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# Replies of the Government of Poland to the list of issues (CCPR/C/POL//Q/6) to be taken up in connection with the consideration of the third periodic report of Poland (CCPR/C/POL/6)*

(Geneva, 14 July 2010)

* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not edited before being sent to the United Nations translation services.

**List of abbreviations:**

ECHR – European Court of Human Rights

NHP – National Headquarters of the Police

PC – Penal Code

CCP – Code of Criminal Procedure

EPC – Executive Penal Code

CCivP – Code of Civil Procedure

LC – Labour Code

MLSP – Ministry of Labour and Social Policy

MIA – Ministry of the Interior and Administration

BG – Border Guard

ICCPR – International Covenant of Civil and Political Rights

## 1. Reply to question 1

**Examples of judicial decisions making reference to the ICCPR:**

**a. Judgement of the Constitutional Tribunal of 26 May 2008 (File No. SK 25/07)**

The Constitutional Tribunal decided that Art. 248 § 1 of the EPC is in contravention of the provisions of the Constitution of the Republic of Poland, which prohibit non-humanitarian, cruel, inhumane or degrading treatment. In the *ratio decidendi* the Tribunal stressed that the questioned provision that allows the placement of a prisoner for a specified time in a residential cell where the area per one person is less than 3 m², contributes to overcrowding and thus leads to an infringement of Art. 10 section 1 of the ICCPR, which provides for humanitarian treatment of prisoners.

**b. Judgement of the Constitutional Tribunal of 5 May 2004 (File No. P 2/03)**

The Constitutional Tribunal decided that Art. 32 section 6 of the Press Law with respect to a situation when the text of a dementi cannot be commented on in the same issue or broadcast where the dementi was published, complies with the provisions of the Constitution of the Republic of Poland, which guarantee the freedom of expressing views and acquisition and dissemination of information and analogous rights set out in international documents, including the ICCPR. In the *ratio decidendi* the Tribunal expressed the view that the inadmissibility of commenting on a dementi in the same issue where the dementi was published, is but a temporary restriction, which does not infringe provisions of international law, including the freedom to seek, receive and impart information and ideas of all kinds set out under Art. 19 section 2 of the ICCPR, nor the readers' freedom to seek information.

**c. Ruling of the Chief Administrative Court of 23 May 2005 (File No. I OPS 3/05)**

In the case at hand, the Chief Administrative Court decided that the judge who took part in the issuance of a judgement of a provincial administrative court, which judgement was later subject to a cassation appeal, is not excluded from examination in the Chief Administrative Court whether the cassation appeal meets formal criteria, including also his not being excluded from participating in the issuance of a decision rejecting the cassation appeal. In the *ratio decidendi* the Chief Administrative Court, stressing that the institution of excluding a judge provides for the constitutional right of citizens to have their case examined by an independent and impartial court of law, referred also to Art. 14 of the ICCPR, which guarantees the right to fair judicial proceedings.

**d. Judgement of the Supreme Court of 24 January 2008 (File No. I CSK 341/07)**

The plaintiff demanded in her petition against the defendants, i.e. the publisher and Editor-in-Chief of *Gazeta Codzienna*, that she be granted legal protection because of the infringement of personality rights in the form of the right to an image and the right to privacy. In the cassation appeal filed by the defendants they alleged that the appealed judgement infringed the substantive law, including *inter alia* Art. 19 of the ICCPR through its erroneous interpretation. The Supreme

Court rejected the cassation appeal, referring in its *ratio decidendi* to Art. 19 section 3 of the ICCPR, according to which the right to a free expression of views (including the freedom to seek, receive and impart information and ideas of all kinds, also in writing or in print) may be subject to restrictions imposed by a relevant law, necessary *inter alia* from the point of view of respect for the rights and good name of other persons.

**e. Judgement of the Appellate Court in Warsaw of 5 April 2006 (File No. I ACa 332/04)**

In 2003 a plaintiff demanded in his petition filed with the Provincial Court in Warsaw that the defendants: the editor-in-chief of a Catholic and national daily newspaper and the publisher of the daily should publish in the daily a paid advertisement of the plaintiff's book. The defendants would not do it, arguing that their decision was justified by the fact that the content of the ad was at variance with the programme profile of their daily. The Provincial Court rejected the case and the plaintiff filed an appeal to a court of a higher instance. According to the Appellate Court, in this case there was no reason justifying the rejection of publishing the ad. In the *ratio decidendi* the Appellate Court observed that a paid advertisement is covered by the term "expression" and thus there had been an infringement of provisions of international law, including Art. 19 of the Covenant, according to which everyone has the right to hold opinions without interference.

## 2. Reply to question 2

**Anti-terrorism legislation**

Polish law has no definition of terrorism. However, in the period under consideration legal solutions were introduced to the Penal Code that aim to facilitate Poland's implementation of international obligations related to the prosecution of criminal activity that has the features of terrorist activity.

*The law of 16 April 2004 on the amendment of the Penal Code and selected other laws* (Journal of Laws No. 93, item 889) added § 20 to Art. 115 of the Penal Code, which contains the **definition of a terrorist crime**: "A terrorist crime is a prohibited act subject to the penalty of deprivation of liberty with the upper limit of at least five years, committed in order to: 1) seriously intimidate many persons; 2) to compel public authority of the Republic of Poland or of the other State or of international organization agency to undertake or abandon specific actions; 3) cause serious disturbance to the constitutional system or to the economy of the Republic of Poland, of the other State or international organization - and a threat to commit such an act."

The provision refers to prohibited acts whose features are defined in the existing provisions of the Penal Code – in its specific part.

The terrorist nature of a prohibited act is a circumstance that increases criminal liability, as reflected in Art. 65 and Art. 258 of the Penal Code.

Art. 65 § 1 of the Penal Code, regarding the application of penalisation principles with respect to perpetrators who turned the perpetration of an offence into a permanent source of income or committed an offence acting in an organised group or association aiming at perpetrating an offence as well as with respect to perpetrators of terrorist crimes, provides for a mandatory increase of the penalty for the perpetrators of the above crimes according to the same principles as those applied to repeated offenders.

In turn, Art. 258 of the Penal Code, which penalizes participation in an organised group or association aiming at perpetrating an offence or a fiscal offence, was amended by the aforementioned legislation. The qualification set out under § 2 of this provision was supplemented by the feature of an organised group or association acting with a view to perpetrating a terrorist crime. This act carries a higher penalty of deprivation of liberty for a period of from 6 months to 8 years. A new qualification is introduced under § 4; this is a crime of establishing or leading a group or association acting with a view to perpetrating a terrorist crime. In such a case, the court decides on a penalty of deprivation of liberty for a period of minimum 3 years. The penalty for acts set out under § $1^{1}$ and $3^{2}$ of Art. 258 of the Penal Code was also raised.

In addition, the above amendment changed the wording of Art. 110 § 1 of the Penal Code related to the application of Polish penal legislation to an alien who has committed abroad a prohibited act infringing the interests of the Republic of Poland, a Polish citizen, a Polish legal person or a Polish entity without legal personality. According to the new wording of the provision, domestic jurisdiction was extended to apply to an alien who has committed a terrorist crime abroad.

The Law of 25 June 2009 on the amendment of the Law on preventing the trade of assets from illegal or undocumented sources and on preventing the financing of terrorism and on the amendment of selected other laws (Journal of Laws No. 166, item 1317) introduced into the Polish Penal Code Art. 165 a, which penalises an act of **financing terrorist crimes**: "Whoever collects, transfers or offers legal tender, financial instruments, securities, foreign currency, property rights or other movables or fixed assets in order to **finance a terrorist crime**, shall be subject to the penalty of deprivation of liberty for a period of from 2 to 12 years."

**Impact of anti-terrorism legislation on the exercise of human rights**

Persons suspected of being implicated in terrorist activity enjoy the same rights and guarantees at each stage of proceedings as persons suspected of committing any other offence.

No Polish legal regulation related to terrorism and anti-terrorist activity has resulted in the derogation or invalidation of any rights safeguarded under the International Covenant of Civil and Political Rights.

**Anti-terrorist activities**

Within Polish anti-terrorist system, tasks of preventing and combating terrorist threats and neutralisation of effects of possible terrorist attacks are carried out by adequate services and agendas within particular ministries, as well as by agendas of government administration and special services. The fundamental element of these activities is the monitoring of terrorist threats, their analysis and evaluation, as well as the presentation of opinions and conclusions, initiation, coordination and monitoring of actions taken by competent agendas of government

[1]Art. 258. § 1. Who takes part in an organised group or association aiming at perpetrating an offence or a fiscal offence, shall be subject to the penalty of deprivation of liberty from 3 months to 5 years.

[2]Art. 258. § 3. Who establishes or leads a group or association defined under § 1 above, including an armed group or association, shall be subject to the penalty of deprivation of liberty from one year to 10 years.

administration, in particular with respect to the use of information as well as identifying, preventing and combating terrorism.

## 3. REPLY TO QUESTION 3

On 7 May 2010, the Council of Ministers approved the Report on the implementation of the National program for preventing racial discrimination, xenophobia and related intolerance for the period 2004-2009. Prior to its submission to the Council of Ministers, the Report, compiled on the basis of data submitted by the institutions involved in the Program, was discussed and assessed during meetings of the Task Group Monitoring the Program.

The Task Group Monitoring the *National program for preventing racial discrimination, xenophobia and related intolerance*, an advisory body to the Prime Minister, was set up in February 2009. The duties of the Task Group include, *inter alia* the evaluation of the Program, introduction of proposed changes and preparation of assumptions for the activities of the Government which are a follow-up of the Program. The Task Group is composed of representatives of the ministries and institutions involved in the Program and representatives of selected non-governmental organisations (Helsinki Foundation of Human Rights, "Nigdy Więcej" Association, "Otwarta Rzeczpospolita" Society Against Anti-Semitism and Xenophobia, Polish Migration Forum Foundation, *Pro Humanum* Association). The Task Group is headed by the Government Plenipotentiary for Equal Treatment, the *Program* coordinator since July 2008.

As follows from the Report on the implementation of the National program for preventing racial discrimination, xenophobia and related intolerance for the period 2004-2009, within the five years of Program implementation a series of activities were conducted with a view to eliminating racism and xenophobia from social life, inter alia:

- the core curriculum of general education, the foundation of education in Polish schools, takes into account the development of tolerance and elimination of xenophobia in students;
- school curricula and textbooks approved for school use are evaluated with respect to the development of the attitude of tolerance of and respect for national and ethnic minorities; experts evaluating school textbooks were obliged by the Minister of National Education to analyse textbook content from the perspective of equal treatment and prevention of discrimination on grounds of sex, race, ethnic origin, nationality, religion or denomination, political views, age, sexual orientation, marital and family status;
- a series of training sessions for teachers dedicated to the prevention of discrimination were conducted; relevant publications were issued;
- human rights issues, including the question of discrimination, were included into training programs for the Police, Border Guard, Customs, Prison Service and the army at all levels of education;
- teaching aids developing anti-racist attitudes and combating xenophobia and intolerance were prepared and disseminated in the Police, Border Guard, Customs, Prison Service and the army;
- a network of plenipotentiaries for the protection of human rights was created in the Police and Border Guard;

- training sessions for judges and public prosecutors were carried out; they were dedicated to analysing case law in cases related to racially, nationally, and ethnically motivated crimes;
- law enforcement authorities institute proceedings related to racially motivated or xenophobic incidences more often than prior to the launching of the Program;
- permanent official supervision applies to cases instituted by prosecution authorities and related to racially motivated offences; relevant statistics for the period since 2007 are available in the Internet, data on earlier cases are provided on request;
- court rulings applying provisions of the Penal Code indicating directly racist or xenophobia motivation of offences are more frequent than prior to the launching of the Program.

On 29 October 2009, the Prime Minister decided to continue the National program for preventing racial discrimination, xenophobia and related intolerance in the years 2010-2013.

## 4. Reply to question 4.

Since 2004 within the structure of the Ministry of Internal Affairs and Administration there has been a Task Group for Monitoring Racism and Xenophobia, which *inter alia* monitors instances of racism, xenophobia and anti-Semitism in Poland. For this reason the Task Group follows media coverage and Internet portals and cooperates closely with agendas subordinated to or supervised by the Minister of Internal Affairs and Administration, including *inter alia* with the Police, Border Guard and Office for Refugees, as well as non-governmental organisations dedicated to countering racial discrimination.

Due to interventions of the Task Group, detailed data is gathered on this kind of cases, which provides insight into the scale of these phenomena in Poland and allows the preparation of relevant future educational programs.

Also the Government Plenipotentiary for Equal Treatment appointed in 2008 takes emergency interventions concerning combating racism (including ant-Semitism), xenophobia and related discrimination. This action is taken in response to complaints or comments submitted by citizens, their groups and non-governmental organisation and in response to information provided by the communications media.

The Law Enforcement Officers Programme on Combating Hate Crimes – LEOP – has been implemented since 2006. The Program is coordinated by the Ministry of Internal Affairs and Administration and implemented in the Police in cooperation with the Office for Democratic Institutions and Human Rights Organization for Security and Co-operation in Europe (ODIHR OSCE). The *Program* involves, *inter alia*, a system of multi-tier on-the-job training sessions for officers of the Police, prepared by a special team. The training program, known as the *Specialist course of countering and combating hate crimes,* is dedicated to issues of identifying, adequately responding to and preventing hate crimes. The training program, which started in November 2009, is still underway and its efficiency remains yet to be evaluated properly.

Responding to the recommendation of the Council of Europe Commissioner for Human Rights addressed in a Memorandum to the Government of the Republic

of Poland in 2007 and related to the *Protection of monuments of heritage and cemeteries of minorities out of respect for them and for the protection of common heritage,* the Police implemented local action plans dedicated to the *special protection of monuments of heritage and cemeteries of minorities* in the years 2008-2009. The above activities were coordinated by plenipotentiaries for the protection of human rights of Provincial Headquarters and the Warsaw Headquarters of the Police. The fundamental forms and operational methods include anti-discrimination workshops for officers and employees of the Police (involving also representatives of non-governmental organisations), participation in training sessions and conferences held by external entities, preparation of teaching aids (brochures, leaflets, guides), organisation with non-governmental organisations of joint awareness raising and educational projects dedicated to citizens and the organisation of awareness-raising meetings for cemetery attendants and students. Anti-discriminatory issues and questions showing the importance of memorial venues, monuments of heritage and cemeteries were included in training programs and meetings with school students, held by officers of the Police involved in crime prevention. Because of the short duration of the operation of the local plans, it is impossible as yet to objectively evaluate the impact of the above actions on the decrease of criminal activity and pathologies. However, officers of the Police have increased their awareness of discrimination, its outward manifestations and ways of preventing racially motivated crimes. This initiative will be continued and developed in the long run. Ongoing cooperation takes place with cemetery administrators with a view to eliminating vandalising monuments of heritage and cemeteries of minorities. Cooperation takes place with churches and religious communities (in particular with respect to the protection of sites of worship), as well as with Provincial Conservators of Heritage Monuments and Sites and the National Heritage Board.

Action combating instances of anti-Semitism taken in the years 2004-2009 by public prosecution authorities and law enforcement agencies resulted first of all in an increased efficiency of prosecuting perpetrators of racist and anti-Semitic crimes. The number of relevant indictments brought to courts has increased, too. In the years 2000-2003 a total of 7 indictments were brought to courts, in 2004 – 6 indictments, in 2005 – 7, in 2006 – 12, in 2007 – 19 indictments and 2 cases were brought to courts for summary judgement, in 2008 there were 28 indictments, and in 2009 also 28 indictments.

Another effect of the above activities is the raising of awareness of the general public and law enforcement agencies of the social damage of crimes committed of racist and anti-Semitic motives. The above has resulted in an increased social sensitivity to all instances of anti-Semitism and racism in the Internet, press, or in the form of various acts of vandalism (anti-Semitic graffiti, destruction of cemeteries), which in turn leads to a greater number of reports on such incidences filed with law enforcement agencies. For instance:

- in 2005, 3 out of 43 proceedings concerned crimes of disseminating racist and anti-Semitic content via the Internet,
- in 2006 – 18 out of 60 proceedings concerned the above incidents,
- in 2007 – 15 out of 62 proceedings concerned the above incidents,
- in 2008 – 26 out of 123 proceedings concerned the above incidents,
- in 2009 – 54 out of 166 proceedings concerned the above incidents.

Sensitising law enforcement agencies to this category of crimes resulted in the fact that as of 2004 there have been virtually no refusals to institute proceedings in relevant cases or no discontinuations of preparatory proceedings on account of the low social harm of these acts. The last such decision was made in 2006. In the years 2004, 2005, 2007, 2008 and 2009 public prosecutors did not take such decisions.

Criminal proceedings run by prosecution authorities also led to a motion filed by a prosecution authority to a court to proscribe an organisation, an ordinary association called a National and Radical Camp with its registered seat in Brzeg. The grounds for the proscription was a continuous infringement of the law, in particular of Art. 13 of the Constitution that bans the existence of political parties and other organisations whose programmes are based upon totalitarian methods and the modes of activity of nazism, fascism and communism, as well as those whose programmes or activities sanction racial or national hatred, the application of violence for the purpose of obtaining power or influencing the State policy, or provide for the secrecy of their own structure or membership.

**Change of Art. 256 of the Penal Code**

An amendment of the Penal Code entered into force on 10 June 2010 (Journal of Laws 2009.206.1589); it extended the catalogue of punishable offences. The current wording of Art. 256 of the Penal Code is as follows:

"Art. 256. § 1. Whoever publicly promotes a fascist or other totalitarian system of state or incites hatred based on national, ethnic, race or religious differences or for reason of lack of any religious denomination, shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to 2 years.

§ 2. The same penalty shall be imposed on whoever, for the purpose of dissemination produces, records or imports, purchases, stores or possesses, presents, carries or send a print, recording or another object with the content specified under § 1 above or a carrier of fascist, communist or other totalitarian symbols.

§ 3. A person does not commit an offence specified under § 2 above, if the act was part of artistic, education, collection, or scientific activity.

§ 4. In the event of a conviction for an offence specified under § 2 above, the court rules on the forfeiture of the objects an offence specified under § 2 above, even if they may not have been the property of the perpetrator."

## 5. Reply to question 5

**Activity of the Prosecution Authority**

Since 2004 the National Prosecution Authority (now General Prosecution Authority) has taken a whole range of activities with a view to enhancing the efficiency of prosecution of racially motivated crimes and thus to increasing the number of indictments in these cases.

On 10 May 2004, the Director of the Office for Preparatory Proceedings of the National Prosecution Authority issued a memorandum to all prosecutors of appellate prosecution authorities, asking them to:

- assure that provincial prosecution authorities monitor on an ongoing basis cases related to racially or ethnically motivated crimes through official supervision with a view to eliminating premature refusals to

institute preparatory proceedings or their discontinuation on account of the low social damage of such acts,

- assure that periodic (quarterly) evaluation be carried out by appellate prosecution authorities of cases of this category concluded with refusals to institute preparatory proceedings or their discontinuation and that such decisions should be assessed as to their justifiability, and the information about the evaluation and action taken should be submitted to the Office for Preparatory Proceedings.

When executing the above recommendation, provincial and appellate prosecution authorities show interest first of all in preparatory proceedings conducted in subordinate units in cases related to racially motivated crimes.

Whenever such proceedings are concluded with valid and final decisions on the refusal to institute or discontinue preparatory proceedings, provincial and appellate prosecution authorities examine all such cases as to their proper conduct and justifiability of substantive decisions taken in their course. If a decision is found premature or unjustified, prosecution authorities are ordered to resume and continue proceedings or carry out action under Art. 327 § 3 of the Code of Criminal Procedure[3], or else motions are submitted to the Prosecutor General to invalidate unjustified decisions of discontinuing proceedings against particular individuals under Art. 328 of the Code of Criminal Procedure[4].

Audits of files in a series of cases led to the elimination of improper decisions of public prosecutors to discontinue or refuse to institute proceedings. They also sensitised public prosecutors in charge of proceedings to this category of offences and in effect led to improved prosecution.

In 2004 a prosecutor was appointed in the Office for Preparatory Proceedings of the National Prosecution Authority, who *inter alia* takes criminal and non-criminal action within the Prosecution Authority in cases of infringement of freedom or instigating hatred on grounds of nationality, ethnicity, race, and religion. The prosecutor's duties include also initiating or conducting audits of particular preparatory proceedings and initiating non-criminal action related to the proscription of organisations based on anti-Semitic or racist ideas.

The above activities are continued in the Department for Preparatory Proceedings of the General Prosecution Authority.

In 2006 consultants for this category of offences were appointed in Appellate Prosecution Authorities; their principal task is to assist public prosecutors leading

[3] Art. 327 § 3. Prior to the issuance of a decision on instituting or resuming proceedings, a public prosecutor may carry out himself or commission the Police with the conduct of indispensable evidence-collecting activities with a view to establishing circumstances justifying the issuance of the decision.

[4] Art. 328. § 1. The Prosecutor General may invalidate a valid decision to discontinue preparatory proceedings with respect to a person who was a suspect if he finds that the discontinuation was unjustified. This does not apply to a case where the court upheld a decision to discontinue.

§ 2. After the elapse of 6 months from the date of the decision to discontinue proceedings becoming valid and final, the Prosecutor General may invalidate or change the decision or its *ratio decideni* exclusively for the benefit of the suspect.

and supervising these cases, which would allow the adoption of uniform modes of action and the elimination of mistakes made in such cases. Furthermore, these public prosecutors audit concluded proceedings as part of their official supervision powers and teach prosecuting trainees about this category of offences.

Such activities helped improve the efficiency of law enforcement agencies in combating racially motivated crimes, as reflected by the rise in the number of indictments filed to courts. Furthermore, there was a marked increase in the awareness of the prosecution authorities and the judiciary about the social damage involved in relevant crimes. In practice, cases of unjustified discontinuation or refusal to institute preparatory proceedings on account of the negligible social damage of relevant crimes have been eliminated.

**Racist motive as an aggravating circumstance**

Under Polish penal law, the court is obliged to take into account the racist motive of an offence as part of specific penalisation guidelines as set out in Art. 53 § 2 of the Penal Code[5]. The guidelines point to the motive of action or inaction of the perpetrator as one of the circumstances affecting the scope of the penalty.

The aggravating nature of this motive is reflected by the fact that the racist motive of an offence is a direct element of selected types of offences defined in the specific section of the Penal Code (Art. 118, 119, 256, and 257 of the Penal Code)[6].

[5] Art. **53** § 2. In imposing the penalty, the court shall above all take into account the motivation and the manner of conduct of the perpetrator, committing the offence together with a minor, the type and degree of transgression against obligations imposed on the perpetrator, the type and dimension of any adverse consequences of the offence, the characteristics and personal conditions of perpetrator, his way of life prior to the commission of the offence and his conduct thereafter, and particularly his efforts to redress the damage or to compensate the public perception of justice in another form. The court shall also consider the behaviour of the injured person.

[6] Art. **118**. § 1. Whoever, acting with an intent to destroy in full or in part, any ethnic, racial, political or religious group, or a group with a different perspective on life, commits homicide or causes a serious detriment to the health of a person belonging to such a group, shall be subject to the penalty of the deprivation of liberty for a minimum term of 12 years, the penalty of deprivation of liberty for 25 years or the penalty of deprivation of liberty for life.
§ 2. Whoever, with the intent specified under § 1, creates, for persons belonging to such a group, living conditions threatening its biological destruction, applies means aimed at preventing births within this group, or forcibly removes children from the persons constituting it, shall be subject to the penalty of the deprivation of liberty for a minimum term of 5 years or the penalty of deprivation of liberty for 25 years.
§ 3. Whoever makes preparation to commit the offence specified under § 1 or 2, shall be subject to the penalty of the deprivation of liberty for a minimum term of 3 years.
Art. **119**. § 1. Whoever uses violence or makes unlawful threat towards a group of person or a particular individual because or their national, ethnic, political or religious affiliation, or because of their lack of religious beliefs, shall be subject to the penalty of the deprivation of liberty for a term of between 3 months and 5 years.
§ 2. The same punishment shall be imposed on anyone who incites commission of the offence specified under § 1.
Art. **257**. Whoever publicly insults a group within the population or a particular person because of his national, ethnic, race or religious affiliation or because of his lack of any religious denomination or for these reasons breaches the personal inviolability of another individual, shall be subject to the penalty of deprivation of liberty for up to 3 years.

## 6. Reply to question 6.

**Measures adopted**

In late 2009 and early 2010 the MLSP implemented the project *Progress, prevention of discrimination, promotion of diversity*, part-financed by the European Commission. Measures taken within this project aimed at constructing a broad social dialogue about non-discrimination and the promotion of diversity in Poland, sensitising the general public to problems of persons experiencing discrimination on different grounds, including sexual orientation.

Within the project a series of meetings were organised for representatives of state institutions, non-governmental organisations, scholars, and journalists. Meetings were dedicated, *inter alia* to exchanges of experience and good practices of combating discrimination; one of them concerned discrimination on grounds of sexual orientation. The meetings led to the adoption and dissemination of recommendations, including those on combating discrimination on grounds of sexual orientation, for authorities and communities involved in combating discriminatory activities.

Within the framework of the European Year of Equal Opportunities for All 2007, a project implemented across the EU Member States under the auspices of the European Commission, research on LGBT issues was financed. This resulted in the publication of *Stigmatised; sexual minorities in Poland report 2008 ed. by Ireneusz Krzemiński*. The distribution process was joined by state administration, *inter alia* the Office of the Government Plenipotentiary for Equal Treatment (GPET), which expressed the willingness to assist further distribution.

GPET intervenes in cases of appearance of homophobic and insulting actions. Issuing letters, it reprimands persons perpetrating acts of discrimination and notifies them about the legal sanctions involved.

Furthermore, GPET takes active action in meetings on LGBT issues held, among others, by the European Commission. Delegated staff of the Office learn about good practices of other states and exchange relevant experience.

**Statistics**

It is not possible to determine the precise number of offences committed on grounds of the injured party's sexual orientation. Personal data is subject to protection in Poland – collecting data *inter alia* on the injured party's sexual orientation is admissible only when the person consents to disclose such information (which will be entered into the case file). The perpetrator of an offence committed against a person of a non-heterosexual orientation is criminally liable under general provisions concerning, e.g. assault or homicide. At the same time the motive of the perpetrator, i.e. acting on the grounds of the injured party's sexual orientation (as the racist motive – see reply to Question 4) is taken into consideration by the court as an aggravating circumstance during the imposition of the penalty.

Appendices 6 A and 6B include general statistics on discrimination in the workplace (it is not possible to indicate within this data cases of discrimination on grounds of sexual orientation exclusively).

**Example of case law of discrimination on grounds of sexual orientation**

In response to the question of the Committee on Human Rights, the Ministry of Justice conducted a study in common courts of judicial proceedings related to discrimination on grounds of sexual orientation.

For instance, in the case File No. I C 764/08, the Provincial Court in Szczecin in its judgement of 4 August 2009 issued pursuant to provisions of Art. 23[7] and Art. 24 § 1[8] of the Civil Code prohibited the defendant from infringing the plaintiff's personality rights, i.e. his freedom, dignity, intimate life, good name, and in particular prohibited her from using the word "pedał" [faggot] with respect to the plaintiff and the attendant derogatory terms and from public comments on the aspects of the plaintiff's intimate life and from comments on his sexual orientation. The court awarded damages to the plaintiff from the defendant in the amount of 15,000 PLN with statutory interest. After considering the appeal of the defendant, the Appellate Court in Szczecin in the judgement of 4 February 2010 in the case File No. I A Ca 691/09 changed the appealed judgement and awarded to the plaintiff the amount of 5,000 PLN with statutory interest. The Appellate Court indicated that in its opinion it is unjustified to award damages for the infringement of personality rights between natural persons in amounts that are gravely disproportionate to the material status of both parties to the lawsuit and to their living standard from before the events justifying the award of damages. The court recognised moreover that when awarding damages, courts must take into account broadly construed financial status of society.

**Data on complaints related to discrimination on grounds of sexual orientation submitted to the Ombudsman**

In the years **2005 – 2008** the Ombudsman accepted for consideration **95** cases, which referred to the question of discrimination on grounds of sex and sexual orientation, including **23** cases where he took action in the form of a general statement. A precise determination of the number of complaints concerning discrimination on grounds of sexual orientation filed with the Ombudsman in this period is not possible, since in the classification used by 31 December 2008 particular kinds of discrimination were not identified.

In the period from **1 January 2009** until **24 June 2010**, **170** cases concerning discrimination on grounds of sexual orientation were filed. In the period under consideration, **164** cases concerning discrimination on grounds of sexual orientation were considered. **147** cases were accepted for consideration, including **10** cases where the Ombudsman took action in the form of a general statement, such as the refusal to issue a permit for the organisation of an equality parade or concerning possible amendment of Art. 256 of the Penal Code and Art. 257 of the Penal Code through the penalisation of action consisting in inciting hatred or intolerance to people of a non-heterosexual orientation and in insulting a group of people or a person on grounds of their sexual orientation (see: section 261of the Report).

No cases of criminal law concerning discrimination on grounds of sexual orientation were identified by the Ombudsman.

[7]Art. 23. Personality rights of a person, in particular health, freedom, dignity, freedom of conscience, name or pseudonym, image, secrecy of correspondence, inviolability of abode, scholarly, artistic, invention and rationalising accomplishments are protected by civil law irrespective of the protection envisaged in other provisions.

[8]Art. 24. § 1. He whose personality right is infringed by the action of another person may demand the discontinuation of this action provided it is illegal. In the event of an infringement, he may furthermore demand that the person infringing take action necessary to remove its effects, in particular to make a statement adequate as to content and form. Pursuant to the provisions of the Code, he may furthermore seek monetary compensation or payment of an adequate amount of money for an indicated social goal.

## 7. Reply to question 7

Aliens under the Geneva Convention of 28 July 1951 relating to the status of refugees and the Council Directive 2004/83/EC of 29 April 2004 on the Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons Who Otherwise Need International Protection and the Content of the Protection Granted are treated in a special way determined in the Law of 12 March 2004 on social assistance – they are entitled to special benefits and principles of assistance. This assistance aims at supporting the process of their integration in Polish society.

Actions of this kind have been carried out since 2000 with respect to recognised refugees, and since 2008 individual integration programmes have applied also to aliens who are granted supplementary protection (earlier tolerated stay) in the Republic of Poland.

Proceedings of granting an individual integration program are instituted at the request of an alien, submitted within 60 days of the day of delivery of the final decision on granting refugee status or supplementary protection. A contract is concluded between an alien and the county [poviat] centre for assistance to the family. The program lasts 12 months and includes the provision of financial aid for maintenance and covering the cost of learning the Polish language, payment of health insurance premiums and specialised counselling.

The program defines the obligations of:

1) The poviat centre for assistance to the family to:

- provide information on program-related assistance and conditions of its discontinuation or refusal to grant,
- cooperate with the alien and assist him in contacts with the local community, including establishing contact with the social assistance centre competent for his place of residence,
- provide assistance in the acquisition of a place of residence, including when possible a protected place of residence,
- carry out social assistance projects,
- carry out other actions agreed on with the alien and arising from his life situation,
- appoint a staff member (“program manager”) who defines the program with the alien and supports him in the implementation of the program;

2) The alien to:

- register his domicile at the place of residence,
- register at the poviat labour office within the time framework envisaged by the program and to actively seek employment,
- take part in obligatory courses of the Polish language, when necessary,
- cooperate with and contact program manager according to an agreed schedule, at least twice a month,
- take other action agreed on with the program manager and arising from his life situation,

- Comply with the obligations adopted in the program.

Assistance to aliens may be discontinued in the event of:

- persistent and deliberate non-compliance of the alien with the obligations accepted in the program, including unjustified absence during Polish language courses for a period of up to 30 days;
- the alien's taking advantage of assistance at variance with its stated objective for up to 30 days;
- the alien's providing untrue information about his life situation – until the determination of the circumstance of providing such information;
- the alien's stay in a health care institution for 30 days – until his being released from the health care institution;
- the alien's being subject to criminal proceedings – until a valid and final conclusion of the proceedings.

The number of integration programs depends on the number of decisions on the granting of refugee status or of supplementary protection; the number of such decisions is relatively limited.

The number of people under individual integration programs:

- 2003 – 348,
- 2004 – 408,
- 2005 – 420,
- 2006 – 652,
- 2007 – 521,
- 2008 – 1,366,
- 2009 – 3,388.

The scope of integration projects is not extensive and the related expenditure have not greater effect on the state budget. The problem here is the frequent discontinuance of the programs as the persons taking part in them decide on leaving Poland.

Upon the conclusion of a program, aliens have access to social assistance benefits on generally applied principles.

## 8. Reply to question 8

**Asylum procedure**

Questions related to aliens are set forth in the Law of 13 June 2003 *on the provision of protection to aliens in the Republic of Poland*, the *Code of administrative procedure* and in other legal acts.

Poland applies the so-called uniform asylum procedure, with a view to providing effective protection of interests of foreigners, also when they do not meet the criteria for obtaining refugee status (supplementary protection). The Chief of the Office for Foreigners (OF) is the competent authority on providing protection to foreigners in the Republic of Poland. Proceedings are instituted on foreigners' request (submitted via the commander of a Border Guard district or the commander

of a Border Guard unit during a border check or during foreigners' stay in the Republic of Poland) and are conducted in compliance with the principle of confidentiality of data of these persons. The authority accepting the applications notifies the applicant about the procedure criteria in a language understandable to the foreigner.

The issuance of a decision to grant refugee status takes place within 30 days (in the case of obviously unjustified applications) or 6 months of the date of submitting the application. Depending on the criteria met by the foreigners applying for refugee status, the following decisions are made: granting refugee status, granting supplementary protection and consent for tolerated stay. The competent authority may also issue a decision to refuse granting refugee status. A decision of the Chief of the Office for Foreigners can be appealed against to the Refugee Council. Proceedings may be discontinued in the case of an unjustified application as well as when a case in its essence requires being forwarded to another member state.

Throughout the proceedings the applicant and his family are provided with protection assuring normal existence in the Republic of Poland. For this purpose the Chief of the Office issues to foreigners temporary IDs which allow them to live in the Republic of Poland. Furthermore, persons applying for refugee status are provided with social and medical assistance, can be placed in a centre for foreigners or granted financial benefits allowing them to cover on their own costs of stay in the Republic of Poland.

**Upgrading and streamlining asylum procedures**

In the years 2008 - 2010 organisational restructuring led to shortening the time for considering cases concerning granting refugee status and to improving decision quality. At this time in-house procedures related to granting refugee status were further upgraded. Of great impact for the quality of proceedings was the project implemented in the years 2008 - 2009 by the Office for Foreigners in cooperation with the Office of the UN High Commissioner for Refugees (UNHCR), called "Asylum Quality Assurance and Evaluation Mechanism"; within its framework relevant procedures applied by the Office were assessed and analysed. Another major element shortening the consideration of applications for refugee status was the launch in September 2009 of a branch of the Office in the town of Biała Podlaska. In the period under consideration, Poland implemented a number of projects part-financed by the *European Refugee Fund for improving living conditions of persons applying for refugee status in the years 2003-2009*; these projects consisted *inter alia* in insulating some buildings, building sports facilities and playgrounds in a number of centres, while persons staying in centres for refugees were provided with clothing and footwear (including wintertime clothes); at present some centres are stocked with medical equipment (including equipment for people with disabilities).

**Action taken by the OF to prevent sexual violence**

The Chief of the Office for Foreigners, Commander in Chief of the Police, UNHCR, "La Strada" Foundation, and the Halina Nieć Centre for Legal Aid, recognising the need to enhance cooperation with respect to recognition, prevention and reaction to cases of sexual violence or sex-related violence incurred by foreigners staying in centres for people applying for refugee status or asylum, set up local cooperation groups composed of representatives of the above institutions. In 2009, 7 cases of sexual violence were identified (including 7 cases of physical

violence). Until 20 June 2010, 9 such incidents were identified (including 7 cases of physical abuse and 2 cases of psychological abuse).

The overarching goal of the above groups is taking coordinated action to prevent the use of violence against foreigners placed in the centre and to provide adequate and efficient measures to potential and actual cases of violence (*inter alia* preventive measures: a proactive approach against the centre officers' or staff's downplaying the problem, arranging a conversation of an at-risk person/victim with a psychologist/ social worker, isolating the perpetrator from an at-risk person/victim, arranging conversations with the elders of a foreigners' community, holding a disciplinary talk with the perpetrator, assurance of efficient cooperation with law enforcement agencies).

**Questions of medical assistance provided to foreigners applying for refugee status**

A foreigner applying for refugee status is assured social and medial assistance for the duration of the proceedings related to granting refugee status and for 2 months of the day of delivering the final decision in this case, and in the case the proceedings related to granting refugee status were discontinued, for 14 days of the day of delivering the final decision about the discontinuation of proceedings.

Pursuant to Art. 73 section 1 of the Law of 13 June 2003 *on the provision of protection to aliens in the Republic of Poland*, medical assistance consists of medical services to the extent persons subject to mandatory or voluntary health insurance have the right to services pursuant to the Law of 27 August 2004 *on health services financed from public resources* (*inter alia* basic health care, consultations and specialist tests, inoculation, hospitalisation, emergency medical services, and medical transport), except spa treatment. Furthermore, in each centre foreigners have access to a general practitioner and psychologist.

In January 2009, the International Organisation for Migration launched the project *Campaign for improving health status of and medical assistance to persons applying for refugee status*, of which the Office for Foreigners is a partner. The project includes the preparation and conduct of an education campaign consisting of workshops for persons applying for refugee status, related to selected health issues as well as workshops for medical personnel meant to enhance their intercultural competences.

**General issues of living standards in centres for foreigners applying for refugee status**

For a number of years the OF has consistently raised living standards for foreigners obtaining social assistance in centres for foreigners. At present, the selection of a centre for foreigners is based to the same extent on the living standards offered and the rent to be paid.

Centres for foreigners are audited periodically *inter alia* by the European Refugee Fund, Ombudsman and Sejm Commissions (Commission for Education, Science and Youth - 2009).

## 9. Reply to question 9

An impact assessment of the National strategy for employment increase and human resources development in the years 2000-2006 for equal treatment of women and men has not been carried out.

**Forthcoming programs**

After 2006 there have been a number of programs of occupational activation targeted at various disadvantaged groups on the labour market. One of them was the Active Woman Program prepared by the MLSP, dedicated to women over 50 years of age who experienced difficulty with finding a job. The strategic objective of the program was to increase the ratio of employed women in this group through facilitated access to projects increasing opportunities for taking up a job and its retention or starting one's own business. The program includes training sessions, occupational preparation, reimbursement of complete or additional furnishing of a workplace, one-off resources for starting a business and subsidised employment.

Participating in the program were 107 out of 339 poviat employment offices, with money for the implementation of the program granted to 84 poviat employment offices, and the total expenditure was 9.4m PLN (ca. 2.3m Euro). Poviat employment offices managed to address their activities to over 2,300 unemployed individuals. 38.1% of program participants found employment after the program. Small involvement of poviat employment offices in the implementation of the Active Woman Program may have stemmed from their parallel implementation of two other programs: "Investment in qualifications lacking in the job market", "Employment for Youth – a Good Start" and the short duration of the program.

The Ministry of Labour and Social Policy – the Intermediary Institution for Priority I of the Operational Program Human Capital (OP HC 2007 – 2013), within sub-measure 1.3.2 has since 2008 led calls for proposals for projects promoting equal opportunities of women and men and policy of work and life balance. Over 9m Euro is dedicated to this sub-measure in the years 2007–2013. At present (May 2010) over 160 projects submitted in response to the call for proposal announced in 2010 are being formally evaluated.

10 projects selected in previous calls for proposals are currently underway.

The following types of activities are implemented within sub-measure 1.3.2:

- Implementation and dissemination of solutions intended to facilitate reconciliation of work and family life, including through:

  - Pilot implementation of comprehensive programmes of a return to work after a break related to childbirth and child upbringing, facilitating reconciliation work and family life,

  - Establishment of centres providing childcare at workplaces and development of alternative forms of childcare (including, *inter alia*, childcare services provided at home),

- Dissemination and promotion of alternative and flexible forms of employment and methods of work organisation, and making the employee's working hours more flexible (e.g. teleworking, part-time work, rotational working patterns, job sharing).

Priority I within OP HC includes also projects whose main objective is to influence the situation of women on the Polish job market. Within Measure 1.1 this is the project "Reconciling roles in the family and workplace for women and men" implemented by the Centre for the Development of Human Capital (CDHC) since November 2008 until April 2011, with a budget of 6.5m PLN. It envisages the preparation of models of reconciling roles at the level of legislation and implementation (on local, regional and national levels) enhancing the efficiency of state employment agendas and other institutions of the job market as to assuring

equal opportunities and enhancing women's professional activity. Within the second project: "Social and economic activation of women at the local and regional level" ,also implemented by the CDHC since February 2008 until April 2011 with a budget of over 18.5m PLN, it is planned to disseminate among staff of labour market institutions and the general public the ideas of equal opportunities in access to employment and relevant methods.

Because of the fact that the projects last for a number of years, assessment of their impact on the equal treatment of women and men has not been made as yet.

A draft National Action Plan for Employment in the years 2009-2011 has been prepared. The draft envisages action for the benefit of women facing problems on the labour market. It likewise entails the introduction or upgrading of solutions allowing reconciling duties at home and in the family with professional employment – enhanced access to care services, promotion of all forms of employment and methods of work organisation, promotion of employment of women who return to work after a break related to childbirth. The draft Plan has so far not been approved by the Council of Ministers.

## 10. Reply to question 10

**Measures adopted to assure equal participation of women in social and political life and labour market**

The introduction of the perspective of gender mainstreaming into policy and activities is a permanent task implemented by MLSP. One of the tools for the assurance of gender mainstreaming is a system of monitoring equal treatment of women and men in the following areas: life potential, personal development, social status, social support, and a risk of exclusion. Detailed information and results of monitoring activities (presented as a graph or table) is available at www.monitoring.rownystatus.gov.pl

In the years 2005-2007 there was a network of provincial Plenipotentiaries for Women and the Family. Plenipotentiaries operated in nine provinces. Since the appointment of the Government Plenipotentiary for Equal Treatment (19 April 2008), the appointment of provincial plenipotentiaries is his prerogative. 45 Coordinators for Equal Treatment are scheduled to be appointed within the planned program: "Equal Treatment as a Standard of Good Governance" within the Operational Program Human Capital of the European Union.

In 2007, the European Year of Equal Opportunities for All, projects were implemented with a view to enhancing occupational and social activation of women, including project "ABC of gender mainstreaming for local government officials".

In the period 2006-2008 MLSP was a co-partner of the Gender Index project within the framework of EFS Equal. The project was implemented within a national (7 partner institutions) and transnational Partnership. The project led to the preparation of the first in Poland tool for evaluating company management with respect to non-discrimination of employees by the employer, a series of publications, competitions like the Equal Opportunity Company, lectures, conferences on equality in the workplace, etc. The index gauges 7 areas, i.e.: recruitment of employees, access to promotion and training, protection against dismissal, work remuneration, protection against sexual abuse and mobbing, and the possibility of balancing work and family duties. Other results of the project include: publication of the Equal Opportunity Company Guidebook of Good Practices, a study Report from the first edition of the Equal Opportunity Company competition, a study Report from the

second edition of the competition, quality standards for equal treatment training programs and management of diversity in the UE and about the equal opportunities policy, How to attract and retain an employee in the organisation, the Gender Index Guidebook for Trainers, and many brochures on equality policy and gender mainstreaming, including lectures on the management of diversity. Within the framework of the project there were 42 conferences (including 9 press conferences), 32 seminars, meetings and regional debates and a nationwide media campaign "Equal at Work – It Pays".

In 2008 two projects were implemented in cooperation with the MLSP. The National Council of the Democratic Union of Women implemented the program "Leaders of social change – upgrading the level of social participation of women, activating women for major social roles in public life: activating women for public roles in local communities and the dissemination of knowledge and development of skills related to the practise and tools of equality policy". In addition, research was carried out by the Sociology Institute of Łódź University titled "No To Stereotypes", which addressed the question of social inequality and discrimination on grounds of participation in specific social categories (gender, age) as well as lifestyles different than the traditional ones (voluntary childlessness, single life).

On 21 October 2008, the Sejm of the Republic of Poland, in cooperation with the Parliamentary Group of Women and the Representative Office of the UN Development Program (UNDP), hosted a meeting of the so-called round table "Women in Politics", prepared by the Government Plenipotentiary for Equal Treatment. The meeting aimed to define the principal trends, good practices and challenges as to the participation of women in Polish politics and the adoption of proposals of further action. Partners of the meeting included Members of Parliament, representatives of the Government, political parties, local and regional government, non-governmental organisations, media, and Academia.

A workshop seminar "Break Gender Stereotypes, give talent a chance" was organised in cooperation between the Government Plenipotentiary for Equal Treatment with the Lower Silesia Chamber of Commerce, the managing authority of the European Commission project "Break Gender Stereotypes, give talent a chance". Three editions of the workshop have been carried out, attended by a total of 49 entrepreneurs and representatives of other institutions.

The most significant media campaigns that contributed to the change of social consciousness (abolition of gender stereotypes, improvement of the image of women in society) implemented in the years 2006-2008 were, among others:

- project "It is good to be an enterprising woman!", with a media campaign "Fulfilled in Business", promoting the idea of women-entrepreneurs, their active role in social and professional life, and encouraging women to take action,
- project "Stereotype and equal opportunities for women and men in rural communities", aimed at activating women in the area of education and professional, social and personal life – preparation of local leaders promoting action in rural communities.

The Government Plenipotentiary for Equal Treatment in cooperation with the Minister of National Education prepared the first edition of the competition "I am a Boss", targeted at female students of high schools from across Poland. the aim of the competition was to break stereotypes concerning women in power and the promotion of a positive image of leader-women among young people. Participants of the competition were to write an essay on the topic "I am a Boss"; they were to

imagine that they were bosses in any area of social, political and economic life and to describe what they wished to change and what obstacles they encounter and how they perceive themselves as women-bosses. Close to 200 essays from all over Poland were submitted to the competition.

The project implemented at present, envisaged for the years 2008-2013, is titled "Socio-economic activation of women at local and regional levels". The following have taken place so far: a Congress of Polish Women (June 2009), 4 regional conferences as a follow-up to the Congress. Another 12 conferences are scheduled to take place in 2010. The Congress of Women is a non-partisan initiative aiming at the professional, social and political activation of women. The 2009 Congress resulted in a grass-roots draft law on parities and quotas on electoral lists, submitted to the Sejm of the Republic of Poland. Training programs concerning gender equality are underway for labour market institutions, and a series of TV programs are prepared on gender equality in the job market. Another Congress was held in June 2010.

In addition, the MLSP conducts competitions for initiatives for non-governmental organisations, aiming at granting subsidies to non-governmental organisations – on many occasions the competitions concerned creating equal opportunities for women in socio-economic life – promotion of the participation of women in public life, including subsidies to projects encouraging women to stand for election.

**Women in Parliament**

**Sejm**

| | Women | Men | Total |
|---|---|---|---|
| VI term of office (from 2007) | 94 | 366 | 460 |
| V term of office (2005-2007) | 93 | 367 | 460 |
| IV term of office (2001-2005) | 99 | 361 | 460 |

**Senate**

| | Women | Men | Total |
|---|---|---|---|
| VI term of office (from 2007) | 8 | 92 | 100 |
| V term of office (2005-2007) | 16 | 84 | 100 |
| IV term of office (2001-2005) | 7 | 93 | 100 |

**Women in government administration**

At present (as of 26 May 2009) the Government is composed of 5 women and 13 men (Prime Minister, Deputy Prime Minister and ministers). 20 women and 77 men work in the capacity of secretaries of state and under-secretaries of state.

4 women and 14 men occupy positions of general directors (one in one institution) in government administration, while 142 women and 201 men are department directors in the civil service.

**Women in the civil service**

The principles of equal access to employment in the civil service were enshrined in the *Law of 24 August 2006 on the civil service* (Journal of Laws No. 170, item 1218). Pursuant to this law, each citizen has the right to information about vacancies in the civil service, and recruitment to the civil service is open and competitive. The open nature of recruitment process means that information about recruitment is generally available and anyone meeting relevant criteria may apply for a position. Information about the results of the recruitment process is public information. Competitiveness of recruitment to the civil service means that it results in the employment of a person whose knowledge, skills and other competences are the most adequate to the vacant position. Higher-ranking positions in the state are granted to persons from the state cadre corps, upon meeting criteria defined in the law, the same for all candidates irrespective of their sex.

*The Law of 21 November 2008 on the civil service* (Journal of Laws No. 227, item 1505), which came into effect on 24 March 2009 and replaced the 2006 Law, continues the aforementioned principles, also with regard to higher-ranking positions in the civil service, made of a selected number of high governmental positions.

On 31 December 2007, 68.7% of civil servants were women. As of 30 June 2008, the index was 69.1%. As of 31 December 2009, the index was 69.2%.

**Women in Academia**

In the academic year 2007/2008, universities and colleges employed 97,672 faculty, including 40,872 women. 1,307 women were employed as ordinary professors (16.7% of all ordinary professors), 3,742 women were extraordinary professors (25.8% of the total number), and 41 women were visiting professors (21.2%). The position of a *docent* was held by 213 women (28.2%) and that of the assistant professor by 16,781 women (42.1%). In 2007 doctorates were earned by 2,760 women (49.1%), post-doctoral degrees by 248 women (32.16%), and professorship was granted to 155 women (26.4%). As of 2008, a woman (who is at the same time the President of Warsaw University) has been the Chairperson of the Conference of Presidents of Polish Academic Schools.

In the academic year 2008/2009, universities and colleges employed 98,631 faculty, including 41.643 women. 1,372 women were employed as ordinary professors (17.01% of all ordinary professors), 3,810 women were extraordinary professors (26.07 % of the total number), while 40 women were visiting professors (18.96%). The position of a *docent* was held by 349 women ( 31.84%) and that of the assistant professor by 17,712 women (43.03%). In 2008 doctorates were earned by 2,686 women (50.02%), post-doctoral degrees by 358 women (38.21%), and professorship was granted to 111 women (30.08%).

**Women in the Police, Prison Service and Border Guard**

The Police, Prison Service and Border Guard apply the principle of competence and gender equality. The basic criterion for filling vacant positions in these services, including managerial and high-ranking positions, is competences and not gender.

Women in these services are employed both as officers and civilian staff.

The status of employment of female officers of the Police, Prison Service and Border Guard is regulated, respectively, by the following acts: *the Law of 6 April*

*1990 on the Police* (Journal of Laws No. 43, item 277), *the Law of 26 April 1996 on the Prison Service* (Journal of Laws No. 207, item 1761) and *the Law of 12 October 1990 on the Border Guard* (Journal of Laws No. 234, item 1997). All standards of the selection process are the same as those for the selection of male officers of the Police. The status of employment of female civilian staff of these services is regulated by provisions of other acts – *Labour Code*, the *Law on civil service* (detailed information – see above) – and provisions of relevant bylaws. These provisions guarantee equal treatment of women and men in the workplace.

According to the statistics as of 1 April 2010, the Police employed 12,692 female officers out of the total of 97,057 officers, with 516 women holding high-ranking positions out of the total of 11,181 high-ranking positions. Until now 56 women have entered the recruitment process. Female civilian staff of the Police as of 1 April 2010 numbers 17,049. 168 out of the total of 339 high-ranking positions are occupied by women.

As of 31 March 2010, the Prison Service employees 5,955 women out of 30,299 officers and staff, i.e. over 19.6% of the total workforce. For the sake of comparison, out of 28,295 officers and staff of the Prison Service on 30 June 2008, there were 5,288 women, i.e. around 19% of the workforce. On 31 March 2010, the Prison Service employed 27,424 officers, including 4,475 (16.32 %) women.

The relatively small number of women occupying major commanding positions (only 30 women are directors and deputy directors of units and commanders) results most probably from the fact that most directors come from prevention, penitentiary and quartermaster departments, where women are in the minority (in the penitentiary department women account for a fourth of the workforce, in the quartermaster department every eleventh officer and staff is a woman, and in the prevention department every thirty-ninth employee is a woman).

Statistics on the number of women in the Border Guard – see Appendix 10 A.

Plenipotentiaries of Commanders for equal treatment have been appointed both in the Police and in the Border Guard.

In 2010, General Director of the Prison Service appointed the Council for Women, whose underlying objective is the adoption of conclusions and taking action with a view to assuring equal treatment on account of sex of officers and civilian staff of the Prison Service, and analysing and evaluating system and legal solutions with a view to respecting equal treatment on account of sex of officers and civilian staff of the Prison Service.

**Women in the judiciary**

see Appendix 10 B.

**Women in the prosecution authority**

see Appendix 10 C.

## 11. Reply to question 11

**Article 275 of the Code of Criminal Procedure**

The law of 29 July 2005 on preventing domestic violence (Journal of Laws No. 180, item 1493; hereinafter – Law on prevention) envisaged in its Art. 14 so-called conditional police custody.

Conditional custody means the injunction to vacate premises occupied jointly with the injured person and the obligation to restrain oneself from contacts with the injured person in a specified manner. Custody may be ordered by a court in lieu of temporary detention. This means that custody may be ordered by a court if criteria apply for the use of temporary detention with respect to a perpetrator of a crime committed with the use of violence or unlawful threat with respect to a family member, provided the perpetrator vacates premises occupied jointly with the injured person and complies with the obligation to restrain oneself from contacts with the injured person in a specified manner.

Temporary detention is one of the preventive measures, which can be used with a view to safeguarding a proper course of proceedings related to a person with respect to whom a resolution has been issued to press charges, in a situation where the evidence gathered indicates a high probability that the suspect has perpetrated the crime. Temporary detention is justified specifically in the following situations: 1/ there is a justified risk of the perpetrator's escape or going into hiding, especially when his identity cannot be ascertained or he has no permanent residence in Poland 2/ there is a justified risk of the perpetrator's encouraging others to provide false testimony or explanations or in another unlawful way hampering the conduct of criminal proceedings.

Temporary detention may exceptionally take place also when there is a justified risk that the perpetrator charged with a crime or deliberate offence has committed a crime against life, health or general security, and in particular when he has threatened to commit such an offence.

Thus the use of conditional police custody is limited to the aforementioned situations where temporary detention can be applied.

Pursuant to the Law of 5 November 2009 on the amendment of the Penal Code, Code of Criminal Procedure, Executive Penal Code, Fiscal Penal Code and selected other laws (Journal of Laws No. 206, item 1589; the law entered into force on 8 June 2010), Art. 14 of the Law on prevention was invalidated, and the conditional police custody set forth in it was incorporated into the Code of Criminal Procedure, into its Art. 275. At present, Art. 275 of the Code of Criminal Procedure reads as follows:

- "Art. 275. § 1. As a preventive measure, the accused may be committed to the surveillance of the Police and, if the accused is a soldier, to the surveillance of the soldier's commanding officer.
- § 2. A person under surveillance shall be obligated to comply with the conditions set forth in the order of the court or public prosecutor. These obligations may consists in the prohibition of absenting himself from a designated area of residence, in his having to report to the agency under the surveillance of which he remains in specified time intervals, and to inform such an agency of any intention to absent himself and the time of his return, the prohibition to contact the injured person or other persons, the prohibition to stay in specified areas as well as other limitations on his freedom of movement necessary to assist the surveillance.
- § 3. If temporary detention may be reasonably applied with respect to the perpetrator charged with a crime committed with the use of violence or unlawful threat with respect to a family member or a person jointly residing with the perpetrator, custody may be applied instead of temporary detention, on condition the accused vacates by

a designated date the premises occupied jointly with the injured person and defines his place of stay.

- § 4. A person committed to the surveillance of the Police is obliged to appear in an indicated unit of the Police with a means of identification, to carry out orders aiming at recording the course of custody and to provide information necessary for establishing whether he complies with the requirements set out in the injunction of the court or public prosecutor. The accused may likewise be called to appear in person at an indicated time to provide the above information.
- § 5. In the event the person committed to the surveillance fails to comply with the requirements set out in the injunction, the custody authority immediately notifies the court or public prosecutor who issued the injunction."

The introduction of this solution into the Code of Criminal Procedure is meant to contribute to a more frequent application of the attendant measures by courts.

Furthermore, Art. 275 § 5 of the Code of Criminal Procedure amended by means of the above law, made the custody authority obliged to immediately notify the court or public prosecutor who issued the injunction in the event of the failure of the person committed to the surveillance to comply with the requirements set out in the injunction. This is meant to enhance the efficiency of the person committed to the surveillance to meet the imposed obligations, including the prohibition of contacts with the injured person or other persons, as well as the prohibition of staying in specified areas.

Application of conditional police custody

| Type of custody | 2006 | 2007 | 2008 | 2009 |
|---|---|---|---|---|
| Custody conditioned by vacating premises | 105 | 120 | 147 | 173 |
| Custody conditioned by restraining oneself from contacts with the injured person | 212 | 281 | 415 | 559 |

On 10 June 2010 a law was passed which amends inter alia the Code of Criminal Procedure (the law will enter into force in August 2010). The Law increased the mandate of the public prosecutor with respect to the perpetrator of violence; it is the public prosecutor, and not solely the court, as before, who will be able to issue an injunction to the accused for vacating premises occupied jointly with the injured person, if there is a justified risk of the perpetrator's again committing a crime with the use of violence against this person, especially if the former has threatened to do so. The injunction can be applied for a period of up to 3 months. If its use continues to be justified, the court of first instance competent to consider the case, may at the request of the public prosecutor extend its application for further periods of up to 3 months. Issuing an injunction to the accused to vacate residential premises, the accused may be shown at his own request a place of residence in centres assuring night accommodation, with the exception that the accused cannot be indicated centres for victims of home violence. This means that already at the stage

of preparatory proceedings a person suspected of domestic violence may be isolated from the victim (Art. 275a of the Code of Criminal Procedure).

**Article 72 of the Penal Code**

The obligation to restrain from contacting the injured person or other persons in a particular manner (Art. 72 § 1 section 7a of the Penal Code) or the obligation to vacate premises occupied jointly with the injured person (Art. 72 § 1 section 7b of the Penal Code) may also be ordered by the court with respect to a perpetrator of a crime committed with the use of violence or unlawful threat towards a family member in a situation of a conditional discontinuation of proceedings or conditional suspension of the imposed penalty of deprivation of liberty. Such a possibility is envisaged *expressis verbis* under Art. 13 of the Law on prevention.

As follows from statistical data, the frequency of courts' applying these measures has increased in recent years. And so, in:

- 2005 – no data available;
- 2006:

  1. In provincial courts no obligations pursuant to Art. 72 §1 section7a and 7b of the Penal Code were carried out,

  2. in district courts:

  - In 6 conditionally discontinued cases the obligation was carried out pursuant to Art. 72 §1 section 7a of the Penal Code,

  - In 60 cases of conditional suspensions of imposed penalties the obligation was carried out pursuant to Art. 72 §1 section 7a of the Penal Code,

  - In 29 cases of conditional suspensions of imposed penalties the obligation was carried out pursuant to Art. 72 §1 section 7b of the Penal Code;

- 2007:

  1. In provincial courts in one case of conditional suspensions of imposed penalties the obligation was carried out pursuant to Art.72 §1 section7a of the Penal Code,

  2. in district courts:

  - In 66 conditionally discontinued cases the obligation was carried out pursuant to Art.72 §1 section 7a of the Penal Code,

  - In 437 cases of conditional suspensions of imposed penalties the obligation was carried out pursuant to Art. 72 §1 section 7a of the Penal Code,

  - In 181 cases of conditional suspensions of imposed penalties the obligation was carried out pursuant to Art. 72 §1 section 7b of the Penal Code;

- 2008:

  1. In provincial courts in one case of conditional suspensions of imposed penalties the obligation was carried out pursuant to Art. 72 §1 section 7a of the Penal Code,

2. in district courts:

- in 81 conditionally discontinued cases the obligation was carried out pursuant to Art.72 §1 section 7a of the Penal Code,

- in 1,235 cases of conditional suspensions of imposed penalties the obligation was carried out pursuant to Art. 72 §1 section 7a of the Penal Code,

- in 409 cases of conditional suspensions of imposed penalties the obligation was carried out pursuant to Art. 72 §1 section 7b of the Penal Code;

- 2009:

1. in provincial courts:

- in 2 cases of conditional suspensions of imposed penalties the obligation was carried out pursuant to Art. 72 §1 section7a of the Penal Code,

- in 2 cases of conditional suspensions of imposed penalties the obligation was carried out pursuant to Art. 72 §1 section7b of the Penal Code,

2. in district courts:

- in 54 conditionally discontinued cases the obligation was carried out pursuant to Art. 72 §1 section 7a of the Penal Code,

- in 1,532 cases of conditional suspensions of imposed penalties the obligation was carried out pursuant to Art. 72 §1 section 7a of the Penal Code,

- in 437 cases of conditional suspensions of imposed penalties the obligation was carried out pursuant to Art. 72 §1 section 7b of the Penal Code.

On legislative action for combating sexual abuse, including home violence, and on the envisaged introduction of "home detention" or "house arrest" – see reply to Question 26.

## 12. Reply to question 12

**Mandate of the Commissioner for the Protection of the Rights of the Patient**

The Commissioner for the Protection of the Rights of the Patient (hereinafter: CPRP) was appointed in 2008 as the central authority of government administration, competent for the protection of the rights of the patient set out *inter alia* in the *Law of 6 November 2008 on the rights of the patient and the Commissioner for the Protection of the Rights of the Patient* (Journal of Laws of 2009, No. 52, item 417 as amended, hereinafter: *Law on the rights of the patient*). The Commissioner performs its mandate with the aid of the CPRP Office.

The *Law on the rights of the patient* indicates *inter alia* the rights of the patient to: 1) health benefits and services in compliance with the present state of medical knowledge, 2) information about his health status, 3) information about the rights of the patient as set forth in the law and bylaws, 4) confidentiality of information related to him, 5) express consent to be provided with health benefits

and services, 6) the respect of his intimacy and dignity, 7) the presence of a person close to him during the provision of health services, 8) have access to medical documentation, 9) express disapproval of the opinion or statement of a physician, 10) respect of private and family life, 11) spiritual care, 12) preserve valuables in a deposit.

CPRP can apply a catalogue of legal measures to protect the rights of the patient. The Law defines collective rights of patients (Art. 59 of the Law). As a result, a division can be made into collective rights of patients and individual rights of the patient.

With regard to individual rights of the patient, CPRP determines whether or not a violation of the law has occurred as a result of action or negligence of entities obliged to respect and implements the above rights. CPRP may institute explanatory proceedings if he has been informed about a fact of a probable violation of the rights of the patient. Formal criteria of an application for instituting such proceedings were limited to a minimum. Furthermore, CPRP may institute explanatory proceedings on his own, taking into account in particular the information about a fact of a probable violation of the rights of the patient. Upon considering the application submitted to him, CPRP may do the following: 1) carry on the case, 2) limit himself to indicate to the applicant the legal measures he or the patient is entitled to, 3) forward the case to the competent authority, 4) not carry on the case – notifying about it the applicant and the patient concerned. If CPRP decides to carry on the case, he may himself carry out explanatory proceedings or apply to competent authorities to examine the case or its part; these can be in particular authorities of supervision, prosecution, state occupational or social audits, in line with their competences. Carrying out explanatory proceedings, CPRP has the right to examine, without prior notice, each case on site. He may demand explanations about and access to files of each case carried out by agendas of public administration or self-governments of medical professions. CPRP may also demand information about the status of the case carried out by courts, prosecution authorities and other law enforcement authorities and demand insight in the Office into judicial and prosecution files and files of other law enforcement authorities upon the conclusion of proceedings and adoption of a final solution.

After carrying out explanatory proceedings, CPRP may *inter alia* address a statement to the institution whose operation was found to have violated the rights of the patient.

In civil cases concerning violations of the rights of the patient, CPRP may *ex officio* or at the request of a party: 1) demand the institution of proceedings, 2) take part in ongoing proceedings with the prerogatives of a public prosecutor.

With regard to protecting collective rights of patients, a practise is considered as violating collective rights of patients if it is an organised action or negligence of entities providing health services as well as the unlawful, and confirmed as such by a valid and final court ruling, organisation by the organiser of a protest or strike contravening provisions of solving collective protests, which action is meant to deprive patients of their rights or limits these rights, in particular with a view to obtaining a pecuniary benefit. In the event the Commissioner issues a decision on recognising a given practice as violating collective rights of the patient, he orders its discontinuation or indicates action necessary to redress the effects of violations of the collective rights of patients, indicating a schedule for taking this action. The decision takes immediate effect. CPRP imposes on the entities providing health services or the organiser of a strike, by means of a decision, a fine of up to 500,000

PLN (i.e. ca. 125,000 Euro) in the event of failure to take action defined in the above decision by the date set forth in it.

**Measures taken with a view to disseminating knowledge about the rights of the patient in the general public**

One of the rights of the patient (Art. 11 *of the Law on the rights of the patient*) is the one to information about the rights of the patient. The entity providing health services is obliged to make this information available in writing, through its placement on the premises in a generally accessible place. Furthermore, the Office of the Commissioner for the Protection of the Rights of the Patient runs a toll free helpline which interested individuals may consult in matters related to the rights of the patient or inform about their violation. In addition, through the website www.bpp.gov.pl patients may receive information on the most frequent problems filed. The website includes also statements and addresses of CPRP to other authorities and institutions concerning the rights of the patient and changes in legislation and bylaws. It must be emphasised that CPRP informs patients about their rights through the communications media, e.g. radio, television and press.

**Rights of the patient lodging a complaint of medical malpractice connected with a violation of the rights of the patient**

First, pursuant to Art. 4 section 1 *of the Law on the rights of the patient*, in the event of a deliberate violation of the rights of the patient, the court may award an adequate amount of money as compensation for the damage incurred pursuant to Art. 448 of the Civil Code[9].

Second, the patient may pursue his claims (for damages, compensation, and benefit) exclusively pursuant to the Civil Code (Art. $445^{10}$ and ff. of the Civil Code).

Third, depending on circumstances, adequate action may be taken by the prosecution authority and a criminal court.

Fourth, physicians, as members of medical chambers, are professionally liable. Proceedings in cases of violating principles of exercising the medical profession are conducted by agencies of medical self-government (commissioner for professional liability, medical court). A similar principle applies to professional responsibility of nurses and midwives as well as laboratory analysts.

Furthermore, it is in order to point out that pursuant to Art. 31 section 1 *of the Law on the rights of the patient*, the patient or his duly appointed attorney may file a dissenting opinion with respect to the opinion or statement issued by a physician or dentist, if this opinion or statement affects the rights or obligations of the patient arising from relevant law. A dissenting opinion is filed with the Medical Commission operating at CPRP, via CPRP, within 30 days of the day the opinion or

[9] Art. 448 of the Civil Code. In the event of a violation of a person's right, the court may award the person whose personal right has been violated, an adequate amount of money as compensation for the damage incurred or at his request order the payment of an adequate amount of money for the benefit of a social institution the injured party indicates, irrespective of other means necessary for the redress of the effects of the violation. (…)

[10] Art. 445 of the Civil Code § 1. In cases set forth in the preceding Article, the court may award to the injured party an adequate amount of money as compensation for the damage incurred.

statement is issued by the physician evaluating the patient's health status. A dissenting opinion cannot apply in appeals cases with respect to opinions and statements regulated under separate provisions. The above provisions were introduced due to an absence of legal regulations concerning appeals against doctors' opinions and statements in cases provided for under the Law of 7 January 1993 on family planning, protection of the human foetus and the conditions under which pregnancy termination is permissible (the case of Alicja Tysiąc vs. Poland), but will also apply to other doctors' opinions and statements.

The Medical Commission is entrusted with the examination of the justifiability of the content of the dissenting opinion. The Commission expresses its stand in the form of a statement, issued on the basis of medical documents and, when necessary, after examining the patient. The patient should be notified about the date of the meeting of the Medical Commission or about the date, venue and scope of examination. The patient or his statutory representative may participate in a meeting of the Medical Commission, with the exception of the part of the meeting when a debate and a vote is held on the statement and has the right to provide information and explanations in the case. The statement of the Medical Commission is final.

## 13 Reply to question 13

**Legal provisions on admissibility of abortion**

Pursuant to the binding provisions of the *Law of 7 January 1993 on family planning, protection of the human foetus and the conditions under which pregnancy termination is permissible* (Journal of Laws No. 17, item 78 as amended), abortion can be effected exclusively by a physician in the circumstances set forth in the law. Detailed information on the possibilities and principles of having an abortion were presented in the Report – in response to recommendation 8 of the Committee.

The Centre of Information Systems of Health Protection runs a register of the number of abortions made pursuant to the above law on the basis of statistics from form MZ – 29 – *Report on the operation of a general hospital*.

Data on the number of abortions made in the years 2007 and 2008 (data for the preceding period was included in the Report – in response to recommendation 8):

Abortions made in the years 2007-2008, disaggregated as to cause.

| Poland | Total No. | Abortions effected pursuant to the law: | | |
|---|---|---|---|---|
| | | as a result of a life or health hazard for the mother | as a result of prenatal tests | as a result of a crime |
| 2007 | 322 | 37 | 282 | 3 |
| 2008 | 499 | 32 | 467 | 0 |

Source: Reports of the Program of Statistical Research of Public data: MZ-24 and MZ-29; Centre of Information Systems of Health Protection.

**Provisions of penal law concerning illegal abortions**

The Penal Code envisaged criminal liability for violating abortion admissibility criteria, as was indicated in the Report.

For statistics on illegal abortions – see Appendix 13 A and 13 B.

Data on so-called "clandestine abortions" other than that provided in Appendices and which could be considered as actual is not available.

**Measures preventing illegal abortions**

With a view to allowing women the actual use of a legal abortion as set forth in the *Law on family planning*, in 2008 new legal regulations were adopted, pursuant to which the patient may appeal against the decision of a physician, including a decision to refuse an abortion – more on this in the reply to Question 12 of the Committee.

## 2. Measures adopted by the Ministry of Education

**Support for teenage mothers**

Pursuant to Art. 2 section 3 of the *Law of 7 January 1993 on family planning, protection of the human foetus and the conditions under which pregnancy termination is permissible* (Journal of Laws No. 17, item 78 as amended):

"Schools shall have the duty to grant leave to pregnant pupils, and any other essential assistance up to the end of compulsory schooling, in such a way that this does not entail, as far as possible, any delay in regard to the subjects of the curriculum. If pregnancy or childbirth make it impossible to undergo, within the prescribed time limits, important examinations for the continuation of studies, the school shall be required to grant a supplementary period, not exceeding six months, for the examinations to be taken by the person concerned".

The above provision allows pregnant students to avail themselves of leaves, examinations at another time, and other forms of support (most often: individual study, compulsory schooling outside school premises, individual tutorials).

It is the duty of the school to notify students about assistance opportunities and to create a system of psychological and educational support for children and young people.

Principals of educational institutions attended by pregnant students, depending on the possibilities of the school and the needs of the students, provide the following: care of a psychologist or a school educator; material support in getting to the doctor and for periodic medical check-ups, in establishing paternity, finding a foster family, placement in the home for single mothers.

A pregnant student, whose exceptional educational skills are confirmed by a statement of a psychological and educational counselling centre, may follow an individual school program or course of study. A statement on the need for an individual course of study is issued following an application by legal guardians or an adult pregnant student, filed with the expert panel in a public psychological and educational counselling centre. The application should be accompanied by a medical certificate about the student's health status, where the physician determines whether the student's health status prevents her or only significantly hampers her attending school, as well as defines the period for which an individual course of study should be applied.

Furthermore, pregnant students may count on assistance provided by the school as to the principles and opportunities for exercising their right to: free of charge family, psychological, legal, and educational counselling; being accepted to an assistance centre for mothers with underage children and pregnant women or to

an emergency assistance centre; a monetary benefit; benefits in kind; financial support granted by the voivode through social organisations, the Catholic Church, other Churches and religious communities.[11]

**Measures adopted by schools within the subject "Education for Life in the Family"**[12]

(Extension of the information provided in the Report, in response to recommendation 9 of the Committee)

3rd education stage (junior high schools)

Content taught (specific requirements):

*inter alia* Threats of puberty (sexual pressure, addictions, pornography, prostitution of minors); Sexual initiation (relationship between sexual activity and love and responsibility; dysfunctions connected with the treatment of the human person as an object in the sexual sphere); Risks of early initiation.

4th education stage (high schools)

Content taught (specific requirements):

*inter alia* Methods of fertility recognition; Contraceptive methods and measures (Manner of operation and selection criteria); Unplanned pregnancy (ways of seeking support in difficult situations); Abortion as a threat to mental and physical health (legal, medical and ethical aspects).

## 14. Reply to question 14

a) *Information on measures adopted to increase safeguards against torture and ill-treatment in Police custody:*

In 2007, the Council of Europe Commissioner for Human Rights presented to the Polish government the recommendation to establish an independent authority for the examination of improper conduct of the Police.

Upon the examination of binding provisions, the Polish Government came to the conclusion that the Commissioner for the Protection of Civil Rights (Ombudsman) will be the most competent authority in this respect, on account of his capacities and rights to examine complaints of citizens, including those concerning the conduct of officers of the Police and other services. As a result, a system was adopted of submitting to the Ombudsman information about complaints and incidents with the participation of the Police and Border Guard, concerning cases where the European Court of Human Rights issues its rulings. This information signals certain types of incidents and at the moment of being submitted to the Ombudsman is not yet confirmed. Information about complaints is submitted to the Ombudsman by units of the Police and Border Guard on a monthly basis. The

[11] Regulation of the Council of Ministers of 5 October 1993 on defining the scope, form and course of providing social and legal assistance to pregnant women and women rearing a child (Journal of Laws of 1993 No. 97, item 441 as amended).

[12] According to the core curriculum of general education for junior high and high schools, whose completion allows the obtaining of a school leaving certificate upon passing the final exam – appendix No. 4 to the ordinance of the Minister of National Education of 23 December 2008 on the core curriculum of pre-school education and general education in specific school types (Journal of Laws of 2009 No. 4, item 17).

mechanism of submitting information other than complaints is as follows: a plenipotentiary of the provincial /capital city headquarters of the Police for protecting human rights, on receiving a telegram from the duty officer of the headquarters registers this information which, after being communicated to the provincial /capital city commander of the Police, is dispatched immediately (no later than within 5 days of the plenipotentiary receiving the telegram) through electronic mail to the Plenipotentiary of the Commander in Chief of the Police for Protecting Human Rights, who then forwards this information (no later than within 2 days), also through electronic mail, to the Ombudsman.

In order to increase supervision of premises for detainees, the *ordinance of the Minister of the Interior and Administration of 13 October 2008 on Police premises for detainees or persons brought for sobering up and the rules of stay on such premises* introduces a provision allowing furnishing such premises with monitoring equipment operating around the clock and other technical equipment increasing the security of persons staying there.

Furthermore, in-house regulations of the Police concerning service on premises for detainees or brought for sobering up have been constructed in such a manner that they introduce an obligation of explaining the causes and circumstances of extraordinary events which have occurred on such premises[13].

b) Officers and staff of the Prison Service are trained as to principles of treatment of persons deprived of liberty both as part of preliminary occupational training and in schools for subalterns, ensigns and cadets, as well as within on the job training (courses, conferences, seminars, debates, briefings). Occupational training in the schools of the Prison Service aims to develop humanitarian attitudes[14]. Training programs relate to international and domestic law on human rights; at present priority is given to training programs about international human rights standards and instruments.

Information about each officer being familiarised with human rights issues is entered into his personal file. Pursuant to ordinance No. 5/07 of the General Director of the Prison Service of 4 June 2007 on personal files of officers of the Prison Service, part A of personal files includes *inter alia* "a statement of learning the binding regulations and pledge of their observance, in particular of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the United Nations General Assembly on 10 December 1984 (…)".

The treatment of human rights as an area of professional expertise indispensable for a qualified officer of the Prison Service is both a challenge and a real future perspective.

[13§] 32 of ordinance No. 1061 of the Commander in Chief of the Police of 2 September 2009 on methods and forms of performing duties in premises for detainees or brought for sobering up.

[14] The Law on the Prison Service stipulates as follows:
Art. 1. section 3. The fundamental tasks of the Prison Service include: assuring respect for the rights of persons sentenced to a penalty of deprivation of liberty or under temporary detention, in particular humanitarian conditions, respect for their dignity, health and religious care;
Art. 12. In their conduct with persons deprived of liberty (officers and staff) are obliged to: follow the principles of the rule of law, impartiality and humanism.

A comprehensive application of case law of the European Court of Human Rights and CPT Reports constitutes a good practice.

## 15. Reply to question 15

a) Responding to Question 15 of the Committee, the General Prosecution Authority asked appellate prosecution authorities to present detailed statistics on the conduct of officers of the Police which has the characteristics of crimes under Art. 246[15] and 247[16] of the Penal Code, including statistics on:

- registered notifications about an offence,

- cases concluded with a refusal to institute preparatory proceedings,

- instituted proceedings,

- number of proceedings concluded with a decision to discontinue investigation,

- data on indictments filed in a particular category of cases,

- number of accused officers of the Police, and

- content of judgements (convicting or acquitting ones).

The General Prosecution Authority also asked for data on possible complaints concerning cases when the Police or the prosecution authority did not act on filed complaints concerning offences pursuant to Art. 246 of the Penal Code and 247 of the Penal Code, along with an indication of the manner of responding to the case, or complaints about a mistaken qualification of a notification about an offence as a complaint.

On the basis of reports submitted to the General Prosecution Authority, it was established that in the period from October 2003 until the end of 2009, units of prosecution authorities registered 1,299 notifications about an offence pursuant to Art. 246 and Art. 247 of the Penal Code. Out of this number, in 526 cases decisions were made against instituting an investigation and in 694 cases public prosecutors issues decisions to institute investigations, which in 640 cases were concluded with decisions about the discontinuation of investigations.

In the period under consideration, the Prosecution Authority received no single complaint about not pursuing a notification about an offence concerning action of officers of the Police consisting in ill-treatment of persons in connection

[15] Art. 246. A public official or anyone acting under his orders for the purpose of obtaining specific testimony, explanations, information or a statement, uses force, unlawful threat, or otherwise torments another person either physically or psychologically, shall be subject to the penalty of deprivation of liberty for a term of between 1 and 10 years.

[16] Art. 247. § 1. Whoever torments either physically or psychologically a person deprived of liberty, shall be subject to the penalty of deprivation of liberty for a term of between 3 months to 5 years.

§ 2. If the perpetrator acts with particular cruelty, he shall be subject to the penalty of deprivation of liberty for a term of between 1 and 10 years.

§ 3. A public official who, despite his duties, allows the act specified in § 1 or 2 to be committed, shall be subject to the penalty specified in these provisions.

with the performance of professional duties with them. Moreover, in the period under consideration across the country there were a total of 9 complaints about negligence of public prosecutors in this type of cases. As a result of official audits, however, all 9 complaints were found unjustified.

In the period from October 2003 until the end of 2009, indictments were filed to courts in 29 cases (2.4% of registered proceedings), related to a total of 45 officers of the Police; there were 23 convicting sentences or decisions about a conditional discontinuation of proceedings. 4 accused officers were acquitted pursuant to valid and final judgements.

The above data demonstrates that the statement included in the question put by the Committee implying that there is a significant discrepancy between the number of complaints lodged against the Police for ill-treatment and the number of investigations and prosecutions is not borne out by facts. On the contrary, as follows from the above data, notifications lodged were subject to procedural assessment.

In turn, with respect to the question of a significant discrepancy between the number of notifications about an offence in this category and the number of indictments it may be said that it stems from the assessment of collected evidence carried out in individual cases – not every complaint is backed up by evidence.

Furthermore, in cases when provisions of the Penal Code cannot be justifiably applied to an officer of the Police, under Polish law an officer of the Police may be subject to disciplinary measures.

**b) Persons detained by the Police or Border Guard**

Each person in the territory of Poland detained by the Police or Border Guard, in the case of improper treatment (e.g. torture or ill-treatment) has the right to lodge a complaint about the conduct of the Police or Border Guard or a notification about an offence to their detriment to a unit of the Police or the Prosecution Authority. In the case of foreigners, the Police or Border Guard has to assure contact with an interpreter so that the detainee may receive information about the reasons for detention and his rights. Non-compliance with these procedures may result in the officer's criminal liability (Art. 231 of the Penal Code). Furthermore, in the case of detaining foreign nationals, they should be allowed, at their own request, to contact in a manner available the competent consular office or diplomatic representative (612 § 2 of the Code of Criminal Procedure).

The following legal regulations are in force with a view to assuring to all persons, in particular to those staying in detention centres, access to information about their rights – in a language understandable to them:

"A detainee accepted to given premises is notified without delay about his rights and obligations and is familiarised with the rules of stay on the premises"; A detainee who does not know Polish is assured a chance to communicate in cases concerning stay on given premises through an interpreter."[17];

The text of internal regulations (defining the rights and obligations of a foreigner staying in a centre for aliens) is placed in a visible place in each room and

[17] Provisions of the Rules of stay of detainees on premises of units of the Border Guard dedicated to detainees constituting an appendix to the ordinance of the Minister of the Interior and Administration of 30 November 2001 on conditions to be met by premises in units of the Border Guard dedicated to detainees, and the Rules of stay on these premises (Journal of Laws No. 148, item 1657 as amended).

residential cell for a foreigner in Polish and, if possible, in a language understandable to the foreigners staying there.[18]

Each foreigner, both having a citizenship of a given state or a stateless person, when accepted to a Guarded Centre for Foreigners, is notified in writing in a language understandable to him, about his rights and obligations and the principles of stay in a guarded centre or on the premises of a detention centre for the purpose of expulsion.

**Persons under temporary detention and those serving the penalty of deprivation of liberty**

Pursuant to Art. 101 of the Executive Penal Code, a convicted person upon placement in a correctional facility should be notified without delay about his rights and obligations, in particular should be offered a chance to familiarise with the provisions of the EPC and the rules of conduct for persons serving the penalty of deprivation of liberty.

Pursuant to § 22 section 1 subsection 2 of ordinance No. 2/04 of the General Director of the Prison Service of 24 February 2004 on detailed principles of conducting and organising penitentiary operations and scopes of duties of officers and staff of penitentiary and therapeutic departments, the Prison Service is obliged to notify the convicted person, in a conversation held immediately upon admission to the correctional facility, about the following:

- possible risks to personal safety and security during a stay in the correctional facility /detention facility and manners of avoiding them,

- his rights and obligations,

- possible occurrence of conduct typical of criminal circles,

- obligation to notify superiors about risks to his own personal safety and that of other prisoners.

Another significant regulation is contained under Art. 102 section 10 of the Executive Penal Code, which stipulates that the convicted person has the right to lodge petitions, complaints and requests to a competent authority and to submit them, without the presence of third persons, to the administration of the correctional facility, heads of units of the Prison Service, penitentiary judge, public prosecutor, and the Ombudsman.

Pursuant to Art. 103 of the Executive Penal Code, convicted persons, their defence lawyers and attorneys and competent non-governmental organisations have the right to lodge complaints with human rights authorities appointed pursuant to international agreements ratified by the Republic of Poland.

It is worthwhile to note that the convicted person has the right to avail himself of all legal measures set forth in provisions of criminal, civil and administrative law in order to protect his rights and interests. A person under

[18] For more details see: Rules of stay of foreigners in a guarded centre and a temporary detention centre for the purpose of expulsion constituting an appendix to the ordinance of the Minister of the Interior and Administration of 26 August 2004 on conditions to be met by a guarded centre and a temporary detention centre for the purpose of expulsion and the Rules of stay of foreigners in a guarded centre and detention facility for the purpose of expulsion (Journal of Laws No. 190, item 1953).

temporary detention, pursuant to Art. 215 § 2 of the Executive Penal Code, should be allowed preparation for defence.

Furthermore, in each penitentiary unit, in a place offering easy access to convicted persons and persons under temporary detention, there is information on the authorities they can lodge their complaints, grievances and appeals with, along with relevant procedural rules.

In Art. 82 of the Executive Penal Code, among the objectives of classifying convicted persons the legislator lists protection against the detrimental impact of demoralised convicted persons and provision of personal safety. Classification is made on the basis of *inter alia* age, degree of demoralisation and social risk and the kind of offence committed by the convicted person.

The EPC also envisages the possibility of qualifying a convicted person as "dangerous" (Art. 88 a § 1 of the EPC). One of the features for qualifying a person to this category of persons deprived of liberty is rape or ill-treatment committed by a convicted person or a person under temporary detention during a previous or present conviction (Art. 88a section 2 section c of the Executive Penal Code).

Placement in a residential cell (Art. 110 § 4 of the Executive Penal Code) takes into consideration medical, psychological and rehabilitation recommendations, the need to foster a proper atmosphere among convicted persons, and the need to prevent self-aggression and perpetration of crimes during a conviction.

The above issues seem to be vital for assuring personal safety to convicted persons, including the prevention of ill-treatment and torture, to which the Prison Service is obliged under Art. 108 of the Executive Penal Code.

**c) Complaints concerning officers of the Police**

In the event of complaints lodged with the Police and concerning officers of the Police pertaining to alleged crimes, or notifications about an offence committed by an officer of the Police, they are submitted for consideration by an independent external authority, i.e. the public prosecutor. In turn, the Police offer the victim support as defined by the public prosecutor, e.g. through the performance of particular actions in a given investigation.

The justifiability of a decision about the discontinuation of investigations in cases concerning ill-treatment by officers of the Police is constantly monitored since pursuant to an order contained in a letter of the National Public Prosecutor of 8 August 2007, positions of coordinating prosecutors were set up in appellate and provincial prosecution authorities for crimes of officers of the Police. The coordinators are obliged *inter alia* to assess on an ongoing basis the justifiability of a decision about the discontinuation of investigations in cases concerning an officer of the Police. This form of supervision assures a proper level of proceedings as to their substance.

**Complaints concerning officers of the Prison Service**

Pursuant to § 8 section 6 of the ordinance of the Minister of Justice of 13 August 2003 on ways of considering applications, complaints and requests of convicted persons and persons under temporary detention (Journal of Laws No. 151, item 1467), "In especially justified cases, a complaint should be considered directly on site by representatives of the unit superior to that to which the complaint applies". This provision applies inter alia when it is necessary to examine the case on site, whether the complainant is not subject to pressure that has the features of retaliation.

The above issues are monitored continuously by the Ministry of Justice and the Central Board of the Prison Service. In particular, it is one of the areas of permanent audits carried out by provincial directors of the Prison Service and the General Director of the Prison Service.

In each case causes for the occurrence of justifiable complaints are examined and action is taken to determine persons guilty of causing alleged irregularities. This kind of examination of concrete cases and the resulting knowledge is used in the Prison Service for training programs of the staff and efficient enforcement from officers and staff of knowledge of provisions regulating the execution of the penalty of deprivation of liberty and temporary detention.

To forestall possible negative patterns of behaviour, officers are familiarised on an ongoing basis *inter alia* with case law of the European Court of Human Rights in Strasbourg as well as with recommendations and comments of institutions and organisations outside the Prison Service which monitor the operation of penitentiary units, taking into account the question of complaints.

The Penitentiary Office of the Central Board of the Prison Service examines reports concerning extraordinary incidents occurring among convicted persons, such as abuse, rape and assault. The Office may demand additional explanations, assess the correctness of the action taken and procedures applied, issue statements concerning confirmed irregularities to provincial directors of the Prison Service and directors of correctional facilities and temporary detention centres, meant to prevent such incidents in the future.

Every single piece of information that could point to the use of torture or ill-treatment is examined carefully. In the case of ill-treatment, assault or rape of the convicted person, procedures are instituted defined in Instruction No. 9/2003 of the General Director of the Prison Service of 29 December 2003 on notifications about extraordinary incidents, for instance consisting in the obligation to:

notify without delay superior units about such an incident,

carry out explanatory proceedings or action whose completion should take place at the latest within 21 days of the day of issuance a decision in this case,

notify the penitentiary judge and public prosecutor having jurisdiction over the place,

notify a competent authority when the incident involved a convicted person subject to proceedings conducted by this authority.

Furthermore, in the event of determining the perpetrator of the incident, disciplinary measures apply.

## 16. Reply to question 16

### a) Penal Code

The amendment of 20 May 2010 (Journal of Laws No. 98, item 626; the Law will enter into force on 8 September 2010) introduced into the Penal Code the definition of trafficking in human beings, patterned on definitions from relevant acts of international law:

Art. 115 § 22. Trafficking in human beings consists in recruitment, transport, supply, transfer, storage or acceptance of a human person with the use of:

1) violence or unlawful threat,

2) abduction,

3) deceit,

4) misleading or taking advantage of an error or inability to properly understand action taken,

5) abuse of the relation of dependence, taking advantage of a critical situation or helplessness,

6) offer or receipt of a pecuniary or personal benefit or its promise to a person taking care or supervising another person

- for the purpose of taking advantage of this person, even with her consent, in particular in prostitution, pornography or other forms of sexual exploitation, for forced work or services, in begging, slavery and other forms of exploitation degrading human dignity or for the purpose of obtaining cells, tissue or organs in contravention of the provisions of the law. If the conduct of the perpetrator concerned a minor, this conduct constitutes trafficking in human beings, even if the methods or measures listed in sections 1-6 have not been used.

Art. 189a, introduced into the Penal Code pursuant to the above amendment, penalises the crime of trafficking in human beings[19] as well as – a novelty in Polish law – preparation for it:

Art. 189a § 1. Whoever is involved in trafficking in human beings shall be subject to the penalty of the deprivation of liberty for a term of at least 3 years.

§ 2. Whoever makes preparations for the perpetration of the offence set forth under § 1, shall be subject to the penalty of the deprivation of liberty for a term of from 3 months to 5 years.

The currently binding provisions of the Penal Code directly addressing the crime of trafficking in human beings are as follows: Art. 203 of the Penal Code (subjecting another person to practice prostitution), 204 sections 1–3 of the Penal Code (inducing another person to practice prostitution and facilitating it, inducing a minor to practice prostitution), Art. 191 § 1 of the Penal Code (use of force or an illegal threat with the purpose of compelling another person to conduct himself in a specified manner) or pursuant to Art. 189 of the Penal Code (unlawful deprivation of liberty).

Furthermore, the aforementioned amendment introduces into the Penal Code a definition of slavery, according to which slavery is a state of dependence where a human being is treated as a property object. The amendment moreover changes Art. 8 of the Law on provisions introducing the Penal Code, which penalises the crime of slavery: the previous wording: "Whoever causes the transfer of another person into the state of slavery or is involved in trafficking in slaves, shall be subject to the penalty of deprivation of liberty for a term of at least 3 years."; the wording of the amended provision is as follows: "Whoever causes the transfer of another person into the state of slavery or keeps her in this state or is involved in trafficking in slaves, shall be subject to the penalty of deprivation of liberty for a term of at least 3 years."

[19] Prior to the entry into force of the amendment, this crime is penalised Art. 253 of the Penal Code, which the said amendment invalidated.

**Law on aliens and the Law on granting protection to foreigners in the Republic of Poland – amendments**

In order to align Polish law with the provisions of the law of the European Union, in particular with the *Council Framework Decision of 19 July 2002 on combating trafficking in human beings* (Official Journal L 203 of 1 August 2002), amendment was made to *the Law of 13 June 2003 on aliens* (Journal of Laws of 2006, No. 234, item 1694 as amended). The amendment introduced provisions concerning legalisation of the stay of victims of trafficking in human beings cooperating with law enforcement agencies, taking into account the provisions of the above directive. If there is a justifiable suspicion that a foreigner is a victim of trafficking in human beings confirmed by an authority competent to conduct proceedings related to combating trafficking in human beings (Art. 33 section 1 section 5 of the *Law on aliens*), a visa can be issued to him according to a special procedure. This visa was issued for a period of stay indispensable for a foreigner to make a decision to cooperate with an authority competent to conduct proceedings related to combating trafficking in human beings, but not exceeding 2 months.

Following the amendment of the *Law on aliens*, which came into force on 1 January 2009, the above visa - issued according to a special procedure - was replaced by a special permit to reside in Poland for a specified time (up to 3 months), issued to foreigners staying illegally in Poland, with respect to whom an authority competent to conduct proceedings related to combating trafficking in human beings concludes that they are probably victims of trafficking in human beings within the meaning of the aforementioned framework decision.

The foreigner to whom the above permit has been issued cannot be expelled from the Republic of Poland; in addition, an earlier decision about expulsion is not carried out (Art. 89 section 1 section 3 of the *Law on aliens*).

Following the start of cooperation of the foreigner with an authority competent to conduct proceedings related to combating trafficking in human beings, such a foreigner is issued a permit to reside in Poland for a specified time, provided he meets the following criteria:

a) stays in the Republic of Poland,

b) has started cooperation with an authority competent to conduct proceedings related to combating trafficking in human beings,

c) discontinued contacts with persons suspected of committing offences of trafficking in human beings.

A permit to reside in Poland for a specified time is issued for a period of 6 months, and the foreigner can apply for other permits of this kind if the situation warrants (Art. 56 section 2 section 4 of the *Law on aliens*).

The above permit may be issued to a foreigner staying illegally in the territory of Poland by a voivode competent for the place of residence of the foreigner.

If, upon concluding cooperation with an authority competent to conduct proceedings related to combating trafficking in human beings, a foreigner who is a victim of trafficking in human beings intends to continue living in Poland, he may do it under general provisions.

After the conclusion of a legal period of stay in Poland, a foreigner may be granted consent for tolerated stay in Poland (Art. 97 section 1 of the Law of 13 June 2003 *on granting protection to aliens in the territory of the Republic of Poland*).

This consent is granted provided: a return of the foreigner might only be to the country where his right to life, freedom and personal safety would be jeopardised, where he could be subject to torture or inhuman or degrading treatment or punishment or could be forced to work or be deprived of the right to a fair trial or could be unlawfully punished or if his expulsion would jeopardise the right to family life or would violate the rights of a child as defined under the *Convention on the Rights of the Child* to a degree posing a significant hazard to his mental and physical development, or if the expulsion were impossible for reasons independent of the authority exercising the decision of expulsion and of the foreigner.

More on the protection of aliens and proceedings in asylum cases – see reply to Question 8.

**b) and c) Statistics – Appendices 16 A - E.**

**Training programs**

Training programs for representatives of institutions committed to combating trafficking in human beings, including officers of the Police and representatives of the judiciary, are held regularly. And so, for instance:

Training programs for representatives of the judiciary:

Training programs concerning trafficking in human beings were held within the framework of successive *National Programs of Combating and Preventing Trafficking in Human Beings* in the years 2003 – 2004, 2005 – 2006, 2007 – 2008 and within the current *National Action Plan against Trafficking in Human Beings in the years 2009-2010*. Within the framework of these programs and the plan of action, resources have been dedicated to the following: training programs for officers of the Police and Border Guard, public prosecutors, judges, labour inspectors, staff of the Office for Foreigners conducting interviews with persons applying for refugee status and working in centres for foreigners and for training programs on trafficking in children, for directors of care and educational facilities and representatives of provincial offices exercising supervision over them.

In 2005 training was held for 26 judges and 36 public prosecutors including the following subjects: trafficking in human beings from the perspective of EU legislation; protection of a witness to trafficking in human beings, manner of examining a witness – a victim of trafficking in human beings (an adult and a child).

In 2006 the Polish National School of Judiciary and Public Prosecution organised training programs for judges on the question of international legal cooperation in the area of family law (abduction of a child abroad – the Hague Convention of 25 October 1980, legal situation of unaccompanied minor foreigners applying for refugee status, situation of foreign children staying in care institutions – deprivation, restriction of parental authority of natural parents, adoption, with special emphasis on EU law) and proceedings with foreigners concerning the use of arrest, placement in a guarded centre and a detention centre for the purpose of expulsion.

Questions concerning criminal proceedings related to crimes of trafficking in human beings and illegal migration are taught in a post-graduate study course on Organised Crime and Terrorism for public prosecutors, held by the Polish National School of Judiciary and Public Prosecution in cooperation with the Faculty of Law and Administration of Warsaw University. The post-graduate course was led twice, in the academic year 2006/2007 and 2007/2008; since it was attended by all public prosecutors employed in Departments of Crime and Corruption in Appellate

Prosecution Authorities from across the country, in the academic year 2008/2009 this course was no longer held.

In 2007 La Strada Foundation initiated a series of seminars for judges, held in cooperation with the Embassy of the United Kingdom and the Ministry of Internal Affairs and Administration; they were organised as part of a specialist pilot training program "*Trafficking in human beings in case law as a crime and a circumstance for committing other crimes"*. Other training sessions of this kind, in particular regions of Poland, were held in 2008 (the training was attended by 70 judges).

In March 2009, the Polish National School of Judiciary and Public Prosecution organised specialist training sessions on trafficking in human beings. Training courses were dedicated to a group of around 60 public prosecutors – consultants for cases of trafficking in human beings. Consultants for cases of trafficking in human beings are public prosecutors appointed in all Appellate Prosecution Authorities, who have ample expertise in combating trafficking in human beings; their task is to provide support in complicated cases concerning trafficking in human beings. The training programs focused, *inter alia*, on the notion of trafficking in human beings, the rights of the victim in proceedings in cases of trafficking in human beings, methodology of criminal proceedings in cases concerning trafficking in human beings (workshops) and cooperation between the public prosecutor and the Police, Border Guard and non-governmental organisations in the course of proceedings concerning trafficking in human beings.

To follow up on the recommendations of the Council of Europe Human Rights Commissioner on providing officers of the Police with specialist training programs on trafficking in human beings and domestic violence, a *Program of a specialist course on combating trafficking in human beings* was prepared. The program was implemented in 2009. The course is dedicated to officers of the Police who work with cases related to combating trafficking in human beings and/or conduct classes related to combating trafficking in human beings.

In December 2010 training programs are scheduled for a group of 50 judges. The classes will focus on "*Criminal law aspects of combating discrimination on grounds of race, ethnicity, religion, sexual orientation or gender. Forensic science, criminological and legal aspects of trafficking in human beings"*.

Training programs for social workers:

The first training concerning trafficking in human beings was held by the MLSP in 2004, successive ones (8) in cooperation with the Ministry of Internal Affairs and Administration within the *Task Group for Combating and Preventing Trafficking in Human Beings*. Training programs were organised in all provinces and were attended by officers of the Police, social workers, judges, and public prosecutors. Training programs were organised as lectures and workshops led by people supporting victims of trafficking in human beings, public prosecutors of the National Prosecution Authority, employees of the Ministry of Internal Affairs and Administration and members of the Working Group. Training programs familiarised social workers with issues related to trafficking in human beings and facilitated contacts with representatives of other services committed to combating trafficking in human beings.

Since 2004 the MLSP has held its own series of training programs on general issues related to trafficking in human beings. Individual modules concern the questions of adult victims of trafficking in human beings and the questions of children-victims of trafficking in human beings. Training programs take place 4 times a year. Until 2010, 10 training programs have been held. Training programs

are financed in full by the MLSP. Six training programs financed by the European Union have been held within the "IRIS" Partnership for Development.

The Polish Government cooperates in organising training programs on trafficking in human beings, first of all with the following non-governmental organisations: La Strada Foundation and Dzieci Niczyje Foundation.

Training programs for the diplomatic and consular corps:

In May 2010 the Ministry of Internal Affairs and Administration organised training for the diplomatic and consular corps in cooperation with the Council of the Baltic Sea States, International Organisation for Migration, Moldova, and domestic experts. Furthermore, the Ministry of Foreign Affairs included a special module concerning trafficking in human beings in a training for the diplomatic and consular corps.

## 17. Reply to question 17

One investigation was recorded that answered the categories included in the question. This investigation is conducted in the Fifth Department for Organised Crime and Corruption of the Appellate Prosecution Authority in Warsaw and concerns a suspicion of public officials' exceeding their authority, i.e. an offence under Art. 231 § 1 of the Penal Code:

Art. 231. § 1. A public official who, exceeding his authority, or not performing his duty, acts to the detriment of a public or individual interest, shall be subject to the penalty of deprivation of liberty for up to 3 years.

The investigation was instituted after the disclosure of facts justifying it and out of the need for verification in a trial of circumstances connected with the resolution of the European Parliament concerning the examination of the alleged use of European countries by the US Central Intelligence Agency for the transportation and illegal detention of prisoners suspected of terrorist activity.

The investigation is conducted in a specialised unit of the Polish Prosecution Authority (in the Department for Organised Crime and Corruption), which demonstrates the importance attached by Poland to the respect for human rights and the need to clarify all suspicions of violating international standards safeguarding these rights.

Most of the activities of collecting evidence in this case are confidential and the findings of the investigation in this respect are a state secret.

## 18. Reply to question 18

**Measures taken to reduce the length of temporary detention**

The Minister of Justice takes action in the areas of legislation, training, supervision, nd organisation, aiming at shortening the duration of pre-trail detention in Poland. Some of these activities were discussed in the Report (in response to recommendation 13 of the Committee). These actions are continued.

**Changes in legislation**

In the period following the submission of the Report to the Committee, a number of amendments to the Code of Criminal Procedure have been introduced in

order to directly or indirectly (through shortening preparatory and judicial proceedings in general) to shorten temporary detention and to restrict the use of this preventive measure; these were *inter alia*:

The draft amendment of the Code of Criminal Procedure indicated in the Report came into force on 22 January 2009 (Journal of Laws of 2008 No. 225, item 1485). Through this amendment, the catalogue of criteria authorising the court to extend temporary detention for a period of over 2 years until the issuance of a ruling by a court of first instance in judicial proceedings and for a period of 1 year in the course of preparatory proceedings no longer contains the following criteria: extension of psychiatric observation, lengthy preparation of expert evidence and the occurrence of significant obstacles whose removal was impossible.

The introduction of these changes has made it possible to extend temporary detention above the aforementioned time limits exclusively on the basis of criteria precisely defined in the provision – if such a necessity is caused by: a discontinuation of criminal proceedings, action aiming at establishing the identity of the accused, execution of evidence collecting in an especially complicated case or a case abroad, and finally a deliberate protraction of proceedings by the accused.

An obligation was introduced to count the period of temporary detention towards the penalty of deprivation of liberty, in the event of their conjunction (this amendment of the Code of Criminal Procedure entered into force on 19 February 2009, Journal of Laws No. 28 item 171).

The duration of psychiatric observation in a given case was determined as 4 weeks, with a possibility of a maximum extension of this period to 8 weeks (this amendment of the Code of Criminal Procedure entered into force on 24 February 2009, Journal of Laws of 2009 No. 20, item 104).

**Non-legislative action**

The use of temporary detention is a permanent focus of services subordinate to the Minster of Justice which exercise supervision over the administrative operation of common courts.

Monitoring judicial proceedings where the period of temporary detention lasts over two years has been conducted permanently since 15 January 2008.

The Minister of Justice within his supervising capacity, indicating the obligation of meeting standards of the length of temporary detention arising from Polish and international law, obliged Presidents of Appellate Courts to:

- carry out supervision in all appeals of their jurisdiction concerning criminal proceedings where an indictment has been filed and the total duration of temporary detention applied exceeds 2 years,

- submit, as of 15 January 2008, quarterly reports on their supervision in such cases. Reports are studied by visitation judges in charge of supervision over individual appeals. If necessary, presidents of appellate courts receive supervision letters in particular cases,

- oblige presidents of courts of all levels and respectively heads of departments to assign in these cases dates of hearings and meetings outside the regular order of cases, and to issue relevant decisions ensuring the streamlining of proceedings.

Furthermore, the Minister of Justice brought judges' attention to the need of a precise justification of their decisions to apply and extend temporary detention, with

references to particular circumstances. The above questions, pursuant to the order of the Minister of Justice, are to be issues of major significance during briefings conducted by heads of criminal court divisions.

In addition, judges delegated to perform administrative work in the Ministry of Justice, in their capacity as supervision authorities, conduct inspections of pending cases in selected judicial units where the total duration of temporary detention has exceeded 2 years. Inspections concern also the care and precision of justifying decisions on extending temporary detention (inspections carried out over the past few years have not established any irregularities in this respect) and the efficiency of supervision of presidents of courts and heads of departments over long criminal proceedings where temporary detention is applied. "Directions of supervision over the operation of common courts in 2010" envisage continued examinations of this kind of cases.

Irrespective of the above, the Minister of Justice also conducts ongoing monitoring over the course of all proceedings where complaints have been lodged with the ECHR (many cases considered by the Court with Poland as the defendant concern precisely lengthy temporary detention).

Apart from supervising the administrative operation of common courts, the Ministry of Justice widely disseminates information on international standards of the length of pre-trial detention.

**Effects of actions taken**

Statistics provided in annual reports about the operation of common courts demonstrate that successive legislative changes in tandem with a systematic supervision over the operation of common courts and dissemination of international standards concerning the application and extension of temporary detention bring about concrete results. For instance, at the end of 2009 (relative to the data for 2008) there was a decrease in the number of persons under temporary detention being at the disposal of courts of different levels. Similarly, there was a drop in the number of persons with respect to whom the total period of applying temporary detention in judicial proceedings exceeded 2 years.

In 2008, 27,441 applications of public prosecutors were lodged with district courts in the course of investigations or inquiries for the application of temporary detention, i.e. 24.7% less than in 2007 (36,408 applications). Courts found 24,145 applications justified, i.e. 22.8% less than in 2007 (31,271 applications). On 31 December 2008, a total of 8,149 people were at the disposal of provincial and district courts, i.e. 2,312 persons fewer (22.1%) than in 2007 (10,461 persons), while 25,472 people under temporary detention were at the disposal of public prosecutors, i.e. 7,637 persons fewer (23%) than in 2007 (33,109 people).

It follows from the data for the first half of 2009 that the total number of persons under temporary detention further decreased; 7,493 persons were at the disposal of courts and 15,530 persons were at the disposal of public prosecutors.

For statistics on the application of temporary detention – see Appendix 18A.

Pursuant to Art. 552 of the Code of Criminal Procedure, damages and compensation are awarded to the accused for unjustified conviction, arrest, application of a preventive measure, and for an unjustified use of temporary detention:

Art. 552 of the Code of Criminal Procedure.

§ 1. The accused who as a result of resumption of proceedings or cassation was acquitted or sentenced to a less severe penalty, can claim damages from the State Treasury for the damage sustained and compensation for the injury incurred as a result of his serving the penalty which should not have been imposed on him, in its entirety or in part.

§ 2. Provision § 1 applies also when upon the invalidation of a convicting judgement proceedings were discontinued as a result of circumstances which had not been taken into account in earlier proceedings.

§ 3. The right to damages and compensation arises also as a result of the use of a preventive measure under conditions specified under § 1 and 2 above.

§ 4. Damages and compensation can be awarded also in the case of an undoubtedly unjustified temporary detention or arrest.

For statistics on the application of Art. 552 of the Code of Criminal Procedure – see Appendix 18B.

**Complaint concerning the violation of a party's right to fair trial within a reasonable time**

(re: the Law of 17 June 2004 on the complaint concerning the violation of a party's right to fair trial within a reasonable time – Journal of Laws No. 179, item 1843 – amended by the Law of 22 February 2009 – draft amendment was discussed in the Report, in the section concerning recommendation 14 of the Committee)

Pursuant to the Law on the complaint, a party may lodge a complaint with a view to establishing that in the relevant preparatory or judicial proceedings the party's right to fair trial within a reasonable time was violated. Such a violation will be established by a court of law if proceedings in a relevant case last longer than necessary for explaining factual or legal circumstances vital for the resolution of the case, or longer than necessary for the conclusion of an executory case or another case concerning the execution of a court ruling (lengthy proceedings).

In order to establish whether given proceedings exceeded a reasonable time, a court should in particular assess the duration and correctness of action taken by a court to resolve a case as to its essence or of action of the public prosecutor conducting or supervising preparatory proceedings in order to conclude preparatory proceedings or of action taken by a court or court bailiff to conduct and conclude an executory case or another case requiring a court decision, with regard to the nature of the case, degree of its factual and legal complexity, significance for the party that lodged the complaint, resolved issues and conduct of the parties to the proceedings, in particular the party claiming that proceedings exceeded a reasonable time.

Complaints can be lodged by the following:

1) in proceedings concerning cases of fiscal offences and misdemeanours – a party;

2) in proceedings concerning cases of misdemeanours – a party;

3) in proceedings concerning responsibility of collective entities for punishable offences – a party or applicant;

4) in criminal proceedings – a party and the injured person even if not a party;

5) in civil proceedings – a party, a third party respondent and a participant of proceedings;

6) in judicial-administrative proceedings – the claimant and a participant of proceedings having the rights of a party;

7) in executory proceedings and other proceedings concerning the execution of a court decision – a party and another person exercising their rights in these proceedings.

Finding the complaint justified, the court establishes that the relevant proceedings were not concluded within a reasonable time. At the request of the claimant or *ex officio* the court orders necessary redress action to be taken within a designated time by a court recognising the case as to its essence or by a public prosecutor conducting or supervising preparatory proceedings, unless such orders are obviously unnecessary. Recommendations cannot refer to the scope of the factual and legal evaluation of the case.

Finding the complaint justified, the court at the request of the claimant awards from the State Treasury, and in the case of complaints about unreasonable length of proceedings conducted by a bailiff – from a bailiff – an amount of money ranging from 2,000 PLN to 20,000 PLN.

The party whose complaint has been found justified may in separate proceedings seek a redress of the injury incurred by the lengthy proceedings from the State Treasury or jointly and severally from the State Treasury and the bailiff.

The party which has not lodged complaints about lengthy proceedings may claim a redress of the damage incurred as a result of lengthy proceedings pursuant to the provisions of the Civil Code, upon a valid and final conclusion of proceedings as to the essence of the case.

A comprehensive evaluation of the efficacy of using the amended Law will be based on monitoring to be yet implemented, but already now it follows from the annual report prepared by the Ministry of Justice as to the use of the *Law on complaint* that in 2009 courts considered a total of 3,909 complaints referred to in the Law, i.e. 1,172 complaints more than in 2008 (a 42% increase).

Across the country, the biggest percentage of complaints concerned lengthy civil proceedings, i.e. 53.6 % of all complaints lodged (2,095 complaints), the smallest number concerned insurance complaints: 2.3 % (92 complaints).

In 2009 courts considered a total of 3,760 complaints. 726 complaints were found justified; in 588 cases compensation was awarded in the total amount of 1,779,840 PLN (i.e. an average of 3,026.93 PLN per case).

In 2009 there was an increase in the ratio of complaints where money was awarded (588 complaints) to the total number of complaints found justified (726 complaints) and it stood at the level of 80 %. In 2008 the ratio had been 67.8%.

## 18A. Reply to question 18a (mistakenly numbered ‘19’ at the list of issues).

Action related to the arrest of foreigners and their placement in a guarded centre or a detention centre for the purpose of deportation are carried out by the Border Guard pursuant to relevant provisions of the *Law on aliens* and of the regulation of the Minister of Internal Affairs and Administration of 23 October 2009 *on the course of action during the exercise of selected entitlements by officers of the Border Guard* (Journal of Laws No. 190, item 1476).

Pursuant to Art. 102 section 1 of the *Law on aliens*, a foreigner is placed in a guarded centre if:

- this is indispensable for a smooth conduct of a case about a deportation or about revoking a settlement permit or revoking a permit to stay as a long-term resident of the European Union,

- there is a justifiable risk that he will avoid complying with the decision about a deportation or about revoking a settlement permit or revoking a permit to stay as a long-term resident of the European Union,

- has crossed or has tried to cross the border in contravention of the law, if he has not been immediately brought to the border.

When the arrested foreigner does not have a communicative knowledge of the Polish language, an interpreter is present throughout all activities during the arrest. More on the subject of notifying a detained person in a language understandable to him about his rights – see reply to Question 15 b.

In detention centres there are bulletin boards with legal information in Polish, English and Russian about a possibility of foreigners applying for refugee status.

Furthermore, pursuant to Art. 89a section 1, subsection 1 and 2 of the Law of 13 June 2003 *on granting protection to aliens in the territory of the Republic of Poland* (Journal of Laws of 2006 No. 234, item 1695 as amended), a head of a guarded centre or an officer in charge of the operation of a detention centre for the purpose of deportation, allows foreigners who have expressed a wish to apply for refugee status (placed in a guarded centre or detained for the purpose of deportation) to:

1. contact by letter or telephone organisations whose statutory tasks include matters related to refugees;

2. contact personally representatives of the UN High Commissioner for Refugees or organisations whose statutory tasks include matters related to refugees and entities providing legal aid. In practice, detained foreigners have unlimited access to addresses and telephone and fax numbers of the Office of the UN High Commissioner for Refugees (UNHCR) and governmental and non-governmental organisations involved in providing legal aid for refugees.

Furthermore, detained foreigners have permanent access to leaflets and brochures (published by organisations providing legal aid for refugees), translated into several languages understandable to foreigners, which include *inter alia* a description of the legal status of foreigners illegally staying in the Republic of Poland.

Foreigners staying in a guarded centre can use both free of charge legal aid provided by non-governmental organisations and assistance provided by defence attorneys and commercial interpreters.

Situations when an illegal immigrant may be arrested are set forth by law. Detention for the purpose of deportation is applied to a foreigner if any of the circumstances defined under Art. 102 section 1 of the *Law on aliens* applies (see above) and when there is a risk that a foreigner will not comply with the rules of stay in a guarded centre.

The admission of a foreigner to a guarded centre or a detention centre for the purpose of deportation follows a court decision to place a foreigner in a guarded centre or in a detention centre for the purpose of deportation. Issuing this decision

the court notifies the foreigner in a language understandable to him about the action taken and decisions issued and about the foreigner's rights in judicial proceedings (Art. 105 section 2 of the *Law on aliens*).

Proceedings related to the arrest and placement of a foreigner in a guarded centre or the application of detention for the purpose of deportation are conducted pursuant to the provisions of the Code of Criminal Procedure. In this respect, pursuant to Art. 246 § of the Code of Criminal Procedure, the foreigner has the right to appeal to a court. Furthermore, in the case of a decision to extend the duration of detention in a detention centre, the detainee has the right to lodge an appeal with a Provincial Court (Art. 106 section 4 of the *Law on aliens*).

## 19. Reply to question 19.

**a) Police holding facilities**

The problem of overcrowding does not apply to facilities for detainees or persons brought for sobering up. This is because the procedure of accepting detainees or persons brought for sobering up makes it impossible to place a bigger number of persons than the technical conditions of given premises allow (a number of precisely defined places, where detainees could be placed in compliance with the principles of safety and security and respect for human dignity). Information concerning all irregularities and inadequate furnishings of premises for detainees or persons brought for sobering up, established by entities authorised to conduct audits (judges of Provincial Courts, Ombudsman), is immediately forwarded to the Office for Logistics of the Chief Police HQ with a view to taking action aiming at making the facilities compliant with relevant requirements.

**Prisons and detention centres**

**Data on the number of persons in correctional facilities as of 31 May 2010**

The problem of overcrowding remains of special interest for the Ministry of Justice. Periodic studies of the number of prisoners in correctional facilities and reasons for overcrowding are conducted in close cooperation with the Central Board of the Prison Service.

At present the accommodation base of prisoners in residential wards includes 80,548 places. This number is systematically increasing year by year. This year resources dedicated to this purpose in the budget of the Prison Service will allow for the creation of ca. 1,200 new accommodation places.

The number of persons deprived of liberty has remained virtually constant for around 2 years and remains within the bracket of 85,000 to 83,000 persons in residential prison wards. As of 31 May 2010, the number of persons deprived of liberty was 81,163, with the accommodation capacity of residential wards filled in 100.8%. The number of 81,163 does not include 2,640 prisoners in health establishments, cells and wards for dangerous prisoners, hospitals, mother and child homes, and wards of temporary accommodation. The number of positions in health establishments, cells and wards for dangerous prisoners, hospitals, mother and child homes, wards of temporary accommodation was 3,616 as of 31 May 2010. The actual accommodation capacity of penitentiary units (health establishments, cells and wards for dangerous prisoners, hospitals, mother and child homes, wards of temporary accommodation) on that day was filled in 99.6 %.

The Prison Service took all possible action to limit the effects of overcrowding, *inter alia* through:

- transporting prisoners from overcrowded units to units where there is no overcrowding,

- changing the purpose of correctional facilities to adapt the structure of accommodation base to individual categories of prisoners to actual needs,

- changing the catchment area of persons under temporary detention to adapt the number of places for this category of prisoners to actual needs,

- optimising placement of prisoners and persons under temporary detention in penitentiary units for a balanced population of individual residential wards and cells.

The most important activity was the establishment of so-called additional accommodation base through a temporary conversion of day-care centres and other premises into residential cells. As of 31 May 2010, an additional 3,860 accommodation places were gained in this way. This is a dynamic situation as new places are created and removed on a regular basis depending on the accommodation needs of particular penitentiary units.

**Legislation changes concerning the overcrowding of correctional facilities**

**- Penalty of restriction of liberty**

An amendment to the PC, the CCP and the EPC (Journal of Laws No. 206, item 1589) entered into force on 8 June 2010; it changed provisions so that the obstacles for an efficient execution in Poland of the penalty of restriction of liberty have been removed.

The law envisages a very comprehensive determination of entities where prisoners might perform free monitored community work and socially useful work. The obligations of the employer were limited to a necessary extent through reducing to a minimum the administrative action concerning the organisation and documentation of the course of the work performed. Furthermore, costs of employment of prisoners borne by the employer have been reduced. The new regulations are meant to increase the number of places where prisoners will be able to serve their sentences. Both the provision of new jobs and the acquisition of new work places will depend on the local government, which will activate local authorities and include them in the system of execution of the penalty of deprivation of liberty.

The introduction of the above regulation concerning the penalty of deprivation of liberty may in the future result in the extension of the use of this type of punishment, which will lead to a reduction of the number of short- and medium-term isolation penalties, and therefore will contribute to restricting the overcrowding in correctional facilities.

Furthermore, amended Art. 78 of the Penal Code introduces a regulation allowing each prisoner serving the penalty of deprivation of liberty to apply for parole (earlier this applied exclusively to persons convicted to the penalty of deprivation of liberty for over 6 months).

**- System of electronic monitoring**

The *Law of 7 September 2007 on serving the penalty of deprivation of liberty outside the premises of a correctional facility under a system of electronic monitoring* (Journal of Laws No. 191, item 1366 as amended) became effective on 1 September 2009; it introduced a new system of executing a short-term penalty of deprivation of liberty, adjudicated by a penitentiary court and making it possible for a prisoner to stay outside the premises of a correctional facility. At the same time it introduced far-reaching checks on the liberty of the prisoner by monitoring his stay in the court-appointed place and time. An amendment to the above law entered into force on 25 June 2010 (Journal of Laws of 2010 No. 101, item 647); it increased four times the potential population of prisoners entitled to apply for serving their sentence under this system: the amendment raised the penalty threshold for prisoners eligible for electronic monitoring from 6 months to 12 months, extended the group of eligible persons to include second-time offenders (except repeated offenders) and persons convicted for deliberate offences and fiscal offences and abolished an earlier fee paid by the prisoner for serving a sentence under the system of electronic monitoring. By 19 January 2010 the system had included 50 prisoners. At present the penalty is served by 44 prisoners[20], 5 have already completed their full sentences without any violations of the conditions imposed in the penitentiary court ruling, while the court revoked the consent to one prisoner to serve the penalty under this system.

The number of prisoners serving a penalty under the system of electronic monitoring is constantly rising, from the initial number of 2 prisoners in September 2009 to 46 prisoners in January 2010.

**- Restriction of placement of prisoners in conditions not meeting 3 $m^2$ per prisoner**

On 9 October 2009 an amendment was passed of the provisions of the EPC arising from a ruling by the Constitutional Tribunal of 26 May 2008 (SK 25/07), establishing the non-compliance of Art. 248 § 1 of the EPC with the provisions of the Constitution of the Republic of Poland (see reply to Question 1 of the Committee on judicial decisions). The law entered into force on 6 December 2009 (Journal of Laws No. 190, item 1475). The law envisages strictly defined standards of prisoners' placement in the situation of overcrowding. Art. 110 of the EPC was amended, pursuant to which the placement of a prisoner in a residential cell where the area per prisoner is under 3 m² (never, however, less than 2 m²) is possible solely for a specified time – no longer than for 90 days and exclusively in emergency situations strictly defined under this provision. The relevant decision is made by the director of a correctional facility or a detention centre who is at the same time obliged to minimise the deterioration of conditions for serving the penalty. Such a decision must specify the time framework and reasons for placing a prisoner under such circumstances and define the deadline by which a prisoner is going to stay under such conditions. Complaints regarding such decisions are considered by a court within 7 days. In order to improve the conditions of serving a penalty in a correctional facility, an additional provision was introduced which stipulates that in the event of placing a prisoner in a cell with an area of less than 3 m² per person, such a prisoner should be provided with half an hour longer daily walks and the use of additional culture and education activities or general fitness and sports classes.

[20] As of 31 May 2010.

**b)** The Polish Government has taken action with a view to improving conditions in the deportation centres. The Border Guard has at its disposal 6 guarded centres for foreigners and 8 deportation centres. The correct operation of these facilities was evaluated by representatives of the UN High Commissioner for Refugees, Ombudsman, courts, and non-governmental organisations. Such external visitations and inspections did not demonstrate irregularities or inadequacies that would call for immediate corrective action on the part of the Border Guard.

The question of access to information was described in detail in reply to Question 15 b).

With regard to medical care, at the moment of arrest, an officer of the Border Guard are obliged to provide first aid to the detainee and to assure a medical examination in line with the procedure determined in the regulation of the Minister of Interior Affairs and Administration of 27 June 2002 *on the course of examining persons detained by officers of the Border Guard* (Journal of Laws of 2002, No. 98, item 898).

Medical care for foreigners is provided by the following: medical service of the Border Guard, medical companies providing services pursuant to contracts and through public health care. After the standard working hours of the Border Guard medical services, foreigners may use round-the-clock medical services offered by local Emergency Medical Services.

By law, all foreigners have a medical examination when admitted to the centre or a detention centre and when they are discharged, as well as at least once a month in the case of a longer stay.

There is no difference between access to and quality of medical care for persons staying in deportation centres on grounds of the foreigner's nationality, race or citizenship.

**c)**Since the visit in Poland of the Council of Europe Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment in October 2004, the facilities indicated in the question have been renovated, which improved ventilation, lighting, sanitation furnishings, and accessibility of drinking water. For detailed information about the improvement of conditions in the Police establishments indicated – see Appendix 19A.

## 20. Reply to question 20.

Detailed information on the rights of persons arrested by the Police was provided in the Report – in response to recommendation 14 of the Committee – and is still valid.

**Information about the possibility of legal assistance**

Polish criminal procedure contains provisions safeguarding that a person arrested is notified about the right to legal assistance. Such a provision is provided for under Art. 244 § 2 of the Code of Criminal Procedure, which stipulates that a person arrested should be notified without delay about the reasons for the arrest and the rights afforded, including the right to legal assistance, and should be listened to.

Pursuant to Art. 244 § 3 of the Code of Criminal Procedure, an arrest protocol is filled out, which contains the name, surname and capacity of the

person exercising the action, the name and surname of the arrested individual and – when his identity cannot be determined – his description and the day, hour, place, and reason for arrest with a provision of the offence he is suspected of having committed. The protocol should also include representations made by the arrested person and information that he has been notified about his rights. A copy of such a protocol is served on the arrested person. The document confirms that the arrested person has been notified about the right to take advantage of the help of a defence counsel. Arrest protocol forms, signed by arrested persons after completion, their copy served on them, as a standard contain an instruction for the arrested person about his rights, including the right to contact and talk personally to a defence counsel.

Article 245 § 1 of the Code of Criminal Procedure stipulates that a person arrested, at his request, should be immediately allowed to contact a legal counsel in an available manner and to talk with a legal counsel directly. The person making the arrest, however, may reserve the right to be present. See below – a similar right of persons under temporary detention – Art. 215 of the Executive Penal Code.

In addition, a relevant instruction about the scope of rights and obligations is provided by the examining person to a suspect at the moment of him being presented with the charges. Apart from an oral instruction, the suspect also receives the above information in writing. The rights include also an instruction about the right to take advantage of the assistance of a defence counsel.

**The right of persons under temporary detention to a confidential contact with defence counsel**

Provisions of the EPC provide for a comprehensive treatment of a confidential contact of a suspect and a person under temporary detention with their defence counsel. Art. 215 § 1 of the EPC guarantees to a person under temporary detention contacts with a defence counsel or attorney who is an attorney at law or legal counsel in the absence of other persons. Visits of the above persons are not subject to the restrictions applicable during visits of persons under temporary detention with their next of kin. As a result, in principle visits of a defence counsel or attorney who is an attorney at law or legal counsel are conducted in a manner allowing direct contact, are not monitored by an officer of the Prison Service, and 60-minute limits set forth in § 23 of the *Regulation of the Minister of Justice of 25 August 2003 on the rules of executing temporary detention* (Journal of Laws No. 152, item 1494) are not applicable.

Pursuant to Art. 215 § 1 of the Executive Penal Code, the authority at whose disposal persons under temporary detention remain, may reserve its presence or the presence of an authorised person during visits of a defence counsel or attorney who is an attorney at law or legal counsel. In such a situation a visit takes place in a manner indicated by this authority. This restriction is also connected with the provisions of the Code of Criminal Procedure, which stipulate that the reservation of presence of a public prosecutor or a duly authorised person cannot be ordered or retained after 14 days of the day of temporary detention of a suspect (Art. 73 § 4 of the Code of Criminal Procedure). As case law indicates, this type of reservation should be exceptional and caused by an actual need to safeguard the interests of the proceedings.

Entitlements of persons under temporary detention defined under Art. 215 § 1 of the Executive Penal Code, refer also to their contacts with persons enumerated in this provision (defence counsel or attorney who is an attorney at law or a legal counsel) either by correspondence or by phone. Provision of Art. 217a of the EPC stipulating that the correspondence of persons under temporary detention may be discontinued, censored or monitored does not apply in such a situation. Furthermore, the provision of Art. 217c of the Executive Penal Code, prohibiting persons under temporary detention from using a telephone and other means of cable or cordless communication, does not apply to contacts with a defence counsel or attorney who is an attorney at law or legal counsel. However, as in the case of visitations, a public prosecutor may reserve a monitoring of the suspect's correspondence with the above individuals (Art. 73 § 3 of the Code of Criminal Procedure). Also, in a situation of applying such monitoring, the authority at whose disposal persons under temporary detention remain is limited by time, as a result of which after 14 days of the day of temporary detention, in the event this authority does not make a relevant reservation, it cannot order or retain it (Art. 73 § 4 of the Code of Criminal Procedure).

**Notifying a person under temporary detention about a possibility of applying for an appointment of a defence counsel pursuant to Art. 78 § 1 of the Code of Criminal Procedure**

Persons under temporary detention, as prisoners, have access to legal acts in libraries of penitentiary units. A library of each unit possesses acts concerning penal law, i.e. the PC, the EPC and the CCP. Furthermore, tutors in penitentiary units attend special training programs where they are taught issues concerning penal law and binding international standards. Their daily work consists in solving problems brought to their attention by prisoners, which often concern issues of the rights of persons deprived of liberty.

## 21. Reply to question 21

In recent years the European Court of Human Rights considered a number of complaints against Poland concerning illegal censorship of correspondence. The Court has found many of these complaints duly justified. Such violations do not arise from flaws of Polish law, which clearly prohibits censorship of correspondence e.g. with ECHR and envisages criminal liability for the violation of this prohibition, but from a faulty practice of applying the law.

Pursuant to the Executive Penal Code, censorship does not apply to the correspondence of a person under temporary detention or deprived of liberty with the defence counsel or attorney, law enforcement authorities, courts and other authorities of the state and local government, and with the Ombudsman and to correspondence – complaints lodged by a prisoner to human rights authorities appointed in international agreements ratified by the Republic of Poland (i.e. e.g. to the UN Human Rights Committee or to the European Court of Human Rights). The above correspondence may only be subject to monitoring consisting in opening a letter to check its contents (censorship, in turn, consists in familiarising oneself with the contents of the letter or deleting part of the letter or making it illegible).

Complaints claiming violations of the confidentiality of the above correspondence of persons under temporary detention or prisoners are recognised as notifications about a suspected commission of an offence pursuant to Art. 267 § 1 of the Penal Code.[21]

In the period under consideration of the Report, i.e. from October 2003 until October 2008, and also in 2009, only one such complaint was lodged with prosecution authorities. As a result, preparatory proceedings were instituted concerning the unlawful acquisition of information (by public prosecutors of one provincial prosecution authority) through censorship of official correspondence. The proceedings, as a consequence of establishing no characteristics of an offence, were discontinued (in 2007).

However, because of repeated cases of unlawful censorship of correspondence, the Government of the Republic of Poland takes a number of steps:

- The Department of Human Rights in the Ministry of Justice translates and disseminates ECHR case law concerning Polish cases on correspondence censorship. The Court's rulings, in the original language and in Polish, are uploaded on an ongoing basis on the website of the Ministry and forwarded to courts and prosecution authorities.

- To safeguard the proper conduct of officers and staff of the Prison Service, the General Director of the Prison Service on 16 November 2007 issued an *instruction on the handling of correspondence addressed to the European Court of Human Rights in Strasbourg and other international human rights bodies*. He moreover ordered the District Directors of the Prison Service to take action and work out logistical solutions allowing a full implementation of the relevant rights of prisoners, including training of officers and staff as to the obligations of the Prison Service arising from the above instruction, standards arising from the *Convention for the protection of human rights and fundamental freedoms* and case law of the European Court of Human Rights concerning the obligation of respect of correspondence with ECHR and other international human rights authorities and the need to assure the presence of prisoners during the monitoring of correspondence with these bodies. Furthermore, irrespective of the above, the General Director of the Prison Service ordered the monitoring of the manner of handling the correspondence of prisoners.

- At present the Government of the Republic of Poland is working on a draft amendment to the EPC which would eliminate differences in handling correspondence of prisoners. The draft provision of Art. 8a of the EPC introduces a general principle: correspondence with a defence counsel or attorney who is an attorney at law or legal counsel, law enforcement authorities, courts and other authorities of the state

[21] Art. 267 §1. Whoever, without being authorised to do so, acquires information not destined for him, by opening a sealed letter, or connecting to a wire that transmits information or by breaching electronic, magnetic or other special protection for that information shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to 2 years.

and local government, Ombudsman, Ombudsman for Children, and human rights authorities appointed in international agreements ratified by the Republic of Poland is not subject to censorship, monitoring and arrest and should be forwarded to the addressee without delay.

- In the event of lodging justified complaints with ECHR against the Republic of Poland and concerning the violation of the prohibition of censorship of correspondence with ECHR, UN Human Rights Committee, Ombudsman, etc., the Government of the Republic of Poland, recognising the special gravity of such violations, proposes an amicable solution of the claim.

## 22. Reply to question 22

The confidentiality of complaints referred to under Question 22 of the Committee, and the protection of persons lodging the complaints is safeguarded by law. A violation of relevant provisions is subject to disciplinary liability.

**a) Police**

The confidentiality of complaints lodged by persons arrested by the Police is safeguarded by acts of binding law (the Law *on the protection of personal data, Civil Code, Executive Penal Code*) and by in-house provisions.

Cases of violating the confidentiality of correspondence and disclosing personal data to third parties may be subject to disciplinary liability, regulated in the *Law on the Police*, as well as may be subject to disciplinary liability on account of violating the decision of the Commander in Chief of the Police (pursuant to the Principles of Professional Ethics of an Officer of the Police).

When a complaint of a person under temporary detention contains circumstances and information related to the commission of an offence, apart from explaining the charges contained in it, it may be part of the evidence and be included into the criminal case file. The officer of the Police who will disclose the contents of such a complaint to unauthorised persons will violate a major principle of judicial proceedings, i.e. a prohibition of disclosing information concerning pending preparatory proceedings (inquiry or investigation).

Any single case of an officer of the Police talking in the presence of third parties about the contents of a grievance or a complaint lodged by a prisoner may result in disciplinary liability and in the event of a suspected offence – in a notification to prosecution authorities. In the Police this question is addressed systematically by the internal audit units and the Police Office of Internal Affairs.

**b) Prison Service**

Complaints, requests and applications of prisoners are handled by units of the Prison Service in the course of action defined in the Executive Penal Code and in the *regulation of the Minister of Justice of 13 August 2003 on manners of handling applications, complaints and requests of persons placed in correctional facilities and detention centres* (Journal of Laws No. 151, item 1467). Provisions of both legal acts are to guarantee a full respect of the rights of prisoners. And so, *inter alia*:

- Art. 102 sections 10 and 11 of the EPC stipulates that a prisoner has the right in particular to "(...) lodge applications, complaints and requests to a competent authority and to submit them in the absence of other persons to the

administration of a correctional facility, heads of the units of the Prison Service, penitentiary judge, public prosecutor and Ombudsman" (section 10) and to "correspond, without censorship, with national and local government bodies and the Ombudsman" (section 11).

- Art. 103 § 1 of the EPC stipulates that: "Prisoners, their defence counsels and attorneys and competent non-governmental organisations have the right to lodge complaints with human rights authorities appointed in international agreements ratified by the Republic of Poland. In these cases, prisoners' correspondence is not subject to censorship and should be forwarded to the addressee without delay".

In the event of receiving complaints from a prisoner, units of the Prison Service examine not only the formal criteria of the justifiability of the complaints, but also the overall circumstances connected with the event described in the complaints.

A prisoner, choosing the addressee of the complaint, decides on the course and authority that will recognise it. He also has the right to reserve the confidentiality of recognising his complaint and may reserve his personal data only for the persons recognising the complaint. Complaints lodged in cases concerning prisoners by other persons may be recognised and processed exclusively with the consent of the interested prisoners.

Officers of the Prison Service who examine a complaint or provide information related to the complaint are obliged to comply with the confidentiality of information acquired during the examination of allegations included in the complaint to third parties, especially the information on personal data and on health status. For non-compliance with the confidential nature of the contents of complaints, an officer of the Prison Service may be subject to disciplinary and professional liability as defined under the *Law on the Prison Service*.

## 23. Reply to question 23

**Legal regulation related to lustration proceedings**

To guarantee full respect of the trial rights and human rights, provisions of the *Law of 18 October 2006 on disclosing information about documents of state security authorities from the years 1944-1990 and their contents* (Journal of Laws of 2007 No. 63, item 425; hereinafter: *Law on disclosing information*) introduced a possibility of the person under lustration to exercise all entitlements of a suspect/accused person under the Code of Criminal Procedure. Pursuant to Art. 19 of the *Law on disclosing information*, when provisions of the relevant law do not regulate it, lustration proceedings (including appeals and cassations) are conducted according to provisions of the Code of Criminal Procedure. A major change (with respect to lustration provisions introduced by the Law of 11 April 1997) was the introduction of the principle that lustration proceedings are open, unless their confidentiality is asked for in part or in their entirety by the person under lustration proceedings to the extent this could lead to the disclosure of so-called sensitive data (Art. 18 section 1 of the *Law on disclosing information*). Exclusion of the open character of lustration proceedings may also occur *ex officio* or on request of a public prosecutor, if there is a risk of disclosing a state secret. Files of lustration proceedings are not classified, which allows the party to use the entire evidence gathered for the purpose of preparing a defence. The above, coupled with systematic action taken by the Institute of National Remembrance – Commission for

Prosecution of Crimes against the Polish Nation (hereinafter: IPN) related to the disclosure of documents stipulated by the Law, made until 10 May 1990 and containing information being a state secret or an occupational secret at the moment of creating these documents[22] contributed to the situation when in large measure the files currently at the disposal of the National Remembrance Institute archives are not classified. Rulings of courts of first and second instance are *ex officio* accompanied by a *ratio decidendi* and are served on the party.

Furthermore, the *Law on disclosing information* was examined as to its compliance with the Constitution of the Republic of Poland (judgement with the Constitutional Tribunal of 11 May 2007). This resulted in the adjustment of these regulations to constitutional principles safeguarding civil rights. The Constitutional Tribunal declared that **each** person publicly alleged to have worked, served for or cooperated with state security agencies, not only a person who is a public official of the categories listed in the Law (Art. 20 section 5 of the *Law on disclosing information*) may apply for the institution of so-called self-lustration proceedings. The Constitutional Tribunal questioned the initially proposed form of a lustration statement, which led to its correction and ruled that the publication by the IPN Bulletin of Public Information of lustration statements with full personal data is in contravention of the Constitution.

Lustration proceedings is a procedure assuring to persons subject to it any and all guarantees arising from the Constitution and the Code of Criminal Procedure, including the presumption of innocence, right to defence, free assessment of evidence in lustration proceedings, principle of material truth, principle of interpreting irremovable doubts to the benefit of the person undergoing lustration. The task of the IPN lustration division is to ascertain the "true content of cooperation with representatives of the services enumerated in the lustration law" not only on the basis of documents of former communist services gathered in the IPN archives but also on the basis of such evidence as witness testimonies, expert evidence, representations of persons under the lustration proceedings.

In recent years, the European Court of Human Rights has issued a number of judgements in cases against the Republic of Poland, where it found violations of the principle of equal defence in lustration proceedings. It found the following violations: the fact that persons under lustration proceedings may familiarise themselves with classified documents concerning them only in secret documents chancelleries, cannot make copies of them, are not served with a *ratio decidendi* but only notifications that a *ratio decidendi* has been prepared, and are not able to make and use notes from classified documents. At the same time the other party to proceedings – the Commissioner for Public Interest – is not restricted in this manner.

IPN took action to eliminate such situations.

Each time when there are documents in lustration proceedings from a separate set referred to under Art. 39 sections 1 and 2 of the *Law of 18 December 1998 on the National Remembrance Institute – the Commission for Prosecution of Crimes against the Polish Nation*[23], the director of the IPN Lustration Office applies

[22] Disclosure is regulated under the provisions of the Law of 22 January 1999 on the protection of confidential information (Journal of Laws of 2005 No. 196, item 1631 as amended).

[23] Art. 39 of the relevant Law:

section 1: "The Head of the Internal Security Agency and the Head of the Intelligence Agency or the Minister of National Defence, respectively, may reserve, for a specified time, access to

in writing to the head of the state security service who reserved that access to particular documents must not be had by any other person but representatives appointed by them to consider a possibility of their declassification and transfer to general access documents.

Furthermore, the already non-existent Lustration Court (Fifth Division of the Appellate Court in Warsaw) adopted solutions allowing persons under lustration proceedings to use these documents as much as possible. Pursuant to a regulation issued on a case-by-case basis by the chairman of the Division, persons under lustration proceedings are allowed to make notes when familiarising themselves with documents, in a copybook provided by the head of the secret documents chancellery of the Court. The copybook was stored in the secret documents chancellery and was submitted to lustration proceedings along with other documents from the secret documents chancellery. In the court room, the notes from the copybook could only be used by the persons who had made them, i.e. persons under lustration proceedings or their attorneys. Such a solution was never questioned by ECHR.

**Basic statistics**

Within the Institute of National Remembrance – Commission for Prosecution of Crimes against the Polish Nation (hereinafter: IPN) there is the Lustration Office which is responsible *inter alia* for the preparation of lustration proceedings. The Office was established as of 15 March 2007, on entering into force of the *Law on disclosing information*.

Since the establishment of the Office, **147,606** statements were submitted to it, **1,736** of them confirming the fact of a person's having worked, served for or cooperated with state security agencies. Until the end of April 2010, the IPN Lustration Office published information about 25,508 persons on the basis of the archival documents – Bulletin of Public Information.

## 24. Reply to question 24

**Binding regulations**

Questions of violations of binding criminal law and social norms by minors are comprehensively dealt with in *the law of 26 October 1982 on rules of conduct in cases concerning minors* (Journal of Laws of 2010 No. 33, item 178).

Detailed information about provisions of this Law was introduced in the Report, in the section related to the implementation of Art. 24 of the Covenant.

particular documents to no other person but representatives appointed by them, if this is necessitated by state security reasons. Authorities of other special services may apply for such a reservation via, respectively, the Head of the Internal Security Agency and the Head of the Intelligence Agency."

section 2: "Documents referred to under section 1, are a separate and classified set in the National Remembrance Institute archive and are subject to special protection."

**Envisaged amendments**

Work on the draft Code for Minors referred to in the Report, was discontinued because of significant discrepancies of opinion between the participants of social consultations.

As a result, the ordinance of the Minister of Justice of 13 October 2009 sets up a group to analyse previous and to work out new model legal solutions related to minors. This task group is composed of representatives of academia and judges-practitioners. It is meant to prepare a new comprehensive legislation on proceedings in cases concerning minors, to streamline proceedings in such cases, respecting the best interest of the child and fostering his upbringing and re-adaptation in the family and school.

Irrespective of the above work, the Ministry of Justice prepared a draft law on the amendment of the law concerning cases of minors. The draft envisages detailed regulation of cases where a minor may be placed in a police establishment for children for a precisely specified time. The regulation is supposed to solve problems of escapees from education centres for young people and social therapy centres for young people and to guarantee an efficient course of proceedings with regard to activities calling for the presence of minors. A precise determination of cases when and how long a minor may stay in a police establishment for children and a strict determination of judicial custody over the execution of such decisions and rulings, and also over respecting the rights of minors staying in police establishments for children, will allow the use of this form of deprivation of liberty only in obviously indispensable situations, within the framework of clear statutory legal solutions.

## 25. Reply to question 25

Pursuant to Art. 77 of the *Law* of 26 October 1982 *on rules of conduct in cases concerning minors* (Journal of Laws No. 33, item 178) supervision over the execution of a decision to place a minor in a police establishment for children is carried out by a family judge. This supervision consist in checking the compliance with the law of the placement of the minor and the correct manner of the execution of the ruling, especially when it comes to the method and impact measures used, the living conditions of minors and respect of their rights and obligations. For this purpose, the family judge can at all times enter an establishment under his supervision and premises where minors stay, can review documents and demand explanations from the administration of relevant establishments, hold talks with minors in private and consider their requests and complaints.

The *ordinance of the Minister of Justice of 16 June 2009 on detailed principles, scope and manner of supervision over decisions concerning minors* (Journal of Laws No. 107 item 894) envisages coordination of supervision activities of family judges at the level of districts through the imposition of an obligation on presidents of provincial courts to hold at least once a year meetings with family judges conducting supervision, heads of supervised units and representatives of managing authorities of these units.

Questions of providing sufficient quantities of food, access to education, medical examinations and access to health care are regulated in the *ordinance of the Minister of Internal Affairs and Administration of 21 January 2002 on detailed principles of stay of minors in Police establishments for children* (Journal of Laws No. 10, item 104). Decisions on the frequency and form of visits of minors placed in

a police establishment for children are made by the family court at whose disposal the child remains.

At present there are 29 police establishments for children.

In 2009 during joint actions with education centres, officers of the Police in police establishments for children also had training programs and meetings with parents, children and teachers of primary, secondary and high schools as well as

## 26. Reply to question 26

### I. Major amendments of legislation

In the period under consideration in the Report, major amendments were introduced into the Penal Code with a view to enhancing the protection of minors against sexual abuse.

- amendments to Art. 202 of the Penal Code (concerning pornography) – amendments introduced by laws of 2004 (Journal of Laws No. 69 item 626), 2005 (Journal of Laws No. 163, item 1363) and 2008 (Journal of Laws No. 214 item 1344). The present content of Art. 202 of the Penal Code is as follows (amended clauses are in bold type):

Art. 202. § 1. Whoever publicly presents pornographic material in such a manner that it is imposed upon a person who may not wish so, shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to one year.

§ 2. Whoever presents pornographic material to a minor under 15 years of age or makes available to him/her items of this nature shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to 2 years.

**§ 3. Whoever produces, records or imports, stores or possesses for the purpose of dissemination or disseminates or publicly presents pornographic material with the participation of a minor or pornographic material connected with the depiction of violence or the use of an animal, shall be subject to the penalty of deprivation of liberty for a period from 6 months to 8 years.**

**§ 4. Whoever records pornographic material with the participation of a minor under 15 years of age, shall be subject to the penalty of deprivation of liberty for a period from 1 year to 10 years.**

**§ 4a. Whoever imports, stores or possesses pornographic material with the participation of a minor under 15 years of age, shall be subject to the penalty of deprivation of liberty for a period from 3 months to 5 years.**

**§ 4b. Whoever produces, disseminates, presents, stores or possesses pornographic material showing a produced or processed image of a minor participating in a sexual act, shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to 2 years.**

**§ 5. The court may order the forfeiture of the tools or other objects which served or were destined for the perpetration of the offences defined under § 1-4b, even if they are not the property of the perpetrator.**

- Statue of limitation – amendment of the Penal Code of 2008 established that the statue of limitation for offences against sexual liberty and morals, when a minor is the injured party, cannot be less that 5 years of the injured party turning 18 years of age (Art. 101 § 4 of the Penal Code).

- Grooming – amendment of 2009 (Journal of Laws No. 206 item 1589; the Law entered into force on 8 June 2010) introduces the offence of grooming – Art. 200a § 1 of the Penal Code added in the amendment stipulates that who, via an IT system or a telecommunications network establishes contact with a minor under 15 years of age to rape them, having a sexual intercourse with them or in order to produce or record pornographic material with their participation and intends to meet them by providing false information, taking advantage of a mistake or inability to a proper understanding of a situation or through the use of an unlawful threat, shall be subject to the penalty of deprivation of liberty for up to 3 years. Furthermore, § 2 Art. 200a stipulates that who via an IT system or a telecommunications network proposes to a minor under 15 years of age a sexual intercourse, subjection to or exercise of a sexual act or participation in the production or recording of pornographic material, and pursues its implementation, shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to 2 years.

The Law stipulates that during the performance of recognition and operational action taken by the Police to prevent an offence, detect and establish offenders, as well as gather and preserve evidence of deliberate offences prosecuted *ex officio*, including the offence of a sexual intercourse with a minor under 15 years of age and the offence of grooming, when other measures have proved ineffective or there is a high probability that they will be ineffective or useless, the court may order an operational inspection (an operational inspection is confidential and consists in: monitoring the contents of correspondence; monitoring the contents of parcels and letters; use of technical means allowing a secret gathering of information and evidence and their recording, in particular contents of telephone conversations and other information transmitted via telecommunications networks - Art. 19 of the Law of 6 April 1990 on the Police – Journal of Laws of 2007 No. 43, item 277, as amended).

- Promotion of paedophilia – amendment of the Penal Code of 2009 introduces Art. 200b, which defines it as an offence the public promotion or praise of paedophilia. Pursuant to this article, the offence carries a penalty of a fine, restriction of liberty or deprivation of liberty for up to 2 years.

- Penalisation of using prostitution of minors – amendment of the Penal Code of 2005 sets forth that the person who leads a minor (a person under 18 years of age) to a sexual intercourse, subjection to or exercise of a sexual act, granting them a pecuniary benefit or personal benefit, or its promise, shall be subject to the penalty of deprivation of liberty from 3 months to 5 years (Art. 199 § 3 of the Penal Code).

- Penalisation of presenting pornography– amendment of the Penal Code of 2005 penalises the act of presenting an execution of a sexual act to a minor under 15 years of age (Art. 200 of the Penal Code)

- Stricter penalisation of a sexual intercourse with a person under 15 years of age – amendment of the Penal Code of 2005 sets forth that the penalty of deprivation of liberty from 2 years to 12 years will be imposed on a person who has a sexual intercourse with a minor under 15 years of age, involves them in another sexual act, leads them to being subjected to such acts or to their performance or for the purpose of sexual relief presents to a minor under 15 years of age an execution of a sexual

act (Art. 200 § 1 and § 2 of the Penal Code). Earlier the act carried a less stringent penalty (deprivation of liberty from 1 year to 10 years).

- Image of a nude person – amendment of the Penal Code of 2009 added to the Penal Code *inter alia* Art. 191a. § 1, which sets forth that whoever records an image of a nude person or a person during a sexual act, using violence with respect to them, unlawful threat or deceit, or disseminates an image of a nude person or a person during a sexual act without their consent, shall be subject to the penalty of deprivation of liberty from 3 months to 5 years. The provision assures protection to all persons, irrespective of age.

- Therapy – amendment of the Penal Code of 2009 added Art. 95a of the Penal Code § 1a sets forth that the offender sentenced for the crime of raping a minor under 15 years of age or a family member, is placed for obligatory treatment in a closed institution or referred to treatment. Treatment is supposed to prevent a repeated offence, in particular through the reduction of the offender's sexual drive. The manner of execution of this preventive measure (in an institution or an outpatient clinic) is determined by a court within 6 months prior to prospective parole or prior to the execution of the penalty. Depending on the needs of the particular offender, the court is authorised to order a change of the manner of executing the measure. In the event of the accused avoiding treatment in an outpatient health care establishment, an order on the change of the manner of executing the preventive measure is mandatory.

- The Ministry of Justice is currently working on the alignment of Polish law to the provisions of the *Council of Europe Convention against Sexual Exploitation and Sexual Abuse* and the *Council of Europe Convention on Cybercrime*.

**Envisaged changes in the legislation**

The Government of the Republic of Poland is currently at an advanced stage of work on a draft amendment to the Penal Code, Code of Criminal Procedure and Executive Penal Code, meant to introduce normative foundations for a wide application in all stages of criminal proceedings of the achievements of new technologies, including the technology of remote monitoring of a person's conduct with the use of electronic equipment.

To increase the efficiency of monitoring the conduct of validly sentenced prisoners-perpetrators of the gravest sexual offences, the draft amendment envisages new solutions concerning protective measures used with respect to perpetrators of paedophilic rape and incestuous rape, committed as a result of aberrations of sexual preferences.

When a protective measure other than a prison sentence is applied to the perpetrator of such a crime, i.e. referral to outpatient therapy, it will be mandatory to impose on the perpetrator the obligations or prohibitions defined under Art. 41a of the Penal Code[24].

[24]Art. 41a. § 1. The court may order an obligation to restrain oneself from staying in particular circles or places, a prohibition of contacts with specific persons or a prohibition of leaving a particular place without the court's consent in the event of conviction for a crime against sexual liberty or decency to the detriment of a minor and in the event of conviction for a deliberate crime with the use of violence, including violence

The fulfilment of a particular obligation or compliance with the prohibition will be controlled with the use of monitoring equipment.

Therefore, when ordering the above obligations (in particular the obligation to restrain oneself from particular places) or prohibitions (in particular the prohibition of contacting specified persons) the court will be able to flexibly apply restrictions on the accused party subjected to a protective measure to minimise his threat to other persons who might be the objects of his illegal conduct triggered by a pathological drive. In particular the court will be able to impose on the convicted individual with identified paedophilic inclinations a restraining order covering e.g. educational establishment (schools, nurseries), or children's playgrounds, while perpetrators of incestuous rape may be prohibited from contacting the injured person to the detriment of whom a validly judged crime was committed.

The possibility envisaged in the draft law of monitoring, with the use of monitoring equipment, whether a prisoner complies with the imposed obligation or prohibition, will facilitate the application of future solutions concerning the electronic identification of the place of stay, in particular the use of systems based on the GPS technology.

With respect to provisions of the Code of Criminal Procedure, the draft law envisages the introduction into the catalogue of Polish judicial proceedings a new measure known as "house arrest". This measure, extending the catalogue of available measures of influencing the conduct of a person accused (suspected) of committing a crime, will on the one hand allow minimising the number of uses of temporary detention to those cases where, in particular because of the need to prevent possible obstruction of justice, the use of an isolation measure will be indispensable, and on the other hand will facilitate an efficient monitoring of a person charged with a crime, including prevention of possible action taken with a view to escaping or hiding from authorities conducting criminal proceedings.

## II. For statistics – see Appendices 16A-E.

## III. Implementation of the Law on preventing domestic violence and the National Program of Preventing Domestic Violence

The objective of the activities envisaged in the Law and in the Program is the change in the awareness of the general public, an increasingly professional approach of services dealing with preventing domestic violence, enhanced efficiency of

against a family member; the obligation or prohibition may be connected with the obligation to report to the Police or another appointed authority in designated time intervals.

§ 2. The court may order an obligation to restrain oneself from staying in particular circles or places, a prohibition of contacts with specific persons or a prohibition of leaving a particular place without the court's consent in the event of conviction to the penalty of deprivation of liberty without conditional suspension of its execution for a crime against sexual liberty or decency to the detriment of a minor; the obligation or prohibition may be connected with the obligation to report to the Police or another appointed authority in designated time intervals.

§ 3. The court may order an obligation to restrain oneself from staying in particular circles or places, a prohibition of contacts with specific persons or a prohibition of leaving a particular place without the court's consent indefinitely in the event of another conviction of the perpetrator under the terms provided for under § 2.

correctional and educational actions taken with respect to persons using domestic violence.

Effecting a change in the awareness of the general public is the most vital issue. The Program provides for relevant social activities at central and local levels.

A nationwide campaign was held by the MLSP in cooperation with the National Competence Centre and the "Dzieci Niczyje" Foundation in 2008 and 2009. The target group of its first part – "I love and do not spank" (TV commercials featuring celebrities showing how to properly take care of children) were persons experiencing violence, children and young people, parents, representatives of institutions preventing domestic violence, and perpetrators of violence. The second part – "I love and react", was targeted at the general public and encouraged reactions to cases of ill-treatment of children (TV commercials, radio commercials, posters, leaflets, brochures, website, and an emergency phone number of the National Competence Centre). The third part – "A good parent", was dedicated to parents and carers of small children (0 to 3 years); its objective was to raise the awareness about manners of coping with the stress accompanying the upbringing process and about the ineffectiveness of spanking used as a child upbringing method (TV and radio commercials). Posters, leaflets and brochures made in cooperation with the National Competence Centre and the "Dzieci Niczyje" Foundation were submitted to marshals of regions to be forwarded to commune and poviat governments. The last part of the campaign – "Childhood without violence" – was to demonstrate the ineffectiveness of physical violence as a child upbringing method (TV commercials, leaflets and brochures presenting child upbringing methods alternative to the use of violence).

While the effects of the programs can only be identified in a longer time perspective, the experience gathered so far indicates the need for extending the programs, in particular the broadcast of TV and radio commercials at prime time. This will be made possible thanks to the planned change of the Program, to take place after the passing of the Law on the prevention of domestic violence (parliamentary work in progress).

The increase of the professional expertise of services is mainly assured via training programs for staff of social assistance centres, poviat centres for assistance to the family, officers of the Police, probation officers, school educators, health care staff, members of commune committees for the solution of alcohol-related problems, staff of social therapy centres, care and educational establishments, care and adoption centres, non-governmental organisations, psychologists, clergy, journalists, and addiction centres therapists. Training programs relate to the construction of local systems of preventing domestic violence as well as are meant to prevent violence against children (diagnosis of the situation), provide assistance to persons experiencing domestic violence (preparing assistance strategies, work with the abused child), and implement correctional and educational programs for perpetrators of domestic violence.

Number of first-contact staff participating in training programs

| 2007 | 2008 | 2009 |
|---|---|---|
| 4,543 | 4,593 | 4,700 |

To increase the efficiency of correctional and educational actions, on 6 July 2006 the Minister of Labour and Social Policy issued a regulation concerning standard basic services provided by specialist support centres for victims of domestic violence, as well as specific guidelines for correctional and educational action. This helps the creation of specialist support centres for victims of domestic

violence, providing medical, psychological, legal, and social counselling. In 2010 there are 36 such centres.

Implementation of correctional and educational programs for persons using domestic violence

Number of persons admitted to correctional and educational programs

| 2006 | 2007 | 2008 |
|---|---|---|
| 1,081 | 2,922 | 4,214 |

Studies show that 40% of perpetrators of violence who took part in the programs did not perpetrate violent acts within a year of the programs being concluded.

Enhanced protection of victims of domestic violence was also possible thanks to:

- preparation of protection programs for victims of domestic violence in cooperation with the Police, prosecution authorities, probation officers,

- assurance of adequate conditions for conducting of children (blue rooms),

- preparation of guidelines and operational instruction for emergency situations connected with domestic violence – for persons dealing with victims of domestic violence.

An amendment of the Law on preventing domestic violence and selected other laws was passed on 10 June 2010. The changes introduced aim at developing prevention methods as a form of action eliminating domestic violence, enhancing efficient protection of victims of domestic violence, in particular children, creating mechanisms facilitating isolation of perpetrators from victims, and changing the attitude of perpetrators of domestic violence through their subjection to correctional and educational actions.

The amended Law concerns the following:

1/ the Law on preventing domestic violence (*inter alia*):

- imposition of new tasks onto public administration, meant to increase the efficiency of combating domestic violence, including preparation and implementation of commune programs of preventing domestic violence, setting up interdisciplinary teams,
- imposition onto the voivode of the obligation to establish a regional coordinator for the implementation of the National Program of Preventing Domestic Violence,
- extension of the competence of the minister in charge of social protection by preparation and financing support programs for the prevention of domestic violence,
- definition of principles of implementation of the “Blue Card” procedure,
- extension of forms of assistance provided to victims of domestic violence by a free-of-charge medical examination to determine the causes and types of bodily injury and to issue a relevant medical certificate,
- creation of legal conditions for notifications about cases of domestic violence through witnesses and competent services,

- introduction of a right of a social worker to remove a child from a family when the child's health and life is at risk; such action is performed by a social worker with the participation of the Police and health care staff,
- extension of rights of a parole officer as to the execution of rulings with respect to individuals convicted for offences connected with domestic violence under custody and the determination of a procedure for the arrest of a convicted individual for the purpose of ordering the execution of the penalty of deprivation of liberty or the revocation of a parole.

2/ Family and Guardianship Code: introduction of a prohibition of corporal punishment and all forms of reprimand consisting in causing mental suffering and violating the dignity of the child (the provision reads: "Persons exercising parental responsibility and taking care of a minor are prohibited from the use of corporal punishment").

3/ Penal Code: imposition on the perpetrator of domestic violence the obligation to participate in correctional and educational action without obtaining his consent.

4/ Code of Criminal Procedure: extension of the catalogue of preventive measures by a restraining order concerning the injured party or other people in a specific manner and the injunction to vacate premises occupied together with the injured party.

## IV. Action taken by social assistance centres arising from provisions other than the Law on preventing domestic violence

Action concerning children who are victims of different forms of violence is taken by social assistance centres pursuant to the Law on social assistance and the Law on preventing domestic violence.

Providing care to children whose parents have a limited parental responsibility or have been deprived of their parental rights (because of the use of violence) is guaranteed by the Law of social assistance. Care is provided by foster families. A child can also be placed in an emergency, family and social care and educational facility. A special role is played by emergency centres, admitting children in sudden emergency situations. They diagnose the children as to their mental and physical condition and find information about their family to establish whether a child can return to the family or whether s/he should be referred to a foster family or a family or social facility.

There are centres of support for mothers with children and pregnant women as well as centres of emergency assistance. A regulation of the Minister of Social Policy of 8 March 2005 on homes for mothers with underage children and pregnant women defines the standards of services provided by these establishments. It guarantees decent living conditions and the satisfaction of mental and spiritual needs, as well as provides help in becoming independent and prevents social exclusion. Seeking a place in such a home may be a pregnant woman and a woman or man with underage children who are victims of violence or in an emergency situation. A stay in such a home lasts for up to one year and can be extended for educational purposes or for occupational training programs as well as emergency situations. On leaving the centre its former residents receive assistance from poviat centres for assistance to the family.

Children provided with assistance pursuant to the Law on social assistance and the Law on preventing domestic violence

| Form of assistance | 2006 | 2007 | 2008 |
|---|---|---|---|
| Emergency assistance | 22,253 | 25,009 | 21,801 |
| All-day care in support centres, centres for emergency assistance, specialist support centres for victims of domestic violence | 3,465 | 3,793 | 3,819 |

## V. Action aiming to combat economic exploitation of children

The minimum employment age is 16 years (Art. 65 section 2 of the Constitution of the Republic of Poland and Art.190 § 2 of the Labour Code). Art. $304^5$ of the Labour Code allows the execution of work by persons under 16 years of age, when it consists in cultural, artistic, sports, or advertising activities, within an employment contract and under conditions of providing services defined in civil law. The precondition is the consent of the child's statutory representative or carer and the consent of the labour inspector. The labour inspector issues a decision on the basis of the following documents submitted to him as mandatory: opinion of a psychological and pedagogical counselling centre, statement of a physician who finds no contraindications for the execution of work or other paid activities by the child, opinion of the school principal concerning the child's possibility of fulfilling the schooling obligation while performing work.

A permit issued by the labour inspector includes:

- the data of the child and the child's statutory representative or carer,
- definition of the employer,
- definition of the type of work to be performed by the child (employment other than indicated will constitute work without an obligatory permit),
- definition of the daily amount of work to be performed,
- definition of the duration of work to be performed by the child and other paid activities (permanent employment is excluded),
- other arrangements taking into account the best interest of the child or the kind and conditions of work (vacation time, health protection, occupational safety and hygiene).

The labour inspector is obliged to revoke a permit when this is asked for by the child's statutory representative or carer and *ex officio*, when he finds that the child's working conditions do not answer those determined in the permit. The employer of the child is obliged to dissolve the contract with immediate effect and pay to the child compensation in the amount of remuneration for the notice period.

| | No. of applications for permits | No. of decisions | Positive decisions | Negative decisions | Revoked decisions |
|---|---|---|---|---|---|
| 2005 | 389 | 417 | 410 | 7 | 0 |
| 2006 | 245 | 398 | 392 | 6 | 0 |
| 2007 | 201 | 376 | 376 | 0 | 0 |
| 2008 | 214 | 464 | 464 | 0 | 0 |
| 2009 | 178 | 547 | 543 | 4 | 0 |
| Total | 1,227 | 2,202 | 2,185 | 17 | 0 |

## 27. Reply to question 27

Teaching ethics, like teaching religious education, is organised in public schools at the request of parents or adult students. Issues concerning the organisation of ethics classes are regulated in the provisions of the *regulation of the Minister of National Education of 14 April 1992 on conditions and manner of organising religious education in public nurseries and schools* (Journal of Laws No. 36, item 155, as amended).

A school is obliged to organise ethics classes for a group no less that seven students of a given class (unit). For a smaller number of students interested in ethics, lessons of this subject should be organised in a group composed of students of different classes or units. If fewer than seven students apply for ethics classes in the entire school, the supervising authority organises ethics lessons for students from different schools in an inter-school group. The number of students in an inter-school group should not be less than 3.

A school should provide care or educational classes to students not attending religious education or ethics lessons during such lessons.

The number of students attending ethics classes in public schools stems from the interest in the subject and reflects the denominational structure of Polish society. The vast majority of students participating in religious education classes are Catholics, a smaller number of students attend religious education classes of other Christian and non-Christian denominations and ethics lessons.

The number of schools where ethics lessons are organised at the request of interested individuals is constantly rising: in 2007 this number was 406 schools, in 2009 went up to 916 schools. The biggest interest in ethics classes can be observed in junior high schools (4% of the total number of schools at this level), in high schools (5.7% of the total number of Polish high schools) and in supplementary high schools for graduates of vocational schools (4% of the total number of such schools).

The Ministry of National Education requested in September 2007 school superintendents to examine, within their supervision capacity, the extent to which schools comply with the obligation to provide ethics lessons to students who have expressed such a wish. Information and comments submitted by school superintendents, along with the quotation of provisions concerning the possibilities and principles of organising ethics classes were disseminated at the Ministry's website as a "Report on the teaching of ethics in public schools".

In 2008, the Minister of National Education determined a new core curriculum, including the "ethics" subject (regulation of the Minister of National Education of 23 December 2008 *on core curriculum of pre-school education and general education in particular school types* - Journal of Laws of 2009 No. 4, item 17). With regard to this subject, the Minister contained recommendations in the regulation, allowing for conducting classes in different-age groups, joining students from the entire education stage, in the event of a small number of students choosing ethics. In such a case the ethics curriculum should be divided into modules that could be taught in any order. This will allow the construction of an ethics lessons offer in each school, even when there is a small number of students choosing ethics. In the event of a bigger number of students choosing ethics, the school is recommended to conduct ethics classes in joint groups of students, e.g. from one year grade only.

On 15 June 2010, ECHR issued a ruling in the case Grzelak vs. Poland, where the claimant charged the Republic of Poland with a violation of the prohibition of discrimination and the right to the freedom of thought, conscience and religion. This year the Court accepted the arguments of the claimant as party justified. The Court did not question Polish legal regulations – neither those concerning the organisation of the teaching of religion and ethics, nor those allowing the evaluation of progress in the learning of religion and ethics, nor those that concern the inclusion of the grades in these subjects to the grade-point average. The Court had a critical assessment only of the application of these provisions – an absence of the implementation of the right to be provided with ethics classes by school authorities. The judgement concerns a situation that took place ca. 10 years ago. This is significant as each year the awareness of school principals as to the importance of providing school ethics classes to children who do not attend religious education classes and are at the same time interested in ethics lessons. The court judgement under discussion is not valid and final. The Polish Government can take a decision on a possible appeal until 15 September 2010.

## 28. Reply to question 28

The offence of slander – an act consisting in imputing to another person, a group of persons, an institution or organisational unit not having the status of a legal person, such conduct, or characteristics that may discredit them in the face of public opinion or result in a loss of confidence necessary for a given position, occupation or type of activity – is penalised pursuant to Art. 212 of the Penal Code.

This article was changed in an amendment of the Penal Code (the law of 5 November 2009, Journal of Laws No. 206, item 1589), which entered into force on 8 June 2010.

**Legislation in force until 8 June 2010**

Until 8 June 2010, the offence of slander carried the penalty of a fine, restriction of liberty or deprivation of liberty (up to one year) (Art. 212 § 1 of the Penal Code).

If the offence was committed with the use of the communications media (i.e. press, radio, television, book publications, electronic recordings or the worldwide web) – qualified type, the offence carried the penalty of a fine, restriction of liberty or deprivation of liberty up to 2 years.

**Legislation in force as of 8 June 2010**

Pursuant to the above amendment, the offence defined under Art. 212 § 1 of the Penal Code carries the penalty of a fine or restriction of liberty, and thus – when compared with the previous law – the legislator dismissed the penalty of deprivation of liberty. In the qualified type of the offence of slander (Art. 212 § 2 of the Penal Code), the upper limit of the penalty of deprivation of liberty for this act was reduced from two years to one year.

**Analysis of the penalty envisaged in the Penal Code for the offence of slander**

The question of the compliance with the Constitution of provisions of Art. 212 § 1 and 2 of the Penal Code (their contents in force until 7 June 2010), penalising two types of slander, was resolved by the judgement of the Constitutional Tribunal of 30 October 2006 (Journal of Laws No. 202, item 1492). The Tribunal,

responding to a legal question put by one court, ruled that the above provisions comply with the Constitution, in particular with its Art. 14[25] and Art. 54 section 1[26] in conjunction with Art. 31 section 3[27]. Compliance with the Constitution of binding provisions does not mean, naturally, that a democratic legislator is not entitled to their amendment or invalidation. Such a need may in particular occur e.g. as a result of criminal law and political conditions or because of the effect of evaluation concerning a possible redundancy of using elements of penal sanctions when instruments of other branches of law assure an adequate degree of protection. De-penalisation of slander is not, however, at present justified by any of the potential reasons indicated. It is worthwhile to quote the opinion expressed by the Constitutional Tribunal in the *ratio decidendi* of the above ruling, namely that *"an absence of clear reasons to assume that the protection of personal rights in civil law in the current conditions of the operation of the judiciary may be seen as an equally efficient protection of the dignity and good name as the penalisation of slander"*; the Constitutional Tribunal stressed at the same time that *"slander is a type of activity whose effects are in large measure irreversible. It is possible to compensate for (redress) a material damage through the reinstitution of the initial state or payment of damages, but a full compensation of all the negative mental and vital consequences of slander cannot be effected"*.

While Polish penal law retains protection against slander, the complete dismissal of the penalty of deprivation of liberty for slander committed with the use of means of mass communication is justified; it is done through the invalidation of § 2 of Art. 212 of the Penal Code, which determines a qualified type of the offence of slander. This opinion was introduced by the aforementioned amendment to the Penal Code, which entered into force on 8 June 2010.

Furthermore, at present work is in progress in the Polish Government on draft guidelines for another draft amendment of the Penal Code, aiming *inter alia* at de-penalising a qualified type of the offence of slander.

## 29. Reply to question 29

The amendment of the *Law of 5 July 1990 on Assemblies* (Journal of Laws No. 51, item 297, as amended), which the Question of the Committee concerns, is meant to enhance the possibilities of implementing the constitutional freedom of assembly.

This goal is to be reached by the following:

1. assuring that the appellate authority evaluates the decision of the executive authority of a commune (town or city) about a prohibition of an ordinary assembly prior to the scheduled time of this assembly. The need for the amendment of the law in this respect was indicated by the European Court of Human Rights in Strasbourg in its judgement of 3 May 2007 in the case Bączkowski and others vs. Poland

[25] Art. 14. The Republic of Poland shall ensure freedom of the press and other means of social communication.

[26] Art. 54 section 1. The freedom to express opinions, to acquire and to disseminate information shall be ensured to everyone.

Art. 31. section 3. Any limitation upon the exercise of constitutional freedoms and rights may be imposed only by statute, and only when necessary in a democratic state for the protection of its security or public order, or to protect the natural environment, health or public morals, or the freedoms and rights of other persons. Such limitations shall not violate the essence of freedoms and rights.

(complaint No. 1543/06) (amendment of Art. 7 section 1 and Art. 9 of the *Law on Assemblies*);

2. introducing into the legislation provisions concerning so-called spontaneous assemblies: the introduction of the definition of a spontaneous assembly, shortening (in comparison with so-called ordinary assemblies) the obligatory time of notification of spontaneous assemblies and the indication of the Police as the authority entitled to be notified about such an assembly (with regard to ordinary assemblies, the commune authorities are notified about them).

The above amendment has not been submitted for debate to the Sejm of the Republic of Poland; it is currently subject to inter-ministerial consultations.

## 30. Reply to question 30

Since the time of entry into force of the Law of 6 January 2005 *on national and ethnic minorities and a regional language* (Journal of Laws No. 17, item 141, as amended), pursuant to Art. 18 and Art. 20 of the Law, the state budget supports activities meant to foster and develop the cultural identity of national and ethnic minorities and the preservation and development of a regional language. In the years 2006 – 2010 the allocation from the budget of the Ministry of Internal Affairs and Administration for this purpose amounted to a total of 63,517,264.51 PLN (ca. 15,230,000 Euro). Resources of the Ministry of Internal Affairs and Administration help finance *inter alia* the implementation of key investments fostering the cultural identity of national and ethnic minorities and communities using a regional language. Earmarked subsidies are also allocated to support the statutory activities of organisations of national and ethnic minorities and communities using a regional language.

The *Law on national minorities* introduced into the Polish legal system a possibility of using minority languages and a regional language as auxiliary languages in communes where the number of residents of a minority (or using a regional language at home) is no less than 20% of the total number of residents of a commune and communes that have been entered into the Official Register of Communes which use an auxiliary language. The possibility of using an auxiliary language means that members of a minority or using a regional language, with the exception of the appeals procedure before an office, have the right to: apply to authorities of the commune in an auxiliary language in writing or orally, receiving, at their specific request, replies also in an auxiliary language in writing or orally. Until today (10 May 2010) the Official Register of Communes which use an auxiliary language includes 29 communes, including five communes of Podlaskie Region (one has Lithuanian as an auxiliary language, the other four have Belorussian), two communes of Pomorskie Region (where Kashubian is an auxiliary language) and twenty two communes of Opolskie Region with German as an auxiliary language. From among the communes entered into the Register, in sixteen communes of Opolskie Region, one commune of Pomorskie Region and one commune of Podlaskie Region members of national and ethnic minorities and communities using a regional language, have so far addressed authorities of the commune in an auxiliary language. In the above communes replies were provided to interested individuals in an auxiliary language, both in writing or orally.

Provisions of the *Law on national minorities* likewise introduce the possibility of using, next to official names of towns and physiographic items and street names, additional traditional names in a minority language or in a regional language. Additional place names may be introduced in a commune in two cases:

when as a result of the most recent population and household census the officially determined number of commune residents claiming membership in a minority or using a regional language is no less than 20% or, failing this criterion, when there are towns and villages within the commune where the majority of residents opted in consultations for adding another name to the place in a minority language or in a regional language. Additional place names cannot refer to the names from the period of 1933-1945, appointed by the authorities of the Third German Reich or the Union of Socialist Soviet Republics, and cannot stand on their own. Furthermore, additional names are written in the letters of the alphabet used in the language of a given national and ethnic minority or a regional language, with the inclusion of diacritics specific for this particular alphabet.

Pursuant to Art. 12 section 2 of the *Law on national minorities*, the introduction of additional place names, physiographic items and street names in a minority language or in a regional language is contingent on entering the commune to the Official Register of Communes which use a minority language, kept by the minister in charge of religious communities and national and ethnic minorities. The Minister enters a commune at the request of the commune council.

Applications for the establishment of an additional name or a place or physiographic item are assessed by the voivode and the Commission of Place Names and Physiographic Items. A negative opinion of the Commission results in a refusal of entry into the Register and as a consequence the name cannot be used as an additional name within the commune limits. A refusal to be entered into the Register can be appealed against by the commune council to the administrative court.

As of 10 May 2010, the Register of Communes which use a minority language included 31 communes, including 21 communes of Opolskie Region (additional names in German), 6 communes of Pomorskie Region (additional names in Kashubian), 2 communes of Śląskie Region (additional names in German), 1 commune of Podlaskie Region (additional names in Lithuanian), and 1 commune of the Małopolskie Region (additional names in Lemka). Until today no commune has applied for entry into the Register of Communes because of their intention to introduce within its limits additional street names in a minority language.

Pursuant to Art. 15 section 2 of the *Law on national minorities*, costs related to the exchange of information plaques arising from the establishment of an additional place name or a physiographic item in a minority language, are borne by the state budget. The first agreement in this respect was concluded with the Radłów Commune on 10 March 2008. In 2008 the budget of the Minister of Internal Affairs and Administration donated a subsidy for the exchange of information plaques arising from the establishment of an additional place name in the amount of 443,532.92 PLN (ca. 106,000 Euro), in 2009 – 537.446,55 PLN (ca. 128.000 Euro). The budget allocation for 2010 amounts to 600.000,00 PLN (ca. 143.000 Euro) – until today resources in the amount of 181,655.75 PLN (ca. 43.000 euro) have been used.

*Use of minority languages and the regional language in court proceedings*

Identical principles apply in court proceedings with a person who does not have a command of the Polish language, irrespective of whether he uses a regional language or any other language.

Pursuant to the ruling of the Supreme Court of 22 April 1970 (III KR 45/70), what is meant here is not only a complete inability to use Polish, but also its command which does not allow persons during a hearing to sufficiently comprehend questions asked to them or does not allow the formulation of thoughts reconstructing

the course of events being the object of the hearing. Furthermore, a person who participates during judicial proceedings with an insufficient command of Polish should be instructed about their rights and obligations through an interpreter.

**Civil proceedings**

Pursuant to Art. 265 § 1 of the Code of Civil Procedure, to hear a witness with an insufficient command of Polish, the court may call in an interpreter. Furthermore, pursuant to Art. 1187 § 1 of the Code of Civil Procedure, parties to proceedings in an arbitration court may agree on a language or languages of the proceedings.

**Penal proceedings**

Pursuant to Art. 72 of the Code of Criminal Procedure, the accused with an insufficient command of Polish has the right to use, free of charge, the assistance of an interpreter. An interpreter is called in to participate in activities taking place with the participation of the accused. The accused is provided with the following in translation: decision to present, supplement or change charges, indictment and ruling that can be appealed against or a ruling concluding proceedings. With the consent of the accused, it may be enough to announce the final ruling concluding proceedings, if this cannot be appealed against. Art. 72 of the Code of Criminal Procedure refers both to preparatory proceedings and to judicial ones.

The use of an interpreter does not depend on the material status of the accused and is free of charge. Pursuant to Art. 619 § 3, the State Treasury covers the costs of participation in the proceedings of an interpreter in the extent necessary for providing the accused party with his right to defence.

Furthermore, pursuant to Art. 204 of the Code of Criminal Procedure, an interpreter must be called in also when there is a need to hear a person with no command of the Polish language or a document has to be translated into Polish or into a foreign language or the accused has to be familiarised with the contents of the evidence gathered. Costs of the services of the interpreter/translator are also borne by the State Treasury.

**Administrative proceedings – before authorities of public administration**

In administrative proceedings it is possible to provide a testimony in a foreign language. The content of the testimony is interpreted into Polish, and the protocol of a hearing indicates the data and address of the interpreter who did the translation, which will allow the competent authority to refer to the interpreter in case of doubts as to the content of the testimony in a foreign language. Furthermore, the interpreter who translated the testimony should sign the protocol of a hearing. As a general rule (Art. 69 of the Code of Administrative Procedure), the protocol of a hearing should be read out and presented for signature to the person providing a testimony immediately after the testimony has been provided.

Of significance here is the provision of Art. 9 section 5 of the *Law on national minorities*, which stipulates that proceedings before authorities of a commune may also take place in the so-called auxiliary language, i.e. a regional language (an appeals procedure takes place exclusively in the official language – Polish).