initiated by the prosecutor's offices. Nonetheless, this is the only official set of data.

The data on the number of pregnancy terminations in Poland presented by NGOs is only estimated and can hardly be considered a reliable reflection of the reality, because of the non-legal nature of the phenomenon and unspecified methodology of data collection.

In the said paragraph, it has been pointed that, according to the data presented by NGOs, the number of doctors available to carry out a pregnancy termination or prenatal testing is limited in Poland due to invocation of the conscience clause. This claim is unfounded, particularly in the context of prenatal testing. It should be noted that under Article 2 (2) (a) of the Act of 7 January 1993 on Family Planning, Human Foetus Protection, and Acceptable Conditions of Pregnancy Termination, public administration and local self-government bodies, within the limits of their respective competences, as specified in detailed regulations, shall provide unlimited access to information and prenatal testing, particularly on the ground of increased risk or suspicion of a genetic or developmental fetal defect, or an incurable life-threatening ailment.

The access to prenatal testing is governed by, among others, a regulation of the Minister of Health of 6 November 2013 concerning the guaranteed medical services in the field of health programs. The annex thereto contains a prenatal testing programme as part of guaranteed medical services list of prophylactic health programmes. The programme contains a precise scope of procedures included in the guaranteed services, criteria of programme eligibility for the patient and eligibility criteria for the service provider. As far as the eligibility criteria for patients are concerned, a pregnant woman must meet at least one of the following criteria:

- 1) age of 35 or more (a woman is eligible for the test from the beginning of the calendar year in which she turns 35);
- 2) chromosomal aberration in the foetus or the child during last pregnancy;
- 3) structural chromosomal aberrations confirmed with the pregnant woman or the child's father;
- 4) confirmation of significantly increased risk of delivering a baby with a monogenetically determined or multifactorial disease;
- 5) confirmation of abnormal ultrasound or biochemical tests results in pregnancy, indicative of increased risk of chromosomal aberration or foetal defect.

To be covered by the program, a patient must present a referral from the attending physician stating indications for the programme, description of abnormalities and attach tests results to prove eligibility.

The following procedures are carried out within the programme:

- 1) Biochemical testing and counselling:
 - estriol,
 - alpha-fetoprotein (AFP),
 - beta human chorionic gonadotropin (β -HCG),
 - PAPP-A protein - pregnancy-associated plasma protein A with computer assisted foetal disease risk assessment;
- 2) Counselling and foetal ultrasound for congenital defects;
- 3) Counselling and genetic testing:
 - conventional cytogenetic testing (banding techniques - GTG, CBG, Ag-NOR),
 - QFQ, RBG and higher resolution banding techniques (HRBT) with microscopic chromosome analysis,
 - cytogenetic molecular testing (including FISH analysis – fluorescent in situ hybridisation – for metaphase and prometaphase chromosomes and for interphase nuclei with molecular centromere probes, painting, specific, telomere, Multicolour-FISH),
 - molecular biology testing (PCR and its variants RFLP, SSCP, HD, sequencing and others) matching the size and type of mutation;
- 4) Collecting foetal material for genetic testing (amniocentesis, trophoblast biopsy or cordocentesis).

The following table shows the performance of the prenatal testing in 2018 (divided into provinces, the number and value of the services provided, and the number of patients covered by the programme).

Name of National Health Fund provincial branch	Number of patients			Value of services settled (in PLN)			Number of service providers
	Younger than 35	35 or older	Total	Younger than 35	35 or older	Total	
DOLNOŚLĄSKI	2 688	4 392	7 080	1 735 693	2 857 833	4 593 526	9
KUJAWSKO-POMORSKI	4 352	2 543	6 895	3 618 782	2 160 664	5 779 446	6
LUBELSKI	724	2 195	2 919	442 989	1 361 541	1 804 530	4
LUBUSKI	2 824	1 174	3 998	1 673 449	795 604	2 469 053	5
ŁÓDZKI	1 876	3 491	5 367	1 387 289	2 519 440	3 906 729	7

MAŁOPOLSKI	3 551	4 627	8 178	2 443 864	3 331 068	5 774 932	5
MAZOWIECKI	3 411	6 324	9 735	2 942 511	5 228 453	8 170 964	19
OPOLSKI	1 313	1 089	2 402	771 252	811 782	1 583 034	2
PODKARPACKI	1 832	2 592	4 424	1 041 730	1 558 890	2 600 620	3
PODLASKI	731	1 813	2 544	596 286	1 357 897	1 954 183	1
POMORSKI	1 696	2 805	4 501	1 137 655	2 015 677	3 153 332	5
ŚLĄSKI	20 494	8 153	28 647	11 509 587	5 168 420	16 678 007	37
ŚWIĘTOKRZYSKI	1 501	1 518	3 019	813 341	940 989	1 754 330	3
WARMIŃSKO- MAZURSKI	1 066	1 486	2 552	524 736	910 854	1 435 590	2
WIELKOPOLSKI	6 577	3 979	10 556	3 442 018	2 411 103	5 853 121	11
ZACHODNIOPOLSKI	974	2 569	3 543	723 971	1 786 812	2 510 784	2
TOTAL:	55 610	50 750	106 360	34 805 154	35 217 026	70 022 180	121

Source: National Health Fund

Also of note is that prenatal tests serve primarily the purposes of prophylaxis and diagnosis, hence they should not be considered and are not considered as aimed at finding the circumstances for pregnancy termination. It is erroneous to assume that each time the only intention of the tests is to perform pregnancy termination, based on the tests' results. The purpose of prenatal testing is to confirm or exclude a foetal defect or disease. With modern medicine it is possible to cure certain developmental defects *in utero*, while others can be treated immediately after birth. Early detection of developmental anomalies helps to prepare better for the arrival of a child which will require special care due to its condition. It is vital both for the doctor who can plan effective forms of therapy and for the new-born's parents.

Therefore, a doctor shall not refuse a pregnant woman a referral for prenatal or specialist testing, even if he knows or presumes that if the suspicion under which the woman asks for prenatal testing is confirmed, the patient will claim her right for pregnancy termination under the Act of 7 January 1993 on Family Planning, Human Foetus Protection, and Acceptable Conditions of Pregnancy Termination.

Comment to paragraph 68 of the Report

As for the execution of the judgements by the European Court of Human Rights in *Tysic v. Poland*, *R.R. v. Poland* and *P. and S. v. Poland*, it must be noted that Poland reports on the subject to the Committee of Ministers of the Council of Europe on a regular basis.

The reports many times mentioned a patient's right to object against the doctor's opinion or ruling, which was introduced into Polish legislation under the Act of 6 November 2008 on Patients' Rights and Patients' Rights Ombudsman. The primary purpose of the act was to execute the judgment of the European Court of Human Rights in *Tysic v. Poland* case. However, since both *R.R. v. Poland* and *P. and S. v. Poland* refer to situations that occurred before the act of 6 November 2008 on Patients' Rights and Patients' Rights Ombudsman entered into force, and the applicants were unable to defend their rights under the provisions and mechanisms of this act, the right to object shall also be understood as a means of execution of the said judgments.

This right constitutes a legal remedy for women who were refused a pregnancy termination (in all circumstances provided for by the act), prenatal test referral, or if they were refused the prenatal tests despite a referral. Under the aforementioned act, a patient may file an objection about a doctor's or a dentist's opinion or ruling with the Medical Commission at the Patient's Rights Ombudsman, if the opinion or ruling affects a patient's legal rights or obligations. The activities of the Medical Commission at the Patient's Rights Ombudsman are governed by a Regulation of the Minister of Health of 10 March 2010 on the Medical Committee at the Patient's Rights Ombudsman (Journal of Laws item 244). National consultants, in agreement with the relevant provincial consultants, prepare a list of doctors eligible for a seat in the Medical Commission by 30 March each year.

Patient's right to object is of a general nature, that is, it has not been limited to the cases of pregnancy termination on grounds provided for by the Act. Rendering the right general in nature was a purposeful action with the intention of providing protection for all patients when a doctor's opinion or ruling affects their right or obligations under the law (and when no other legal remedies are to pursue these rights has not been provided). A doctor's refusal to perform pregnancy termination affects the patient's rights, whatever the indications for the procedure in that specific case and whatever the reason of the refusal. It should be pointed out, however, that to realise his constitutional freedom of conscience and religion, a doctor may refrain from performing medical services against his conscience (except when a delayed medical service would expose a patient to an immediate danger of loss of life, a severe bodily injury, or a serious impairment of health). Nonetheless, he or she must give reasons for the decision and register the fact in the medical records. The obligation applies in any case of conscience-based refusal of medical service, including all cases when pregnancy termination is legally permissible. Since any such denial must be justified and recorded in medical documentation, and since it affects a patient's right to medical service, any such refusal shall be treated as a doctor's opinion and may be subject to an objection. In any such case, the objection is a means of recourse aimed at the execution of a patient's right to a medical service.

According to the annual information provided by the Patient's Rights Ombudsman, the number of appeals examined in 2013-2017 amounted to:

- 2013 – Medical Commission at the Patient's Rights Ombudsman examined 2 objections, one of which included indications for pregnancy termination (and was deemed unfounded by the Medical Commission);
- 2014 – Medical Commission at the Patient's Rights Ombudsman examined 5 objections 2 of which included lack of indications for pregnancy termination (and both were deemed unfounded by the Medical Commission);

- 2015 – Medical Commission at the Patient’s Rights Ombudsman examined 1 objection on lack of indications for pregnancy termination and it was deemed unfounded by the Medical Commission;
- 2016 – Medical Commission at the Patient’s Rights Ombudsman examined 2 objections. One of them was filed at the end of 2015 and regarded a doctor’s opinion on lack of indications for pregnancy termination, and was unanimously deemed unfounded by the Medical Commission;
- 2017 – Medical Commission at the Patient’s Rights Ombudsman examined 1 objection and it was not related to a pregnancy termination refusal.

It should also be noted that since 2011 the information on patient’s right to object against a doctor’s opinion or ruling, particularly the formal legal requirements of filing an appeal, are available from the Patient’s Rights Ombudsman website www.bpp.gov.pl on the “You have a right to...” tab. At the beginning of 2015, the section was expanded to provide patients with more comprehensive information on the requirements and conditions of filing an appeal with the Medical Commission.

Comment to paragraph 69 of the Report

As regards the regulations currently in force in Poland governing the use of the conscience clause and with reference to the implications of the judgement of the Constitutional Tribunal of 7 October 2015, case no. K 12/14, it should be underscored that the use of the so called conscience clause by the doctors in Poland has been regulated in such a way as to safeguard both the doctor’s right to refrain from a service contrary to his/her conscience and the patient’s due right to receive a medical service (as well as the performance of the patient’s right to information). Patients’ rights in this field have not been diminished as the result of the judgment of the Constitutional Tribunal of 7 October 2015, case no. K 12/14.

Currently, under Art. 39 of the Act of 5 December 1996 on Doctors and Dentists (Journal of Laws of 2018, item 617, as amended), a doctor may refrain from providing a medical service which is against his/her conscience, save Art. 30 of the Act (to the extent that it provides for the doctor’s obligation to provide medical assistance in each case when a delayed medical service would expose a patient to an immediate danger of loss of life, a severe bodily injury, or a serious impairment of health). Such refusal must be justified and recorded in the medical documentation. An employed doctor or a doctor on duty service must also inform his/her superior in writing in advance. With regards to the aforementioned judgement by the Constitutional Tribunal, the following articles were repealed:

1) Art. 39, first sentence in conjunction with Art. 30 of the Act of 5 December 1996 on Doctors and Dentists (Journal of Laws of 2015, item 464) insofar as it obliged a doctor in “other urgent cases” to perform a medical service contrary to his conscience;

2) Art. 39, first sentence of the Act of 5 December 1996 on Doctors and Dentists (Journal of Laws of 2015, item 464) insofar as it obliged a doctor who refrained from performing a medical service contrary to his/her conscience to redirect the patient to another available doctor or medical entity.

Therefore, the wording changed by the judgment of the Constitutional Tribunal was analysed to see if it safeguards both the doctor’s right to refrain from a service contrary to his/her conscience

and the patient's due right to receive a medical service (as well as the performance of the patient's right to information in this case).

Related to the above are the current provisions of the Act of 15 April 2011 on Medical Activity (Journal of Laws of 2019, item 2190). Under Art. 14 of the Act, a medical entity shall provide public information on the scope and type of medical services provided. Upon patient's request, the medical entity shall provide detailed information on the medical services provided, in particular on the diagnostic or therapeutic methods in use and the quality and safety of these methods.

At the same time it should be noted that by providing guaranteed medical services, the service providers perform their contractual obligations under relevant contracts with the National Health Fund (hereinafter referred to as "NHF"). Obligatory provisions of contracts executed by service providers were stated in the general terms and conditions of providing medical services (hereinafter: "GT") which are annexed to the Regulation of the Minister of Health of 8 September 2015 on the general terms and conditions of providing medical services (Journal of Laws of 2016, item 1146, as amended).

Under Paragraph 3 GT, the service provider shall execute the contract in accordance with the terms and conditions of services stipulated in the act and the regulations based thereon (particularly the regulations on guaranteed services), general terms and conditions and under specific contractual terms provided by the President of the NHF. The service provider is also obliged thereunder to provide services with due diligence and to respect patients' rights. Moreover, it should be noted that under Paragraph 9 (1) GT, the service provider shall deliver services throughout the term of the contract according to the working schedule contained therein and material and financial plan.

By signing a contract to deliver medical care services, the service provider undertakes to deliver all services listed as guaranteed in the relevant secondary legislation to the Act, in the scope and type covered by the contract.

It should also be noted that in case of an unforeseeable inability to deliver services, the service provider is obliged to take immediate actions to ensure the continuity of services (transfer of patients to another service provider who may deliver the necessary services), and to inform a provincial NHF branch about the incident and about the actions taken.

Moreover, it should be stressed that under Paragraph 8 GT, the service provider shall deliver comprehensive services covering necessary tests, including laboratory tests and diagnostic imaging, and the medical procedures related to the delivery thereof. Therefore, if an employed doctor or a doctor on duty service informs the service provider about the refusal of delivery of medical service under Art. 39 of the Act of 5 December 1996 on Doctors and Dentists, that is upon invoking the conscience clause, the service provider is obliged to ensure the delivery of the service in another way. The delivery of medical services at a given medical establishment shall be organized in such a way as to ensure the doctors the right to perform their professions according to their conscience and to ensure the patients an uninterrupted access to their due healthcare services.

Inability to deliver services constitutes an improper performance of contract, which may be sanctioned with a contractual penalty under Paragraph 29 et seq. GT or even termination of the contract under Paragraph 36 GT.

As a rule, therefore, all medical entities (hospitals) which signed contracts with NHF are obliged to deliver medical services included therein – in the full scope and in compliance with the current laws. The use of the conscience clause shall not violate this obligation.

Moreover, it is also noteworthy that conscience is an individual category and a collective refusal does not meet the criterion of free (that is free from external pressure) decision-making of an individual on world view issues.

To conclude, should a doctor refrain from performing a medical service contrary to his/her conscience, it is the duty of the service provider, that is, the medical establishment where the doctor refused to perform the service, to inform the patient on how the contract with NHF may be performed.

Comment to paragraph 70 of the Report

With reference to the „declaration of faith”, it should be explained again that the conscience clause is the right of a doctor and it applies *a casu ad casum*. A doctor may invoke the conscience clause except when a delayed medical service would expose a patient to an immediate danger of loss of life, a severe bodily injury, or a serious impairment of health. Therefore the conscience clause is directly applicable in the doctor-patient relation; a doctor cannot say in advance if such situation could occur.

Comment to paragraph 71 of the Report

In the said paragraph it had been stated that several initiatives were launched over the past decade to restrict the existing legislation on the permissibility of pregnancy termination.

Indeed, both in 2016 and 2018 (as well as previous years) the Polish Sejm proceeded on bills amending the Act of 7 January 1993 on Family Planning, Human Foetus Protection, and Acceptable Conditions of Pregnancy Termination.

It should be noted, however, that both bills (of 2016 and 2018) were civil initiative, that is, were supported by a group of at least 100 000 authorised citizens (the legislative initiative was not undertaken by the Council of Ministers or other authorized bodies of government, that is the Members of Parliament, the Senate or the President of Poland). The initiative was an embodiment of the citizens’ right to participate in the law-making, based on the Polish Constitution and current legislation, and applicable to any subject matter.

Under the relevant regulations in force, the aforementioned initiatives were proceeded in the Parliament.

The Civil Bill to Amend the Act of 7 January 1993 on Family Planning, Human Foetus Protection, and Acceptable Conditions of Pregnancy Termination and the Act of 6 June 1997 – Criminal Code (parliamentary issue 784), lodged with the Sejm in 2016, was rejected at the second reading and the Civil Bill to Amend the Act of 7 January 1993 on Family Planning, Human Embryo Protection and Conditions of Legal Pregnancy Termination (lodged with the Sejm in 2018) is still being processed by the Sejm.

It should be explained that according to the provisions of the Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws item 483, as amended) the Sejm proceeds with a bill in three readings. Bills are passed by simple majority with at least half of MPs present, unless the Constitution provides otherwise. Resolutions are passed in the same manner, unless the Sejm's act or resolution provides otherwise. Once the bill is passed by the Sejm, the Speaker refers it to the Senate, which adopts the act unamended, introduces amendments or votes to reject the act as a whole. The Senate's resolution to reject an act or amend it is considered adopted unless the Sejm rejects it by absolute majority with at least half of the MPs present. Upon completion of this procedure, the Speaker of the Sejm submits the act to be signed by the President. The President of the Republic of Poland shall sign the act within 21 days and orders its promulgation of the act in the Journal of Laws of the Republic of Poland. Prior to his signature, the President may ask the Constitutional Tribunal to rule on its constitutionality. The President refuses to sign an act which is deemed unconstitutional by the Tribunal. If the President did not apply to the Tribunal, he may file a reasoned request with the Sejm to re-examine the act. After the act is passed again by a 3/5 majority with at least half of the MPs present, the President shall sign the act within 7 days and order its promulgation in the Journal of Laws of the Republic of Poland. Should an act be passed by the Sejm for the second time, the right to apply to the Constitutional Tribunal for a ruling does not apply.

At the same time it should be clearly emphasized that in the period under discussion, the Polish Sejm also received bills liberalizing the applicable provisions regarding the admissibility of pregnancy termination, such as the citizens' bill on women's rights and conscious maternity (parliamentary issue 830) which was lodged with the Sejm in 2016, and the citizens' bill on women's rights and conscious maternity parenthood (parliamentary issue 2060), which was filed with the Sejm in 2017.

What is more, initiatives to amend regulations regarding the admissibility of pregnancy termination aimed both at making them more severe and more lenient were also filed during the previous terms of the Polish Sejm.

So far, the Ministry of Health has not worked and is not working on any amendment to the applicable Act of 7 January 1993 on Family Planning, Human Foetus Protection, and Acceptable Conditions of Pregnancy Termination.

In light of the above, a conclusion might be drawn that there is an ongoing public debate on the matter at hand, reflected by citizens' bills lodged with the Sejm. However, it would be hard to agree with suggestions about any legislative initiative being taken on this subject other than citizens' initiative. In turn, citizens' initiative is taken according to the constitutional right of citizens to take part in the law-making process and as such should not be criticized.

Comment to paragraph 73 of the Report

It was pointed out in Paragraph 73 that the conscience clause cannot be invoked by professionals (e.g. pharmacists) other than those performing the actual pregnancy termination service. Even though it is true that the applicable provisions of the Polish Act of 6 September 2001 Pharmaceutical Law do not provide for the possibility to restrict the range of medical products available in pharmacies due to the so-called conscience clause, the information concerning the

application of the “conscience clause” only by doctors performing the pregnancy termination procedures is not accurate.

As it was explained in the response to Paragraph 69 of the report, the “conscience clause” is the right of doctor, allowing him/her to refrain from providing medical services which are contrary to his/her conscience, save Art. 30 of the said Act (to the extent that it provides for the doctor’s obligation to provide medical aid in each case if the delay in providing it could carry the risk of loss of life, severe bodily injury or serious impairment of health). The doctor is obliged to justify this decision and to make a relevant record in medical documentation. An employed doctor or a doctor on duty service must also first inform their superior in writing about their decision.

It is worth noting however, that the doctors’ right to refrain from providing medical services which are contrary to their conscience is of a general nature. It does not apply only to pregnancy termination procedures, and it is not determined by a specific worldview. Neither the Polish Constitution, nor the Act of 5 December 1996 on Doctor and Dentist Professions define the notion of conscience. By providing for the freedom of conscience and the ensuing possibility to refrain from carrying out services that are contrary to the conscience, these two legal acts provide for the right to a free (that is free from any pressure) self-determination in matters regarding worldview, without specifying the basis of the said worldview. Therefore, from the point of view of the Constitution and legal acts of a lower rank, including the above-mentioned Act of 5 December 1996 on Doctor and Dentist Professions, it does not matter whether the worldview was shaped based on religion, faith, beliefs and philosophy.

Therefore, doctors’ right to invoke the “conscience clause” cannot be limited only to pregnancy termination procedures.

Moreover, it needs to be noted that according to the provisions of the Act of 15 July 2011 on Nurse and Midwife Professions (Journal of Laws of 2019, item 576, as amended), nurses and midwives can refuse to carry out a doctor’s referral and other medical services which are contrary to their conscience or which go beyond the scope of their qualifications, by immediately giving the cause of the refusal in writing to their superior or to the referring person, unless the delay in providing aid could cause a state of a sudden health risk. Nurses and midwives are also obliged to immediately inform the patient, his/her legal representative or his/her real guardian about such refusal and about real possibilities to receive such service from another nurse, midwife or medical facility. If a nurse and midwife refrains from providing health services, they are obliged to justify this decision and make a relevant record in medical documentation.

Comment to paragraph 74 of the Report

As regards the information contained in this paragraph on the representatives for patients’ rights and the Patients’ Rights Ombudsman, it needs to be explained that the Act on 6 November 2008 on Patients’ Rights and Patients’ Rights Ombudsman introduced the right to refusal and established a central body of government administration - Patients’ Rights Ombudsman. This authority is of crucial importance for all patients, including pregnant women who have difficulties in acceding pregnancy termination procedures.

The Patients’ Rights Ombudsman is tasked with the protection of patients’ rights which are specified in the above-mentioned act and in other regulations.

The tasks of the Patients' Rights Ombudsman include:

- 1) conducting proceedings in cases of practices infringing collective rights of patients;
- 2) conducting proceedings under Art. 50-53 of the Act (these provisions provide for the possibility of the Ombudsman to commence an investigation if he/she becomes aware of information at least making a violation of patients' rights probable);
- 3) performing activities in the civil cases referred to in Art. 55 of the Act;
- 4) cooperation with public authorities, specifically with the minister competent for health, in order to ensure that patients' rights are respected;
- 5) providing the competent public authorities, organizations and institutions, and self-governments of medical professions with assessments and proposals to ensure effective protection of patients' rights;
- 6) cooperation with non-governmental organizations, social and professional organizations whose statutory objectives include the protection of patients' rights;
- 7) analysis of patients' complains in order to identify the risks and areas of the health care system in need of repair.

Moreover, in response to written applications, e-mails and phone calls which the Patients' Rights Ombudsman receives and following his/her personal meetings with patients who come to his/her Bureau, the Ombudsman informs patients about the broadly defined issues regarding pregnant women.

Therefore it needs to be noted that a pregnant woman who was refused access to a service that she was entitled to, can request the help of the Patients' Rights Ombudsman, who can institute an investigation into the matter. Consequently, a patient who was refused to have her pregnancy terminated, can assert her right also with the help of the Ombudsman, along with objecting to the opinion or the ruling of a physician.

In order to facilitate contact with the Bureau of the Patients' Rights Ombudsman, the nationwide free phone helpline 800-190-590 operated for ten years. Its staff informed people calling the Ombudsman about their rights, about what should be done in a specific situation, and advised them on the legal measures available to the patients. In November 2018, the number 800-190-590 was transformed into a common phone number for NHF and the Bureau of the Patients' Rights Ombudsman as part of a Patients' Call Center operating all across Poland, in all NHF provincial units. The helpline's staff are composed of several dozen employees of the NHF provincial units and of the Bureau of the Patients' Rights Ombudsman. The new uniform all-Poland number replaced a dozen or so earlier numbers operating in NHF provincial units. It provides quick, comprehensive and clear information on the functioning of the Polish health care system.

Staff operating the 800 190 590 number inform callers on the rights of insured persons, guide them on how to report a violation of patients' rights, provide contact details to medical facilities and offices that cooperate with the NHF, inform about the rules of medical services and universal health insurance.

At the same time, in order to ensure proper respect of patient's rights in a medical facility, the heads of many medical facilities decide to establish representatives for patients' rights. The major

task of the people who hold this post is to counsel on issues concerning patients' rights and support in solving problems that are reported by patients or their families.

Comment to paragraph 77 of the Report

As a supplement to the data indicated in the Report the results of surveys conducted by the Centre for Public Opinion Research (Centrum Badań Opinii Społecznej - CBOS), which is not a stakeholder in the case at hand (unlike the centres referred to in the Report) should be presented. In its communication from surveys no. 165/2016, the CBOS points out that over one half of the respondents are against changing the Polish abortion law. In another communication (communication no. 144/2016), the CBOS showed that 62% of Poles accept the so-called abortion compromise of 1993.

Comment to paragraph 78 of the Report

As referred to in our response to Paragraph 73, the provisions of the Act on Pharmaceutical Law do not provide for the possibility to restrict the range of medical products available in pharmacies due to the so-called conscience clause.

The above-cited paragraph also notes that "most modern contraceptives are not covered by public healthcare reimbursement."

In this respect it needs to be explained that in light of the Act of 12 May 2011 on the Reimbursement of Medicines, Foodstuffs Intended for Particular Nutritional Uses and Medical Devices (Journal of Laws of 2017, item 1844, as amended), a medical product is covered by reimbursement at a request. If the Minister of Health receives such a request, he/she issues an administrative decision on reimbursement and on determining official trading price, having in mind the goal of achieving the optimal health effects in the framework of available public funds. When doing so, he/she takes into consideration the criteria specified by law and other medical procedures applicable under the specific clinical state that can be replaced by the requested medicine, foodstuff intended for particular use or medical device.

Pursuant to Art. 37(1) of the Act of 12 May 2011 on the Reimbursement of Medicines, Foodstuffs Intended for Particular Nutritional Uses and Medical Devices, the Minister of Health announces lists of reimbursed medicines which were included in the final administrative reimbursement decisions. The announcements are made every two months.

On the basis of announcements issued in 2018, in the reporting period, reimbursement covered and still covers medical products containing active substances Cyproteronum+Ethinylestradiolum and Ethinylestradiolum+Levonorgestrelum.

The table below provides a list of these medicines, their retail prices and patients' charges in 2018, as well as information on the amount of reimbursement in 2018.

Active substance	Name, form and dose	Pack content	Number of packs	Patient's charge (PLN)	Amount of reimbursement
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					(refund)
Cyproteronum + Ethinylestradiolum	Cyprodiol, coated tablets., 2+0,035 mg	21 pcs	2 499	5,72	10 918,08
Cyproteronum + Ethinylestradiolum	Cyprodiol, coated tablets, 2+0,035 mg	63 pcs	590	15,98	7 699,50
Cyproteronum + Ethinylestradiolum	Diane-35, coated tablets, 2+0,035 mg	21 pcs (1 blister à 21 pcs)	20 165	9,77	87 977,37
Cyproteronum + Ethinylestradiolum	Diane-35, coated tablets, 2+0,035 mg	63 pcs (3 blisters à 21 pcs)	14 841	21,77	193 793,68
Cyproteronum + Ethinylestradiolum	OC-35, coated tablets, 2+0,035 mg	21 pcs (1 blister à 21 pcs)	6 762	7,09	29 491,67
Cyproteronum + Ethinylestradiolum	OC-35, coated tablets, 2+0,035 mg	63 pcs (3 blisters à 21 pcs)	2 767	19,50	36 105,00
Cyproteronum + Ethinylestradiolum	Syndi-35, dragée tablets, 2+0,035 mg	21 pcs (1 blister à 21 pcs)	20 457	7,32	89 284,15
Cyproteronum + Ethinylestradiolum	Syndi-35, dragée tablets, 2+0,035 mg	63 pcs (3 blister à 21 pcs)	7 775	20,63	101 498,53
Ethinylestradiolum + Levonorgestrelum	Levomine, coated tablets, 0,03+0,15 mg	21 pcs	14 800	2,44	84 943,61
Ethinylestradiolum + Levonorgestrelum	Levomine, coated tablets, 30+150 mcg	63 pcs	33 974	6,63	526 328,58
Ethinylestradiolum + Levonorgestrelum	Microgynon 21, coated tablets, 30+150 mcg	21 pcs (1 blister à 21 pcs)	103 129	3,03	599 647,60
Ethinylestradiolum + Levonorgestrelum	Microgynon 21, coated tablets, 30+150 mcg	63 pcs (3 blisters à 21 pcs)	196 301	6,97	3 197 011,12
Ethinylestradiolum + Levonorgestrelum	Rigevidon, dragée tablets, 0,03+0,15 mg	21 pcs	12 761	2,46	73 321,94
Ethinylestradiolum + Levonorgestrelum	Rigevidon, coated tablets, 0,03+0,15 mg	21 pcs	254 424	2,49	1 480 504,20
Ethinylestradiolum + Levonorgestrelum	Stediril 30, dragée tablets, 0,03+0,15 mg	21 pcs (1 blister à 21 pcs)	86 047	2,49	500 973,89

Fourteen requests for reimbursement of the above-mentioned medicines were filed in 2018.

Comments to paragraphs 79-80 of the Reports

In response to the comments regarding the so-called emergency contraception, referred to in Paragraphs 79-80 of the report, it should be indicated that in 2017 standardized provisions were introduced to provide for the access to medicines from the ATC G03A group – hormonal

contraceptives for internal application. Under the amendment of 25 May 2017 to the Law on Health Care Services Financed from Public Funds and Certain Other Laws which became effective on 23 July 2017, all hormonal contraceptives for internal application require medical prescription. This is justified by the fact that before taking such medical product, the patient should consult a doctor specializing in gynecology who carries out a mandatory physical examination. What is more, a doctor who holds the patient's medical documentation knows the frequency of prescribing such medical products and their possible side effects or a possible interaction with other medicines. Thanks to the introduced regulation, the doctor will be able to assess whether the medicine affects the patient's health.

It should be also emphasized that pursuant to Art. 4(4) of the Directive 2001/83/EC of 6 November 2001 of the European Parliament and of the Council on the Community code relating to medical products for human use: "This Directive shall not affect the application of national legislation prohibiting or restricting the sale, supply or use of medical products as contraceptives or abortifacients. The Member States shall communicate the national legislation concerned to the Commission."

The above provision gives Member States the right to introduce restrictions referred to in it both as regards national marketing authorizations, and as regards authorizations issued by the European Commission, as follows from Art. 13(1) of the Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Community procedures for the authorization and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency: "Without prejudice to Art. 4(4) and 5 of Directive 2001/83/EC, a marketing authorization which has been granted in accordance with this Regulation shall be valid throughout the Community."

To sum up, it needs to be noted that under Art. 2(2) of the Act of 7 January 1993 on Family Planning, Human Foetus Protection, and Acceptable Conditions of Pregnancy Termination, institutions of state and local administrations are obliged to ensure citizens free access to the methods and measures used for conscious procreation, in the scope of their competences referred to in specific provisions.

Contraceptives in the form of medical products or medical devices and medicines and medical products used during pregnancy and necessary to care for the embryo and pregnant women are registered and accessible in Poland nowadays. As a consequence, apart from reimbursed products, you can also find on the Polish market a wide range of hormonal contraceptives in the form of oral tablets of different composition and hormone content, including transdermal systems which are not covered by reimbursement.

In addition, according to the provisions of the Regulation of the Minister of Health of 6 November 2013 on Guaranteed Services in the Framework of Specialist Outpatient Clinic Care, the National Health Fund also funds the insertion and removal of an intrauterine contraceptive device (not including the cost of the device, which is covered by the patient herself). Moreover, one does not need a prescription to buy such products as spermicide in the form of vaginal globules and condoms.

Comment to paragraph 80 of the Report

As regards the accessibility of gynecological services, it should be stressed that the provisions of the Act of 27 August 2004 on Health Care Services Financed from Public Funds and of the Regulation of the Minister of Health of 6 November 2013 on Guaranteed Services in the Framework of Specialist Outpatient Clinic Care provide women with health care covering specialist medical services in gynecology and obstetrics – they include two types of services: counseling in gynecology and obstetrics and gynecological counseling for girls. The counseling covers in particular ensuring care in terms of reproductive health.

The table below provides information on the number of all counsels given in the above-mentioned matters in 2018, including to patients below 18 years of age.

Table: Number of counsels in obstetrics and gynecology and in gynecology given in 2018 to girls, including girls below the age of 18.

Name of the NHF provincial branch	02.1450.001.02 services in obstetrics and gynecology 02.1453.001.02 services in gynecology for girls				02.1450.001.02 services in obstetrics and gynecology 02.1453.001.02 services in gynecology for girls			
	All female patients				Underage female patients (below 18 years of age)			
	Value of services performed	Number of counsels	Number of women covered by care	Number of service providers carrying out services	Value of services performed	Number of counsels	Number of women covered by care	Number of service providers carrying out services
DOLNOŚLĄSKI	50 746 801	666 978	257 393	202	678 212	9 604	4 516	196
KUJAWSKO-POMORSKI	33 343 958	510 047	183 076	192	732 778	10 699	4 460	171
LUBELSKI	26 552 788	427 712	155 130	97	445 664	6 928	3 095	95
LUBUSKI	14 258 530	207 587	80 287	45	201 734	3 083	1 451	45
ŁÓDZKI	28 172 492	518 042	188 365	160	393 118	6 800	3 177	148
MAŁOPOLSKI	46 922 281	708 509	243 379	190	491 456	7 454	3 505	187
MAZOWIECKI	85 317 941	1 306 842	456 649	299	1 192 833	17 444	8 536	269
OPOLSKI	14 228 050	193 951	75 465	57	194 334	2 715	1 331	56
PODKARPACKI	28 739 208	436 103	153 740	117	401 721	6 114	2 776	113
PODLASKI	19 789 944	286 779	95 788	58	349 663	4 833	2 373	40
POMORSKI	37 386 530	503 843	199 859	123	517 764	7 228	3 512	122
ŚLĄSKI	65 465 162	1 106 860	391 122	406	1 164 798	16 638	7 361	359
ŚWIĘTOKRZYSKI	18 020 837	279 106	97 524	119	313 805	3 722	1 748	115
WARMIŃSKO-MAZURSKI	23 172 857	351 970	123 357	101	418 869	5 956	2 541	98
WIELKOPOLSKI	61 568 580	756 738	297 850	228	970 180	10 940	5 608	219
ZACHODNIOPOMORSKI	27 115 624	422 324	155 926	114	755 852	8 160	3 707	106
TOTAL	580 801 583	8 683 391	3 140 070	2 508	9 222 780	127 778	59 370	2339

Source: Headquarters of the National Health Fund

2.2. Gender equality

Comment to paragraph 92 of the Report

The draft report cites data concerning the number of childcare facilities and the number of places available in childcare facilities as provided by a publication by the Polish Central Statistical

Office titled “Social assistance and family and child care in 2017.” The Central Statistical Office provides said data with respect to nurseries, nursery classes and kids clubs. Central Statistical Office does not take into account child minders and nannies, who also provide care to children under the age of three pursuant to the Act of 4 February on the Care over Children under Three Years of Age.

It is recommended to use the statistics provided by the Ministry of Family, Labour and Social Policy. The Ministry, while informing about the number of institution and places of care for children under three years old, apart from providing data on nurseries and kids clubs, also provides statistics concerning child minders. While calculating the share of children under three who are under institutional care, only the data on children aged one to three (excluding three-year olds) is taken into account, because since the introduction in 2013 of a year-long parental leave, in institutions providing care children under one year old make up only two percent. The indicator also takes into account nannies

Therefore, in 2017, in Poland there were 4,271 nurseries, kids clubs and child minders offering 111,348 places. In 2017, 8,482 nannies cared over children under three years old. In total, childcare services (including nannies) were provided to 16 percent of children aged one to three (excluding three year-olds). According to the Ministry of Family, Labour and Social Policy, in 2017, childcare institutions – nurseries, kids clubs and child minders – operated in 32 percent of Poland’s municipalities. Compared to 2016, in 2017 the number of childcare facilities grew by 820 (nurseries, kids clubs and child minders).

In 2017, there were 87 childcare facilities in the Świętokrzyskie Province, while in Mazowieckie Province there were 983 facilities. Podlaskie Province had fewest facilities, with 85 institutions. The Mazowieckie Province had the highest number of childcare facilities.

In 2018, there were 5,123 childcare facilities offering 145,948 places. Compared to 2017, the number of facilities grew by 852. There were 6,969 nannies caring over children aged up to three years. Childcare services (including nannies) were provided to 19.8 percent children aged up to three.

Amendments to regulations introduced in January 2018 concerning childcare for children under three years old make it easier to set up and run childcare facilities while maintaining quality standards and improving the level of children’s safety. The changes create conditions to lower the fees for placing a child in a childcare facility and make it possible to increase the annual funding for subsidies for the establishment and running facilities for small children to the amount of PLN 500 million under the MALUCH+ programme. The funds earmarked for the 2018 edition amounted to PLN 450 million, i.e. the amount increased threefold compared to 2017. It was estimated that the funds under the 2018 programme would help create 24,500 places in childcare facilities. According to preliminary data, about 16,700 places were created (final data will be known after the verification of governors’ reports on the implementation of the 2018 MALUCH+ programme).

The funds earmarked for the 2019 MALUCH+ programme will also amount to PLN 450 million. It is estimated that subsidies under the programme will help create 27,600 places available in childcare facilities.

Comment to paragraph 99 of the Report

In the area of childcare for children under 3 years the Commissioner welcomes increases in government funding for public childcare under the age of three. It should be noted that the subsidies

for the establishment and running of childcare facilities are granted under the MALUCH+ programme, while the programme is addressed both to local governments and private entities.

2.3 Violence against women and domestic violence

Comment to paragraph 105 of the Report

The system for counteracting domestic violence was established in 2005 with the adoption of the Act on Counteracting Domestic Violence (Journal of Laws of 2015, item 1390, as amended). The Act defines, among others, domestic violence. It also imposes specific tasks aimed at counteracting domestic violence on all levels of government and local self-government administration. On 1 August 2010, amendments were introduced to the Act of 29 July 2005 on Counteracting Domestic Violence and other legal acts (Journal of Laws no. 125, item 8420). The amendments focused primarily on a more efficient protection of domestic violence victims and introducing efficient measures with respect to perpetrators. The work on the amendments was carried out in cooperation with non-governmental organisations dealing with combatting domestic violence. The work allowed to develop solutions to systemise the work of services and their staff responsible for counteracting domestic violence.

The following amendments were introduced:

- allowing domestic violence victims to obtain free medical certificates specifying the causes and type of injuries sustained as a result of domestic violence,
- introducing an order prohibiting the perpetrator from contacting his or her victim and an order to vacate the place of residence irrespectively of the fact whether the perpetrator is the owner or not,
- prohibiting corporal punishment of children,
- introducing an obligation of informing competent services about cases of domestic violence,
- setting out the rules of cooperation in interdisciplinary teams and working groups dealing with individual cases,
- defining the “Blue Cards” procedure and specifying entities responsible for its implementation.

The entry into force of the Regulation of the Council of Ministers of 13 September 2011 on “the Blue Cards” procedure and the templates of the “Blue Card” forms (Journal of Laws no 209, item 1245) imposed an obligation of cooperation and developing specific solutions to help persons affected by domestic violence on the services tasked with counteracting domestic violence.

Issues related to counteracting domestic violence in the current legal framework are regulated by the Act of 29 July 2005 on Counteracting Domestic Violence and the provisions of the National Programme for Combating Domestic Violence for the years 2014-2020, which was established on 29 April 2014 by a Resolution no. 76 of the Council of Ministers.

New solutions included in the National Programme for Combating Domestic Violence for the years 2014-2020 include:

- launching a 24-hour free phone line for domestic violence victims,
- introduction of new measures directed at perpetrators consisting in psychological and therapeutic programmes. Since 2006, about 4,500 perpetrators annually have been taking part in correctional and educational programmes for domestic violence perpetrators; the measures are financed from the state budget,
- introduction of unified statistical data, broken down by gender,
- establishment of new specialised support centres for domestic violence victims (currently, there are 36 such centres, financed from the state budget. Another centre is scheduled to be opened in 2019. Each year, 8,000 people are helped by the centres. The centres provide free, 24-hour psychological, legal and social assistance to domestic violence victims for up to three months, with the possibility of extending the stay).
- In 2017, spending on training for first-contact staff dealing with counteracting domestic violence was increased; since 2007, the training has been conducted by Marshalls of Provinces and are attended on average by 5,000 participants; the training is financed by the state budget,
- introduction of efficiency study of the assistance provided to persons affected by domestic violence,
- expansion of the catalogue of preventive measures aimed at persons and families vulnerable to domestic violence, in particular measures addressed to children and youth,
- raising social awareness on the need of efficient reaction to cases of domestic violence and counteracting it.

At this point, it should be noted that one of the systemic tools aimed at counteracting domestic violence is “the Blue Cards” procedure. Pursuant to Art. 9d (2) of the Act of 29 July 2005 on Counteracting Domestic Violence “the Blue Cards procedure encompasses all activities pursued and implemented by the representatives of organised units of the social service, municipal committees for solving alcohol-related problems, the Police, education and healthcare system, in connection with a justified suspicion of domestic violence.” The procedure should be initiated in situations, where there is only a suspicion that domestic violence is taking place, even if it is not substantiated by any evidence or circumstance. At the same time, it should be noted that pursuant to Art. 9d (4) of the Act on Counteracting Domestic Violence, “the Blue Cards” procedure is initiated by completing “the Blue Card” form once, while carrying out official or work duties, suspicion arises that family members are abused or a family member or a witness reports a case of domestic abuse.

The procedure assumes that actions are taken when an official believes that abuse is taking place in a family. The overriding idea of “the Blue Cards” procedure is to ensure safety of persons suspected to be affected by domestic violence. “The Blue Cards” procedure has not only interventional character, but also provides for long-term work consisting of concrete legal, assistance and monitoring solutions, which make it possible to eliminate the phenomenon of domestic violence. Under “the Blue Cards” procedure, the interdisciplinary team or working group members: provide assistance to the suspected domestic violence victim, take actions to stop the suspected perpetrator

of domestic violence from inflicting abuse, invite the suspected domestic violence victim to meet with the interdisciplinary team or working group, come up with an individual assistance plan for the suspected domestic violence victim, which contains a set of actions to be taken by the person concerned to improve his or her life situation and of his or her family (the plan is subject to change depending on the needs and the situation of the family), decide that there are no grounds to take actions.

If the suspicion of domestic violence is not confirmed, or the abuse stops, the procedure is closed. Paragraph 18 (1)(1–2) of the Regulation of the Council of Ministers of 13 September 2011 states explicitly that the procedure is closed when: 1) the domestic violence stops or there is justified suspicion that domestic violence stopped or the individual assistance plan is implemented, or 2) a decision is taken that there are no grounds to take actions.

Domestic violence victims can receive assistance as part of measures taken by the interdisciplinary teams, which operate in the vicinity of the place of residence of the person concerned, that is in the municipal social service centres. The municipalities perform tasks to counteract domestic violence through, among others, appointing interdisciplinary teams. In cases of domestic violence, a competent interdisciplinary team with respect to the place of residence of the victim can provide assistance and support to the victim based on “the Blue Cards” procedure by carrying out the individual assistance plan established together with the victim. The plan (established by the interdisciplinary team or a working group) can provide for psychological or legal counselling, as well as social assistance. The programme is developed with the respect of the rights and dignity of the domestic violence victim.

In Poland, most actions enabling the victims to overcome the effects of the violence they suffered are taken at a local level (municipality or district) as part of local-performed tasks of counteracting domestic violence and granting social assistance benefits. It is within the competence of a district to provide specialised legal, psychological and family counselling. The counselling services are provided to persons, including children and families facing difficulties or in need of support in solving their life problems, irrespective of their income. Legal counselling consists in providing information on current legal regulations concerning family and custody law, social security and the protection of the rights of tenants. Psychological counselling covers issues concerning family functioning, including issues connected with providing care to persons with disabilities, and family therapy. Access to other services, such as financial support or help in finding employment, is provided for under general rules set out in relevant legal acts.

The Police officers use a handbook „Practical manual for police officers – Estimation of the risk related to individual cases of domestic violence”, which aims to prepare Police officers, who conduct the interventions related to domestic violence, to use tools to estimate the level of risk to life and health in cases of domestic violence. The handbook includes also the Algorithm of conduct during the police intervention. The introduction of risk assessment tools related to domestic violence aims to increase the efficiency of actions taken by the Police officers conducting interventions against perpetrators of domestic violence and to ensure safety to their victims, by minimizing the threat to their life and health.

The risk to life and health is estimated by means of questionnaires, which help to make decisions by intervening Police officers in cases of domestic violence. The separate questionnaires are used for adults and for children. The questionnaire is a helpful tool for the Police officers

conducting the intervention, which helps to identify the life- or health-threatening situations in cases of domestic violence and to make well-reasoned decisions aiming at detention of the perpetrator of domestic violence.

Comment to paragraph 108 of the Report

With respect to the implementation of the provisions of the Council of Europe Convention on preventing and combating violence against women and domestic violence, it should be noted that it was ratified by the President of the Republic on 13 April 2015. The Convention, in line with its Art. 75 (4) entered into force on 1 August 2015.

The legal acts mentioned above (the Act on Counteracting Domestic Violence and the National Programme for Combating Domestic Violence for the years 2014-2020) comply with the provisions arising from the Convention, since they aim to protect and support all persons affected by different forms of violence, irrespectively of their gender, age, health or origin. The system for counteracting domestic violence that is currently in force in Poland grants equal rights to all violence victims, without identifying specific social groups. These regulations ensure equal treatment and the respect of the rights and freedoms of violence victims.

Comment to paragraph 109 of the Report

With reference to the alleged failure to comply with the provisions of the Act on Counteracting Domestic Violence (Journal of Laws of 2015, item 1390, as amended) by the town of Zakopane, it should be emphasised that pursuant to Art. 6(2)(4) of said Act, the competence to establish interdisciplinary teams lies with the municipality. The tasks listed in Art. 6 (2)(1) also include the development and implementation of the municipal programme for combating domestic violence and the protection of domestic violence victims.

The functioning of the interdisciplinary team at the level of municipality cannot be separated from the implementation of “the Blue Cards procedure”. The task is regulated both by the Act on Counteracting Domestic Violence and the Regulation of the Council of Ministers of 13 September 2011 on the Blue Cards procedure and the Blue Card templates (Journal of Laws No. 209, item 1245)

The obligation of establishing interdisciplinary teams by municipalities was introduced into the Polish legal system in 2010 with the Act of 10 June 2010 on the amendment to the Act on Counteracting Domestic Violence and Certain Other Acts (Journal of Laws No. 125, item 8420). In breach of the provisions of the act concerning the establishment of interdisciplinary teams, Zakopane is the only local government in Poland which did not comply with its obligation under Art. 6 (2)(4) of the Act on Counteracting Domestic Violence.

In view of the failure to respect the laws on counteracting domestic violence by the Zakopane authorities, the Ministry of Family, Labour and Social Policy undertook a number of actions aimed at enforcing the establishment of the interdisciplinary team in Zakopane, the adoption of a programme for combating domestic violence and the protection of domestic violence victims.

On 16 May 2014, the Ministry filed a request with the Mayor of the Town of Zakopane to urgently establish an interdisciplinary team in order to implement the systemic solutions to combat domestic violence and creating proper legal conditions for services and their staff to carry out “the

Blue Cards” procedure. The Mayor of Zakopane, in his response to the call of the Ministry, noted that several attempts to establish an interdisciplinary team and to develop a municipal programme for counteracting domestic violence were made, but the opposition of the Town Council prevented the attempts from succeeding.

In view of the above, on 11 July 2014, the Ministry repeated its request and asked the Mayor of Zakopane to take appropriate steps to implement the law on counteracting domestic violence.

Following the local elections in 2014 and in view of the fact that a different person took the office of the Mayor of Zakopane, the Ministry sent another letter to local authorities, which pointed out the potential legal consequences arising from Art. 96 (1) and 97 of the Local Government Act.

Since the Zakopane authorities failed to take any actions to implement the Act on Counteracting Domestic Violence, on 30 March 2015 the Ministry asked the Małopolskie Governor to intervene, as the governor supervises and monitors the performance of tasks connected with counteracting domestic violence. The Małopolskie governor, in his letter of 20 April 2015, informed the Ministry of Labour and Social Policy about his actions taken in 2012-2015 in terms of supervising and monitoring the performance of tasks connected with counteracting domestic violence.

On 29 December 2015, the Ministry sent further letters addressed to Zakopane authorities and the Małopolskie governor, who supervises the performance of tasks in this area, requesting efficient steps to be taken aimed at establishing an interdisciplinary team in Zakopane.

Furthermore, in 2016 the Undersecretary of State at the Ministry met with delegates from the Zakopane Council. At the meeting, the interlocutors discussed the issues mentioned above. Despite repeated actions by the Ministry, the town of Zakopane has not so far established an interdisciplinary team and has not adopted a programme for counteracting domestic violence and the protection of violence victims.

Since the municipality continues to fail its tasks it is legally required to perform in terms of counteracting domestic violence, the Minister of Family, Labour and Social Police continues to take actions aimed at establishing the interdisciplinary team in Zakopane and adopting the municipal programme for counteracting domestic violence and the protection of domestic violence victims.

Comment to paragraphs 110 and 111 of the Report

With reference to the amendments in the area of counteracting domestic violence, the Ministry of Family, Labour and Social Policy is of the view that the amendments to the legislation concerning counteracting violence are necessary, while all cases of violence should result in to launch support mechanisms for its victims. The legislation on counteracting domestic violence should be clear and transparent and should not give rise to any doubt as to how to interpret it. The legislation bill amending the Act on Counteracting Domestic Violence and Certain Other Acts was withdrawn and is not subject to any further proceedings.

Comment to paragraph 112 and 114 of the Report

Actions to counteract domestic violence are regulated under the Act of 29 July 2005 on Counteracting Domestic Violence (Journal of Laws of 2015, item 1390) and the National Programme for Combating Domestic Violence for the years 2014-2020.

It should be emphasised that based on the aforementioned legislation, actions are taken to ensure the protection and support for victims, in particular in the form of: medical, psychological, legal, social, vocational and family counselling as well as crisis intervention and support. Services tasked with providing assistance should provide the assistance to violence victims, including under “the Blue Cards” procedure, first and foremost in the place of residence. The actions taken by competent services and institutions should aim to provide support in such a way, so that the violence victim does not have to seek shelter outside of the place of his or her residence. In Poland, there is a network of establishments that provide assistance to violence victims, including shelters.

One important task carried out under the National Programme for Combating Domestic Violence for the years 2014-2020 is the establishment and running of specialised support centres for domestic violence victims. These centres provide various forms of specialised assistance to domestic violence victims, including shelter and specialised counselling. The entity responsible for running the centres are district authorities. The centres are funded from the state budget.

In the specialised support centres, apart from catering to basic needs, the centres offer domestic violence victims professional medical social, psychological and legal support. The specialised support centres for domestic violence victims are run based on the standards set out in the Regulation of the Minister of Labour and Social Policy of 22 February 2011 *on the standards of the basic services provided by the specialised support centres for domestic violence victims, the qualifications of persons employed by the centres, detailed directions of running correctional and educational measures directed at the perpetrators of domestic violence and the qualifications of persons tasked with running the correctional and educational therapy*. The priority task of specialised support centers for victims of domestic violence is to protect the victim of domestic violence and to provide her with professional assistance.

The specialised support centres for domestic violence victims provide the following intervention measures:

- providing shelter to domestic violence victims, without referrals and irrespectively of income, for the period of up to three months with the possibility of extending it in cases justified by the situation of the domestic violence victim;
- the protection of the domestic violence victim against his or her perpetrator, providing immediate psychological, medical assistance and support,
- investigating the situation of the victim and establishing an assistance plan.

Specialised support centres for domestic violence victims provide the following therapeutic and support assistance:

- a) diagnosing the problem of domestic violence,
- b) establishing an individual assistance plan for the domestic violence victim taking into consideration: his or her needs, goals, methods and duration of assistance,
- c) providing:
 - medical,
 - psychological,
 - legal,

- social counselling.
- d) running support and therapy groups for domestic violence victims,
- e) running individual therapy aimed at supporting the domestic violence victims and providing him or her with the skills necessary to protect himself or herself against the perpetrator of domestic violence,
- f) providing access to medical assistance,
- g) assessing the situation of children based on the so-called local inquiry conducted in a family,
- h) counselling on children and youth upbringing.

The centres provide the following livelihood needs: 24h temporary stay for no more than thirty persons:

- bedrooms for up to five persons, taking into account family situation of a given domestic violence victim,
- common living space with a playing area and a study area,
- shared bathrooms, adapted to the needs of both adults and children, one bathroom per five people,
- shared kitchens,
- laundry and drying area,
- meals, clothing and footwear,
- personal hygiene and cleaning products.

The report states that in 2018, the specialised support centres for domestic violence victims provided assistance to 8,558 persons. The statement should be corrected, since the number refers to 2017. Until 2018, in Poland there were 35 centres of this type. In 2018, another, i.e. 36th support centre for domestic violence victims was established in Krakow from the state budget. There are plans to launch another centre, funded by the state budget, in 2019. Currently, the Ministry of family, Labour and Social Policy is assessing the needs in terms of setting up this type of shelter. It should be emphasised that the centres provide assistance to all victims seeking shelter irrespectively of their previous place of residence.

Comment to paragraph 113 of the Report

It should be underlined that providing shelter in the centres providing assistance to domestic violence victims lies within the competence of all local authorities. At the level of municipalities and districts, a support system for domestic violence victims was put in place. Assistance is provided

through consultation points, municipal or district support centres, homes for mothers with small children and pregnant women or crisis intervention centres.

Locally, that is at the municipality and district level, the domestic violence victim support system provides assistance through consultation points, municipal or district support centres, the aforementioned homes for mothers with small children and pregnant women and the crisis intervention centres. It should be noted that depending on their type, the establishments concerned provide outpatient care, e.g. specialised counselling (legal, medical, psychological), support groups, therapy groups, or shelter. It is also worth noting that mothers with children or pregnant women seeking shelter, if need be, can be referred to homes for mothers with small children and pregnant women.

As part of efforts to expand the offer of centres providing support to domestic violence victims, in 2017, 66 consultation points, one support centre and 22 crisis intervention centres (including four crisis intervention points and 13 other establishments providing specialised assistance to domestic violence victims) were set up. In total, in 2017, there were 800 units, including 552 institutions run by municipalities and 248 institutions run by district-level authorities in Poland. Most institutions are consultation points – 520, followed by 212 crisis intervention centres (including 54 emergency intervention points), 35 specialised support centres, 20 support centres and 13 homes for mothers with small children and pregnant women. Data for 2018 is still being collected and verified.

At the same time, it is worth mentioning that systemic solutions aim to provide emergency assistance and support for persons in crisis situations, such as suffering violence. The intended effect of a direct intervention in the local community in cases of domestic violence is to develop the ability to analyse processes taking place in a family as they happen and to assist the family members to deal with these phenomena effectively. However, if a person cannot overcome a difficult situation independently, he or she should seek the assistance of local institutions responsible for providing such assistance, e.g., social welfare centres or interdisciplinary teams for countering domestic violence if violence is being inflicted.

Comment to paragraphs 115 and 116 of the Report

Protection under criminal law:

In criminal proceedings, pursuant to Art. 275a of the Code of Criminal Proceedings (the CCP), it is possible to apply to a suspect (accused) charged with a violent offence committed against a member of his household a libertarian preventive measure ordering to leave, for a certain period of time, the premises occupied together with the aggrieved party. The CCP permits the use of this measure, if there is justified concern that the accused will commit a violent offence against this person again and in particular if he or she has threatened to do so.

This measure is ordered for a period not exceeding three months. If the conditions for its order have not ceased to exist, the court of first instance competent to hear the case may extend its application for further periods not exceeding three months. In view of the contents of Art. 249 (4) of the CCP, it should be assumed that this measure may be applied until the commencement of the execution of the sentence.

Art. 249. § 1. Preventive measures may be ordered in order to ensure the correct course of proceedings and, exceptionally, in order to prevent the accused from committing a new serious offence; they may be ordered only if, according to the evidence already collected, it is highly probable that that the accused committed the offence.

§ 2. In preparatory proceedings, preventive measures may be ordered only against a person, who was presented with the charges.

§ 3. Before a preventive measure is ordered, the court or the public prosecutor examines the accused, unless it is not possible to do so due to the fact that the accused is in hiding or staying out of the country. Defense attorney appointed by the accused should be allowed to participate in the examination, if he appears. It is not obligatory to notify the defense attorney of the date of the examination, unless the accused requests so and this will not obstruct the proceedings. The public prosecutor is notified of the date of the examination by the court.

§ 4. Preventive measures may be ordered up until the commencement of the sentence. This provision applies to the detention on remand only if the accused was sentenced to the penalty of imprisonment.

§ 5. The public prosecutor and the defense attorney are entitled to participate in a court hearing regarding the extension of detention on remand or an appeal against the use or extension of this preventive measure. At the request of arrestee who does not have a defense attorney, a defense attorney ex officio is appointed for this procedure. The order may also be issued by a court clerk. The absence of a properly notified public prosecutor or defense attorney does not stay the proceedings

It needs to be emphasized that this measure, just like other preventive measures, may only be used in the context of pending criminal proceedings, and in the pre-trial proceedings – only after presenting the charges (thus in *ad personam* phase).

Protection under civil law:

Pursuant to Art. 11a (1) of the Law on Counteracting Domestic Violence, if a family member jointly occupying the premises, by his/her behaviour of domestic violence, makes a joint living particularly oppressive, the person affected by the violence may request the court to order the family member to leave the premises occupied together with the aggrieved party.

The case is examined on the basis of the provisions of the Code of Civil Proceedings. The decision is issued after a hearing that should be conducted within one month from the submission of the request. The decision becomes enforceable at the time of announcement and may be changed or revoked in the event of a change of circumstances.

At present legislation is drafted in order to introduce in the civil procedure in the Civil Procedure Code (the CPC) of separate proceedings in cases of injunctions ordering alleged perpetrators of violence to vacate accommodation occupied jointly with the victims and refrain from approaching the premises and their immediate surroundings. The draft law includes improvements to the procedure of serving documents by courts, specifying time limits for issuing a decision by a court, granting interim orders, or ensuring immediate enforceability of a decision issued in a case. A completely new instrument introduced to better protect persons affected by violence is the granting of an authorization to the Police to issue an immediate injunction ordering an alleged perpetrator to vacate jointly occupied accommodation and banning them from approaching the premises and its immediate surroundings which is subject to judicial review. For this purpose, the draft also contains amendments to provisions of the Law on Police of 6 April 1990.

Comment to Chapter 2.3.4 Withdrawal of funding from and Police searches of women's rights organisations

Procedural actions of securing documentation and data carriers, in the seats of non-governmental organisations were carried out in connection with proceedings conducted by the prosecutor's office regarding misconduct, or dereliction of duties by public officials (Art.231 (1) of the Polish Criminal Code) and concerned the request for the surrender of objects that could constitute evidence in the case.

It appears from the information available that all secured evidence has been surrendered voluntarily. The organizations referred to in the decision, did not report any objections to the records of surrender. Electronic carriers after being copied were returned to individual entities from whom they were secured, so as not to paralyze the work of these institutions. Simultaneously, it needs to be pointed out that earlier the prosecutor's office had also secured documents in public institutions. The activities were carried out at the sets of the following entities: Śląska Fundacja Błękitny Krzyż, Stowarzyszenie Przeworsk – Powiat Bezpieczny, Lubuskie Stowarzyszenie na Rzecz Kobiet „BABA”, Stowarzyszenie Pomocy Bliźniemu im. Brata Krystyna, Katolickie Stowarzyszenie Potrzebującym „AGAPE”, Fundacja Centrum Praw Kobiet. Thus, various entities were included in the searches, both organizations indicated in the Report as feminine organisations as well as conservative organisations or those connected with the Catholic church.

Having regard to the above, there are no grounds to assume that the above actions were carried out with the intent to affect the activities of women's organizations.

The Justice Fund, noticing the existing needs to help victims of crimes, including women, in 2017-2019 significantly increased the range of support offered. In 2017, PLN 16 mln was allocated to non-governmental organizations providing assistance to victims. In 2018 those funds were increased to PLN 25 mln and in 2019, funds amounting to more than PLN 45 mln were transferred to NGOs and an additional PLN 27 mln of funds are planned to be transferred.

According to the publicly announced plan for the implementation of assistance for victims from the Justice Fund, the amounts allocated to associations and foundations are PLN 80 mln (in 2020) and PLN 82 mln (in 2021).

The increase of funds allocated to help victims from the Justice Fund's funds indicating a gradual increase in the amounts allocated to non-governmental organizations is presented in the table below.

Lp	Year	Sector	Amount paid (PLN)	Engaged/Planned (PLN)	Plan (PLN)	%
1	2017	NGO	16,352,509.17			100,00
2	2018	NGO	25,331,983.20			154,91
3	2019	NGO	45,274,641.64	27,936,000.00	78,875,000.00	289,00

4	2020	NGO	-	-	80,686,000.00 zł	110,21
5	2021	NGO	-	-	82,560,000.00 zł	102,32

Also noteworthy is the constantly growing number of contracts with non-governmental organizations providing assistance to victims of crime in individual regions of Poland: from 31 contracts in 2017 and 42 contracts in 2018 to 52 contracts in 2019 (from the planned number of 60 contracts until the end of 2019). Thus, as a result of the actions undertaken, both the volume of funds transferred to the functioning of the victim support network and the number of centres dedicated to victims were increased.