



**Convention on the  
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COMMITTEE ON THE RIGHTS OF THE CHILD  
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**WRITTEN REPLIES BY THE GOVERNMENT OF THE REPUBLIC OF POLAND TO  
THE LIST OF ISSUES (CRC/C/OPSC/POL/Q/1) TO BE TAKEN UP IN CONNECTION  
WITH THE CONSIDERATION OF THE INITIAL REPORT OF THE REPUBLIC OF  
POLAND SUBMITTED UNDER ARTICLE 12, PARAGRAPH 1, OF THE OPTIONAL  
PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE  
SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY  
(CRC/C/OPSC/POL/1) \* \*\***

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

\*\* Annexes may be consulted in the files of the Secretariat.

**OPTIONAL PROTOCOL ON THE SALE OF CHILDREN, CHILD PROSTITUTION  
AND CHILD PORNOGRAPHY**

**Replies to the list of issues to be taken up in connection with the consideration of the initial  
report of Poland (CRC/C/OPSC/POL/1)**

**Question 1. Please provide, if available, statistical data (disaggregated by  
nationality, age, sex, ethnic origin, religion, geographic location, and socio-economic status)  
for the years 2006, 2007, and 2008 on:**

- (a) The number of reported cases of sale of children (including the purpose), child prostitution and child pornography; the number of cases prosecuted and the outcome of these cases, including withdrawals; any institutional measures adopted to investigate these cases; sanctions for perpetrators; as well as recovery and reintegration programs provided for the victims;**
- (b) The number of children trafficked to and from Poland as well as within the country for the purpose of sexual exploitation, the number of cases prosecuted with additional information on type of follow-up provided on the outcome of the cases, including withdrawals, as well as on sanctions for perpetrators;**
- (c) The number of child victims provided with recovery assistance and compensation as defined in article 9, paragraphs. 3 and 4 of the Optional Protocol; and**
- (d) The number of reported cases of crimes related to child sex tourism involving Polish citizens, with additional information on type of follow-up provided on the outcome of the cases, including prosecution, withdrawals and sanctions for perpetrators.**

1. Estimates provided by Voivodeship (provincial) Police Units and the Warsaw Police Command, indicate that in 2008 751 persons were engaged in roadside prostitution, of whom two women under the age of 15, and 8 women between 15 and 18 years of age. In prostitution in escort agencies were engaged 2520 persons, of whom one woman under 15 years of age, 23 women from 15 to 18 years of age, and 15 men. Of 3271 persons engaged in prostitution in Poland, 3237 were adults, three aged 15-18 years, and 31 between 15 and 18 years of age.

2. Among persons involved in prostitution, the most numerous groups represent the following countries: Poland – 2496, Ukraine – 419, Bulgaria – 212 and Belarus – 119. As regards foreign women, roadside prostitution by 191 Bulgarians, and prostitution in escort agencies by 401 Ukrainians and 112 Belarusians has been recorded.

3. The number of persons involved in prostitution attributed to place, age, gender and nationality, is presented in the following table:

Citizenship	"Roadside prostitution"						Prostitution in escort agencies and other places (e.g. massage parlours, private apartments, hotels, etc.)						Total	
	Age						Age							
	under 15		15 – 18		Above 18		under 15		15 – 18		above 18			
	W	M	W	M	W		W	M	W	M	W	M		
Polish	2		7		517	3	1		23		192	8	15	2496
Belarusian					7						112			119
Lithuanian					1						3			4
Ukrainian					18						401			419
Bulgarian			1		190						21			212
Russian											12			12
Czech					1									1
Romanian					4						1			5
Mongolian											1			1
Kazakh											2			2
TOTAL	2	-	8	-	738	3	1	-	23	-	248	1	15	3271
COMBINED	751						2520							

*Data from TEMIDA System of Criminal Offence Statistics*

**Article 253, paragraphs 1-2 of the Penal Code**

4. As regards trade (trafficking) of people and organizing illegal adoptions of children, 21 preparatory proceedings have been initiated. Also, 21 proceedings have been concluded. In 2008, 60 new offences were recorded, 59 detected. The detection indicator was 98.3 per cent. In the course of proceedings, 59 motions for indictment were submitted. The perpetrators were 17 adults, of whom 14 men and three women, including four foreigners. Sixty-two persons were identified as injured by the practice of human trafficking, including 14 foreigners. This data is presented in the tables below:

**Article 253, paragraph 1 of the Penal Code – Human trading***Number of proceedings*

	<b>Initiated</b>	<b>Concluded</b>	<b>Identified offences</b>	<b>Detected offences</b>	<b>Detection indicator %</b>	<b>Motions for indictment</b>
2004	5	5	44	42	95,5	42
2005	6	14	19	17	89,5	17
2006	12	13	18	15	83,3	14
2007	15	15	22	23	100	21
<b>2008</b>	<b>18</b>	<b>18</b>	<b>60</b>	<b>59</b>	<b>98,3</b>	<b>59</b>

*Perpetrators*

	<b>Identified offences</b>	<b>Total</b>	<b>Suspects</b>		<b>Foreigners</b>
			<b>Women</b>	<b>Men</b>	
2004	44	21	2	19	-
2005	19	9	2	7	-
2006	18	9	4	5	3
2007	22	23	7	16	4
<b>2008</b>	<b>60</b>	<b>17</b>	<b>3</b>	<b>14</b>	<b>4</b>

*Injured persons*

	<b>Total</b>	<b>Injured persons</b>	
		<b>Foreigners</b>	<b>Minors</b>
2004	35	3	3
2005	17	12	-
2006	16	-	-
2007	859	-	-
<b>2008</b>	<b>62</b>	<b>14</b>	<b>-</b>

**Article 253, paragraph 2 of the Penal Code – Human trading (illegal adoption)***Number of proceedings*

	<b>Initiated</b>	<b>Concluded</b>	<b>Identified offences</b>	<b>Detected offences</b>	<b>Detection indicator %</b>	<b>Motions for indictment</b>
2004	-	-	-	-	-	-
2005	-	-	1	1	100	1
2006	1	2	-	-	-	-
2007	1	1	-	-	-	-
<b>2008</b>	<b>3</b>	<b>3</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>

*Perpetrators*

	<b>Identified offences</b>	<b>Total</b>	<b>Suspects</b>		<b>Foreigners</b>
			<b>Women</b>	<b>Men</b>	
2004	-	-	-	-	-
2005	1	1	-	1	-
2006	-	-	-	-	-
2007	-	-	-	-	-
<b>2008</b>	-	-	-	-	-

*Injured persons*

	<b>Total</b>	<b>Injured persons</b>	
		<b>Foreigners</b>	<b>Minors</b>
2004	-	-	-
2005	-	-	-
2006	-	-	-
2007	-	-	-
<b>2008</b>	-	-	-

**Article 204, paragraph 3 of the Penal Code – gaining material benefit from practice of prostitution by a juvenile**

5. In cases under the objective article of the Penal Code, ten preparatory proceedings have been initiated; 17 proceedings were concluded. In 2008, 21 new offences were identified, also 21 were detected. The detection indicator was 100 per cent. The perpetrators were 18 Polish nationals, of whom nine men and nine women. Following the respective proceedings, 20 motions for indictment were submitted. In the course of proceedings, 28 injured minors were identified. This data is presented in the tables below:

*Number of proceedings*

	<b>Initiated</b>	<b>Concluded</b>	<b>Identified offences</b>	<b>Detected offences</b>	<b>Detection indicator %</b>	<b>Motions for indictment</b>
2004	13	18	43	42	97.7	42
2005	19	28	59	59	100	57
2006	14	20	29	27	93.1	23
2007	10	16	44	43	99.7	43
<b>2008</b>	<b>10</b>	<b>17</b>	<b>21</b>	<b>21</b>	<b>100</b>	<b>20</b>

*Perpetrators*

	<b>Identified offences</b>	<b>Total</b>	<b>Suspects</b>		<b>Foreigners</b>
			<b>Women</b>	<b>Men</b>	
2004	43	18	5	13	-
2005	59	42	17	25	1

2006	29	27	10	17	-
2007	44	23	7	16	-
<b>2008</b>	<b>21</b>	<b>18</b>	<b>9</b>	<b>9</b>	<b>-</b>

*Injured persons*

	<b>Total</b>	<b>Injured persons Foreigners</b>	<b>Minors</b>
2004	67	-	55
2005	78	1	67
2006	46	-	45
2007	242	1	242
<b>2008</b>	<b>28</b>	<b>-</b>	<b>28</b>

**Article 200, paragraph 1 i 2 k.k. – sexual relationship with minor under 15 years of age**

6. In cases under the objective article of the Penal Code 1994 preparatory proceedings have been initiated. 2229 proceedings were concluded. In 2008, 1683 new offences were identified, also 1528 were detected. The detection indicator was 90.6 per cent. The perpetrators were 1082 persons, of whom 1062 men and 20 women. Among the perpetrators, five non-Polish citizens were identified. Following the respective proceedings, 1144 motions for indictment were submitted. In course of proceedings, 5635 injured minors were identified. This data is presented in the tables below.

*Number of proceedings*

	<b>Initiated</b>	<b>Concluded</b>	<b>Identified offences</b>	<b>Detected offences</b>	<b>Detection indicator %</b>	<b>Motions for indictme nt</b>
2004	1884	2036	1904	1766	92.5	1472
2005	1884	2071	1697	1572	92.1	1194
2006	1993	2084	1687	1573	92.9	1213
2007	2029	2361	1882	1730	91.2	1196
<b>2008</b>	<b>1944</b>	<b>2229</b>	<b>1683</b>	<b>1528</b>	<b>90.6</b>	<b>1144</b>

*Perpetrators*

	<b>Identified offences</b>	<b>Total</b>	<b>Suspects Women</b>	<b>Men</b>	<b>Foreigners</b>
2004	1904	1052	12	1040	10
2005	1697	1053	14	1039	5
2006	1687	1101	23	1078	5
2007	1882	1148	23	1125	1
<b>2008</b>	<b>1683</b>	<b>1082</b>	<b>20</b>	<b>1062</b>	<b>5</b>

*Injured persons*

	<b>Total</b>	<b>Injured persons</b>	
		<b>Foreigners</b>	<b>Minors</b>
2004	2098	2	2080
2005	1811	-	1799
2006	4064	-	4053
2007	8151	-	8151
<b>2008</b>	<b>5635</b>	-	<b>5635</b>

**Article 202, paragraph 2 of the Penal Code – displaying, disseminating and providing pornographic contents to a minor under 15 years of age**

7. In cases under the objective article of the Penal Code, 138 preparatory proceedings have been initiated. 176 proceedings were concluded. In 2008, 235 new offences were identified, also 214 were detected. The detection indicator was 90.7 per cent. The perpetrators were 90 persons, of whom four women. Following the respective proceedings, 100 motions for indictment were submitted. In the course of proceedings, 786 injured minors were identified. This data is presented in the tables below:

:

*Number of proceedings*

	<b>Initiated</b>	<b>Concluded</b>	<b>Identified offences</b>	<b>Detected offences</b>	<b>Detection indicator %</b>	<b>Motions for indictment</b>
2004	79	71	128	121	94.5	105
2005	73	89	158	138	87.3	109
2006	93	93	209	201	96.2	106
2007	104	152	242	230	95.0	99
<b>2008</b>	<b>138</b>	<b>176</b>	<b>235</b>	<b>214</b>	<b>90.7</b>	<b>100</b>

*Perpetrators*

	<b>Identified offences</b>	<b>Total</b>	<b>Suspects</b>		<b>Foreigners</b>
			<b>Women</b>	<b>Men</b>	
2004	128	43	8	35	-
2005	158	25	2	23	1
2006	209	54	7	47	1
2007	242	91	10	81	-
<b>2008</b>	<b>235</b>	<b>90</b>	<b>4</b>	<b>86</b>	-

*Injured persons*

	<b>Total</b>	<b>Injured persons Foreigners</b>	<b>Minors</b>
2004	137	-	111
2005	192	-	159
2006	658	-	657
2007	1006	-	1006
<b>2008</b>	<b>786</b>		<b>786</b>

**Article 202, paragraph 3 of the Penal Code – producing, recording, disseminating or publicly displaying pornographic contents featuring a minor**

8. In cases under the objective article of the Penal Code, 268 preparatory proceedings have been initiated and 294 proceedings were concluded. In 2008, 581 new offences were identified, also 516 were detected. The detection indicator was 88.7 per cent. The perpetrators were 138 persons, of whom 127 men and 11 women. Following the respective proceedings, 141 motions for indictment were submitted. In the course of proceedings, 122 injured persons were identified, of whom 83 minors. This data is presented in the tables below:

*Number of proceedings*

	<b>Initiated</b>	<b>Concluded</b>	<b>Identified offences</b>	<b>Detected offences</b>	<b>Detection indicator %</b>	<b>Motions for indictment</b>
2004	18	13	19	18	94.7	16
2005	112	93	83	68	81.9	64
2006	136	143	123	97	78.9	74
2007	197	199	187	154	82.4	107
<b>2008</b>	<b>268</b>	<b>294</b>	<b>581</b>	<b>516</b>	<b>88.7</b>	<b>141</b>

*Perpetrators*

	<b>Identified offences</b>	<b>Total</b>	<b>Suspects</b>		<b>Foreigners</b>
			<b>Women</b>	<b>Men</b>	
2004	19	14	2	12	-
2005	83	58	2	56	-
2006	123	72	2	70	1
2007	187	108	8	100	2
<b>2008</b>	<b>581</b>	<b>138</b>	<b>11</b>	<b>127</b>	<b>1</b>

*Injured persons*

	<b>Total</b>	<b>Injured persons Foreigners</b>	<b>Minors</b>
2004	3	-	3
2005	27	-	2



2006	38	-	17
2007	72	-	24
<b>2008</b>	<b>122</b>	-	<b>83</b>

**Article 202, paragraph 4 i 4a of the Penal Code – recording, bringing and keeping pornographic contents featuring a minor under 15 years of age**

9. In cases under the objective article of the Penal Code, 229 preparatory proceedings have been initiated and 325 proceedings were concluded. In 2008, 345 new offences were identified, also 315 were detected. The detection indicator was 91.0 per cent. The perpetrators were 180 persons, of whom 178 men and two women. Following the respective proceedings, 292 motions for indictment were submitted. In the course of proceedings, 91 injured persons were identified, of whom 44 minors. This data is presented in the tables below.

*Number of proceedings*

	<b>Initiated</b>	<b>Concluded</b>	<b>Identified offences</b>	<b>Detected offences</b>	<b>Detection indicator %</b>	<b>Motions for indictment</b>
2004	14	12	11	11	100	8
2005	71	83	100	91	91.0	87
2006	128	150	356	340	95.5	327
2007	222	215	222	206	92.8	178
<b>2008</b>	<b>229</b>	<b>325</b>	<b>345</b>	<b>315</b>	<b>91.0</b>	<b>292</b>

*Perpetrators*

	<b>Identified offences</b>	<b>Total</b>	<b>Suspects</b>		<b>Foreigners</b>
			<b>Women</b>	<b>Men</b>	
2004	11	7	-	7	-
2005	100	40	2	38	1
2006	356	91	-	91	1
2007	222	132	4	128	-
<b>2008</b>	<b>345</b>	<b>180</b>	<b>2</b>	<b>178</b>	<b>1</b>

*Injured persons*

	<b>Total</b>	<b>Injured persons</b>	
		<b>Foreigners</b>	<b>Minors</b>
2004	43	-	43
2005	128	-	120
2006	80	-	49
2007	81	-	31
<b>2008</b>	<b>91</b>	-	<b>44</b>

10. The above police data from the TEMIDA System of Criminal Offence Statistics, focus on the objective topic in the phase of preparatory proceedings (from initiating to concluding proceedings, e.g. through developing a bill of indictment). Therefore, it does not cover court verdicts or specific sentences in cases relative to analysed criminality.

11. Court data are stated in annexes to the present document:

Annex 1. Adults sentenced in first instance by district and provincial courts under selected articles of the Penal Code in 2006, 2007, 2008.

Annex 2. Adults validly sentenced on indictment under selected articles of the Penal Code in 2006.

Annex 3. Penal Code – extract.

**Question 2. Please provide information on whether the Optional Protocol has the force and effect of law and whether it has been applied by the Courts.**

12. Under article 91 of the Constitution of the Republic of Poland (Journal of Laws 1997 No. 78, it. 483), the regulations of international agreements ratified by Poland, thus including the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, constitute a part of the national legal order and are directly applied, unless their applying depends on the issuance of the law. As the Optional Protocol has been ratified at previous consent expressed in the law, if there is an incompatibility between its provisions and those of the domestic law, the Optional Protocol shall prevail.

13. The provisions of the Optional Protocol relative to penalizing pornography and child prostitution and the sale of children, have been introduced into Polish law. The commitments set forth in the Optional Protocol are mainly met by the regulations of the Penal Code (Journal of Laws 1997 No. 88, it. 553) and the law on foreigners (Journal of Laws 2006 No. 234, it. 1694) (their provisions crucial in the context of the analysed topic, are set forth in paragraphs 4-6, 11, 12, 16, 17, 23, 24, 26 of the initial report). The provisions of these laws, as well as of the Optional Protocol, are applied by the Polish judiciary.

**Question 3. Please provide the definitions of sale of children and child prostitution under the Polish legislation. Please also indicate whether the State party has introduced or intends to introduce into the Criminal Code a specific prohibition of child prostitution in accordance with article 3, paragraph 1 of the Optional Protocol.**

#### **Definition of human trafficking**

14. Under the provision of article 91 of the Constitution of the Republic of Poland, described in the answer to question 2, the provisions of international agreements that mention the definition of human trafficking, primarily of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, and the Council of Europe Convention on Action Against Trafficking in Human Beings, are directly applied by Polish judiciary bodies. Nevertheless, striving to enhance the efficiency of action against human trafficking, the Polish Government has decided to include in the Penal Code the definition of human trafficking modelled on respective

provisions of international law, primarily of the Protocol and Convention. The respective draft amendment of the Penal Code is currently undergoing consultations between ministries, and is to be shortly submitted to the Government for approval.

15. Simultaneously, the Penal Code provides for sanctions for the offence of trafficking in persons, even done at their consent, and for other offences that may occur in relation to human trafficking, including, inter alia, abduction of a person to engage in prostitution abroad, and adoption of children against the provisions of the law.

### **Definition of child prostitution, protecting child from sexual abuse**

16. Under Polish law, prostitution does not constitute an offence. However, it does state as offence all forms of achieving benefit from prostitution performed by another person, both adult and child. Therefore, there is no definition of child prostitution in the Penal Code. Nevertheless, it does provide for protecting children from sexual abuse. More information in this regard, mainly relative to legislative changes implemented in recent years with the purpose of enhancing the protection of children from sexual abuse, is set forth in paragraph 6 of the initial report.

17. In this context, the following provisions of the Penal Code are of primary importance:

- Article 197, paragraph.1. Whoever by violence, unlawful threat or deceit brings another person to a sexual relationship,  
Shall be subject to imprisonment from 2 to 12 years.  
Paragraph 2. If the perpetrator, in the way set forth in paragraph 1, brings another person to submit to another sexual act or to perform such act, shall be subject to imprisonment from 6 months to 8 years.  
Paragraph 3. If the perpetrator commits rape jointly with another person, then he shall be subject to imprisonment for 3 years as minimum.  
Paragraph 4. If the perpetrator of the act set forth in paragraphs 1-3, acts with particular cruelty, then he shall be subject to imprisonment for five years as minimum.
- Article 198. Whoever by taking advantage of the helplessness of another person or the inability of this person to recognise the meaning of the act, or to control his own behaviour due to mental disability or mental illness, brings this person to a sexual relationship or to submitting to another sexual act or to performing such act,  
Shall be subject to imprisonment from six months to eight years.
- Article 199, paragraph 1. Whoever by abusing the relation of dependence or by taking advantage of critical position, brings another person to a sexual relationship or to submission to another sexual act or to performing such act,  
Shall be subject to imprisonment up to three years.  
Paragraph 2. If the act set forth in paragraph 1 was committed to the injury of a minor, then the perpetrator shall be subject to imprisonment from three months to five years.  
Paragraph 3. The penalty set forth in paragraph 2 shall apply to whoever brings a minor to a sexual relationship or to submission to another sexual act or to performing such act, by abusing trust or providing him a material or personal benefit, or promising the same.

- Article 200, paragraph 1. Whoever maintains a sexual relationship with a minor under 15 years of age or commits towards such a person another sexual act or brings him to submit to such acts or to perform the same,  
Shall be subject to imprisonment from 2 to 12 years.  
Paragraph 2. The same penalty applies to whoever with the purpose of achieving sexual satisfaction, presents to a minor under 15 years of age the exercising of a sexual act.
- Article 201. Whoever commits a sexual relationship towards an ascendant, descendant, adopted, adopter, brother or sister,  
Shall be subject to imprisonment from three months to five years.
- Article 203. Whoever by violence, unlawful threat, deceit or by taking advantage of relation of dependence or critical position brings another person to engaging in prostitution,  
Shall be subject to imprisonment from one to ten years.
- Article 204, paragraph 1. Whoever with the purpose of achieving material benefit impels another person to engage in prostitution or facilitates the engaging in prostitution of this person,  
Shall be subject to imprisonment up to three years.  
Paragraph 2. The penalty set forth in paragraph 1 shall apply to whoever achieves material benefits from engagement in prostitution by another person.  
Paragraph 3. If the person stated in paragraphs 1 or 2 is a minor, then perpetrator  
Shall be subject to imprisonment from one to ten years.  
Paragraph 4. The penalty set forth in paragraph 3 shall apply to whoever lures or abducts another person with the purpose of engaging in prostitution abroad.

18. Furthermore, changes in the scope of sexual offences against children, are provided for by the draft amendment of the Penal Code and other laws, developed by the Ministry of Justice, which provides for example penalizing the so-called grooming. Only the appointment with and undertaking of actions to meet a person under 15 years of age, will constitute an offence penalized with three years of imprisonment. To this purpose, the introduction of the provision of article 202a of the Penal Code of the following wording is anticipated: "Whoever with the purpose of committing the offence set forth in article 197, paragraph 3 it. 2 or article 200, as well as of producing or recording pornographic contents featuring a minor under 15 years of age, establishes contact with a minor through a data communication system or telecommunication network, and undertakes actions aimed at meeting the same, shall be subject to imprisonment of up to three years..." The draft is currently under consideration by Parliament.

**Question 4. Please provide information on legislative and other measures providing protection from prostitution for children between the ages of 15 and 18.**

19. In Polish law, the minimum age of admissible sexual relationship is 15, what results from considering such person capable of consciously deciding whether to perform a sexual act. Under the provisions of the Penal Code a child, also aged 15-18, is more broadly protected against sexual abuse, than an adult: the qualified types (i.e. those for which a penalty is more severe than for the basic type) of offences set forth in articles 199 and 204 of the Penal Code, are the offences committed to the injury of a minor (i.e. a person under 18 years of age).

**Question 5. Please indicate if there are any legal provisions which application might lead to a prosecution of a child victim of sale, prostitution or pornography, and if so, under which conditions.**

20. Under article 10 of the Penal Code, penal responsibility may apply only to the person who at the time of committing the offence had completed 17 years of age. As exception, in cases of committing the most serious offences on terms set forth in the Penal Code (as an adult) may be prosecuted a juvenile who completed 15 years. However, only when the case is backed by circumstances of the case, the personal development of the juvenile and his personal qualities and conditions, and in particular, when previously applied educational or corrective measures were inefficient. Therefore, against the victims of the offence of human trafficking, pornography or prostitution, who did not complete 17 years of age, the application of penal provisions leading to their indictment, would not be possible. As a rule, towards minors only the educational and corrective measures may be applied, as far as the minor demonstrates symptoms of demoralisation or commits an offence.

21. The penal responsibility mentioned in the question, could possibly apply only to children who completed 17 years of age and behaviours such as, e.g. illegal border crossing, or using false documents, etc. However, the revealing of such behaviour does not automatically generate the pressing of charges against such persons, nor subsequent indictment. In every case the behaviour of that person is assessed to certify whether any evidence exists, to enable to issue a decision to refuse to open criminal proceedings, or to dismiss criminal proceedings (art. 17, para. 1 Ccp).

22. Depending on determined circumstances, there are the following legal possibilities to resign from prosecuting the actions of the victims of human trafficking:

**1. Dismissal of penal proceeding, due to emergence of circumstance excluding the action.**

23. The behaviour of a person may only constitute an offence under the condition that it has the features of a prohibited action. A circumstance excluding responsibility, is physical compulsion (*vis absoluta*), consisting in the use of physical violence that completely rules out a decision based on the will of the person against whom this form of coercion was used. It may apply to a situation when the victim is brutally abducted and the illegal border crossing occurs against his will.

**2. Dismissal of penal proceeding, due to the emergence of a state of necessity.**

24. If the victim is submitted to physical pressure (*vis compulsiva*, consisting in exerting physical measures to influence the decisions of the victim) or psychological coercion (punishable threat), then his legal situation should be assessed in terms of article 26 of the Penal Code (state of necessity).

25. However, if none of the above circumstances excluding penal proceedings occurs, then there is the possibility to apply the institution of extraordinary mitigation of penalty, if the person who appears in a separate proceeding as accused of e.g. using a false passport, or illegal border

crossing (who is actually a victim of human trafficking), has decided to reveal information on other offences (e.g. human trafficking), and their perpetrators.

**Question 6. Please briefly provide clarification as to the current Statute of Limitations for criminal offences committed against children pending the adoption of the draft amendment to the Penal Code that will allow the possibility to start and execute penal proceedings within five years of the moment the victim turns 18. Please also provide the Committee with an update as to the current status of the above-mentioned amendment.**

26. In December 2008 an amendment to the Penal Code entered in force, inserting in article 101, a paragraph 4 that provides for more severe guidelines of the statute of limitations in sex offences committed against minors: "The statute of limitations in offences set forth in articles 199, paragraphs 2 and 3; 200; 202, paragraphs 2, and 4; and 204, paragraph 3, as well as the offences set forth in articles 197, 201; 202, paragraph 3; 203 and 204, paragraph 4, in the case when the victim is a minor, shall not occur prior to the lapse of five years from the day the injured completed 18 years of age. "

**Question 7. Please inform the Committee if any research has been earned out on the issue of children used in prostitution in Poland and its outcome, as well as the estimated numbers of children used in prostitution disaggregated according to age, sex, ethnic origin, religion, nationality, geographic location and socioeconomic status.**

**Question 8. Please provide information on rules regarding deportation and repatriation of children who may have been trafficked to Poland for the purpose of sale within the meaning of article 2, paragraph (a) of the Optional Protocol or of child prostitution. Please also provide statistical data covering years 2004 -2008 on children victims of trafficking deported or repatriated from Poland disaggregated as above and according to country of return.**

27. The provisions of the law of 13 June 2003 on foreigners (Journal of Laws 2006 No. 234, it. 1964 as amended) do not provide for any particular regulations on deporting from Polish territory the children who are victims of human trafficking. Whereas the law on foreigners does contain regulations relative to legalising the stay of foreigners, who are victims of human trafficking.

28. Article 53 (a), clause 2 of the above law, states that residence permits for a determined time may be granted to a foreigner staying illegally in the territory of the Republic of Poland, if the organ competent in conducting proceedings on human trafficking, states that the foreigner in question is probably a victim of human trafficking in terms of the framework decision of the Council of 19 July 2002 on countering human trafficking (Official Journal of the EU L 203 of 1 August.2002, p. 1; Official Journal of the EU special Polish issue, chapter 19, vol. 6, p. 52). The decision in the objective case is issued by the *voivode* (provincial governor) whose authority covers the place of stay of the foreigner. The permit of residence for a determined time (not exceeding three months) may be in this case issued for a period necessary to take a decision to collaborate with the organ competent to conduct the proceeding to counter human trafficking. Also, article 53, clause 1 it. 15 of the law on foreigners, states that the residence permits for a determined time shall be granted to the foreigner who is victim of human trafficking in terms of

the framework decision of the Council of 19 July 2002 on countering human trafficking, and meets the following conditions combined:

- (a) Stays in the territory of the Republic of Poland;
- (b) Undertook collaboration with the organ competent in conducting proceeding to counter human trafficking,
- (c) Broke contacts with persons suspected of committing prohibited actions related to human trafficking,

29. If the circumstance that is the basis for applying for the permit, justifies his residence in the territory of the Republic of Poland for a period exceeding three months. The above permit shall be granted by the voivode) whose authority covers the place of stay of the foreigner, for a six-month period. The law of 16 November 2006 on stamp duty (Journal of Laws No. 225, it. 1635, of 2007 No. 64, it. 427, No. 124, it. 859, No. 127, it. 880 and No. 128, it. 883 and of 2008 No. 44, it. 262 and No. 63, it. 394) provides for exempting from stamp duty on the residence permit for a determined time, granted to a foreigner who is a victim of human trafficking and undertook collaboration with law enforcement bodies (art. 53, clause 1 it. 15 of the law on foreigners).

30. It should be stressed that in 2005, Poland implemented the 2004/81/EC directive on the residence permit issued to victims of actions aimed at facilitating illegal immigration, or trafficking in human beings.

31. The law on foreigners separately regulates the issue of deporting minors from Polish territory. Article 94 of the Law states that the decision to deport a minor foreigner to his country of origin or to another country, is exercised only when the minor is there ensured the guardianship by parents, other adults or care institutions, in line with the standards set by the Convention on the Rights of the Child, adopted by the General Assembly of the United Nations on 20 November 1989 (Journal of Laws 1991 No. 120, it. 526 and of 2000 No. 2, it. 11). The minor foreigner may be deported only under the care of legal representative, unless the decision on deportation is exercised in a way to ensure that the minor is transferred to the legal representative, or the representative of the respective bodies of the country to which deportation takes place.

32. In the law of 13 June 2003 on granting foreigners protection in the territory of the Republic of Poland (Journal of Laws 2006 No. 234, it. 1695 as amended), Chapter 4 Section II art. 61-67 regulates the procedure of granting the refugee status to minors devoid of guardians, and the special duties of the bodies conducting the proceeding.

33. The body that accepts the application for refugee status submitted by a minor devoid of guardian promptly addresses the guardianship court with an application to appoint a custodian to represent the minor in the proceeding to grant the refugee status, and to place the minor in an institution of care for children and the young. Moreover, it brings the minor devoid of guardian to a professional foster emergency-family not related in blood with the child, or to a childcare institution. The costs of stay of the minor devoid of guardian are financed by the State budget, from the part at disposal of the minister competent in internal affairs, from the resources at disposal of the Head of the Office. The head of the Office for Foreigners, as possible, shall undertake activities to find the members of the family of the minor devoid of guardian.

Additionally, within the framework of his competence, instructs the minor devoid of guardian on the factual and legal circumstances that may affect the outcome of the proceeding to grant the refugee status, and on the possibility to demand that interrogation takes place in presence of an adult indicated by the minor. The questioning is held in a language understood by the minor devoid of guardian, in a manner adjusted to his age, maturity and mental development, with consideration of the circumstance that the minor may have limited knowledge on the actual situation in the country of origin. The minor devoid of guardian is questioned in the presence of a custodian, who is an adult indicated by the minor, and if the proceeding is not hampered as a result, by a psychologist or teacher, who develops an assessment of the minor's psychological and physical condition.

34. It should be stressed that the bodies conducting proceedings are obliged to contact the organs or organizations of the country of origin, whose statutory duties cover issues of minors, in case when the deportation of a minor is pronounced.

35. Under article 97, clause 1 it. 1a of the law on granting foreigners protection in the territory of the Republic of Poland, a foreigner shall be granted consent to a tolerated stay in the territory of the Republic of Poland, if his deportation breaches the right to family life in terms of the Convention for the Protection of Human Rights and Fundamental Freedoms, drawn in Rome on 4 November 1950, or the rights of child set forth in the Convention on the Rights of the Child, adopted by the General Assembly of the United Nations on 20 November 1989 (Journal of Laws 1991 No. 120, it. 526 and of 2000 No. 2, it. 11), in a scope importantly threatening his psychological/physical development.

36. Furthermore, the status of victim of human trafficking entitles every foreigner (also the minor) to take advantage of the *Programme of assistance and protection for victim/witness of human trafficking*, under which apart from material, medical and psychological support, the victim is also ensured safe return to the country of origin. In 2006-2008, four foreign minors, including two minors devoid of guardians, took advantage of the assistance provided under the Programme.

**Question 9. Please indicate whether any specific measures have been taken to prevent particularly vulnerable children, such as street children, Roma children, unaccompanied asylum-seeking children and children residing in residential care institutions, from becoming victims of such offences.**

#### **Governmental programmes and strategies**

*Governmental programme to reduce delinquency and antisocial behaviour "Together safer".*

37. The programme was created by force of a resolution of the Council of Ministers of 18 December 2006, No. 218/2006. The executing of tasks implemented under the programme is coordinated by the Minister of Internal Affairs and Administration. The programme is planned to be completed in 2007-2015.

38. Every year, in the State budget as part of target financial reserves, the amount of PLN 3 million is allocated to implementing the programme "Together safer", to stimulate the activity of



local communities. This amount is transferred to voivodeship (provincial) budgets, to finance tasks executed by non-governmental organizations and self-government units.

39. The main thrust of the Programme is to reduce the number of events and those attitudes that provoke universal condemnation and sense of insecurity. The Programme combines the activities of Police, State administration and self-governments and social partners, interested in improving public safety and order. Among the crucial points of the Programme is convincing citizens to establish permanent, continuous, natural partnership with the Police and other institutions responsible for public safety and order.

40. The programme covers, inter alia, the following domains:

- Safety in public areas and place of residence.
- Violence in family.
- Safety in school.

41. In 2008, an all-Polish campaign called "I love. I don't batter" was carried out, meeting the guidelines of the governmental programme of reducing delinquency and antisocial behaviour "Together safer". Its idea came out of the Foundation National Competence Centre "KCK".

42. The campaign was carried out in September/October 2008. One of its primary purposes was to promote slogans associated with countering violence in the family and reducing its consequences, enhancing social engagement in preventing violence in the family by strengthening social awareness of all aspects of violence, improving citizens' knowledge of violence at home, and disseminating family values.

*Governmental Programme for Preventing Social Maladjustment and Delinquency among Children and the Young.*

43. One of the important elements of system actions designed to counter prostitution among children and teenagers, is – developed by the governmental Team at the Ministry of Internal Affairs and Administration and accepted by the Council of Ministers in 2003 – the *Programme of Preventing Social Maladjustment and Delinquency among Children and the Young*. The Ministry coordinates the implementation of the Programme by drawing up annual reports on its progress. The period for the execution of the Programme was extended to ten years, one of its elements is to set out procedures to be followed by teachers and methods of collaborating with the Police, in situations when children and teenagers are threatened by delinquency and demoralisation, in particular drug addiction, alcoholism and prostitution.

#### **Cooperation with non-governmental organisations (NGOs):**

44. In 2008, the Minister of Internal Affairs and Administration entrusted to non-governmental entities the execution of the public programme "Countering the radicalisation in behaviours of children and the young". The task consisted, inter alia, in carrying out actions and conducting campaigns to promote correct attitudes that respect the law and social standards and implementing initiatives to foster among the young effective mechanisms to counteract such negative phenomena as violence, alcoholism, drug addiction.

45. In 2008, the Ministry of Internal Affairs and Administration also announced a contest for performing in 2009 the public programme to enhance the feeling of safety among children and to prevent violence in family, titled "Managing helpline for children". The Programme consists of operating a nation-wide helpline for children, and conducting informative and promotional activities addressed to Polish society on the functioning of helpline for children. The Programme is designed to enhance the feeling of security among children, by offering them the option of resorting to the telephone helpline, and to counteract violence in family.

46. Regarding the initiatives aimed at protecting special types of minors, such as e.g. Roma children, in Poland thus far no cases have been recorded, in which children and teenagers of Roma origin would fall victim to trafficking of children, child pornography, or child prostitution. However, they are particularly exposed to negative phenomena generated by social exclusion that affect a large part of the Roma community in Poland. Due to the need to counteract this situation and to improve the difficult position of the Roma, the Council of Ministers by force of a resolution of 19 August 2003 has adopted the Programme *for the Roma society in Poland*. A large majority of solutions stated in the Programme, has been tested in the course of implementing the *Pilot governmental programme for the Roma society in Lesser Poland voivodeship for 2001 – 2003*, and is currently being continued in the all-Polish Programme. The process of implementing the Programme was launched on 1 January 2004, it is planned to be continued for ten years, with the option of prolongation.

47. Under the Programme, State administration, self-government units and non-governmental organizations perform a broad range of activities to improve living and social conditions, reduce unemployment, promote health, safety, culture, and support Roma identity, disseminate knowledge about the Roma community, and raise civic awareness among the Roma. As in the earlier Programme for Lesser Poland voivodeship, educational tasks are the priority. The biggest successes have been achieved in this field. The number of children attending schools has risen significantly (in some voivodeships all children covered by compulsory education, attend schools), the attendance of Roma students and their scores in learning have improved. These successes are the result, inter alia, of the work of assistants in Roma education and teachers supporting the education of the Roma, hired under the Programme, and complementary activities as well, mainly organized level equalizing, and additional classes. Educational activities include subsidizing summer camps and semi-camps, winter and scout camps, as well as tourist excursions and sports and leisure activities. The activities launched in the field of education are complemented by material assistance, which mainly consists of subsidizes that enable Roma children to systematically attend nursery schools and reception "0" grade classes. This domain also includes other initiatives such as providing especially needy pupils with manuals, school aids, didactic aids, and co-financing transportation to and from school, as well as covering students' accident insurance.

48. Overall, until 2009 (inclusive) budgetary resources exceeding PLN 54 million have been allocated to finance operations under both Programmes (more than €13 million), enabling to implement hundreds of initiatives mainly by self-government units and non-governmental organizations, Roma organizations included, whose share in financing the tasks of the Programme is approximately 20 per cent

49. According to the guidelines of the National Plan of Action against Human Trafficking for 2009-2010, providing for the creation of a Model of support and protection of the child-victim of human trafficking, efforts have been launched for:

- Developing a network of safe care centres, indicated as adequate in case of identifying a minor victim of human trafficking;
- Establishing a training panel about human trafficking, addressed to employees of care centres;
- Developing an analysis of the phenomenon of child trading in Poland;
- Developing – for functionaries of law enforcement organs – of algorithm/guidelines of procedure in case when there is suspicion of committed offence of trading in children.

50. Moreover, within the framework of preventive measures, until 2010 an all-Polish information campaign is being carried out, addressed to students of upper secondary schools. As part of the campaign, information materials have been issued to be later provided to the young, at educational meetings specially organized for this purpose.

**Question 10. Please provide updated information on how progress in the implementation of the Programme of "Preventing and combating violence against children, youth and women and the protection of victims and risk groups - DAPHNE III for the years 2007-2013" has improved protection of the child from the sale of children, child prostitution and child pornography;**

51. Then role of the Ministry of Internal Affairs and Administration as national coordinator consists, inter alia, of disseminating as broadly as possible among entitled Polish entities, information on the possibility to apply for support from resources under the Programme, as well as actively participating in the work of the Committee Daphne III. The structure of the Ministry includes a domestic expert (member of the Committee Supporting the European Commission in implementing the Programme Daphne III).

52. In order to promote the Programme Daphne III in Poland, a website was created: [www.mswia.gov.pl/daphne](http://www.mswia.gov.pl/daphne) and e-mail address: [daphne@mswia.gov.pl](mailto:daphne@mswia.gov.pl). Also, attention should be drawn to the contact base for entities interested in the Programme Daphne III, available at the website of the Ministry of Internal Affairs and Administration.

53. Under the Programme Daphne III, the Commission awarded in 2008 an "action grant", for a project developed jointly with an entity from another EU member country, amounting to €76,224 to the Warsaw Police Command, for the project "To serve children: Co-operation between Police and non-governmental organizations to counter violence against children". Implementation of the project will enable to develop police functionaries' awareness of the symptoms of injured child, on basis of the experience of partners. It will pave the way to developing educational materials, to be used in the process of police training.

54. Moreover, the Foundation Centre of Women's Rights, has received under the Programme Daphne III an *operational grant*" (to the activity of a non-governmental organization in a given year) of €100,000, for its operations in 2009.

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