

## **POLAND**

### **Follow-up - State Reporting Action by State Party**

**CESCR, E/C.12/POL/CO/5/Add.1 (2010)**

[Advance Unedited Version, 29 March 2010]

### **Comments by the Government of Poland on the concluding observations (E/C.12/POL/CO/5)**

#### **I. General issues**

1. In response to the opinion contained in paragraph 8 of the Concluding observations that the International Covenant on Economic, Social and Cultural Rights is not given full effect in Poland as the Covenant provisions cannot be invoked by individuals before the courts, the Government of Poland would like to state that Poland considers itself fully respecting the obligations arising from the Covenant.

2. The provisions of the International Covenant on Economic, Social and Cultural Rights differ from the provisions of the International Covenant on Political and Civil Rights. As concerns the Covenant on Economic, Social and Cultural Rights States-parties to it undertake to recognize the rights and to implement them according to article 2(1) of the Covenant, namely to the maximum of available resources, with a view to achieving progressively their full realization. The Covenant on Political and Civil Rights contains rights that States Parties undertake to respect and to ensure to all individuals within its territory and subject to its jurisdiction.

3. No obligation as to ensuring general direct applicability of the provisions derives from the Covenant on Economic, Social and Cultural Rights. A State Party has the obligation to adopt national legislation to allow all persons to enjoy these rights and has to strive to guarantee these rights progressively and to the maximum of available resources. The Government of Poland wishes to state that independent courts decide whether provisions of the Covenant are self-enforceable and whether their implementation can be pursued before the court. The possibility to derive individual claim from the provisions of the Covenant is evaluated on the basis of a detailed analysis of articles invoked as the grounds for the claim. If the court decides that the application of a given provision of the Covenant does not depend on the promulgation of an act, the provision may be directly invoked by individual before national court.

4. According to the Act of 14 April 2000 on International Treaties the minister responsible for the issues to which the agreement refers to is responsible for an analysis of the international agreement provisions to identify the method of ensuring their implementation. The analysis of the Covenant on Economic, Social and Cultural Rights allowed to conclude that the majority of its provisions had been formulated so that the States are obliged to undertake measures to

progressively guarantee the rights. Therefore, there is no possibility for direct applicability and to derive subjective rights from those provisions. However, the Covenant provisions allow an individual to expect that the State make political decisions creating an environment conducive to the rights enforcement. Only few social rights contained in the Covenant (the right to form unions and the right to education, which are recognised in other international treaties as civil and political rights) are subjective rights.

5. The analysis of the Covenant provisions was carried out by the Government of Poland being aware of the opinions of other countries' courts, international control bodies and the law doctrine.

6. The Government of Poland would like to remind that the Covenant does not include any provision conferring the right to its interpretation to the Economic and Social Council which the Covenant indicates as a body authorised to control enforcement of its provisions by the States. Neither such a provision may be found in the resolutions of the Economic and Social Council on the Committee of Economic, Social and Cultural Rights. Undoubtedly, the general comments are a source of knowledge on the Committee's views on the content of the Covenant's provisions; however, they are not a source of its binding interpretation.

## **II. National and ethnic minorities**

7. The statement of the Committee in paragraph 13 of the Concluding observations according to which the distinction between "national minorities" and "ethnic minorities" as provided for in the Act of 6 January 2005 on National and Ethnic Minorities and Regional Language may be discriminatory towards some minorities, and the statement that some minorities living in the territory of Poland cannot be covered by the Act provisions as they do not comply with the definition provided for in the Act have no grounds in the law in force.

8. The criteria provided for in the Act on National and Ethnic Minorities and Regional Language to define a given group as a national or ethnic minority are compliant with the provisions of the Council of Europe's Framework Convention for the Protection of National Minorities. There are no national or ethnic minorities in Poland that would be excluded from the scope of the Act for any reason whatsoever. Pursuant to the Act, national and ethnic minorities enjoy the same rights. The list of national and ethnic minorities was prepared in consultation with national and ethnic minorities.

9. Poland is among the European Union Member States with the most extensive lists of national and ethnic minorities provided for in the legislation.

10. The opinion in paragraph 14 of the Concluding observations that the Roma minority faces widespread discrimination that impairs the enjoyment of their economic, social and cultural rights is groundless. The Government of Poland has no knowledge of any studies that would prove widespread discrimination of the Roma minority. So far, the Government has not found any reliable information on discrimination cases against the members of the Roma minority in the access to their rights. Such information was not presented during the meeting of the Committee with the Polish delegation either.

11. The members of the Roma minority enjoy the same rights as other Polish citizens, guaranteed in the Constitutions and other legislation. They are subject to the same procedures of asserting their infringed rights.

12. It may be stated that the Roma minority is in a more difficult situation compared to other groups within Polish society. However, it is not the result of formally restricted access to the rights available to all Polish citizens, but mainly a consequence of the policy implemented years ago (during the Communist era, before 1989). It is to be noted that ensuring effective access of Roma community to education, health protection, employment, social assistance and social security is an important effort for organizational and financial reasons. The Government undertakes appropriate steps, progressively. The Programme for the Roma community in Poland aims at overcoming long lasting development lag, social and in particular educational backwardness. The State budget allocated EUR 11 million for measures for the benefit of the Roma community between 2002 and 2009. In addition, in relation to the new financial perspective of the European Union for 2007-2013, Priority 1 of the Operational Programme Human Capital includes the “Roma Component” with the budget of EUR 22 million.

13. As regards the statement in paragraph 33 of the Concluding observations that the Committee has not received information on the enrolment of Roma students in higher education, the Government of Poland would like to inform the Committee that it is impossible to provide the number of Roma students in Polish higher education institutions. National or ethnic origin of students is not included in any statistics as there is no legal grounds to request such personal information. In Poland, information on national or ethnic origin cannot be requested, but it may be provided only on voluntary basis.

14. The Government would like to remind that, the Polish delegation (the representative of the Ministry of Interior and Administration) provided information on the number of scholarships that Roma students receive under the Programme for the Roma community (the number of scholarships awarded in 2009/2010 academic year amounts to 63, while the number of applicants for scholarships was 68) during the meeting with the Committee on 6 November 2009. The population of the Roma living in Poland is relatively small (according to 2009 estimates, the number of the Roma in Poland ranges between 12.000 and 15.000, while the population of Poland is 38.1 million).

### **III. Equal rights of men and women**

15. The opinion in paragraph 15 of the Concluding observations on the absence of a framework legislation embodying the principle of equal rights of men and women is untrue. In the Fifth periodic report on the implementation of the Covenant and during the meeting on 6 November 2009, the Committee was informed that Article 33 of the Constitution of the Republic of Poland guarantees women and men equal rights in family, political, social and economic life. Men and women have equal rights regarding, in particular, education, employment and promotion, equal pay for work of the same value, to social security, to hold offices, and to receive public honours and decorations. As regards the right to work, Article 11<sup>2</sup> of the Labour Code was quoted, which states that employees have equal rights resulting from the performance

of identical duties; this applies in particular to the equal treatment of men and women in employment.

16. Paragraph 17 of the Concluding observations states on inequality in the wages earned by men and women, which is not confirmed by information presented in the documents submitted to the Committee (Fifth periodic report, replies to additional questions, 2009) and provided by the Polish delegation during the meeting on 6 November 2009. The Committee has been informed that the Polish legislation provides for the obligation to provide equal pay. Paragraph 1 of Article 18<sup>3c</sup> of the Labour Code provides that employees shall have the right to the equal pay for the same work or for work of the same value. The relevant information was included in replies to additional questions of 2009 (point 282 and 283). The Committee's recommendation for Poland to incorporate in its legislation a specific provision on equal pay for equal work of equal value has been implemented by the Polish legislation since 2001 when the relevant amendment to the Labour Code was made.

17. There is a wage gap between women and men but it is relatively limited as compared to differences in other countries. The average wage gap between women and men in Poland amounts to 10%-12%, while in the European Union it is between 15% and 17%.

18. For the statement of the Committee concerning the wage gap in the public sector and among professionals with higher education, The Government of Poland would like to point out that in accordance with data provided in section 293 of written replies to the additional questions provided in 2009, wages of men and women in the public sector are as follows:

A:in PLN; B: average = 100.0		Men	Women
Average of which:	A	2,903.68	2,385.68
	B	100.0	100.0
Public administration and defence; compulsory social security and health insurance (L)	A	3,772.56	3,153.03
	B	129.9	132.2
Education (M)	A	2,948.86	2,499.30
	B	101.6	104.8
Health and social assistance (N)	A	2,972.81	2,288.07
	B	102.4	95.9
Other community, social and personal service activities (O)	A	2,589.14	2,260.04
	B	89.2	94.7

19. In the light of the data provided, the opinion that the gap in wages of men and women in the public sector is considerable is groundless.

20. The wage gap to the disadvantage of women occurs primarily in the private sector and the Government considers it a problem that needs to be solved and takes steps to that end. As appropriate legal provisions concerning equal wages are already in force as previously stated, the Government takes measures to disseminate knowledge on the regulations and their proper application among employees and employers, mainly through the media campaigns, training, and informing the employers. The Committee will be provided with information on these actions in the subsequent report on implementation of the International Covenant on Economic, Social and Cultural Rights.

#### **IV. Labour legislation**

21. During the meeting held on 6 November 2009 detailed information on the working time in Poland was provided, in particular as concerns conditions of extending working time as well as on the protection of employees who work under the extended working time system. Information on overtime work compensation in the private sector was also provided. Thus, conclusions included in paragraph 18 concerning working time and overtime work compensation are groundless.

#### **V. Domestic violence, corporal punishment, and marital rape**

22. The Government of Poland expresses deep concern at the statement made in paragraph 22 of concluding observations that domestic violence, corporal punishment, and marital rape are not penalised in Poland. The statement is completely untrue.

23. The issue of domestic violence and corporal punishment has been extensively discussed in the Fifth periodic report on implementation of the Covenant and in replies to the additional questions submitted in 2009. Both documents quote relevant provisions of the Penal Code in extenso. The provisions unambiguously provide that such acts are forbidden under the Polish law and their perpetrators are subject to punishment (paragraphs 361-363 of the Fifth periodic report and paragraphs 371-372 of replies to additional questions). Also, paragraphs 398-401 of replies to additional questions feature data for 2005-2008 concerning the number of cases of domestic violence, sentenced adults, and of victims. The data prove that domestic violence is forbidden in Poland and that the regulations are enforced.

24. The Polish Family and Guardianship Code was amended in 2009 with a view to eliminate abuse of parental rights and to strengthen protection of children. At present, Article 95 thereof stipulates that:

“§ 1. Parental custody includes particularly the obligation and right of parents to exercise care of the child and his/her assets and to bring up the child respecting his/her dignity and rights.

§ 3. Parental custody should be exercised in the best interest of the child and society.”

25. The issue of the lack of legal ban on domestic violence was raised during the meeting held on 6 November 2009, when the Committee was also informed in detail on the regulations in force.

26. The issue of criminalisation of rape, including marital rape, has not been raised by the Committee in additional questions, nor during the meeting on 6 November 2009. Thus, The Government of Poland does not see the grounds for the Committee's claim that such acts are not forbidden in Poland. We are concerned with the fact that such a serious accusation has not been raised during the meeting on 6 November 2009 and the opinion of the Committee was only formulated in concluding observations without any opportunity for The Government of Poland to become acquainted with the accusations and to provide the relevant explanations.

27. In order to clarify the issue, the Government would like to quote relevant provisions of the Penal Code concerning rape:

“Article 197. § 1. Whoever, by force, illegal threat or deceit subjects another person to sexual intercourse shall be subject to the penalty of the deprivation of liberty for a term of between 2 and 12 years.

§ 2. If the perpetrator, in the manner specified in § 1, makes another person submit to other sexual act or to perform such an act, he shall be subject to the penalty of the deprivation of liberty for a term of between 3 months and 5 years.

§ 3. If the perpetrator commits rape in common with other person, he shall be subject to the penalty of the deprivation of liberty for a term not shorter than 3 years.

§ 4. If the perpetrator of the act specified in § 1-3 acts with particular cruelty, he shall be subject to the penalty of the deprivation of liberty for a term not shorter than 5 years.

28. Article 198. Whoever, taking advantage of the vulnerability of another person, or of the lack of ability to recognise the significance of the act or ability to control his/her conduct, resulting from mental disability or disorder, subjects such a person to sexual intercourse or makes him/her submit to another sexual act or to perform such an act shall be subject to the penalty of the deprivation of liberty for a term of between 6 months and 8 years.

Article 199. §1. Whoever, abusing a relationship of dependence or by taking advantage of a critical situation, subjects such a person to sexual intercourse or makes him/her submit to another sexual act or to perform such an act shall be subject to the penalty of deprivation of liberty for up to 3 years.

§ 2. If the act specified in § 1 has been committed to the harm of a minor, the perpetrator shall be subject to the penalty of the deprivation of liberty for a term of between 3 months and 5 years.

§3. Whoever subjects such a minor to sexual intercourse or makes him/her submit to another sexual act or to perform such an act by abusing his/her trust or by offering property or personal gain or a promise thereof shall be subject to the penalty specified in § 2.”

29. Statistical data concerning validly sentenced adults confirm that regulations that penalise rape are in force and are enforced.

Types of offences	2005	2006	2007	2008
	2315	2032	1,851	2,259
<i>Article 197, paragraph 1 of the Penal Code</i>	731	558	500	573
Article 197, paragraph 1 of the Penal Code (aggrieved)	6			
<i>Article 197, paragraph 2 of the Penal Code</i>	141	144	150	154
Article 197, paragraph 2 of the Penal Code (aggrieved)	-	-	-	-
Article 197, paragraph 3 of the Penal Code	182	152	147	143
Article 197, paragraph 3 of the Penal Code, in conjunction	47	2	-	1
Article 197, paragraph 3 of the Penal Code, in conjunction	18	-	-	-
Article 197, paragraph 4 of the Penal Code	-	-	-	8
Article 198 of the Penal Code	57	63	61	72
<i>Article 199 of the Penal Code (aggrieved minor)</i>	2		2	
<i>Article 199 of the Penal Code</i>	15	7	3	1
<i>Article 199, paragraph 1 of the Penal Code</i>	1	12	3	7
Article 199, paragraph 2 of the Penal Code	-	-	-	6
Article 199, paragraph 3 of the Penal Code	-	-	-	3

## VI. Sexual and reproductive health

30. The Government of Poland provided extensive information on the services in the area of sexual and reproductive health, access to contraceptives, and family planning services in the Fifth periodic report and during the meeting held on 6 November 2009. The claims concerning the issues featured in concluding observations are not justified taking into account explanations provided.

31. The observation featured in paragraph 7 of the Committee's concluding observations that Poland does not guarantee basic services in the area of sexual and reproductive health and that it does not ensure the provision of contraceptives and family planning services within the public health system is not true. The National Health Fund (NFZ) covers the cost of care for pregnant women within the framework of hospital treatment, outpatient specialist care and under preventive health programmes. Programmes of State health policy in respect of family planning and planned motherhood are implemented. Much attention is devoted to the prevention of HIV/AIDS infections and care of pregnant women and children who are HIV infected and have developed AIDS.

32. Women at risk of a disease or a defect higher than the general population undergo prenatal diagnostic tests, in accordance with recommendations of clinical genetics. The scope of prenatal diagnostic tests has been set forth in the Regulation of the Minister of Health of 21 December 2004 on the scope of health-care benefits, including screening tests and periods in which the tests

are carried on. Since 2005, the National Health Fund has financed a programme of prenatal diagnostic tests for women who meet at least one of the following criteria: age of the mother over 35, chromosome aberrations of foetus or child during the previous pregnancy, discovery of structural chromosome aberrations in the pregnant woman or the father of the child, highly increased risk of giving birth to a child who suffers from a monogenic or multifactorial disease, irregular result of an ultrasound scan and/or biochemical tests proving increased risk of a chromosome aberration or a foetus defect during pregnancy.

33. In accordance with Article 2 of the Act of 7 January 1993 on family planning, protection of the human embryo and conditions for termination of pregnancy, the central and local administration bodies are under the obligation to ensure citizens' free access to planned procreation methods and means within the scope of their competence set forth in specific provisions. In accordance with recommendations on contraception of the Polish Gynaecological Society (PTG), the following contraceptive methods are available in Poland: methods of periodical sexual abstinence (natural methods), spermicides, sheaths, intrauterine devices, including devices that release progesterone, progesterone-only or combined hormone preparations in the form of oral contraceptive pills, patches, or injections.

34. With regard to paragraph 28 of the Concluding observations that states that women frequently ("alarming number") resort to illegal and clandestine abortions due to the refusal of physicians to perform legal operations on the basis of conscientious objection, it should be explained that such a situation is practically impossible. Pursuant to Article 39, in relation to Article 30 of the Physician and Dentist Profession Act of 1996, the physician has the right to invoke conscientious objection, except for a situation of an immediate danger to life or health of a patient. When invoking conscientious objection, the physician is obliged to indicate realistic possibilities of having such a procedure performed by another physician or in another health care institution, and to justify and record this fact in medical records.

35. One cannot agree with the paragraph 31 of the Concluding observations suggesting that there is no sexual and reproductive health education programmes directed at the secondary school children. Pursuant to Article 4(1) of the Act on family planning, protection of human fetus and admissibility of pregnancy termination, the minister competent for education ensures appropriate framework for teaching schoolchildren about human sexual life, the principles of conscious and responsible parenthood, the value of family, prenatal life and the methods and means of family planning.

36. It is obligatory for all types of schools to ensure family life education courses. The school courses are detailed in the Ordinance of the Minister of Education of 12 August 1999 on school teaching methods and the scope of content related to the knowledge about human sexual life, the principles of conscious and responsible parenthood, the value of family life, prenatal life and the methods and means of family planning included in the core curriculum for general education.

37. The curricula of "family life education" is specified in the Ordinance of the Minister of National Education and Sport of 26 February 2002 on core curricula for pre-school and general education in particular types of schools. The curricula complies with guidelines and obligations

resulting from the Convention on the Rights of the Child, the National Programme on Mental Health Protection, the National Programme to Prevent and Solve Alcohol Problems, the National Programme for Prevention of HIV Infection and Treatment of People Living with HIV or AIDS. In 2008 a new core curriculum for pre-school and general education was developed and scheduled for implementation in the first grade of primary school and in the first grade of lower secondary school (gimnazjum) since the school year 2009/2010, and since the school year 2012/2013 in the fourth grade of primary school and in upper secondary schools (the Ordinance of the Minister of National Education of 23 December 2008 on core curricula for pre-school and general education in particular types of schools).

38. The knowledge about sexual life, the principles of conscious and responsible parenthood, the value of family life, prenatal life and the methods and means of family planning acquired by students allow them to acknowledge and understand the complexity of these issues from the scientific, social, cultural and ethical perspective. Education in this regard is also included in the following subjects: Science, Biology, Physical Education and Ethics. Particular emphasis is placed on pro-health education.

39. With reference to the statement included in paragraph 29 of the Concluding observations that the decrease in public spending on health is of continuous nature and it negatively affects the enjoyment of the right to health, it should be noted that this statement stands in contradiction to the available statistical data. In the period 1998-2009, public spending on health increased more than two and a half times.

	Total health	%	Outlay per capita	%
1998	23,203.8	100	600.09	100
1999	26,183.2	112.84	677.38	112.88
2000	28,567.97	123.12	739.26	123.19
2001	32,075.97	138.23	830.27	138.36
2002	33,298.02	143.5	870.99	145.14
2003	33,224.2	143.18	869.93	144.97
2004	36,158.8	155.83	947.55	157.9
2005	39,286.38	169.31	1,030.51	171.72
2006	42,974.21	185.2	1,128.38	188.03
2007	49,954.8	215.29	1,310.61	218.4
2008	59,439.8	256.16	1,559.8	259.93
2009	63,233.3	272.51	1,659.64	276.56

40. The statement about gradual privatization of health care system risks making it less accessible and affordable is unjustified as a vast majority of non-public health institutions provides services free of charge under the contracts concluded with the National Health Fund. The increase in competitiveness on the health services market forces the managers of public health care institutions to improve the quality of management, which consequently leads to improvement of their functioning, financial situation, quality and accessibility of medical services.

41. As regards paragraph 30 of Concluding observations, it needs to be stated that the statement that persons living with HIV/AIDS have limited access to antiretroviral treatment and medical care is not true. The programme on ARV treatment covers all persons living with HIV/AIDS who meet medical criteria. More than 4.300 patients, including 135 children, are subject to antiretroviral treatment. According to the study carried out by the World Health Organisation in 2006, it is one of the highest indicators in Europe. Poland was one of the first countries to introduce antiretroviral treatment for HIV/AIDS patients, immediately after it was proved effective (1996). Free ARV treatment has been continually offered since 2001 within the programme on health policy of the Ministry of Health - "Antiretroviral treatment for persons living with HIV in Poland". The implementation of the programme for 2007-2009 came to an end, and a programme for 2010-2011 has been prepared. The programme is consistent with the international recommendations and commitments (undertaken at the global and regional level, including the Millennium Declaration, the Declaration of Commitment, protocols of the World Health Organisation, recommendations of the Council of Europe, the regulations of the European Union, and the Three Ones principle).

42. An indisputable achievement of the Polish health care system for HIV/AIDS patients is ensuring free antiretroviral treatment to persons held in penitentiary institutions. In a number of European countries, whose economic indicators are higher than those in Poland, the problem of ARV treatment for persons held in penitentiary institutions has not been solved. Therefore, it should be even more stressed that the statement about highly limited access to antiretroviral treatment by prisoners is at least unfair.

43. The programme of antiretroviral treatment covers HIV-positive pregnant women and infants born by HIV-positive women. Thanks to the application of antiretroviral prevention, the percentage of HIV infection among infants decreased from 23% before 1989 to 1% at present. Apart from ARV treatment for HIV/AIDS infected persons, the programme covers post-exposure measures after being exposed to HIV infection risk while performing work and after accidental outside-work exposures. Owing to the use of ARV drugs for preventive purposes, no cases of HIV infection after work-related or outside-work exposure have been recorded to date.

44. With reference to the statements included in paragraph 24 of Concluding observations on the increasing incidence of mental health problems and a limited availability and accessibility of mental health services, it should to be noted that the data available indicate that the increase in the number of new female patients from rural areas results mainly from the increased awareness of the sick persons and higher accessibility of services. A particularly large increase in the number of patients, women from rural areas in particular, has been observed after a new system of health care financing was introduced in 1999. These changes allowed reducing inequalities in access to medical services between urban and rural women. Since 2003 the number of women covered by in-patient psychiatric treatment has remained relatively stable (around 75.000), the number of women patients from rural areas has ranged between 22.000 and 23.000, and the incidence recorded among women living in rural areas has remained at the same level (slightly above 8.000). The incidence recorded among rural women is lower by 25% in comparison with urban women.

45. Since 1990s, accessibility of outpatient services has increased significantly. The number of mental health outpatient clinics increased from 683 in 1995 to 1,218 in 2007. Restructuration of mental health care system is in progress – the number of beds in psychiatric hospitals is decreasing, whereas the number of beds in psychiatric wards of general care hospitals is increasing, which brings mental health care services closer to patients and reduces stigmatisation. In years 1995-2007, the number of in-patient units increased from 159 to 279.