



ORDO IURIS

INSTITUTE FOR LEGAL CULTURE

Warsaw, 29 March 2018

Honourable Special Rapporteur
on the rights of persons with disabilities

Dear Madam Catalina Devandas-Aguilar

Special Rapporteur on the rights of persons with disabilities,

The *Ordo Iuris* Institute for Legal Culture welcomes the opportunity to assist the Special Rapporteur on the rights of persons with disabilities in its gathering of information about the right of persons with disabilities to the highest attainable standard of health (Question 3).

The *Ordo Iuris* Institute for Legal Culture is an independent legal organization incorporated as a foundation in Poland. It gathers academics and legal practitioners aimed at the promotion of a legal culture based on the respect for human dignity and rights. The *Ordo Iuris* pursues its objectives by means of research and other academic activity as well as advocacy and litigation.

The Ordo Iuris has ECOSOC consultative status. Moreover, it is among organisations consulted by the Polish Government within the legislative process. Polish courts, including Supreme Court of the Republic of Poland, have accepted our 'third parties interventions'. The *Ordo Iuris* has also intervened before the European Committee of Social Rights and the European Court of Human Rights. We hope that the Special Rapporteur on the rights of persons with disabilities will find our submission supportive.

Jerzy Kwaśniewski
President of the Board
Ordo Iuris Institute for Legal Culture

3. Please provide information on discrimination against persons with disabilities in the provision of healthcare, health insurance and/or life insurance by public or private service providers.

Discrimination of persons with disabilities is currently taking place in the light of legally valid Article 4a section 1 item 2 of the Act of 7 January 1993 r. on family planning, protection of human foetuses, and the conditions under which pregnancy termination is permissible¹. In accordance with the wording of section 1 item 2 of the above mentioned Act, authorized person may in the light of the Act, perform an abortion if “prenatal tests or other medical premises indicate a high probability of severe and irreversible impairment of the foetus or an incurable disease threatening his life”. According to the “Report of the Council of Ministers on the implementation and the consequences of the application in 2016 of the Act of 7 January 1993 on family planning, protection of human foetuses, and the conditions under which pregnancy termination is permissible” in 2016 alone, 1098 unborn children were killed legally, 1042 of which because of suspected disabilities, mostly related to suspicion of trisomy 21 (so called “Down syndrome”)². Statistical data for the period 2002-2016 presented in the aforementioned Report, due to the existence of statutory premises contained in Article 4a section 1 item 2 of the Act, unambiguously show a rising trend in abortions due to suspected disability of the unborn child.³ This lethal discrimination is based not only on evident grounds of impairment, disability or a disposition to them but also on presumption of a given health status, genetic or other predisposition towards illness. Such presumptions, as was rightly stated in paragraph 22 of the draft of the General Comment No. 6 on Article 5 of the Convention on the Rights of Persons with Disabilities, constitute also grounds of discrimination.⁴ The rights granted in Article 4 section 1 item 2 of the Act make use of such a discriminating presumption of “high probability” of impairment or illness. However, a “high probability” both of a severe and irreversible impairment of the foetus as well as of an incurable disease threatening the child’s life is hard, or even impossible to state from the perspective of development of medical knowledge and technical capabilities. Above all, development of medicine points to the fact that as the child develops in the mother’s womb, his or her health condition improves in many cases, resulting in the illness not being a threat to the child’s life anymore. Moreover, technical capabilities of contemporary medicine make it impossible to unambiguously state that a child is unable to survive outside of the mother’s body.

¹ Act of 7 January 1993 on family planning, protection of human fetuses, and the conditions under which pregnancy termination is permissible. (Journal of Laws No. 17, item 78 as amended); hereinafter as the “Act”.

² Report of the Council of Ministers on the implementation and the consequences of the application in 2016 of the act of 7 January 1993 on family planning, protection of human fetuses, and the conditions under which pregnancy termination is permissible – adopted by the Council of Ministers by circulation on 15 January 2018, transferred to the Sejm on 23 January 2018. <https://bip.kprm.gov.pl/kpr/bip-rady-ministrow/informacje-i-sprawozda/4632,informacje.html> [accessed: 29.03.2018r.].

³ Ibid., Table no. 16 Pregnancy terminations in the years 2002-2016 (country-wide) –per reasons, p. 108.

⁴ See par. 21 and 22 of the draft of the General Comment No. 6 on art. 5 of the CRPD (first draft as of 31 August 2017).

Human life cannot be deprived of protection simply because it is burdened with severe and irreversible impairment or an incurable and terminal illness. This was also confirmed by the Constitutional Tribunal in the verdict of 30 September 2008 in the case under file ref. no. K 44/07, stating that “human life is not subject to valuation because of age, health condition, expected duration, or any other criteria”⁵. Premises based on Article 4a section 1 item 2 of the Act are not rooted in values, rights and freedoms expressed in the Constitution of the Republic of Poland. It is impossible to find in the Constitution of the Republic of Poland any norm that would justify treatment of people who are severely and irreversibly or incurably ill as unworthy of full protection of life and health. Quite on the contrary, Article 32 section 2 of the Constitution of the Republic of Poland confirms that discrimination “for any reason whatsoever” is prohibited, and moreover Article 68 section 3 of the Constitution of the Republic of Poland obliges public authorities to ensure special health care to children, also with disabilities and impairments. The fact that a premise taking away absolute safeguards of the right to life due to inborn defects leads to stigmatization of all persons with disabilities. The above view on discrimination and stigmatization of unborn children due to their disability or suspected disability is close to the position of the Committee on the Rights of Persons with Disabilities presented within the framework of the discussions on adoption of General Comment No. 36 on Article 6 of the International Covenant on Civil and Political Rights⁶.

Widespread support for citizens’ initiatives aimed at protection of human life, as well as growing awareness of the bloody and brutal truth about abortion techniques, shamefully hidden until now, lead to the conclusion that the society has matured and is ready to restore full statutory protection of life and health to people discriminated against because of their health condition. Opinion polls show that the opposition of Poles to abortion grew significantly since the first citizens’ initiative foreseeing a ban on abortion was submitted in 2011. At the same time, there has been a drop in the number of people who opposed banning abortion, while at the same time ensuring their support for full protection of life. The number of opponents of eugenic abortion grew by almost a half, from 21% to 30%.⁷ Furthermore, recently submitted citizens’ initiative “Stop Abortion” was supported by almost 830 thousand citizens, four times more than the “Save the Women” initiative⁸.

⁵ Verdict of the Constitutional Tribunal of 30 September 2008, file ref. no. K 44/07, item 7.5.

⁶ See Committee on the Rights of Persons with Disabilities *Comments on the draft General Comment No 36 of the Human Rights Committee on article 6 of the International Covenant on Civil and Political Rights*, par. 1, available at <http://www.ohchr.org/EN/HRBodies/CCPR/Pages/GC36-Article6Righttolife.aspx> [accessed: 29.03.2018].

⁷ Communiqué from CBOS poll no. 51/2016, Opinions on admissibility of abortion, Warsaw 2016, p. 5). Cf. Also IBRiS poll of 6 October 2016.

⁸ See <http://zatrzymajaborcje.pl/> [accessed: 29.03.2018].