



**Convention against Torture  
and Other Cruel, Inhuman  
or Degrading Treatment  
or Punishment**

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COMMITTEE AGAINST TORTURE

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES  
UNDER ARTICLE 19 OF THE CONVENTION**

**Fourth periodic reports of States parties due in 2002**

**Addendum\* \*\***

**POLAND**

[21 December 2004]

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\* For the initial report of Poland, see CAT/C/9/Add.13; for its consideration, see CAT/C/SR.160, 161 and 161/Add.1 and Official Records of the General Assembly, Forty-ninth Session, Supplement No. 49 (A/49/44), paras. 66-73.

For the second periodic report, see CAT/C/25/Add.9; for its consideration, see CAT/C/SR.276, 277 and 279 and Official Records of the General Assembly, Fifty-second Session, Supplement No. 52 (A/52/44), paras. 95-110.

For the third periodic report, see CAT/C/44/Add.5; for its consideration, see CAT/C/SR.412, 415 and 419 and Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 55 (A/55/44), paras. 82-95.

The annexes to this report are available at the Secretariat.

\*\* This report has not been edited being submitted for translation.

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## Introduction

1. The previous - third - periodic report of the Republic of Poland (CAT/C/44/Add.5) on the implementation of the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention) covered the period from August 1994 until July 1998 and was supplemented during the presentation of the report before the Committee with information related to the period until May 2000 (see CAT/C/SR.412, 415 and 419).
2. The present - fourth - report, which the Government of the Republic of Poland submits pursuant to article 19, paragraph 1, of the Convention, covers the period from 1 August 1998 until 30 September 2004, with special emphasis on the period from May 2000.
3. In order to obtain a full picture of the changes that have transpired in Poland since the time of the presentation of the third report, it is recommended to read also the core document (HRI/CORE/1/Add.25/Rev.2) as well as the fifth periodic report of the Republic of Poland on the implementation of the provisions of the International Covenant of Civil and Political Rights (CCPR/C/POL/2004/5), which covers the period until the end of December 2003.
4. The Convention (Journal of Laws of 1989 No. 63, items 378, 379) entered into force with respect to Poland on 25 August 1989 (ratification - 9 June 1989, date of the submission of the ratification documentation to the United Nations - 26 July 1989). Pursuant to the Resolution of the Council of Ministers of 30 March 1993, Poland, by means of submitting a declaration according to article 22, paragraph 1, of the Convention, recognized the competence of the Committee against Torture to consider individual communications. This declaration has been binding for the Republic of Poland as of 12 May 1993 (Government Statement of 16 July 2001 on the binding force of the Declaration on the recognition of the competence of the Committee against Torture to receive and consider information and communications submitted pursuant to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, drawn up in New York on 10 December 1984 - Journal of Laws of 2001 No. 143, item 1605). Until now no complaints have been communicated to Poland.
5. On 5 April 2004 Poland signed the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted by the United Nations General Assembly on 18 December 2002.<sup>1</sup> Because of the fact that the “national preventive mechanism” provided for in the Protocol (cf. art. 18, para. 1) must fulfil the criterion of independence, which criterion would not be met by an organ functioning within the framework of public administration, the possibility of entrusting this function to an already existing institution, i.e. the Ombudsman, is being considered. The national preventive mechanism will be launched within one year of the Protocol’s entry into force with respect to Poland.

## I. IMPLEMENTATION OF ARTICLES 1-16 OF THE CONVENTION

### Article 1 - Definition of torture

6. The Constitution of the Republic of Poland of 2 April 1997, which entered into force on 17 October 1997, regulates in a comprehensive manner the question of the sources of law and clearly specifies the status of international law - including the Convention - within the framework of the legal system. Pursuant to article 87, paragraph 1, the sources of universally binding law of the Republic of Poland comprise, inter alia, ratified international treaties. Under article 91, paragraph 1, a ratified international treaty upon its publication in the Journal of Laws of the Republic of Poland becomes a part of the domestic legal order and is applied directly, unless its application is dependent on the enactment of a law. Within the constitutional legal order, international treaties are placed under the Constitution, with which they should comply, while their hierarchy with regard to other acts depends on their mode of ratification. International treaties ratified by the President upon a prior consent of the Parliament (the Sejm and the Senate) expressed by a law have precedence over a law, provided this law cannot be reconciled with the provisions of the treaty. Pursuant to article 241 of the Constitution, international treaties ratified by the Republic of Poland pursuant to the constitutional provisions in force at the time of their ratification and published in the Journal of Laws are considered as treaties ratified upon a prior consent expressed by a law and are subject to the provisions of article 91 of the Constitution if it follows from the content of the international treaties that they concern, inter alia, civil freedoms, rights or obligations. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is such an international treaty, which means that it may be applied directly and that it has precedence over laws. By the same token the definition of torture contained in the Convention is a part of universally binding Polish law.

7. Poland is also bound by other agreements of the same rank pertaining to the issues relevant to the Convention:

(a) Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, drawn up in Strasbourg on 26 November 1987 (Journal of Laws of 1995 No. 46, item 238 as amended); date of ratification by Poland - 7 September 1994, date of entry into force with respect to Poland - 1 February 1995;

(b) Protocol No. 1 to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, drawn up in Strasbourg on 4 November 1994, date of ratification by Poland - 6 February 1995, date of entry into force with respect to Poland - 1 March 2002;

(c) Protocol No. 2 to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, drawn up in Strasbourg on 4 November 1994, date of ratification by Poland - 6 February 1995, date of entry into force with respect to Poland - 1 March 2002;

as well as treaties related to the protection of human rights which contain provisions for the prohibition of torture (International Covenant on Civil and Political Rights, Journal of Laws of 1977 No. 38, item 167; Convention for the Protection of Human Rights and Fundamental

Freedoms, Journal of Laws of 1993 No. 61, item 284 as amended) and Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms on the abolition of the death penalty (Journal of Laws of 2001 No. 23, item 266).

8. Work is currently under way on the implementation into the Penal Code and the Code of Criminal Procedure of the Rome Statute of the International Criminal Court, which entered into force with respect to Poland on 1 July 2002 (Journal of Laws of 2003 No. 78, items 708 and 709), where the crime of torture is considered as one of the manifestations of crimes against humanity and war crimes.

### **Article 2 - All measures to prevent acts of torture**

9. The Constitution (especially chapter II - "The Freedoms, Rights and Obligations of Persons and Citizens") guarantees the rights stipulated in the Convention and provides efficient mechanisms of their protection. Pursuant to article 30 of the Constitution, the inherent and inalienable dignity of the person shall constitute a source of freedoms and rights of persons and citizens and as such it is inviolable and the respect and protection thereof is the obligation of public authorities. Article 40 of the Constitution provides that no one may be subjected to torture or cruel, inhuman, or degrading treatment or punishment. Moreover, the Constitution prohibits the application of corporal punishment. In addition, it prohibits subjecting persons to scientific experimentation, including medical experimentation, without their voluntary consent (art. 39) and assures the right to be treated in a humane manner to persons deprived of liberty (art. 41, para. 4). These rights and freedoms, pursuant to article 233 of the Constitution, must not be limited in any circumstances. The Constitution additionally guarantees everyone the right to compensation for any violation of human rights done to him (art. 77, para. 1), provides that there is no statute of limitation regarding war crimes and crimes against humanity (art. 43), and assures 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 until such reasons cease to exist (art. 44).

10. Norms protecting against acts of torture and cruel, or inhuman treatment or punishment are moreover contained in the provisions of the Penal Code (these provisions are discussed in detail in article 4 of this report), of the Code of Criminal Procedure, of the Executive Penal Code, and of other laws.

11. Pursuant to article 3 of the Penal Code, penalties and other measures provided for in this Code shall be applied with a view to humanitarian principles, particularly with the respect for human dignity. An analogous provision is inscribed in article 4, section 1, of the Executive Penal Code (Journal of Laws of 1997 No. 90, item 557) which provides that "penalties [and] penal, deterrent and preventive measures are executed in a humane way, respecting the human dignity of the convicted person" and that "it is prohibited to use torture or inhuman or degrading treatment or punishment of the convicted person". This provision contains a command addressed to organs executing court orders to abide by the principles of humane treatment and respect for the human dignity of each convicted person during the execution of all penalties and penal, deterrent and preventive measures. This applies also to disciplinary penalties.

12. In connection with the requirements of article 31, paragraph 3, of the Constitution of the Republic of Poland, pursuant to the Law of 29 June 2000 on the amendment of the Law - the Executive Penal Code (Journal of Laws of 2000 No. 60, item 701), an amendment to article 4, section 2, of the Executive Penal Code was introduced on 1 September 2003; it currently stipulates that the restriction of civil rights and freedoms of a convicted person may arise only from a law and from a legally binding judgement issued on the basis of the law. The amendments imply also that the hitherto binding provisions of the by-laws for the execution of preliminary detention and the by-laws for the execution of the penalty of the deprivation of liberty (which had the status of a Resolution of the Minister of Justice), in the scope standardizing the relevant problem issues and referring to the rights and duties of persons deprived of liberty, are shifted to regulations contained in codes pursuant to the Law of 24 July 2003 on the amendment of the Law - The Executive Penal Code and some other laws (Journal of Laws of 2003 No. 142, item 1380).

13. Relevant provisions preventing the use of torture or other cruel, inhuman, or degrading treatment or punishment are also contained in acts regulating the principles of operation of the Police, the Border Guard, the State Protection Office, the Agency of Internal Security, the Intelligence Agency, the Prison Service, and the Communal Guard. Officers of those services carry out their duties only within the limits defined by the law. Questions pertaining to the use by officers of those services of a force, coercive measures or firearms are in particular regulated in numerous detailed provisions.

### **Respect for human dignity and observance of human rights**

14. Article 14, paragraph 3, of the Law of 6 April 1990 on the Police (Journal of Laws of 2002 No. 7, item 58 as amended) stipulates that "In the course of the execution of their duties, Police officers are obliged to respect human dignity and respect and protect human rights."

15. Article 9, paragraph 5, of the Law of 12 October 1990 on Border Guard (Journal of Laws of 2002 No. 171, item 1399 as amended) stipulates that "In the course of the execution of their duties, Border Guard officers are obliged to respect human dignity as well as to respect the rights and freedoms of man and citizen." In recent years, the Border Guard has not recorded cases of its officers using torture, inhuman or degrading treatment of persons. In 2003, 15 complaints were filed with the courts pertaining to the detention by the Border Guard, but they were rejected by the courts as groundless. The complaints, however, concerned the validity of the detention rather than the manner of its execution.

16. Article 12, paragraph 2, of the Law of 16 March 2001 on the State Protection Office (Journal of Laws of 2001 No. 27, item 298 as amended) stipulates that "In the course of the execution of his duties, the officer is obliged to respect human dignity and respect and protect human rights."

17. The Law on the Agency of Internal Security and the Intelligence Agency (Journal of Laws of 2002 No. 74, item 676), article 23, paragraph 5, stipulates that officers of the Agency of Internal Security and of the Intelligence Agency should carry out appropriate activities in a manner which to the least possible extent infringes on the personal goods of the person who is subject to these activities.

18. Article 1, paragraph 3, of the Law of 26 April 1996 on the Prison Service (Journal of Laws of 2002 No. 207, item 1761 as amended) provides that the fundamental duties of the Prison Service include the ensurance of the observance of the rights of persons subject to the penalty of the deprivation of liberty or temporarily detained, especially humane conditions, respect for their dignity, health care and religious needs. Article 4, section 1, of the Executive Penal Code prohibits the use of torture or inhuman or degrading treatment or punishment in the course of the execution of penalties, penal, deterrent and preventive measures.

19. Article 1, paragraph 2, of the Law of 29 August 1997 on Communal Guards (Journal of Laws of 1997 No. 123, item 779) provides that the Guard fulfils an auxiliary role towards the local community, fulfilling its duties with due respect to the dignity and rights of citizens.

### **Execution of orders**

20. Article 58, paragraph 2, of the Law of 6 April 1990 on the Police (Journal of Laws of 2002 No. 7, item 58 as amended) stipulates that a police officer is under an obligation to refuse the execution of an order or a command of a superior or a command of a prosecutor, organ of government administration or local self-government, if the execution of this order or the command would be linked with committing an offence; the police officer should report the refusal to execute an order or a command to the Commander in Chief of the Police and does not have to report to his immediate superiors (art. 58, para. 3). This provision is supplemented with the provision of article 141a of the Law on the Police, according to which “the provisions of article 115, [section 18] (definition of an order), and of articles 318 and 344 of the Penal Code apply, respectively, to officers of the Police”. Pursuant to article 318 of the Penal Code, “A soldier who commits a prohibited act which is an execution of an order does not commit an offence, unless by executing an order he consciously commits an offence.” Article 344, section 1, in turn, stipulates that “A soldier who refuses to execute an order which is a command to commit an offence or does not execute it, does not commit an offence specified in article 343 (i.e. non-execution or refusal to execute an order or an execution of an order in violation of its content).”<sup>2</sup> Pursuant to section 2, “In the event of executing an order specified in section 1 in violation of its content for the purpose of a significant reduction of the detrimental character of the act, the court may apply an extraordinary mitigation of the penalty or renounce its imposition.”

21. Analogous regulations can be found in reference to:

- The Border Guard - in article 63, paragraphs 2 and 3 (an officer should report the refusal to execute an order or a command to the Commander in Chief of the Border Guard) and article 143a of the Law of 12 October 1990 on the Border Guard (Journal of Laws of 2002 No. 171, item 1399 as amended);
- The State Protection Office - in article 53 of the Law of 16 March 2001 on the State Protection Office (Journal of Laws of 2001 No. 27, item 298 as amended);<sup>3</sup>

- The Agency of Internal Security and the Intelligence Agency - in article 79, paragraph 1 (an officer should report the refusal to execute an order or a command to the Head of the appropriate Agency) and article 153 of the Law of 24 May 2002 on the Agency of Internal Security and the Intelligence Agency<sup>4</sup> (Journal of Laws of 2002 No. 74, item 676);
- The Prison Service - in article 58 (an officer should report the refusal to execute an order or a command to a superior, the Director-General of the Prison Service or the Minister of Justice and does not have to report to his immediate superiors) and 58a of the Law of 26 April 1996 on the Prison Guard (Journal of Laws of 2002 No. 207, item 1761).

### **Use of firearms**

22. Article 17 of the Law on the Police permits the use of firearms exclusively in situations enumerated in this article (e.g. to ward off a direct and unlawful assault on the life, health or liberty of an officer of the Police or another person and to prevent actions leading directly to such an assault), when measures of direct coercion have proved insufficient or their use on account of the circumstances of a particular event is not possible. At the same time officers of the Police are under an obligation to use firearms in a manner which does the least possible harm to the person against whom they have been used.

23. According to the Resolution of the Council of Ministers of 21 May 1996 on the specific circumstances and manner of the use of firearms by officers of the Police (Journal of Laws of 1996 No. 63, item 296 as amended):

- Pursuant to section 1, paragraph 1, of the Resolution, police officers have the right to use firearms exclusively in situations strictly defined by the above law;
- When making a decision on the use of firearms, officers of the Police are under an obligation to act with special caution, treating firearms as an extraordinary and ultimate means of direct coercion;
- Before the use of firearms, officers of the Police are obliged to call a person to behave in a lawful manner and precede this summons with a call “Police”, and in the event the person does not abide by this summons to threaten the use of firearms by calling “Stand still - or I’ll shoot”, also preceded with a call “Police”. Should these summons prove ineffective, police officers are obliged to fire a warning shot in the air;
- Further provisions of the Resolution define detailed principles of the use of firearms against certain categories of persons, the obligation to file a report on the use of firearms, and the principles of basic monitoring whether the use of firearms has taken place in compliance with the binding regulations.



24. Article 24 of the Law on the Border Guard contains regulations analogous to the regulations pertaining to the Police, with the exception of a slightly different catalogue of situations when the use of firearms is admissible and with a reservation that the use of firearms not only should take place in a manner that does the least possible harm to the persons against whom firearms have been used, but also cannot be aimed to kill the person or threaten the life or health of other persons.
25. The Resolution of the Council of Ministers of 17 February 1998 on defining cases and circumstances of the use of direct coercion measures and the use of firearms by officers of the Border Guard and the circumstances and manner of the use of direct coercion measures and the use of firearms by back-up units of the Border Guard (Journal of Laws of 1998 No. 27, item 153) contains regulations analogous to the regulations pertaining to the Police.
26. Article 15 of the Law of 16 March 2001 on the State Protection Office contains regulations analogous to the ones pertaining to the Border Guard, with slight differences as to the catalogue of situations when the use of firearms is admissible and with a reservation that the use of firearms not only should take place in a manner that does the least possible harm to the persons against whom firearms have been used, but also cannot be aimed to kill the person or threaten the life or health of other persons.
27. Resolution of the Council of Ministers of 22 January 2002 on the specific circumstances and manner of the use of firearms by officers of the State Protection Office (Journal of Laws of 2002 No. 12, item 111) contains regulations analogous to the regulations pertaining to officers of the Police.
28. Article 26 of the Law of 24 May 2002 on the Agency of Internal Security and the Intelligence Agency, Resolution of the Council of Ministers of 25 March 2003 on the circumstances and manner of the use of firearms by officers of the Agency of Internal Security (Journal of Laws of 2003 No. 70, item 639) and the Resolution of the Council of Ministers of 8 October 2003 on the circumstances and manner of the use of firearms by officers of the Intelligence Agency (Journal of Laws of 2003 No. 179, item 1751) contains regulations analogous to the regulations pertaining to the State Protection Office, with the exception of a slightly different catalogue of situations when the use of firearms is admissible; this catalogue is markedly limited with respect to the Intelligence Agency.
29. Articles 20 and 21 of the Law of 26 April 1996 on the Prison Service and the Resolution of the Council of Ministers of 20 November 1996 on specific circumstances and manner of the use of direct coercion measures and firearms or a service-trained dog by officers of the Prison Service and the way of relevant conduct (Journal of Laws of 1996 No. 136, item 637) regulate the principles of the use of firearms or a service-trained dog. It should be adequate to the degree of jeopardy, should take place after a prior warning of their use (does not apply if a delay poses a direct threat to the life of the officer or another person and in situations defined in the law) and in a manner that does the least possible harm to the person against whom firearms have been used, and cannot in any way be aimed to kill the person or threaten the life or health of other persons.

30. Article 18 of the Law on Guards contains regulations analogous to the regulations pertaining to the Police, but the catalogue of situations when the use of firearms is admissible is markedly restrained, and the use of firearms should constitute the ultimate course of action. However, admission of an officer of a guard to the execution of tasks with combat firearms and an electric paralyzer is not automatic and takes place only after a motion of the commander of the guard, by means of an administrative decision issued by the relevant organ of the Police (art. 16).

31. Detailed regulations contained in the Regulation of the Council of Ministers of 10 July 1998 on specific circumstances and way of conduct during the use of handguns by officers of the Communal Guard (Journal of Laws of 1998 No. 90, item 571) are analogous to the provisions regulating the work of the Police.

### **Circumstances and manner of the use of direct coercion measures**

32. Article 16 of the Law on the Police and the Resolution of the Council of Ministers of 17 September 1990 on defining cases and circumstances and manner of use of direct coercion measures by officers of the Police (Journal of Laws of 1990 No. 70, item 410 as amended) regulate the principles of the use of direct coercion measures in the event of non-compliance with lawful commands of organs of the Police or its officers:

(a) Pursuant to section 2, paragraphs 1 and 2, of the Resolution, a police officer should use direct coercion measures in a manner which would assure that the compliance with lawful commands might cause the least possible inconvenience, and the use of direct coercion measures should be abstained from if the person with respect to whom these measures have been used has complied with the commands;

(b) Further provisions of the Regulation define in a detailed manner the principles of the use of individual direct coercion measures, e.g. section 13 stipulates that a police baton may be used in the event of warding off a direct assault, overcoming active resistance or with a view to preventing damage to property. It cannot be used with respect to persons using passive resistance, unless the use of physical force has proved ineffectual. It is also forbidden to strike and shove with a police baton in the head, neck, abdomen as well as unmuscled and especially sensitive parts of the body, as well as to use with respect to these parts body and hand blocks; to execute blows with the grip of the multi-purpose service baton and the use of the service baton with respect to persons who have been put in handcuffs, leg irons, straight-jackets or restraining belts and nets. Of exceptional character are situations when there is a need to ward off a direct unlawful assault on the officer's own life or health or those of another person. In such situations it is admissible to execute blows and shoves with a service baton in all parts of the body.

33. Taking into consideration the doubts contained in addresses of the Ombudsman to the Ministry of Internal Affairs and Administration concerning the regulations of the circumstances and manner of use of non-penetrating bullets projected from smooth-bore firearms, legislative measures were taken. The Resolution of the Council of Ministers of 7 March 2000 amended the Resolution on the definition of cases and the circumstances and manner of use of direct coercion measures by officers of the Police, which after section 15 added a new section 15a as follows:

- “1. Non-penetrating bullets may be exclusively rubber bullets projected from smooth-bore firearms or alarm and signal arms.
- “2. Non-penetrating bullets may be used, with the reservation of paragraph 3, in cases of:
  - “(1) Warding off a direct assault,
  - “(2) Warding off a violent assault on property,
  - “(3) Warding off a direct unlawful assault on human life or health or during a pursuit of the perpetrator of such an assault,
  - “(4) Mass violation of public order.
- “3. Non-penetrating bullets may be used within buildings in cases defined in para. 2 points 1-3.
- “4. Non-penetrating bullets are used:
  - “(1) Firing a warning shot (warning volley) in the air,
  - “(2) Aiming at the lower part of the body, up to the person’s waist.
- “5. In the event of action of close formations in situations of mass violations of public order, provisions of section 12 paragraphs 2 and 3 apply, respectively.”

34. Article 23 of the Law on the Border Guard and the Resolution of the Council of Ministers of 17 February 1998 on the definition of cases and the circumstances and manner of use of direct coercion measures by officers of the Border Guard and on circumstances and manner of use of direct coercion measures, as well as the principles of use of firearms by back-up units of the Border Guard (Journal of Laws of 1998 No. 27, item 153) contains regulations analogous to the regulations pertaining to the Police, i.e. direct coercion measures are used in a manner which would assure that the compliance with lawful commands might cause the least possible inconvenience. The Resolution defines precisely the circumstances warranting the use of direct coercion measures. With respect to women who are evidently pregnant, persons whose appearance indicates that they are less than 13 years of age, elderly persons, and persons with evident disabilities only incapacitating grapples are used. The use of blows is prohibited during the use of physical force, unless the officer acts in self-defence or in order to ward off an assault on human life or health.

35. The officer records the fact of the use of a direct coercion measure in the duty book and files a written report to his superior.

36. Article 14 of the Law on the State Protection Office and the Resolution of the Council of Ministers of 1 February 2002 on cases and the circumstances and manner of use of direct coercion measures by officers of the State Protection Office (Journal of Laws of 2002 No. 17, item 154) contain provisions analogous to the provisions regulating the work of the Police, but the kinds of direct coercion measures are limited.

37. Article 25 of the Law on the Agency of Internal Security and the Intelligence Agency and the Resolution of the Council of Ministers of 25 March 2003 on direct coercion measures used by officers of the Agency of Internal Security (Journal of Laws of 2003 No. 70, item 638) stipulate that in the event of non-compliance with lawful commands, officers of the Agency of Internal Security may use physical, technical and chemical direct coercion measures, used for the purpose of incapacitating or escorting persons or pulling up vehicles.

38. Article 19 of the Law on the Prison Service stipulates that during the exercise of their duties officers have the right to use direct coercion measures enumerated in the Law with respect to persons deprived of liberty. These measures may be used, if necessary, exclusively for the purpose of preventing: an attempted assault on the officer's own life or health or those of another person, instigation to a riot, blatant disobedience, serious violation of law and order, destruction of property or an escape of a person deprived of liberty. Strictly defined measures may be used also against persons other than those deprived of liberty in cases when these persons seriously violate order in the territory of the organizational units or in other cases precisely defined in the Law. Special restrictions in the use of direct coercion measures apply with respect to women, especially pregnant or breastfeeding. Only in justified circumstances during the escorting or coerced appearance of a person deprived of liberty may handcuffs, a restraining belt or leg irons be used for the purpose of preventing an escape of this person or symptoms of the person's active aggression. Pursuant to the Law, direct coercion measures cannot be used for a period longer than is warranted by the circumstances.

39. Specific principles of the use of direct coercion measures, including circumstances for the placement of a prisoner in a security cell, are regulated in the Resolution of the Council of Ministers of 20 November 1996 on specific circumstances of the use of direct coercion measures and on the use of firearms or a service-trained dog by officers of the Prison Service and a relevant mode of action (Journal of Laws of 1996 No. 136, item 637). The legal bases and conditions for the placement of a prisoner in a security cell are defined in article 143, section 1, point 8; article 143, section 2 and 3; article 144, section 1; article 145, section 3; article 222, section 2, point 5; article 222a, sections 1, 2 and 3 of the Executive Penal Code and in section 78 of the Resolution of the Minister of Justice of 31 October 2003 on the manners of protection of organizational units of the Prison Service.

#### **Use of direct coercion measures**

	1998	1999	2000	2001	2002	2003
Number of cases of direct coercion measures in units subordinated to provincial inspectorates of the Prison Service	1 869	1 977	2 195	2 559	2 414	2 009

#### **Placement in a security cell**

Year	1998	1999	2000	2001	2002	2003
Number of cases	1 721	2 758	4 027	4 415	3 915	3 442

40. Pursuant to article 14 of the Law on Communal Guards, an officer of the guard can use direct coercion measures with respect to persons who make it impossible for him to execute duties defined in the Law. At the same time, their use must be adequate to the circumstances and be indispensable for the achievement of the compliance with lawful commands, and additionally should be used in a manner that infringes the least on the personal goods of the person with respect to whom they have been used. Detailed relevant issues are regulated by the resolution of the Council of Ministers of 27 January 2004 on cases, manner and course of use of direct coercion measures by communal (municipal) guards (Journal of Laws of 2004 No. 18, item 169).

41. Pursuant to section 11 of the Regulation of the Minister of Health of 4 February 2004 on the manner of coerced appearance, accepting and releasing persons under the influence of alcohol and on the organization of sobering-up centres<sup>5</sup> and centres set up or indicated by a unit of local self-government (Journal of Laws of 2004 No. 20, item 192), the use or the discontinuance of use of a direct coercion measure is the decision of a physician or a paramedic upon a consultation with the head of the shift or another employee appointed by the director of a sobering-up centre. Immediately after the discontinuance of the use of a direct coercion measure, a physician or a paramedic inspects the health status of the person with respect to whom a direct coercion measure has been used.

42. The use of a direct coercion measure is recorded in the patient's card with the following information:

- (a) Reason for the application of the direct coercion measure;
- (b) Kind of measure used;
- (c) Duration of the use of the measure;
- (d) Description of a reaction of the person during the use of the direct coercion measure and after its discontinuance.

### **Inspection of IDs, detention, search of persons**

43. Resolution of the Council of Ministers of 17 September 1990 on the manner of ID inspection, detention of persons, search of persons, search of luggage and inspection of cargo by officers of the Police (Journal of Laws of 1990 No. 70, item 409 as amended):

- Pursuant to section 2 of the Resolution, prior to attending to their professional duties arising from the Resolution, police officers are obliged to provide: their rank, first name and given name, in the case of plainclothes policemen also their service ID, as well as the legal basis for and the cause of undertaking a given activity;
- Moreover, the Resolution defines the mode of conduct of officers of the Police during ID inspection, detention of persons, and search of persons, inspection of the contents of luggage and of cargo in ports and stations and in means of land, air, and water transportation.

44. The Resolution of the Council of Ministers of 18 April 2003 on the manner of execution and documentation of: ID inspection, detention of persons, search of persons, search of luggage and inspection of cargo by officers of the Agency of Internal Security (Journal of Laws of 2003 No. 91, item 856) contains regulations analogous to the regulations pertaining to the Police, and an officer of the Agency of Internal Security prior to attending to their professional duties is at all times under an obligation to present his service ID or an identification badge in a manner allowing the person with respect to whom particular activities are undertaken to read the number of the document and the name of the issuing organ, as well as offer the legal basis for and the cause of undertaking a given activity. An officer is also obliged, on demand, to allow the particular person to record these data.

45. An officer of the Agency of Internal Security may detain a person when he reasonably suspects that the detainee has committed an offence whose prosecution belongs to the tasks of the Agency of Internal Security and it is probable that the person may escape or hide or obliterate the evidence of the offence, or the person's identity cannot be established.

46. Pursuant to the provision of article 11, paragraph 1, of the Law on the Border Guard, officers of the Border Guard, when exercising their statutory duties, have the right to:

- Conduct searches of persons, inspect the contents of luggage and of cargo in ports and stations and in means of land, air, and water transportation with a view of excluding the possibility of committing offences or misdemeanours, especially directed against the inviolability of the State border or the security of international transportation;
- Inspect IDs or establish in a different manner the identity of a person;
- Detain persons in the manner and cases defined in the provisions of the Code of Criminal Procedure and other laws (e.g. pursuant to article 101 of the Law of 13 June 2003 on Aliens and to article 40 of the Law of 13 June 2003 on Granting Protection to Aliens in the Territory of the Republic of Poland) and bring them to the relevant organ of the Border Guard.

47. During the inspection of an ID and the detention of persons pursuant to the provision of article 11, paragraph 2, of the Law on the Border Guard, officers of the Border Guard share respectively the rights and obligations of officers of the Police. Pursuant to the provision of article 11, paragraph 3, of the Law on the Border Guard, the detainee should immediately - in the event of a justified need - undergo a medical examination or be administered first aid.

48. The mode of coerced appearance of detainees by officers of the Border Guard is defined in Resolution of 25 March 2002 (Journal of Laws of 2002 No. 37, item 351).

49. The mode of conducting medical examinations for persons detained by officers of the Border Guard is defined in Resolution of 27 June 2002 (Journal of Laws of 2002 No. 98, item 893).

### **Use of direct coercion in mental hospitals**

50. Pursuant to article 18, paragraph 1, of the Law of 19 August 1994 on the Protection of Mental Health (Journal of Laws of 1994 No. 111, item 535 as amended), in the course of activities envisaged in the above Law, direct coercion with respect to persons with mental disturbances may be used only when these persons make an assault on their own life or health, the life or health of another person, general security, or in a violent manner destroy or damage objects in their immediate surroundings, or when a provision of the Law authorizes the use of direct coercion. Moreover, pursuant to article 34 direct coercion with respect to persons admitted to a mental hospital without their consent may be used also when it is necessary for the conduct of indispensable medicinal activities aiming at the removal of the causes of admission without the person's consent as envisaged by the Law. Direct coercion may likewise be used in order to prevent the person's unlawful departure from the mental hospital.

51. The use of direct coercion consists in holding down a person, coerced administration of medication, immobilization or isolation, which cannot last longer than four hours. In case of need, a physician, upon a personal examination of the patient, may prolong the immobilization for further six-hour periods. The prolongation of immobilization or isolation for periods in excess of 24 hours is admissible only in hospital conditions. Prior to the use of direct coercion, the person with respect to whom it is to be used is appropriately warned. The least inconvenient measure possible should be chosen and during the use of direct coercion special care and consideration for the person's good should be exercised.

52. The decision to use direct coercion rests with a physician, who defines the kind of direct coercion measure and personally supervises its execution. In psychiatric hospitals and in social welfare homes, when it is impossible to obtain an immediate decision of a physician, the use of direct coercion is decided on by a nurse, who is under an obligation to notify a physician without delay. Every single case of the use of direct coercion is entered into medical documentation (article 18, paragraph 2, of the Law on the Protection of Mental Health).

53. After ordering direct coercion, a physician fills out a card of the use of such measures, providing the reasons for the use of direct coercion, its kind and the duration of immobilization or isolation; the card is supplemented to the patient's medical documentation (section 11.1 of the Resolution of the Minister of Health and Social Welfare of 23 August 1995 on the manner of use of direct coercion (Journal of Laws of 1995 No. 103, item 514)). An order to use or prolong the use of direct coercion is recorded by a physician also in the person's medical documentation, with a description of the reasons and circumstances of the use of direct coercion, its kind and duration (section 12, paragraph 1, of the Resolution). If the order to use direct coercion in the form of immobilization or isolation was made by a nurse, she/he records the reasons for its use in the patient's card, about which she/he notifies a physician, which also should be recorded as an appropriate entry in the card. The nurse is furthermore obliged to record information on the use of direct coercion in a nurse's report.

54. Moreover, pursuant to article 18, paragraph 6, on the Protection of Mental Health and pursuant to section 12.2 of the Resolution, a physician from the health-care centre that has

used direct coercion notifies the head of the centre by means of a special form, and another physician - a physician-specialist in psychiatry authorized by the voivode, who within three days evaluates the validity of the use of direct coercion.

55. Pursuant to section 17 of the above Resolution, direct coercion in a psychiatric hospital, in a social welfare home or for the purpose of bringing a person directed to a psychiatric hospital may be used exclusively by specially trained paramedics or in their presence. The training of employees in the use of direct coercion measures is organized by the head of a hospital, a social welfare home or an emergency health-care unit (emergency service).

56. Detailed regulations on the manner of use of direct coercion and a specimen of a card and notifications are defined in the Resolution of the Minister of Health and Social Welfare of 23 August 1995 (Journal of Laws of 1995 No. 103, item 514).

57. In connection with irregularities in decisions related to admission to a psychiatric hospital without a person's consent (e.g. issuing opinions and certificates without a personal examination; lack or an insufficient justification of a direct threat), the National Consultant for Psychiatry compiled "Recommendations on the preparation of opinions and certificates issued by experts and authorized physicians for the purpose of judicial decisions in cases concerning admissions of a mentally sick person to a psychiatric hospital or a discharge of such a person from this hospital."

58. The irregularities in the implementation of the Law on the Protection of Mental Health, mainly regarding non-compliance with the provisions about the consent to treat persons admitted to psychiatric hospitals with their consent, direct coercion and decisions related to psychiatric cases, became an important basis for a draft amendment to the above Law, envisaging, inter alia, the appointment of the ombudsmen for mental patients, who will be delegated to hospitals and will on site clarify oral complaints of patients.

59. See also information related to article 11.

### **Extraordinary measures**

60. All infringements of human rights guaranteed by the Constitution (including the prohibition of torture) constitute an infringement of the Constitution and are treated as an offence. Interference in the sphere of rights and freedoms on the part of the legislative or executive authority may occur only in cases enumerated by the Constitution and only when necessary for the protection of security or public order, the natural environment, health or public morals, or possibly also the freedoms and rights of other persons (art. 31).

61. Chapter XI of the Constitution indicates which of the civil rights and freedoms may be subject to derogation or limitation in situations of extreme danger. Extraordinary measures may be introduced by a law or by regulation, which shall be publicized, in situations of particular danger, if ordinary constitutional measures are inadequate. Actions undertaken as a result of the introduction of any extraordinary measure shall be proportionate to the exigency of threat and shall be intended to achieve the swiftest restoration of conditions allowing for the normal functioning of the State.



62. The Constitution provides for three kinds of extraordinary measures: martial law, a state of emergency and a state of natural disaster (a detailed review is provided in the fifth periodic report of the Republic of Poland on the implementation of the provisions of the International Covenant on Civil and Political Rights (CCPR/C/POL/2004/5)). Issues pertaining to individual extraordinary measures are regulated in detail in separate laws passed in 2002:

- The Law of 18 April 2002 on a State of Natural Disaster (Journal of Laws of 2002 No. 62, item 558);
- The Law of 21 June 2002 on a State of Emergency (Journal of Laws of 2002 No. 113, item 985);
- The Law of 29 August 2002 on Martial Law and Competencies of the Commander in Chief of the Armed Forces and the Principles of His Subordination to Constitutional Organs of the Republic of Poland (Journal of Laws of 2002 No. 156, item 1301).

63. The catalogue of rights and freedoms that are not subject to limitation during the period of introduction of the state of public emergency is defined in article 233 of the Constitution. The scope of limitation of the freedoms and rights of persons and citizens in times of martial law and a state of emergency shall not concern the freedoms and rights envisaged in article 30 (dignity of the person), articles 34 and 36 (citizenship), article 38 (protection of life), article 39 (prohibition of scientific experiments without consent), article 40 (prohibition of torture) and article 41, paragraph 4 (humane treatment), article 42, paragraph 4 (humane treatment), article 42 (ascription of penal liability), article 45 (access to a court), article 47 (personal rights), article 53 (conscience and religion), article 63 (lodging petitions), as well as articles 48 and 72 (family and child). Furthermore, it shall be prohibited to limit the freedoms and rights of persons and citizens solely on grounds of race, gender, language, religion or lack of it, social origin, ancestry or property.

64. In addition, in order to minimize the scope of interference in human freedoms and rights, article 233, paragraph 3, of the Constitution enumerates the rights and freedoms that arise from the Constitution and that may be limited by means of a law during a state of natural disaster. They are as follows: article 22 (freedom of economic activity), article 41, paragraphs 1, 3 and 5 (personal freedom), article 50 (inviolability of the home), article 52, paragraph 1 (freedom of movement and stay in the territory of the Republic of Poland), article 59, paragraph 3 (the right to strike), article 64 (the right of ownership), article 65, paragraph 1 (freedom to work), article 66, paragraph 1 (the right to safe and hygienic conditions of work), as well as article 66, paragraph 2 (the right to rest).

65. A separate Law of 22 November 2002 on the Recompense of the Material Loss resulting from the limitation of the freedoms and rights of persons and citizens during a period requiring the introduction of extraordinary measures (Journal of Laws of 2002 No. 233, item 1955) stipulates also that each person who has incurred a material loss resulting from a limitation of the freedoms and rights of persons and citizens during a period requiring the introduction of extraordinary measures may claim compensation from the State Treasury, which will comprise a recompense of the material loss, without profit, which the injured person may have gained had no loss occurred.

66. Poland is also a State party to a number of treaties in the field of humanitarian law, including the Geneva Conventions of 1949 and the Optional Protocols of 1977, which also envisage the prohibition of torture. It is worthwhile mentioning that as of 20 May 2004, pursuant to Regulation No. 51 of the President of the Council of Ministers, a Commission for International Humanitarian Law was set up (*Monitor Polski* of 2004 No. 23, item 402), whose duties include submitting to the President of the Council of Ministers periodic opinions on legislative, organizational and educational actions that should be taken with a view to assuring the implementation of the obligations of the Republic of Poland in the field of international humanitarian law; putting forward suggestions on the preparation of legal acts with a view to introducing into Polish legislation the norms of international humanitarian law; preparing draft training programmes on issues related to international humanitarian law as well as providing opinions as to the position of the Republic of Poland at international conferences and on the manner of implementation of the obligations arising from those conferences.

67. In the period under consideration, no changes took place in the Polish educational system in the area of legal solutions and practice relating to corporal punishment: it is inadmissible, and the possibility of its use is not envisaged in any document. See also information in article 24 in the fifth periodic report of the Republic of Poland on the implementation of the provisions of the International Covenant on Civil and Political Rights, paragraphs 381-382.

### **Articles 3 and 8 - Extradition**

#### **Extradition**

68. Article 55 of the Constitution of the Republic of Poland stipulates that the decision concerning the admissibility of extradition is taken by a court and prohibits an extradition of a Polish citizen and a person suspected of the commission of a crime for political reasons but without the use of force. These questions are regulated in detail by the Code of Criminal Procedure and international bilateral and multilateral agreements.

69. Within the Code of Criminal Procedure the problems of extradition are regulated in chapter 65, "Requests of foreign States for the extradition or transit of prosecuted or convicted persons or for handing over of property". It must be indicated here that it is the Minister of Justice and not the Prosecutor General who is at present a competent authority as to an extradition or a refusal of an extradition.<sup>6</sup>

70. The remaining issues related to the course of the proceedings did not undergo significant changes. Proceedings are commenced at the moment when an authority of a foreign State requests an extradition of a prosecuted person for the purpose of proceeding the person for an offence or for the carrying out of a sentence or detention order. After hearing the person and securing the evidence which can be found in the country, a prosecutor initiates proceedings in a provincial court competent *rationae loci*, which makes a decision about the request of a foreign State for extradition. The decision of the court can be appealed against. If the court made a decision about the inadmissibility of extradition, extradition cannot take place. When the decision becomes legally valid, the court forwards the decision along with the case documentation to the Minister of Justice, who, after making the final decision on the request, informs about it a relevant authority of a foreign State.

71. Pursuant to the Law of 10 January 2003 on the amendment of the Law - Code of Criminal Procedure, the Law - Regulations introducing the Code of Criminal Procedure, the Law on the Star Witness and the Law on the Protection of Classified Information (article 1, point 230; Journal of Laws of 2003 No. 17, item 155), amendments were introduced into the Code of Criminal Procedure due to which article 604, paragraph 1, was extended by the addition of points 6 and 7, according to which extradition is inadmissible in the event of a justified fear that in the State requesting extradition the person may be sentenced to the death penalty or such a penalty may be executed, or that the extradited person may be subjected to torture.

72. As of 1 May 2004 provisions of the Law of 18 March 2004 on the amendment of the Law - The Penal Code, the Law - Code of Criminal Procedure and the Law - Code of Misdemeanours entered into force (Journal of Laws of 2004 No. 69, item 626) changed the title of chapter 65 of the Code of Criminal Procedure to "Extradition and transport of prosecuted or convicted persons or handing over of property on the motion of foreign States" and introduced into article 602 a new paragraph 1, which stipulates that "with the reservation of the provisions of chapter 65b, extradition is a surrender of a prosecuted or convicted person, at the request of a foreign State, for the purposes defined in [section] 2". (Section 2 stipulates that "in the event of an authority of a foreign State requesting an extradition of a prosecuted person for the purpose of proceeding against the person for an offence or for the carrying out of a sentence or detention order, a prosecutor hears this person and, when necessary, secures the evidence which can be found in the country, after which he initiates proceedings in a provincial court competent *rationae loci*.")

73. The amendments also introduce into the Polish legal system the institution of the European arrest warrant (chapter 65a "Request to a member State for an extradition of a person prosecuted under the European arrest warrant" and chapter 65b "Request of a member State for an extradition of a person prosecuted under the European arrest warrant"). This institution will be discussed in greater detail below.

74. Statistical data on extraditions conducted by Poland in the period covered by the report are given in the following table:

Year	No. of motions considered in extradition cases	No. of decisions on refusals of extraditions
1998	30	5
1999	43	3
2000	52	5
2001	42	3
2002	63	5
2003	56	2

75. With reference to 10 proceedings, decisions on a refusal of an extradition were made after the courts competent to decide on the legal validity of extradition assumed that a formulation of a positive opinion would violate article 3 of the European Convention on the Protection of Human Rights and Fundamental Freedoms, while in two cases a refusal of an extradition resulted from granting the prosecuted persons refugee status and asylum. The remaining cases of refusal were motivated as follows: recognition of the fact that the person whose surrender was requested was a Polish citizen (3); recognition of the fact that the

extraditable offence could not be valid for an extradition (7), by reason of lapse of time from prosecution or punishment of the extraditable offence, the personal situation of the prosecuted person or the fact that the extraditable offence was committed in the territory of Poland.

76. In the years 1998-2004, Poland entered into the following bilateral agreements relating to extradition:

No.	Title of agreement	Date of signing/ ratification	Date of entry into force	Publication of agreement
1.	Agreement between the Republic of Poland and Australia on extradition	3 June 1998	2 December 1999	2000/5/51
2.	Agreement between the Republic of Poland and the Federal Republic of Germany on supplementing and facilitating the use of the European Convention on Extradition of 13 December 1957	17 July 2003	-	-
3.	Agreement between the Republic of Poland and the United States of America on extradition	10 July 1996	18 September 1999	1999/93/1066

77. Moreover, as of 13 September 1993, apart from other agreements on extradition concluded earlier, Poland has been a party also to the European Convention on Extradition of 1957, to the Optional Protocol to it of 1975, and to the Second Optional Protocol to it of 1978 (Journal of Laws of 1994 No. 70, item 307).

### **European arrest warrant**

78. The mechanism of the execution of the European arrest warrant consists in a mutual recognition of specific decisions of the judiciary of the European Union member States, and in particular in the surrender from the territory of the Republic of Poland of a person prosecuted under the European arrest warrant with a view to proceeding against the person, in the territory of another European Union member State, for a criminal offence or for the carrying out of a sentence or another measure consisting in deprivation of liberty.

79. In a situation when a judicial authority of one State applies for a surrender of a person for the purpose of either carrying out a penalty adjudged by this authority (surrender is admissible when the penalty of at least four months of deprivation of liberty was imposed) or proceeding against the person (surrender is admissible when the proceedings relate to an offence whose upper limit of custodial sentence is no less than one year), the decision of this authority should be enforced within a strict, short and precisely specified time frame, with the attendant limited possibilities for a refusal and a simplified form of application for the execution of such a decision.

80. In the event of obtaining the European arrest warrant, a prosecutor conducts a hearing of the person under the warrant and informs him/her about the contents of the European arrest warrant and about a possibility of expressing consent for the surrender or consent for abstaining from the principle of exceptionality (article 607 e, section 1, of the Code of Criminal Procedure),

upon which the prosecutor files a case with the provincial court competent *rationae loci*. The European arrest warrant may be linked with a motion on the use of preliminary detention or another protective measure.

81. If simultaneously with the issue of the European arrest warrant a European Union member State applies for the hearing of the prosecuted person, the person should be heard prior to the consideration of the warrant. The hearing takes place in the presence of the person indicated in the European arrest warrant. The European arrest warrant does not envisage the possibility of excluding the surrender of nationals of the requested State, which is a consequence of the principle of EU citizenship. Cooperation under the European arrest warrant does not contain a political stage of a decision, and the warrant itself is an autonomous decision of judicial authorities. This is, then, an exclusively legal procedure, taking place directly between judicial authorities.

82. The European arrest warrant does not result in a final “surrender” of a Polish citizen to another judicial system. In the event of an imposition of a sentence, the State to which the person was surrendered is under an obligation to “return” the Polish citizen to serve his/her penalty in Poland.

83. In regulations pertaining to the European arrest warrant, the following provisions of chapter 65b are of special interest:

- The court makes a decision related to the surrender within 60 days of the day of detaining the fugitive. If the fugitive has issued a statement about his/her consent to the surrender or consent to abstain from the principle of exceptionality, the time frame is 10 days starting from the day of the issue of the statement;
- The execution of the European arrest warrant may be refused, *inter alia*, if it concerns offences which under Polish law have been committed in their entirety or in part in the territory of the Republic of Poland, as well as on a Polish ship or aircraft, and if the prohibited act under the European arrest warrant is punishable in the issuing country with a lifetime deprivation of liberty or another measure consisting in deprivation of liberty without a possibility of applying for its shortening;
- The European arrest warrant issued for the execution of the penalty of deprivation of liberty or another measure consisting in deprivation of liberty with respect to the fugitive who is a Polish citizen or is granted the right to asylum in the Republic of Poland, if the person does not express their consent to the surrender, is unenforceable. The execution of the European arrest warrant may be refused if it was issued for the above purpose and when the territory of the Republic of Poland is the fugitive’s domicile or a place of permanent residence.

When refusing the surrender of a person for the aforementioned reasons, the court decides on the execution of a penalty or a measure ruled on by the judicial authority of the State issuing the European arrest warrant.

84. In the period from 1 May until 7 September 2004, Poland received 8 European arrest warrants (from Belgium, Spain, France, Hungary and Lithuania), of which 3 were executed. Poland issued 44 arrest warrants; 5 of the 9 warrants sent abroad for execution were carried out. The remaining warrants have been forwarded to Interpol, which conduct actions aiming at the detention of the persons indicated in the warrants.

### **Expulsion of an alien**

85. Extradition should be differentiated from the expulsion of an alien, which constitutes a unilateral administrative act and may occur not only because of the commission of an offence by an alien. This institution is regulated first of all by the provisions of chapter 8 of the Law of 13 June 2003 on Aliens (Journal of Laws of 2003 No. 128, item 1175), which took effect on 1 September 2003.

86. The Law of 13 June 2003 on Granting Protection to Aliens in the Territory of the Republic of Poland (Journal of Laws of 2003 No. 128, item 1176) introduced a new institution of tolerated stay. The above laws, with special emphasis on the new institution, were discussed in great detail in the fifth periodic report of the Republic of Poland on the implementation of the provisions of the International Covenant on Civil and Political Rights.

87. Pursuant to article 89 of the Law on Aliens, a decision on expulsion is not issued, and when issued it is not carried out, if there are reasons for granting permission for tolerated stay under article 97 of the Law of 13 June 2003 on Granting Protection to Aliens in the Territory of the Republic of Poland, inter alia:

- Expulsion of an alien would be possible only to a State where the person's right to life, liberty and personal security would be threatened, where he/she might be subjected to torture or inhuman or degrading treatment or punishment or might be forced to work or deprived of the right to a fair court trial or be penalized without a legal basis as defined in the Convention on the Protection of Human Rights and Fundamental Freedoms, done in Rome on 4 November 1950 (article 97, paragraph 1, of the Law on Granting Protection to Aliens in the Territory of the Republic of Poland);
- Expulsion of an alien would be possible only to a State where it is inadmissible on grounds of a judicial decision on the inadmissibility of an expulsion of an alien or on the basis of a final decision of the Minister of Justice on the refusal of the expulsion.

The above regulations arise also from Poland's fulfilment of the provisions of article 33 of the Geneva Convention relating to the Status of Refugees.

88. Applications for making a decision on granting tolerated stay are filed to the voivode by the authorities obliged to execute the decision on expulsion (Border Guard, Police), in cases when after the issue of a decision on the expulsion the aforementioned circumstances present themselves, or if the decision on the expulsion becomes unenforceable for reasons independent of the authority which is obliged to execute it.

89. Pursuant to article 104, paragraph 1, of the Law on Granting Protection to Aliens in the Territory of the Republic of Poland, permissions for tolerated stay are granted by:

(a) Voivode:

- Ex officio, in a decision on a refusal of expulsion, when in the course of proceedings for the expulsion of an alien he concludes that there occurs any of the circumstances specified in article 97, point 1 or 4;
- At the request of the authority obliged to carry out a decision on the expulsion in the case when the circumstances specified in article 97, point 1 or 4, present themselves after the issue of a decision on the expulsion or if the decision on the expulsion becomes unenforceable for reasons independent of the authority which is obliged to execute it;

(b) President of the Office for Repatriation and Aliens:

- Ex officio, in a decision on a refusal of granting refugee status, if there occurs any of the circumstances specified in article 97;
- At the request of an alien staying in the territory of the Republic of Poland as to whom a decision specified in article 97, point 3, was made;

(c) The Council, when as a result of considering an appeal against the decision on granting refugee status it concludes that there occurs any of the circumstances specified in article 97.

90. New legal regulations relating to aliens did not introduce any significant changes with respect to authorities issuing a decision on expulsion and appellate procedures as compared to the Law on Aliens of 1997 (currently this is defined in article 92.1. of the Law on Aliens of 13 June 2003).

91. The number of decisions on expulsion from the territory of the Republic of Poland and the number of persons these decisions concerned are as follows:

Year	Number of decision	Number of persons
1998	8 037	9 053
1999	8 531	9 120
2000	9 226	9 987
2001	7 657	8 497
2002	7 503	8 280
2003	7 868	8 410
Total	48 822	53 347

92. The discrepancy between the number of decisions on expulsion and the number of expelled persons arises from the fact that the decisions on the expulsion of an alien from the territory of the Republic of Poland concern sometimes both a legal guardian (e.g. a parent) and minor family members. Pursuant to the provision of article 94 of the Law of 13 June 2003 on Aliens, the decision on the expulsion of a minor alien to his/her country of origin or to another country is carried out only on condition the minor is guaranteed there the care of the parents, other adults or care institutions, in accordance with the standards defined in the Convention on the Rights of the Child, adopted by the United Nations General Assembly on 20 November 1989 (Journal of Laws of 1991 No. 120, item 526 and of 2000 No. 2, item 11). Moreover, pursuant to article 94, paragraph 2, of the Law on Aliens, a minor alien can be expelled only in the custody of a legal representative, unless the decision on expulsion is carried out in such a way that the minor is transferred to a legal representative or a representative of relevant authorities of the State to which the expulsion takes place.

93. From 1 September until 31 December 2003, applying article 89 of the Law of 13 June 2003 on Aliens, in 22 cases decisions on expulsion were not taken or not carried out on account of circumstances specified in article 97, points 1-4, of the Law on Granting Protection to Aliens in the Territory of the Republic of Poland. However, no data are available as to which of these cases related to the circumstances specified in paragraph 1 of the article quoted above.

94. From 1 September 2003 until 31 December 2003, 48 permits for tolerated stay were granted, including 17 on account of circumstances specified in article 97, point 1, of the Law of 13 June 2003 on Granting Protection to Aliens in the Territory of the Republic of Poland.

95. There are no statistical data as to the number of cases in which prior to 1 September 2003 a decision on expulsion was not taken or not carried out on account of its violation of the provisions of the Convention on the Protection of Human Rights and Fundamental Freedoms. At that time competent authorities were not under an obligation to record such information.

#### **Article 4 - Legal regulations for the penalization of acts of torture**

96. Article 40 of the Constitution of the Republic of Poland, as has already been mentioned, stipulates that "No one may be subjected to torture or cruel, inhuman or degrading treatment or punishment. The application of corporal punishment shall be prohibited."

97. Polish criminal law - in article 3 of the Penal Code and in article 4 of the Executive Penal Code - contains general guidelines on the imposition of penalties and penalty measures, based on the respect for the principles of humanitarianism, human dignity, and the prohibition of the use of torture or inhuman or degrading treatment.

98. Article 123, section 2, of the Penal Code envisages the penalty of deprivation of liberty for a term of no less than 5 years or the penalty of deprivation of liberty for a term of 25 years for a war crime consisting in subjecting to torture or cruel or inhuman treatment persons who surrendered, laid down their arms or lacked any means of defence; the wounded, sick, shipwrecked persons, medical personnel or clergy; prisoners of war; civilians in an occupied area, annexed or under warfare, or other persons who are protected by international law during warfare.



99. In turn, article 246 of the Penal Code provides a legal framework for the prosecution of acts constituting acts of torture which are not war crimes. The provision envisages the penal liability of a public official or anyone acting under his/her orders for the purpose of obtaining specific testimony, explanations, information or a statement, uses force, unlawful threat, or otherwise torments another person either physically or psychologically. This act is punishable by deprivation of liberty for a term of between 1 and 10 years.

100. Article 247, section 1, of the Penal Code envisages penal liability for tormenting a person deprived of liberty either physically or psychologically. This act is punishable by deprivation of liberty for a term of between 3 months and 5 years, while if the perpetrator acts with particular cruelty, he shall be subject to the penalty of deprivation of liberty for a term of between 1 and 10 years (sect. 2). Furthermore, a public official who, despite his/her duties, allows the act specified in section 1 or 2 to be committed, shall be subject to the penalty specified in these provisions (article 247, section 3, of the Penal Code).

101. The list of subjects covered by the term of a public official is enumerated in article 115, section 13, of the Penal Code. They are as follows:

- President of the Republic of Poland;
- Member of Parliament, senator, councillor;
- Member of the European Parliament;
- Judge, juror, prosecutor, notary public, court executive officer, court probation officer, a person adjudicating in cases of contravention or in disciplinary authority operating in pursuance of a law;
- A person who is an employee in the Government administration, other State authority or local government, except when he/she performs only service-type work, and also other persons to the extent to which they are authorized to render administrative decisions;
- A person who is an employee of a State auditing and inspection authority or of a local government auditing and inspection authority, except when he/she performs only service-type work;
- A person who occupies a managerial position in another State institution;
- An officer of an authority responsible for the protection of public security or an officer of the Prison Service;
- A person performing active military service.

102. Furthermore, provisions of the Penal Code (arts. 318 and 344) apply in lieu of previous criminal provisions relating to the liability of officers as defined in the Laws on the Police, on the Agency of Internal Security and Intelligence Agency, and on the Border Guard.

103. A detailed discussion of the regulations inscribed in chapter XLI of the military part of the Penal Code, Offences against the Rules of Behaviour to Subordinates, was provided in the presentation of the implementation of the recommendation of the Committee relating to the elimination of the so-called “wave” phenomenon in the army, in section II of this report.

104. The notion of “mental or physical torment” appears in the provisions of criminal law in an unchanged form, starting from the first comprehensive codification of criminal material law of an independent Polish State, i.e. the Penal Code of 1932. Torment is defined as any action marked by an intention to inflict physical or moral harm on a person who remains in a state of dependence on the perpetrator, or on a vulnerable person. Such action may be both active (e.g. delivering blows, beating) and passive (e.g. neglect, refusal to provide food).

105. Under the circumstances, it should be recognized that the notion of “mental or physical torment” corresponds fully to the notion of “torture” as defined in the relevant Convention.

106. It should be noted at this point that in principle any unlawful behaviour threatening the bodily integrity of a person, his/her freedom, honour, or conscience, even if perpetrated for reasons other than the desire to inflict pain or psychological torment, is typified as an offence, as already mentioned in the previous report.

107. The Penal Code contains a number of detailed norms that prevent particular cases of cruel or inhuman treatment. Special emphasis should be laid on the following:

- Article 148, section 2, of the Penal Code, envisaging the penalty of deprivation of liberty for a minimum term of 12 years, the penalty of deprivation of liberty for 25 years or the penalty of deprivation of liberty for life for the perpetrator of a killing of a human being, inter alia with particular cruelty;
- Article 189, section 2, of the Penal Code, envisaging the penalty of deprivation of liberty for a term of between 1 and 10 years for whoever deprives a human being of his/her liberty, if the deprivation of liberty exceeded seven days, or was coupled with special torment;
- Article 207, section 2, of the Penal Code, envisaging the penalty of deprivation of liberty for a term of between 1 and 10 years for whoever mentally or physically, with particular cruelty, mistreats a person close to him/her, or another person being in a permanent or temporary state of dependence on the perpetrator, a minor, or a person who is vulnerable because of his/her mental or physical condition.

108. Data pertaining to convictions for offences defined in article 148, section 2, of the Penal Code, article 189, section 2, and article 207, section 2, of the Penal Code in the years 2000-2003 were as follows:

Article of the Penal Code	Number of persons convicted in a given year						
	1998*	1999	2000	2001	2002	2003	1st half of 2004
	Final convictions					Non-final convictions	
Article 148, section 2	8	53	60	238	224	266	106
Article 189, section 2	24	54	81	88	88	No data available	No data available
Article 207, section 2	14	36	56	42	125	88	37

\* The period when the Penal Code of 1997 was in force (as of 1 September 1998).

109. It must be stressed that pursuant to article 11 of the Penal Code, the same act may constitute only one offence. If, however, an act has features specified in two or more provisions of penal law, the court shall sentence the perpetrator for one offence on the basis of all concurrent provisions. In such a case the court shall impose the penalty on the basis of the provision providing for the most severe penalty, which shall not prevent the court from imposing other measures provided for in law on the basis of all concurrent provisions. Moreover, pursuant to article 12 of the Penal Code, two or more prohibited acts of conduct undertaken at short intervals with premeditated intent shall be regarded as one prohibited act; if the subject of the assault is a personal interest, the condition for regarding many acts as a single prohibited act is the specific identity of the injured.

110. Reasons for the indictment and sentencing of a perpetrator for an offence are defined in the Code of Criminal Procedure.

111. With regard to offences committed in the army, it must be said that the provisions of article 343, section 1, 2 and 3, of the Penal Code define as an offence the behaviour of a soldier who does not execute an order, refuses to execute it or executes an order in violation of its content. In the context of these provisions, of special interest is article 318 of the Penal Code, under which a soldier who perpetrates a prohibited act does not commit an offence, unless by executing an order he consciously commits an offence. Penal liability rests on the principle of guilt. Subjection to torture as envisaged in the Convention or torment as defined in the Penal Code are always intentional offences; therefore, if a soldier mentally or physically torments a person as a result of the execution of an order, he shall be accountable for this act as for any other intentional offence committed by someone's order.

112. The prosecution of the offence of "mental or physical torment" under Polish law occurs on a motion of the injured person. The injured parties have the right to submit a notice of an offence as about each offence prosecuted ex officio, and furthermore have the right to file an indictment in court in the event that the State prosecutor decides twice on the discontinuation of the proceedings (articles 55, section 1, and 330, section 2, of the Code of Criminal Procedure). In turn, in the event that the submitted notice of offence has not been acted upon by the adjudicating authority, the injured party filing it shall have a right to bring an interlocutory appeal (article 306, section 3, of the Code of Criminal Procedure). The injured parties are a party to preparatory proceedings, and they can appear as a party before the court if they express such an intention.

113. As a result of the most recent amendment to the Code of Criminal Procedure (1 July 2003), provision section 3, was introduced into article 51 of the Code, which allows for the exercise of rights of an injured person by a person who has custody of the injured person if the latter is vulnerable, especially because of his age or health status.

114. Pursuant to article 105 of the Penal Code, the period of limitation does not apply to crimes against peace, crimes against humanity or war crimes, nor does the period of limitation apply to the intentional offence of homicide, inflicting serious bodily harm, causing serious detriment to health or deprivation of liberty connected with particular torment perpetrated by a public official in connection with the performance of official duties.

115. 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 until such reasons exist (article 44 of the Constitution).

116. Statistical data relating to a greater number of offences are provided in annex 1. Discussed succinctly below are examples of relevant criminal cases:

(a) The Provincial Court in Bydgoszcz by its ruling of 21 October 2002 index No. III K 82/00 found three defendants guilty as follows: on 17 October 1999 in the pretrial detention centre in Inowrocław, as officers of the Prison Service, acting deliberately, neglected their duties, acted beyond their powers, and unintentionally caused the death of K.P. in the following manner: during the use of direct coercion measures with respect to K.P., they let him fall down and beat him causing injuries resulting in the failure of the respiratory and circulatory systems, i.e. they were guilty of an offence under article 231, section 1, of the Penal Code in conjunction with article 155 of the Penal Code in conjunction with article 11, section 2, of the Penal Code; the court sentenced each defendant to the penalty of deprivation of liberty for two years with a conditional suspension of the execution of the penalty for a probationary period of five years. In addition, with respect to all the defendants the court ruled on a penal measure in the form of a prohibition of employment in the Prison Service for a period of eight years. By the same ruling the Provincial Court in Bydgoszcz found the fourth defendant guilty as follows: on 17 October 1999 in the pretrial detention centre in Inowrocław, as an officer of the Prison Service - head of a shift - he neglected his duties in the sense that by ordering, organizing and directly supervising the use of a direct coercion measure with respect to K.P., he allowed an improper execution of relevant activities by the officers subordinated to him, i.e. he was guilty of an offence under article 231, section 1, of the Penal Code; the court sentenced the defendant to the penalty of deprivation of liberty for two years with a conditional suspension of the execution of the penalty for a probationary period of five years. Moreover, pursuant to article 41, section 1, of the Penal Code, the court imposed on the defendant a penalty measure in the form of a prohibition of employment in the Prison Service for a period of eight years. The court ruling is final;

(b) The District Court in Słupsk by its ruling of 12 March 2003 found an officer of the Police guilty of acting beyond his powers when, stopping a minor motorcyclist, he hit him with the base of his palm in the nose, leading to a bodily injury disturbing the action of the bodily organ for a period of over seven days (breaking of the nose), i.e. he was guilty of an

offence under article 231, section 1, of the Penal Code in conjunction with article 157, section (sic), of the Penal Code in conjunction with article 11, section 2, of the Penal Code, and for this offence imposed on him a penalty of one year of deprivation of liberty, with a conditional suspension of the execution of this penalty for a probationary period of two years. In addition, the court imposed on the defendant a fine of 20 daily fines of PLN 10 each, and ruled on a penal measure consisting in the prohibition of employment as an officer of the Police for a period of two years;

(c) Pursuant to the judgement of the Provincial Court in Krosno of 18 December 2001, changed - as a result of an appeal filed by the prosecutor to the detriment of the defendants - by a ruling of the Appellate Court in Rzeszów of 14 March 2002, an officer of the Police was found guilty as follows: on 17 October 1997, during the execution of duties connected with the detention of K.H., he acted beyond his powers by kicking K.H. twice after K.H. struck him with a baseball bat in the leg after the officer had K.H. beaten up with a baton. The blow, to the left part of the lower abdomen, caused a fragmentation of the spleen, which led to the development in K.H. of an illness normally constituting a health hazard, i.e. the officer was found guilty of an offence under article 231, section 1, of the Penal Code in conjunction with article 156, section 1, point 2, of the Penal Code in conjunction with article 11, section 2, of the Penal Code. The defendant was sentenced to two years of deprivation of liberty, with a conditional suspension of the execution of this penalty for a probationary period of three years. In addition, the court imposed on the defendant the prohibition of employment as an officer of the Police for a period of three years;

(d) The District Court in Olsztyn by its ruling of 22 June 2001 conditionally discontinued penal proceedings against four officers of the Police who on 12 August 1999 in Olsztyn, during the removal of persons protesting in the building of the Warmińsko-Mazurski Voivodeship Office acted beyond their powers by, without justification and without an order, firing shots from their service arms at persons sitting in the above Office, exposing persons remaining in the building to the direct hazard of grievous bodily harm, i.e. they were of an offence under article 231, section 1, of the Penal Code in conjunction with article 160, section 1, of the Penal Code in conjunction with article 11, section 2, of the Penal Code;

(e) The District Court in Tarnobrzeg by its ruling of 16 May 2000 index No. II K 16/00 found an officer of the Police guilty as follows: in the night of 6/7 October 1999, carrying out the duties of an officer of the Police, he acted beyond his powers by twice hitting in the face the detainee T.B., thus violating his bodily inviolability, and at the same time hitting in the face the detainee Ł.Ż., and then kicking him in the back, causing bodily injuries, i.e. he was guilty of offences under article 231, section 1, of the Penal Code in conjunction with article 217, section 1, of the Penal Code in conjunction with article 11, section 2, of the Penal Code and under article 231, section 1, of the Penal Code in conjunction with article 157, section 1 of the Penal Code in conjunction with article 11, section 2, of the Penal Code. The court sentenced the defendant to a penalty of one year of deprivation of liberty, with a conditional suspension of the execution of the penalty for a probationary period of three years. In addition, the court imposed on the defendant the prohibition of employment as an officer of the Police for a period of four years;

(f) Pursuant to the judgement of the Provincial Court in Warsaw of 19 December 2002 index No. XVIII K 174/01, an officer of the Police was found guilty as follows: on 25 January 1996 in Warsaw during the execution of his professional duties, the officer intervened in a scuffle between M.Ł. and another officer, T.S., neglecting the duty specified in article 17, paragraph 3, of the Law of 6 April 1990 on the Police and the duties specified in section 3, paragraph 1, points 1 and 3, of the Resolution of the Council of Ministers of 17 September 1990 on the specific circumstances and manner of conduct for the use of firearms by officers of the Police, and at the same time acting beyond the powers specified in section 3, paragraph 2, of this Resolution, he failed to call on M.Ł. to abandon a dangerous object and did not fire a warning shot, despite the absence of a direct threat to the health of the officer T.S. After running up to the place of the scuffle he unlocked his service weapon - a 9 mm "P-64" pistol, No. JS 02403 - held the weapon to the head of M.Ł. and inadvertently pressed the trigger, causing the gun to fire a shot to the head of M.Ł. from a distance of no more than 25 cm, which resulted in a gunshot wound to M.Ł.'s head with the point of entry in the vicinity of the right auditory canal, resulting in M.Ł.'s death at the scene of the incident following the damage of vital parts of the central nervous system, i.e. he was guilty of an offence under article 155 of the Penal Code. For such an act, pursuant to article 155 of the Penal Code, the court sentenced the defendant to two years of deprivation of liberty, with a conditional suspension of the execution of this penalty for a period of five years. Pursuant to article 41, section 1, of the Penal Code, the court ruled to prohibit the defendant's employment in professions related to the possession and use of firearms for a period of two years;

(g) On 15 September 2001 an inquiry was launched relating to the use of violence with respect to M.M. by officers of the police station in Gniewkowo who wished to obtain a statement as to his identity, i.e. relating to an offence under article 246, section 1, of the Penal Code. On 1 February 2002 an indictment in this case was filed with the District Court in Inowrocław. By a court ruling of 8 May 2003, two officers of the Police, A.R. and K.J., were found guilty as follows: on 2 September 2001 in Zajezerze, Gniewkowo commune, acting jointly and with a view to obtaining a statement as to his identity, they used violence with respect to M.M. by striking his body with a police baton and beating him in the face with a hand, as a result of which M.M. incurred injuries which disturbed the actions of his bodily organs for a period of up to seven days; they additionally threatened to take him to a forest and to continue beating him, i.e. they were of an offence under article 246 of the Penal Code and article 157, section 2, of the Penal Code in conjunction with article 11, section 2, of the Penal Code. The court sentenced A.R. to one year of deprivation of liberty with a conditional suspension of the execution of this penalty for a period of three years; K.J., in turn, was sentenced to 10 months of deprivation of liberty with a conditional suspension of the execution of this penalty for a period of three years. The court ruling is final;

(h) Case 1 Ds. 13/02/Ś of the District Prosecutors' Office in Wrocław concerned actions exceeding their powers (beating, striking a blow in the nape of the neck with an unidentified object, verbal abuse) committed by officers of the Police from the municipal headquarters of the Police in Włocławek during the arrest of M.A., a citizen of Ukraine residing permanently in Poland, in connection with information on his illegal possession of explosive devices in the form of grenades, and abusing members of his closest family. During the search of his apartment a combat grenade, pneumatic weapons and knives were found. The officers conducting the arrest used force with respect to M.A. since the latter did not comply with their

commands. M.A. then incurred bodily injuries in the form of a contusion of the nose, of a lateral bone of the right shank and of the nape, as well as an abrasion of the skin and a double-sided haematoma in the area where glasses are worn. The officers testified that it had been necessary to use physical force to arrest M.A. and that he had incurred the bodily injuries as a result of his resistance, and his falling and hitting a hard surface. Pursuant to a decision of 12 November 2002, the District Prosecutors' Office discontinued the inquiry in this case for lack of evidence. An appeal by the injured party was not approved by a prosecutor of the Provincial Prosecutors' Office in Włocławek. The District Court in Włocławek in its ruling of 29 July 2003 in the case Kol 73/03 upheld the decision to discontinue the inquiry;

(i) Case Ds. 896/03 of the District Prosecutors' Office in Kwidzyn concerned actions exceeding their powers committed by officers of the Prison Service from the Correctional Facility in Sztum against G.P., consisting in beating, a command to undress fully prior to a search, and use of physical violence and terms of abuse. The circumstances described by G.P. were not confirmed by other evidence, and he did not have any bodily injuries. At the same time, it was established that the injured party during his stay in the Correctional Facility was punished with a disciplinary penalty several times for behaviour incompatible with the by-laws, inter alia placement in a security cell. Pursuant to a decision of 30 June 2003, the relevant proceedings were discontinued as a result of a conclusion that the alleged act had not been perpetrated. The decision is final. The District Court in Kwidzyn in its decision of 16 September 2003, index No. Ko<sup>1</sup> 180/03, did not consider the appeal of the injured party and upheld the decision;

(j) In case Ds. 707/99/S of the District Prosecutors' Office in Lubaczów, following a notification of the Bieszczady Division of the Border Guard in Przemyśl, the Prosecutors' Office conducted proceedings against M.M., an officer of the Bieszczady Division of the Border Guard in Przemyśl, related to the perpetration of an offence consisting in neglecting his professional duties and in detaining in a detention room a citizen of Ukraine, O.R. The inquiry showed that the officer had detained at the market in Lubaczów Ukrainian citizens O.R. (who did not have a passport; male) and N.S. (did not have a domicile; female). He took O.R. to the Border Guard station, without presenting any of the documents required for detention. He drove N.S. around for a few hours in his own car, offering her alcohol and an intimate contact in return for not issuing a ticket. On 7 December 2000 the court convicted the officer of an offence under article 231, section 1, and article 189, section 1, in conjunction with article 11, section 2, and sentenced him to a penalty of one year of deprivation of liberty with a conditional suspension of the execution of this penalty for a period of three years;

(k) Proceedings in the case 1 Ds. 1709/02 of the District Prosecutors' Office in Stargard Szczeciński were initiated in August 2002 and were conducted in the form of an internal investigation related to an offence under article 247, sections 1 and 3, of the Penal Code consisting in torment, through beating and verbal abuse, of prisoners in the Correctional Facility in Stargard Szczeciński in the period 2001/2002 by officers of the Prison Service. In this case up to 20 collective notifications of the perpetration of an offence were filed (lodged by a total of 54 persons). Persons lodging complaints were prisoners of the correctional facility; some complaints were anonymous. Complaints concerned allegations of verbal abuse, beating, intimidation, and unjustified use of direct coercion measures, described as physical and psychological torment. The evidence gathered in the case was evaluated by a prosecutor as insufficient to justify a suspicion of the perpetration of an offence, which resulted in

discontinuation of the inquiry pursuant to article 17, section 1, point I, of the Code of Criminal Procedure. It transpired from the statement of reasons for the decision that there had been no irregularities in the use of direct coercion measures with respect to prisoners. In part, the credibility of the testimonies of the injured parties was doubted. As the prosecutor established, the injured parties had not previously filed complaints during an audit conducted by the Provincial Inspectorate of the Prison Service. Neither were such complaints filed with the Governor of the Correctional Facility. More importantly, a message coded in prison jargon intercepted in one of the cells was included in the proceedings; the message called on prisoners to file the largest possible number of complaints against officers of the Prison Service, which was supposed to “strengthen” information on negative behaviour. Some of the prisoners testifying in the case themselves admitted that they had initiated conflicts with the officers of the Prison Service. The allegations of serious beating described by prisoners were passed on as “hearsay”. The persons who were allegedly victims of such incidents did not corroborate them. The prosecutor, while not disputing the use of violence against prisoners during the application of (lawful) direct coercion measures, did not find a basis for the recognition of the fact that the officers of the Prison Service had perpetrated criminal offences, which resulted in discontinuation of the proceedings. It is characteristic that none of the injured persons filed a complaint against the decision to discontinue the proceedings;

(l) Inquiry 4 Ds. 2040/02 registered in the District Prosecutors’ Office in Pruszków related to the abuse of statutory powers by the officers of the Prevention Division of the Municipal Headquarters of Police in Warsaw and employees of the “Impel” property protection agency in breaking up a picket by employees of the Cable Factory in Ożarów Mazowiecki in the period 26-30 November 2002, i.e. to an offence under article 231, section 1, of the Penal Code. Hearings of 130 injured persons, witnesses to the intervention of the Police, and a few dozen officers of the Police and employees of the aforementioned agency were held and an analysis of 52 hours of videotapes of the events was conducted. Pursuant to a decision of 27 November 2003, proceedings were discontinued as no perpetrators of the alleged offence were detected. In a decision of 21 June 2004, the District Court in Pruszków upheld the decision of the District Prosecutor in Pruszków, which had been appealed against by the injured parties;

(m) An improper use of firearms was the subject of the inquiry O.Z. Ds. 1/01/S of the Chełm Local Centre of the Provincial Prosecutor’s Office in Lublin. A citizen of Ukraine, S.K., was fatally shot by an officer of the Police during a pursuit and apprehension. The incident took place on 28 January 2001, when two officers of the Police, M.G. and A.B. (commander of the patrol), launched a pursuit of a car that tried to avoid stopping, driven by S.K. with his wife as passenger. In blocking his way with their car, in a situation where there was no direct and unlawful threat to the life, health and personal liberty of the officers or of other people, M.G. acted beyond his powers, and by using a service firearm and incapacitating grapples during the apprehension, leading to the firing of two shots resulting in the immediate death of S.K., M.G. failed to act with due caution. A.B., in turn, neglected his duties in the area of organization and manner of execution of pursuit, apprehension and the use of direct coercion measures and weapons by inadequately supervising and covering M.G. in the execution of his professional duties, allowing the latter’s unjustified use of a service weapon, which had the described effect. An indictment was brought in this case in September 2001 charging M.G. with the commission of an offence under article 231, section 1, of the Penal Code, article 160, section 1, of the Penal Code and article 155 of the Penal Code in conjunction with article 11,



section 2, of the Penal Code, and charging A.B. under article 231, section 1, of the Penal Code. M.G. was sentenced to two years of deprivation of liberty and by the ruling of the court he was prohibited from employment as an officer of the Police for a period of five years, while A.B. was sentenced to one year and eight months of deprivation of liberty with a conditional suspension of the execution of this penalty for a period of four years and by the ruling of the court he was prohibited from employment as an officer of the Police for a period of four years. Moreover, the court ruled for a compensatory payment for the benefit of M.G., while A.B. was subjected to a fine.

117. Furthermore, public opinion in Poland has been recently shocked by the incidents taking place during the student holidays in Łódź in the night of 8/9 May 2004, when participants of the student holidays held on campus were attacked by a few-dozen strong group of aggressively behaving young men, returning from a football game. Due to these incidents, both the organisers and the participants of the student holidays asked the Police to intervene. After officers of the Police took action, the participants of the incidents directed aggression towards them. Due to the aggressive behaviour of the participants of the incident, the commander of the Police unit took a decision on the use of smooth bore weapons and non-penetrating ammunition, i.e. cartridges with rubber bullets. After firing a round in the air, faced with a mounting aggression on the part of the participants of the event, officers of the Police subsequently fired shots in the direction of aggressively behaving persons. The commander of the unit asked for backup and provision of smooth bore rifles and non-penetrating ammunition. He received backup and ammunition. By mistake, to the place of the incident was forwarded also penetrating ammunition of the breneka type. After obtaining information on this fact, the commander of the intervention ordered an immediate cessation of fire and an inspection of the ammunition. The ammunition of the breneka type was collected and secured. Still, 5 bullets of this type had been fired, as a result of which 2 persons were shot - D.T., who due to injuries died that very night, and M.K., who due to injuries died in hospital the following day.

118. Until now the following charges for the commission of offences were pressed in the investigation V Ds. 42.04:

- R.I. - duty officer of the traffic division of the Municipal Headquarters of the Police in Łódź, suspected of professional negligence in the area of supervision over the distribution of ammunition, allowing the use of penetrating ammunition at the scene of the incident and causing danger to the life or health of many persons, a consequence of which was the death of M.K. and D.T., i.e. of an offence under Article 231 section 1 of the Penal Code and Article 165 section 1 point 5, section 2 section 4 of the Penal Code in conjunction with Article 11 section 2 of the Penal Code;
- R.S. - coordinator of the Municipal Command Post of the Municipal Headquarters of the Police in Łódź, suspected of professional negligence in the area of commanding police forces and measures placed at his disposal and of coordinating and monitoring actions performed by him, failure to take efficient actions to prevent the use of penetrating ammunition and causing danger to the life or health of many persons, a consequence of which was the death of M.K. and D.T., i.e. of an offence under Article 231 section 3 of the Penal Code and Article 165 section 1 point 5, section 2 and section 4 in conjunction with Article 11 section 2 of the Penal Code.

119. Further actions related to the investigation are directed first of all towards the establishment of the following:

- Which officers of the Police fired penetrating bullets, thus causing death and injuries of the aggrieved parties, with a possibility of charging them with unintentionally causing death;
- The final circle of persons liable for professional negligence in the area of the distribution of ammunition (or the supervision over the distribution of ammunition) and in consequence leading to the use of penetrating ammunition at the scene of the incident, with a possibility of pressing charges against the accountable persons;
- Whether the planning of safeguarding law and order by the Police proceeded in a correct way and, in the event of establishing irregularities in this respect, with a possibility of charging the accountable persons with the commission of offences;
- Whether the intervention at the scene of the incident was conducted in a correct manner, especially whether the use of smooth bore weapons was warranted by the circumstances and whether they were used in keeping with the regulations related to the principles of their use;
- Whether there were any irregularities during the execution by officers of the Police of activities in the area of preventing the scene of the incident from the obliteration, distortion or damage of traces and evidence and establishing persons accountable with a possibility of pressing charging against them.

### **National Remembrance Institute**

120. *The Law of 18 December 1998 on the National Remembrance Institute - Commission for the Prosecution of Crimes Against the Polish Nation* established the legal framework for the prosecution and penalisation of perpetrators of crimes of torture committed in Poland in the years 1939 - 1989 (Journal of Laws of 1998 No. 155, item 1016 as amended).

121. Thanks to the change in the legal status, prosecutors of the National Remembrance Institute gained the right to conduct the entire penal proceedings against perpetrators of acts of torture and to file indictments to courts. The National Remembrance Institute commenced its actual action in this area in July 2000, i.e. as of the moment of the President of the National Remembrance Institute taking an oath of office before the Sejm.

122. In the investigation practice of the National Remembrance Institute, torture is qualified as a form of communist crimes, i.e. acts perpetrated by officials of the communist state which constitute acts of reprisal or violations of human rights, consisting in psychological and physical torment of the injured. These acts were considered as offences according to the penal law in force at the moment of their perpetration, even if the then state authorities did not prosecute them. Article 2 of the Law on the National Remembrance Institute - Commission for the Prosecution of Crimes Against the Polish Nation is, then, invoked in the legal qualification of

torture; the article contains the definition of communist crimes<sup>7</sup> and the provisions of the Penal Code (of 1932 or of 1969) in force at the moment of their perpetration, indicating in particular the penal liability for torment, causing grievous bodily harm, participation in a beating, and an unlawful deprivation of liberty. It may be concluded that a lack of a separate generic type of crimes of torture in the system of Polish penal law is no obstacle to their actual prosecution.

123. Investigations in cases related to the crime of using torture are conducted irrespective of the nationality and citizenship of the victims, if they were perpetrated in the territory of the Polish State. Prosecutors of the National Remembrance Institute since July 2000 until the end of 2003 brought to courts 53 indictments in cases related to a communist crime. The *ratios decidendi* of 46 indictments indicated the use by the defendants - former officers of the Office of Public Security (existed until 1956), the Security Service (existed until 1989), and of Military Intelligence - of torture in the form of psychological and physical torment of the arrested or alleged opponents of the then political regime in Poland.

124. Especially difficult cases of acts of torture were presented in indictments filed against former officers of the Office of Public Security who in the period 1944 - 1956 used psychological and physical torment in the course of inquiries conducted by them in political cases. The methods of torture most frequently used at the times comprised beating the arrested persons on the head and the entire body, also with the use of various objects, such as batons, whips, or handguns. Other acts of torture applied at that time consisted in electrocuting the arrested persons and placing them in cold cells whose floor was in water. A frequent method of torture was also depriving persons subjected to hearings of sleep, lighting electric bulbs straight into their eyes during the hearing or forcing the person subjected to hearings to sit on a leg of an overturned stool, which resulted in the damage of the crotch. In individual investigations the use of other acts of torture was established, consisting in burning fingernails of arrested persons, breaking their limbs, causing other grievous bodily harm. The acts of torture described were often committed by the perpetrators until the person subjected to them lost their consciousness and were resumed during the following hearing. Torture consisting in psychological torment, established in the course of investigations, was most often related to threats of homicide, arrest of family members and friends of the person subjected to a hearing and to verbal abuse.

125. Difficulties encountered by the prosecutors of the National Remembrance Institute in the course of conducting investigations in cases related to the crime of using torture are occasioned by the time lapse since the moment of these crimes being perpetrated. That is why these investigations usually require a great effort to identify the perpetrators and to gather evidence necessary for bringing charges against them.

126. Moreover, the same legal regulations provide the basis for conducting proceedings with respect to officers of the Security Office who used torture during martial law in Poland, i.e. since 13 December 1981 and in the following years. In one of the trials, a former female officer was sentenced for psychological torment of arrested women-activists of the political opposition in Poland.

127. By 31 December 2003 courts adjudicated on 10 cases from this category, filed by prosecutors of the National Remembrance Institute, where the defendants were charged with the use of acts of torture described above. In 9 cases the defendants were found guilty as charged and sentenced to from 1 year up to 5 years of deprivation of liberty. One case finished with an acquittal.

128. In a few dozen further investigations, prosecutors charged suspects with perpetrating communist crimes, including the use of torture.

129. As of 31 December 2003, prosecutors of the National Remembrance Institute conducted 856 inquiries in cases related to communist crimes committed by the end of 1989.

130. The *Law on the National Remembrance Institute - Commission for the Prosecution of Crimes Against the Polish Nation* adopts a principle according to which the death of the perpetrators of an offence subject to the proceedings by the National Remembrance Institute is no obstacle in conducting an inquiry. This is because the proceedings conducted by the National Remembrance Institute aim, apart from bringing the perpetrator of an offence to justice, also at the establishment of all the circumstances of a criminal violation of human rights, especially at the definition and identification of the injured parties. This is the way to restore human dignity to persons persecuted by totalitarian unlawfulness.

131. Additional information on the activities of the National Remembrance Institute is presented in the *V Periodic Report of the Republic of Poland on the implementation of the provisions of the International Covenant of Civil and Political Rights*.

#### **Article 5, 6 and 7 - Jurisdiction, detention of a suspect**

132. Pursuant to Article 5 of the Penal Code, the Polish penal law shall be applied to the perpetrator who committed a prohibited act within the territory of the Republic of Poland, or on a Polish vessel or aircraft, unless an international agreement to which the Republic of Poland is a party stipulates otherwise.

133. Article 6 of the Penal Code defines that a prohibited act shall be deemed to have been committed at the time when the perpetrator has acted or omitted to take an action which he was under obligation to perform as well as to have been committed at the place where the perpetrator has acted or has omitted an action which he was under obligation to perform, or where the criminal consequence has ensued or has been intended by the perpetrator to ensue.

134. The principles related to the liability for offences committed abroad (Chapter XIII of the Penal Code), discussed in detail in the previous report, underwent only slight modifications. Following the aforementioned amendment of the Penal Code (referred to in the part devoted to the European Arrest Warrant), as of 1 May 2004 Article 112 of the Penal Code was extended by one point, which allows for the use of the Polish penal law irrespective of the provisions in force at the place where the perpetrator of a prohibited act has acted, also to a Polish citizen and an alien in the event of perpetrating an offence which led, if only indirectly, to a profit within the territory of the Republic of Poland.

135. Also Articles 110 and 114 of the Penal Code underwent changes. Article 110 of the Penal Code reads as follows:

“Article 110. Section 1. The Polish penal law shall be applied to an alien who committed abroad a prohibited act directed against the interest of the Republic of Poland, a Polish citizen, a Polish legal person or a Polish organisational unit which does not have legal personality and to an alien who committed abroad an offence of a terrorist character.

Section 2. The Polish penal law shall be applied in the event of an alien committing abroad a prohibited act other than specified in section 1, if the prohibited act is under the Polish penal law punishable by at least 2 years of deprivation of liberty, and the perpetrator stays in the territory of the Republic of Poland and a decision has been made not to surrender him”; i.e. apart from the change consisting in the replacement of the word “offence” by a “prohibited act”, the scope of persons to whom the Polish penal law applies was extended with “aliens who have committed abroad an offence of a terrorist character.”<sup>8</sup>

136. In Article 114 the most significant changes related to section 3.

“Article 114. Section 1. A sentencing judgement rendered abroad shall not bar criminal proceedings for the same offence from being instituted or conducted before a Polish court.

Section 2. The court shall credit to the penalty, imposed the period of deprivation of liberty actually served abroad and the penalty there executed, taking into consideration the differences between these penalties.

Section 3. The provision of section 1 shall not apply:

- (1) When a sentencing judgement rendered abroad has been transferred to be executed within the territory of the Republic of Poland, and also when the judgement rendered abroad regarded an offence, with regard to which either a transfer of the prosecution or extradition from the territory of the Republic of Poland has occurred.
- (2) To rulings of international criminal courts acting on the strength of international law binding for the Republic of Poland.
- (3) To rulings of courts of foreign states, if this arises from an international agreement binding for the Republic of Poland.

Section 4. If a Polish citizen validly and finally sentenced by a court in a foreign country, has been transferred to execute the sentence within the territory of the Republic of Poland, the court shall determine, under Polish law, the legal classification of the act, and the penalty to be executed or any other penal measure provided for in this Law; the basis for determination of the penalty or other measure subject to execution shall be provided by the sentencing judgement rendered by a court of a foreign country, the

penalty prescribed for such an act under Polish law, the period of actual deprivation of liberty abroad, the penalty or other measure executed there, and the differences between these penalties considered to the favour of the sentenced person.”

137. Work is currently underway in the Parliament on another amendment to the Penal Code. The draft amendment envisages the following wording for Article 113 of the Penal Code:

“Article 113. Irrespective of the regulations in force at the place where a prohibited act has been perpetrated, the Polish penal law applies to a Polish citizen and an alien about whom a decision of non-surrender has been taken, in the event of him committing abroad an offence whose prosecution is binding for the Republic of Poland pursuant to international agreements.”

138. Information related to the principles of deprivation of liberty, including preliminary arrest, as well as statistical data, are discussed in detail in Article 9 the *V Periodic Report of the Republic of Poland on the implementation of the provisions of the International Covenant of Civil and Political Rights*.

**The number of persons in preliminary detention in  
pretrial detention centres - as of 31 December**

Year	Detainees - as of 31 December
1998	11 551
1999	14 565
2000	22 032
2001	22 730
2002	20 896
2003	18 240

139. Out of the total number of detainees as of 30 June 2004, there were 16,066 persons in preliminary detention.

**Article 9 - Legal aid**

140. The currently binding legal regulations related to legal aid and deliveries in criminal cases have not changed. Legal aid at the request of a court and the prosecutors’ office of a foreign state is granted by a court and the prosecutors’ office (Article 588 of the Code of Criminal Procedure). If the requested action is in conflict with the legal order of the Republic of Poland or constitutes an infringement of its sovereignty, provision of legal aid is refused. In addition, a court and the prosecutors’ office may refuse to grant legal aid if:

- (1) The performance of the requested action lies beyond the scope of activity of the court or state prosecutor under Polish law,
- (2) The foreign state which requests legal aid does not guarantee reciprocity in such matters,
- (3) The request is concerned with an act which is not an offence under Polish law.

141. Defining in more detail the provision of point 37 of the III Report, it should be added that these issues are discussed in Chapter 62 of the Code of Criminal Procedure of 1997.

#### **Laws on legal aid in criminal cases**

142. In the years 1998-2004, Poland entered into agreements on legal aid in criminal cases with the following states:

- Slovakia - *Agreement on supplementing and facilitation of the application of the European Convention on legal aid in criminal cases* (Journal of Laws of 1999 No. 78, items 856 and 867);
- United States of America - *Agreement on mutual legal aid in criminal cases* (Journal of Laws of 1999 No. 76, items 860 and 861).

143. Moreover, in 2003 agreements on supplementing and facilitation of the application of the European Convention on legal aid in criminal cases were signed with Austria, France, and Germany.

144. Moreover, on 1 February 2004 the *Second Additional Protocol to the European Convention on legal aid in criminal cases* entered into force (it was ratified on 9 October 2003). *The European Convention on legal aid in criminal case* along with its first *Additional Protocol* was ratified by Poland on 19 March 1996 (they took effect on 17 June 1996; Journal of Laws of 1999 No. 76, item 854).

145. Furthermore, on 12 November 2001 Poland ratified the *United Nations Convention against International Organised Crime*, which in the event of a lack of bilateral agreements may also constitute a basis for an application for legal aid.

#### **Article 10 - Education, training**

146. Detailed information on training programmes in the field of human rights protection for public officials, personnel of the Prison Service, officers of the Police, of the Border Guard, and of the State Protection Office is provided below. This information was likewise described in detail in Article 2 of the *V Periodic Report of the Republic of Poland on the implementation of the provisions of the International Covenant of Civil and Political Rights*.

147. In November 2003, the Ministry of Justice brought to the attention of the Police and the Central Board of the Prison Service with the aim of its further use the Istanbul Protocol (*Istanbul Protocol. Principles on the effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment* and the *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*).

148. Thanks to the efforts of the Central Board of the Prison Service, excerpts of the *Istanbul Protocol* were translated and at the beginning of 2004 forwarded to relevant services for further application. Currently action is taken with a view to acquainting personnel of relevant services with the contents of the *Istanbul Protocol*.

149. It has been established that four sobering-up centres had already known the contents of the Istanbul Protocol. More recently, the Istanbul Protocol was brought to the attention of 30 physicians and paramedics employed in sobering-up centres. In turn, the personnel in 6 sobering-up centres was familiarised with the main provisions of the *Convention on the Prohibition of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.

### **Prison Service (including physicians employed in correctional facilities)**

150. Training programmes for officers and employees of the Prison Service envisage the following subjects and detailed topics in the field of domestic and international human rights norms and standards:

- As part of a preparatory course (21-day course for all newly admitted officers and personnel of the Prison Service) - 27 hours, including:

*Selected legal issues - 6 hours.*

General information on international standards related to the treatment of prisoners.

*Selected issues in professional ethics - 7 hours.*

The notion of the rule of the law, humanitarianism and respect for the dignity of a person in reference to the situation of a correctional facility (pre-trial detention centre) and in the Executive Penal Code, organizational and ordering by-laws of the execution of the penalty of deprivation of liberty and preliminary detention.

*Selected penitentiary issues - 14 hours.*

Principles of conduct in relations between officers and personnel and prisoners. The aim and the principles of the execution of the penalty of deprivation of liberty and preliminary detention, the status of a convicted individual. General characteristics of means of interaction with convicted persons, the role of an officer and employee in the process of social reintegration.

- As part of the Non-Commissioned Officers' School of the Prison Service (a three-month stationary training) 12 hours, including:

*Basic knowledge of the State and the law - 4 hours.*

Rule of law, obedience for the law and the legal order. Guarantees of the rule of law. Issues related to the rule of law in the implementation of tasks of the Prison Service and in the conduct of officers.



*Problems of human rights protection - 3 hours.*

Rights of persons deprived of liberty. Legal means of deprivation of liberty envisaged in the legal system of the Republic of Poland. Deprivation of liberty vs. the universal catalogue of freedoms and rights. Means for the protection of rights and freedoms. Constitutional complaint. Motion to the Ombudsman. The issue of the so-called "Strasbourg complaint". Institution of complaints and motions.

*International standards in the treatment of prisoners - 4 hours.*

The role and significance of the UNO in the field of the treatment of prisoners and crime prevention. *UN Minimal Rules, Convention on the Prohibition of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. A set of principles related to detainees or prisoners. Resolution on preliminary arrest. *European Prison Rules*. International cooperation in the area of protection of prisoners' rights. Definition of the aims of the penalty of deprivation of liberty arising from laws and codes. Functions of the penalty of deprivation of liberty. Principles of the execution of the penalty of deprivation of liberty: humanism, rule of law, individualisation, and openness.

*Legal bases for the provision of sanitation conditions and health care - 1 hour.*

The rights of the prisoner in light of the Executive Penal Code and by-laws and their relation to European and UN standards. A relation between the right to adequate sanitation conditions and the principle of respect for human dignity.

- As part of the Officer School of the Prison Service (a ten-month training organized in a few sessions) - 13 hours, including:

*Issues related to human rights protection - 6 hours.*

Human and civil rights.

Documents of international law in the field of human rights, including persons deprived of liberty. Freedoms, rights and obligations of man and citizen under the Constitution of the Republic of Poland. Deprivation of liberty under the *European Convention on the Protection of Human Rights* of 4 November 1950.

Status of a person deprived of liberty.

Legal means of deprivation of liberty envisaged in the legal system of the Republic of Poland. Deprivation of liberty vs. the constitutional catalogue of freedoms and rights. Acceptance and surrender of criminal proceedings and convicted persons for the execution of a sentence.

Legal mechanisms of human rights protection.

Means for the protection of rights and freedoms under the Constitution of the Republic of Poland. The issue of the so-called “Strasbourg complaint”. Activities of the Committee Against Torture and Cruel or Degrading Treatment or Punishment. Social non-governmental institutions of human rights protection.

*Characteristics of international standards in the treatment of persons deprived of liberty - 2 hours.*

*UN Minimal Rules, European Prison Rules, their significance and impact on the Polish system of execution of penalties.*

*The execution of the penalty of deprivation of liberty. Principles of the execution of the penalty of deprivation of liberty - 1 hour.*

A legal definition of the aims of the execution of the penalty of deprivation of liberty, functions of the penalty of deprivation of liberty: isolation, reform and education, prevention, repression, social reintegration. Legal definition of the principles of the execution of the penalty: rule of law, humanism, individualisation, tolerance, and openness. Current international recommendations.

*Legal status of convicted persons - 1 hour.*

Rights and obligations of convicted persons (arising from Codes and by-laws) and special conditions of their implementation.

*Legal bases for the provision of sanitation conditions and health care - 1 hour.*

The rights of the prisoner in light of the Executive Penal Code and by-laws and their relation to European and UN standards. A connection between the right to adequate sanitation conditions and the principle of respect for human dignity.

*Employment of prisoners - 2 hours.*

International provisions in the form of conventions or recommendations which constitute a common standard (*UN Universal Declaration of Human Rights*), universal standards (*UN International Covenant of Economic, Social and Cultural Rights*), regional standards (*European Social Charter* of 1961), and recommended standards. The role of the UNO, International Labour Organisation, and the Council of Europe in establishing international law defining provisions related to employment. The law of the European Union and the Polish legal system in the field of labour issues.

151. In the years 1998-2003, training programmes related to the above issues were attended by a total of 12,436 persons, including 5,408 persons as part of preparatory training, 1,769 persons in an officers’ school and 5,259 persons in a non-commissioned officers’ school.

152. Training programmes of the personnel of penitentiary institutions comprise also issues related to domestic and international human rights norms and standards, including rights and freedoms of HIV sufferers. Training programmes organised in the years 2001-2003, which included these issues, were attended by 250 officers and personnel of the Prison Service.

153. Moreover, officers of the Prison Service took part in 17 courses, held in the years 1991-2003 in the Human Rights School, organised by the Helsinki Foundation of Human Rights. These courses were completed by 24 officers of the Prison Service.

154. For the past three years the following trainings have been organised for the personnel of the prison health service in the area related to the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*:

- In October 2000, during a training in the field of forensic medicine, special emphasis was put on the principles of forensic examination, proper technique of subjective and objective examination as well as proper principles of a description of established changes. The training session was organised for Heads of Health Care Units;
- In March 2001, in a training module devoted to principles of medical certification and conducting medical documentation, issues related to the recognition of torture and effects of its use were taken into consideration. The training was attended by head physicians of provincial inspectorates of the Prison Service as well as chairs of physicians' commissions;
- In June 2002, at a conference targeted at the personnel of all levels of the prison health service, in a training module devoted to the law in force in penitential medicine and its application in the everyday practice of physicians, teaching and information materials were presented on the prohibition of the use of torture and inhuman treatment;
- In May 2003, during a seminar devoted to psychiatric care and certification in penitentiary units, issues related to the recognition of mental torture and effects of its use were taken into consideration. The seminar was attended by head physicians of provincial inspectorates of the Prison Service as well as directors of hospitals and psychiatrists and psychologists employed in observation wards dealing with mental patients.

155. Moreover, in part as a result of the suggestions of the Ombudsman, as part of courses and schools run in centres for in-service training of the personnel of the Prison Service and in the Training Centre of the Prison Service in Kalisz, trainings are held devoted, *inter alia*, to the following issues:

- Kinds and practice of a lawful use of direct coercion measures;
- Administering first aid to officers and persons deprived of liberty;
- Training of interpersonal skills in relations officer-prisoner and officer-family of the prisoner, conducted by a lecturer-psychologist.

## Police

156. Starting from 1989, the system of professional education of the Polish Police has been modified a few times with a view to bringing it in line with social expectations and international commitments.

157. At the turn of 2001, significant changes were introduced in regulations related to the upgrading of professional qualifications by officers of the Police. The reforms introduced resulted in the division of trainings into *qualification courses* (basic, specialist, higher professional training) and courses *implemented as part of in-service training*. The training programmes - depending on the specialisation of the person attending them - are subject to significant diversification as to content. They relate both to the issues of human rights and freedoms, and questions contained in the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. The scope of knowledge provided in these areas depends of the character and the specificity of tasks for which an officer of the Police is being prepared.

158. Human rights issues are a permanent subject of training seminars which, when necessary, are prepared by the *Plenipotentiary of the Commander in Chief of the Police for Human Rights* and the *National Working Group for the Police and Human Rights*. Officers of the Police who work in executive units and police teachers attend them. The prohibition of torture or other cruel, inhuman or degrading treatment or punishment is frequently raised as one of the major elements of the programme:

- In the period from 4 to 5 October 2001, the Police Academy in Szczytno hosted a meeting of police teachers lecturing on human rights. It concerned *inter alia* the inclusion of issues related to human rights into the training programme of the executive personnel of the Police. During the workshops it was arranged that the prohibition of torture or other cruel, inhuman or degrading treatment or punishment would be one of the issues contained in the programme;
- In the period from 22 to 24 October 2001 was held an international training seminar on the subject “*Human Rights and Freedoms in the Practice of Police Actions*”. The training took place in the International Centre for Specialist Trainings of the Police in Legionowo. It was attended by officers of the Police from Poland, the Czech Republic, and Lithuania. Classes conducted by members of the Polish National Working Group for the Police and Human Rights provided an opportunity for an exchange of experience, *inter alia* related to the violations of the prohibition of torture or other cruel, inhuman or degrading treatment or punishment in the practice of the Police;
- In the period from 14 to 15 March 2002, the Police Academy in Szczytno hosted a meeting of police teachers lecturing on human rights. During the meeting was discussed, among others, a proposal for a concept of research on the observance of human rights in the Police and by the Police. In particular, the project was meant to diagnose relations between superiors and subordinates;

- In the period from 4 to 7 November and from 16 to 19 November 2003, two editions of a course being a part of in-service training entitled “*The Role of Human Rights and Freedoms in Police Management*” were held at the Police Academy. A total of 34 district and municipal Commanders of the Police attended both editions of the course. On completion of the training, its participants received a Polish version of a Council of Europe textbook entitled *Police in a Democratic Society - Do Your Police Defend Human Rights*. On the basis of the obtained knowledge and the textbook, the participants of the course prepare a written assignment in which they diagnose the state of observance of human rights and freedoms in their subordinate units. This relates also to the prohibition of torture or other cruel, inhuman or degrading treatment or punishment. A thorough knowledge of this issue by persons in management positions is of key importance. On the one hand, superiors conduct a direct monitoring of the observance of this prohibition by their subordinate officers, on the other hand – they are responsible for its maintenance within the work framework they themselves organise.

159. Trainings organised with the participation of non-governmental organisations (selected examples):

- On 19 June 2001, the International Centre for Specialist Trainings of the Police in Legionowo hosted a training entitled “*The European Convention on Human Rights - European Human Rights Standards in the Activities of the Police*”. This training was co-organised by the Polish *Information Centre of the Council of Europe*. The training was attended by 50 officers of the Police. Among them were persons who were to leave for a peacekeeping mission in Kosovo and lecturers on human rights in schools and training centres of the Police. Classes were conducted by, among others, Commissioner for Human Rights in Kosovo and representatives of the Supreme Court, the Helsinki Foundation for Human Rights, and the Human Rights Commission of the Chief Bar Council. The violation of the prohibition of the use of torture or other cruel, inhuman or degrading treatment or punishment was often referred to in the presented papers;
- In the period from 9 to 11 April 2003, the International Centre for Specialist Trainings of the Police in Legionowo hosted a discussion forum on the subject *Human Rights and Humanitarian Law*. Training workshops were organised with the cooperation of the *Regional Representative for the Police and Security Forces of the Central European Delegation of the International Committee of the Red Cross*. It was also attended by representatives of the Police Academy, the Training Centre of the Police, schools of the Police in Katowice, Piła and Słupsk. The basis issues raised during the discussions was the education of officers of the Police in the area of human rights and humanitarian law, which also related to the prohibition of torture or other cruel, inhuman or degrading treatment or punishment.

## Teaching aids

160. Securing textbooks, which might be of help in the education process of officers of the Police, is a significant form of cooperation:

- *Human Rights. Guidebook for Police Officers*, Kraków 2001

This is a Polish version of the British handbook by A. Beckley's entitled *Human Rights for Police Officers and Support Staff*. The handbook was published thanks to the assistance of the British Embassy in Poland and of the Jagiellonian University Human Rights Centre. It was then distributed free of charge in the Police. In 2002, 5,000 copies of the handbook were distributed in schools of the Police, in provincial, district, and municipal headquarters of the Police as well as in police stations.

- *Służyć i chronić. Prawa człowieka i prawo humanitarne dla policji i organów bezpieczeństwa*, Legionowo 2002 (textbook)

This is a Polish translation of a textbook by C. Rover *To Serve and Protect. Human Rights and Humanitarian Law for Police and Security Forces*. The textbook was published by the Publishing House of the Training Centre of the Police in Legionowo, with a financial support of the Regional Representative for the Police and Security Forces of the Central European Delegation of the International Committee of the Red Cross. This publication is meant first of all for police teachers and officers of the Police who are to participate in peacekeeping missions. It is *inter alia* part of standard equipment of commanders of Polish peacekeeping missions of the Police.

- *Guide Contact of a Police Officer with a Refugee in Selected Situations*, W. Trojan, R. Stawicki, Warsaw 2001

It was prepared within a framework of cooperation between the Polish Police and the Representative of the United Nations High Commissioner for Refugees in Warsaw. This publication is meant for officers of the Police who, fulfilling their professional duties in the area of public security and order, have problems with the identification of the legal status of an alien. The guide contains general information on particular categories of aliens and algorithms of behaviour in a variety of situations of contacts between the officer of the Police and an alien.

## Conferences and scientific seminars

161. Conferences and scientific seminars play an important role in the process of promoting human rights in the Police. They usually take place with an active participation of representatives of non-governmental organisations, which facilitates an exchange of opinions and strengthens cooperation. From among such projects which related *inter alia* to the prohibition of the use of torture or other cruel, inhuman or degrading treatment or punishment were raised, mention should be made of the following:

- International conference *Human Rights and the Police. Towards European Standards in the Education Process*, organized in the period from 25 to 26 November 1999 in the Police Academy in Szczytno. The conference was attended by police teachers lecturing on human rights. Conference proceedings were published as a comprehensive book by the publishing house of the Police Academy in Szczytno (J. Węgrzyn, ed. *Prawa człowieka a Policja. Ku standardom europejskim w procesie nauczania*, Szczytno 2000);
- International conference *An Officer of the Police as a Subject of Human Rights*, which was held from 29 to 31 October 2000 in the International Centre for Specialist Training of the Police in Legionowo. The conference was attended, among others, by representatives of 12 states and 12 non-governmental domestic and foreign organisations;
- International conference *European Union - Challenges for the Polish Police*, held in May 2002 in the Police Academy in Szczytno. One of the discussion panels of the conference was devoted to human rights issues. Participating in the panel were, among others, the President of the Criminal Chamber of the Supreme Court and the President of Transparency International Polska. Comprehensive conference proceedings were published (W. Pływaczewski, G. Kędzierska, P. Bogdalski, eds. *Unia Europejska - wyzwanie dla polskiej Policji*, Szczytno 2003). One of the five chapters of this 500-page book relates to human rights.

## **Border Guard**

162. As part of the basic training of officers admitted to the service, issues related to human rights protection and humane use of direct coercion measures are dealt with in the section: law and professional ethics. Specialist trainings which last several days are organised, when necessary, outside the basic curriculum, as part of courses in the apprehension of detainees and courses of duties in rooms for detainees.

163. In recent years the issues of a humanitarian treatment of detainees and persons subject to hearings was discussed in part in the following trainings within EU assistance programmes:

1. *Twining'98 Stage II Specialist training for instructors, continuation of Stage I part 3: "Training on the expulsion of illegal immigrants" (17.04. – 5.05.2000) – training completed by 7 persons.*
2. *Twinning'99 Action No. 10.1: "Control of aliens in sea ports" (26 - 30.03.2001) the Netherlands, training completed by 10 persons.*
3. *Twinning'99 Action 10.2: "Control of aliens within the country and on EU external borders" (23 – 27.04.2001) Dutch–German border, training completed by 10 persons.*
4. *Twinning'99 Action 10.3: "Control of aliens in airports" (7 – 11.05.2001) the Netherlands, training completed by 10 persons.*

5. *Twinning'99 Action 10.4: "Control of aliens within the country, methods of conducting hearings and verification of identity" (27 – 30.08.2001 Training Centre of the Border Guard; 21 – 24.08.2001 Centre for Training of the Border Guard) – training completed by 30 persons.*
6. *Twinning'99 Action 10.5: "Detention and expulsion procedures" (8 – 10.10.2001 Training Centre of the Border Guard) training completed by 20 persons.*
7. *Twinning'99, 6 Actions on "European Law" – Poland / Germany – training completed by 80 persons.*
8. *Twinning'01 "Immigration and visa policy": No. 3.3.2.4. "Expulsion of aliens by air" (30.06 – 04.07.2003) – training completed by 5 persons.*
9. *Twinning'01 "Immigration and visa policy": No. 3.3.3.2. "Asylum practice" (14 – 15.04.2003) – training completed by 7 persons.*
10. *Twinning'01 "Immigration and visa policy": No. 3.3.2.2. "Expulsion practice" (26-28.05.2003, 3 - 5.09.2003) – training completed by 15 persons.*
11. *Twinning'01 "EU law in the context of border control" (actions 5.1 – 5.3) – training completed by 60 persons.*
12. *Twinning'02 "Procedure of conduct with persons with traumatic experiences" (actions 2.1 – 2.3) – training completed by 60 persons.*
13. *Twinning'02 Asylum policy, Action No. 1.4e: "Workshops on asylum procedures with special emphasis on general procedural and legal techniques with examples of selected countries of origin (29.03. – 02.04.2004) – training completed by 16 persons.*
14. *Twinning'02 Asylum policy, Action No. 3.2e "Workshops on methods of recognition of persons in need of special care (sensitive persons) 10 – 14.05.2004 – training completed by 16 persons.*
15. *Twinning'02 Asylum policy, Action No. 1.2: "Review of Polish legal regulations related to aliens, refugees and migration" (13 – 14.05.2004) – training completed by 5 persons.*
16. *Twinning'02 Asylum policy, Action No. 3.2c: "Workshops on the treatment of aliens from so-called 'special groups'" (01 – 04.06.2004) – training completed by 5 persons.*
17. *Twinning'02 Asylum policy, Action No. 1.3e: "Workshops on the Provisions of the European Convention of Human Rights of the Geneva Convention of 1951" (14 – 18.06.2004) – training completed by 16 persons.*
18. *Twinning'02 Asylum policy, Action No. 2.3 "Workshops on special issues related to the provisions of the Dublin Convention" – training completed by 5 persons.*



164. At the same time Commanders of Units of the Border Guard were obliged to bring about an organisation of courses (*inter alia* as part of in-service training) in the organizational units of the Border Guard subordinate to them; these courses were to be run by multipliers trained in subjects discussed in the course of twinning projects.

### **Article 11 - Monitoring a proper treatment of persons**

#### **Border Guard**

165. Pursuant to the provision of Article 104 para. 5 of the *Law on Aliens*, a district court competent *rationae loci* with respect to the location of a guarded centre or a pre-trial detention centre for the purpose of expulsion, where an alien has been placed, carries out penitentiary supervision over the execution of the decision on placing an alien in a guarded centre or a decision on the use of detention with respect to him for the purpose of expulsion. No violations of regulations in force in the relevant area were recorded in the course of penitentiary supervision.

166. Until the second quarter of 1998, within the National Headquarters the audit of the activities of individual organisational units of the Border Guard was carried out by the Audit Division situated within the structure of the Supervision and Audit Inspectorate. Within units (training centres) the above issues were dealt with by Sections of Audit, Complaints and Petitions located in Supervision and Audit Departments.

167. Pursuant to the *Resolution No. 7 of the Commander-in-Chief of 6 July 1998*, a re-organisation of the previously existing structure of the Inspectorate was carried out as a result of which a division of internal affairs and a division of audit were created (an Independent Team for Audits, Complaints and Petitions of the Commander-in-Chief was introduced at the level of the central authority of the Border Guard, whereas in units and training centres the tasks were implemented by Independent Sections for Audits, Complaints and Petitions).

168. As a result of another re-organisation at the National Headquarters of the Border Guard, an Inspectorate for Audit and Control of the Commander-in-Chief (*Resolution of the Commander-in-Chief of the Border Guard No. 07 of 7 June 1999*) was set up from the previous Independent Team for Audits, Complaints and Petitions and some positions of other organisational units of the National Headquarters of the Border Guard. Within the structure of the above Team special audit positions and an Independent Section for Complaints and Petitions were set up.

169. Within units, the monitoring tasks – related to the scope of activities of organisational positions within the structure of these units – were implemented by Independent Sections for Audits and Control (previously Divisions for Audits and Control), subordinate to the commanders of the above organisational units, while as to content subordinate to the director of the Inspectorate.

170. As part of the monitoring actions carried out by organisational units (positions) of the Border Guard, the following issues were evaluated which were indirectly connected with the relevant questions and which provided a general picture of respecting the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by the authorities of the Border Guard:

- Organisation of admissions of inquirers who file complaints and petitions and the manner of their consideration and processing by heads of border organisational units;
- Procedures and a manner of execution of border control of travellers;
- A manner of conduct in matters related to aliens (the issue of visas and other administrative decisions related to their crossing the state border, procedures related to their placement in guarded centres and pre-trial detention centres for the purpose of expulsion);
- The officers' execution of activities ordered by other authorities;
- Procedure and manner of surrender and acceptance of persons by the Border Guard as part of readmission;
- Conduct of preparatory proceedings;
- Functioning of facilities for detainees and detention centres for the purpose of expulsion;
- A manner of conduct with detainees (the validity and effective use of the duration of detention, implementation of detainees' rights).

171. In the period under consideration (from 1 August 1998 until 30 June 2004), a total of 829 audits was conducted, 72 of which were carried out by the Inspectorate. 467 of the audits were problem-related and 362 were emergency ones, where issues concerning the relevant subjects were also analysed. In the event of establishing irregularities, examination audits were carried out. In addition, the relevant subjects were also inspected by Offices and Boards from the National Headquarters of the Border Guard (as part of content-related supervision). No violations of regulations in the relevant field were established during service and penitentiary audits.

172. When assessing the outcomes of professional activities and the resultant conclusions, it should be emphasised that strictly speaking problems of violating the provisions of the relevant Convention were not subject to the audit procedure in the Border Guard. General observations in this matter may only be drawn on the basis of professional activities of the monitored organisational units and positions in broad terms, related to the above issues. A comprehensive assessment in this matter allows for a conclusion that no cases of violations by officers of the Border Guard of the provisions of the above legal regulation were recorded. The above statement does not permit, however, an unconditional acceptance of the fact that there were no signals concerning situations that might have been determining factors for the occurrence of such phenomena. This was connected, *inter alia*, with the incompatibility of facilities for detainees

and detention centres for the purpose of expulsion to the binding regulations i.e. with respect to living and social conditions (especially in earlier years). The irregularities in this respect were reacted to by taking necessary measures aiming at upgrading the existing logistics base in this field. Moreover, this also related to the manner of execution of judicial actions (detentions, search) or actions ordered by other authorities. The evaluation of these issues was based not only on the conclusions arising from the audits, but also on those arising from the consideration of complaints about relevant actions. Irrespective of the fact that relevant explanatory activities confirmed the groundless character of the allegations and the compatibility with the law of the sanctions applied by officers (e.g. the use of direct coercion measures), the issues have been subject to close supervision and an ongoing verification of all, even the slightest transgressions in this respect. Summing up the above, it must be emphasised that irregularities in the area subject to audits were not connected with torture in the understanding of the Convention, i.e. with actions inflicting pain or physical or psychological suffering.

173. Taking into consideration a wide spectrum of the activities of the Border Guard and the implementation of a whole range of occupational activities concerning an officer (clerk) – traveller (citizen), it must be stressed that this is no doubt an area of a relatively high risk of the occurrence of events that might be catalysts for behaviour in violation of the provisions of the Convention. This is because whenever a conflict occurs at the threshold of the rights of a public servant and such inalienable personal rights as freedom, inviolability and dignity, a situation like that might take place. Fully aware of the above hazards, the authorities of the Border Guard monitor on an ongoing basis the observance by their officers of fundamental human rights and liberties during their audits. The above is further facilitated by an efficient system of lodging complaints related to unlawful treatment.

#### **Sobering-up centres/Facilities in the organizational units of the Police for persons brought to them for sobering-up**

174. The mode of filing complaints by persons brought to sobering-up centres for sobering-up is regulated in Article 40 para. 3a and para. 6 point 2 of the *Law of 26 October 1982 on Education in Sobriety and Preventing Alcoholism* (Journal of Laws of 2002 No. 147, item 1231 as amended) and in section 14 of the *Resolution of the Minister of Health of 4 February 2004 on the mode of coerced appearance, admission and discharge of persons under the influence of alcohol and on the organisation of sobering-up centres and facilities created or indicated by a unit of local self-government* (Journal of Laws of 2004 No. 20, item 192). Each person brought to a sobering-up centre for the purpose of sobering up is informed of the possibility of filing a complaint against the coerced appearance in the centre and detention while being acquainted with the protocol of coerced appearance of a person for the purpose of sobering up.

175. Moreover, pursuant to section 15 of the *Resolution of the Minister of Health of 4 February 2004 on the mode of coerced appearance, admission and discharge of persons under the influence of alcohol and on the organisation of sobering-up centres and facilities created or indicated by a unit of local self-government* (Journal of Laws of 2004 No. 20 item 192), in the event of the death of the person staying in a sobering-up centre, a facility or a unit of the Police, a relevant prosecutor and an executive authority of the unit of local self-government which manages the centre or the facility are notified without delay.

176. In none of the sobering-up centres were there any penal or disciplinary proceedings against a physician or a paramedic employed in a sobering-up centre, whereas 1 disciplinary proceeding was initiated with respect to other employees of sobering-up centres (in Inowrocław).

177. A person placed in a facility for persons brought to it for the purpose of sobering up in an organisational unit of the Police has the right to file requests, complaints and petitions to the officer of the Police in charge of the functioning of the facility and to the commander of the organisational unit of the Police where a given facility is located (section 8 para. 1 point 10 of the *Rules and regulations of the stay of persons placed in facilities of the organisational unit of the Police for detainees or persons brought to them for the purpose of sobering up*, which is an annex to the *Resolution of the Minister of Internal Affairs and Administration of 21 March 2003 on the conditions (...)*, with which such facilities should comply).

**Data related to the numbers and reasons for placement of persons  
in police facilities for detainees or brought to them for the purpose  
of sobering up**

Year	1998	1999	2000	2001	2002	2003
Total	269 623	274 890	288 856	300 730	293 364	284 038
Including:						
Suspected of committing an offence	127 306	137 169	138 022	157 764	149 187	148 507
For the commission of a misdemeanour	32 605	21 829	23 562	17 216	14 002	11 924
Following an order of a court or a prosecutor	52 531	51 473	55 463	56 752	57 896	54 230
Brought for the purpose of sobering up	53 970	60 446	66 184	64 693	68 324	65 210
Aliens for the purpose of expulsion	3 211	3 973	5 625	4 305	3 955	4 167

178. In 2003, 284,038 persons stayed in police facilities for detainees, which was 9,326 (3.18%) less than in 2002.

**Data related to events in police facilities for detainees or persons  
brought to them for the purpose of sobering up**

Year	1998	1999	2000	2001	2002	2003	Total
Death	8	9	5	10	9	12	53
Suicide	3	4	6	5	9	3	30
Attempt against one's own health (e.g. self-mutilation, swallowing)	52	64	82	132	115	100	545
Total	63	77	93	147	133	115	628

179. All deaths of persons deprived of liberty were of natural causes.

180. In 2003, 154 extraordinary events were recorded in police facilities for detainees (including deportation detention centres and a guarded centre for aliens) – including 15 in the Deportation Centre – which is 37 fewer than in 2002, when this number was 191 (including 13 in the Deportation Centre).

181. The biggest number of extraordinary events was recorded in the area of the activities of the Viovodeship Headquarters of the Police in: Radom (24), Olsztyn (18), Gdańsk (14), Bydgoszcz, Katowice, and Poznań - 10 events each. In turn, with the exception of the Viovodeship Headquarters of the Police in Lublin, Kielce, Olsztyn, and Szczecin, a decrease in the number of events with the participation of persons placed in facilities for detainees was observed.

182. It should likewise be emphasised that 65 % of all extraordinary events occurred when the supervision over persons placed in facilities for detainees was conducted by officers of the Police from outside the full-time escorting and prevention units.

183. The number and categories of extraordinary events recorded in facilities for detainees are presented in the table below:

Event category	Year 2002	Year 2003	Increase + Decrease -
Attempt against one's own health	115	101	-14
Escapes	23	15	-8
Suicides	9	3	-6
Deaths	9	12	+3
Direct assault on a policeman	6	5	-1
Other*	29	18	-1
Total	191	154	-37

\* Destruction or damage to the furnishings within the facilities.

184. As can be seen in the above table, the biggest category, including 101 (65.58%) of extraordinary events caused by persons placed in facilities for detainees comprises attempts against one's own health – these are: self-mutilations, attempted suicides, and swallowing different objects. Detailed relevant data are as follows:

	Year 2002	Year 2003	Increase + Decrease -
Attempt against one's own health conducted by means of:			
Self-mutilation	54	43	-11
Attempted suicide	31	22	-9
Swallowing different objects	30	36	+6
Total	115	101	-14

185. Self-mutilation constitutes the most frequent manner of assault against one's health. Analysis of reports submitted shows that persons placed in facilities for detainees most often perform self-mutilations with the use of the following: pieces of a safety razor, a shaving blade or parts of the furnishings of facilities for detainees (parts of window protection nets, nails or screws extracted from stools or beds), or the persons' own clothes – parts of zippers or shoe metal plates.

186. Attempted suicides are another kind of events in this category (relative to 2002 – a 70.97% decrease). Attempted suicides are most often perpetrated with the use of the following: objects which are parts of the furnishings of facilities for detainees (parts of blankets, mattresses or bed sheets), parts of the detainee's articles of clothing (jogging suits ribbons, parts of shirts or sweatshirts) or dressings – bandages, which are most frequently used for hanging loops fixed to preventive nets, or lighting points.

187. Acts of swallowing different objects by persons placed in facilities for detainees are another category of this type of events. The objects swallowed are: mug ears, parts of the detainee's articles of clothing (zippers, buttons), as well as parts of the furnishings of facilities for detainees (screws, nails, wire, parts of electric socket casings). Assaults on one's health are mainly prompted by the desire to leave these facilities, e.g. for the purpose of medical examinations, which greatly increases the opportunities for an escape.

188. The most frequent causes of the incidence of extraordinary events in facilities for detainees were the following: negligence of regulations in force during service in facilities for detainees, improper technical protection in facilities for detainees and a failure to use special precautions with respect to persons placed in facilities for detainees.

189. Analysis of reports submitted to the National Headquarters of the Police on audits of police facilities for detainees allowed the preparation of recommendations of the Commander in Chief of the Police as to the implementation of follow-up observations. The recommendations were forwarded to all Voivodeship Commanders of the Police with a view to eliminating irregularities in the functioning of facilities for detainees.

## **Prison Service**

190. Supervision over the execution of the penalty of deprivation of liberty, the penalty of arrest, the penalty of military arrest, preliminary detention, detention and a preventive measure in the form of placement in a guarded institution, as well as disciplinary penalties and coercive measures resulting in the deprivation of liberty (penitentiary supervision) is regulated in the following legal acts:

- *Executive Penal Code;*
- *Resolution of the Minister of Justice of 26 August 2003 on a detailed scope and manner of executing penitentiary supervision;*
- *Resolution of the Minister of Justice of 25 August 2003 on organisational Rules and regulations of the execution of the penalty of deprivation of liberty, issued under Article 249 section 1 of the Executive Penal Code;*

- *Resolution of the Minister of Justice of 25 August 2003 on organisational Rules and regulations of the execution of preliminary arrest*, issued under Article 249 section 1 of the Executive Penal Code.

191. Irrespective of the measures taken with a view to assuring a reliable consideration of complaints, requests and motions of persons deprived of liberty in correctional facilities and pre-trial detention centres in the years 1998-2003, similarly to the previous period, the prison service continued actions aimed at the assurance of a proper supervision over the activities of subordinate organisational units, including e.g. through a planned and systematic external audits, which would provide information on the correctness of action, the choice of measures and the execution of tasks by these units, both with respect to the observance of the rights of persons deprived of liberty and to the implementation of the entirety of tasks of the Prison Service.

192. Pursuant to the *Law of 26 April 1996 on the Prison Service* (Journal of Laws of 2002 No. 207, item 1761 as amended), the direct supervision over the activities of correctional facilities and pre-trial detention centres is conducted by provincial directors of the Prison Service, and the implementation of tasks carried out by organisational units of the Prison Service is supervised by the General Director of the Prison Service. Both the Central Board of the Prison Service and the provincial inspectorates of the Prison Service monitor penitentiary units by means of comprehensive, problem-related and emergency audits, in keeping with the recommendations inscribed in international documents related to the treatment of prisoners.

193. Audits of the Central Board of the Prison Service and of provincial inspectorates of the Prison Service focused *inter alia* on the examination of the observance of the rights of persons deprived of liberty in correctional facilities and pre-trial detention centres and on assuring statutory conditions for serving the penalty. To this end usual monitoring methods were used, consisting *inter alia* in visitations in all facilities in controlled units, including residential cells, providing prisoners, especially during comprehensive audits, with an opportunity to file to the auditors possible complaints, requests and petitions without the presence of the staff of the audited units. In the course of monitoring actions, in 2000 direct talks were held with 28,944 persons deprived of liberty, i.e. with 19.9% of persons staying throughout the entire year 2000 in correctional facilities and pre-trial detention centres. 136 complaints were recorded in protocols and upon a closer examination two of them proved justified. In 2001, in the course of visitations in cells and facilities where prisoners were staying, direct talks were held with 28,078 prisoners and persons in preliminary detention, i.e. with 16.9% of the total number of prisoners in 2001. 78 complaints were recorded in protocols, one of which was considered as justified. In 2002 direct talks were held with 27,595 persons deprived of liberty, i.e. with 16.1% of the total number of prisoners in 2002. 98 complaints were recorded in protocols, five of which were considered as justified. In 2003, 35,229 prisoners, i.e. 20.6% of the total number of prisoners in 2003, were offered an opportunity to talk with auditors. 36 individual complaints were recorded in protocols, three of which were considered as justified. Justified complaints within the time-framework under consideration related most often to the following: failure to provide prisoners with proper living conditions in residential cells, placement of non-smoking persons with smokers and prolonged periods of waiting for consultations from specialist physicians. The processing of complaints, requests and petitions related to persons deprived of liberty was in 2000 subject to 177 external audits carried out by supervisory organs of the Prison Service (provincial inspectorates of the Prison Service, Central Board of the Prison Service) in 2002 – 225, and in 2003 – 195.

194. Persons in charge of considering complaints, requests and petitions in organisational units of the Prison Service attend annual training sessions devoted to relevant issues, organised by the Central Board of the Prison Service and provincial inspectorates. In 2003 the Central Board of the Prison Service (Office of Audit and Control) organised two meetings devoted to instruction and training in relevant issues, attended by all officers responsible for the implementation of these tasks in provincial inspectorates as well as officers of selected correctional facilities and pre-trial detention centres where the biggest number of complaints were raised. These meetings served *inter alia* the purpose of discussions on the rulings of the European Court of Human Rights related to violations in penitentiary units of the rights arising from the *European Convention of Human Rights*. Their participants were familiarised also with the mechanism for the consideration of complaints, requests and petitions in the penitentiary system of Great Britain.

195. Moreover, all provincial directors organised training sessions for officers from their subordinate organisational units who were authorised to carry out activities connected with the consideration and processing of complaints, requests and petitions related to persons deprived of liberty.

196. The Executive Penal Code of 1997 abolished the penitentiary supervision of the prosecutor. According to Article 32 of the Executive Penal Code, external supervision over the legality and propriety of the execution of the penalty of deprivation of liberty, the penalty of arrest, preliminary arrest, detention and a preventive measure in the form of placement in a guarded institution, as well as disciplinary penalties and coercive measures resulting in the deprivation of liberty, is carried out solely by a penitentiary judge (Article 32 of the Executive Penal Code). The penitentiary supervision over the execution of the penalty of military arrest, preliminary arrest applied by a military court and detention is carried out by a military penitentiary judge.

197. The penitentiary supervision conducted by a penitentiary judge consists in the control and evaluation of, in particular, the legality of the execution of the imposed penalty, the legality of placement and stay of convicted persons in correctional facilities and their discharge from these facilities, and especially the execution of penitentiary tasks and the social reintegration activities of a correctional facility, the compliance with the rights and duties of convicted persons, the legality and efficacy of the methods and measures used in penitentiary work. The above activities of penitentiary supervision conducted by a penitentiary judge apply respectively to penitentiary supervision in pre-trial detention centres and in guarded psychiatric institutions or institutions for the rehabilitation treatment of substance abuse, in connection with the placement there of perpetrators as a preventive measure.

198. Regulations contained in codes guarantee the right of persons in charge of penitentiary supervision to enter at all times and without limitations the premises of the facility and the rooms where persons deprived of liberty stay. A penitentiary judge also has the right to inspect documentation and demand explanations from the administration of the facility, to conduct talks with prisoners in private on the premises of the facility and to examine their complaints, petitions and requests (Article 33 of the Executive Penal Code).



199. Penitentiary supervision can take the following forms:

- Visitations of penitentiary facilities and issue of follow-up recommendations;
- Issue by a penitentiary judge of regulations on a change or a repeal of decisions made by administrations of facilities and their organs and the suspension of the execution of these organs' decisions by a penitentiary judge;
- Forwarding addresses, opinions and motions by a penitentiary judge to courts and administrations of facilities;
- Provision by a penitentiary judge of necessary explanations or instructions;
- Acceptance and consideration of complaints, petitions and requests filed by prisoners and the examination of the manner of their resolution by administrations of the facilities.

200. Penitentiary supervision conducted by a penitentiary judge is not tantamount to his administrative authority over penitentiary units, nor does it authorise him to issue orders of an administrative character. If in the opinion of a penitentiary judge a decision which is not within the scope of his competences is necessary, especially a decision of an administrative character, he notifies about his observations a competent authority and forwards to it his relevant conclusions.

201. As part of the supervision over the legality of the execution of isolation penalties, a penitentiary judge, pursuant to Article 34 of the Executive Penal Code, may repeal an unlawful decision of an authority executing the relevant ruling, if it concerns a person deprived of liberty. A penitentiary judge is likewise authorised, in the event of observing an unlawful deprivation of liberty of a person serving a sentence or a person with respect to whom a preventive measure is applied, to order a release of such a person.

202. A penitentiary judge has the right to take action aiming at a suspension of the functioning or a shut-down of a penitentiary unit which does not guarantee the observance of the rights of persons staying on its premises. Pursuant to Article 35 section 3 of the Executive Penal Code, in the event of a recurrence of blatant transgressions in the functioning of a correctional facility, a pre-trial detention centre or another facility where persons deprived of liberty stay, or when the conditions of these facilities do not guarantee the observance of the rights of persons staying on their premises, a penitentiary judge applies to a competent authority with a motion for the elimination of existing irregularities within a specified time-framework. If these irregularities are not eliminated by a given deadline, a penitentiary judge applies to a competent minister for a suspension of the functioning or a partial or complete shut-down of a particular correctional facility, pre-trial detention centre or another facility.

203. Pursuant to the *Law of 25 June 1997 on Aliens*, the supervision over the correctness of the execution of a decision on the use of detention for the purpose of expulsion with respect to an alien was until 2001 carried out by a prosecutor. Following the amendment of the above Law by the *Law of 11 April 2001 on the Amendment of the Law on Aliens and on the Amendment of Some Other Laws*, the supervision over the correctness of the execution of a measure consisting

in a placement of an alien in a guarded centre or a detention centre for the purpose of expulsion was transferred to the competences of a district court competent *rationae loci* because of the seat of the authority filing this motion. This competence of the district court was retained by the currently binding Article 104 of the Law of 13 June 2003 on Aliens. The district court is likewise competent as to the issue of a decision referred to above.

204. Article 102 of the Executive Penal Code, amended by the Law of 24 July 2003 (which took effect on 1 September 2003), specifies in detail the rights of the convicted person. Article 101 of the Executive Penal Code moreover calls for an immediate notification of a convicted person about his rights and obligations, and especially provides for their becoming acquainted with the provisions of this Code immediately upon being placed in a correctional facility.

205. In the course of visitations and various types of audits of penitentiary units it is checked whether the libraries have an adequate number of copies of the Constitution of the Republic of Poland, as well as of the following Codes: the Executive Penal Code, the Code of Administrative Proceedings, and the Civic Code.

206. The convicted person has the right to directly address superiors and persons visiting the correctional facility about issues related to the execution of deprivation of liberty, as well as has the right to file complaints, petitions and requests to an authority competent for their consideration. Moreover, they can bring their complaints, petitions and requests, during the absence of other persons, to the attention of the administration of a correctional facility, the head of organisational units of the Prison Service, a penitentiary judge, a prosecutor, and the Ombudsman (Article 102 point 10 of the Executive Penal Code). The issues related to lodging complaints are presented in great detail during the discussion of Article 13 of the Convention. Article 13 also contains information on the possibility, under Article 7 of the Executive Penal Code, of the convicted person's appealing to a court against a decision of an organ of executive proceedings (including an organ outside the judiciary) on account of its unlawful character.

207. The convicted person has the right to legal aid of an advocate appointed in executory proceedings. If, however, one of the circumstances specified in Article 8 of the Executive Penal Code occurs (the convicted person is deaf, mute or blind; there is a justified doubt about his sanity; he has not attained the age of 18 years or does not use the Polish language), an advocate is obligatorily appointed to him by a court (Article 8 section 2 of the Executive Penal Code).

208. The convicted person has the right to communicate with his advocate or plenipotentiary who is an advocate or a legal advisor in the absence of other persons. Also correspondence with these persons is not subject to censorship or detention. Additionally, conversations during visitations and telephone calls with his advocate or plenipotentiary who is an advocate or a legal advisor are not subject to monitoring. Supervision over the correspondence with an advocate may be carried out by opening a letter only when there are justifiable grounds to suspect that the letter contains objects which are subject to the ban on their possession, storage, transfer, sending or trade. The activity of opening is performed in the presence of the convicted person and a penitentiary judge is notified and provided with the reason for and results of taking this activity (Article 8 section 3 of the Executive Penal Code).

209. Pursuant to Article 6 section 1 of the Executive Penal Code, the convicted person may also file petitions for instituting proceedings before a court and take part in them as a party as well as institute appellate measures in preparatory proceedings, unless the law stipulates otherwise.
210. The provisions related to the execution of the penalty of deprivation of liberty, as amended, specified in the provisions of the Executive Penal Code (Article 209 of the Executive Penal Code) apply, respectively, to the execution of preliminary detention. A person under preliminary detention enjoys the same rights that are granted to a convicted person serving the penalty of deprivation of liberty in an ordinary system in a correctional facility of a locked-up regimen and no restrictions apply to him other than those necessary for ensuring a proper course of criminal proceedings, maintaining order and security in a detention centre and for preventing mutual demoralisation of persons under preliminary detention (Article 214 of the Executive Penal Code). Persons under preliminary detention enjoy full rights to file requests, petitions and complaints in the same course as convicted persons. Similarly to convicted persons, they may directly address superiors and visitating persons with issues related to the execution of preliminary detention and with personal issues (section 4 of the above Rules and regulations of 25 August 2003).
211. The moment a person under preliminary detention is admitted to a detention centre, s/he is informed about a possibility of incidence during his stay in the Pre-trial Detention Centre of threats to his personal security and of manifestations of negative behaviours characteristic of criminal circles, as well as about the need to notify superiors about a threat to his own personal security and that of other detainees (Article 3 of the Rules and regulations).
212. Article 215 section 2 of the Executive Penal Code defines the right of persons under preliminary detention to prepare themselves for the defence and the duty of making it possible for them. A person under preliminary detention has the right to communicate with a defence attorney or a plenipotentiary who is an advocate or a legal advisor in the absence of other persons or by means of correspondence, with a reservation of the organ at whose disposal he remains (Article 215 section 1 of the Executive Penal Code).
213. Regulations different than those related to a convicted person concern the following: correspondence – it may be subject to monitoring or censorship if the organ at whose disposal a detainee remains orders so (Article 73 of the Code of Criminal Procedure, Article 217a of the Executive Penal Code); visitations – possible only upon the issue of a resolution on a permission of a visitation by the organ at whose disposal a detainee remains (Article 217 of the Executive Penal Code) and granting permission to a detainee to leave the premises of the correctional facility in cases of special significance for the detainee – this requires the issue of a resolution on a permission by the organ at whose disposal a detainee remains. Additionally, a person under preliminary detention cannot use telephones and other means of cordless and wire communications.
214. On 1 September 2003 the provision of Article 223a of the Executive Penal Code took effect which regulates the situation of a person under preliminary detention with respect to whom the penalty of deprivation of liberty is executed in another case. The person in question enjoys the same rights as the convicted person, with the exception of: visitations, correspondence, use of telephones and other means of cordless and wire communications,

possession of objects in a cell, use of medical services, notifications of the organ at whose disposal a detainee remains on his qualification among persons under preliminary detention causing a serious social threat or a serious threat to the security of a correctional facility and on remaining for medical treatment in a correctional facility upon release, as well as the issue of a permit for leaving the premises of the correctional facility in cases especially vital for the detainee and additionally in other circumstances, when this is required by the necessity to ensure a proper course of criminal proceedings. Moreover, he does not use passes (which are granted in facilities of a semi-open type – no more than once every two months, for a combined period not exceeding 14 days a year, and in the case of a facility of an open type – not more than once a month, for a combined period not exceeding 28 days a year), rewards in the form of permits for visitations without supervision outside the premises of a correctional facility, with a person close to the detainee or a trustworthy one, for a period not exceeding at one time 30 hours or in the form of permissions to leave a correctional facility without supervision for a period not exceeding at one time 14 days, as well as in the form of permissions to leave a correctional facility for the combined period of up to 14 days, especially with a view to trying to obtain adequate conditions of residence and work upon a release.

### **Remand houses and shelters for juveniles**

215. In the period from 1998 until 2003, 34 remand houses and shelters for juveniles were attended by an annual average of from 2,000 to 2,100 juveniles. From the total number of 34 facilities run by the Minister of Justice, no events violating the rights of juveniles were recorded in 20 of them, while out of all the 24 explanatory proceedings related to notifications about the violations of the Convention, only six confirmed the allegations in the course of the five years under consideration in this Report. The remaining eighteen cases were considered as unjustified in the course of an inquest. Detailed data are provided in Annex 3.

216. Most of the allegations were filed by juveniles in shelters for juveniles, by letter or during talks, to directors of facilities, visitation officers of provincial pedagogical supervision teams, the Ministry of Justice and to judges monitoring the implementation of judicial decisions in remand houses. In one of the post-visitiation reports, a judge monitoring a facility indicated cases of the use of corporal punishment with respect to juveniles, which were subsequently not confirmed by the prosecutors' office. Information on violations of juveniles' rights in a facility was treated as one of the relevant notifications of irregularities; it was contained in an audit report prepared by employees of the Office of the Ombudsman for Children. In still another case the prosecutors' office was notified by a mother of a minor placed in a shelter, who subsequently withdrew the allegation. Out of the total number of examined cases of violations of the Convention, competent prosecutors' offices conducted seven explanatory proceedings. The other inquiries were in a vast majority conducted by visitation officers of provincial pedagogical supervision teams, directors of facilities, visitators of the Department of Facilities for Juveniles of the Ministry of Justice, and supervising judges. One case, apart from being filed to a court, was also forwarded to an occupational disciplinary committee.

217. Actions taken within the framework of explanatory proceedings were most frequently based on cooperation between individual organs, but there were also audits of the results of the activity of subordinate authorities. When the allegations proved justifiable, the accused persons were punished with the penalties of reprimand, caution, dismissal from work or conclusions and recommendations for implementation were formulated. Reports on violations of the principles

of the Convention related in the majority to the use of physical force with respect to juveniles by vocational teachers, tutors in boarding houses, non-pedagogical staff (beating, incidental blows). Single allegations concerned the aforementioned employees' use of psychological violence, verbal abuse, hindering the exercise of religious practices, or limiting access to specialist medical care.

218. In the period under consideration cases of violations of the rights of juveniles were not a significant phenomenon, which is a result of systematic supervision, starting from the lowest level supervision conducted by directors of individual remand houses and shelters, and especially a result of actions aiming at:

- Raising the awareness of juveniles and staff in the field of respecting the Convention;
- Creating a comprehensive network of monitoring and preventing violations of the Convention;
- Conducting training sessions, *inter alia* in the field of interpersonal communication skills of staff in contacts with juveniles and coping with one's own aggression.

219. Thanks to the cooperation of directors of facilities for juveniles with the pedagogical supervision and the coordination of the Department of Facilities for Juveniles of the Ministry of Justice, a system was worked out which prevents violations of the principles of the Convention, e.g. by monitoring the extent of the observance of the Convention. The system consists in the following:

- Guided talks with juveniles and staff;
- Participating observation;
- Diagnostic hospitalisation;
- Surveys of juveniles and staff;
- Talks with parents or legal guardians of juveniles.

220. Within the supervision activities, periodic audits of the observance of juveniles' rights are carried out. Pursuant to the Resolution of the Minister of Justice of 17 October 2001 on *remand houses and shelters for juveniles*, visitations are conducted no less than once in a five-year period, unless circumstances calling for an emergency visitation present themselves.

221. Visitation officers of provincial pedagogical supervision teams conduct periodic audits and controls, participate in meetings of boards of remand houses or shelters and in meetings of pedagogical boards of schools. As part of work quality assessment, they consistently and regularly control the manner of executing supervision by directors of facilities, carrying out *inter alia* participating observations, guided talks, surveys, and documentation analysis. They analyse the functioning of all areas of work. These actions are coordinated by visitation

officers of the Department of Facilities for Juveniles of the Ministry of Justice. On average two scheduled audits or inspections are conducted per semester, and additionally there are audits monitoring the implementation of recommendations. In facilities that in the opinion of the supervision demand special attention, additional or emergency actions are implemented.

222. Knowledge on the work of facilities for juveniles can be obtained also from the statistics gathered and forwarded to the Ministry of Justice, e.g. concerning the relevant problems and reports of family judges responsible for a proper implementation of decisions in facilities for juveniles.

223. Therefore, it can be said that the supervision, both of the local and central level, possesses updated and reliable knowledge on the situation in all facilities.

224. The observance of the rights of juveniles placed in a remand house or a shelter is examined separately during each comprehensive visitation. During the visitation both juveniles and the staff of facilities are surveyed. Conclusions from the polls are analysed and discussed in the facilities and placed in post-visitation reports, and if necessary formulated in the form of recommendations. Moreover, during each stay of visitation officers in facilities, educational guided talks are carried out with a view to obtaining information on unlawful treatment of juveniles by the staff of a facility. Such talks are carried out most often with boys in interim centres, as well as during school classes, workshops and classes in boarding houses. Also documentation related to the use of rewards and disciplinary measures is analysed with a view to obtaining a balanced approach in this respect, since the use by the facilities of assessment, rewarding and disciplinary systems should be based on positive reinforcement (rewards).

225. It is a fundamental principle that juveniles are provided with all information related to their inalienable rights – the respect of this requirement is verified within supervision activities. Each juvenile newly admitted to a facility is notified about his rights and about ways of passing on information in the event of violations of these rights. Already during the first stay in an interim centre the level of understanding the information provided is checked. Each juvenile confirms with his own signature on a relevant statement the fact of being notified about his rights and obligations contained in the Rules and regulations for juveniles placed in facilities.

226. Furthermore, the rights and duties of juveniles are discussed by educational staff during tutorials in boarding houses, during regular classes, which is confirmed by the pedagogical documentation of the facility.

227. Remand houses and shelters for juveniles have procedures that assure to the juveniles placed in them the exercise of their inalienable rights. All juveniles have access to information on the Rules and regulations binding for them, rewards and disciplinary measures, as well as on the social reintegration offer. Rooms of individual tutorial groups feature in accessible places the Rules and regulations along with a selection of rights and obligations, a catalogue of rewards and disciplinary measures, the manner of their granting and award, criteria for establishing grades related to conduct and the mode of enforcing the juveniles' obligations. Moreover, competitions are organised in facilities related to the knowledge of rights by juveniles.

228. In each facility for juveniles, in generally accessible places, there are lists of institutions with their addresses, where juveniles can send petitions, requests, complaints and communications which are not subject to the monitoring of the staff of the facility. The institutions in question are the following:

- Director of a competent Remand House/Shelter for Juveniles;
- President of a competent District Court;
- Provincial Pedagogical Supervision Team at a competent District Court;
- Department of Common Courts of the Ministry of Justice;
- Department of Supervision over the Implementation of Judgements in the Ministry of Justice;
- Office of the Ombudsman for Children;
- Office of the Ombudsman.

229. Furthermore, during each stay of visitation officers in a facility, juveniles are offered an opportunity to personally file possible complaints and observations. Juveniles can file complaints and communications every day to the director or another educational employee of the facility.

230. Facilities provide juveniles with adequate care and psychological and pedagogical assistance, give an opportunity to comply with the school attendance requirement, vocational training, religious practices, basic medical care and dental care on facility premises.

231. Special care and attention is offered to juveniles psychologically and physically vulnerable. When possible, facilities assure the protection of family ties, sending and receiving correspondence to the extent arising from regulations, a contact with an advocate or a plenipotentiary on facility premises and with a family judge in charge of supervising the facility.

232. Facilities for juveniles are meant to educate in a manner that will help juveniles to fulfil their obligations, especially those most important in the process of social reintegration. Systems of educational impact impose obligations on employees to systematically and consistently exercise the rights and obligations of juveniles and to provide them with assistance in their execution. All facility staff are obliged to know adequate regulations, which they confirm in many facilities with a handwritten signature. All materials related to juveniles' rights issued by the Ombudsman, the Ombudsman for Children and the Helsinki Foundation for Human Rights are brought to the attention of the staff on a regular basis. Furthermore, the supervision comprises also trainings for educational and non-educational staff related to the observance of the Convention.

233. All supervision activities e.g. during visitations, audits and surveys, will continue to provide close monitoring in this area and to shape proper educational attitudes on the part of the staff of facilities for juveniles.

### **Monitoring the observance of the rights of persons in mental hospitals and social welfare homes**

234. Pursuant to Article 43 of *the Law of the Protection of Mental Health*, mental hospitals and social welfare homes for the mentally ill or persons with mental handicaps can be entered at all times by a judge for the purpose of monitoring the legitimacy of admission and stay in such a hospital or a social welfare home of persons with mental handicaps, monitoring the observance of their rights and the living conditions. These questions are regulated in detail in the *Resolution of the Minister of Justice of 22 February 1995 (Journal of Laws of 1995 No. 23, item 128) on monitoring the observance of the rights of persons with mental handicaps staying in mental hospitals and social welfare homes*. Pursuant to the Resolution, the monitoring of the legitimacy of admission and stay in mental hospitals or social welfare homes, hereafter called “facilities”, of persons with mental handicaps, as well as of the living conditions of these persons, is carried out by a judge who possesses expertise and experience in the field of mental health care, appointed by the president of the provincial court competent *rationae loci* for the facility. In the event of recording significant transgressions in the activity of the monitored facility, a copy of the report is also forwarded to the Ministry of Health - in 2003 no judge forwarded a copy of an audit report.

235. The Ministry of Health also obtains copies of reports on the course of a visitation of a penitentiary judge (section 3.1 and section 7.3 of the *Resolution of the Minister of Justice on the manner, scope and mode of execution of penitentiary supervision* which is a by-law to Article 36 of the *Executive Penal Code*). As a part of this procedure, a report was obtained from the Provincial Court in Radom (No. VII Wiz. 4016/1/04 of 15 January 2004) which indicated mistakes in cards of the application of immobilisation.

236. Moreover, periodic audits of mental hospitals are conducted by the Ombudsman via the employees of his Office.

237. An audit carried out by a judge appointed by the president of a provincial court, under Article 43 of *the Law of 19 August 1994 on the protection of mental health* and on the basis of an executive law issued under it, comprises *inter alia*:

- (1) Correctness of medical documentation which is a basis for the admission and stay in a facility of persons with mental disturbances.
- (2) Correctness of medical documentation related to the use of direct coercion and the use of health services posing a higher risk for the patient.
- (3) Appropriacy of a further stay in a mental hospital in a case of hospitalisation in excess of 6 months.
- (4) Respect of the rights of persons staying in a facility, specified in the Law on the protection of mental health and in regulations related to health care facilities, as well as in regulations concerning social welfare.



- (5) Living conditions in a facility.
- (6) Activity of a facility related to cooperation with a court and curators conducting supervision over persons with mental disturbances staying in a facility.
- (7) Cooperation between the facility and the family or guardians of persons with mental disturbances.
- (8) Correctness and timely processing of complaints and observations of persons with mental disturbances staying in a facility.

238. A judge carries out the aforementioned activities within his scope of his competences through the following:

- (1) Audits of facilities – conducted at least once a year or on an *ad hoc* basis – comprising all issues subject to monitoring or audits comprising only selected issues, carried out when necessary.
- (2) Direct contact with persons with mental disturbances staying in a facility.
- (3) Issue of post-audit recommendations and inspection of their correct and timely implementation.
- (4) Other activities aiming at the elimination of irregularities and the prevention of their occurrence.

239. Following an audit, a judge notifies the head of the facility about the results, making it possible for him to express his opinion on the established facts and on suggested post-audit recommendations. When necessary, a post-audit meeting is organised which should be attended also by other employees of the audited facility and about which the supervising organ of a given facility is notified.

240. The course of the audit is presented in a report, which should contain especially data on the extent of the audit, assessment of the manner of execution of recommendations issued after the previous audit, the results of the audit, and post-audit recommendations. The President of a competent Provincial Court forwards a copy of the report within 14 days of the completion of the audit to a competent guardianship court, the head of the audited facility and the supervising organ of a given facility. In the event of establishing serious irregularities in the work of the audited facility, the President of a Provincial Court sends a copy of the report to the minister for health issues, social welfare or labour and social policy. In order to codify audit methods, the President of a Provincial Court may organise meetings attended by judges in charge of the supervision of facilities, heads of audited facilities and psychiatrists.

241. The head of the monitored facility or a supervising organ may – within 14 days of the reception of the report – notify the President of the Provincial Court of reservations or observations concerning audit results and post-audit recommendations.

242. The head of the monitored facility or a supervising organ, on demand of a judge, provides within 14 days information on the scope and manner of the implementation of post-audit recommendations.

243. Moreover, the assessment of the justifiability of the use of direct coercion is subject to an ongoing monitoring. If direct coercion measures have been applied as a result of a decision of a physician from a health care unit – the assessment is carried out within 3 days by the head of this facility. If, however, the decision is taken by another physician – the assessment is carried out also within 3 days by a physician – specialist in psychiatry appointed by the voivode (Article 18 para. 6 of the *Law on Mental Health Protection*). This mechanism was discussed at length in Article 2 of this Report.

244. A national study (incomplete data) led by the Institute of Psychiatry and Neurology by means of the *Questionnaire for the Monitoring of the Law on Mental Health Protection* filled out by nearly all mental hospitals, it follows that direct coercion was used:

- In 2000 with respect to 22,666 persons (14.6% of the total no. of admitted persons);
- In 2001 with respect to 23,921 persons (14.8% of the total no. of admitted persons);
- In 2002 with respect to 25,401 persons (14.5 % of the total no. of admitted persons);
- In 2003 with respect to ca. 25,000 persons (ca. 14 % of the total no. of admitted persons).

245. A study<sup>9</sup> conducted within a six-month period (from November 1999 until 30 April 2000) in one of the big mental hospitals indicates that direct coercion, mainly in the form of immobilisation, was used with respect to 12.4% of patients. Analysis of the documentation of 959 cases of the use of direct coercion indicates that the reasons for its application were:

- In 54.3% in agreement with the relevant Law;
- In 33.7% formally in agreement with the Law, but inadequately justified;
- In 3.8% in violation of the Law;
- In 4.1% doubtful;
- In 4.2% occurred on the patient's demand.

246. In January 2003 the aforementioned study was repeated in the same hospital. Analysis of 100 cases of the use of direct coercion indicates that the reasons for its application were:

- In 69 % - in agreement with the relevant Law;
- In 21 % - formally in agreement with the Law, but inadequately justified;

- In 4 % - in violation of the Law;
- In 3 % - doubtful;
- In 2 % - occurred on the patient's demand.

247. Since there is no statutory obligation for collecting data on instances of the use of a direct coercion measure, no comprehensive information related to the use of direct coercion is available.

248. Available statistical data is presented in Annex 2.

### **Care and educational institutions**

249. In the years 1999 – 2000, following an administrative reform of the country, some of the tasks related to child care were transferred from the educational system to the system of social welfare. The task of organising child care was entrusted to a new level of local self-government – the district (above the commune level; *poviat*) (Article 47 a para. 1 *of the Law of 29 November 1990 on Social Welfare*), and within the district – to district centres of family assistance. As of 1 January 2000, social welfare was entrusted with the task of providing care and education in care and educational institutions (children's homes, family children's homes, emergency care centres, educational groups, day care centres, and social clubs) to children fully or partially deprived of parental care and to socially ill-adjusted children.

250. In the years 2000 – 2003, care and educational institutions run by social welfare comprised also social reintegration centres for juveniles placed there pursuant to the Law on conduct in cases concerning juveniles. As of 1 January 2004 these institutions were returned to the system of education.

251. Provisions of the *Resolution of the Minister of Labour and Social Policy of 1 September 2000 on care and educational institutions* (Journal of Laws of 2000 No. 80, item 900) indicate standards to be met by the centres in order to adequately implement their objectives. The standards of education and care specified in section 35 and in section 37 of the Resolution were prepared pursuant to the *Convention of the Rights of the Child*. They emphasise that a centre is obliged to:

- (1) Create conditions conducive to children's physical, psychological and cognitive development.
- (2) Respect the identity of the child, hear his opinion and if possible take into account his requests in all cases related to him and to inform the child about actions taken with respect to him.
- (3) Ensure a sense of security.
- (4) Care about the respect for and sustenance of emotional ties between the child and the parents, siblings and other persons both from outside the facility and those who stay or are employed in the care and educational institution.

- (5) Teach the child how to establish emotional ties and interpersonal relations.
- (6) Teach the child the respect for the tradition and cultural heritage.
- (7) Teach the child how to plan and organize everyday activities adequately to his age.
- (8) Teach the child how to organize leisure time, including participation in cultural, recreational and sports activities.
- (9) Instil in children a healthy lifestyle and healthy habits.
- (10) Prepare children for assuming responsibility for their own conduct and teach them independence and self-reliance in life.
- (11) Level out developmental differences in children.
- (12) Take important decisions related to the child in agreement with his parents or guardians.

252. As to the fulfilment of the standard of education and care, care and educational institutions are subject to supervision conducted by persons with proper pedagogical qualifications, authorised by the voivode competent *rationae loci* with respect to the seat of the institution. The principles of supervision over care and educational institutions were defined in the *Resolution of the Minister of Labour and Social Policy of 29 August 2000 on detailed principles of supervision of the standard of education and care in care and educational institutions and of supervision of the quality of work of adoption and care centres* (Journal of Laws of 2000 No. 74, item 862). The Regulation emphasises the need for examining the validity of the child's stay in the institution, meeting the standard of care and educational services, and respecting the child's rights in the institution. Should any irregularities in the functioning of institutions arise, they ought to be eliminated within the framework of supervision conducted by the voivode.

253. In the years 2001 – 2003, audits of care and educational institutions were carried out in all voivodeships; these audits were to establish the observance of the child's rights, the position and rights of juveniles in the institutions. Supervisors of care and educational institutions appointed by the voivode carried out among minors anonymous polls, the result of which could indicate *inter alia* whether children were subject to psychological or physical abuse. Moreover, directors of all institutions were instructed to inform children about telephone numbers and addresses of the Ombudsman for Children, of persons conducting pedagogical supervision appointed by the voivode and of the district centre for family assistance.

254. It follows from the information obtained in 16 voivodeships that in the years 2000 – 2003 voivodeship services of pedagogical supervision recorded 17 cases of violations of personal inviolability of minors in care and educational institutions; however, in 5 cases explanatory proceedings, including preparatory proceedings conducted by a prosecutor, did not confirm the allegations. The scope of violations of personal inviolability of juveniles in care and educational

institutions ranged from a pull, through an argument, during which an educator shoved a minor, to a beating, e.g. with a belt. These events were brought to the attention of voivode services by, e.g. a child's legal guardian, adult wards, anonymous polls, and local press. Criminal proceedings were instituted with respect to educators who were found guilty of more serious actions. In less drastic cases the educator received a negative assessment of his work or a reprimand. Persons conducting pedagogical supervision also reported on cases concerning these educators to the teachers' disciplinary commission.

255. The voivode, as a supervisory unit, is an authority competent to consider complaints in the event of the incidence of irregularities in the functioning of care and educational institutions, including also in the provision of care. The procedure of considering complaints is regulated in the Code of Administrative Procedure and in the *Resolution of the Council of Ministers of 8 January 2002 on receiving and considering complaints*.

256. In 2000, establishing a new legal state for the functioning of care and educational institutions within the system of social welfare, advantage was taken of the material contained in the 1999 report of the Helsinki Foundation for Human Rights "The State of Observance of the Rights of Minors in Children's Homes". As a result, the Regulation on care and educational institutions and on the principles of supervision grants priority to the full observance of the rights of the child in care and educational institutions.

### **Living conditions of persons subject to all forms of detention, arrest or deprivation of liberty**

#### **(a) Living conditions in units subordinate to the Prison Service**

257. General living conditions in units subordinated to the Prison Service are regulated in the provisions of the Executive Penal Code of 1997, amended by the *Law of 24 July 2003 on the amendment of the Law – The Executive Penal Code and some other laws* (Journal of Laws of 2003 No. 142, item 1380) and in Rules and regulations issued on their basis.

258. Article 110 of the Executive Penal Code defines the minimum area of a residential cell per one detainee (no less than 3 m<sup>2</sup>). Moreover, basic requirements related to the conditions of serving the penalty of deprivation of liberty were specified: adequate accommodation furnishings ensuring a separate place for sleep, proper conditions of hygiene, adequate supply of air and a temperature adequate to the season of the year according to the norms defined for residential quarters, as well as lighting adequate for reading and execution of work.

259. A shortage of places for prisoners is a serious problem which the prison system has faced for a few years. Since the beginning of 1999 the number of prisoners has increased from around 53,000 to around 80,000 at present. This situation caused overcrowding of prisons by approximately 15 % and a constant threat of an influx of convicted persons from the group "awaiting the execution of a penalty" (the capacity of correctional facilities and pre-trial detention centres as presented in the Report and in statistics is established in accordance to the norm defined in Article 110 section 2 of the Executive Penal Code (an area in a residential cell per one prisoner cannot be less than 3 m<sup>2</sup>)). Population density in some penitentiary units exceeds 130% of their capacity.

260. The table presents months when population density in correctional facilities and pre-trial detention centres was the highest in the years 1998-2004:

Month and year	Population density in correctional facilities and pretrial detention centres	Month and year	Population density in correctional facilities and pretrial detention centres
31.03.1998	59 049	30.11.2002	81 766
30.11.1999	56 206	31.03.2003	82 766
30.11.2000	69 937	29.02.2004	81 206
30.11.2001	80 565		

261. As a consequence, the penitentiary system took efforts to secure new places of accommodation. These efforts consisted in the change of the intended use of some rooms such as community centres, fitness-rooms, briefing halls, etc. for residential purposes or in investment and renovation actions. As a result of investment and renovation actions, in 1999 1,035 places were secured, in 2000 – 974, in 2001 – 1 115, in 2002 – 335, and in 2003 – 1,604. It is worth mentioning that in the aforementioned period two new penitentiary units were constructed. The construction of the Pre-trial Detention Centre in Radom (789 places) was concluded in 1998 and the Pre-trial Detention Centre in Piotrków Trybunalski (619 places) became fully operational in 2003. Generally, in period from January 1999 until May 2004, the number of places for prisoners at the disposal of the penitentiary system increased from nearly 65,000 to over 69,000.

262. Currently, in all penitentiary units there is a total of 16,995 cells, including 1,125 single cells, 4,499 double cells, and 2,764 triple ones. The remaining cells are meant for four and more prisoners, including *inter alia* 295 cells designated for over eleven inmates. The Prison Service takes further action with a view to limiting the number of residential cells for larger groups of prisoners in the total number of residential cells.

263. Regrettably, the pace of increasing the number of places in penitentiary institutions is inadequate. Currently, the shortage of places in penitentiary units amounts to over 10,000. Bad living conditions in penitentiary units caused by their overcrowding led in the period 24-27 May 2004 to a passive protest<sup>10</sup> of 1,613 prisoners in correctional facilities in Wołów, Wronki, Gębarzewo, Pińczów, and Kłodzko. The protest, consisting in a refusal to eat meals, was begun by prisoners from the correctional facility in Wołów and the rest joined them as a token of solidarity.

264. The penitentiary system prepared a programme of extending the existing accommodation base by 10,000 places (see point 159). Its implementation is to consist in the construction of new penitentiary pavilions on the premises of already existing units and in the reestablishment and renovation of penitentiary pavilions destroyed during rebellions (from the 1980s and the turn of the 1990s), floods or closed down on account of an extremely inadequate technical state. From the point of view of the existing possibilities of investments in the penitentiary system, this is the only real way of securing a quick improvement in the number of accommodation places.

265. Out of over 200 general addresses of the Ombudsman forwarded to different authorities in cases of persons deprived of liberty, the majority related to the sphere of respect for their social rights.

266. The penitentiary system plans to commence the implementation of new tasks which will lead to the extension of the accommodation base. These are *inter alia* the following:

- Construction of penitentiary pavilions in the Pre-trial Detention Centre in Lublin (356 places), the External Ward in Ustka (150 places), the Pre-trial Detention Centre in Warsaw-Służewiec (200 places), and the Correctional facility in Krzywaniec (240 places);
- Reestablishment of a penitentiary pavilion in the Correctional facility in Goleniów (204 places);
- Foundation of an External Ward of the Correctional facility in Zamość (230 places);
- Conversion of facilities in Złotów for penitentiary use;
- Re-construction of a barracks building in the Correctional facility in Czerwony Bór into a penitentiary pavilion (187 places).

267. The Central Board of the Prison Service prepared also information entitled “Basic Problems of the Prison System”, which was accepted by the Council of Ministers on 27 April 2004. One of the conclusions contained in it points to the need of assigning resources for increasing the capacity of penitentiary units and for improving their technical condition and security level. A detailed range of proposed tasks and the agenda for their implementation is presented in the “Road Map for Obtaining 10,000 accommodation places in the years 2005-2009”. The implementation of this programme would strengthen the accommodation capacity of the penitentiary system within 5 years by 10,345 places. In the opinion of the Central Board of the Prison Service, only a radical drop in the number of prisoners in penitentiary units or the extension of already existing correctional facilities and pre-trial detention centres or the construction of new ones would allow for an increase of the norm of the residential area for one person.

268. The implementation of the above agenda will also allow for a full execution of separate placement on the premises of penitentiary units of smokers and non-smokers, which was many times suggested in the period under consideration, *inter alia* by the Ombudsman. At present, separate placement is a priority during the placement of prisoners, but overcrowding in correctional facilities does not permit its full realisation.

269. As a result of entry into life of the amended Executive Penal Code, new Rules and regulations related to living conditions of persons deprived of liberty have been issued. These are, *inter alia*:

- *Resolution of the Minister of Justice of 2 September 2003 on the definition of a daily nutritional norm and the kind of diets provided to prisoners in correctional facilities and pre-trial detention centres* (Journal of Laws of 2003 No. 167, item 1633);

- *Resolution No. 8/2003 of the General Director of the Prison Service of 9 October 2003 on the implementation of rights of prisoners in correctional facilities and pre-trial detention centres to nutrition;*
- *Resolution of the Minister of Justice of 17 October 2003 on the living conditions of prisoners in correctional facilities and pre-trial detention centres (Journal of Laws of 2003 No. 186, item 1820).*

270. These regulations define three nutritional norms and two kinds of diets as well as a number of nutrition indications, such as calorific content, percentage content of nutrients, an amount of vegetables, a list of products forbidden in particular diets, as well as amounts of daily sums.

271. The table below presents the nutritional norms in force as well as the kinds of diets and the amounts of daily sums.

No.	Kind of nutritional norms and diets	Amount of daily sums in PLN
1.	Basic	4.20
2.	For prisoners up to 18 years of age	4.60
3.	Light diet	5.00
4.	Diabetic diet	6.00
5.	Additional	3.20

272. The value of a daily nutritional norm for prisoners under 18 years of age should be no less than 2,800 kcal, and for the other prisoners no less than 2,600 kcal.

273. The convicted person is also entitled to receive once every three months a food package weighing together with the packaging no more than 5 kg. Making purchases on the premises of the correctional facility was increased to at least three times per month and making purchases during visitations was made possible.

274. A prisoner whose health status requires the application of nutrition other than that listed in the table, may be ordered individual nutrition by a physician, who defines the following:

- The number and times of dispensing meals during one day – if necessary;
- Daily calorific intake;
- Percentage content of nutrients;
- Forbidden manners of preparing meals;
- A list of forbidden products;
- The duration of time for which a particular type of nutrition is ordered.



275. The Regulation related to living conditions defines the norms of assigning clothing, underwear, shoes, bed sheets, and means of personal hygiene to prisoners during their stay in correctional facilities and pre-trial detention centres. The Regulation likewise defines the norms of fitting out residential cells and other rooms related to the execution of the penalty of deprivation of liberty and preliminary detention with basic housing equipment, as well as norms assigned to prisoners staying in health care institutions for persons deprived of liberty.

276. Depending on the type of a correctional facility, prisoners use lavatories in residential cells or in halls of individual wards. In 2003 the penitentiary system eradicated once and for all the problem of cells equipped in sanitation pails.

277. In 2003 was issued:

- *A new Resolution of the Minister of Justice of 31 October 2003 on detailed principles, scope and manner of providing health care services to persons deprived of liberty by health care institutions for persons deprived of liberty (Journal of Laws of 2003 No. 204, item 1985.);*
- *Resolution of the Minister of Justice of 13 November 2003 on the conditions and manner of providing prisoners in correctional facilities and pre-trial detention centres with artificial limbs and dentures, orthopaedic objects and auxiliary means (Journal of Laws of 2003 No. 204, item 1986.); and*
- *Resolution of the Minister of Justice and the Minister of Health of 10 September 2003 on detailed principles, scope and manner of cooperation of health care institutions with the health care system in correctional facilities and pre-trial detention centres for the purpose of providing health care services to persons deprived of liberty (Journal of Laws of 2003 No. 171 item 1665).*

278. Currently prisoners are informed about the fundamental rights of the patient during the initial examination when they are admitted to a penitentiary unit. Moreover, the content of provisions regulating these issues is available from educators and heads of outpatient health centres in all correctional facilities and pre-trial detention centres.

279. The Central Board of the Prison Service takes every effort so that persons deprived of liberty may fully enjoy all their rights to intimacy and the protection of personal data at the time of their use of medical services.

280. Nevertheless, the regulations contained in Article 115. Section 7 of the Executive Penal Code, according to which a convicted person serving the penalty of deprivation of liberty in a correctional facility of a locked-up regimen, health care services are provided in the presence of “an officer who is not a medical professional” and only “at the request of an officer or employee of the prison health care institution for persons deprived of liberty, health care services may be provided to the convicted person in the absence of an officer who is not a medical professional”, were the subject of the Ombudsman’s interventions in 2001 and 2004 and related to the violations of the rights of prisoners to intimacy and the protection of personal data at the time of their use of medical services.

281. It is worthwhile to note that pursuant to Article 115 section 8 of the Executive Penal Code, a convicted person serving the penalty of deprivation of liberty in a correctional facility of a semi-open character, may be provided health services in the presence of an officer who is not a medical professional, but only at the request of the person administering the services, if this is required by the security of this person.

282. Thanks to the efforts of the Prison Service, the amended Executive Penal Code calculates the remuneration of employed persons deprived of liberty in a manner ensuring the level of at least half the minimum salary as defined on the basis of universally binding provisions (Article 123 section 2 of the Executive Penal Code). At present, as a result of a higher competitiveness of employment of persons deprived of liberty, the number of employed prisoners has slightly increased. Moreover, pursuant to Article 123a section 1 of the Executive Penal Code, persons deprived of liberty are not entitled to remuneration for tidying up and auxiliary works not exceeding 90 hours per month, which allows a greater number of prisoners to work, and therefore stay outside the residential cell.

283. Moreover, the possibility of an access to education of prisoners with a learned occupation in case they need to retrain was regulated. The need for abolishing restrictions in access to prison schools was in 2002 raised by the Ombudsman.

**(b) Living conditions in sobering-up centres**

284. Pursuant to the Resolution of the Minister of Health of 4 February 2004 on the manner of coerced appearance, admission and release of persons under the influence of alcohol and on the organisation of sobering-up centres and facilities set up or indicated by a unit of the local self-government (*Journal of Laws of 2004 No. 20 item 192*), a sobering-up centre has separate rooms for men, women and persons under 18 years of age (section 19). Actions connected with the admission of women to a sobering-up centre or a facility and direct care over them during their stay may be carried out solely by female medical personnel of a sobering-up centre or a facility, with the exclusion of the administration of medical care.

285. A sobering-up centre has also separate rooms for persons whose behaviour poses a serious threat to their health or life or to the health or life of other persons staying in a sobering-up centre.

286. A sobering-up centre ensures the following minimum conditions for the stay of persons:

- (1) Room area per one person is no less than 3 m<sup>2</sup>, and in the case of a separate room persons whose behaviour poses a serious threat to their health or life or to the health or life of other persons staying in a sobering-up centre, no less than 6 m<sup>2</sup>.
- (2) Artificial and natural lighting of rooms.
- (3) Separate toilets for women and men.
- (4) Separate showers for women and men.
- (5) A call-up system which facilitates summoning a staff member of a sobering-up centre if a need arises.

287. Persons placed in a sobering-up centre are provided with beverages served in disposable cups.

288. A sobering-up centre has a medical point, consisting of a physician's study, a surgery fitted in with medications and equipment necessary for the administration of first aid, disinfectants and an attested device for measuring the alcohol level in the body which prints out the read-out of the device.

289. Rooms occupied by persons under the influence of alcohol are subject to an ongoing monitoring by authorised personnel of a centre. Symptoms indicating a deterioration of the state of health of a person under the influence of alcohol are immediately brought to the attention of a physician or a paramedic, who makes a decision on a course of action to be taken.

290. The personnel of a sobering-up centre or a facility participate in yearly training sessions related to the following:

- (1) Administration of first aid.
- (2) Use of direct coercion measures.
- (3) Prophylactics of the solution of alcohol-related problems.

**(c) Living conditions in police facilities for detainees**

291. A legal act which regulates the question of living conditions in police rooms for detainees is the *Resolution of the Minister of Internal Affairs and Administration of 21 March 2003 on the conditions to be met by the facilities in organisational units of the Police for detainees or persons brought for sobering up and the Rules and regulations of the stay of persons placed in these facilities* (Journal of Laws of 2003 No. 61 item 547) along with the appended *Rules and regulations of the stay of persons placed in the facilities in organisational units of the Police for detainees or persons brought for sobering up*. The regulations contained in this legal act concern the number and kind of rooms, technical conditions and furnishings. It follows from the Regulation that a facility for detainees or persons brought for sobering up should be located on the ground floor or a higher floor of a building. Such a facility may be located in the basement only after it is found valid for use by organs of the State Sanitation Inspectorate of the Ministry of Internal Affairs and Administration, as well as after ensuring in it:

- (a) Natural lighting;
- (b) Insulation against dampness.

Such a facility is composed of:

- A room of the officer on duty;
- Rooms for detainees or persons brought for sobering up;
- A physicians' room;

- A room for heating up and rationing meals;
- A room for washing up utensils and equipment;
- Storerooms for the storage of: deposited objects, with separate places for the storage of objects belonging to persons with infectious diseases and clean and dirty bed sheets;
- Washing rooms;
- Toilets.

292. Rooms for detainees or persons brought for sobering up and their furnishings should contain a room area per one person no less than 3 m<sup>2</sup>, proper lighting, heating and ventilation. Rooms may be equipped with a portable toilet seat or a fixed toilet located in a place ensuring intimacy. If for technical reasons it is impossible to provide for rooms or storerooms and a cloakroom on the premises of the facility, they may be located outside the premises of the facility, but in the same building of an organisational unit of the Police.

293. The *Rules and regulations of the stay of persons placed in police facilities* appended to the Regulation define the manner of conduct with respect to detainees, their rights and obligations. The Rules and regulations stipulate, *inter alia*, as follows:

- Detainees or persons brought for sobering up to the facility are immediately informed about their rights and obligations and acquainted with the Rules and regulations of the stay in the facility;
- Detainees or persons brought for sobering up to the facility who do not know the Polish language are given a chance to communicate in matters related to the stay in the facility through an interpreter;
- The facility cannot be used for the placement of breastfeeding mothers and pregnant women from the seventh month of pregnancy;
- Detainees or persons brought for sobering up to the facility are in justifiable cases subject to an immediate medical examination and sanitary measures, which are carried out, in keeping with the indications of medical expertise, by an authorised employee of the health service;
- Detainees or persons brought for sobering up, prior to their admission to the facility, are obliged to deposit the following:
  1. Means of identification, legal tenders and valuables, including a wedding band, a signet ring, a ring, and a watch.
  2. Means of communications and technical devices used for recording and playing information.

3. Objects that may pose a threat to the order or security in a facility, especially: razor blades, safety blades, metal cutting tools, restraining devices, intoxicants, psychotropic substances and alcohol, as well as shoelaces, belts, scarves, matches and cigarette lighters.
  4. Objects whose dimensions or quantity infringe upon the established order or the security of stay in the facility.
- Persons of different gender are placed separately;
  - Persons brought for sobering up are not placed together with sober persons, and those under 18 years of age – together with adults;
  - Detainees or persons brought for sobering up staying in the facility use their own clothing, underwear, and shoes;
  - Persons placed in the facility receive free of charge cleaning means necessary for maintaining personal hygiene, including especially soap and a towel;
  - During curfew, as well as – if necessary – at another time of day, a detainee is granted for his or her personal use a place to sleep and bedclothes;
  - Persons placed in the facility have the right to:
    1. Dispose of deposited objects, if these objects have not been secured under the regulations on administrative execution.
    2. Receive a meal three times per day (including at least one hot meal), beverages to quench their thirst and – when this is warranted by the health status of this person – a diet indicated by a physician.
    3. Take advantage of health care.
    4. Use lavatories and cleaning means necessary for maintaining personal hygiene.
    5. Possess objects of religious worship (on condition that their properties are not in any way a threat to the security in the facility), exercise religious practices and use religious services in a manner which does not infringe upon the order and security in the facility.
    6. Read the press.
    7. Purchase of their own money tobacco products and press and possess it in a room for detainees or persons brought for sobering up and personal artefacts necessary for maintaining personal hygiene, on condition that these objects and their packaging are not in any way a threat to the security in the facility.

8. Smoke tobacco, upon receiving permission from an officer of the Police on duty in the facility, in a room designated for this purpose.
9. Receive – after the inspection of their contents in the person's presence – packages with clothing, shoes and other personal artefacts and with dressings and means of personal hygiene, as well as with medications which may be used upon obtaining a permission from a physician; medications are dispensed to a person staying in the facility by a physician or an officer of the Police in line with the recommendations of the physician.
10. File requests, complaints and petitions to the officer of the Police in charge of the functioning of the facility and the commander of an organisational unit of the Police, where the facility is located.
  - A person placed in the facility is obliged to immediately notify an officer of the Police on duty in the facility about the incidence of a disease, self-mutilation or another incident with serious consequences.

294. In the period covered by this Report, i.e. in the years 1998 – 2003, issues related to the placement of persons in police detention centres were subject to a number of internal audits and inspections conducted by domestic and foreign institutions and organisations, including: penitentiary judges, appointed staff members of the Ombudsman and representatives of the Helsinki Foundation for Human Rights. The premises are also visited by employees of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment (CPT). The audits serve to check and evaluate especially:

- Furnishing and technical protection of facilities;
- Observance of the duration of stay of detainees in the facilities;
- Manner and quality of conducting documentation;
- Observance of the rights of persons placed in facilities for detainees.

Inspectors conducting audits also carry out conversations with persons placed in facilities for detainees, officers of the Police on duty there and the senior staff of the unit where an audit was conducted.

295. The irregularities recorded concerned first of all the furnishing of facilities for detainees and an improperly conducted documentation. The irregularities are eliminated on an ongoing basis, depending on the financial and technical resources of individual local units of the Police. However, audit inspectors did not have reservations as to the issues of violating the right to freedom from torture or cruelty.

296. The irregularities were immediately forwarded in protocols to heads of the audited units with a view to eliminating, improving or supplementing the reservations within a specified time-framework. Head of units of the Police were ordered to increase supervision over the execution of professional duties by subordinate officers of the Police in a manner ensuring that

no violations of any civil rights might occur, including the rights enjoyed by the parties to criminal proceedings. If a need arose and depending on the financial resources, renovation work was recommended of police facilities for detainees with a view to meeting the requirements set by relevant regulations. The facilities with respect to which reservations were expressed were afterwards subject to another audit.

297. In the event when the state of the facilities for detainees departs from the norm, they are closed down until the irregularity has been removed and a permission for their use in keeping with the intended use has been obtained.

298. On the basis of the order of the Commander in Chief of the Police in December 1999, police psychologists are obligatorily notified about traumatic and extremely stressful events. The introduction of this obligatory practice was possible only after training at least some psychologists in carrying out debriefing (psychological post-traumatic recovery) and in taking emergency interventions. In the year 2000, psychologists intervened in 288 cases.

299. In January 2004 Deputy Commander in Chief of the Police expressed his consent to a visitation conducted by the Helsinki Foundation for Human Rights of police facilities for detainees and police facilities for children in the Zachodniopomorskie Voivodeship.

**(d) Living conditions in facilities of organizational units of the Border Guard and in guarded centres for aliens and detention centres for the purpose of expulsion**

300. A legal act that regulates technical questions related to the living conditions in facilities in organisational units of the Border Guard and the frequency of audits of these premises is the *Resolution of the Minister of Internal Affairs and Administration of 30 November 2001 on the conditions to be met by the facilities in organisational units of the Border Guard for detainees and the Rules and regulations of the stay in these facilities* (Journal of Laws of 2001 No. 148, item 1657).

301. A Commander of a division of the Border Guard or his deputy is under an obligation to conduct an inspection of the facilities in the territorial scope of a given division at least once every quarter of a year.

302. On 1 September 2004 entered into force the Resolution of the Minister of Internal Affairs and Administration of 26 August 2004 *on the conditions to be met by guarded centres and detention centres for the purpose of expulsion and the Rules and regulations of the stay of aliens in guarded centres and detention centres for the purpose of expulsion* (Journal of Laws of 2004 No. 190, item 1953), which regulates questions related to ensuring humanitarian conditions to aliens placed in a guarded centre or a detention centre for the purpose of expulsion. This Resolution replaced the previously binding relevant Resolution of 10 February 1999 (Journal of Laws of 1999 No. 20, item 179).

303. No violations of relevant regulations in force were recorded as a result of professional and penitentiary supervision. The detention centres for the purpose of expulsion at the disposal of the Border Guard and of the Police, as well as the guarded centre for aliens in Lesznowola, the only operational centre of this kind as of now in Poland, remaining at the disposal of the Police, fulfil the requirements specified in the above Regulation.

304. The following audits and visitations were conducted in the guarded centre for aliens in Lesznowola:

1. Year 1998:
  - 26.I, 23.III, 5.X, 22.X – UN High Commissioner for Refugees – result: no reservations.
  - 20.X, 6.XI, 25.XI – Helsinki Foundation for Human Rights – no reservations.
2. Year 1999:
  - 25.VIII – UN High Commissioner for Refugees – result: no reservations.
  - 24.II – Office of the Ombudsman – no reservations.
  - 25.III, 25.VI, 13.X – Prosecutor from a Provincial Prosecutors' Office – no reservations.
3. Year 2000:
  - 10.V – European Committee for the Prevention of Torture (CPT) – no reservations. Evaluation of the audit: 4 on a scale from 1 to 5.
  - 18.V – International Team for Human Rights – no reservations.
  - 13.IV – Prosecutor from a Provincial Prosecutors' Office – no reservations.
4. Year 2001:
  - 28.II – Prosecutor from a Provincial Prosecutors' Office – no reservations.
  - 25.V – Commissioner for Human Rights from Australia – visitation of living conditions.
  - 3.VII – Council for Refugees from the Federal Republic of Germany + Prosecutor from a Provincial Prosecutors' Office – visitation of the Centre – no remarks.
5. Year 2002:
  - 24.VI – Office of the Ombudsman – no reservations.
6. Year 2003 and the first half of 2004 – visits from representatives of non-governmental organisations (Halina Nieć Association for Human Rights in Kraków), conducted pursuant to Article 117 para. 1 point 2 of the Law on Aliens (for the implementation of rights of aliens to assistance, especially legal one). In 2003 there were 4 such visits (20 August 2003, 18 September 2003, 28 November 2003, and 17 December 2003) and five visitations in the year 2004 (21 and 26 January 2004, 2 April 2004, 10 May 2004, and 23 June 2004).



305. No cases of official complaints on conditions of stay and the treatment of persons staying in the guarded centre for aliens in Lesznowola were registered. Persons staying in the centre have the right and opportunity to file complaints to independent institutions, *inter alia* by means of letters mailed with the use of the Polish Postal Service.

### **Monitoring conducted by the Ombudsman**

306. The manner of the Ombudsman's monitoring the treatment of persons staying in pre-trial detention centres, correctional facilities, police detention rooms, sobering-up centres, psychiatric hospitals, remand houses and shelters for juveniles is specified in the *Law on the Ombudsman*. This monitoring consists not only in the consideration of complaints, but also visitations and audits conducted systematically in places of isolation for citizens.

307. As part of the analysis of legal acts in force in Poland, regulating the manner of treatment of persons deprived of liberty, the Ombudsman called upon the relevant ministers to:

- Issue precise Rules and regulations regulating the stay of detainees in facilities run by the Police (1999, 2001 and 2002) – implemented in 2003;
- Issue regulations allowing persons placed in sobering-up centres to file complaints on the legality of such a placement and on the appropriacy of the measures used (systematically since 1995) – implemented in 2001;
- Change regulations related to the manner of conduct with persons placed in sobering-up centres (years 2001-2003) – implemented in 2004.

Furthermore, the Ombudsman signalled the necessity to:

- Change regulations related to the use of physical force and direct coercion measures with respect to persons under preliminary detention and convicted persons by officers of the Prison Service regarding: a precise definition of the ways of use of coercion measures, an improvement of the monitoring of their use, an abstention from the use of so-called tripartite restraining belt, an introduction of an obligation of television monitoring and registration of the use of physical force and coercion measures (2000 and 2004); as well as
- Change of the regulations related to the manner of conduct with prisoners considered as dangerous regarding: a statutory definition of a possibility of including into the dangerous category persons under preliminary detention, obliging the Prison Service to conduct social reintegration measures with respect to dangerous prisoners, eliminating obstacles in dangerous prisoners' access to a physician, psychologist, and educator, a precise definition in relevant provisions of situations when restraining chains or physical force are used with respect to these prisoners (2000 and 2003).

308. Provisions related to the use of direct coercion measures with respect to convicted and preliminary detained persons have been lately significantly modified in accordance with the

Amendments suggested by the Ombudsman. Comprehensive solutions have been introduced related to the manner of assigning prisoners to a dangerous category and to conducting penitentiary activities with respect to this population of prisoners.

### **Monitoring of public officials by NGOs**

309. The Helsinki Foundation for Human Rights is a non-governmental organisation which has for many years carried out an organised monitoring of the activities of the Police. Since May 1997 the Foundation has conducted a project concerning a public audit of the work of the Police. The programme comprised countries of Central and Eastern Europe and was coordinated by the Hungarian Helsinki Committee. The programme resulted in, *inter alia*, the preparation of a report *Between Militia and Reform, The Police in Poland 1989 – 1997*. This report was updated in the period 1999 – 2000. It takes into consideration e.g. questions of legal mission, monitoring and responsibility, coercive measures, and criteria of the assessment of the work of the Police.

310. Another study on the work of the Police, carried out by the Polish Helsinki Committee at the end of 2000, concerned *inter alia* the observance of the rights of detainees. The study comprised 53 district headquarters of the Police, 14 municipal headquarters of the Police and 101 Police stations. Conclusions from the study were contained in a publication entitled *Policemen and their Clients. Law in Action. A Monitoring Report* (S. Cybulski, Warsaw 2001).

311. Reports from the monitoring activities conducted by the Helsinki Foundation of Human Rights are forwarded to the heads of the Polish Police. Their analysis allows for an ongoing rectification of irregularities in the practice of the Police. One of the fundamental forms of such rectification is the modification of curricula of occupational trainings of officers of the Police.

312. It is in order at this point to mention the two visits in Poland conducted so far by the *European Committee for the Prevention of Torture (CPT)* of the Council of Europe, who in their reports positively assessed the level of law observance in the area related to the prohibition of the use of torture and its prevention.

### **Article 12 - Prompt and impartial examination of cases**

313. The general principles regulating criminal proceedings were discussed in the previous report and are still binding. Several significant changes should be pointed out, however, which relate to individual stages of criminal proceedings and which have occurred since that time, first of all as a result of the amendments to the Code of Criminal Procedure introduced by the Law of 10 January 2003 (Journal of Laws of 2003 No. 17 item 155), which took effect on 1 July 2003:

- (a) *New solutions related to preparatory proceedings:*
- Extension of the scope of admissibility of conducting mediation on the initiative or with the consent of the injured party and the defendant with a possibility of sending the case by the court, and in preparatory proceedings by the prosecutor, to a trustworthy institution or person (Article 23a of the Code of Criminal Procedure);

- Entrusting the Police with the conduct of most investigations (so far an investigation was conducted by the prosecutor) (Article 311 para. 1 of the Code of Criminal Procedure) with a reservation that an investigation in homicide and misdemeanour cases when the suspect is a judge, a prosecutor, an officer of the Police, of the Agency of Internal Security, or of the Intelligence Agency, as well as in misdemeanour cases when the suspect is an officer of the Border Guard, of the Military Police, of financial inquiry organs or supervisory authorities of financial inquiry organs, with respect to cases that belong to the scope of competence of these organs or in cases related to misdemeanours committed by these officers in connection with the performance of professional duties, is conducted by the prosecutor;
- Introduction of a possibility of a preparation of a protocol related jointly to: an oral notification of a person about an offence, a hearing of this person as a witness, and an acceptance of a motion for prosecution from the person notifying about an offence (Article 304a of the Code of Criminal Procedure);
- Complaint related to the lack of action of the prosecuting organ, applicable only in relation to an investigation rather than, as was previously the case, in relation to the investigation and the inquiry. The change is connected with a significantly wider modification of the institution of an inquiry;
- Introduction of a new model of preparatory proceedings: an investigation was stressed as playing a major role and an inquiry was assigned a minor role. An inquiry is conducted in cases related to offences specified in the Code of Criminal Procedure which belong to the scope of competence of a district court, *inter alia* in cases related to offences punishable by a penalty of deprivation of liberty for up to 5 years, but in cases related to offences against property only when the value of the object of the offence or the incurred or posed damage does not exceed 50,000 PLN.

314. A prosecutor may initiate an investigation also related to an offence with respect to which proceedings may be conducted in the form of an inquiry because of the importance or complexity of the case. The inquiry should be concluded within 2 months (previously within 1 month), and the prosecutor may extend this period to 3 months. In the event the inquiry is not concluded within the specified period, further preparatory proceedings are conducted in the form of an investigation:

- If one offence violates a number of provisions of the criminal law, an inquiry cannot be conducted if at least one of the violated provisions requires the conduct of an investigation;
- Introduction of the possibility of a prompt discontinuation of an inquiry and of an entry of a case into the register of offences, when in the course of an inquiry conducted for at least 5 days it turns out that there are no grounds for detecting the perpetrator in the course of further proceedings (Article 325 f);

- Abolition of the requirement of making a decision on the presentation of charges and on the issue of a decision on the conclusion of an inquiry (Article 325 g);
- Limitation of the scope of an inquiry to the establishment of whether there are grounds for bringing an indictment or for another conclusion of an inquiry, a hearing of a suspect and an injured party as well as to conducting in protocols activities which cannot be repeated. An introduction of an admissibility of recording other evidentiary actions in the form of a protocol limited to the record of the most important statements made by persons taking part in these actions (Article 325h).

(b) *New solutions related to the examination of a case:*

- Extension of the possibility of the defendant's voluntarily accepting the punishment (Article 387): the co-called shortened trial, through the possibility of the defendant's filing a motion for a convicting sentence and an imposition of a specified penalty on the defendant charged with this offence (prior to the amendment this institutions could be taken advantage of exclusively with respect to a person charged with an offence punishable with a penalty not exceeding 8 years of deprivation of liberty). In the place of the consent of the prosecutor and the injured party as preconditions for a shortened trial, a condition of a lack of objection of the prosecutor and the injured party for such a conclusion of the case was introduced;
- Extension of the possibility of applying the institution of passing a judgement of conviction without a trial (Article 335) onto all cases related to offences punishable by a penalty of deprivation of liberty for up to 10 years (formerly up to 8 years).

(c) *New solutions related to evidentiary proceedings:*

- Extending the possibility of the court's use of the evidentiary material gathered in preparatory proceedings or in other proceedings under the relevant law, with respect to the admissibility of reading out or considering as read out protocols or other documents (Articles 389 and 391-394);
- Granting to courts the possibility of dismissing a petition for presenting evidence which aims at an "obvious prolonging of a trial" (Article 170 para. 1 point 4), leaving to courts the decision on whether to continue a trial after 35 days of recess (Article 404 para. 2) – prior to the introduction of the amendments the court obligatorily resumed from the start the adjourned trial, i.e. after 35 days of recess;
- Accepting the possibility of examining a witness at a distance with the use of appropriate technical equipment (Article 177 para. 1a), accepting the possibility of delivering court documentation by means of facsimile or electronic mail (Article 132 para. 3), extension of the scope of execution of

regulations concerning delivery of material objects, search and surveillance of conversations onto computer systems, electronic data carriers and messages sent by electronic mail (Articles 236 a and 241);

- Granting the possibility of taking blood samples or bodily secretions from suspected persons without their consent (Article 74 para. 3) – prior to the introduction of the amendments such consent was required.

(d) *New solutions related to modes of procedure and the competence of courts:*

- Extension of the catalogue of cases adjudicated on according to a simplified procedure by including in it all cases where an inquiry was conducted (Article 469), and the abolition of the inadmissibility of adjudicating on cases in a simplified procedure with respect to a defendant deprived of liberty or a juvenile;
- Introduction of the so-called transferable competence of courts consisting in a possibility of transferring the adjudication of cases concerning all offences because of their special importance or complexity to the provincial court as a court of the first instance (Article 25 para. 2).

315. Moreover, pursuant to Article 328 of the Code of Criminal Procedure, the Prosecutor General may repeal a valid and final decision on the discontinuation of preparatory proceedings with respect to a person who was considered as a suspect if he establishes that the discontinuation of proceedings was groundless. This does not relate to a case when the court upheld a decision on the discontinuation. At the same time there is a reservation that after the period of 6 months since the date when the decision on the discontinuation becomes valid and final, the Prosecutor General may repeal or alter the decision or its *ratio decidendi* only for the benefit of the suspect.

### **Article 13 - Complaints**

316. An efficient and operational system of filing complaints which makes it possible to lodge complaints for victims of torture and other forms of cruel, inhuman or degrading treatment or punishment is ensured by:

(a) *The Code of Administrative Procedure* (Journal of Laws of 2000 No. 98, item 1071 as amended):

- Division VIII of the Code defines the principles of the implementation of the right guaranteed in the Constitution of the Republic of Poland to lodge petitions, complaints and motions to organs of the state, organs of local self-government units, organs of organisational units of local self-government, and to social organisations and institutions (Article 221 section 1 of the Code of Administrative Procedure);

- Petitions, motions and complaints may be filed in the public interest, in one's own interest or in the interest of a third person with the latter's consent (Article 221 section 3 of the Code of Administrative Procedure);
- Improper and unduly prolonged resolution of a complaint or a petition results in disciplinary accountability or in another accountability specified in relevant legal provisions (Article 223 section 2 of the Code of Administrative Procedure);
- No one can be subject to any damage or allegation on account of filing a complaint or a petition or on account of providing for publication materials which have the attributes of a complaint or a petition, if they have acted within the limits of law and public organs are obliged to prevent acts of hushing up critique and other actions which limit the right to file complaints and petitions or to provide for publication information which has the attributes of a complaint or a petition (Article 225 of the Code of Administrative Procedure).

(b) *Resolution of the Council of Ministers of 8 January 2002 on the organisation of the admission and consideration of complaints and petitions* (Journal of Laws of 2002 No. 5, item 46) issued under Article 226 of the Code of Administrative Procedure.

317. The Audit Department of the Ministry of Internal Affairs and Administration contains a Division of Complaints and Petitions, whose scope of competence comprises *inter alia*:

- (1) Admission and consideration of complaints and petitions filed in every way by citizens, trade or social organisations.
- (2) Admission of citizens filing complaints, motions and petitions, providing them with information and explanations, filling out protocols on the oral lodging of complaints, keeping files of lodged or sent in complaints, motions and petitions and keeping a register of admissions of citizens.
- (3) Consideration and resolution of complaints, motions and petitions by a competent organisational unit, including complaints related to the resolution of previous cases by organisational units of the Ministry of Internal Affairs and Administration and by organs and units subordinated to or supervised by the Minister of Internal Affairs and Administration.
- (4) Preparation of annual analyses of the influx, consideration and resolution of complaints, motions and petitions by organs and organisational units subordinated to or supervised by the Minister of Internal Affairs and Administration, initiating and taking action aiming at the improvement of the system of considering and resolving complaints.

318. The scope of competences of the Audit Division of Uniformed Services of the Audit Department in the Ministry of Internal Affairs and Administration comprises, *inter alia*, the audit of the consideration of information on law violations by officers of the Police and of the Border Guard.

319. The Department carries out audits ordered by the Minister of Internal Affairs and Administration, as well as internal audits ordered by the General Director of the Ministry of Internal Affairs and Administration. The Department may also – ordered by the Minister of Internal Affairs and Administration – cooperate with the Supreme Chamber of Control, the Department of Audit, Complaints and Petitions of the Chancellery of the Prime Minister, the National Prosecutors’ Office in the Ministry of Justice, and the Department of Fiscal Control in the Ministry of Finance.

## Police

320. The organisation of admitting and considering complaints and petitions was regulated – as has been indicated earlier – in the *Code of Administrative Procedure* and in the *Resolution of the Council of Ministers of 8 January 2002 on the organisation of the admission and consideration of complaints and petitions*. Obligations of the organs of the Police arising from the above regulations are implemented by the Commander-in-Chief of the Police and his subordinate heads of organisational units of the Police (commanders of: voivodeships, the city of Warsaw, districts, municipalities, precincts in the Warsaw area, police stations). Tasks are implemented within a comprehensive complaints system, which makes it possible for citizens of the Republic of Poland and aliens to file to organs of the Police complaints and petitions in writing, by electronic mail or with the use of special telephone lines run by the Police. Furthermore, a system of admissions has been worked out, thanks to which interested persons may directly present their complaints or petitions to heads of units of the Police – the information on days and hours of admitting inquirers who want to file complaints and petitions is placed in accessible places on the premises of organs of a given unit of the Police.

321. In the National Headquarters of the Police complaints are dealt with by a separate organisational unit – Office for the Protection of Classified Information and Inspection, and in voivodeship and Warsaw headquarters of the Police these tasks are carried out by inspectorates. Proceedings related to complaints are supervised by the Commander-in-Chief of the Police. In addition, the above issues are subject to evaluation carried out within problem audits in local organisational units of the Police.

### **Statistical data related to allegations of the “use of unlawful physical methods” - cases resolved within the complaints procedure by organs of the Police**

Use of prohibited physical methods	Year					
	1998	1999	2000	2001	2002	2003
Number of cases resolved internally	517	479	489	565	569	571
Number of confirmed allegations	16	22	15	10	16	8
Confirmation of allegations in %	3.1	4.6	3.1	1.8	2.8	1.4

322. It must be emphasised that the above data refer only to cases considered in the Police in the course of action specified in Division VIII of the Code of Administrative Procedure and do not include cases considered during judicial proceedings.

323. In the years 1998 – 2003, 28 cases were recorded when the prosecutors' office initiated criminal proceedings on the basis of materials forwarded by the National Headquarters of the Police.

324. Information concerning actions aiming at the protection against unjustified use of force on the part of the Police is included also in Part I Article 2, Articles 1 and Article 12 of the present Report.

325. Detailed information on the duration of proceedings and actions taken with a view to shortening this time framework is contained in Article 13, paragraphs 276 – 286 of the *V Periodic Report of the Republic of Poland on the implementation of the provisions of the International Covenant of Civil and Political Rights*.

### **Prison Service**

326. European Prison Rules (Recommendation No. R/87/3 for the Member States of the Council of Europe) contain, *inter alia*, recommendations on providing information to prisoners and on their right to lodge complaints.

327. Pursuant to Rule 42, each prisoner should be every day provided with an opportunity to file requests and complaints to the head of the facility or an officer authorised to act in this area. He should also be given an opportunity to file requests and complaints to the inspector of the prison or to any other organ of authority validly authorised to inspect prisons, as well as to be able to talk with them in the absence of the prison governor or other staff members. An appeal against a decision of prison administration may be, however, admissible in a specified course of action. Each prisoner should be allowed to file requests and complaints in a confidential manner to a central organ of prison administration, judicial authorities and other competent authorities. Each request or complaint addressed to an organ of prison authorities should be promptly considered by this organ and the latter's response should be provided without an unjustifiable delay.

328. European Prison Rules in the above scope were taken into consideration in Polish legislation: in the Constitution of the Republic of Poland of 2 April 1997 and in the Law of 6 June 1997 - the Executive Penal Code as well as in relevant by-laws.

329. Pursuant to Article 63 of the Constitution, "Everyone shall have the right to submit petitions, proposals and complaints in the public interest, in his own interest or in the interests of another person - with his consent - to organs of public authority, as well as to organizations and social institutions in connection with the performance of their prescribed duties within the field of public administration. The procedures for considering petitions, proposals and complaints shall be specified by statute".

330. Pursuant to Article 7 of the Executive Penal Code, the convicted person may also appeal to a court against a decision of an organ of executive proceedings (which means also of an extra-judiciary organ) defined in Article 2 points 3-6 and 10 (point 5 enumerates organs of the Prison Service, including: a director of a correctional facility, a pre-trial detention centre, and the provincial director and Director General of the Prison Service) on account of its incompatibility with the law, if the Law does not provide otherwise. In cases concerning serving the penalty of



deprivation of liberty, penalty of detention, a disciplinary penalty, a coercive measure resulting in the deprivation of liberty, and execution of a decision on a parole or a protective measure consisting in a placement in a guarded institution, the penitentiary court is the competent court.

331. Pursuant to Article 102 point 10 of the Executive Penal Code, persons deprived of liberty have especially the right to file petitions, complaints and requests to an organ competent to consider them and to present them, in the absence of third persons, to the administration of the correctional facility, heads of organisational units of the Prison Service, a penitentiary judge, a prosecutor, and the Ombudsman. Correspondence with law enforcement organs, the judiciary and other organs of the State, local self-government, and with the Ombudsman is not subject to censorship (Article 102 point 11 of the Executive Penal Code). Similarly, correspondence addressed by convicted persons to organs established under international treaties related to human rights protection ratified by Poland is not subject to censorship. Correspondence in these cases should be immediately forwarded to the addressee, in keeping with the disposition contained in Article 103 of the Executive Penal Code. Also their advocates and plenipotentiaries and relevant non-governmental organisations have the right to file complaints to these authorities.

332. Moreover, pursuant to Article 42 of the Executive Penal Code, the convicted person may appoint in writing, as his representative, a trustworthy person who on his behalf may file petitions, complaints and requests to competent organs and institutions, associations, foundations, organisations, churches, and other trade unions. This person may also, at the request of the convicted person, be granted permission by the president of the court, authorised judge or, in the course of a sitting, by a court, to participate in proceedings before a court. Pursuant to Article 209 of the Executive Penal Code this provision can be applied respectively to persons under preliminary detention.

333. In 2003 the Helsinki Foundation for Human Rights launched the application of this provision in several prisons.

334. Moreover, each convicted alien has the right to correspond with the competent consular office or a diplomatic representative office.

335. As of 1 September 2003 entered into force the *Resolution of the Minister of Justice of 13 August 2003 on the manner of considering petitions, complaints, and requests of persons detained in correctional facilities and pre-trial detention centres* (Journal of Laws of 2003 No. 151, item 1467), which replaced the earlier relevant Resolution of the Minister of Justice. The changes introduced by means of the new resolution are to streamline the procedure of considering motions, complaints and requests of persons deprived of liberty. Cases filed by other persons are considered following the provisions of Division VIII of the Code of Administrative Procedure.

336. The institution of complaints, requests and petitions is very often used by persons incarcerated in correctional facilities and pre-trial detention centres as well as by their families. It is used to provide a signal to heads of organisational units of the Prison Service, as well as to other organs outside the Prison Service, about the irregularities in the functioning of penitentiary

units. It is also used to ensure compliance with the legal regulations related to the execution of the penalty of deprivation of liberty and preliminary detention and penalties and measures of coercion resulting in the deprivation of liberty. It is also a source of information on the observance by prison administration of the rights of persons deprived of liberty and is an available form of the protection of individual rights of prisoners.

337. In the years 1998-2003 a total of 67,289 complaints were filed to the organisational units of the Prison Service.

Year	Number of prisoners' complaints	Number of prisoners as of 31 December	Number of complaints per 100 prisoners	Growth indicator of the No. of complaints per 100 prisoners
1998	8 407	54 373	15.5	100 (base indicator)
1999	9 284	56 765	16.5	106.5
2000	10 701	70 544	15	96.8
2001	12 340	79 634	15.5	100
2002	12 884	80 467	16	103.2
2003	13 673	79 281	17	109.7

338. In the years 1998 – 2003, in all complaints on unlawful treatment of persons deprived of liberty by the officers and employees of the Prison Service, the complainants raised the following number of allegations:

- In 1998, 1,681 allegations were filed concerning an improper attitude of officers to prisoners, including 78 related to the use of direct coercion measures. 13 allegations were regarded as justifiable, including 1 concerning an unlawful use of a direct coercion measure;
- In 1999, a total of 1,887 allegations were filed concerning an improper attitude of officers and employees of the Prison Service to prisoners. Out of 1,534 allegations considered by organisational units of the Prison Service, 12 were regarded as justifiable, one of which concerned the violation of a personal inviolability of a prisoner;
- In 2000, a total of 2,140 allegations were filed concerning treatment of persons deprived of liberty by officers and employees of the Prison Service, including 94 related to a beating and 48 to the use of direct coercion measures. The remaining allegations concerned other forms of what the complainants saw as improper treatment. Out of 1,761 allegations considered by organisational units of the Prison Service, 21 were regarded as justifiable. The justifiable allegations did not relate to a beating and the use of direct coercion measures;
- In 2001, a total of 2,486 allegations were filed, including 123 related to a beating and 114 to the use of direct coercion measures. Out of 2,034 allegations considered by organisational units of the Prison Service, 10 were regarded as justifiable. Within this group no justifiable allegations related to a beating and an unlawful use of direct coercion measures were recorded;

- In 2002, a total of 2,671 allegations were filed, including 131 related to a beating and 46 to the use of direct coercion measures. Out of 2,214 allegations considered by organisational units of the Prison Service, 16 were regarded as justifiable;
- In 2003, a total of 3,000 allegations were filed, including 117 related to a beating and 66 to the use of direct coercion measures. Out of 2,472 allegations considered by organisational units of the Prison Service, 25 were regarded as justifiable, none of which related to a beating by employees or officers of the Prison Service or to an unlawful use of a direct coercion measure.

339. The above data take into account cases subject to consideration and processing by organisational units of the Prison Service, and the total number of allegations takes into account also cases filed to the Prison Service with a view to obtaining explanations and information and forwarded to other competent organs (penitentiary courts, prosecutors, the Office of the Ombudsman, the Chancellery of the President, the Chancellery of the Prime Minister, senators and deputies to the Parliament).

340. It must be emphasised that in especially justified cases, always in the case of a complaint containing allegations related to a violation of personal inviolability by employees or officers of the Prison Service, an unlawful use of a direct coercion measure, use of torture with respect to the prisoner, the complaint is considered directly at the place of the incident by representatives of an organisational unit superior to the organisational unit referred to in the complaint (this course of action is envisaged in provision section 8 para. 4 of the Resolution of the Minister of Justice of 5 October 1999 and in provision section 8 para. 6 of the *Resolution of the Minister of Justice of 13 August 2003 on the manner of considering petitions, complaints, and requests of persons detained in correctional facilities and pre-trial detention centres*).

341. The following number of complains were considered by the Prison Service under the provisions of section 8 para. 4 of the Resolution of the Minister of Justice of 5 October 1999:

- In 1999 – 165 complaints;
- In 2000 – 303 complaints;
- In 2001 – 191 complaints;
- In 2002 – 261 complaints;
- In 2003 – 68 complaints.

342. In the years 1998-2003, thirteen officers were subject to disciplinary penalties for an inappropriate attitude towards prisoners, including:

- In 1998, two officers were penalised with the receipt of statements on their incomplete suitability for service;

- In 1999, two officers were subject to the penalty of reprimand;
- In 2000, two officers were subject to the penalty of caution, one to the penalty of a severe reprimand and one to the penalty of reprimand;
- In 2001 no cases of disciplinary penalties imposed on officers were recorded;
- In 2002, three officers were subject to disciplinary penalties. These transgressions took place in the following units:
  - Regulations in Pre-trial Detention Centre in Krasnystaw: a shift commander on duty took an unjustifiable decision on the use of a direct coercive measure in the form of a prisoner's placement in a security cell. The officer was subject to the penalty of a reprimand;
  - Correctional Facility in Warsaw-Białołęka: Ward head of the protection ward, on duty in the residential ward, took part in a beating of a prisoner. He was subject to the penalty of a discharge from service;
  - Correctional Facility in Rzeszów-Załęże: deputy shift commander used placement of a prisoner in a security cell. Measures of direct coercion were used in violation of force. The officer was subject to the penalty of a caution;
- In 2003, two officers were subject to disciplinary penalties. These transgressions took place in the following units:
  - Correctional Facility in Kłodzko. A senior instructor of the financial department addressed the prisoner in an offensive manner. The officer was subject to the penalty of caution;
  - Correctional Facility in Bydgoszcz-Fordon. A ward officer addressed prisoners with offensive language when he was supervising a stroll. The officer was subject to the penalty of reprimand.

### Deaths of prisoners<sup>11</sup>

Cause of death	1998
Total	110
Incl. outside correctional facility or pre-trial detention centre	33
As a result of an illness	67
As a result of suicide	39
As a result of self-mutilation	4

Cause of death	1999	2000	2001
Total	102	106	142
Incl. in a health centre outside correctional facility or pre-trial detention centre	24	10	17
As a result of an illness	66	57	88
As a result of suicide	32	46	47
As a result of self-mutilation	4	3	7

Cause of death	2002	2003
Total	96	127
Incl. in a health centre outside correctional facility or pre-trial detention centre	17	29
Natural cause	56	86
As a result of self-aggression (including suicides)	40 (39)	37 (36)
Others		4

### **Border Guard**

343. Issues related to the organisation of the admission and consideration of complaints and petitions were regulated – as has been mentioned above – in the *Code of Administrative Procedure* and in the *Resolution of the Council of Ministers of 8 January 2002 on the organisation of the admission and consideration of complaints and petitions*.

344. The obligations of organs arising from the above regulations are implemented by the Commander-in-Chief of the Border Guard and his subordinate heads of organisational units (commanders of: divisions, watch centres and border checkpoints). The issues under discussion are dealt with under a comprehensive complaints system, which makes it possible for citizens of the Republic of Poland and aliens to file complaints and petitions to competent organs in writing or by means of electronic mail. Moreover, interested persons may present their doubts orally – the information concerning the days and hours of admitting inquirers in cases concerning complaints and petitions is provided in a visible place in seats of the organs of a given unit and its subordinate organisational units (legal basis: Article 253 of the Code of Administrative Procedure).

345. In the National Headquarters of the Border Guard, cases related to complaints are considered by a separate unit – the Inspectorate of Audit and Control of the Commander-in-Chief, whereas in divisions the relevant tasks are dealt with by Independent Sections of Audit and Control. Proceedings in cases concerning complaints carried out by commanders of divisions (training centres, watch centres and border checkpoints) is supervised by the Commander-in-Chief of the Border Guard (legal basis: division VIII, chapter 6 of the Code of Administrative Procedure). In addition, the above issues are also subject of evaluation carried out as part of problem audits conducted in local organisational units of the Border Guard. Complaints and petitions filed so far by detained aliens were not found as grounds for initiating criminal proceedings.

346. Aliens detained in guarded centres and detention centres for the purpose of expulsion have the right (Article 117. 1 of the Law on Aliens) to file complaints, requests and petitions to:

(a) *The head of the centre or an organ of the Border Guard or to the organ of the Police to which the centre is subordinated;*

(b) *The officer in charge of the functioning of the detention or to the organ of the Border Guard or an organ of the Police to which the centre is subordinated.*

347. Complaints and petitions are considered in accordance with the principles specified in the *Resolution of the Council of Ministers of 8 January 2002 on the organisation of the admission and consideration of complaints and petitions* (Journal of Laws of 2002 No. 5, item 46) under the provisions of the Code of Administrative Procedure.

348. Pursuant to Article 112 of *the Law on Aliens*, each alien admitted to a guarded centre and a detention centre for the purpose of expulsion is informed, in a language he understands, about his rights and obligations as well as about the regulations related to his stay in a guarded centre and a detention centre for the purpose of expulsion (*Resolution of the Minister of Internal Affairs and Administration of 26 August 2004 on the conditions to be met by guarded centres and detention centres for the purpose of expulsion and the Rules and regulations of a stay of aliens in guarded centres and detention centres for the purpose of expulsion* (Journal of Laws of 2004 No. 190, item 1953).

349. A detainee has the right to file to a court a complaint related to the validity of the detention and the correct manner of its execution (Article 246 of the Code of Criminal Procedure).

350. The personnel of guarded centres and detention centres for the purpose of expulsion is under an obligation to immediately forward to the addressee a complaint or a petition filed by an alien.

351. Within the entire territory of Poland, the Border Guard has at its disposal five detention centres for the purpose of expulsion, namely in the Pomerania Division of the Border Guard (POSG) in Szczecin, Lubuski Division of the Border Guard (LOSG) in Krosno Odrzańskie, Sudeten Division of the Border Guard (SOSG) in Kłodzko, Carpathian Division of the Border Guard (KOSG) in Nowy Sącz, and in the Border Checkpoint at Warsaw Okęcie Airport. A total of 3,424 aliens stayed in these detention centres in the period from 1 August 1998 through 30 June 2004, 2,175 of which in the POSG in Szczecin, 798 in the LOSG in Krosno Odrzańskie, 259 in the GPK of the Border Guard at Warsaw Okęcie Airport, 121 in the KOSG in Nowy Sącz, and 71 in the SOSG in Kłodzko.

352. The right to file complaints and petitions was guaranteed in *section 8 point 12 of the Resolution of the Minister of Internal Affairs and Administration of 30.11.2001 on the conditions to be met by the premises for detainees of organisational units of the Border Guard, and the Rules and regulations of the stay on these premises*. Pursuant to *Article 112 of the Law on Aliens of 13 June 2003*, all aliens staying in detention centres were acquainted with the rules of their stay in their mother languages. If a detainee came from a country whose language was rare and he did not know other languages, he was notified about his rights in the presence of an

interpreter. Detainees filed, in the course specified in the Code of Criminal Procedure, complaints to competent courts on the validity of the detention and the use of detention for the purpose of expulsion. Aliens can at all times use a pay telephone for contacts with family, friends and their diplomatic mission in the territory of Poland and for contacting many other institutions in Poland, mainly the President of the Office for Repatriation and Aliens (about refugee status) and the Helsinki Foundation for Human Rights (about free legal aid in order to obtain refugee status). A list of addresses and telephone numbers is available on the premises of the Detention Centre.

353. Statistics relating to complaints, motions and requests filed by aliens in the period from 1 August 1998 – 30 June 2004 indicate that aliens detained in the detention centres of the Border Guard lodged a total of 10 complaints, including: 5 by citizens of Ukraine, 3 by citizens of Pakistan, and one by citizens of Romania, Bulgaria, Moldova, Georgia, India, Russia, and Vietnam. In addition, 7 petitions were lodged, including 4 by citizens of Pakistan, 2 by citizens of Russia, and 1 by a citizen of Vietnam.

354. In 1999, in a detention centre for the purpose of expulsion of the Pomerania Division of the Border Guard, five citizens of Ukraine filed complaints to the Commander of the Maritime Division of the Border Guard in Gdańsk via the General Consulate of the Republic of Ukraine in Gdańsk. In part these complaints concerned the provision of insufficient amounts of water and food and were considered by the Commander of the Pomerania Division of the Border Guard in Szczecin, which regarded them as unjustifiable. In the remaining part, related to the improper conduct of officers of the Border Guard during the detention and execution of activities connected with the expulsion of aliens, the complaints were appropriately considered by the Commander of the Maritime Division of the Border Guard in Gdańsk, who likewise regarded them as unjustifiable.

355. In 2001 aliens filed two complaints. The first one was lodged by female citizens of: Bulgaria, Moldova, Georgia, and Vietnam placed in one cell, related to officers of the Border Guard allowing a TVP television crew to film them without their permission. An inquiry conducted in this case revealed that one of the women voluntarily – encouraged by her cellmates – was twice interviewed by tv crews of TVP and TVN on the subject of the treatment of women in brothels in Germany. The remaining women filmed, who had nothing to do with prostitution, felt offended and defamed. After getting familiar with the recorded material it was found that it did not allow for the recognition of the women. As a result the complaint was considered as inadmissible. The complainants were informed that possible claims related to the damage of the good of the person should be directed to TVP in Szczecin. The other complaint concerned a citizen of Romania who filed two complaints about the inadequate quality of meals. The proceedings conducted did not confirm the allegations and a medical examination provided evidence that the person may stay in a detention centre. Additionally, it was found out that the alien had refused medication. The complaints were considered as unjustifiable.

356. On 2 March 2004 three citizens of Pakistan and one citizen of India incarcerated in a detention centre for the purpose of expulsion in Lubuski Division of the Border Guard in Krosno Odrzańskie, filed a collective complaint to the Office of the Ombudsman, which related mainly to the court's decision on the prolongation of their stay in a detention centre and to inadequate medical care. The complaint in this case was considered as unjustifiable.

357. From among aliens incarcerated in a detention centre in the Carpathian Division of the Border Guard in Nowy Sącz, 4 citizens of Pakistan and 1 citizen of Russia filed petitions for obtaining refugee status to the Director of the Department for Refugee and Asylum Proceedings. All the decisions issued were negative. One of the incarcerated citizens of Vietnam filed a request – petition to his Embassy for speeding up the issue of a passport, and a citizen of Russia filed two complaints to the Consulate of the Embassy of the Russian Federation for speeding up an issue of identification papers and a request – petition to the Chancellery of the President of the Republic of Poland for obtaining Polish citizenship, to which he received a negative response. This alien was expelled from the territory of Poland.

358. Aliens placed in a Detention Centre for the purpose of expulsion in the Sudeten Division of the Border Guard in Kłodzko and of the Border Checkpoint of the Border Guard in Warsaw Okęcie did not file any complaints and petitions.

### **Complaints to the Ombudsman**

359. Pursuant to Article 102 point 10 of the Executive Penal Code, the convicted person has the right to file motions, complaints, and requests also to the Ombudsman.

360. Relevant data are contained in annual reports of the Ombudsman. For instance, in 2003 the number of complaints filed to the Ombudsman related to cases of the execution of the penalty of deprivation of liberty and preliminary detention was 3,986. The most frequent allegations concerned the following: inadequate medical care – 1,010 complaints (25.3% of the total number), improper treatment by officers – 707 complaints (17.7%), inadequate living conditions – 422 complaints (10.9%), restrictions concerning correspondence and visitations – 408 complaints (10.2%), and placement in a facility distant from the place of domicile – 262 complaints (6.6%). The remaining complaints related to: employment of convicted persons, provision of post-penitentiary assistance, conduct of fellow prisoners, and conditions of the execution of preliminary detention.

361. 122 complaints (8.2% complaints considered) were regarded as admissible in full or in part. In 2003 employees of the Office of the Ombudsman conducted visitations in 20 pre-trial detention centres, correctional facilities, police rooms for detainees, and sobering-up centres.

### **Complaints on an international forum**

362. In the period under consideration no individual communications to the Committee Against Torture were recorded. There is no information, either, on whether common courts in the period under consideration evoked the provisions of the Convention.

363. In the period under consideration the European Court of Human Rights communicated 436 complaints to the Polish Government. Nine of these complaints contained an allegation of the violation of Article 3 of the Convention on the Protection of Human Rights and Fundamental Freedoms. The cases were resolved as follows:

- (1) Z., J., M. Zdebscy (No. 27748/95); the allegation was considered as inadmissible in a decision of 6 April 2000 - a complaint communicated in 1998.



- (2) P.K. (No. 37774/97); in a decision of 27 May 2003 the allegation was considered as admissible, then by a ruling of 6 November 2003 confirming amicable solution between the Government and the complainant the case was struck off the list of cases - a complaint communicated in 1999.
- (3) Z. Skowroński (No. 37609/97); the allegation was considered as inadmissible in a decision of 19 March 2002 - a complaint communicated in 2000.
- (4) G. Olszewski (No. 55264/00); the allegation was considered as inadmissible in a decision of 13 November 2003 - a complaint communicated in 2000.
- (5) O. Orzeł (No. 74816/01); in a ruling of 25 March 2003 the Court established a violation of Article 6 section 1 which guarantees the right to have a case considered by a court within a reasonable time framework, as a result of which it recognised that there was no need to consider the allegation previously considered as admissible under Article 3 of the Convention - a complaint communicated in 2001.
- (6) R. Maliszewski (No. 40 887/98); the allegation of the violation of Article 3 was considered in a judgement of 6 May 2003 as inadmissible - a complaint communicated in 2001.
- (7) P. Rachwalski/A.Ferenc (No. 47709/99); the allegation has not been as yet considered by the Court - a complaint communicated in 2002.
- (8) Z. Borzęcki (No. 10469/02); in a decision of 27 January 2004 the Court considered the allegation as inadmissible.
- (9) J. Wedler (No. 44115/98); the allegation has not been yet considered by the Court - a complaint communicated in 2003.

364. In the period under consideration the European Court of Human Rights issued rulings related to the violation of Article 3 of the Convention, contained in complaints communicated to the Republic of Poland in the period covered by the previous report:

- (10) K. Iwańczuk (No. 25196/94); in a ruling of 15 November 2001 the Court recognised a violation of Article 3 of the Convention - a complaint communicated in 1995. Sums adjudged by the European Court of Human Rights were paid out respectively on 10 October 2002 and on 3 July 2002, which means there was a slight delay for reasons dependent on the complainant.
- (11) M. Jeznach (27580/95); the case was struck off on account of not being upheld on the strength of a ruling of 14 December 2000 - a complaint communicated in 1996.
- (12) H. Jabłoński (No. 33492/96); in a decision of 14 April 1998 the allegation was considered as inadmissible - a complaint communicated in 1997.

- (13) A. Kudła (30210/96); in a ruling of 26 October 2000 the Court established that there no violation of Article 3 of the Convention had occurred - a complaint communicated in 1997.
- (14) A. Shamsa (No. 40673/98); the allegation was considered as inadmissible in a decision of 10 January 2002 - a complaint communicated in 1998.
- (15) R.S. Berliński (No. 27715/95); in a decision of 18 January 2001 the allegation was considered as admissible yet in a ruling of 20 June 2002 the Court decided on a lack of violation - a complaint communicated in 1998.
- (16) H.D. (33310/96); in a decision of 7 June 2001 the allegation was considered as admissible, and then in a ruling of 20 June 2002 confirming amicable solution between the Government and the complainant the case was struck off the list of cases - a complaint communicated in 1998.

365. Moreover, in the period under consideration 26 decisions were issued which considered as inadmissible the allegation of the violation of Article 3 – this concerns exclusively the allegations which were not communicated to the Government.

#### **Article 14 - Compensation**

366. The right of the injured party to compensation and redress is guaranteed in both penal and civil legislation.

367. According to the provisions of Chapter 58 of the Code of Criminal Procedure, an accused who as a result of a re-opening of proceedings or of a cassation appeal has been acquitted or his sentence was reduced, shall be entitled to receive from the State Treasury compensation for the damages incurred by him as well as redress for the injury, resulting from his having served all or part of the sentence unjustifiably imposed. The provision is applicable also if, after reversing the sentencing judgement or declaring it null and void, the proceedings have been discontinued by reason of material circumstances not duly considered in prior proceedings, as well as in the event of the application of a preventive measure other than preliminary detention.

368. The right to compensation and redress is granted also in the case of a manifestly unjustifiable preliminary detention or arrest. At the same time, with respect to preliminary detention in relation to the Code of Criminal Procedure of 1969, the scope of accountability of the State Treasury has been slightly increased.

369. In the event of the death of the accused, the right to compensation is granted to the person who as a result of the execution of the penalty imposed or of a manifestly unjustifiable preliminary detention has lost:

- Maintenance which the accused has been obligated by law to furnish;
- Maintenance theretofore regularly furnished to him by the deceased, if consideration of equity favours the granting of such compensation.

**Valid and final judgements on compensation under article 552 of the Code of Criminal Procedure (information obtained from common courts)**

Year	Compensation under Article 552 of the Code of Criminal Procedure for unjustifiable:					
	Conviction - § 1 and 2		Use of a preventive measure - § 3		Preliminary arrest or detention - § 4	
	Number of persons	Total amount of adjudged compensation (PLN)	Number of persons	Total amount of adjudged compensation (PLN)	Number of persons	Total amount of adjudged compensation (PLN)
1999	68	873 790	-	-	39	222 973
2000	63	1 561 739	2	5 500	63	665 872
2001	66	919 796	-	-	84	1 470 187
2002	60	766 847	-	-	108	1 276 655
2003	63	1 101 426	12	77 800	160	2 638 334
1st half 2004	43	465 263	6	40 739	106	1 650 489

**Aliens**

370. At present the right of aliens to compensation in connection with an unjustifiable detention is specified in Article 108 of the *Law on Aliens of 13 June 2003*. An alien is entitled to receive from the State Treasury compensation for the damages incurred by him as well as redress for the injury in the event of a manifestly unjustifiable placement in a guarded centre or use with respect to him of detention for the purpose of expulsion. These cases are proceeded under the provisions of the Code of Criminal Procedure related to compensation for an imposition of an unjustifiable sentence as well as unjustifiable preliminary detention or arrest.

**Compensation arising from the limitation of human rights during a period requiring the introduction of extraordinary measures**

371. Moreover, the Law of 22 November 2002 on the *Recompense of the Material Loss resulting from the limitation of the freedoms and rights of persons and citizens during a period requiring the introduction of extraordinary measures (Journal of Laws of 2002 No. 233, item 1955)* stipulates also that each person who has incurred a material loss resulting from the limitation of the freedoms and rights of persons and citizens during a period requiring the introduction of extraordinary measures may claim compensation from the State Treasury, which will comprise a recompense of the material loss, without profit, which the injured person may have gained had no loss occurred.

**Amendments to the Civil Code**

372. Amendments to the Civil code, aimed at assuring a more efficient manner of claiming compensation for damage resultant from an unlawful action or abstention from action during the execution of public authority, entered into force on 1 September 2004 (*Journal of Laws of 2004 No. 162, item 1692*). Changes in this field theretofore comprised only the loss of the binding

force as of 18 December 2001 of those provisions of the Civil Code which make the responsibility of the State Treasury for the damage done by a public official dependent on his guilt as proven in criminal or disciplinary proceedings. The change was introduced following a ruling of the Constitutional Tribunal which stated that a citizen has the right to a redress of the damage incurred as a result of an unlawful action of the authority, irrespective of the statement of guilt of the direct perpetrator of this damage; the ruling regarded the previous regulations as violating the provisions of Article 77 of the Constitution (Journal of Laws of 2001 No. 145, item 1638).

373. The amended provisions markedly extend the scope of responsibility, taking into account the *Recommendations of the Committee of Ministers of the Council of Europe* of 1984 on the accountability of public authority. Amended Article 417 of the Civil Code provides that the responsibility for the damage caused by an unlawful action or lack of it during the execution of public authority is borne by the State Treasury or a unit of the local self-government or another legal person exercising this authority by virtue of the law. Previously, this Article regulated the “responsibility for damage done by a state official”. The above amendment will facilitate compensation proceedings since it is easier to indicate a competent organ of an office than a particular clerk (official). It is no longer necessary to prove the guilt of a clerk (previously the guilt had to be proven in the course of adequate proceedings, e.g. criminal ones), and it is enough to indicate the unlawfulness of the action of the office. If the damage was done by means of an issue of a normative act, its redress may be claimed after, in the course of adequate proceedings, it is shown to violate the Constitution, an international agreement or a law (Article 417. para. 1 of the Civil Code). If, however, the damage was caused by means of not issuing a normative act whose issue is provided for by the law, a violation of the law by not issuing an act is adjudged on by the court which considers the case on the redress of the damage. This is referred to as legislative negligence.

374. Annex 4 provides statistical data related to compensation arising from the accountability of the State Treasury for the damage done by functionaries of the department of justice for the period 1998 – 2003.

375. Moreover, work is currently in progress on an amended civil procedure with a view to providing an opportunity for filing a complaint on the statement of violation of the law by a valid ruling without its repeal, which in consequence will facilitate a redress of the damage caused by faulty judicial rulings.

### **Law on the consideration as null and void of court judgements issued with respect to persons persecuted for their activity for the Republic of Poland**

376. In the period covered by this Report, i.e. since 1998, common courts adjudicated in cases filed by persons claiming compensation under the provisions of *the Law of 23 February 1991 on the consideration as null and void of court judgements issued with respect to persons persecuted for their activity for the sovereignty of the Polish State* (Journal of Laws of 1991 No. 34, item 149 as amended).

377. Valid and final judgements on compensation related to the consideration as null and void of court judgements issued with respect to persons persecuted for their activity for the sovereignty of the Polish State:

Year	Number of persons	Total amount of adjudged compensation (PLN)
1998	6 274	112 914 844
1999	6 800	151 505 642
2000	5 060	100 552 911
2001	3 625	67 262 712
2002	1 992	50 805 193
2003	1 522	38 076 477
1 <sup>st</sup> half 2004	874	23 722 976

378. In order to eliminate post-traumatic disturbances and to achieve full rehabilitation of victims of torture, it is necessary to bring to justice the perpetrators of the inflicted suffering and to provide the victims with adequate care and assistance, including specialised care, e.g. psychological one.

379. Such tasks are implemented by the *Outpatient Centre for Persons Persecuted for Political Reasons* set up at the Department of Sociopathology of the Collegium Medicum Chair of Psychiatry of the Jagiellonian University. Apart from the provision of medical and psychological or psychiatric care, it also assures legal aid. Moreover, specialist-training sessions are organised on clinical psychology and psychiatry.

#### Statistical data on admissions to the Outpatient Centre

Year	Number	Men	Women	Children <18	Families, including	Prisoners	Deportees	From camps	Other
1989	1	1	0	0	0	1			
1990	7	5	2			5	1	1	
1991	5	5	0			5			
1992	15	15	0			13	1		1
1993	31	28	3			29		1	1
1994	41	39	2		1	36			5
1995	27	24	3			23			4
1996	19	19	0			17	1		1
1997	25	23	2			21			4
1998	63	59	4			56	3		4
1999	45	39	6			32	6	2	5
2000	58	40	18			30	24	1	3
2001	76	44	32			13	50	6	7
2002	81	41	40	0	0	10	42	21	8
2003	118	65	53	0	0	7	97	7	7
Total	612	447	165	0	1	298	225	39	50

### **Article 15 - Prohibition of the use of evidence obtained as a result of torture**

380. Provisions of the Penal Code and of the Code of Criminal Procedure contain a prohibition of the use of information obtained as a result of torture as evidence in proceedings, providing at the same time for the prosecution of actions that aim at coercing certain information on the one hand, and considering evidence obtained in this way as inadmissible, on the other.

381. The Penal Code defines as a punishable offence each behaviour consisting in the use of violence or an unlawful threat with a purpose of influencing a witness, expert witness, translator, prosecutor or the accused or a breach of personal inviolability of such a person (Article 245 of the Penal Code). Such behaviour is punishable by the penalty of deprivation of liberty for a period from 3 months to 5 years.

382. In turn, Article 246 of the Penal Code relates to a public official or any person acting under his orders who, for the purpose of obtaining specific testimony, explanations, information or a statement, use force, unlawful threat, or otherwise torment another person either physically or psychologically. Such action is subject to the penalty of deprivation of liberty for a term of between 1 and 10 years.

383. The attributes of the subject matter of the offence specified in Article 246 of the Penal Code comprise action consisting in a public official's coercing and exerting influence over a person subject to a hearing or a third person for the purpose of obtaining specific testimony, explanations, information or a statement. The coercion of such statements should be understood as both the very coercion of their provision and a coercion of their specific content, as well as a coercion of a resignation from their provision, both by the person subject to a hearing or a third person. The attributes of Article 246 of the Penal Code were not limited to statements which are to serve as evidence in judicial proceedings or other proceedings conducted under a law. This means that the provision will be used both with respect to the testimony of a witness, the explanation of a suspect (defendant) and of a person subjected to an informal hearing, e.g. for the purpose of providing operations information.

384. In a situation when the above action conducted by a public official does not aim at the coercion of a statement stipulated above, and aims at the coercion of specific behaviour of a person connected with the performance, with this person's participation, of professional duties by a public official, then depending on the actual circumstances, such action may be qualified under Article 190 of the Penal Code (punishable threat); Article 191 of the Penal Code (compelling another person to conduct himself in a specified manner, or to resist from or to submit to a certain conduct); Article 207 of the Penal Code (tormenting a person in a state of dependence) in conjunction with Article 231 of the Penal Code (acting beyond one's powers or failing to perform one's duty); Article 257 of the Penal Code (insult, breach of personal inviolability on grounds of ethnic differences) or in a cumulative qualification under Article 231 of the Penal Code.

385. In turn, the subject of an offence specified in Article 247 of the Penal Code comprises all actions consisting in tormenting a person lawfully deprived of liberty, as well as allowing the incidence – against one's duty – of such actions, irrespective of their objective. The attributes of the object are realised irrespective of the motivation of the perpetrator.

386. Statistical data on convictions of adults for violations of the articles discussed above are provided in Annex 1.

387. If the taking of evidence is inadmissible, then pursuant to Article 170 of the Code of Criminal Procedure, an evidentiary motion must be denied.

388. Article 171 of the Code of Criminal Procedure specifies the so-called evidentiary prohibitions. *Inter alia*, pursuant to Article 171 section 7 of the Code of Criminal Procedure, explanations of the accused, testimony or statements given or made under conditions precluding the possibility of free expression or inadmissible cannot be considered as evidence. The Code considers as inadmissible the evidence obtained through the influence of the statement of the examined person through coercion or unlawful threat, or through the application of hypnosis or chemical or technical means affecting the psychological processes of the examined person or aimed at influencing unconscious reactions of his organism in connection with the examination.

389. Examples of criminal cases:

- 2. DS. 362/02 of the District Prosecutors' Office Bydgoszcz-Południe.<sup>12</sup>

On the basis of the established facts, the following charges were pressed against an officer of the Police in the Police Station Bydgoszcz-Szwederowo, D.M.:

I. On 20 Nov., 2000 in the Police Station Bydgoszcz Szwederowo he acted beyond his powers as an officer of the Police in the sense that he beat the detainee suspect K.G., kicking him in the vicinity of the breastbone and lower abdomen, by which he caused a bodily injury lasting for a period of up to 7 days, and he acted with a view to influencing the content of K.G.'s explanations and to coercing his admission of guilt for the offences charged to him; an offence under Article 231 section 1 of the Penal Code and Article 157 section 2 of the Penal Code and Article 246 of the Penal Code in conjunction with Article 11 section 2 of the Penal Code.

II. In June 2001, in the Correctional Facility Bydgoszcz-Fordon he induced K.G. to provide a false testimony in that he offered him, in return for a repeal of the previous testimony and a withdrawal of the case concerning a beating, to pay for an advocate, to assist in the obtaining of a suspension of preliminary detention, as well as to provide cigarettes and a TV set; an offence under Article 18 section 2 of the Penal Code in conjunction with Article 233 section 1 of the Penal Code.

390. An indictment in this case was filed to the District Court in Bydgoszcz on 25 April 2002. As of 7 Feb., 2002 senior master sergeant D.M. was discharged from service in the Police at his own request. By a ruling of 22 Dec., 2003, D.M. was sentenced for act I to the penalty of 1 year of deprivation of liberty, for act II to the penalty of 6 months of deprivation of liberty, to a joint penalty of 1 year and 2 months of deprivation of liberty with a conditional suspension of its execution for a period of 2 years. The court ruling is final.

- 2. Ds. 1/2 of the District Prosecutors' Office Poznań-Stare Miasto in Poznań.
  - In March 2002 proceedings were initiated against 4 officers of the Police for the commission of an offence under Article 246 of the Penal Code. The persons were charged as follows: in the period from January to May 2002 in Poznań, on the premises of the Poznań Jeżyce Police Station, beating in the face and in the abdomen, kicking, striking with a baton in the heels, burning with a cigarette and using verbal terms of abuse, coerced testimony of a specific content from 5 persons. The District Court in Poznań, in its ruling of 15 Oct., 2003 acquitted all the defendants. The ruling is not final. The appeal filed by the prosecutor has not been adjudged on so far.
  - In August 2002 the District Prosecutor in Chełm brought an indictment against T.W., an officer of the Police Station in Chełm, for an offence under Article 231 section 1 of the Penal Code, Article 246 of the Penal Code and Article 157 section 2 of the Penal Code in conjunction with Article 11 section 2 of the Penal Code; the indictment stated that on 7 May 2002 in Chełm, T.W. acted beyond his powers in that in order to obtain information from a juvenile, K.D., concerning offences committed by the latter and other persons of his acquaintance, he repeatedly struck him with a police baton in the buttocks and thighs, by which he caused a bodily injury lasting for a period of up to 7 days. By a valid ruling of 31 March 2003, T.W. was sentenced to one year and 6 months of deprivation of liberty with a conditional suspension of the execution of the penalty for a term of 3 years and to a fine.
  - In January 2004 the District Prosecutors' Office in Biała Podlaska initiated an inquiry 2 Ds. 3098/03/S on the basis of a report filed by S.K., a 17-year-old second grade student of the local high school, who maintained that during her detention in the period 5 - 6 December 2003 in the police detention centre of the local Municipal Headquarters of the Police, the officer of the Police who conducted the hearing issued towards her unlawful threats in order to obtain explanations consisting in her admission of being guilty of a theft of a mobile telephone. The evidence gathered, including the opinion of a court psychiatrist confirming the existence of a causal relationship between the strong depression established in her and the stay in the police detention centre, constitutes the grounds for bringing an indictment within foreseeable future against the officer of the Police under Article 246 of the Penal Code and Article 157 section 1 of the Penal Code in conjunction with Article 11 section 2 of the Penal Code.

### **Article 16**

391. Particular issues related to cruel, inhuman or degrading treatment or punishment were presented above in detail during the discussion of individual Articles.



## II. IMPLEMENTATION OF THE RECOMMENDATIONS OF THE COMMITTEE

“Legislative and administrative measures should be introduced to safeguard against excessive use of force by the police, in particular in connection with the supervision of public meetings and to safeguard against the persistence of abusive measures associated with the practice of so-called *fala* in the army” (A/55/44, para.95).

### **Elimination of the abuse of junior soldiers - the so-called wave phenomenon**

392. In reference to the observations of the Committee related to the phenomenon of the abuse of junior soldiers – the so-called wave phenomenon – practices used in the army, consisting in exploiting and humiliating recruits, it must be observed that the Government of the Republic of Poland, and in particular the Ministry of National Defence, notices a necessity of eliminating this negative and reprehensible phenomenon. It is a subject of special concern of the authorities of the Ministry of National Defence, in particular of the social and educational division of the Armed Forces of the Republic of Poland. The problems of irregularities in the field of interpersonal relations in the army, with special emphasis on the abuse of junior soldiers, was discussed on a regular basis during meetings of the authorities of the Ministry of National Defence and the College of Commanders-in-Chief of the Armed Forces of the Republic of Poland devoted to the evaluation of the state of military discipline in the Armed Forces of the Republic of Poland within a given year. This subject was likewise discussed during the meeting of the Sejm Commission of National Defence, where the phenomenon was subject to assessment and where reasons for its continuance were indicated – dependent on and independent of the army.

393. The phenomenon of the abuse of junior soldiers and the scope of its existence in military units are monitored on a regular basis by the authorities of the Ministry. In 2002 the qualitative state of interpersonal relations in the army was assessed twice. In addition, the existence of the phenomenon of the abuse of junior soldiers is a subject of regular surveys conducted by the Military Office for Sociological Research, e.g. a part of the examination of the atmosphere among soldiers of mandatory military service, conducted on a half-yearly basis. Surveys conducted show a significant limitation of the phenomenon of the abuse of junior soldiers in recent years (in 1998 the existence of this phenomenon was declared by approx. 74% of soldiers of mandatory military service, as compared to 36% at present).

394. In the years 1998-2003, implementing the recommendations of the Committee Against Torture, the Ministry of National Defence took the following action:

- In the years 1998-2003, military prosecutors held 54,372 meetings in military units related to raising legal awareness in the military environment. In the course of these meetings military prosecutors acquainted the participants, among others, with the principles of penal liability for the perpetration of offences specified in the detailed and military part of the Penal Code of 6 June 1997 (Journal of Laws of 1997 No. 88, item 553 as amended) and discussed issues related to pathological behaviour in the

area of interpersonal relations, occurring at times in the military environment, which are described as the “wave” phenomenon. Meetings of this kind are organised on an ongoing basis and constitute a priority extra-judiciary task implemented by military prosecutors;

- With a view to examining the causes of and circumstances accompanying the “wave” phenomenon, military prosecutors carry out periodic audits of documentation of all criminal cases, where the appearance of this phenomenon has been detected;
- Military prosecutors analyse closely information (including that of anonymous character) on suspected commissions of an offence related to the “wave” phenomenon in the military environment.

395. According to the Chief Military Prosecutors’ Office, the main causes of committing such offences include: alcohol consumption by soldiers on duty, a lack of efficient supervision of military personnel over subordinates during the so-called “leisure time”, improperly developed relations between senior and junior soldiers in some subunits, connected with a subjective conviction of the perpetrator about the non-punishable character of his act, and irregularities in the execution of professional obligations by soldiers on duty in subunits.

396. Experience gained by military prosecutors over the years indicates that there is no need for an introduction of substantial legislative changes in the form of a law, which would relate to the “wave” phenomenon in the military environment; nevertheless, it is essential that administrative action is taken which would eliminate the most frequent causes of this phenomenon. One of the basic obstacles in the elimination of the “wave” phenomenon is the approval of soldiers themselves for the functioning of this informal tradition.

397. The Minister of National Defence has adopted a plan of action aiming at a marked limitation of pathological phenomena among soldiers. In particular were introduced:

- Recommendations aimed at a decisive improvement of the quality of performing duty services in military units (violations of the law by soldiers, including the organisation of prohibited practices of abuse of junior soldiers, occur most often in the evening and at night time);
- Monitoring the efficiency of promoting appropriate interpersonal relations, including the efficiency of eliminating abuse of junior soldiers, during every single audit of military units;
- Comprehensive prevention activity conducted for the sake of the army by military prosecutors and military police. Each reception of new soldiers is connected with meetings with representatives of the above institutions; such meetings provide opportunities for raising issues e.g. related to penal liability for the performance of practices of abuse of junior soldiers and for indicating ways of conduct when soldiers encounter such practices;

- Implementation of tasks included in the National Programme for the Prevention and Solution of Alcohol-related Problems. Over 560 officers – commanders and educators – have been prepared for independent prevention work in this field during specially organised training courses. Gradually, a special programme of alcohol-related prevention known as “KOREKTA” is being introduced to all units. In 2002, a one-fourth drop in the number of offences and misdemeanours committed by soldiers under the influence of alcohol was observed;
- Active participation of the army in the implementation of the National Programme for the Prevention of Drug Abuse. Educational activities are expanded – training workshops for commanders and educational personnel. Thanks to them, in 2002 the group of personnel professionally qualified to solve drug-related problems in military units doubled;
- Assistance offered to commanding officers by consultants for psycho-prophylactics, who fulfil the function of psychologists of first contact, working directly with soldiers. In 2002 psychological assistance (in the form of individual counselling and psycho-educational classes) was taken advantage of by tens of thousands of soldiers. Psychologists teach soldiers how to counter practices of abuse of junior soldiers and how to cope with such situations;
- Activities for the sake of a better and more attractive organisation of free time for soldiers in barracks, after training classes, with a view to e.g. limiting the phenomenon of abuse of junior soldiers. First of all, a bigger number of additional leisure activities are planned, used for promoting attitudes of friendship and good competition;
- With a view to better preparing professional personnel, especially of the lowest ranks, to deal with the problem of abuse of junior soldiers, a number of publications of a handbook character have been issued (e.g. a book “Koty, wicki i rezerwa” [Freshmen, Smart Alecks and the Reserve] which describes practices and customs as well as norms and symbols of the abuse of junior soldiers in the army).

398. A major project contributing to restraining the phenomenon of the abuse of junior soldiers was the inauguration as of 1 February 2002, on principles defined by the Minister of National Defence, of the *Military Telephone Helpline*. It is available to soldiers, their families and close friends, and makes it possible to report on problems connected with phenomenon of the abuse of junior soldiers. Each signal requiring an intervention and a possible legal reaction is forwarded to a competent military organ. Reports pertaining to the abuse of junior soldiers are examined in the course of verification proceedings conducted by the Military Police, following which each time a prosecutor issues a decision as to the further course of action. On the basis of reports to the Military Telephone Helpline last year up to twenty soldiers, perpetrators of offences of abuse of junior soldiers, were brought to military court.

399. Preventive actions are also undertaken by military chaplains and the Ombudsman; they concern talks with soldiers on the problem of the “wave” conducted during audits and interventions. This is a result of an increased accessibility of contact with the Office of the

Ombudsman due to placement in the bulletin boards of sub-units of telephone numbers of the Office of the Ombudsman as well as of soldiers being made aware of such possibilities during visits of employees of the Office of the Ombudsman in units. Signals thus obtained are frequently the reason for visits of employees of the team in units they come from.

400. As of 1 July 1999, mandatory military service in Poland was shortened ultimately to 12 months, which in a natural way limited a dependence between soldiers based on a longer period of service between soldiers of “the new and the old recruitment”. In the course of work on another amendment to the *Law on the General Obligation of the Defence of the Country*, the Government put forward a proposal of shortening the mandatory military service to 9 months as of 2006.

401. Chapter XLI of the of the military part of the Penal Code defines in an unequivocal manner *Offences against the Rules of Behaviour to Subordinates*:

“Article 350. Section 1. A soldier who degrades or insults a subordinate, shall be subject to the penalty of restriction of liberty, military custody or the penalty of deprivation of liberty for up to 2 years.

Section 2. The prosecution occurs upon a motion from the injured person or the commanding officer of the unit.

Article 351. A soldier who strikes a subordinate or in another manner violates his bodily inviolability shall be subject to the penalty of military custody or deprivation of liberty for up to 2 years.

Article 352. Section 1. A soldier who torments either physically or psychologically his subordinate shall be subject to the penalty of deprivation of liberty for a term of between 3 months and 5 years.

Section 2. If the act specified in section 1 is coupled with a particular cruelty, the perpetrator shall be subject to the penalty of deprivation of liberty for a term of between 1 and 10 years.

Section 3. If the act specified in section 1 or 2 results in an attempt by the injured person on his own life, the perpetrator of the initial act shall be subject to the penalty of deprivation of liberty for a term of between 2 years and 12 years.

Article 353. The provisions of Articles 350 - 352 shall be applied accordingly to the soldier who perpetrates the act specified in these provisions, with respect to a soldier of a lower rank or of the same rank but junior in terms of the duration of military service.”

402. The addition of the feature “junior in terms of the duration of military service” in Article 353 of the Penal Code allowed for rendering the full criminal content of the phenomenon of the abuse of junior soldiers in its typical and most frequent manifestation.

403. In the years 1998 – 2003, a total of 1,536 cases of soldiers' committing offences against the rules of behaviour to subordinates were recorded. Indictments were brought to competent military courts against 1,433 soldiers, and with respect to a further 90 persons petitions were filed to courts for a conditional discontinuance of proceedings because of the occurrence of statutory premises for its application specified in Article 66 section 1 of the Penal Code (i.e. the social harm of the acts they were charged with was not significant; the attitude of the perpetrators, with no previous criminal record for intentionally committed offences, their properties and personal conditions and life conduct justified a conjecture that despite the discontinuance of proceedings the soldiers would observe the legal order, and especially would not commit an offence). In turn, with respect to the remaining 13 persons, criminal proceedings were discontinued on account of the fact that the perpetrators of the offences – in a given period covered by this Report – were evading the law enforcement authorities.

404. The crime rate for individual years was as follows:

- 1998 - 136 perpetrators;
- 1999 - 196;
- 2000 - 312;
- 2001 - 373;
- 2002 - 318;
- 2003 - 201.

405. The manner of the completion of proceedings in relevant cases is presented in the table below:

Criminal proceedings completed in the year	Total No. of perpetrators	Manner of completing the proceedings		
		Indictment	Motion for a conditional discontinuance	Suspension of proceedings
1	2	3	4	5
1998	136	101	34	1
1999	196	180	8	8
2000	312	296	15	1
2001	373	358	12	3
2002	318	301	17	-
2003	201	197	4	-
Total	1 536	1 433	90	13

**Legally valid convictions of adults in military courts in the years 2002-2003  
(Military Provincial Courts in Poland - collective account)**

Legal classification	Put on trial - in total	Convicted in total	Including:					
			Military arrest	Deprivation of liberty - total	Duration specified in the sentence passed		Restriction of liberty	Self-effecting fine
					Up to 1 year	Over 1 year		
in 2002								
Article 350 § 1 of the Penal Code	64	61	-	51	42	9	10	-
Article 351 of the Penal Code	217	183	2	145	134	11	32	4
Article 352 § 1 of the Penal Code	99	96	-	92	69	23	3	1
Article 352 § 2 of the Penal Code	1	-	-	-	-	-	-	-
Article 353 of the Penal Code	-	-	-	-	-	-	-	-
in 2003								
Article 350 § 1 of the Penal Code	46	41	-	33	29	4	8	-
Article 351 of the Penal Code	99	91	1	62	61	1	27	1
Article 352 § 1 of the Penal Code	96	93	4	84	77	7	4	1
Article 352 § 2 of the Penal Code	1	1	-	1	1	-	-	-
Article 353 of the Penal Code	1	1	-	-	-	-	1	-

406. The most typical patterns of behaviour classified as offences against the rules of behaviour to subordinates are the following behaviours of soldiers (senior in terms of military service towards junior soldiers):

- Issuing unlawful commands for the performance of physical exercises, individually or in groups (e.g. push-ups, sit-ups, jogs in a squatting position, etc.), under the supervision of so-called "granddads" (i.e. soldiers who have stayed the longest in a given military subunit), sometimes coupled with a simultaneous singing of songs;

- Organising at night hours so-called alerts for junior soldiers (the soldiers summoned are supposed to report with a full military gear – often with bed sheets); these practices are organised during the absence of regular commissioned officers, mainly late at night;
- Summoning junior soldiers to appear in a soldiers' residential room where there are so-called "granddads" for the purpose of executing a command "attack moth-fashion" (i.e. putting a lace curtain or a thick curtain in the mouth);
- Ordering the execution of a command "batman" – a soldier dressed in a rain cloak or a part of the OP-1 suit is supposed to hang under a bunk with his arms and legs holding on to the frame of the bed or is to jump from a window sill into the interior of a soldiers' residential room;
- Issuing unlawful commands for the performance of particular activities, e.g. brushing the shoes of senior soldiers in the evening, purchasing goods out of their own money (mainly cigarettes and alcohol) for senior soldiers, brewing coffee and preparing tea for them, execution of cumbersome cleaning activities at night hours to the detriment of sleep (cleaning toilets, hallways or soldiers' residential rooms), singing lullabies, etc.;
- Hitting soldiers (most often with an open palm of the hand in the nape – so-called "karczycho"), which is frequently coupled with forcing a soldier to express special gratitude for a strike or to recite poems;
- Throwing down sleeping soldiers from beds late at night and subsequently throwing bed sheets into the hallway;
- Organising so-called "trimmings" – on the day when the most senior soldiers acquire the status of "granddads" – e.g. each soldier from the junior year lies down on a table (bench, chair), and then is struck twelve times by a senior soldier with a military belt (so-called tail trimming);
- Ordering the execution of a command "sapper" (a soldier of a junior year walks in the hallway with a can full of water – the can is without a lid – imitating with a brush the activity of mine detection, and then after hearing the command "alert" – he drops onto the ground.

407. The blatant distortions in the sphere of interpersonal relations in the military environment described above constitute examples of typical criminogenic patterns of behaviour of soldiers senior in terms of the duration of military service or superiors of soldiers junior in terms of the duration of military service and are, when such informal practices are disclosed, severely prosecuted by military organisational units of the Prosecutors' Office.

408. In 2002, at a special conference, the Undersecretary of State for Social Affairs publicly reported on the scale of pathological phenomena in military environments, the "wave" phenomenon included, as well as on the forms and methods of preventing these phenomena.

409. Actions taken in the Ministry of National Defence were positively evaluated in the report of the Council of Europe Commissioner for Human Rights, who paid a visit to Poland in November 2002.

410. Examples of criminal cases:

1. By a final judgement of the Military Garrison Court in Warsaw of 9 August 2000 (index No. Sg 216/00), reserve corporal Piotr Sz. and reserve corporal Artur Sz. were found guilty as follows: on 27 February 2000 around 9.30 on the premises of the training company of Military Unit 4391 in Tomaszów Mazowiecki, in the bathroom, being superiors, jointly and in collusion they tormented physically subordinates: private Szymon L. and private Radosław S. in that they made them do 30 push-ups, put on gas masks, and after unscrewing cartridges, inserted into the inhalation tube no fewer than 10 cigarettes in each mask, then lit the cigarettes and made them inhale the smoke into the mask, which the soldiers did, and then - after they took off the masks - made them do another 10 push-ups, i.e. committed an offence under article 352 section 1 of the Penal Code.

For the above, the Court sentenced the accused to the penalty of the deprivation of liberty for a period of 6 months, and conditionally suspended the execution of the penalty for the probation period of 3 years in each case, using a penalty measure in the form of demotion, additionally assigning reserve corporal Artur Sz. to the custody of a curator during the probation period.

The above judgement was issued following a consideration of the motion of the accused filed pursuant to article 387 section 1 of the Code of Criminal Procedure, i.e. until the moment of completing the first hearing of all the defendants during the main trial, a motion filed by the defendants for a sentencing ruling and an imposition of a specified penalty or a penal measure without conducting evidentiary proceedings.

2. By a final judgement of the Military Garrison Court in Szczecin of 3 April 2000 (index No. Sg. 45/00), 7 reserve privates were found guilty as follows: in the period from 2 July until 18 August 1999 on the premises of communications companies of Military Unit 1755 and Military Unit 1756 in Stargard Szczeciński they tormented physically and psychologically junior privates, i.e. committed an offence under article 352 section 1 of the Penal Code in conjunction with article 353 of the Penal Code. Four of them were additionally found guilty of committing an offence under article 352 section 3 of the Penal Code in conjunction with article 352 section 1 of the Penal Code in conjunction with article 353 of the Penal Code, as their actions led one of the injured persons to take his life by cutting the veins of the left forearm on 30 August 1999.

For the above acts they were sentenced to the combined penalty of 6 months of deprivation of liberty with a conditional suspension of its execution for a probation period of 2 years, to a combined penalty of 2 years of deprivation of liberty with a conditional suspension of its execution for a probation period of 3 years and assigning at this time to the custody of a curator.



3. A case filed against reserve private first class M.G. for an offence under Article 352 section 1 of the Penal Code in conjunction with Article 353 of the Penal Code and Article 357 section 1 of the Penal Code and against reserve private first class A.K. for an offence under Article 352 section 1 of the Penal Code in conjunction with Article 353 and Article 338 section 2 of the Penal Code.

In the course of the investigation led by the Military Garrison Prosecutors' Office in Warsaw it was established that the aforementioned soldiers, in November 2000, on the premises of Military Unit 1400 in Warsaw, tormented physically and psychologically a soldier of a lower rank and junior in terms of the duration of military service. The perpetrators made him do push-ups, sit-ups and crawl. They likewise often threatened to wake him up after the tattoo.

Most frequently the unlawful behaviour of the suspects took place when they were under the influence of alcohol.

By a court ruling of 22 Nov., 2001, both defendants were found guilty as charged and sentenced to the following penalties: reserve private first class M.G. to a joint penalty of 5 months of deprivation of liberty with a conditional suspension of the execution of the penalty for a period of 3 years, and reserve private first class A.K. to a joint penalty of 4 months of deprivation of liberty with a conditional suspension of the execution of the penalty for a period of 3 years. Moreover, both were assigned to the custody of a curator.

4. A case filed against private G.L. and private K.S. for an offence under Article 353 of the Penal Code in conjunction with Article 351 of the Penal Code and Article 158 of the Penal Code in conjunction with Article 353 of the Penal Code in conjunction with Article 351 of the Penal Code (perpetrated three times).

In the course of the investigation led by the Military Garrison Prosecutors' Office in Gliwice it was established that in the night 7 / 8 March 2001 both soldiers, in a soldiers' residential room of Military Unit 1607 in Gliwice, where 4 junior soldiers were stationed, threw them down from their beds onto the floor and then beat them with their hands all over the body.

By a court ruling of 18 June, 2001, private G.L. and private K.S. were found guilty as charged and sentenced to the joint penalty of 1 year and 3 months of deprivation of liberty each, with a conditional suspension of the execution of the penalty for a period of 3 years.

5. A case filed against private first class P.A. for an offence under Article 350 section 1 of the Penal Code in conjunction with Article 353 of the Penal Code (eight times) and Article 350 section 1 of the Penal Code in conjunction with Article 353 of the Penal Code in conjunction with Article 12 of the Penal Code (twice) and private first class B.K. for an offence under Article 350 section 1 of the Penal Code in conjunction with Article 353 of the Penal Code (twice) and Article 350 section 1 of the Penal Code in conjunction with Article 353 of the Penal Code in conjunction with

Article 12 of the Penal Code (three times), and also private first class M.L. for an offence under Article 350 section 1 of the Penal Code in conjunction with Article 353 of the Penal Code (twice) and Article 351 section 1 of the Penal Code in conjunction with Article 353 of the Penal Code (twice).

In the course of the investigation led by the Military Garrison Prosecutors' Office in Koszalin it was established that in early July 2001 a group of newly admitted soldiers was assigned to Military Unit 3288 in Wałcz. Soldiers senior in terms of the duration of military service of this subunit used with respect to the former unstatutory methods of conduct. And so, on 16 and 17 July 2001 after the tattoo, the aforementioned perpetrators made the newly admitted soldiers fall on the floor after hearing the word "grenade", hang under a bunk upon hearing the word "batman", make beds for other soldiers, climb a window sill and imitate a cat's meow, do push-ups, learn and recite poems about the "wave", and moreover hit them in the nape with the palm of the hand.

By a court ruling of 22.10.2001, all three defendants were found guilty as charged and sentenced to the following penalties: private first class P.A. to a joint penalty of 1 year of deprivation of liberty with a conditional suspension of the execution of the penalty for a period of 3 years, private first class B.K. (previously sentenced by a court ruling) to a joint penalty of 1 year and 4 months of deprivation of liberty, and M.L. to a joint penalty of 10 months of deprivation of liberty with a conditional suspension of the execution of the penalty for a period of 2 years.

6. A case filed against sailor first class M.N. and sailor M.B. for an offence under Article 352 section 1 of the Penal Code in conjunction with Article 353 of the Penal Code in conjunction with Article 157 section 2 of the Penal Code and Article 352 section 1 of the Penal Code in conjunction with Article 353 of the Penal Code (five times).

In the course of the investigation led by the Military Garrison Prosecutors' Office in Gdynia it was established that the aforementioned sailors, on duty aboard ORP "Pułaski", on 21 September 2001 around 11.00 p.m. ordered both junior soldiers and those of the same rank but with a shorter duration of military service to do 272 sit-ups, which was a number equivalent to the number of the vessel. The injured made altogether from 150 to 272 sit-ups, and one of them, after doing at least 240 sit-ups, incurred an injury in the form of a strain of the knee joint.

By a court ruling of 15 Nov., 2001, both defendants were found guilty as charged and sentenced to the following penalties: sailor first class M.N. to a joint penalty of 1 year of deprivation of liberty with a conditional suspension of the execution of the penalty for a period of 2 years, demotion, and a compensatory payment of 200 PLN and a fine to the amount of 500 PLN, while sailor M.B. to a joint penalty of 1 year of deprivation of liberty with a conditional suspension of the execution of the penalty for a period of 3 years, and a compensatory payment of 200 PLN and a fine to the amount of 500 PLN.

7. A case filed against private first class G.F., private M.B. and private M.T. for an offence under Article 352 section 1 of the Penal Code in conjunction with Article 353 of the Penal Code and Article 350 section 1 of the Penal Code in conjunction with Article 353 of the Penal Code.

In the course of the investigation led by the Military Garrison Prosecutors' Office in Poznań it was established that on the premises of Military Unit 3293 in Powidz, in the period from 20 until 24 June 2001, the aforementioned soldiers, in the Unit's infirmary, struck with palms of their hands the faces and napes of three soldiers junior in terms of the duration of military service staying in that room. Moreover, they made the injured soldiers report at roll calls and ordered them to execute various personal services.

By a court ruling of 6 May 2002, all the defendants were found guilty as charged and sentenced to the following penalties: private first class G.F. to a joint penalty of 10 months of deprivation of liberty with a conditional suspension of the execution of the penalty for a period of 3 years, while privates M.B. and M.T. to joint penalties 8 months of deprivation of liberty each with a conditional suspension of the execution of the penalty for a period of 3 years. Moreover, all of the above were assigned to the custody of a curator.

8. A case filed against private first class A.K. for an offence under Article 352 section 1 of the Penal Code in conjunction with Article 353 of the Penal Code (nine times).

In the course of the investigation led by the Military Garrison Prosecutors' Office in Wrocław it was established that in 1998, on the premises of Military Unit 2399 in Świętoszów, the aforementioned soldier tormented physically and psychologically nine junior soldiers in that he ordered them to do push-ups, sit-ups with a stool in hands, crawl under beds, make beds a number of times, treated himself to their coffee and tea and made them organise a collection of money, 50 PLN each, to buy alcohol consumed during the so-called trimming, when each soldier was struck in the buttocks several dozen times with a military belt.

By a court ruling of 30 Dec., 1998, private first class A.K. was found guilty as charged and sentenced to a joint penalty of 1 year of deprivation of liberty with a conditional suspension of the execution of the penalty for a period of 2 years and to a demotion.

9. A case filed against corporal M.K., private J.R., private M.D., private J.C. and private A.P. for an offence under Article 352 section 1 of the Penal Code in conjunction with Article 353 of the Penal Code.

In the course of the investigation led by the Military Garrison Prosecutors' Office in Wrocław it was established that in 1999, on the premises of Military Unit 2399 in Świętoszów, the aforementioned soldiers tormented physically and psychologically junior soldiers in that they ordered them, at night time, to clean toilets where they had previously dumped sand on which they poured water, as well as do push-ups, walk on all fours and submit pseudo-reports of degrading content.

By a court ruling of 11 Jan., 2000, corporal M.K., private J.W., private first class M.D., private J.C. and private A.P. were found guilty as charged and sentenced to 3 months of deprivation of liberty with a conditional suspension of the execution of the penalty for a period of 3 years. Moreover, the five above soldiers were assigned to the custody of a curator.

10. A case filed against private G.I. for an offence under Article 352 section 1 of the Penal Code in conjunction with Article 353 of the Penal Code (seventeen times).

In the course of the investigation led by the Military Garrison Prosecutors' Office in Warsaw it was established that the aforementioned soldier, in the period from May until June 2002, on the premises of Military Unit 1131 in Mińsk Mazowiecki, tormented physically and psychologically junior soldiers in that, using unlawful threats, he made the soldiers perform physical exercises in the form of push-ups and sit-ups, during which he hit them with a fist in the back and shoulders and kicked in the stomach, and moreover made them participate in "games" consisting in imitating a sexual intercourse with animals or a masturbation and in reciting poems that were degrading to them.

By a court ruling of 9 Oct., 2003, private G.I. was found guilty as charged and sentenced to a joint penalty of 1 year and 6 months of deprivation of liberty with a conditional suspension of the execution of the penalty for a period of 3 years. Moreover, the soldier was assigned to the custody of a curator and sentenced to a compensatory payment of 1,000 PLN in favour of one of the injured persons.

### **Protection against unjustified use of force by the Police**

411. Legal regulations regarding the principles of the use of force by the Police as well as situations when these principles were violated were discussed in detail in Articles 2 and 12.

### **Remaining recommendations**

412. Information on actions taken by the Republic of Poland with a view to solving issues which caused the Committee's concern and on the implementation of the Committee's recommendations (A/55/44, paras. 82-95) was included in the discussion of individual articles as follows:

- Paragraphs 87 and 92 - articles 1 and 4;
- Paragraphs 88 and 93 - article 2;
- Paragraph 89 - articles 3 and 8;
- Paragraph 90 - articles 2, 10, 11 and 13;
- Paragraphs 91 and 95 - discussed in section II;
- Paragraph 94 - article 13.

## Notes

<sup>1</sup> The Resolution of the Council of Ministers No. 55/2004 of 13 March 2004 (RM 111-52-04) pursuant to the motion of the Minister of Justice expressing consent to the signature of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted by the United Nations General Assembly on 18 December 2002.

<sup>2</sup> Article 343. Section 1. A soldier who does not execute or refuses to execute an order or executes an order in violation of its content shall be subject to the penalty of military arrest or to the penalty of deprivation of liberty for up to 3 years.

Section 2. If the perpetrator of the offence specified in section 1 acts in collusion with other soldiers or in the presence of a group of soldiers or the offence specified in section 1 results in a grievous damage to property or another grievous damage, the perpetrator shall be subject to the penalty of deprivation of liberty for a term of between 3 months and 5 years.

Section 3. A soldier who acts in collusion with other soldiers for the purpose of committing the prohibited act specified in section 1 or 2 shall be subject to the penalty of restriction of liberty, to the penalty of military arrest or to the penalty of deprivation of liberty for up to 2 years.

Section 4. The prosecution of the offence specified in section 1 or 3 shall occur at the request of the commander of the military unit.

<sup>3</sup> Article 53. 1. An officer is obliged to perform duties arising from the oath of service.

2. An officer is obliged to refuse to execute an order or a command if their execution would be connected with a commission of an offence.

3. An officer is obliged to report a refusal of an execution of an order or a command to the Chief of the State Protection Office and does not have to report to his immediate superiors.

<sup>4</sup> Article 153. Provisions of article 115, section 18, and of articles 318 and 344 of the Penal Code apply respectively to officers of the Agency of Internal Security and of the Intelligence Agency.

<sup>5</sup> Persons under the influence of alcohol, who with their behaviour cause scandal in a public place or a workplace, who happen to find themselves in circumstances threatening their own lives or health or the life or health of other persons, may be coerced by officers of the Police or guards of the communal guard to come to a sobering-up centre, other centres set up or indicated by units of local self-government and - when there are no vacancies - to a unit of the Police.

A person coerced to appear in a sobering-up centre, a centre or unit of the Police is admitted there on the basis of the result of a test, carried out with the consent of the person brought to such an institution, on the presence of alcohol in the body which indicates a state of alcohol intoxication. If the person brought to the above institution does not express their consent

to such a test, the person is admitted to a sobering-up centre, another centre or unit of the Police exclusively when additional symptoms of alcohol intoxication present themselves and they are confirmed by a physician or a paramedic of the sobering-up center or another center, and in the event of persons brought to a unit of the Police by an authorized officer of the Police, in a protocol of coerced appearance or in the patient's card.

A sobering-up centre:

- (1) Takes care of persons under the influence of alcohol;
- (2) Provides hygienic and sanitary services to persons under the influence of alcohol;
- (3) Administers first aid to persons under the influence of alcohol in emergency cases;
- (4) Administers detoxication to persons conceding to it if the sobering-up centre has a proper room, equipment, facilities and adequately trained personnel;
- (5) Provides information on the detrimental character of alcohol abuse and encourages disaccustoming treatment.

The sobering-up centre cooperates with relevant communal commissions for the solution of alcohol-related problems, centers of disaccustoming treatment, and other institutions and organizations whose activity aims at the prevention of alcohol-related problems and their effects.

The sobering-up centre files annual reports to the Minister for Health by 1 March for the preceding year; the report includes especially the number of persons placed in the sobering-up center, their sex, and the division into adults and minors, including the number of persons admitted to a sobering-up center at least three times within one year.

<sup>6</sup> During the period covered by the previous report, the Prosecutor General was the competent authority.

<sup>7</sup> Article 2. 1. Communist crimes under the law are acts committed by officials of the communist regime in the period from 17 September 1939 until 31 December 1989, consisting in the use of reprisals or other forms of violations of human rights with respect to individuals or groups or in conjunction with their use, which constituted offences under the Polish penal law in force at the time of their perpetration.

<sup>8</sup> Pursuant to Article 115 section 20, "An offence of a terrorist character is a prohibited act punishable by deprivation of liberty whose upper limit is at least 5 years, perpetrated for the purpose of:

- (1) Serious intimidation of many persons;

- (2) Forcing an organ of the public authority of the Republic of Poland or another state or an international organisation to take or abstain from taking a particular action;
- (3) Causing serious disturbances in the political system or in the economy of the Republic of Poland, another state or an international organisation as well as threatening to perpetrate such an act.”

<sup>9</sup> The method used in the study was an analysis of medical documentation – “Notifications on the application of direct coercion under Article 18 para. 6 of the Law on the Protection of Mental Health”. Each case of the application of direct coercion is recorded in medical files.

<sup>10</sup> *Instruction No. 9 of the General Director of the Prison Service of 29 December 2003 on notifications about extraordinary events* (unpublished regulation) defines “a rebellion” as “an extraordinary event consisting in a collective protest of prisoners infringing on the security of an organisational unit by a lawless departure from the assigned places of stay or work or their occupation and nonsubordination to issued orders”. A rebellion should be differentiated from another collective protest of prisoners, which the instruction divides into the following:

- Passive collective protest - an extraordinary event infringing on the order of an organisational unit during which no violations of personal inviolability of persons or damage to property occurred and which concerned at least 10 persons;
- Active collective protest - an extraordinary event infringing on the order of an organisational unit during which violations of personal inviolability of persons or damage to property occurred and which concerned at least 5 persons.

<sup>11</sup> Since 1999 with the exception of those taking place while using passes or permits for a temporary leave of the correctional facility.

<sup>12</sup> Article 11. Section 1. The same act may constitute only one offence.

Section 2. If an act has features specified in two or more provisions of penal law, the court shall sentence the perpetrator for one offence on the basis of all concurrent provisions.

Section 3. In the case specified in section 2 the court shall impose the penalty on the basis of the provision providing for the most severe penalty, which shall not prevent the court from imposing other measures provided for in law on the basis of all concurrent provisions.

Article 18. Section 2. Whoever, willing that another person should commit a prohibited act, induces the person to do so, shall be liable for instigating.

Article 157. Section 2. Whoever causes a bodily injury or an impairment to health lasting not longer than 7 days, shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to 2 years.

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

Article 233. Section 1. Whoever, in giving testimony which is to serve as evidence in court proceedings or other proceedings conducted on the basis of a law, gives false testimony or conceals the truth shall be subject to the penalty of deprivation of liberty for up to 3 years.

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

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