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## I. LAND AND PEOPLE

1. The Republic of Poland is a State in Central Europe on the Baltic Sea. It borders the Russian Federation, Lithuania, Belarus, Ukraine, Slovakia, the Czech Republic and Germany. The length of its frontier is 3,582 km, including a 528 km maritime border and 1,285 km of borders along rivers. In area it is 312,685 km<sup>2</sup>, the ninth largest country in Europe.
2. The population is 38.3 million. The official language is Polish. The monetary unit is the zloty (PLN).
3. The national holidays are 3 May - Constitution Day (commemorating the promulgation of the Constitution of 1791) and 11 November - Independence Day (commemorating the regaining of independence in 1918).
4. The country is divided administratively into 16 voivodships (regions).
5. The State emblem is the image of a white eagle wearing a crown with its head turned to the right with gold beak and talons, set against a red rectangular shield tapering to a point at the bottom. The national colours are white and red in two horizontal parallel bands, of which the top is white and the bottom is red.
6. Poland is a lowland country: areas not exceeding 300 metres above sea level account for 91.3 per cent of its area (depressions constitute 0.2 per cent); the average altitude is 173 m (Europe - 330 m). The highest point is Mount Rysy in the High Tatras (2,499 m), the lowest 1.8 m below sea level. Poland's surface is inclined from the south to the north-east.
7. Poland is rich in natural resources. More than 70 different minerals are mined, 40 of them of key importance to the economy (hard coal accounts for 40 per cent, sand and gravel 35 per cent, and lignite and limestone 8 per cent each). Hard coal is the most important fuel, and lignite is also important. Of the chemicals raw sulphur and rock salt play a basic role, and of the metals copper, zinc and lead are the most abundant deposits in Poland.
8. Poland's climate is marked by rapid weather changes and great variability of the seasons in successive years. Through Poland runs the border separating the warm and rainy temperate climate from the boreal, snow and forest climate (according to the Koppen-Geiger classification). Owing to Poland's physical traits and geographic location, various air masses interact above it, influencing its weather and, as a result, its climate.
9. The total population of Poland is 38,230,100 people, where 19,713,700 (i.e. 51.6 per cent) are women and 18,516,400 (i.e. 48.4 per cent) men. At present, 37,529,700 inhabitants hold Polish citizenship, which for 37,084,800 of them constitutes the only one. Only 402,000 inhabitants hold exclusively citizenship other than Polish.
10. Ethnically Poland is quite a homogenous country. According to the results of the national census Poland is ethnically rather a homogenous country. The most numerous minorities are Germans (147,094), Belarussians (47,640) and Ukrainians (27,172). Other minorities are Roma (12,731), Russians (3,244), Lemks (5,850), Lithuanians (5,693), Slovaks (1,710), Jews (1,055), Armenians (262), Czechs (386), Tatars (447) and Karaims (43). Additionally, 52,490 respondents (Pomorskie voivodship) declared that they use the Kashubian

language (a regional language in Poland). Additionally, 172,682 people declared their nationality as Silesian, which is not at present recognized by the Polish State as a nationality.

11. As far as the territorial distribution of minorities is concerned, the population of non-Polish identity is concentrated in three voivodships: Silesia voivodship - 186,300 (39.5 per cent), Opolskie voivodship - 133,300 (28.3 per cent) and Podlaskie voivodship - 55,200 (11.7 per cent).

12. The results of the census have also shown that about 97.8 per cent of the Polish population speaks Polish, and that for 96.5 per cent it is the only language spoken at home. Only 1.47 per cent of the respondents declared using languages other than Polish in family contacts; most of them (i.e. 1.34 per cent) admitted using other language in parallel with Polish and only 0.14 per cent declared exclusive usage of the non-Polish language at home. In general, 87 languages and dialects were singled out, however, only 20 of them are used by more than 1,000 people.

13. The natural population increase (per 1,000 population) has been systematically declining. It dropped from 4.1 in 1990 to 0.9 in 1997 and to 0.13 in 2001. Since 1992, the average life expectancy of men and women in Poland has been systematically, albeit very slowly, increasing. In 1997 it was 77 years for women and 68.5 for men, whereas in 2001 it was 78.4 for women and 70.2 for men.

14. Considerable progress has been made in combating infant mortality. The number of infant deaths per 1,000 live births dropped from 19.3 in 1990 to 10.2 in 1997 and to 7.7 in 2001.

## **II. THE ECONOMY**

15. Poland's economic transition began with the establishment of the first non-communist Government in September 1989. In the beginning of 1990 the introduction of radical reforms was the precondition of Poland's survival. The early reformers inherited a completely dysfunctional and obsolete economic system, with near hyperinflation and a huge foreign debt. The "shock therapy" designed and applied by the then Deputy Prime Minister Leszek Balcerowicz envisaged dismantling all central economic planning mechanisms and the introduction of a market economy as soon as possible. The economic programme provided for concurrent policies of stabilization, liberalization and profound institutional restructuring. It has gained unparalleled public support, which made it possible to take difficult decisions resulting in heavy, but unavoidable, social costs, including open unemployment and a decline in real wages. Successive Polish Governments, although representing different political options, had never questioned the fundamental principles of the reforms, initiated in 1990. Over the past 13 years the Polish economy has effectively switched from a command and distribution, State-owned system to a free market economy with its characteristic institutions and dominant private ownership, open to trade, investment and competition.

16. The reform programme could not spare Poland from a severe recession in the early 1990s, with sharp declines in industrial production and increases in unemployment rates. In 1992, the economy began a strong recovery. Inflation and unemployment rates stabilized and began to decrease steadily, while growth rates were in the 2.6 per cent range.

17. In 1993 the growth of the gross domestic product (GDP) of 3.8 per cent was the highest growth rate in Europe. After achieving 5.2 per cent in 1994, GDP growth ended the following year at 7 per cent. In 1996, GDP growth amounted to 6 per cent, in 1997 to 6.8 per cent. In 1998, following three years of high, balanced development at a level of 6-7 per cent a year, the growth rate had begun to weaken. In 1998 the GDP growth amounted to 4.8 per cent, in 2000 to 4.0 per cent and in 2002 to 1.3 per cent. Despite the decrease in GDP, Poland remained a leader among the States of Central and Eastern Europe because the accumulated increase in GDP in the period 1995-2001 - 129.7 per cent - was the highest. In 1992, the first year in the initial transformation phase in which growth was recorded, per capita GDP (on the basis of purchasing power parity) came to \$4,697 in Poland, and by 2000 it had grown to \$9,600.

18. The country's economic growth has brought about the desired qualitative and structural changes in the economy. Productivity is increasing and energy-consuming and material-consuming production are declining, improving competitiveness, although not nearly enough.

19. Progress has been achieved in privatization in all areas of the economy. In 2001 the private sector employed nearly 59.1 per cent of the country's total workforce (it was even higher in specific sectors of the economy, e.g. employment in industry reached 74.6 per cent, while in the construction industry it was 92.4 per cent and in the commercial sector (including repairs), 97.5 per cent and produced 62.9 per cent of GDP. Agriculture, retail trade and building were nearly entirely in private hands. The private sector accounted for 86.4 per cent (in 1998 - 78 per cent) of exports and 90.7 per cent (in 1998 - 86 per cent) of imports.

20. A most favourable development was the dynamic growth of small- and medium-sized businesses, whose number nearly quintupled from 1992 to 1996. Unfortunately the growth of the small and medium enterprises (SMEs) sector stopped in 2000 and 2001. As a result, employment in that sector decreased. The share of the SMEs sector in the creation of GDP was growing in 1999 and came to 49.2 per cent. Employment amounted to 65.5 per cent of the market sector of the national economy (without education, health care and administration).

21. Among the most important processes in the mid-1990s that had a positive impact on Poland's economy was the high growth of investment spending (averaging 20 per cent in the period 1995-1998) - three times greater than GDP. The assortment structure, namely the significant share of industrial machinery and equipment, together with the rapid rate of investment in the most advanced manufacturing fields, was helping to modernize the economy and make it more competitive. Unfortunately, in 1998 the investment growth decreased to 15.3 per cent, in 1999 to 5.9 per cent and in 2000 to only 3.1 per cent.

22. A sore spot of the Polish economy, despite some improvement, remains the situation in the foreign-trade sector. Following a large, balanced growth in trade in 1995, the years 1996-1997 witnessed a slowdown in the average annual export growth rate (in terms of goods volume) to 6 per cent, with the import level hovering round the 20 per cent level. In 1998, the disproportion between export and import growth rates declined considerably (export growth was estimated at 10 per cent and imports at 14 per cent), but a serious foreign-trade deficit remains. The current account deficit in relation to GDP in 1999 was 7.5 per cent and in 2000, 6.2 per cent. Only to a certain extent can that deficit be linked to the situation in countries that are Poland's main trading partners. Essentially it is of a structural nature

stemming from the continued relatively low international competitiveness of Polish export goods. Goods that are not highly processed comprise 35-40 per cent of Poland's exports, and those are the most affected by changing business climates and market access. The persistence of a relatively high current account deficit can be regarded as a normal phenomenon in a rapidly growing economy undergoing modernization.

23. An important factor of economic growth - apart from investment and exports - remains consumer demand (despite its slower rate), which is fostered by a real increase in household incomes as well as by declining inflation (1.9 per cent in 2002 against 8.9 per cent in 1998). The result is an improvement in society's living conditions. Unemployment, however, is still at a very high level. In 1998, the unemployment rate was 9.6 per cent and increased in late 2002 to 18.1 per cent. Inflationary pressure has been systematically weakening.

24. An important aim of the reforms from the very outset has been to open the Polish economy and reintegrate it with the world economy. This has been accomplished through abolishing trade monopolies, progressive liberalization of Polish trading practices, entering into multilateral trade agreements with the European Union (EU), the European Free Trade Association (EFTA) and the Central European Free Trade Association (CEFTA) in 1992-1993, membership of the World Trade Organization (WTO) since 1995, full participation in the Uruguay Round and subsequent consistent implementation of its results. In 1990 full internal convertibility of the zloty was introduced and a new, more realistic exchange rate was set. In 1996 Poland was admitted into the Organization for Economic Cooperation and Development (OECD). Poland's most important, top-priority strategic choice in the political and economic realm is accession to the European Union. On 16 April 2003 the Treaty of Accession between the European Union and the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia was signed in Athens. In June 2003 a referendum will be held in Poland on the country joining the EU.

25. In the near future, the main economic challenges for Poland concern: (a) maintaining macroeconomic stability; (b) further improving the budget situation; (c) accelerating economic, administrative and institutional reform with a view to the preparation for membership of the EU.

### **III. THE REFORMS**

26. In order to overcome the legacy of the communist past, prepare Poland for joining the EU, as well as to enable the fully effective use of the economic, social and political potential of Poland, systemic reforms were and are being implemented.

#### **A. Administrative reform**

27. In the years 1990-2002, reform of the system of public administration was implemented in Poland. Reform introduced a system of self-governing territorial administration, in accordance with the Constitution of Polish Republic and the European Charter of Local Self-Government adopted by the Council of Europe in 1985 and ratified by Poland in 1994. It concerns a range of forms of self-government and also its constitutional guarantee and legal protection. Three tiers of territorial self-government were created:

(a) The gmina (commune), the basic level of territorial self-government, responsible for all public matters of local significance that have not been reserved by law for other entities and authorities;

(b) The powiat (district), responsible for all matters of a local character that the commune cannot execute;

(c) The voivodship (region), responsible for executing regional policies and matters that have a supralocal character but do not have a national character and do not cover the whole country; the meaning of these tasks and how to cope with them will be one of the main challenges of the beginning of the century.

28. As a result of the reform many tasks and competences were transferred from the centre to the voivodships as well as from the voivodships to the poviats or gminas, thereby making it possible for the central authorities to concentrate on strategic matters. The adaptation of the territorial organization of the country and structures of territorial self-government to EU standards will make it possible to use the legal and economic instruments developed by EU, particularly in regional and local development, as well as in regional cooperation.

29. The creation of territorial self-government consisting of gminas, poviats and voivodships has significantly raised the efficiency of public administration. It needs to be emphasized that the transfer to territorial self-government of a considerable part of public affairs that had previously been the competence of the State administration makes it possible to increase the efficiency of the management of financial resources.

30. Reforms of the central government administration were also executed. One of the effects of this reform is unified special administration subordinated to voivode government; this previously was dispersed and subordinated to different ministries. The change contributes to increased efficiency of the working of the central government administration. In 2002 the structure of the organs of central government administration, the offices of central government administration, government agencies and different organizational units was modified. The most important changes included elimination, consolidation, implementation of new rules to encourage efficiency, as well as a decrease in the costs of running the administration; they resulted in a decrease in the number of offices of the central government administration and the introduction of a more rational distribution of competencies and responsibilities in central Government and in the whole government administration.

31. The results of the analysis of the functioning of territorial self-government showed that undertaking a series of actions leading to the improvement of the structures of public administration and a constant increase in the level of quality of the services performed are necessary. Direct election of wojt, mayors and presidents of cities was introduced in order to involve communities in local public affairs, improve the functioning of local self-government as well as strengthen the executive body, allowing a strong social mandate. The change is aimed at stimulating social interests and electoral participation and the "personification of competence and responsibilities", and is intended to counteract the excessive subordination of local authorities to political parties.

32. The changes to the Polish territorial administration foreseen for 2005 are:

- (a) Increasing the efficiency of the public administration, inter alia by improving management systems;
- (b) Preparing a policy for the creation in self-government of a modern and professional civil service as one of the guarantors of the effective carrying out of responsibilities;
- (c) Elaborating a model for the optimum funding of self-government in connection with a clear and rational division of responsibilities,
- (d) Preparing changes in the system of public finances to enable full use of the funds of the European Union in the realization of infrastructure projects.

## **B. Social reform**

33. From 1 January 1999, Poland has begun implementing two major social reforms: the reform of the health-care system and social security reform.

### **Health-care reform**

34. Health care is a field of public endeavour that must satisfy the immense needs and expectations of all citizens. Limited financial resources led to a situation in which even the most affluent societies are incapable of covering the costs of all these needs. In 1999 there was a health-care reform, which set up a system that lasted till 2003. The elimination of direct financing of the health service from the State budget and requiring 17 autonomous (both organizationally and financially) health insurance funds to pursue the system's objectives constituted the cornerstone of the system. However, a thorough analysis of the functioning of the system showed, along with some positive trends, many negative elements, the most alarming ones being a lack of clear long-term public health policy both at a regional and national level, and the occurrence of certain inequities in the access to medical services (health services) in different regions of the country. Additionally, excessive autonomy of health insurance funds, whereby the Minister of Health lost in practice the leadership position, resulting in the creation of 17 autonomous methods of contracting "medical services" based on autonomous, non-compatible management information systems, has led to the creation of independent "health policies" (which often are not based on the recognized priorities considering the needs of the population), which added to the necessity of modifying the system.

35. A key element of these changes was the shifting of the tasks connected with national health policy formulation to the Minister of Health and providing him with the instruments necessary for carrying out the health policy of the State as defined in the Constitution, while maintaining the active role of the self-government entities. Other main goals of the modified health system concept are:

- (a) Transparency of criteria (standards, prices, monitoring) of benefit packages contracted by the National Health Care Fund;
- (b) Evidence-based health policy build on the data of the National Health Information System. The National Health Information System, as a basic tool for system monitoring, becomes a base for detailed analysis of the needs of the population and monitoring equity in access to health services all over the country.



36. Four main strategies for action have been chosen to ensure that scientific, economic, social and political sustainability drive the implementation of the project. They include multisectoral strategies to tackle the determinants of health, taking into account physical, economic, social, cultural, and gender perspectives and ensuring the use of health impact assessments as well as health-outcome-driven programmes and investments for health development. Multilevel and intersectoral cooperation within the central administration and regional governments results in the formulation of the regional health-care plans.

37. Another important task of the health-care system that is worth mentioning is the emphasis on the role of health promotion as an integral part of the national and regional health-care plans. Healthy lifestyles and health promotion are to be prioritized and sufficiently financed from the National Health Care Fund's budget.

### **Social security reform**

38. On 13 October 1998 and 17 December 1998 the Sejm of the Republic of Poland adopted a law on the social security system and the law on pensions and disability pensions from the Social Security Fund (Fundusz Ubezpieczeń Społecznych), respectively. These laws have thoroughly restructured the existing social security system, which encompasses the following forms of social insurance: old age pensions, disability pensions, family pensions, sick benefits and benefits connected with maternity as well as on-the-job accidents and occupational diseases. In that realm, the law has adopted solutions similar to those in force in countries belonging to the European Union. The first stage of the reform comprises retirement insurance. Under the new system, the amount of an old-age pension will depend on the amount of money actually contributed by an insured person and on the period over which the contributions were made. It will be up to the insured to decide when to retire (only a minimum retirement age has been specified). In addition, dividing the obligation to make social security contributions between the employer and the insured generates the hope that the insured will take a greater interest in his/her own future.

## **IV. THE POLITICAL SYSTEM**

39. In the Republic of Poland, the Constitution is the supreme law of the land. Its provisions are applied directly unless otherwise stipulated (art. 8). The fundamental principle governing the State is expressed in article 10, which states that "the political system of the Republic of Poland is based on a division and balance of legislative authority, executive authority and judicial authority. Legislative authority is exercised by the Sejm and Senate, executive authority - by the President and the Council of Ministers (Government), and judicial authority - by courts and tribunals".

### **A. Legislative authority**

40. The competence of the Sejm, as stipulated by constitutional regulations, may be divided into:

- (a) Legislative (the Sejm passes laws and adopts resolutions);

(b) Elective (it designates the State Tribunal and Constitutional Tribunal and adopts resolutions on confidence in the Government designated by the President);

(c) Supervisory (the Sejm oversees the activities of the Council of Ministers to the extent specified by the Constitution and separate legislation; that includes reviewing government reports on implementation of the State budget and designating investigative commissions);

(d) Political and constitutional (adopting no-confidence resolutions vis-à-vis the Government or its individual ministers, lodging complaints with the State Tribunal against government officials, voting together with the Senate as the National Assembly to indict the President before the State Tribunal).

41. Other prerogatives of the Sejm include deciding on a state of war or concluding peace. The competence of the Senate mainly revolves around enacting laws and adopting resolutions. The new Constitution has not delegated any supervisory powers to the Senate.

### **B. Executive authority**

42. The President and the Council of Ministers exercise executive authority. Article 126 of the Constitution states: “The President of the Republic of Poland is the supreme representative of the Republic and the guarantor of the continuity of State authority. He watches over adherence to the Constitution and guards the sovereignty and security of the State as well as the integrity of its territory.”

43. The new Constitution of the Republic of Poland highlights the following presidential powers:

(a) Powers delimiting the tasks of the Head of State in internal and external affairs, in his command of the armed forces and in the defence and security of the State in times of peace and war;

(b) The authority to balance powers with regard to the Sejm and Senate, the Government and the judiciary;

(c) Creative and organizational authority in the area of State leadership.

44. The President first and foremost: ratifies and renounces international agreements (before their ratification he has the right to consult the Constitutional Tribunal over their conformity with the Constitution); appoints and recalls plenipotentiary representatives of Poland to other States and international organizations, receives the credentials and letters of recall of accredited diplomatic representatives of other States; cooperates with the Prime Minister and the appropriate minister in formulating foreign policy; serves as the supreme commander of the armed forces; grants pardons; grants Polish citizenship and consents to the renunciation of that citizenship; issues official acts (decrees and orders which - unless otherwise stipulated by the Constitution - require the signature of the Prime Minister to be valid); upon a motion by the Prime Minister effects personnel changes in the Government; announces elections to the Sejm and Senate; enjoys legislative initiative; signs bills into law; submits motions to the Constitutional Tribunal and - for the purpose of carrying out audits - to the Supreme Auditing Chamber; designates and appoints the Prime Minister and accepts his resignation; accepts the

resignation of the Cabinet; recalls ministers on whom the Sejm has passed a no-confidence vote; upon a motion by the National Council of the Judiciary appoints the Chief Justice and other judges of the Supreme Court, the head of the Supreme Administrative Court and his deputies and appoints the President of the Constitutional Tribunal.

45. The President is elected to a five-year term (and may be re-elected only once) by popular vote in equal, direct and secret balloting.

46. For a violation of the Constitution or the law or the commission of a crime, the President may be held accountable by the State Tribunal.

47. The Council of Ministers (Government) is the supreme executive and managing organ of State authority. It is accountable for its activities and submits reports thereon to the Sejm or - between parliamentary terms - to the President. The main prerogatives of the Government include harmonizing, managing of and giving direction to the activities of ministries and other subordinate organs. On the basis of legislation and for the purpose of its implementation the Government issues executive orders, adopts resolutions and ensures that they are carried out. The Government also exercises general leadership in the realm of foreign relations, in the organization of the armed forces and national defence; it concludes international treaties requiring ratification and directs the activities of local organs of government administration. Institutions supervising the activities of chief organs of authority are: the Constitutional Tribunal (which rules on the conformity with the Constitution of laws and other legal acts of supreme State organs), the State Tribunal (which rules on the culpability of high-ranking State officials for violations of the Constitution and the law), the Supreme Auditing Chamber (which oversees the economic, financial and organizational-administrative activities of State administrative organs and enterprises subordinate thereto with regard to their legality, proper management, usefulness and reliability) and the Ombudsman, the guardian of civil rights and liberties.

### **C. Judicial authority**

48. The structure and organization of the judiciary in Poland is specified in the Constitution of the Republic and in the statute on common law courts. As laid down in the Constitution, and in conformity with the tripartite nature of the power system, law courts and tribunals, forming a separate component of the power system, are independent of the two remaining components ("branches of power"). The courts and tribunals pass judgements in the name of the Republic of Poland.

49. The administration of justice in Poland is implemented by the Supreme Court, common courts, administrative courts and military courts. Common courts administer justice in all matters save those statutorily reserved for other courts, and as such play a significant role in the realization of the guarantees by State measures for the protection of human rights and freedoms.

50. According to article 176 of the Constitution court proceedings have at least two stages. Which means that each decision rendered in the proceedings of first instance may be appealed against, and may be subject to verification by an organ of a higher level as a result of appeal. This is the so-called ordinary appeal procedure. Apart from that, there are also extraordinary

appeal procedures, which allow for the control of final judgements in court proceedings (instituting proceedings de novo in administrative procedure, cassation and reopening of proceedings in criminal procedure, instituting proceedings de novo in civil procedure, cassation in civil procedure belongs to ordinary appeal procedures).

51. A judge is appointed for an indefinite period by the President of the Republic on the motion of the National Council of the Judiciary. Prerequisites of appointment are: Polish citizenship, an unimpeachable reputation, a degree in law, completed training in a court or prosecutor's office, a passed examination for judge or public prosecutor, employment as associate judge or prosecutor for at least two years, and a minimum age of 26. Within the exercise of their office, judges are independent, being solely subject to the Constitution and statutes. At the same time, a judge may not belong to a political party, a trade union, or engage in public activities incompatible with the principles of independent courts and judges. In accordance with the Constitution and the statute on common law courts, a judge may not be removed from office. Recall of a judge from office, suspension from office, removal to another bench or position against his/her will may only occur by virtue of a court judgement and only in cases prescribed by statute. A judge retires at the age of 65, unless the National Council of the Judiciary allows him/her to continue in office, but only until the age of 70. A judge may be retired due to illness or infirmity of a kind that prevents him from discharging his/her duties. A judge may neither be held criminally responsible nor deprived of liberty without prior consent of a disciplinary court. Likewise, he/she may not be either detained or arrested except when apprehended in the commission of an offence and when detention is necessary to ensure the proper course of proceedings. The President of the relevant local court must be notified forthwith of any such detention, and he/she may order an immediate release of the judge. The exact procedures applying to those situations are laid down in the statute on common law courts.

52. The independence of law courts and judges is guaranteed by the Constitution (chap. VIII) and safeguarded by the National Council of the Judiciary, a collective body vested with the right to submit to the Constitutional Tribunal questions of the constitutionality of normative acts that bear on the independence of courts and judges.

53. Article 182 of the Constitution spells out a further fundamental principle: the participation of the citizenry in the administration of justice. Accordingly, cases in the common law courts are heard in the presence of lay assessors; exceptions to this rule are specified by statute.

### **Common law courts**

54. Cases reserved to the competence of common law courts are heard before district courts. Appeals against judgements passed by the district courts are examined by provincial courts, which also hear in the first instance cases reserved for them by statute. Courts of appeal examine appeals against sentences passed by provincial courts of first instance.

### **Military courts**

55. Military courts administer justice within the armed forces of the Republic of Poland in penal cases, as well as in other cases, reserved for them by statute, i.e. in cases/matters concerning civil persons who are not working for the army, but are accused of instigating or

aiding in the commission of military crimes as well as criminal support or fencing (receiving of stolen property) in a situation where the act takes place in connection with a military crime (e.g. purchase of explosive materials appropriated by a soldier). The lower military courts are called garrison courts and the higher ones are district courts. Their modes of action are laid down in the statute on military courts.

### **The Supreme Court**

56. As provided by article 183 of the Constitution, the Supreme Court is the highest judicial organ and also supervises the common law courts and the military courts in their adjudication. According to the Law of 23 November 2002 (Journal of Laws 2002/240/2052) on the Supreme Court, the competencies of the Supreme Court encompass:

- (a) Exercising the administration of justice through:
  - (i) Ensuring, within the framework of its oversight functions, conformity with the law and unanimity of the judicial decisions of the common courts and military courts through the review of cassation and other appeal measures;
  - (ii) Issuing pronouncements designed to elucidate legal provisions that tend to raise doubt in their practical application, or whose application has led to discrepancies in the judicature;
  - (iii) Adopting rulings designed to resolve legal issues that give rise to grave doubts;
- (b) Examining other questions reserved for the Supreme Court by statute, such as, for instance, ascertaining the validity of general and local elections or referendums;
- (c) Expressing opinions on the drafts of laws and other normative acts, on the basis of which courts adjudicate and function, as well as other laws as it deems appropriate;
- (d) Carrying out other tasks provided for in law.

### **The Chief Administrative Court**

57. The Chief Administrative Court administers justice by exercising judicial control over the legality of administrative decisions. The essence of the judicial review consists in the fact that contentious matters between a citizen and an administrative organ that made a decision refusing the citizen a certain right or imposing on him a specific legal obligation are settled by an organ which, within the organizational structure of the State, is situated outside the administration apparatus and which is independent in rendering decisions, as well as able to consider the case objectively and pass a judgement in compliance with the requirements of the rule of law. The Chief Administrative Court can examine complaints on: administrative decisions; rulings of organs of public authority; regulations (normative acts) adopted by local government bodies and resolutions of such bodies bearing on public issues; resolutions and normative acts adopted by territorial organs of government administration; the inaction of administrative organs. The modes of action of the Court are laid down in the Statute on the Chief Administrative Court.

58. On 4 January 2004 new provisions will enter into force introducing the two-instance procedure before the administrative courts. According to the new regulations, the voivodship administrative courts will serve as the courts of first instance while the Chief Administrative Court will assume the role of the court of second instance (court of appeal).

### **The Constitutional Tribunal**

59. The Constitutional Tribunal is an organ of the judiciary empowered to examine: the constitutionality of normative acts (laws) and of international agreements; the conformity of statutes to those international agreements whose ratification required prior consent granted by statute; the conformity of legal provisions issued by central State organs with the Constitution, ratified international agreements, and statutes; complaints against constitutional infringements; the constitutionality of the objectives and activities of political parties; questions submitted by law courts concerning the constitutionality of normative acts (statutes); other issues as specified in the Statute on the Constitutional Tribunal.

### **The State Tribunal**

60. The State Tribunal passes judgements on the responsibility of persons holding the highest posts in the State for infringements of the Constitution or binding laws, committed within their office or within its scope (articles 198-201 of the Constitution). The Tribunal's modes of operation are detailed in the Statute on the Tribunal of State.

### **Prosecutors**

61. The Constitution does not rule on either the organization or the responsibilities of prosecutors who protect law and order and prosecute criminals. The relevant provisions are contained in the Law on Prosecutors of 20 June 1985, as subsequently amended.

62. The Prosecution comprises the office of the Prosecutor General as the supreme organ as well as lower-level public and military prosecutors. The post of Prosecutor General is held by the Minister of Justice. The organizational units of the public prosecution are: the National Prosecutor's Office, which forms a component part of the Ministry of Justice, the appeal prosecutions, and provincial and regional prosecutions. The prosecutor is independent in exercising his/her office, but is obliged to follow the regulations, orders and instructions of his superiors.

63. The position of the prosecutor in judicial proceedings follows from the principle of independence of other State organs and from his/her subordination to no one else but his/her superiors. Within the prosecution, the prosecutor functions in a hierarchy, which obliges him/her to follow the orders of his/her superior(s). The latter principle does not clash with the principle of independence as long as the prosecutor exercises his/her functions in the statutory framework insofar as she/he is free to take any action deemed necessary, being responsible for the adequacy and timeliness of such action.

64. Prosecutors are appointed (and recalled) by the Prosecutor General. To be appointed a prosecutor, the candidate must: hold Polish citizenship and enjoy all civil and citizen's rights; have: an unblemished reputation, a degree in law, completed an apprenticeship in a court or prosecutor's office, passed an examination for judge or prosecutor, been employed as associate prosecutor or judge for at least one year; be 26 or over.

## **V. FRAMEWORK WITHIN WHICH HUMAN RIGHTS ARE PROTECTED**

65. In 1989 the reforms aimed at transforming the State into a democratic State of law started, and the basic institutions of democratic order were introduced. Solidarity won the elections and participated in the creation of the Government. The operation of political parties, free trade unions and non-governmental organizations was legalized. This boosted social confidence in the system of government, increased social participation in governance, and consequently facilitated indispensable transformation of the economy. The major regulators of social life were changed. This meant a qualitative change in people's everyday experience in their roles as citizens, employees and consumers. For ordinary people, these changes were often difficult, as economic transformation was followed by a recession and mass unemployment.

66. The political institutions established at the beginning of the decade (free elections and media, independent political parties and non-governmental organizations, free trade unions) created a mechanism which allowed the restoration of social confidence in the authorities. The new political system also included legal and political mechanisms that regulate social participation, shaping the level and forms of social activity. A shift also took place from the emphasis on the promotion of human rights to their actual protection.

67. At present, the Republic of Poland is a democratic State ruled by law and implementing the principles of social justice, where the supreme power is vested in the nation, which exercises such power directly or through its representatives.

### **A. The Constitution and status of international agreements in Polish law**

68. The Polish Constitution of 2 April 1997 (Journal of Laws, No. 78, Item 483) protects fundamental human and civil rights. Chapter II, entitled "The Freedoms, Rights and Obligations of Persons and Citizens", enumerates the individual, political, economic, social and cultural freedoms and rights, and specifies the measures needed for their protection. The new Constitution guarantees such human rights as freedom to hold and participate in peaceful assemblies, freedom of association and right of involvement in public affairs and to submit petitions and complaints as well as suggestions to organs of public authority. The Constitution also provides for economic, social and cultural rights and freedoms, namely: right of ownership, freedom to pursue an occupation of one's choice, freedom to choose one's workplace, right to safe and sanitary working conditions, to social security, health care, education, the right of families to have their interests taken into account in the State's social and economic policies, protection of the rights of the child, freedom of artistic creativity, environmental security, policies conducive to the satisfaction of the citizens' housing needs, protection of consumers, users and tenants.

69. A new element in Polish constitutional practice is the introduction to the present Constitution of provisions which specify the means of ensuring the right to defend civil rights and freedoms. These are:

- (a) Compensation to anyone harmed by an action of an organ of public authority in breach of law;
- (b) Establishing the principle that laws may not bar the recourse to court by any person in pursuit of claims alleging infringement of freedoms or rights;
- (c) Ensuring the right to appeal against judgements and decisions issued by courts of first instance;
- (d) Ensuring the right to those whose constitutional freedoms or rights have been infringed to appeal to the Constitutional Tribunal to rule on the conformity with the Constitution of a law or other normative act upon which basis a court or organ of public administration has made a final decision on their freedoms, rights or obligations specified in the Constitution;
- (e) Giving everyone the right to apply to the Commissioner for the Protection of Civil Rights for assistance in protection of their freedoms or rights infringed by organs of public authority;
- (d) Specifying matters regulated by law or those in respect of which the Constitution requires legislative form.

70. Chapter III of the Constitution defines the sources of law as being: the Constitution, laws, ratified international agreements and regulations (ordinances). The provisions of the Constitution apply directly, unless the Constitution provides otherwise. To be valid in Poland, any enactment of law must conform to the Constitution. The conformity of statutes and international agreements with the Constitution, and the conformity of laws with international agreements, the ratification of which requires prior consent granted by law, is adjudicated by the Constitutional Tribunal, in ways laid down in the statute of 1 August 1997.

71. According to article 91 of the Constitution, international treaties ratified by the Republic of Poland, upon their publication in the Journal of Laws of the Republic of Poland are part of the domestic legal order and may be applied directly, unless their application depends on the enactment of a statute. In addition, an international treaty ratified upon prior consent granted by law takes precedence over laws if such a treaty cannot be reconciled with the provisions of such laws. The ratification of an international treaty that deals with freedoms, rights or obligations of citizens as specified in the Constitution requires prior consent granted by law.

### **B. Means for the protection of rights and freedoms**

72. The Polish system of law has developed a variety of instruments that serve to protect human rights and freedoms. The foundations are provided in the Polish Constitution, where the various protective devices are enshrined in the relevant constitutional framework.



73. Article 37 proclaims that any person living under the authority of the Polish State may enjoy the freedoms and rights enshrined in the Constitution, while any exceptions to this rule must be specified by law. Some such exemptions are spelled out in the law on foreigners, which applies to taking up residence, temporal limitations on sojourn, and admissibility of expulsion; the law on purchase of immovables (realty) of 24 March 1920, which requires foreigners to obtain a licence from the Minister of the Interior; and in the law on combating unemployment of 14 December 1994, as amended in 2002, which requires the consent of the wojewoda (head of the government administration at the level of voivodships) (art. 6c.1, point 4) to the employment of a foreigner.

74. Article 77 gives everyone the right to compensation for any harm done by an organ of public authority in contravention of the law. Furthermore, laws may not bar the recourse of any person to the courts in pursuit of claims alleging infringement of freedoms or rights. This regulation ensues from the principle that a public authority must strictly adhere to the law. In the following article (78), the Constitution guarantees the right to appeal against judgements and decisions passed at first instance, in ways laid down by law (the codes of penal, civil, or administrative proceedings).

75. Worth mentioning at this point is the responsibility of the Treasury for losses inflicted by the actions of public functionaries (whether civil servants or managers of State enterprises) or of persons acting under orders of this kind, and also of elected officials, judges, public prosecutors and members of the armed forces. If the Constitution or any law is infringed by a functionary of a supreme organ of public authority acting in his/her official capacity, such a case may be put to the Tribunal of State under the law of 26 March 1982. By the same token, any citizen who believes that his/her freedoms or rights have been infringed by an organ of public authority may ask the Ombudsman to examine his/her case, according to the law of 15 July 1987.

76. Constitution guarantees also everyone who maintains that his/her constitutional rights or freedoms have been violated a right to lodge a complaint with the Constitutional Tribunal on the (lack of) conformity with the Constitution of a law or any other normative act that has served a court or organ of public authority as the basis of a final verdict or decision affecting any freedoms, rights, or duties specified in the Constitution.

77. Additionally, as stipulated by the European Convention for the Protection of Human Rights and Fundamental Freedoms, to which Poland is a party, any person whose rights have been violated may appeal to the European Court of Human Rights in Strasbourg, France. As a party to the Optional Protocol to the International Covenant on Civil and Political Rights, Poland has likewise acknowledged the competence of the United Nations Human Rights Committee to receive and examine individual complaints; the same applies to the United Nations Committee against Torture and the United Nations Committee on the Elimination of Racial Discrimination. Work is currently proceeding for Poland to recognize the authority of the United Nations Committee on the Elimination of Discrimination against Women.

### **C. The Commissioner for the Protection of Civil Rights**

78. Among the first democratic institutions was the institution of the Commissioner for the Protection of Civil Rights (Ombudsman), created in 1987. The Commissioner for the Protection of Civil Rights is sovereign and independent of any other State body and is appointed by the

Sejm with the Senate's approval for a five-year term. The Commissioner safeguards the human and civil rights and liberties as set forth in the Constitution and other regulations. Anyone under the authority of the Polish State - Polish citizens as well as foreigners, including stateless persons - is entitled to apply to the Commissioner for assistance in protecting his/her liberties or rights infringed by public administration bodies. Petitions submitted to the Commissioner are free of any charges and need not comply with any specific form. The Commissioner may also take action on his own initiative.

79. The Commissioner for the Protection of Civil Rights may:

(a) Refer to the agency, organization or institution whose activity has been found to have caused infringement of human or civil rights or liberties, presenting in his motion opinions and conclusions as to how the case could be settled, and may demand that disciplinary proceedings be instituted or official sanctions be imposed under prevailing law;

(b) Approach the relevant agencies with proposals for legislative initiative or for the issuance or amendment of other legal acts concerning civil rights and liberties;

(c) File a cassation appeal in a criminal case with the Supreme Court against the legally valid judgement which terminates legal proceedings;

(d) File an extraordinary appeal with the Supreme Court against a judgement of the High Administrative Court;

(e) Apply to the Constitutional Tribunal to verify the conformity of laws with the Constitution and ratified international agreements and the conformity of regulations issued by central State bodies with superior normative acts, especially the Constitution, and apply to the High Administrative Court to verify the conformity of local law with such provisions;

(f) Demand that civil or administrative proceedings be instituted on behalf of the citizen and take part in such proceedings, file a complaint with the High Administrative Court, move for punishment for an offence, and request the prosecutor to institute preparatory proceedings in cases involving offences prosecuted ex officio;

(g) Take up the matters referred to him by the Commissioner for the Protection of Children's Rights;

(h) Cooperate with NGOs and civil society movements for the promotion of the protection of human rights and freedoms.

80. The Commissioner for the Protection of Civil Rights provides the Sejm and the Senate with information about his/her activities and the status of compliance with human and civil rights and liberties on an annual basis; such information is published.

81. In the period between 1 July 1999 and 31 January 2003, the Commissioner received 112,741 new petitions. The total number of all letters addressed to the Commissioner was 184,052. Complaints concerning social security and welfare, tax and housing issues prevailed.

#### **D. Codification of the criminal law**

82. The new Penal Code of 6 June 1997, which went into effect in 1998, explicitly defines the requirements necessary for the prosecution of criminals and the related punishment to be inflicted, with due consideration for humanitarian principles and respect for human dignity. The new Code has abolished the death penalty as a punitive measure, following a moratorium. Life imprisonment is the most severe punishment for perpetrators of the gravest offences. According to article 604, section 1, paragraph 6, item 7 of the Code of Criminal Procedure, it is also prohibited to extradite a pursued person to a foreign country if there exist reasonable grounds to expect that in the country requesting extradition he/she could be subject or sentenced to the death penalty, or to torture.

83. The new Penal Code penalizes to a greater extent various forms of abuse of persons deprived of their liberty. For instance, it provides that a public officer who resorts to violence, illegal threats, or otherwise physically or mentally abuses a person in order to extract from him/her certain testimony or clarifications will be subject to prosecution. The adoption of this new provision is a fulfilment of a Convention-derived obligation concerning the punishability of torture.

84. Under the Law of 29 June 1995 on the Amendment of the Code of Criminal Procedure, a new appellate measure - cassation - has been introduced to replace extraordinary appeal. Besides appeal, cassation is the other possibility of appealing a sentence to a higher court.

85. The new Code of Criminal Procedure encompasses all the guarantees to which suspects (defendants) have the right to according to the international standards, including:

(a) The right of detainees to immediately contact their counsel and to file a complaint with a court concerning any form of detention;

(b) Determination of the maximum period of detention on remand and the reaffirmation of the sole competence of the court in ordering this measure;

(c) Granting the right of review by the courts of the ordering of preventive measures other than detention by public prosecutors;

(d) The principle that clarifications, testimonies or statements are not acceptable as evidence not only in cases where they have been given under conditions excluding freedom of speech, but also if they have been obtained in contravention of a ban on influencing an interrogated person by coercion or illegal threat;

(e) Tapping of telephone conversations has been restricted to cases relating to particularly grave offences, which are exhaustively listed, with the reservation that tapping may be executed solely under a court ruling and only after criminal proceedings have been instituted.

86. The amended Code of Penal Execution emphasizes in particular a convict's rights and obligations, providing appropriate legal guarantees in executory proceedings. These guarantees consist in granting the convict the right to:

(a) File a complaint with the competent court against any decision implementing court rulings that he/she might deem illegal;

(b) Send complaints to international institutions responsible for the protection of human rights;

(c) Avail himself/herself of the advice of counsel for the defence throughout the executive proceedings.

87. The guarantees of protection of personal interest provided for in the Civil Code have also been enhanced. In case of infringement of personal interest involving material loss, the victims are granted the right to claim not only the removal of its consequences (in particular through appropriate public statement), as was regulated until the amendment of 1996, but also financial compensation.

88. The scope of court jurisdiction provides the possibility of appealing to the High Administrative Court against each administrative decision and each ruling issued in the course of administrative proceedings and decisive for matters of substance.

## **VI. HUMAN RIGHTS UNDER THE POLISH CONSTITUTION**

### **A. International conventions on human rights**

89. The Republic of Poland is a party to the major international human rights agreements, those originating in the United Nations framework as well as those created in the European framework. Poland has ratified, among others, the following agreements:

- International Covenant on Civil and Political Rights (Journal of Laws, 1977, No. 38, Item 167) with its Optional Protocol (J. of Laws, 1994, No. 23, Item 80);
- International Covenant on Economic, Social and Cultural Rights (J. of Laws, 1977, No. 38, Item 169);
- Convention on the Elimination of All Forms of Discrimination against Women, New York (J. of Laws, 1982, No. 10, Item 71);
- International Convention on the Elimination of All Forms of Racial Discrimination (J. of Laws, 1969, No. 25, Item 187);
- Convention on the Rights of the Child (J. of Laws, 1991, No. 120, Item 526);
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (J. of Laws, 1989, No. 63, Item 378);

- European Convention for the Protection of Human Rights and Fundamental Freedoms (J. of Laws, 1993, No. 61, Item 284) and its protocols: No. 1 (J. of Laws, 1995, No. 36, Item 175), No. 2 (J. of Laws, 1995, No. 36, Item 176), No. 4 (J. of Laws, 1995, No. 36, Item 175), No. 6 (J. of Laws, 2001, No. 23, Item 266), No. 7 (entry into force on 1 March 2003), No. 9 (J. of Laws, 1995, No. 36, Item 177), and No. 11 (J. of Laws, 1998, No. 147, Item 962);
- European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (J. of Laws, 1995, No. 46, Item 238);
- Framework Convention of the Council of Europe for the Protection of National Minorities (J. of Laws, 2002, No. 22, Item 209).

The stipulations of those international agreements are fully reflected by the Polish Constitution, Polish law and other legal documents in force in Poland. The pertinent regulations are discussed below in their respective contexts.

## **B. Specific human rights and freedoms**

### **1. General principles**

90. The fundamental principles of personal freedoms and rights, specified in the section “General Principles” of chapter II of the Constitution, follow closely the regulations adopted in the European Convention on Human Rights and in the International Covenant on Civil and Political Rights.

#### **(a) Human dignity**

91. Article 30 defines human dignity as source of the entire catalogue of rights and freedoms. Human dignity is considered inviolable, and public authorities are obliged to respect and protect it. As a consequence, respect for human dignity and observance of human rights have been entered, inter alia, in the statutes of the Police and the Border Guards, and any citizen is entitled to complain to the respective prosecutor’s office on the proceedings of any services.

#### **(b) Freedoms**

92. Article 31 of the Constitution ensures that personal freedoms are duly respected: being under the protection of the law, personal freedoms must be respected by everyone, and no one may be coerced to do anything not required by law. Any limitation on the exercise of constitutional freedoms and rights may be imposed only by law, and only when necessary in a democratic State to protect its security or public order, or to protect the natural environment, health or public morals, or the freedoms or rights of others, provided such limitations do not violate the essence of freedoms and rights.

#### **(c) Equality before the law**

93. The principle of equality before the law, the right to equal treatment by public authorities, and the rejection of discrimination in political, social or economic life are spelled out in article 32 of the Constitution. The following article ensures men and women equal rights in

family, political, social and political life, as well as equal rights to education, employment, promotion, to equal remuneration for work of similar value, to social security, to hold public office, and to receive public honours and decorations. Poland is a party to international treaties concerning the equality of women and men, the most important of them being: the Convention on the Political Rights of Women, the Convention on the Elimination of All Forms of Discrimination against Women and ILO Convention (No. 100) concerning Equal Remuneration for Men and Women Workers for Work of Equal Value.

**(d) The right to citizenship**

94. A further fundamental human right is guaranteed in article 34 of the Constitution: the right to citizenship. Polish citizenship is acquired by birth to parents being Polish citizens. Alternative ways of acquiring Polish citizenship (by repatriates, foreigners and stateless individuals) are specified in the Law on Polish Citizenship. A Polish citizen shall not lose his/her citizenship except by renunciation thereof.

**(e) The rights and freedoms of ethnic minorities**

95. Article 35 ensures Polish citizens belonging to national or ethnic minorities the freedom to maintain and develop their own language, to maintain their customs and traditions, and to develop their own culture. Similarly, they have the right to establish their own educational and cultural institutions, or institutions designed to protect their religious identity, and to participate in the resolution of matters bearing on their cultural identity. Poland is a party to the International Convention on the Elimination of All Forms of Racial Discrimination and the Framework Convention for the Protection of National Minorities of the Council of Europe. Poland has also signed bilateral treaties of friendship and good-neighbourly relations with Lithuania, Belarus, Ukraine, Germany, the Czech Republic, the Russian Federation and Slovakia, which oblige the signatories to protect the rights of ethnic minorities. To protect the political rights of the ethnic minorities, the (general) electoral law of 28 May 1993 stipulates that the 5 per cent vote threshold does not apply to candidates listed on lists put forward by registered national minorities, providing that those interested submit statements to that effect.

96. Equal rights are ensured to all Churches and other religious organizations, and so is the State's impartiality in matters of personal conviction, whether religious or philosophic, thus ensuring freedom of their expression in public life (article 25 of the Constitution). Relations between the State and Churches as well as religious organizations and communities are governed by statutes that respect the autonomy and mutual independence of each in its own sphere. The relations between the Republic of Poland and the Roman Catholic Church are laid down in the Concordat, i.e. the international agreement between Poland and the Vatican, and in the Law on Relations between State and Church. Relations with the other Churches and religious organizations are regulated by laws resulting from agreements signed between them and the Council of Ministers. For example, there are separate laws governing relations between the State and the Jewish Religious Congregations, the Lutheran Church and the Muslim Religious Union.

97. The old Penal Code provided penalties for publicly insulting, humiliating, or degrading a person, or curtailing a citizen's rights, on account of his/her religion or irreligiousness, as well as for forcing a person to engage in religious activity or to take part in religious ceremonies, or for preventing a person from doing the same, and for hurting a person's

religious feelings. The new Penal Code (passed on 6 June 1997) (J. of Laws, No. 88, Item 553), in force since 1 September 1998, extends this protection by defining public insult or battery (infringement of corporal inviolability) because of a person's national, ethnic, racial, religious or irreligious identity. Similarly, the law prohibits incitement to hatred on account of someone's racial, national, ethnic, religious or irreligious identity. Furthermore, the same Code imposes penalties for actions aimed at the extermination, in part or wholly, of a national, ethnic, racial, political, religious, or specifically oriented group, or for imposing on such a group conditions of life that could lead to its biological extermination, or for employing measures intended to impair births within such a group, or for depriving such a group of its children; measures taken in preparation of such criminal acts are likewise punishable. Moreover, the new Code classifies as criminal the use of force or unlawful threats in relation to a group of people or to individuals on account of their national, ethnic, racial, political, religious or irreligious orientation; similarly, sanctions are envisaged for public incitement to such deeds.

## **2. Personal freedoms and rights**

### **(a) Protection of human life**

98. The catalogue of personal freedoms and rights guaranteed by the Polish Constitution includes the fundamental human right to the protection of life. The new Penal Code has abolished the death penalty (see comments in the part devoted to codification of criminal law).

99. Homicide belongs to the most serious crimes and as such is severely penalized. Also, euthanasia is prohibited and punishable by up to five years of imprisonment (although in extraordinary cases, the court may renounce punishment).

100. A further consequence of the view that life is a supreme human value is contained in the provision of the statute of 7 January 1993 on family planning, the protection of the human foetus, and restrictions on the admissibility of abortion which penalizes actions designed to put a conceived child (i.e. foetus) to death (while listing those situations which justify abortion), as well as actions designed to make a pregnant woman put her conceived child to death. Under the new penal law, termination of pregnancy in violation of the law is punishable by up to three years of imprisonment.

### **(b) Prohibition of scientific experiments on humans**

101. Article 39 of the Constitution prohibits submitting human beings to scientific experiments without their express consent. The required consent must be granted voluntarily. The conditions under which medical experiments may be conducted are specified in the Law of 5 December 1996 on the Medical Profession. The new Penal Code prohibits cognitive experiments on persons protected by international humanitarian law even with their consent. The new Penal Code has reiterated the obligation of obtaining the consent of a participant in a research experiment after suitably informing him/her of the anticipated benefits as well as the negative consequences and the probability of their occurrence and instructing him/her of the option of withdrawing from the experiment at any stage. Sanctions have been introduced against subjecting individuals under the protection of international humanitarian law to research experiments even with their consent.

**(c) Prohibition of torture**

102. Article 40 prohibits torture or cruel, inhuman or degrading treatment or punishment as well as corporal punishment. Under the new Penal Code, infliction of torture is a crime as specified by international law, e.g. the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

103. The Polish system of penal law contains regulations guaranteeing the prosecution of acts which constitute torture in the eyes of the Constitution. It is a crime to seriously damage the health of individuals, subject them to torture or cruel or inhuman treatment, carry out research experiments on them even with their consent, or use them to shield an area or object against military attacks. A catalogue of legal measures designed to prevent acts of inhuman treatment has also been created, including supervision of incarceration by, e.g. the penitentiary judges or the Commissioner for the Protection of Civil Rights.

104. Legal acts governing the Police, the Internal Security Agency and the Border Guards penalize officers of those services who violate the rights of citizens by overstepping their competence during the exercise of official duties, failing to fulfil their duties, using violence, illicit threats or physically abusing a person to extract a confession, clarification or statement. The Penal Code declares legally punishable the threat of violence and deception in order to exert pressure on a witness as well as the actual physical coercion of a witness.

105. Poland is also a party to international treaties concerning torture: the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

**(d) The right to inviolability of the person**

106. In subsequent articles, the Constitution affirms the right to inviolability of the person and personal freedom. Article 41, paragraph 1, states that the deprivation or restriction of freedom is permissible only in accordance with the principles and in the manner stipulated by law. The respective regulations are contained in the Code of Penal Procedure (CPP), the Law on Foreigners, the Law on Combating Infectious Diseases and the Law on Sobriety.

107. Paragraph 2 of the same article ensures a person deprived of liberty (detained) without trial the right to a judicial examination of the legality of said detention. Any detention must be made immediately known to the family of, or to a person indicated by, the detained person. Among other personal freedoms and rights, the Constitution also lists the right of a detained person to be informed immediately, in a comprehensible manner, about the reasons of such detention. The same article specifies that the detained person must be given over to a court within 48 hours of detention. The detainee is to be set free unless a warrant of temporary arrest issued by a court, along with specification of the charges laid, has been served on him/her within 24 hours of being put at the court's disposal. In other words, the Constitution allows the court 24 hours for issuing the warrant. Only the court may rule on a temporary arrest. The time limits on the duration of arrest are specified in the CPP. Additionally, the Constitution grants the right to compensation for anyone deprived of liberty in violation of the law.



108. The new CPP has greatly extended the procedural rights of detainees. Above all, complaints over detention may not only question the validity and legality of the detention and demand immediate release, but may also be targeted at the improper application of this measure.

109. Important for the protection of personal freedoms is a new provision which ensures the right of the detainee to immediately contact and meet a lawyer. In the case of a foreign citizen, the detainee must be allowed to contact the relevant consular office or diplomatic mission.

**(e) The right to a fair trial**

110. Other fundamental rules are listed in article 42, including the principle *nullum crimen sine lege* (presumption of innocence, or the right to defence), which is given force. According to the Constitution and the relevant provisions of article 1 of the Penal Code, only a person who has committed an act prohibited by a law in force at the moment of commission, and which is subject to a penalty, shall be held responsible before the law. At the same time, anyone against whom criminal proceedings have been brought has the right to defence at all stages of such proceedings. In particular, the defendant may hire counsel or take advantage of counsel appointed by the court, if there is evidence that hiring counsel would be beyond his/her means. The court appoints counsel *ex officio* in the case of a deaf, mute, or blind defendant, or when the defendant shows signs of insanity. Additionally, representation by counsel is obligatory in a criminal case against a minor and anyone who does not speak the official language (Polish), or if the court finds it necessary because of the circumstances which jeopardize an effective defence.

111. The principle of presumed innocence, under which the defendant is considered innocent as long as his/her guilt has not been established by a legally valid verdict, was reflected in CPP article 5, which states that any reasonable doubt must be interpreted in favour of the defendant.

112. A fundamental provision concerning war crimes and crimes against humanity is contained in article 43 of the Constitution, which proclaims the non-applicability of statutory limitations to such crimes. The same is stated in article 109 of the Penal Code. In fact, the statute of limitation was lifted in Poland on 22 April 1964 in relation to the perpetrators of the most heinous Nazi crimes of the Second World War. Subsequently, the statute of 6 April 1984 on the Main Commission for the Investigation of Crimes against the Polish People has lifted the applicability of statutory limitations to Nazi, Stalinist, and other crimes against humanity that constituted war crimes or crimes against humanity under international law. Similarly, article 4 of the Act of 18 December 1998 on The Institute of National Remembrance - Commission for the Prosecution of Crimes against the Polish Nation (J. of Laws, 19 December 1998) states that crimes against peace, humanity or war crimes shall not be barred by the statute of limitations. Moreover, article 44 of the Constitution states that the statute of limitation regarding actions connected with offences committed by, or by order of, public officials and which have not been prosecuted for political reasons shall be extended for the period during which such reasons existed.

113. Article 45 of the Constitution proclaims another fundamental right, namely, the right to a fair and public hearing of the case, without undue delay, before a competent, impartial and independent court. The principle of independence of the judiciary is further safeguarded by the Constitution: articles 173 ff. affirm that courts and tribunals constitute an independent separate authority and that judges, within the exercise of their office, are independent and subject only to

the Constitution and the law. A fair and public trial is guaranteed by the rule of two-stage court proceedings (art. 176) and by the right to lodge constitutional complaints with the Constitutional Tribunal concerning conformity with the Constitution of laws and other normative acts that have served a court or other organ in passing final judgement on the civil liberties or duties of citizens. The public nature of judicial proceedings may be restricted or wholly suspended only on the basis of a law, in cases specified in the Constitution (art. 45, para. 2), for reasons of morality, State security, public order, or protection of the privacy of a party or other important private interests; nevertheless, judgements must be announced publicly in any case. When it comes to the rule that court proceedings must be held without undue delay, in administrative matters a party may lodge a complaint on the inaction of an organ, to be examined by the Chief Administrative Court. The new CCP says, in article 2, that pronouncing judgement within a reasonable time span is one of the objectives of criminal proceedings. Article 306, paragraph 3, grants the right to complain if an earlier complaint has not resulted, in the course of six weeks, in either the initiation of proceedings or a refusal thereof. Article 6 of the Civil Code, in turn, states that the court ought to counteract any protraction of proceedings and should seek to judge the case during the first sitting as long as this is reconcilable with the exercise of justice.

**(f) The right to privacy**

114. Further constitutional norms are the right to personal privacy, the privacy of communication and inviolability of the home. The legal protection of private and family life, of a person's honour and good reputation, and of the freedom of decisions concerning one's private life (art. 47) is reflected in the provisions of the Civil Code. They guarantee protection of such personal values as health, freedom of conviction, name or pseudonym, one's likeness, privacy of communication, inviolability of the home, and scientific, artistic, inventive and innovative activities, insofar as the person concerned is entitled to demand that an unlawful action be discontinued, that the consequences of such action be made good for, that due indemnities be paid, and any loss in property be compensated. The freedom and privacy of communication (art. 49) are additionally safeguarded by penal provisions which prescribe sanctions for unlawful infringement, concealment and damage of correspondence, for tapping a communication line and for passing on the information obtained in that way. Those rights can be curtailed only by law, as specified in the Penal Code, in the Police Law, in the Internal Security Agency and Intelligence Agency Law, in the Border Guard Law, and in the Code of Penal Execution.

115. The question of inviolability of the home (article 50 of the Constitution) is further expanded in the Penal Code, which penalizes infringements of domestic peace. Any search of the home, premises or vehicles may be imposed only in cases and in a manner specified by law.

116. The citizen's right to withhold personal data, and the resultant ban on obtaining, collecting, and accessing information other than that indispensable in a democratic country, as well as the right to restrict access to information about oneself and the right to demand that false, incomplete, or unlawfully obtained information be corrected or deleted (art. 50) are laid down in considerable detail in the Law of 29 August 1997 on the Protection of Personal Data. Organs of the State are entitled to collect and store certain types of data on citizens on the grounds of the Border Guard Law, the Internal Security Agency Law and the Police Law.

**(g) Freedom of speech**

117. Article 54 of the Constitution grants everyone the right to express opinions and to acquire and disseminate information, while banning preventive censorship in the mass media and any licensing of the press. The licensing of radio and television stations is regulated in the statute on radio and television broadcasters. The latter statute as well as the Press Law adhere to the principle of freedom of the mass media.

**(h) The right to rear children in the family**

118. The right of parents to rear their children in accordance with their convictions, with due respect for the degree of maturity of the child and his/her freedom of conscience, religion and conviction, is guaranteed in article 48 of the Constitution. Under article 53, paragraph 3, parents have the right to ensure their children a moral and religious upbringing and teaching, in accordance with their convictions. The issue is further developed in the Family and Guardianship Code of which article 95 states that parents must exercise their authority over the child in the best interest of the child as well as in the social interest. Parental rights may be restricted or suspended only in instances specified by law: parental rights can be suspended when their exercise is infringed by temporary obstacles; complete withdrawal of parental rights may ensue when parents abuse their authority over the child or flagrantly neglect their duties to the child. Under article 41 of the old Penal Code, a court may deprive a defendant of parental rights, as an additional penalty, if he or she is found to have done harm to a minor, or to have acted in collusion with a minor, or to have acted in a scandalizing manner, thus setting a bad example for the minor. The new Penal Code has abolished the court's prerogative to deprive the defendant of his/her parental rights, replacing this by the provision that crimes committed to the detriment of a minor, or in collusion with a minor, shall be dealt with by a juvenile court.

119. Poland is party to the Convention on the Rights of the Child and recently signed both Optional Protocols to the Convention.

**(i) Freedom of movement**

120. The principle of freedom of movement within the territory of Poland as well as freedom to take up residence anywhere in Poland, or leave the country, is spelled out in article 52 of the Constitution. Limitations on those freedoms, provided for by law, are elaborated in: (i) the Code of Penal Procedure, where two kinds of limitations are envisaged: police surveillance and preventing the person from leaving the country (possibly coupled with confiscation of passport); (ii) the Law on Contagious Diseases; and (iii) the Law on Foreigners, which states that a foreign citizen must obtain a permit to live or take up temporary residence in Poland. As stipulated in the Law on Passports, a Polish citizen cannot be refused a document that would allow him/her to leave the country and to stay abroad. At the same time, the Constitution states that a Polish citizen may not be expelled from the country, nor forbidden to return to it (art. 52, para. 4).

121. Similar rules apply to the extradition of Polish citizens. Article 55 states: "The extradition of a Polish citizen is forbidden."

**(j) Freedom of conscience and religion**

122. Another fundamental right ensured by the Constitution (art. 53) is the freedom of conscience and religion, which comprises freedom of religion and freedom to accept a religion by personal choice and to manifest such religion, either individually or collectively, publicly or privately, by worshipping, praying, participating in ceremonies, performing of rites or teaching. The religion of a Church or any other legally recognized religious organization may be taught in schools. At the same time, it is affirmed that no one may be compelled to participate, or not participate, in religious practices, or to disclose his/her philosophy of life, religious convictions or faith. The principles expounded in the quoted article are reflected in the Law on Safeguarding the Freedom of Faith and Religion and in the Law on Education and in the ordinance of the Minister of Education concerning the conditions and manner in which religion shall be taught in public schools.

**3. Political rights and freedoms****(a) Freedom of assembly**

123. Freedom of assembly, consisting in the freedom to organize peaceful assemblies and participating in such assemblies, is spelled out in article 57 of the Constitution. The detailed provisions on how such assemblies may be organized are contained in the Law on Assemblies, which also specifies, in accordance with the Constitution, the restrictions that may be imposed in the interest of State security, public order, and the protection of health, public morals, or other people's rights and freedoms.

**(b) Freedom of association**

124. A further basic principle expounded in the Constitution is the freedom of association. The relevant norms are contained in articles 58 and 59, but they ought to be considered in the framework created by articles 11 and 12. Those regulations safeguard the free formation and functioning of political parties, trade unions, socio-occupational organizations of farmers, societies, citizens' movements, and other voluntary associations and foundations. At the same time, the Constitution states that political parties shall be founded on the principles of voluntariness and the equality of Polish citizens, and their purpose shall be to influence the formulation of State policy by democratic means. Article 13 of the Constitution bans political parties and other organizations 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 to influence the State policy, or provide for the secrecy of their own structure or membership.

125. Whereas freedom of association is guaranteed to everyone, associations whose purposes or activities are contrary to the Constitution or statutes are prohibited. Further restrictions, as envisaged in the Statute on Associations, may be imposed only in the interest of State security, public order, and the protection of health, public morals, or other people's rights and freedoms. A court may refuse to register or may ban an association. The freedom of association in trade unions, in socio-occupational organizations of farmers, and in employers' organizations is further elaborated in laws regulating trade unions, trade unions of farmers, and employers'

organizations. Furthermore, Poland is a signatory to the following ILO conventions that deal with those questions: the Right of Association (Agriculture) Convention (No. 11), the Freedom of Association and Protection of the Right to Organize Convention (No. 87), the Rural Workers' Organizations Convention (No. 141), and the Labour Relations (Public Service) Convention (No. 151).

126. In parallel, the Constitution ensures the right to bargain and the employees' right to stage strikes and other forms of protest. Poland is bound in this respect by the Right to Organize and Collective Bargaining Convention (No. 98), the Workers' Representatives Convention (No. 135) and the Tripartite Consultations (International Labour Standards) Convention (No. 144).

**(c) The right to involvement in public affairs and to submit petitions, complaints and suggestions to organs of public authority**

127. The right to get involved in public affairs makes up the next group of freedoms comprising: the right to vote in elections and referendums, the right to stand for election, the right to become a civil servant (which applies to all Polish citizens on the principle of equality), and the right to obtain information on the activities of public authorities and institutions. In article 61, the Constitution ensures every citizen the right to obtain information, among others, on the work of organs of public authority and of all civil servants, on the activities of self-governing economic and professional organs, and of other elected persons and organs. The right to obtain information ensures access to documents and to sittings of elected organs of public authority (local government bodies), including the right to make sound and video recordings at such sittings. Under the Press Law the aforementioned organs are obliged to inform the media of their activities in ways spelled out elsewhere.

128. At the same time, Polish citizens have the right to submit petitions, proposals and complaints, in the public interest and their own, to organs of public authority as well as to organizations and civic institutions. The procedures for considering petitions, proposals and complaints are specified in the Code of Administrative Procedure.

#### **4. Economic, social and cultural rights and freedoms**

**(a) The right to ownership**

129. A further fundamental right inscribed in the Constitution is the right to ownership, as well as other property rights, and the right of succession. All those rights are equally protected. Restrictions thereupon may be imposed only by law. Cases of such restriction are enumerated in the new Penal Code.

**(b) Freedom to choose and pursue one's occupation**

130. The principle of free choice of one's occupation and place of employment, next to the free pursuit of one's chosen occupation, are spelled out in article 65, where it is also stated that an obligation to work may be imposed only by law. As specified in the Penal Code, a person sentenced to restriction of freedom may be obliged by the court to take up a specific job for a specified period. A similar obligation may be imposed under the Law on the State of Natural Disasters. In the same article, the Constitution bans permanent employment of children

under 16. The specific conditions under which minors may be employed are spelled out in article 191 of the Labour Code and in the ordinance of the Minister of Labour and Social Policies on extraordinary employment of minors. In order to facilitate the implementation of the citizens' rights in the realm of employment, the Constitution spells out the ways and means of curbing unemployment. The detailed measures to this end are laid out in the law on employment and combating unemployment. Furthermore, Poland is a signatory to the Unemployment Convention (No. 2), the Constitution of the International Labour Organization, the Minimum Age (Industry) Convention (Revised) (No. 59), the Abolition of Forced Labour Convention (No. 105), and the Minimum Age Convention (No. 138).

**(c) The right to decent working conditions**

131. The right to safe and sanitary working conditions, to legally defined days free from work, to paid holidays, and to maximum permissible working hours of work is spelled out in article 66. Rules governing work safety and hygiene are laid down in chapter 10 of the Labour Code, where the employer is held responsible for observing the prescribed standards and where the relevant rights of employees are specified. The new Penal Code envisages penal responsibility for glaring violations of work safety and health standards. The regulations on working time and paid holidays are laid down in chapters VI and VII of the Labour Code. Moreover, Poland is a party to the Protection of Wages Convention (No. 95).

**(d) The right to social security**

132. Article 67 of the Constitution guarantees the right to social security whenever an employee is incapacitated for work. The detailed regulations are contained in the following statutes: on the organization and financing of social insurance, on social insurance, on old-age pensions for workers and on employment and combating unemployment, and also in the Workers' Compensation (Accidents) Convention (No. 17), to which Poland is a signatory.

133. The new Penal Code penalizes as violations of the social security law the failure to submit the required data even with the consent of the interested party or submitting untrue data influencing the right to social security benefits.

**(e) The right to health care**

134. The right to health care (health protection) is guaranteed in article 68, which also spells out the principle of equal access to health-care services financed from public funds. Under the same article, the authorities are obliged to ensure that children, pregnant women, the disabled, and persons of advanced age receive special health care. Further provisions on health care for the disabled are contained in article 69, which obliges the public authorities to provide them with subsistence and opportunities for adaptation to work and social communication. Those provisions are further elaborated in the Statute on the occupational and social rehabilitation of the disabled, in the Statute on social assistance, in the Sejm resolution of 1 August 1997 endorsing the Charter of Rights of the Disabled, and in article 14 of the Law on Transport, which specifies the relevant obligations of a carrier.

**(f) The right to education**

135. Another right guaranteed by the Constitution (in article 70) is the right to education. Under this right, education is offered in public schools without payment, access to education is universal and equal, there is a choice between public and non-public schools, and public funding is provided for educational institutions. Detailed regulations on education are laid out in the Law on Education and in the Law on Schools of Higher Education, which invest such schools with autonomy.

**(g) The protection of the family**

136. Under articles 71 and 72, the State is obliged to extend legal protection to the family and the child, and to assist a mother before and after childbirth. The laws on family planning, protection of the foetus (from the moment of conception), and the (non-)admissibility of abortion, as well as the law on social assistance, along with the relevant executive regulations, prescribe the modes and forms of assisting women during pregnancy. Poland has also signed the Maternity Protection Convention (Revised) (No. 103).

137. In regard to the rights of the child, under Polish law, the good of the child is the decisive factor in all decisions (court judgements) concerning the child. Poland is a party to the Convention on the Rights of the Child.

**VII. PROMOTION AND TEACHING OF HUMAN RIGHTS IN POLAND**

138. Human rights receive a lot of attention in Poland, in terms of promotion as much as in terms of teaching. Several schools of higher education offer regular courses in human rights. Human rights issues are also included in the programmes for primary and secondary schools. Also, training and education programmes for Police and Border Guards comprise the human rights issues relevant to their work. A number of books on human rights are published regularly. The rulings of the Human Rights Committee and the European Court of Human Rights are publicized by specialized journals as well as general newspapers (notably the daily *Rzeczpospolita*). The Ministry of Justice organizes training sessions for judges and prosecutors and the Supreme Court holds seminars on human rights. Intensive schooling is provided by the Organization of Defence Counsels and also by "Iustitia", an association of judges. Human rights issues are also included in the training programmes for advocates and legal advisers. There is also a number of non-governmental organizations active in the field of human rights, among them the Helsinki Human Rights Foundation, the Center on Women's Rights, La Strada and the Amnesty International Association.

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