POLAND
FOLLOW-UP TO THE CONCLUDING OBSERVATIONS

Extract from the Report of the Special Rapporteur on Follow-up to Concluding Observations as the 106th Session (October 2012) - CCPR/C/106/2:

Poland
COB: CCPR/C/POL/CO/6

Follow-up paragraphs:
10, 12, 18

First reply:

Date information due: 26 October 2010. Date information received: 3 April 2012

Paragraph 10:

The State party should amend the Act on Domestic Violence to empower police officers to issue immediate restraining orders at the scene. It should incorporate domestic violence issues into the standard training offered to law enforcement and judicial officials. It should ensure that victims of domestic violence have access to assistance, including legal and psychological counselling, medical help and shelter.

Summary of State party’s reply:

(a) Measures taken:

• Adoption of the Act of June 2010 amending the law on preventing domestic violence. The amendments introduced were presented to the Committee during consideration of the sixth periodic report. Since then, the regulations implementing the provisions of the 2010 Act have been adopted.

• Actions to disseminate the 2010 Act and its regulations among the implementing institutions and the general public (a telephone helpline, a guidebook, application forms, a charter of domestic violence victims’ rights, creation of a database of institutions combating domestic violence and promotion of cooperation among such institutions, adaptation of the databases of judiciary institutions to the new legislative provisions).

(b) Out of the total of complaints, 35.6 per cent involving cases where evidence is insufficient are shelved. The General Prosecution Authority will shortly be surveying a representative sample of dismissed cases from various regions to analyse the reasons for dismissal.

(c) Most proceedings last no more than three months, a period that can be extended in the case of child victims to ensure that confidentiality can be maintained and psychosocial support provided
during hearings and court appearances. The Committee’s recommendation to empower police officers to issue immediate restraining orders is not justified; the relevant legislation allows the police to arrest the offender immediately if the victim is in danger. Coercive measures can be used only to prevent the commission of another crime. Under the Act of 2010, the police can issue a restraining order against a perpetrator of domestic violence if the person is likely to commit other violent acts, especially if he or she has threatened to do so. Such an injunction can be issued for up to three months and extended for another three. While these measures have been applied frequently, it is too early to assess their effectiveness. Domestic violence issues are systematically included in training provided to police officers and judiciary workers, particularly since the adoption of the 2010 Act. Victims of domestic violence have access to specialized assistance centres providing medical, social, psychological and legal assistance. Reception facilities are managed by the committees, the State or the municipalities. Their numbers vary depending according to local requirements.

NGO information:

15 February 2012: Helsinki Foundation for Human Rights/CCPR Centre: The procedure is governed by the Criminal Procedure Code of 1997. Restraining orders can be issued only by prosecutors or judges during pretrial proceedings. No change has been made to enable police officers to issue restraining orders. It is too early to evaluate the effects of the 2010 Act on domestic violence.

Evaluation:

[B1]: Progress has been made. Information should be requested on the following:

(a) Progress made in the survey of dismissed cases by the General Prosecution Authority;

(b) Statistical data on the capacity of assistance centres to meet the requirements of domestic violence victims;

(c) The provision of the Act of 2010 that enables the police to issue a restraining order if the individual in question is likely to commit other violent acts;

(d) The effective implementation of the 2010 Act making it possible to issue a restraining order against perpetrators of violence, and outcomes of criminal prosecutions of domestic violence cases, rulings handed down and preventive measures taken.
The State party should urgently review the effects on women of the restrictive provisions of the anti-abortion Act. It should conduct research into and provide statistics on the use of illegal abortion. It should introduce regulations to prohibit the improper use and performance of the “conscience clause” by the medical profession. The State party should also drastically reduce the response time allowed to medical commissions in abortion cases. Lastly, the State party should strengthen measures aimed at the prevention of unwanted pregnancies, such as making a full range of contraceptives widely available at an affordable price and including them on the list of subsidized medicines.

Summary of State party’s reply:

• The legislation governing abortion (1993 Act) has not been changed. Its impact and the criteria for authorizing abortions are reviewed regularly. The reports are made public and are available on the Internet.

• The “conscience clause” may be invoked by individual doctors but not collectively by a health-care facility. A doctor invoking the clause must refer the person requesting an abortion to a colleague, justify the decision, and record it in the patient’s medical file.

• Under the Act of 2008, the Medical Commission is obliged to issue a decision within 30 days, and within a period that will not cause detriment to the woman seeking an abortion.

• Contraceptives can be obtained easily at affordable prices. As a matter of principle, they are not refunded, except for contraceptive pills, which can also be used to treat menstrual pain. The Ombudsman for the Rights of the Patient has produced campaigns for patients to promote awareness of their rights.

NGO information:

No research on illegal abortions has been carried out and no statistics are available. No steps have been taken to prohibit the improper use of the “conscience clause”. It is used not only by individual doctors but in some cases by entire health care facilities. The relevant law has not been amended. The deadlines remain unchanged and the burden of proof can be very heavy for patients. Contraceptives are not refunded and access to them remains limited.

Evaluation:

[C1]: There has been no reform in this area; the Committee reiterates its recommendation and requests additional information on the following points:

• Legal provisions prohibiting collective use of the “conscience clause”.
• Criteria used by the Medical Commission to ensure that response deadlines do not cause detriment to the women concerned; remedies available to women who suffer such detriment; and the consequences in the event of the non-observation of the 30-day deadline by the Medical Commission.

• Steps taken to give adolescent girls and indigent women access to contraceptives.

Paragraph 18:

The State party should take measures to ensure that the detention of foreigners in transit zones is not excessively protracted and that, if the detention needs to be extended, the decision is taken by a court. The State party should ensure that the regime, services and material conditions in all deportation detention centres are in conformity with minimum international standards. Lastly, the State party should ensure that detained foreigners have easy access to information on their rights, in a language they can understand, even if this requires the provision of a qualified interpreter.

Summary of State party’s reply:

• The detention of foreigners is regulated by the Aliens Act of 2003. Detention is possible (a) when there are reasons for issuing a deportation order; (b) when the foreigners do not comply with a deportation order (the only situation where detention can be extended after the deportation deadline).

• The grounds for deportation (and thus indirectly detention) can arise only from illegal entry to or residence in Polish territory, non-compliance with a deportation order (2003 Act, art. 88), or criminal proceedings (in which case the detained persons enjoy guarantees applicable under the Criminal Procedure Code).

• Only the police and border guards are authorized to detain foreigners. Detention may not exceed 48 hours starting from the moment of deprivation of liberty. Detained persons are informed of their rights and obligations. If necessary, they may be provided with an interpreter. If the detention is considered illegal, the court will order the foreigners’ immediate release.

• Detained foreigners will also be released immediately if: (a) they have not been brought before a court within 48 hours of being detained; (b) within 24 hours of being brought before a court, they have not been placed under guard or arrested pending expulsion; (c) the reasons for their detention have ceased to apply.

• The decision to place persons under guard or under arrest must be taken by a court and is subject to judicial review. A bill on foreigners is currently under discussion, which would authorize the enforcement judge to monitor conditions of detention. In the case of unjustifiable placement under guard, an individual can claim reparation or compensation. Under current legislation, prolonged detention is not possible in transit zones after the deportation deadline and without a court order. Detention applies only to foreigners who are already on Polish territory.
• Airport transit zones can be used only by foreigners not authorized to enter Polish territory. Their stay in such zones cannot exceed the time of waiting for the next return flight of the airline that brought them to Poland. Their movements may be restricted only if there is a risk that they may cross the border.

• The information concerning the alleged poor quality of medical care in centres for asylum seekers is unfounded. The head of the Office of Foreigners is obliged to provide adequate medical care as required to asylum seekers, who have the same rights as Polish citizens covered by the general social security scheme (except with regard to sanatorium and rehabilitation care). The limitations encountered by asylum seekers are due to the general state of the health-care system.

• Living conditions in centres for asylum seekers are strictly prescribed by law. They are monitored and assessed regularly by the government authorities and by independent institutions, including NGOs. Audits have confirmed that they meet international standards.

• Relevant information is provided to foreigners at various stages of the procedure in a language they can understand. Difficulties may arise in isolated cases, if foreigners come from countries with which Poland has limited contacts and speak only their mother tongue. In such cases information awaits the arrival of a qualified interpreter, at the earliest possible moment.

NGO information:

• Generally speaking, legal and health-care services in detention facilities are inadequate. Detainees have a limited choice of activities and often suffer from health problems.

• Children have no access to formal education. Courses are taught by non-professional teachers but do not follow standard curricula.

• Detention of migrants in an irregular situation is used routinely, not as a measure of last resort. Justifications issued by the courts are not always sufficient or clear.

• Interpretation services are not available. Legal documents relating to asylum-seeking procedures are only partially translated. Deportation-related orders are not translated.

Evaluation:

[C1]: No new measures have been taken to implement the recommendation: The prevailing legislation dates from 2003 and the described services have not changed since the adoption of the concluding observations. Additional information is needed on the following points:

• Progress on the discussion and adoption of the “new foreigners’ Act” (mentioned on p. 13 of the State party’s follow-up report) and the main reforms introduced.

• The capacity of legal and health-care services to respond to demand.

• The proportion of foreigners in an irregular situation who have been detained during the past five years.
• The capacity of interpretation services to meet the needs of detained or interned foreigners (including the number of foreigners who request interpretation services, by language; number of interpreters available, by language; languages requested for which interpretation services have not been available).

**Recommended action:** Letter reflecting the Committee’s analysis.

**Next periodic report:** 26 October 2015

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Extract from the Annex to the Report of the Special Rapporteur on Follow-up to Concluding Observations as the 106th Session (October 2012):

<table>
<thead>
<tr>
<th>Poland (sixth report) CCPR/C/POL/CO/6 §§ 10, 12, 18</th>
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<tbody>
<tr>
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<td>§18 Not implemented</td>
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<td><strong>Recommended Action:</strong> LETTER REFLECTING ANALYSIS OF THE COMMITTEE</td>
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