

POLAND

Follow-up - State Reporting

(i) Action by Treaty Bodies

CAT, A/62/44 (2007)

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IV. FOLLOW UP ON CONCLUSIONS AND RECOMMENDATIONS ON STATES PARTIES REPORTS

46. In Chapter IV of its annual report for 2005 2006 (A/61/44), the Committee described the framework that it had developed to provide for follow up subsequent to the adoption of the conclusions and recommendations on States parties reports submitted under article 19 of the Convention. It also presented information on the Committee's experience in receiving information from States parties from the initiation of the procedure in May 2003 through May 2006. This chapter updates the Committee's experience to 18 May 2007, the end of its thirty eighth session.

47. In accordance with rule 68, paragraph 2, of the rules of procedure, the Committee established the post of Rapporteur for follow up to conclusions and recommendations under article 19 of the Convention and appointed Ms. Felice Gaer to that position. As in the past, Ms. Gaer presented a progress report to the Committee in May 2007 on the results of the procedure.

48. The Rapporteur has emphasized that the follow up procedure aims "to make more effective the struggle against torture and other cruel, inhuman and degrading treatment or punishment", as articulated in the preamble to the Convention. At the conclusion of the Committee's review of each State party report, the Committee identifies concerns and recommends specific actions designed to enhance each State party's ability to implement the measures necessary and appropriate to prevent acts of torture and cruel treatment, and thereby assists States parties in bringing their law and practice into full compliance with the obligations set forth in the Convention.

49. Since its thirtieth session in May 2003, the Committee began the practice of identifying a limited number of these recommendations that warrant a request for additional information following the review and discussion with the State party concerning its periodic report. Such "follow up" recommendations are identified because they are serious, protective, and are considered able to be accomplished within one year. The States parties are asked to provide within one year information on the measures taken to give effect to its "follow up recommendations" which are specifically noted in a paragraph near the end of the conclusions and recommendations on the review of the States parties' reports under article 19.

50. Since the procedure was established at the thirtieth session in May 2003, through the end of the thirty eighth session in May 2007 the Committee has reviewed 53 States for which it has identified follow up recommendations. Of the 39 States parties that were due to have submitted their follow up reports to the Committee by 18 May 2007, 25 had completed this requirement

(Albania, Argentina, Austria, Azerbaijan, Bahrain, Canada, Chile, Czech Republic, Colombia, Croatia, Ecuador, Finland, France, Germany, Greece, Latvia, Lithuania, Monaco, Morocco, New Zealand, Qatar, Sri Lanka, Switzerland, United Kingdom and Yemen). As of 18 May, 14 States had not yet supplied follow up information that had fallen due (Bulgaria, Bosnia and Herzegovina, Cambodia, Cameroon, Democratic Republic of the Congo, Georgia, Guatemala, Republic of Korea, Moldova, Nepal, Peru, Togo, Uganda and United States of America). In March 2007, the Rapporteur sent a reminder requesting the outstanding information to each of the States whose follow up information was due in November 2006, but had not yet been submitted, and who had not previously been sent a reminder.

51. The Rapporteur noted that 14 follow up reports had fallen due since the previous annual report (A/61/44). However, only 4 (Austria, Ecuador, Qatar and Sri Lanka) of these 14 States had submitted the follow up information in a timely manner. Despite this, she expressed the view that the follow up procedure had been remarkably successful in eliciting valuable additional information from States on protective measures taken during the immediate follow up to the review of the periodic reports. While comparatively few States had replied precisely on time, 19 of the 25 respondents had submitted the information on time or within a matter of one to four months following the due date. Reminders seemed to help elicit many of these responses. The Rapporteur also expressed appreciation to non governmental organizations, many of whom had also encouraged States parties to submit follow up information in a timely way.

52. Through this procedure, the Committee seeks to advance the Convention's requirement that "each State party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture ..." (art. 2, para. 1) and the undertaking "to prevent ... other acts of cruel, inhuman and degrading treatment or punishment ..." (art. 16).

53. The Rapporteur has expressed appreciation for the information provided by States parties regarding those measures taken to implement their obligations under the Convention. In addition, she has assessed the responses received as to whether all the items designated by the Committee for follow up (normally between three and six recommendations) have been addressed, whether the information provided responds to the Committee's concern, and whether further information is required. Each letter responds specifically and in detail to the information presented by the State party. Where further information is needed, she writes to the State party concerned with specific requests for further clarification. With regard to States that have not supplied the follow up information at all, she writes to solicit the outstanding information.

54. At its thirty eighth session in May, the Committee decided to make public the Rapporteur's letters to the States parties. These would be assigned a United Nations document symbol number and placed on the web page of the Committee. The Committee further decided to assign a United Nations document symbol number to all States parties' replies (these symbol numbers are under consideration) to the follow up and also place them on its website.

55. Since the recommendations to each State party are crafted to reflect the specific situation in that country, the follow up responses from the States parties and letters from the Rapporteur requesting further clarification address a wide array of topics. Among those addressed in the letters sent to States parties requesting further information have been a number of precise matters

seen as essential to the implementation of the recommendation in question. A number of issues have been highlighted to reflect not only the information provided, but also the issues that have not been addressed but which are deemed essential to the Committee's ongoing work, in order to be effective in taking preventive and protective measures to eliminate torture and ill treatment.

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57. The chart below details, as of 18 May 2007, the end of the Committee's thirty eighth session, the state of the replies with respect to follow up.

Follow up procedure to conclusions and recommendations from May 2003 to May 2007

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Thirty eighth session (May 2007)

State party	Information due in	Information received	Action taken
...			
Poland	May 2008	-	
...			

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CHAPTER IV. FOLLOW-UP ON CONCLUSIONS AND RECOMMENDATIONS ON STATES PARTIES REPORTS

46. In this chapter, the Committee updates its findings and activities that follow-up on the conclusions and recommendations adopted under article 19 of the Convention, in accordance with the recommendations of its Rapporteur on Follow-Up to Country conclusions. The Rapporteur's activities, responses by States parties, and the Rapporteur's views on recurring concerns encountered through this procedure are presented below, and updated to through May 2008, following the Committee's fortieth session.

47. In chapter IV of its annual report for 2005-2006 (A/61/44), the Committee described the framework that it had developed to provide for follow-up subsequent to the adoption of the conclusions and recommendations on States parties reports submitted under article 19 of the Convention. It also presented information on the Committee's experience in receiving information from States parties from the initiation of the procedure in May 2003 through May 2008.

48. In accordance with rule 68, paragraph 2, of the rules of procedure, the Committee established the post of Rapporteur for follow-up to conclusions and recommendations under article 19 of the Convention and appointed Ms. Felice Gaer to that position. As in the past, Ms. Gaer presented a progress report to the Committee in May 2008 on the results of the procedure.

49. The Rapporteur has emphasized that the follow-up procedure aims "to make more effective the struggle against torture and other cruel, inhuman and degrading treatment or punishment", as articulated in the preamble to the Convention. At the conclusion of the Committee's review of each State party report, the Committee identifies concerns and recommends specific actions designed to enhance each State party's ability to implement the measures necessary and appropriate to prevent acts of torture and cruel treatment, and thereby assists States parties in bringing their law and practice into full compliance with the obligations set forth in the Convention.

50. In its follow-up procedure, the Committee has identified a number of these recommendations as requiring additional information specifically for this procedure. Such follow-up recommendations are identified because they are serious, protective, and are considered able to be accomplished within one year. The States parties are asked to provide within one year information on the measures taken to give effect to its follow-up recommendations which are specifically noted in a paragraph near the end of the conclusions and recommendations on the review of the States parties' reports under article 19.

51. Since the procedure was established at the thirtieth session in May 2003, through the end of the fortieth session in May 2008, the Committee has reviewed 67 States for which it has identified follow-up recommendations. Of the 53 States parties that were due to have submitted

their follow-up reports to the Committee by 16 May 2008, 33 had completed this requirement (Albania, Argentina, Austria, Azerbaijan, Bahrain, Bosnia and Herzegovina, Canada, Chile, Czech Republic, Colombia, Croatia, Ecuador, Finland, France, Georgia, Germany, Greece, Guatemala, Hungary, Republic of Korea, Latvia, Lithuania, Monaco, Morocco, Nepal, New Zealand, Qatar, Russian Federation, Sri Lanka, Switzerland, United Kingdom of Great Britain and Northern Ireland, United States of America and Yemen). As of 16 May, 20 States had not yet supplied follow-up information that had fallen due (Bulgaria, Burundi, Cambodia, Cameroon, Democratic Republic of the Congo, Denmark, Guyana, Italy, Japan, Luxembourg, Mexico, Moldova, the Netherlands, Peru, Poland, South Africa, Tajikistan, Togo, Uganda and Ukraine). In March 2008, the Rapporteur sent a reminder requesting the outstanding information to each of the States whose follow-up information was due in November 2007, but had not yet been submitted, and who had not previously been sent a reminder.

52. The Rapporteur noted that 14 follow-up reports had fallen due since the previous annual report.³ However, only 2 (Hungary and the Russian Federation) of these 14 States had submitted the follow-up information in a timely manner. Despite this, she expressed the view that the follow-up procedure had been remarkably successful in eliciting valuable additional information from States on protective measures taken during the immediate follow-up to the review of the periodic reports. While comparatively few States had replied precisely on time, 25 of the 33 respondents had submitted the information on time or within a matter of one to four months following the due date. Reminders seemed to help elicit many of these responses. The Rapporteur also expressed appreciation to non-governmental organizations, many of whom had also encouraged States parties to submit follow-up information in a timely way.

53. Through this procedure, the Committee seeks to advance the Convention's requirement that "each State party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture ..." (art. 2, para. 1) and the undertaking "to prevent ... other acts of cruel, inhuman and degrading treatment or punishment ..." (art. 16).

54. The Rapporteur expressed appreciation for the information provided by States parties regarding those measures taken to implement their obligations under the Convention. In addition, she has assessed the responses received as to whether all the items designated by the Committee for follow-up (normally between three and six recommendations) have been addressed, whether the information provided responds to the Committee's concern, and whether further information is required. Each letter responds specifically and in detail to the information presented by the State party. Where further information has been needed, she has written to the concerned State party with specific requests for further clarification. With regard to States that have not supplied the follow-up information at all, she requests the outstanding information.

55. At its thirty-eighth session in May 2007, the Committee decided to make public the Rapporteur's letters to the States parties. These would be placed on the web page of the Committee. The Committee further decided to assign a United Nations document symbol number to all States parties' replies to the follow-up and also place them on its website (<http://www2.ohchr.org/english/bodies/cat/sessions.htm>).

56. Since the recommendations to each State party are crafted to reflect the specific situation

in that country, the follow-up responses from the States parties and letters from the Rapporteur requesting further clarification address a wide array of topics. Among those addressed in the letters sent to States parties requesting further information have been a number of precise matters seen as essential to the implementation of the recommendation in question. A number of issues have been highlighted to reflect not only the information provided, but also the issues that have not been addressed but which are deemed essential to the Committee's ongoing work, in order to be effective in taking preventive and protective measures to eliminate torture and ill-treatment.

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58. The chart below details, as of 16 May 2008, the end of the Committee's fortieth session, the state of the replies with respect to follow-up.

3/ *Official Records of the General Assembly, Sixty-second Session, Supplement No. 44 (A/62/44).*

**Follow-up procedure to conclusions and recommendations
from May 2003 to May 2008**

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Thirty-eighth session (May 2007)

State party	Information due in	Information received	Action taken
...			
Poland	May 2008	Not received	
...			

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IV. FOLLOW UP ON CONCLUDING OBSERVATIONS ON STATES PARTIES REPORTS

53. In this chapter, the Committee updates its findings and activities that follow-up to concluding observations adopted under article 19 of the Convention, in accordance with the recommendations of its Rapporteur on follow-up to concluding observations. The Rapporteur's activities, responses by States parties, and the Rapporteur's views on recurring concerns encountered through this procedure are presented below, and updated through 15 May 2009, following the Committee's forty-second session.

54. In chapter IV of its annual report for 2005-2006 (A/61/44), the Committee described the framework that it had developed to provide for follow-up subsequent to the adoption of the concluding observations on States parties reports submitted under article 19 of the Convention. It also presented information on the Committee's experience in receiving information from States parties from the initiation of the procedure in May 2003 through May 2009.

55. In accordance with rule 68, paragraph 2, of the rules of procedure, the Committee established the post of Rapporteur for follow up to concluding observations under article 19 of the Convention and appointed Ms. Felice Gaer to that position. As in the past, Ms. Gaer presented a progress report to the Committee in May 2009 on the results of the procedure.

56. The Rapporteur has emphasized that the follow up procedure aims "to make more effective the struggle against torture and other cruel, inhuman and degrading treatment or punishment", as articulated in the preamble to the Convention. At the conclusion of the Committee's review of each State party report, the Committee identifies concerns and recommends specific actions designed to enhance each State party's ability to implement the measures necessary and appropriate to prevent acts of torture and ill-treatment, and thereby assists States parties in bringing their law and practice into full compliance with the obligations set forth in the Convention.

57. In its follow-up procedure, the Committee has identified a number of these recommendations as requiring additional information specifically for this procedure. Such follow-up recommendations are identified because they are serious, protective, and are considered able to be accomplished within one year. The States parties are asked to provide within one year information on the measures taken to give effect to its follow-up recommendations which are specifically noted in a paragraph near the end of the conclusions and recommendations on the review of the States parties' reports under article 19.

58. Since the procedure was established at the thirtieth session in May 2003, through the end of the forty-second session in May 2009, the Committee has reviewed 81 States for which it has identified follow up recommendations. Of the 67 States parties that were due to have submitted their follow up reports to the Committee by 15 May 2009, 44 had completed this requirement. As of 15 May 2009, 23 States had not yet supplied follow up information that had fallen due. The

Rapporteur sends reminders requesting the outstanding information to each of the States whose follow up information was due, but had not yet been submitted, and who had not previously been sent a reminder. The status of the follow-up to concluding observations may be found in the web pages of the Committee (<http://www2.ohchr.org/english/bodies/cat/sessions.htm>).

59. The Rapporteur noted that 14 follow up reports had fallen due since the previous annual report. However, only 4 (Algeria, Estonia, Portugal and Uzbekistan) of these 14 States had submitted the follow up information in a timely manner. Despite this, she expressed the view that the follow up procedure had been remarkably successful in eliciting valuable additional information from States on protective measures taken during the immediate follow up to the review of the periodic reports. One State party (Montenegro) had already submitted information which was due only in November 2009. While comparatively few States had replied precisely on time, 34 of the 44 respondents had submitted the information on time or within a matter of one to four months following the due date. Reminders seemed to help elicit many of these responses. The Rapporteur also expressed appreciation to non governmental organizations, many of whom had also encouraged States parties to submit follow up information in a timely way.

60. Through this procedure, the Committee seeks to advance the Convention's requirement that "each State party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture ..." (art. 2, para. 1) and the undertaking "to prevent ... other acts of cruel, inhuman and degrading treatment or punishment ..." (art. 16).

61. The Rapporteur expressed appreciation for the information provided by States parties regarding those measures taken to implement their obligations under the Convention. In addition, she has assessed the responses received as to whether all the items designated by the Committee for follow up (normally between three and six recommendations) have been addressed, whether the information provided responds to the Committee's concern, and whether further information is required. Each letter responds specifically and in detail to the information presented by the State party. Where further information has been needed, she has written to the concerned State party with specific requests for further clarification. With regard to States that have not supplied the follow up information at all, she requests the outstanding information.

62. At its thirty eighth session in May 2007, the Committee decided to make public the Rapporteur's letters to the States parties. These would be placed on the web page of the Committee. The Committee further decided to assign a United Nations document symbol number to all States parties' replies to the follow up and also place them on its website (<http://www2.ohchr.org/english/bodies/cat/sessions.htm>).

63. Since the recommendations to each State party are crafted to reflect the specific situation in that country, the follow up responses from the States parties and letters from the Rapporteur requesting further clarification address a wide array of topics. Among those addressed in the letters sent to States parties requesting further information have been a number of precise matters seen as essential to the implementation of the recommendation in question. A number of issues have been highlighted to reflect not only the information provided, but also the issues that have not been addressed but which are deemed essential to the Committee's ongoing work, in order to be effective in taking preventive and protective measures to eliminate torture and ill treatment.

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65. The chart below details, as of 15 May 2009, the end of the Committee's forty-second session, the state of the replies with respect to follow up.

Follow-up procedure to conclusions and recommendations from May 2003 to May 2009

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Thirty-eighth session (May 2007)

State party	Information due in	Information received	Action taken
...			
Poland	May 2008	12 June 2008 CAT/C/POL/CO/4/Add.1	Response under review
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Chapter IV. Follow-up to concluding observations on States parties' reports

65. In this chapter, the Committee updates its findings and activities that constitute follow-up to concluding observations adopted under article 19 of the Convention, in accordance with the procedure established on follow-up to concluding observations. The follow-up responses by States parties, and the activities of the Rapporteur for follow-up to concluding observations under article 19 of the Convention, including the Rapporteur's views on the results of this procedure, are presented below. This information is updated through 14 May 2010, the end of the Committee's forty-fourth session.

66. In chapter IV of its annual report for 2005-2006 (A/61/44), the Committee described the framework that it had developed to provide for follow-up subsequent to the adoption of the concluding observations on States parties reports submitted under article 19 of the Convention. In that report and each year thereafter, the Committee has presented information on its experience in receiving information on follow-up measures taken by States parties since the initiation of the procedure in May 2003.

67. In accordance with rule 68, paragraph 2, of the rules of procedure, the Committee established the post of Rapporteur for follow-up to concluding observations under article 19 of the Convention and appointed Ms. Felice Gaer to that position. In November 2009 and May 2010, the Rapporteur presented a progress report to the Committee on the results of the procedure.

68. At the conclusion of the Committee's review of each State party report, the Committee identifies concerns and recommends specific measures to prevent acts of torture and ill-treatment. Thereby, the Committee assists States parties in identifying effective legislative, judicial, administrative and other measures to bring their laws and practice into full compliance with the obligations set forth in the Convention.

69. In its follow-up procedure, the Committee has identified a number of these recommendations as requiring additional information within one year. Such follow-up recommendations are identified because they are serious, protective and are considered able to be accomplished within one year. The States parties are asked to provide information within one year on the measures taken to give effect to the follow-up recommendations. In the concluding observations on each State party report, the recommendations requiring follow-up within one year are specifically identified in a paragraph at the end of the concluding observations.

70. Since the procedure was established at the thirtieth session in May 2003, through the end of the forty-fourth session in May 2010, the Committee has reviewed 95 reports from States parties for which it has identified follow-up recommendations. It must be noted that periodic reports of Chile, Latvia, Lithuania and New Zealand have been examined twice by the Committee since the establishment of the follow-up procedure. Of the 81 States parties that were due to have submitted their follow-up reports to the Committee by 14 May 2010, 57 had completed this

requirement. As of 14 May 2010, 24 States had not yet supplied follow-up information that had fallen due: Republic of Moldova, Cambodia, Cameroon, Bulgaria, Uganda, Democratic Republic of the Congo, Peru, Togo, Burundi, South Africa, Tajikistan, Luxembourg, Benin, Costa Rica, Indonesia, Zambia, Lithuania (to the 2009 concluding observations), Chad, Chile, Honduras, Israel, New Zealand, Nicaragua and the Philippines.

71. The Rapporteur sends reminders requesting the outstanding information to each of the States for which follow-up information is due, but not yet submitted. The status of the follow-up to concluding observations may be found in the web pages of the Committee at each of the respective sessions. As of 2010, the Committee has established a separate web page for follow-up (<http://www2.ohchr.org/english/bodies/cat/follow-procedure.htm>).

72. Of the 24 States parties that did not submit any information under the follow-up procedure as of 14 May 2010, non-respondents came from all world regions. While about one-third had reported for the first time, two-thirds were reporting for a second, third or even fourth time.

73. The Rapporteur expresses appreciation for the information provided by States parties regarding those measures taken to implement their obligations under the Convention. In addition, she has assessed the responses received as to whether all the items designated by the Committee for follow-up (normally between three and six recommendations) have been addressed, whether the information provided responds to the Committee's concern, and whether further information is required. Each letter responds specifically and in detail to the information presented by the State party. Where further information has been needed, she has written to the concerned State party with specific requests for further clarification. With regard to States that have not supplied the follow-up information at all, she requests the outstanding information.

74. At its thirty-eighth session in May 2007, the Committee decided to make public the Rapporteur's letters to the States parties which are posted on the web page of the Committee. The Committee further decided to assign a United Nations document symbol number to all States parties' replies to the follow-up and also place them on its website.

75. Since the recommendations to each State party are crafted to reflect the specific situation in that country, the follow-up responses from the States parties and letters from the Rapporteur requesting further clarification address a wide array of topics. Among those addressed in the letters sent to States parties requesting further information have been a number of precise matters seen as essential to the implementation of the recommendation in question. A number of issues have been highlighted to reflect not only the information provided, but also the issues that have not been addressed but which are deemed essential to the Committee's ongoing work, in order to be effective in taking preventive and protective measures to eliminate torture and ill-treatment.

76. Among the Rapporteur's activities in the past year, have been the following: attending the inter-committee meetings in Geneva where follow-up procedures were discussed with members from other treaty bodies, and it was decided to establish a working group on follow-up; addressing the Committee on the Elimination of Discrimination against Women at its August 2009 meeting in New York concerning aspects of the follow-up procedure; assessing responses

from States parties and preparing follow-up letters to countries as warranted and updating the information collected from the follow-up procedure.

77. Additionally, the Rapporteur initiated a study of the Committee's follow-up procedure, beginning with an examination of the number and nature of topics identified by the Committee in its requests to States parties for follow-up information. She reported to the Committee on some preliminary findings, in November 2009 and later in May 2010, and specifically presented charts showing that the number of topics designated for follow-up has substantially increased since the thirty-fifth session. Of the 87 countries examined as of the forty-third session (November 2009), one to three paragraphs were designated for follow-up for 14 States parties, four or five such topics were designated for 38 States parties, and six or more paragraphs were designated for 35 States parties. The Rapporteur drew this trend to the attention of the members of the Committee and it was agreed in May 2010 that, whenever possible, efforts would henceforth be made to limit the number of follow-up items to a maximum of five paragraphs.

78. The Rapporteur also found that certain topics were more commonly raised as a part of the follow up procedure than others. Specifically, for all State parties reviewed since the follow-up procedure began, the following topics were most frequently designated:

Ensure prompt, impartial and effective investigation(s)	76 per cent
Prosecute and sanction persons responsible for abuses	61 per cent
Guarantee legal safeguards	57 per cent
Enable right to complain and have cases examined	43 per cent
Conduct training, awareness-raising	43 per cent
Ensure interrogation techniques in line with the Convention	39 per cent
Provide redress and rehabilitation	38 per cent
End gender-based violence, ensure protection of women	34 per cent
Ensure monitoring of detention facilities/visit by independent body	32 per cent
Carry out data collection on torture and ill-treatment	30 per cent
Improve condition of detention, including overcrowding	28 per cent

79. In the correspondence with States parties, the Rapporteur has noted recurring concerns which are not fully addressed in the follow-up replies and her concerns (illustrative, not comprehensive) have been included in prior annual reports. To summarize them, she finds there is considerable value in having more precise information being provided, e.g. lists of prisoners, details on deaths in detention and forensic investigations.

80. As a result of numerous exchanges with States parties, the Rapporteur has observed that there is need for more vigorous fact-finding and monitoring in many States parties. In addition, there is often inadequate gathering and analysing of police and criminal justice statistics. When the Committee requests such information, States parties frequently do not provide it. The Rapporteur further considers that conducting prompt, thorough and impartial investigations into allegations of abuse is of great protective value. This is often best undertaken through unannounced inspections by independent bodies. The Committee has received documents, information and complaints about the absence of such monitoring bodies, the failure of such bodies to exercise independence in carrying out their work or to implement recommendations for

improvement.

81. The Rapporteur has also pointed to the importance of States parties providing clear-cut instructions on the absolute prohibition of torture as part of the training of law-enforcement and other relevant personnel. States parties need to provide information on the results of medical examinations and autopsies, and to document signs of torture, especially including sexual violence. States parties also need to instruct personnel on the need to secure and preserve evidence. The Rapporteur has found many lacunae in national statistics, including on penal and disciplinary action against law-enforcement personnel. Accurate record keeping, covering the registration of all procedural steps of detained persons, is essential and requires greater attention. All such measures contribute to safeguard the individual against torture or other forms of ill-treatment, as set forth in the Convention.

82. The chart below details, as of 14 May 2010, the end of the Committee's forty-fourth session, the replies with respect to follow-up. This chart also includes States parties' comments to concluding observations, if any.

Follow-up procedure to concluding observations from May 2003 to May 2010

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Thirty-eighth session (May 2007)

State party	Information due in	Information received	Action taken
...			
Poland	May 2008	12 June 2008 CAT/C/POL/CO/4/Add.1	Information under review
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Follow-up - State Reporting

(ii) Action by State Party

Replies from the Government of Poland to the conclusions and recommendations of the Committee against Torture (CAT/C/POL/CO/4)

[12 June 2008]

Additional information concerning implementation of recommendations 8, 9, 15, 18 and 19 formulated by the Committee against Torture after consideration of *The Fourth Periodic Report the Republic of Poland on the Implementation of the Provisions of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment for the Period from 1 August 1998 to 30 September 2004*

Recommendation 8

The Committee notes the adoption of a “shortened trial procedure” as a component of the reform of the Code of Criminal Procedure (art. 387) and it would be concerned if it gave rise to undue pressure being brought to bear on suspects to avail themselves of the procedure. (art. 2)

The State party should take all necessary measures to guarantee the voluntary nature of any such agreements.

1. Art. 387 of the Penal Proceedings Code offers a possibility of issuing a sentence in which the accused is found guilty of the commitment of a crime and a penalty or a penal measure is imposed on him/her after admittance by the court of a sole evidence in the form of the testimony of the accused. Such institution is aimed at significant shortening of the proceedings before the court of the first instance without violating the rights of the accused.

2. It was designed as a right of the accused, because the application for voluntary submission to penalty (regarding: the passing of a sentence, the imposition of a certain penalty or a penal measure and the refraining from the conduct of evidence proceedings) may be submitted only by the accused or his/her defence counsel. What is more, the accused may submit such an application even in the situation in which s/he refuses to testify before the court. Such an application may be submitted at any time before the end of cross-examination of all the accused during the main hearing. The application may be submitted by the suspect during preliminary proceedings, but then it will also be considered during a hearing before an independent court. The application may only apply to a misdemeanour and may be effectively withdrawn by the time the court passes a sentence.

3. After a sentence is passed, there is a possibility of lodging a complaint against it pursuant to general principles. This means that either party may lodge an appeal to a court of the second instance.

4. Art. 387 § 1 of the Penal Proceedings Code indicates that the accused, at the time of submitting an application for voluntary submission to penalty, in the event that s/he has no defence counsel of his/her choice, may apply for nomination of an ex officio defence counsel. The practice shows that in such cases courts grant this type of motions and appoint ex officio defence counsels, particularly in fairly complicated matters.

5. The manner of regulation of the of the aforementioned institution and its application only by independent courts guarantee voluntary nature of submission by the accused of an application for submission to penalty in a given matter.

Recommendation 9

The Committee regrets the lack of an appropriate system of legal aid in Poland and, in particular, the delay in submitting the Draft Law on access to free legal aid to the Parliament (Sejm) considering the impact that the delay might have on the protection of persons without resources. (art. 2)

The State Party should take effective steps to expedite the adoption of the Law on access to free legal aid in order to ensure appropriate protection and access to the legal system of persons without resources.

6. Access to free-of-charge legal assistance at the stage of court proceedings is guaranteed by the provisions of the Penal Proceedings Code and the Civil Proceedings Code, as well as by the Law on Court Costs in Civil Matters. In both types of proceedings - penal and civil - the condition for the use of such free-of-charge ex officio legal assistance is demonstration by the accused, victim or a natural person who is a party to civil proceedings, that s/he is unable to cover the costs of legal representation without a harm to his/her own necessary maintenance or the maintenance of his/her family. Moreover, in civil proceedings, the appointment of an ex officio attorney may be requested, in addition to natural persons, also by legal entities and other persons having court capacity (Art. 64 and Art. 117 of the Penal Proceedings Code). In addition, in penal proceedings, such a request may be submitted by a person who is not a party to the proceedings if his/her rights have been violated (Art. 87 of the Penal Proceedings Code).

7. Free-of-charge legal assistance is available in civil proceedings at the stage of court proceedings, and in penal proceedings - both at the stage of court proceedings and at the stage of preliminary proceedings (Art. 78 §1 with reference to Art. 71 §3 of the Penal Proceedings Code).

8. Legal assistance provided ex officio by defence counsels and attorneys is carried out by advocates and legal counsels appointed by the court and paid by the State Treasury. In 2007, the profession of an advocate was performed by 6 930 persons, and the profession of a legal counsel by 18 951 persons. The issue of access to free-of-charge legal assistance and out-of-court assistance was additionally regulated by draft *Law on Access to Free-of-Charge Legal Assistance Granted by the State to Natural Persons*. On 19 October 2005, the Prime Minister submitted the Sejm of the Republic of Poland of the Fifth Term a draft *Law on Access to Free-of-Charge Legal Assistance* granted by the State to natural persons, together with draft executive acts. By means of a Regulation of the Minister of Justice of 6 February 2006, a Team was appointed for

development of an amendment to the draft Law on Access to Free-of-Charge Legal Assistance. Then, on 18 May 2007, the draft of the amendment to the aforementioned Law was submitted to the Sejm of the Republic of Poland. Work on the aforementioned draft was not completed by the Sejm of the Fifth Term. Currently this work is being continued by the Ministry of Justice. The objectives of the draft *Law on Access to Free-of-Charge Legal Assistance* are to be developed by 30 May 2008.

Recommendation 15

Prompt and impartial investigations

The Committee is concerned at allegations regarding the existence in the territory of Poland of secret detention facilities for aliens suspected of terrorist activities. The Committee takes note of the statement of the Polish delegation emphatically refuting all allegations about the existence of secret detention facilities in its territory. (arts. 3, 12 and 16)

The Committee urges the State party to share information about the scope, methodology and conclusions of the enquiry into these allegations conducted by the Polish Parliament so that this matter can be put to rest.

9. Information about the alleged existence of secret CIA prisons in Poland, where allegedly persons suspected of terrorist activity were supposed to be kept were an object of numerous press releases from the autumn of 2005. This information was reflected in speeches of MPs, including the Marshall of the Sejm of the Fifth Term, addressing a need of thorough examination of the suppositions publicized by mass media. The implementation of these expectations was the session of the Commission for Secret Service held on 21 December 2005, where MPs listened to information presented by the Minister - Co-ordinator of Secret Service Affairs. The Commission, after listening to the information presented by the Minister - Co-ordinator, did not undertake any actions which it would be obliged to undertake in case of identification of any violation of the binding law and international conventions ratified by Poland.

Recommendation 18

Hazing in the military

While the Committee acknowledges the progress made by the State party in decreasing the number of cases of abuse of conscripts in the army, it remains concerned at the high number of cases that continue to be reported. (art. 2 and 16)

The State party should eradicate hazing in the armed forces; continue implementing measures of prevention as well as ensure prompt, impartial and effective investigation and prosecution of such abuses; and report publicly on the results of any such prosecutions. The State party should guarantee the rehabilitation of victims, including appropriate medical and psychological assistance.

10. Counteracting pathologies, in particular in the area of social relations, belongs to the priorities of educational activity implemented within the Armed Forces of the Republic of Poland. This sphere constitutes an area of on-going analysis and multi-directional actions taken by commanders of different levels, persons serving functions, as well as representative bodies of soldiers and specialized institutions of the national defence sector (the Department of Education and Promotion of Defence, Military Police and the Supreme Military Prosecutor's Office).

11. Recommendations of the Committee Against Torture are implemented by the national defence sector through, among other things, prevention activity, conducted both among post-secondary school pupils, and among soldiers and employees of the Army. During numerous classes, meetings and training sessions issues of informal customs prevailing in military units are discussed, as well as manners of dealing with this problem. Persons participating in training are also informed about the rules of penal liability and disciplinary proceedings.

12. The Armed Forces of the Republic of Poland developed, among other things, a system of monitoring and recognition of the status of social relations. The established mechanisms, such as: the Military Help Line and Internet Help Desk, surveys conducted among soldiers serving in the basic military service (including periodic surveys of the Military Bureau of Sociological Research), provide for identification of cases of improper conduct of soldiers within the area under examination. The evaluation of the status of social relations in military units and sub-divisions is a regular point of evaluation of the discipline, performed, among others, at the management level of the Ministry of the National Defence.

13. It should also be emphasized that soldiers, including victims of the so-called "wave", are able to take advantage of psychological preventive care. Military psychologists interfere in crisis situations, they operate help lines, they have duty hours in the afternoon, and their contact telephone numbers are made available to soldiers.

14. The undertaken organizational activities, including a system of official supervision and control, creation of sub-divisions which are uniform from the point of view of their background, prevention activity and strict penal and disciplinary reaction to perpetrators of forbidden acts, bring about tangible results in the form of a drop in the number of this type of offences. According to the data of the Supreme Military Prosecutor's Office, in 2007, 196 perpetrators were identified of offences against the rules of conduct towards subordinates, persons with lower rank or those with a shorter record of serving in the Army, and for comparison, in 2006, 221 persons committed such offences.

15. A relevant factor affecting a drop in the number of offences is constituted by undertakings of the national defence sector aimed at making the Army a professional force, deriving from the development of the rules of recruitment, eliminating persons who do not wish to serve in the Army, as well as persons with a low level of education or those who are in conflict with law. Moreover, positions of commanders are taken by professional non-commissioned officers, prepared to serve such functions during 10-month course conducted in schools for non-commissioned officers.

16. It should be emphasized that providing the public with information about the result of penal

proceedings in the cases concerned, as recommended by the Committee, is implemented within the limits of the binding law, through the use of the instrument in the form of the novelized institution of publicizing information, as specified in Art. 50 of the Penal Code.

17. Moreover, the information provided by the Polish Army about inconsistencies occurring with regard to social relations, is also based on co-operation with the media in this regard.

18. The activities which may soon positively affect the quality of social relations include implementation of the provisions of decision No. 285/MON of the Minister of the National Defence of 19 July 2006 on undertaking organizational actions for implementation of a new form of educational activity, as well as creation of educational structures in the national defence sector (not public). This will strengthen the humanity support of the commander, within the scope of, among other things, creation of conditions for observation of the law and military discipline and prevention of unfavourable phenomena in the forces.

19. Currently the national defence sector is consulting a complex “Programme of Counteracting Crime and Pathology in the Armed Forces of the Republic of Poland”, which covers actions and initiatives undertaken at all command levels within the scope of training and educational activity connected with the creation of military discipline, proper inter-personal relations, counteracting violence and education of citizens.

Recommendation 19

Minorities and other vulnerable groups

The Committee notes with concern reports of intolerance and hatred towards minorities and other vulnerable groups in Poland, including alleged recent manifestations of hate speech and intolerance against homosexuals and lesbians. (art. 16)

The State party should incorporate in its Penal Code an offence to punish hate crimes as acts of intolerance and incitation to hatred and violence based on sexual orientation. Moreover, the State party should continue to be vigilant in ensuring that the relevant existing legal and administrative measures are strictly observed and that training curricula and administrative directives constantly communicate to staff the message that incitation to hatred and violence will not be tolerated and will be sanctioned accordingly.

The State party should provide detailed information and statistics on the number and type of hate crimes as well as on the administrative and judicial measures taken to investigate such crimes and the sentences imposed.

Introduction to the Penal Code of *hate crimes* based on sexual orientation

20. Upon consideration of the recommendation of the Committee, the National Prosecutor's Office expressed a position that it would be justified to undertake a legislative initiative aimed at an amendment to Art. 256 of the Penal Code and Art. 257 of the Penal Code through an imposition of a threat of penal sanctions for activities consisting of instigating hatred against

persons having a different sexual orientation, and for an abuse of a group of persons or a person due to their/his/her sexual orientation. In the situation of undertaking work on an amendment to the Penal Code, Recommendation no. 19 regarding a need of introducing penalization of “hate crimes [...] based on sexual orientation”, a body will be introduced which is responsible for the amendment to the Penal Code and the Penal Proceedings Code.

Counteracting discrimination, xenophobia, intolerance

21. Art. 6 of the Law of 6 January 2005 *on National and Ethnic Minorities and on Regional Language* constitutes a prohibition of discrimination resulting from the fact that a person belongs to a national and ethnic minority or an entity using a regional language, and it obliges public authorities to undertake appropriate measures aimed at supporting the actual equality in the area of economic, social, political and cultural life between persons belonging to minorities and persons belonging to the majority, and to protect persons who are objects of discrimination, hostility or violence, resulting from the fact that they belong to minorities, and to strengthen the inter-cultural dialogue.

22. A sector leading in the process of counteracting discrimination and xenophobia is the Ministry of Internal Affairs and Administration. Its structures contain the Team for Monitoring Racism and Xenophobia for the purpose of effective implementation of the rule of equal treatment due to ethnic origin.

23. The Team was entrusted with the fulfilment of tasks imposed on the Ministry of Internal Affairs and Administration in connection with implementation of the *National Programme of Counteracting Racial Discrimination, Xenophobia and Intolerance connected therewith*. This Programme is a result of international obligations of Poland with regard to implementation of recommendations contained in the final documents of the *World Conference Against Racism, Racial Discrimination, Xenophobia and Intolerance Connected Therewith* (Durban, 31 August - 7 September 2001).

24. The objective of the *Programme* is implementation of actions aimed at combating xenophobia and racism, including anti-Semitism, and development in the Polish society a culture of tolerance in the widest sense. Beneficiaries of the *Programme* will be Polish citizens belonging to national and ethnic minorities, foreigners - including immigrants and refugees and other persons who may become an object of discrimination due to ethnic or racial reasons. Moreover, as part of the *Programme*, conferences and trainings are conducted for representatives of government administration to increase the level of their knowledge and awareness in the area of legal and administrative solutions concerning prevention and combating racism and discrimination due to ethnic reasons.

25. In addition, the Ministry of Internal Affairs and Administration signed an agreement with the Association of Citizens' Advice Bureaus within the scope of combating discrimination due to ethnic or national origin. As part of the agreement, the Association of Citizens' Advice Bureaus prepared, in 2007, a report containing a statistical analysis of matters lodged by customers who were complaining of discrimination due to ethnic or national origin and racial discrimination, xenophobia and anti-Semitism.

26. At the order of the Ministry of Internal Affairs and Administration, the Poznań Centre of Human Rights at the Institute of Legal Sciences of the Polish Academy of Sciences prepared the first part of the report on monitoring racist, xenophobic and anti-Semitic contents in the Polish press. The remarks and suggestions contained in the report will help in the future in the development of effective methods and instruments for combating the *hate speech*.

Introduction by the Chief Commander of the Police, in 2007, of a system of implementation of recommendations of international organizations with regard to human rights

27. As part of activities aimed at the development by the Police of the best possible standards of protection of human rights, in November 2007, the Chief Commander of the Police issued an instruction to develop *Plans of Implementation by the Police in 2008 - 2009 of Recommendations* formulated by the Human Rights Commissioner of the Council of Europe, Committee Against Torture and provisions contained in the programme of activities of the government regarding execution of judgements of the European Human Rights Tribunal against the Republic of Poland. Currently, Task Teams are being appointed whose task is development of plans of implementation of individual recommendations in 2008 - 2009, and then monitoring of this process.

28. The function of project co-ordinators is served by: Human Rights Advisors to the Chief Commander Advisors to Regional Chiefs of the Police.

29. As part of the above projects, *Plans of Implementation of Recommendation* of the Committee Against Torture will be developed, including but not limited to:

(a) development of more effective programmes for protection of monuments and cemeteries of national minorities;

(b) intensification of anti-discriminating activities;

(c) development and implementation of a system of gathering, processing and analysing data concerning complaints and disciplinary proceedings, providing for an evaluation of observation by the Police of international conventions on human rights to which Poland is a party.

30. Task Teams will be responsible for an overview of the actual state of affairs within the aforementioned areas, diagnosis of the situation, identification of areas requiring an improvement and suggestion of complex solutions aimed at their implementation in the whole Police forces.

31. In 2010, an Evaluation Report will be developed which will evaluate the effectiveness of the implemented programmes and present recommendations concerning activities for the future.

Accession of Poland to the “Law Enforcement Officer Programme on Combating Hate Crime”

32. On 24 October 2006, Poland joined the Law Enforcement Officer Programme on Combating Hate Crime” implemented by the OECD Bureau of Democratic Institutions and Human Rights. The Department of Control, Complaints and Motions of the Ministry of Internal Affairs and Administration was assigned to serve the role of a co-ordinator of the Programme in Poland.

33. The Programme concerns training of the Police officers in various aspects of *hate crime*, including in particular: conducting an investigation, exchange of information and co-operation with the prosecuting bodies. The Programme assumes the development of a strategy of combating *hate crimes* based on co-operation with the societies involved and development of an effective system of gathering and dissemination of data regarding *hate crimes*.

34. According to the adopted schedule, in 2007, study visits were to take place as well as workshops organized by ODIHR, and in 2008, it is planned to launch the training in the Police.

Educational and informational activity

35. The National Centre of Training of the Personnel of Common Courts and Prosecutor’s Offices, in co-operation with the Department for Women’s and Family’s Affairs and Counteracting of Discrimination at the Ministry of Labour and Social Policy, in 2007, continued to implement the project entitled “Role of prosecutors in effective counteracting of discrimination”, as part of the Community Programme of Measures to Counteract Discrimination 2001 - 2006.

36. Addressees of the training project were prosecutors performing tasks in the area of counteracting discrimination due to race, ethnic origin, religion and denomination, age and sexual orientation.

37. The project was implemented in four training sessions, in total for approx. 240 prosecutors. Each training session, lasting 3.5 day, consisted of the following three modules:

- (a) Raising awareness (self-perception, group identity, perception of others, prejudice, definition of discrimination).
- (b) Implementation - concepts, methods, legal instruments (discrimination, victimization, equal chances, penal law vs. civil law, “good practice” models, social dialogue, procedures).
- (c) Counteracting discrimination (manners of reacting to discriminating activities, structure of conflict, anti-discriminatory strategies).

38. The main measure aimed at prevention of cases of intolerance and hate towards minorities and other particularly-exposed groups among inmates, is thorough education of prison officials

and employees in then area of human rights and manner of dealing with inmates.

39. Moreover, issues falling within the scope of observation of human rights, including discrimination in the widest sense, were incorporated in the programmes of annual training of prison officials and employees dealing with consideration of complaints, requests and applications of inmates. During the training planned for 2008, the issued tackled so far, concerning the tasks of state administration to be fulfilled with regard to counteracting racism, xenophobia and intolerance connected therewith directed against national and ethnic minorities will be extended by issues of intolerance towards persons of different sexual orientation.

40. Issues of human rights and standards of executing temporary detention and penalty of imprisonment also constitute a regular element of training implemented for the penitentiary personnel (psychologists and educators). They are aimed at dissemination of knowledge concerning rights of persons deprived of their liberty, prevention of discrimination due to, among others, ethnic origin, denomination, sex and sexual orientation.

41. The enforcement of human rights in penitentiary institutions and centres of detention-on-remand is facilitated both by controls and supervision performed by organizational units of the prison system at all levels, as well as the transparency of the system, providing for monitoring of penitentiary institutions by institutions and organizations from outside the prison forces.

42. Great attention is paid to a thorough investigation of complaints of inmates concerning discrimination due to nationality reasons, ethnic origin or denomination.

43. Monitoring is also performed of disciplinary proceedings connected with unlawful conduct of prison officials towards inmates. Such events are incidental (in 2002, 4 cases were noted, in 2003 - 3, in 2004 - 1, in 2005 - 0, in 2006 - 2 and in 2007, by 30 September - 1), which proves the effectiveness of actions of didactic nature offered to officials and employees of the prison service.

44. Moreover, The Ministry of Health, supervised by the National Centre for AIDS, conducts educational and informational activities aimed at prevention of HIV infections by raising public knowledge and awareness and by counteracting discrimination and stigmatization of persons living with HIV/AIDS. Such activities include, among others, social campaigns, publication of informational and educational materials (publications, leaflets, brochures), including the Information Bulletin of the National Centre for AIDS "Kontra" and the Internet Bulletin "e-Kontra", as well as Poland-wide training addressed to various social and professional groups, with special emphasis on the group of employees of the healthcare system. Poland-wide training is implemented by non-governmental organizations. The National Centre for AIDS also undertakes interventions in the event of discrimination of HIV-positive persons and persons suffering from AIDS, most commonly at the place of their work or at school.

Statistical data concerning “hare crimes” (data of 2004-2006).

Adult persons sentenced based on final and enforceable judgements and conditional discontinuance of proceedings pursuant to the provisions of selected Articles of the Penal Code¹ in 2003

<i>Legal qualification</i> <i>-Art. Of the Penal Code</i>	Total convictions and conditional discontinuance	Including:							conditional discontinuance
		convicts							
		Total	including:						
			only a fine	restriction of liberty	deprivation of liberty				
total	6 months -11 months	1 year			>1 year <2 years				
Art. 119 §1	4	4	-	-	4	-	3	1	-
Art. 119 §2	1	1	-	-	1	-	-	1	-
Art. 256	7	6	1	1	3	3	-	-	1
Art. 257	11	9	2	2	4	2	-	2	2

Adult persons sentenced based on final and enforceable judgements and conditional discontinuance of proceedings pursuant to relevant provisions of the Penal Code in 2004

Legal qualification -Art. Of the Penal Code	Total convictions and conditional discontinuance	Including:							conditional discontinuance
		convicts							
		Total	including:						
			only a fine	restriction of liberty	deprivation of liberty				
total	up to 11 months	1 year			over 1 year to 2				

			a fine	of liberty	total	up to 11 months	1 year	>1 year <2 years	measures	disproportionate
Art. 119 §1	13	13	-	1	12	4	1	7	-	-
Art. 119 §2	-	-	-	-	-	-	-	-	-	-
Art. 256	12	12	-	4	8	8	-	-	-	-
Art. 257	10	8	2	1	5	4	-	1	-	-

45. Statistical data for 2007 is currently being developed.

Measures taken in order to prosecute “hate crimes”

46. According to the data provided by appeal prosecutor’s offices, in 2007, a total of 62 proceedings were conducted in matters of crimes committed due to racist or xenophobic reasons (Art. 119 § 1 or 2 of the Penal Code, Art. 256 of the Penal Code and Art. 257 of the Penal Code), including 41 new, and 21 pending. From 62 proceedings, at the end of 2007:

- (a) 9 cases were pending,
- (b) in 19 matters bills of indictment were lodged against 35 persons,
- (c) 25 matters were discontinued, including due to failure to identify a perpetrator -11 matters, due to failure to identify prerequisites of a crime - 8 matters, due to lack of data sufficiently justifying the suspicion that the crime was committed - 4 matters, due to the statute of limitation - 1 matter, due to insanity of the perpetrator -1 matter.

47. None of the matters was discontinued due to insignificant social noxiousness of the act, and it was only in 4 matters that institution of preliminary proceedings was refused. Moreover, 1 matter ended by being transferred to a Family and Juvenile Court, 2 matters were referred to court in a summary procedure, and 2 matters were suspended.

48. What needs emphasizing is a growing trend of this type of crime detection - out of 62 proceedings conducted in 2007, in 25 charges were submitted to 50 persons.

49. Positive evaluation should be afforded to reaction of prosecutors to the most serious racial crimes. In 4 matters against 10 suspects, the strictest preventive measures were applied, i.e. detention on remand, in 5 matters also other measures, not restricting freedom, were applied - such as police supervision, ban on leaving the country and property security - in total against 12 persons.

50. A greater level of crime detection is also demonstrated by data concerning the number of matters discontinued due to failure to identify perpetrators - there were 11 such matters out of 53 completed matters. At this point, we should note that in 2006, only 12 bills of indictment were lodged, and no less than 15 matters were discontinued due to failure to identify perpetrators. The above data indicate that the prosecuting bodies pay more and more attention to effective prosecution of this type of crimes.

51. We should also emphasize the fact that the National Prosecutor's Office is implementing the provisions of the *National Programme of Counteracting Racial Discrimination, Xenophobia and Intolerance Connected Therewith*, developed for 2004-2009, as part of which Appeal Prosecutor's Offices were instructed to:

(a) ensure regular monitoring by circuit prosecutor's offices of matters of racial and ethnic crimes by extending official supervision upon them in order to eliminate hasty refusal of institution of preliminary proceedings or discontinuance of the same due to insignificant social noxiousness of such crimes,

(b) ensure periodic investigation by appeal prosecutor's offices (once in a quarter) of matters of this category ended with a refusal to institute preliminary proceedings or discontinuance of the same and performance of the evaluation of justification of such decisions, and then providing the Preliminary Proceedings Bureau of the National Prosecutor's Office with information on results of the investigation and undertaken measures.

52. With reference to the above tasks, all substantive decisions of prosecutor's offices in the form of final and enforceable decisions on refusal to institute preliminary proceedings and discontinuance of preliminary proceedings are examined from the point of view of their justification, and incorrect decisions are eliminated by giving subordinate prosecutors instructions to institute or resume the conduct of proceedings ended in such final and enforceable manner, and to continue them in an appropriate direction.

53. For instance, in 2006, out of 28 examined matters in which the proceedings were discontinued or institution of proceedings was refused, appeal prosecutor's offices evaluated 21 decisions to be correct, 5 were considered to be premature, and in one case, an instruction was given to undertake actions under Art. 327 § 3 of the Penal Proceedings Code due to the fact that new circumstances occurred in the matter. In another case the decision on discontinuance was considered to be obviously unjustified and therefore, according to Art. 521 of the Penal Proceedings Code, a motion was written to the General Prosecutor for cassation of the final and enforceable judgement of the court.

54. On the other hand, in 2007, out of 27 matters investigated by superior prosecutor's offices, ended with final and enforceable decisions on discontinuance of preliminary proceedings and refusal to institute proceedings, in 21 matters substantive decisions were considered to be justified and in 6 matters to be unjustified.

¹ Article 119 § 1. Whoever uses violence or makes unlawful threat towards a group of persons or a particular individual because of their national, ethnic, racial, 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 three months and five years.

§ 2. The same punishment shall be imposed on anyone, who incites commission of the offence specified under paragraph 1.

Article 256. 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 beliefs shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to two years.

Article 257. Whoever publicly insults a group of persons or a particular person because of their national, ethnic, race or religious affiliation or because of their lack of any religious beliefs or for these reasons breaches the personal inviolability of another individual shall be subject to the penalty of deprivation of liberty for up to three years.