



Permanent Mission  
of the Republic of Poland  
to the United Nations Office  
at Geneva

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The Permanent Mission of the Republic of Poland to the United Nations Office at Geneva presents its compliments to the Office of the UN High Commissioner for Human Rights.

With reference to a joint communication of the Special Rapporteur on the human rights defenders; the Working Group on discrimination against women and girls; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on violence against women, its causes and consequences (Ref: AL POL 4/2022) the Permanent Mission of the Republic of Poland has the honour to transmit to the Office of the High Commissioner for Human Rights its reply.

The Permanent Mission of the Republic of Poland to the United Nations Office at Geneva avails itself of this opportunity to renew to the Office of the UN High Commissioner for Human Rights the assurances of its highest consideration.



Geneva, 31 May 2022

**Working Group on discrimination against women and girls;  
Special Rapporteur on the right of everyone to the enjoyment of the  
highest attainable standard of physical and mental health;  
Special Rapporteur on the situation of human rights defenders  
Special Rapporteur on violence against women, its causes and  
consequences;  
Office of the UN High Commissioner for Human Rights**

**Geneva**

## Response by Poland

to the joint communication of the Working Group on Discrimination against Women and Girls, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on violence against women, its causes and consequences - on the court proceedings conducted against [REDACTED]

### 1. Ministry of Health of the Republic of Poland information and explanation:

*The submitted communication concerns the court proceedings conducted against [REDACTED] - a human rights defender facing criminal charges for helping a victim of sexual violence to obtain medicines/medical means to terminate a pregnancy.*

*The Ministry of Health would like to provide general information on the current legislation governing the issues raised in the communication.*

*As regards the allegation set forth in the communication concerning the act specified in Article 124 of the Act of 6 September 2001. - Pharmaceutical Law it should be pointed out that in the light of this Act it is prohibited to introduce to the market or store for the purpose of introducing to the market a medicinal product without having authorization to do so, which is subject to a fine, restriction of freedom and imprisonment for up to 2 years.<sup>1</sup>*

*Polish Pharmaceutical Law does not define the very notion of marketing of medicinal products, it only determines what does not constitute marketing and distinguishes various categories of such marketing, e.g. retail or wholesale marketing.*

*The term "marketing" should be understood as any conduct as a result of which the medicinal product was transferred for use or distribution in accordance with its intended use.<sup>2</sup> It should be added that it refers to both paid and unpaid transfer. It appears that a general interpretation of the concept of 'bringing into circulation' of a product may also be helpful in interpreting the concept of 'bringing into circulation' of goods, according to which it occurs at the moment when the holder loses control over those items, which means that the holder has divested or physically disposed of those items, thereby allowing them to continue to circulate freely.<sup>3</sup>*

*The phrase "placing on the market" conveys the idea of a deliberate and voluntary act and of the disposal and loss of control of a product. What is most important here is the transfer to another party (person) of control over the product, enabling that other person to actually exercise overall control over the product, whereas the legal basis for the current holder to dispose of the product is of no significance.<sup>4</sup>*

*It should also be emphasized that the term "introduces" (to the market) refers to the act initiating the turnover, i.e. the first act, and thus it should be distinguished from subsequent acts, when the product is already on the market.<sup>5</sup>*

*The perpetrator of the prohibited act defined in the aforesaid provision may be only the person, who initially introduced the goods to the market, as subsequent transactions do not fall within this notion.*

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<sup>1</sup> Article 124 of the Act of 6 September 2001 - Pharmaceutical Law, Journal of Laws 2021, item 1977

<sup>2</sup> M. Bojarski, W. Radecki, *Pozakodeksowe prawo karne*, vol. 1, pp. 346-347; W. Kotowski, B. Kurzępa, *Przestępstwa pozakodeksowe*, p. 417

<sup>3</sup> Resolution of the Supreme Court of 24 May 2005, I KZP 13/05, OSNK 2005, No 6, item 50

<sup>4</sup> M. Ożóg, *System handlu*, p. 155-156

<sup>5</sup> Judgment of the Supreme Court of 11 February 2014, ref. no. V KK 272/13

Therefore, the mere trading in such goods is not punishable, and consequently subsequent sellers of such goods are not subject to criminal liability under such a provision.

The communication also refers to the judgment of the Constitutional Tribunal<sup>6</sup> indicating that it has a "significant chilling effect, as medical professionals fear repercussions even in situations where abortion remains legal, increasing health risks for women seeking abortion". It should be clearly noted that in the above-mentioned judgment the Tribunal stated the inconsistency with the Constitution of the Republic of Poland of Article 4a (1) (2) of the Act of 7 January 1993 on family planning, protection of the human fetus and conditions for permissibility of termination of pregnancy, which indicated that termination of pregnancy is permissible if prenatal tests or other medical prerequisites indicate a high probability of severe and irreversible disability of the fetus or an incurable disease threatening its life. The prerequisites allowing termination of pregnancy specified in article 4a, sec. 1, point 1 of the Act (i.e. when the pregnancy endangers the life or health of the pregnant woman) and in article 4a, sec. 1, point 3 of the Act (i.e. when there is a justified suspicion that the pregnancy resulted from a forbidden act) remain in force unchanged.<sup>7</sup> Their application should therefore take place in a manner analogous to the current one. The decision as to whether there are circumstances in which pregnancy endangers the life or health of the pregnant woman is and can only be taken by the doctor in relation to the specific case.

It should also be remembered that, in accordance with the provisions of the Act of 5 December 1996 on the professions of doctor and dentist,<sup>8</sup> the basic obligation of a doctor is to perform his/her profession in accordance with the indications of the current medical knowledge, available methods and means of preventing, diagnosing and treating diseases, in accordance with the principles of professional ethics and with due diligence. On the other hand, the circumstance referred to in Article 4a, par. 1, point 3 of the Act is stated by the public prosecutor - which is necessary to carry out the procedure on the basis of the cited provision.

Possible information on the practice of the public prosecutor issuing certificates relevant in this respect should be provided by the Ministry of Justice.

Additionally, on 7 November 2021, a communication was published on the website of the Ministry of Health, drawing attention to the current legal regulations in the case of a situation threatening the life or health of the pregnant woman (e.g. suspected infection affecting the uterine cavity, hemorrhage, etc.)<sup>9</sup> It indicates that it is lawful to terminate the pregnancy immediately on the basis of the applicable provisions of the Act on Family Planning, Protection of the Human Fetus and Conditions for the Permissibility of Termination of Pregnancy. This law explicitly indicates the premise of a threat to the life or health of the mother. It was stressed that these are disjunctive premises, the occurrence of only one of them is a sufficient legal prerequisite for the doctor to react. It is obvious that the patient at each stage of pregnancy management must be informed about the current health and life risks. The communication of the Ministry of Health also strongly emphasizes that doctors must not be afraid to make obvious decisions based on their experience and available medical knowledge.

The joint communication also states that "legal restrictions and other barriers, including the stigmatization of abortion, mean that it is difficult or impossible for women to access medicines and quality abortion care, leaving them at risk of self-induced abortions using unsafe methods or seeking abortions from unqualified persons".

The barriers mentioned are not further specified in the communication. Therefore, it should be indicated that in cases specified by the Act on Family Planning, Protection of the Human Fetus and Conditions for the Permissibility of Abortion - abortions are among the guaranteed benefits. The list of guaranteed

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<sup>6</sup> Judgment of the Constitutional Tribunal of 22 October 2020, ref. no. K 1/20

<sup>7</sup> Journal of Laws No. 78, as amended.

<sup>8</sup> Journal of Laws of 2021, item 790, as amended.

<sup>9</sup> <https://www.gov.pl/web/zdrowie/zycie-i-zdrowie-matki-najwazniejsze>

services related to termination of pregnancy is specified in Annex No. 1 to the Ministerial Order of 22 November 2013 on guaranteed services in the field of hospital treatment.<sup>10</sup>

In light of the applicable legislation, including above all the Regulation of the Minister of Health of 8 September 2015 on the general terms and conditions of contracts for the provision of healthcare services, all treatment entities (hospitals) that have concluded a contract with the NFZ are obliged to provide the services provided for therein - to the full extent and in accordance with the applicable law. Therefore, by signing a contract with the National Health Fund, the healthcare provider undertakes to provide all the services defined as guaranteed by relevant regulations, in the given scope and type of services for which the contract has been concluded. In case of an impossibility to provide the services, which could not have been foreseen before, the service provider is obliged to immediately take actions in order to maintain the continuity of services. The healthcare provider should also inform the voivodeship department of the Fund about the event and the actions taken. This may take place, for example, in a situation where a doctor refuses to provide a service by invoking the "conscience clause". If such a situation occurs in the entity bound by the contract (a doctor refuses to provide a service due to a conflict of conscience) and the entity does not indicate another treatment facility to the patient where she can receive the service, we have to do with improper performance of the contract with the Fund.

The communication also calls on the Polish authorities to 'ensure adequate access to the medicines necessary to perform abortions safely on their own in an accessible and non-discriminatory manner, including through the use of telemedicine in accordance with the latest WHO guidelines on abortion care'. It should be clearly emphasized that according to Article 4a(1) of the Act on Family Planning, Protection of the Human Fetus and Conditions for Termination of Pregnancy, termination of pregnancy can only be performed by a doctor. The Act does not provide for the possibility of "performing the abortion yourself".

The Polish government was also called upon to "comply with its international obligations and revise its legislation in order to decriminalize abortion and make it legal and accessible". In this regard, it should be noted that abortions are permitted in Poland in two- cases, i.e. when:

- 1) the pregnancy constitutes a threat to the life or health of the pregnant woman,
- 2) there is a justified suspicion that the pregnancy results from a prohibited act.

In the above circumstances, abortions are among the guaranteed benefits. Therefore, one cannot generalize by indicating that abortions are not legal in Poland.

Moreover, with reference to international obligations, it should be noted that in fact the call in this respect also refers to the possibility for the state to autonomously regulate the issue of admissibility of abortion. Although in Poland the change of regulations in this scope, which is the subject of particular complaints, did not take place as a result of a legislative initiative, but by declaring them unconstitutional by an authorized body, the issue of the state's autonomy in this area should be noted in passing. This issue clearly goes beyond the competence of the Ministry of Health and should be clarified by the Ministry of Foreign Affairs. As a signal, however, it should be mentioned that, in accordance with Article 168(7) of the Treaty on the Functioning of the European Union, Union action should respect the responsibilities of the Member States for the definition of their health policy and for the organization and delivery of health services and medical care. Competence for the organization of health systems falls exclusively within the competence of the Member States; consequently, the regulation of the permissibility of abortion also falls within the exclusive competence of the Member States. In 1994, the International Conference on Population and Development (ICPD), held in Cairo, presented a new vision of the relationship between population, development and the well-being of individuals. 179 countries then adopted a 20-year Programme of Action (extended in 2010), which continues to serve as a comprehensive guide to people-centered development progress. According to

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<sup>10</sup> Journal of Laws 2021, item 290, as amended.

*paragraph 8.25 of the ICPD Programme of Action, abortion should in no case be promoted as a method of family planning and, most significantly in the context at hand, any measures or changes related to abortion in the health system can only be determined at the national or local level in accordance with the national legislative process. The fundamental principle of the Programme of Action, reiterated in the Beijing Declaration, states that "implementation is the sovereign right of each State, in accordance with national laws and development priorities, with full respect for various religious and ethical values and cultural considerations and in conformity with universally accepted human rights".*

*For the rest, the issues raised in the communication fall outside the jurisdiction of the Ministry of Health.*

## **2. Ministry of Family and Social Policy** submits the following information:

*Poland is fulfilling its obligations resulting from the ratification of the International Convention on the Elimination of Discrimination against Women, including Article 7 which provides that States shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country, including the right to participate in non-governmental organizations and associations concerned with the public and political life of the country. The existence and functioning of non-governmental organizations in the Polish legal system is guaranteed by Article 12 of the Constitution, which provides for the freedom to establish and operate trade unions, socio-professional organizations of farmers, associations, civic movements, other voluntary associations and foundations.*

*Poland is taking steps to ensure that all women can achieve their goals and aspirations in public and political life. Currently, legislative work is advanced on the adoption of the National Action Programme for Equal Treatment for 2022-2030, which is one of the priority actions of the Government Plenipotentiary for Equal Treatment to integrate the principle of equal treatment into national policies. The Programme sets out the objectives and priorities of activities in the field of equal treatment and its main objective is to eliminate discrimination from social life in Poland to the highest possible degree.*

*In order to promote women's participation in public life, the National Action Programme for Equal Treatment includes measures for the social empowerment of women and girls. In the current context of increasing economic challenges, it is a priority to recognize the crucial contribution of women to communities, societies and economies. It is also necessary to pay due attention to creating social and economic conditions for women and men to enjoy equal rights.*

*The National Programme for Equal Treatment plans to promote women's participation in decision-making processes, to popularize among enterprises, institutions, universities and NGOs the benefits of women's participation in decision-making bodies, and to help build networks. It is also planned to promote content on the empowerment of women and girls in society.*

## **3. Ministry of Justice** information:

*In the opinion of the Ministry of Justice, the observations, conclusions, judgments, assertions, postulates and demands contained in the Communication in reference to the aforesaid thematic groupings are groundless, off the mark and without merit in the perspective of Poland's legal order. They appear to be the result of either lack of awareness or lack of understanding of the law in force.*

*First of all, it should be noted that in the biological and medical sciences the question of the beginning of human life is uncontroversial. Every human life starts when a sperm cell joins with an egg and they create a zygote as a new biological system. Fertilization results in a fully genetically formed new human being whose development occurs over the course of human life. Thus, an embryo, fetus, or newborn are terms describing particular stages of human life development. The Constitutional Tribunal, in its*

*judgment of 30 September 2008, indicated that “there is no doubt that human life should not be valued based on a person’s age, health condition, anticipated life expectancy or any other criteria” (K 44/07, OTK ZU 7A/2008, item 126, paragraphs III.7.4 and 7.5).*

*In the judgment of 7 January 2004 (K 14/03, OTK ZU 1A/2004, item 1, paragraph III.4.1), the Constitutional Tribunal stressed that the Constitution of the Republic of Poland “already in the first of its constitutional provisions on personal freedoms and rights puts the overriding weight on the human life in the hierarchy of values protected by law. It simultaneously prompts the adoption in the law-making process of an interpretative directive according to which any possible doubts about the protection of human life should be resolved in favour of this protection (in dubio pro vita humana) (...). The fact that the protection of life is afforded without exception to every human being also means that it would be unacceptable to differentiate the value of human life depending, for example, on the social position or age of a particular person. It is in fact the protection of life itself, regardless of the social value it represents.”*

*Also representatives of Polish science represent the view that human life begins at conception. And so, for example, dr hab. Andrzej Zoll in his Legal opinion on the assessment of the structure and legal effects of the draft amendment to Articles 30 and 38 of the Constitution of the Republic of Poland (Bureau of Research, Chancellery of the Sejm, Warsaw 2007, p. 103) emphasized that “[t]he life of a human being as a representative of the species, but above all as a separate being possessing determined individual characteristics, is a process, and this process undoubtedly begins at conception. As of this moment we can speak of a human being with their inherent and inalienable dignity and with all the resulting consequences, including for the duties of public authorities, inclusive of legislators. (...) The right to protection of life and the right to protection of health, but also, for example, freedom from being subject to scientific experimentation that does not serve a person’s health, cannot be excluded or restricted at any stage of a person’s life.”[11]*

*Prof. dr hab. Włodzimierz Wróbel in his Legal opinion on the parliamentary draft amendment (Article 38) of the Constitution of the Republic of Poland (Sejm paper no. 993) (Bureau of Research, Chancellery of the Sejm, Warsaw 2007, p. 21) emphasized that: “life during the prenatal period is also the life of a person who, as a human being, is entitled to constitutional subjective right to its protection.”*

*Prof. dr hab. Tadeusz Smoczyński in his Legal opinion on the parliamentary draft amendment (Article 38) of the Constitution of the Republic of Poland (Sejm paper no. 993) (Bureau of Research, Chancellery of the Sejm, Warsaw 2007, p. 16–17) noted that: “currently existing the 1997 Constitution of the Republic of Poland expressly provides for the protection of the life (Article 38). Since life begins at conception, from the first day of pregnancy, constitutional protection concerns human life at every stage.”*

*International agreements in force in Poland directly require the protection of the child’s life at every stage, including the prenatal stage. In accordance with Article 6(1) of the International Covenant on Civil and Political Rights “[e]very human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.” Thus, the law protects human life regardless of its stage, rather than specific stages of human development. Any other interpretation would be incompatible with the prohibition of discrimination based on birth or status (Articles 24 and 26 of the Covenant).*

*The right to life of the unborn child is also emphasized in Article 6(5), which prohibits the sentence of death being carried out on pregnant women. The reason for such a provision is the desire of the Pact makers to prevent the sentence of death being carried out on pregnant mothers to save lives of innocent children, as well as consideration of interests of the unborn child.*

*Also, the 1989 Convention on the Rights of the Child explicitly recognizes the right to life of the unborn child. Its preamble unequivocally states 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.”*

Whereas, Article 1 of the Convention defines a child as “every human being below the age of eighteen years,” without stipulating that the status of a child is acquired at birth.

The criminalization of aiding in the termination of pregnancy is regulated by Article 152(2) of the Criminal Code (hereinafter ‘CC’), viz.:

Article 152. [Abortion with the woman’s consent]

§ 1. Whoever, with a woman’s consent, terminates her pregnancy in violation of the provisions of the statute, shall be liable to the penalty of up to 3 years’ imprisonment.

§ 2. Whoever aids a pregnant woman to terminate the pregnancy in violation of the provisions of the statute or solicits her to do so shall be liable to the same penalty.

§ 3. Whoever commits the act set forth in § 1 or § 2, once the conceived child has achieved the ability to survive on its own outside of the pregnant woman’s organism, shall be liable to the penalty of 6 months to 8 years’ imprisonment.

In addition to the penalties specified above (imprisonment for, respectively, up to 3 years or 6 months to 8 years), the court may impose punitive measures. The court has the power to impose punitive damages payable to an institution, association, foundation or non-government organization whose primary objective of incorporation is the provision of services directly linked to the protection of health (Article 47(1) CC); disqualification from practicing a profession (e.g. physician, nurse or midwife) if the offender abused the profession in the commission of the crime or if the offender’s continued exercise of the profession would jeopardize important interests protected by law (Article 41(1) CC); or forfeiture of public rights if the offender, in the commission of the offences defined in Articles 152(1–3) CC, acted out of a particularly reprehensible motivation (Article 40(2) CC).

Article 152(2) CC is a delictum commune — it can be committed by anyone, with the exception of the pregnant woman herself. It is a delictum formale, the actual termination of the pregnancy is not a required element of the offence. For soliciting, it is, however, a necessary element of the crime that the decision to terminate the pregnancy is formed in the woman’s mind; with aiding, the necessary element is the creation of circumstances facilitating the termination, such as the provision of a tool (any means of termination) or of a means of transport, or of information or advice.

In solicitation, the offender’s conduct must be orientated towards a specific pregnant woman or group of such women (but any such group needs to be individualized). From this, it follows that e.g. the publication of an online ad targeting an indefinite range of recipients (generally accessible) and encouraging e.g. the procurement of an abortion from a specific clinic, even a foreign one, will not complete the elements of the offence of soliciting termination. Nor does such conduct (even undertaken within the territory of Poland) constitute an Article 255(1) or 255(2) CC offence (public incitement of the commission of a criminal offence), given that a woman’s termination of her pregnancy (which the person publishing such an ad would be inciting) is not a criminal offence. As with soliciting, aiding in the termination of pregnancy must be orientated towards a specific pregnant woman. Reaffirming a pregnant woman in her previously formed intention to terminate will be so-called psychological aid (assistance).

The following are some examples of conduct recognized as completing the elements of aiding under Article 152(2): ‘sharing the telephone number of a physician who might agree to perform an abortion (as a way of tendering information or advice); sale of an early-abortifacient drug with the intention of aiding the abortion; offering money to cover the costs of the procedure and possible recovery and agreeing to find a person who will carry out the procedure; sharing the telephone number of an abortion centre outside of the country’s borders and ensuring the availability of personal transport to its location; organizing the trip and financing the procedure; lending money and providing a means of transport; giving a lift to the physician’s office, negotiating the price with the physician and paying it. In numerous cases the perpetrators committed the Article 152(2) offence in both of its forms (viz. aiding and soliciting).

*The language of Article 152(2) CC does not require the aid to be significant. Anything objectively facilitating a pregnant woman in the termination of the pregnancy will suffice to complete the elements of this offence.*

*Within the meaning of Article 152(2) CC pregnancy concerns a child incapable of independent existence outside of the mother's organism. 'Termination of graviditas obsoleta and the curettage involved therein does not complete the elements of the offence arising from Article 152(2).' Soliciting or aiding the termination of pregnancy when the conceived child has achieved the ability to independent existence outside of the pregnant woman's organism falls under the above-cited Article 152(3) CC (higher sentencing limits). This is a circumstance that can only be evaluated in concreto.*

*Another element of the offence under discussion is aiding or soliciting the termination of pregnancy in violation of the provisions of the statute. The blanket character of Article 152 CC means that its correct interpretation necessitates reference to a separate statute (not a Criminal Code). This reference is to the provisions of the Act of 7 January 1993 on Family Planning, Protection of the Human Foetus, and Conditions for the Permissibility of Termination of Pregnancy (hereinafter the 'Act'), which enumerates the circumstances in which abortion is legal. Soliciting or aiding the termination of a pregnancy in accordance with the provisions of the Act does not constitute a crime under Article 152(2). Within the meaning of the Act, termination of pregnancy is permissible if done by a physician in cases when:*

*- the pregnancy poses a danger to the pregnant woman's life or health. In this case there are no time limits on the permissibility of abortion. The danger to the pregnant woman's life or health must be certified by a physician other than the terminating physician unless the threat is imminent; the procedure must be performed in a hospital; or*

*- there is a justified suspicion that the pregnancy is the result of a prohibited act, provided that the suspicion must be certified by a public prosecutor. In this case, termination is allowed into the 12<sup>th</sup> week. There is no requirement for the procedure to be carried out in a hospital.*

*Danger to the pregnant woman's life or health is open ground. This means that not only the certainty but even the realistic probability of a threat to the pregnant woman's physical or mental health entitles her to terminate the pregnancy. This must be evaluated in concreto by a physician in keeping with the current state of medical knowledge and with ethical principles;*

*The principle of equality before the law, the right to equal treatment by public authorities and the prohibition of discrimination in political, social and economic life is guaranteed by Article 32 of the Constitution. The articles that follow provide for the equal treatment of women and men in family, political, social and economic life, as well as equal rights to education, employment and promotion, equal pay for work of equal value, social insurance, as well access to public positions, functions, honours and decorations.*

*As mandated by Article 45 of the Constitution, anyone has a right to a fair and public hearing of their case without unreasonable delay by an independent and impartial court of competent venue. The principle of judicial impartiality is also upheld by the Constitution in its Article 173, whereby the courts are a branch of government separate and independent from the other branches, whereas judges in the exercise of their office are independent and subordinate solely to the Constitution and statutes. A fair and public trial is guaranteed by the principle of at least two procedural instances (Article 176 of the Constitution) and the right to lodge a constitutional complaint with the Constitutional Court to trigger that Court's review of whether the provisions forming the basis of a court or other authority's binding ruling concerning freedoms, rights and obligations set out in the constitution is compatible with the Constitution and with other relevant normative acts. The publicity of a court case may be suspended or limited only by statutory authority, in situations defined in the Constitution (Article 45(2)) for reasons of morality, security of the state, the public order, or the protection of the parties' privacy or some other important public interest. Nonetheless, judgments must be pronounced in public;*

*Article 42 of the Constitution mentions the principles of nullum crimen sine lege, presumption of innocence and right to defence. In line with the Constitution and with the Criminal Code, only a person having committed an act prohibited under the pain of a criminal penalty by a statute binding at the time of the commission of the act shall be liable to criminal liability. The (principle of the) presumption of innocence, whereby the criminal defendant is regarded as innocent until proven guilty by the final and unappealable judgment of a court, is reflected in the Code of Criminal Procedure, which mandates that any abiding doubts must be interpreted in the defendant's favour. Anyone subject to criminal proceedings has a right to mount a defence at any stage of the proceedings. In particular, this includes the right to select defence counsel or, on terms set forth by statute, avail oneself of the assistance of court-appointed counsel if there is evidence that the defendant cannot afford the services of professional counsel. The court will appoint ex-officio defence counsel in the cases of defendants who are minors, deaf, mute or blind, or where there are reasonable grounds to believe that the defendant may be legally insane. Moreover, if the court finds that the circumstances jeopardize the effective conduct of the defence, representation is mandatory.*

*Bearing the above-outlined legal framework in mind, it must be concluded that the observations, conclusions, judgments, assertions, postulates and demands mentioned in the Communication referring to the aforementioned categories of issues are groundless, off the mark and lack merit. The above applies in particular to:*

- the thesis whereby the purpose of the aforementioned criminal proceedings is to intimidate those advocating for access to abortion in Poland;*
- addressing the Government with demands for causing the charges in the aforementioned case to be dropped;*
- the postulate of excluding criminal liability under Article 152(2) with regard to a specific group of subjects (so-called in the Communication defenders of human rights);*
- disputing the merit of the criminalization of aiding in or soliciting the termination of pregnancy: the disputed provision is a manifestation of the societal compromise achieved in 1997, which is when the Constitution and the Criminal Code now in force were adopted. Ever since its original enactment, this provision has not undergone any substantive change, even despite the multiple amendments to the same Code. We wish to note that under the 1932 Criminal Code, the sentencing limits for the same offence were almost double. Disputing the merit of the criminalization of Article 152(2) is thus subverting the abiding social compromise on abortion and should not be taking place;*
- claims of 'intimidating' consequences of the Constitutional Court's ruling of 20 October 2020, which did not introduce modifications to the aforesaid Article 152(2) CC. Moreover, certain statutory criteria to which Article 152(2) CC refers (e.g. danger to life or health, foetal viability) are of flexible nature, allowing the physician to evaluate the woman's health condition in keeping with medical knowledge and ethical principles in each specific case, whether at the stage of making the decision to terminate the pregnancy on medical grounds (in medical practice) or during criminal proceedings (as a court expert). Accordingly, it is impossible to concur with the authors of the Communication that the Constitutional Court's ruling of 2020 has had a significant intimidating effect or that physicians have any reason to worry about becoming targets of hypothetical repression even in those cases in which the termination of pregnancy continues to be permitted by law.*

*Postulates of excluding criminal liability under Article 152(2) CC with regard to an arbitrarily selected group of people, of withdrawing the charges, or some other intervention by the Government in pending court litigation are unacceptable also according to international law.*

*Furthermore, there is no such provision in international law as to justify demands of unconditional legalization of abortion. There is no human-rights standard in international law whatsoever in respect of so-called 'sexual and reproductive rights.' The notion of 'reproductive and sexual rights' is neither a binding international obligation nor an element of human rights. In the international arena, objections*

*are raised against any recognition of some of the so-called 'reproductive and sexual rights,' and abortion in particular, as a human right. For there are no such provisions in the international legal space as would either mandate or prohibit abortion. On the contrary, the sole legally binding international-law document regulating the field of human rights vis-à-vis biomedicine, i.e. the Council of Europe Convention for the protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine, is intended in such a way as to enable accession by countries allowing and countries prohibiting abortion. That is the result of the lack of consensus on the matter among Council of Europe member states (not only during the negotiations leading up to the Convention but also at present). Moreover, the Convention, in its Article 1, mandated the protection of human dignity and that, as understood by Poland, is incompatible with the recognition of abortion as a method of family planning. This position is accordingly consistent with the international law of human rights, even though Poland is not party to said Convention.*

*As regards the positions and opinions expressed by UN committees, those have no legal force, are not binding on the states, and constitute the expression of the private beliefs of their members.*