



**International covenant  
on civil and  
political rights**

Distr.  
GENERAL

CCPR/C/POL/6  
17 July 2009

Original: ENGLISH

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HUMAN RIGHTS COMMITTEE

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES  
UNDER ARTICLE 40 OF THE COVENANT**

**Sixth periodic report**

**POLAND\* \*\***

[15 January 2009]

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

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

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**List of abbreviations**

- BG - Border Guard
- CCP - Code of Criminal Procedure
- CCivP - Code of Civil Procedure
- CChRP - Commissioner for Children Rights Protection (Ombudsman for Children)
- CCRP - Commissioner for Civil Rights Protection (Ombudsman)
- CM - Council of Ministers
- CSO - Central Statistical Office
- CT - Constitutional Tribunal
- EC - European Communities
- ECHR - European Court of Human Rights
- EPC - Executive Penal Code
- EU - European Union
- FGC - Family and Guardianship Code
- LC - Labour Code
- MJ - Ministry of Justice
- MIA - Ministry of the Interior and Administration
- MH - Ministry of Health
- MLSP - Ministry of Labour and Social Policy
- NCRTB - National Council for Radio and Television Broadcasting
- NHF - National Health Fund
- NHP - National Headquarters of the Police
- NPO - National Prosecutor Office
- PC - Penal Code
- PS - Prison Service
- SES - System of Electronic Supervision
- SLI - State Labour Inspectorate

The present Report covers the period from 1 October 2003 to 15 October 2008. It has been prepared in accordance with the *Consolidated guidelines for State reports under the International Covenant on Civil and Political Rights: 26/02/2001* (CCPR/C/66/GUI/Rev.2), with regard to the draft guidelines set out in the Report of the Secretariat *Harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document and treaty-specific targeted documents* (HRI/MC/2005/3) and in the report of the Secretary General *Compilation of guidelines on the form and content of reports to be submitted by States Parties to the international human rights treaties* (HRI/GEN/2/Rev.5 of 29 May 2008).

This Report is supplemented by the *Core Document*.

## Article 1

### Peoples' right of self-determination

1. In line with the principle of sovereignty enshrined in the *Constitution of the Republic of Poland*, the supreme authority in the Republic of Poland belongs to the Nation. Relevant constitutional regulations were presented in the previous Report.
2. Impact on state policy is indirectly effected through the activity of political parties, whose freedom of establishment and activity is guaranteed in the *Constitution*, and through non-governmental organisations representing interests of particular groups.
3. As an EU Member State, Poland supports initiatives and implements instruments aiming at increasing the level of participation of EU citizens in the EU decision process. Poland is committed to projects which aim at enhancing the transparency of the EU decision-making process and at increasing its democratic legitimacy.

## Article 2

### Prohibition of discrimination

4. Poland, a democratic state of law, guarantees all persons within its territory and under its jurisdiction a full protection of rights and freedoms granted by the *Covenant*. The principles of implementing the provisions of the *Covenant* in the Polish legal order, including the principle of direct application of international law, were presented in the previous Report and continue to remain in force.
5. According to the *Constitution*, monitoring the observance of human rights is vested with two authorities, namely the Ombudsman and the Ombudsman for Children (their functions were detailed in the previous Report, and the capacity of the Ombudsman also in the current *Core Document*). The Ombudsman, as set out in the *Constitution*, prepares and disseminates a detailed report on the observance of human rights in Poland and on the activities taken by himself (*Information of the activity of the Ombudsman and on the state of observance of the rights and freedoms of man and citizen*), as well as reports on particular human rights issues.
6. On the prohibition of discrimination in Polish legal order - see: information related to Article 26 of the present Report.

### Article 3

#### **Equal status of women and men (recommendations 10 and 16 of the Committee)**

7. Coordination of actions related to the social status of women and the family and the implementation of tasks aiming at the prevention of all forms of discrimination is entrusted to MLSP (Department for Women, the Family and Prevention of Discrimination). The Ministry is a successor of the Government Plenipotentiary for Equal Status of Women and Men and was indicated to the European Commission as an authority in charge of equal status with respect to binding directives.

8. On the general prohibition of discrimination in Polish legislation and the prohibition of discrimination on grounds of sex in areas other than employment - see: information related to Article 26 of the present Report and information related to Articles 2 and 3 of the previous Report.

#### **Recommendations 10 and 16 of the Human Rights Committee - equality in employment**

9. An amendment of the LC adopted in November 2003 had the following effects:

- Extension of the scope of regulations connected with the prohibition of discrimination: employees should be treated equally with respect to entering into and terminating an employment contract, employment terms and conditions, promotion and access to trainings for the purpose of improving professional qualifications, in particular irrespective of sex, age, disability, race, religion, nationality, political persuasion, trade union membership, ethnic origin, creed, sexual orientation, as well as because of being employed for a specified or unspecified time, full or part-time.
- Introduction of a definition of direct and indirect discrimination. Direct discrimination takes place when an employee has been, still is or might be treated less favourably than other employees in a comparable situation for one or several of the reasons set out in the LC. Indirect discrimination takes place when, as a result of a seemingly neutral decision, the application of a criterion or an action taken, there are disproportionate employment conditions to the detriment of all or a significant number of employees of a group singled out because of one or several of the reasons set out in the LC, provided this disproportional treatment cannot be justified by other objective reasons.
- Introduction of a definition of mobbing and recognition of mobbing as a token of discrimination. Mobbing is defined as behaviour which results in the violation of dignity, humiliation or abasement of an employee. Furthermore, discrimination on grounds of sex includes each unacceptable behaviour of a sexual nature or related to the employee's sex aiming at or resulting in the violation of dignity, humiliation or abasement of an employee; this behaviour may consist of physical, verbal or non-verbal elements (sexual harassment).

10. As concerns equal treatment in employment, a draft amendment of the LC adopted in February 2008 by the CM (at present the draft law is subject to Parliamentary procedure) envisages the following:

- Adoption of a more detailed and precise definition of indirect discrimination
- Adoption of a more precise list of situations being manifestations of discrimination
- Adoption of a more detailed definition of sexual harassment
- Introduction of a prohibition of any negative consequences for an employee who is subject to mobbing or sexual harassment or who takes action combating mobbing or sexual harassment
- Adoption of a more precise scope of protection measures of employees exercising their rights acquired because of the violation of the principle of equal treatment in employment
- Granting protection to an employee offering assistance to another employee who exercises his or her rights acquired because of the violation of the principle of equal treatment in employment

11. The *Law of April 2004 on the promotion of employment and labour market institutions* prohibits discrimination on grounds of sex, age, disability, race, ethnic background, nationality, sexual orientation, political beliefs, religious creed and membership in a union and applies in particular to the following:

- Employment agency
- Information provided by an employer about a vacancy or a venue of professional training, which must not specify conditions discriminating against candidates
- Choice of candidates for trainings and re-trainings
- Vocational guidance counselling
- Criteria of issuing promises and work permits for foreigners

Furthermore, the law provides for a fine (in the amount not lower than 3,000 PLN) for people running an employment agency who do not comply with the prohibition of discrimination.

12. The situation of women in the labour market is slightly worse than that of men, as reflected by the following data: the participation of women in the general number of the work force is 45%, women employment rate - 42.3% (for men - 57.4%), unemployment rate for women - 9.4% (for men - 7.8%). An assistance measure for women is the inclusion of some of them (women who have not been employed after delivering a child and unemployed women - single

mothers of one child up to 18 years of age) to a group of people in a special situation on the labour market. Pursuant to the Law on *employment promotion (...)* they are offered an opportunity to use additional labour market instruments to regain employment.

13. A 2004 CSO poll showed that women held 40% fewer upper management positions than men (the difference was smaller relative to 2003 by 0.7%), with unfavourable ratios applying to a larger extent to the private sector. Women worked on average 3 years and 8 months longer to obtain a higher position. No discrimination between groups of employees was observed with respect to work at inconvenient hours and overtime work.

14. A 2006 survey conducted by SLI (in 116 state, local administration and private companies) indicated that women continued to be in the minority among employees of upper management level. In 2005 in the workplaces surveyed, for 156 men in upper management positions there were 100 women holding similar positions (an increase of the disproportion to the detriment of women by 4% relative to 2004). The unfavourable tendency is observed in all workplaces, especially in the private sector. An especially high imbalance can be seen in upper management positions in private companies employing over 500 people. No major differences were observed with respect to lower management positions (in 2005 the ratio was 100 women to 114 men). Unequal treatment of women and men can also be noted in remuneration for work of employees in upper management positions. No imbalance in remuneration on grounds of sex occurs at the level of lower management positions as well as independent, administration, manual and service positions. Data on remuneration of women and men see: para. 2 of Annex I.

15. Detailed information on equal treatment of women and men is included in the Report on Poland's implementation of the provisions of the *International Covenant of Economic, Social and Cultural Rights*, for the years 2002-2006, submitted in August 2007.

### **Conditions for granting paternal and maternity leave in the context of equal treatment in employment**

16. Information on the use of part of the maternity leave and child-rearing leave by the child's father was included in the previous Report.

17. Maternity leave can be taken advantage of by a man who is employed, is the child's father and is involved in his upbringing. The employer cannot refuse granting the father the part of a leave unused by the mother. When the father is not involved in the child's upbringing or is not interested in taking maternity leave, the female employee must use the full extent of the maternity leave she is entitled to.

18. Pursuant to an amendment of 16 November 2006, the length of the leave was increased. At present a female employee is entitled to a maternity leave of the following duration:

- 18 weeks after the first delivery
- 20 weeks after each successive delivery
- 28 weeks in the case of delivering more than one child during one delivery

Provisions on the use of the leave by the child's father have not been amended.



19. The draft amendments to the LC adopted in February 2008 by the CM envisage guarantees of employment in the same or equivalent position for an employee returning from maternity leave.

20. The number of people using maternity leave (and benefits): in 2005 - 260 400, in 2006 - 274 300, in 2007 - 296 600. The data applies to people who took maternity benefits for at least one day in a given year. No information as to the break-up with respect to gender is available.

### **Compensation**

21. Compensation claims on grounds of discrimination in the workplace as a separate category of cases have been adjudicated by courts since 1 January 2002, and on grounds of mobbing since 1 January 2004.

22. In the second half of 2005 complaints filed with SLI contained 56 discrimination-related problems, including 14 cases of discrimination on grounds of sex and 2 on grounds of age. 9 cases were recognised as justifiable. In 2006, out of 208 complaints related to discrimination in employment (including 29 cases of discrimination on grounds of sex and 13 on grounds of age, 0.35% of all problems raised in the complaints) 41 cases were recognised as justifiable. In 2007 complaints filed with SLI contained 305 discrimination-related problems, including 42 cases of discrimination on grounds of sex and 21 on grounds of age (0.6% of all problems raised in the complaints). 53 cases were recognised as justified.

23. For data on the number of cases filed to labour courts, related to compensation because of discrimination - see: paras. 1 and 1A of Annex I.

### **Adopting the same retirement eligibility age for women and men**

24. The social insurance system is universal, i.e. encompasses all groups of professionally active population. The social insurance system does not adopt different benefits eligibility criteria on grounds of sex with two exceptions. The exceptions in question relate to the system of maternity benefits – on account of natural biological differences - and the retirement system.

25. General retirement age for women is 60 years, for men it is 65 years. Employees who have not attained retirement age may take early retirement. Eligibility criteria for early retirement are set out in the *Law on old age and disability pensions from the Social Security Fund*. Pursuant to Article 29 para. 1 of the Law, in force as of 8 May 2008, an employee born prior to 1 January 1949 who has not attained retirement age (60 years for a woman, 65 years for a man), may retire provided s/he has met the following criteria:

- A woman - on attaining 55 years of age and documenting at least 30 years of paying social insurance premiums or at least 20 years of paying social insurance premiums if s/he has been qualified as completely unfit for work
- A man - on attaining 60 years of age with at least 35 years of paying social insurance premiums or at least 25 years of paying social insurance premiums if s/he has been qualified as completely unfit for work

Persons whose social insurance seniority contains periods of employment, other activity covered by social insurance and periods of non-payment of social insurance premiums must meet additional criteria set out in the Law. If the request for early retirement is filed by a person entitled to a disability pension on account of inability to work, s/he is not required to have been employed for at least 6 months in the last 24 months of being covered by social insurance.

Granting earlier retirement is not contingent on the discontinuation of employment.

The institution of the right to early retirement was introduced mainly for the sake of employees born prior to 1 January 1949. No deadline has been set up for those people as to meeting eligibility criteria for early retirement and as to filing an application for being granted early retirement.

The right to early retirement is granted also to employees born after 31 December 1948, provided they meet the eligibility criteria (age, employment seniority, inability to work) at the latest on 31 December 2008 and do not belong to an open pension fund. However, this is not the deadline for filing an application for early retirement. The Law does not make granting early retirement contingent on filing an application for early retirement by 31 December 2008.

26. Pursuant to the *Law on old age and disability pensions (...)*, men born prior to 1 January 1949 who have not attained the retirement age of 65 years may retire on attaining 60 years of age provided they have paid or not paid social insurance premiums for at least 35 years. These provisions implement the judgement of CT of October 2007, where CT ruled that the relevant Law violated the non-discrimination principle enshrined in the *Constitution of the Republic of Poland* in that it did not grant the right to retirement at an earlier retirement age to a man (or respectively to a woman eligible for this right on attaining 55 years of age and documenting at least 30 years of paying social insurance premiums) on attaining 60 years of age with at least 35 years of paying and not paying social insurance premiums.

Consequently, men born prior to 1949 may take early retirement on attaining 60 years of age, with at least 25 years of paying and not paying social insurance premiums and completely unable to work, or on attaining 60 years of age, with at least 35 years of paying and not paying social insurance premiums. The change in regulations is beneficial for men born in the years 1943-1948, who have not yet reached retirement age (65 years), and who have previously been prevented from taking early retirement since their health status was such that a recognition of a complete inability to work was impossible.

With respect to people born prior to 1949, no time framework was set up within which all the criteria of early retirement should be met. The youngest man from this group will attain 60 years of age at the latest on 31 December 2008. This does not mean, however, that only this man, who will additionally meet all the remaining criteria by the end of 2008 is entitled to early retirement. Since people born prior to 1949 (women and men) are not covered by the retirement reform, they are entitled to retirement computed according to so-called old principles, as stipulated in Article 53 of the *Law on old age and disability pensions (...)*, irrespective of when they meet the eligibility criteria and file an application for being granted early retirement.

27. A lower retirement age for women is based on tradition. In the draft amendments to the system of social security, the Government repeatedly put forth proposals for adopting the same retirement age for men and women. Such draft legislations have never been accepted in the general public. For instance, on 9 April 2004 the Government submitted to the Sejm a draft law envisaging a gradual adoption of the same retirement age for women and men. On 11 August 2004 the Government submitted to the Sejm an amended draft law withdrawing this proposal. This was a reaction to negative opinions of employers' organisations, trade unions, non-governmental organisations, and scientific institutes. Legal solutions on the different retirement age of women and men are also discussed in the request filed in 2007 by CCRP to CT (the Tribunal has not ruled on this case so far).

28. In the retirement system introduced in 1999, the level of old age pension depends on the level of capital from premiums accrued on the insured person's personal account. The amount of capital depends *inter alia* on the period of paying social insurance premiums. The earlier a person retires, the smaller the capital on the account and as a result the lower the pension. Information campaigns are conducted (by MLSP, Social Insurance Office, in particular in cooperation with the communications media) sensitising the public to the consequences of early/late retirement; early retirement usually pertains to women, who traditionally terminate their professional activity at an earlier age.

29. The Law of April 2004 *on employees' pension programmes* lays down the same age for women and men as of which it is possible to obtain money accrued in the employees' pension programme (EPP).

30. EPP is an additional form of saving money for the future pension. EPP is set up by the employer for the persons employed by him. The payment of additional pension benefits takes place from the resources accrued in the EPP in keeping with the principles set out in the company's pension agreement and in the Law. Payment is in the form of money upon an investment fund buys back the participant's units from his/her account. Payment may be made, *inter alia*, in the following cases:

- On request from the participant, after s/he attains 60 years of age
- After the participant attains 70 years of age (without a request)
- On request from the participant, upon obtaining retirement entitlements

### **Measures taken for the implementation of the principle of equal treatment in employment**

31. Providing support to women in the labour market with a view to increasing their employment rate and raising their vocational and social status was the subject of the following programmes implemented in the period covered by this Report:

- "National Strategy for Employment Increase and Human Resources Development in the period 2000-2006" (objectives: elimination of barriers encountered by women and discrimination against women in the labour market, information campaigns for the discontinuation of employers' discriminatory practices during the recruitment process, organisation of workplaces, remuneration and evaluation of employees)

- “Vocational integration and reintegration of women” as part of the Sectoral Operational Programme for Human Resources Development (SOP HRD) (objective: granting support to women in the labour market)
- EQUAL Community Initiative Programme for Poland 2004 - 2006 (objective: elimination of all forms of discrimination and inequality on the labour market, also through trainings, workshops, vocational, psychological and legal counselling and other forms of support)

32. A whole range of activities were taken during the European Year of Equal Opportunities for All (2007); these were trainings, exhibitions, billboard campaigns and conferences, scientific studies were carried out, including research on Polish stereotypes with respect to age, disability, creed and gender. Furthermore, in 2008 as part of a subsidy for non-governmental organisations, MLSP earmarked funds for initiatives aiming at combating discrimination, including discrimination on grounds of disability, as a continuation of objectives and assumptions of the European Year of Equal Opportunities for All (2007).

33. The number of women taking part in the projects implemented under SOP HRD Action “Vocational integration and reintegration of women”: 97 990. The percentage of women who expressed an opinion that participation in the Action had been to their benefit was 92%. Out of 200 respondents, 15% believed that the support was average, 50% as rather good, while 27% as very good. The participation of women who continued to study or work within 6 months after finishing participation in the project was 49.5%. (a poll conducted in November 2007 by ABR Opinia Sp. z o.o., commissioned by the Ministry of Regional Development).

34. At present (as of 1 September 2008), the Polish Government includes 4 women and 20 men in the capacity of secretaries of state; 13 women and 53 men are undersecretaries of state. In government administration directorial positions are held by 146 women and 237 men, while positions of deputy directors are held by 189 women and 267 men.

35. Women in the judiciary and prosecution offices - data on the number of women judges in common courts and women prosecutors of common units of the prosecution office and data on the number of women holding high positions in common courts - see: paras. 3-6 of Annex I.

### **Women in political life**

36. During the Parliamentary election of 21 October 2007 94 women were elected deputies to the Sejm, which accounted for 20.43% of the total number of deputies, and 8 women were elected senators, which accounted for 8% of the total number of senators.

37. 9 685 women (20.70% of the total number) were elected councillors in elections to commune and county councils and voivodeship assemblies. During the 2006 elections of commune heads and town and city mayors, 204 women were elected for these positions, which accounted for 8.23% of the total number of commune heads and town and city mayors elected.

#### **Article 4**

##### **Public emergency**

38. In the period covered by this Report the circumstances set out in Article 4 of the Covenant did not occur. The information presented in the previous Report remains up to date.

#### **Article 5**

##### **Principles of interpretation of the provisions of the Covenant**

39. The interpretation principles stipulated in Article 5 of the Covenant are fully respected by Poland. No human right inscribed in the Polish legal order has been excluded, restricted or suspended because the Covenant does not recognise such rights or grants them to a lesser extent. The situation in this respect has not changed since the submission of the previous Report.

#### **Article 6**

##### **Right to life (recommendations 8 and 9 of the Committee)**

40. Poland protects the life and health of the human being. Such protection is guaranteed by the provisions of the *Constitution* and the *Law of 7 January 1993 on family planning, protection of the human foetus and criteria for the admissibility of abortion*. The preamble to the act stipulates that life is the fundamental good of the human being, and concern with human life and health is one of the fundamental obligations of the state, society and citizen.

41. Furthermore, protection of human life and health is safeguarded by the provisions of PC. Legal regulations on the prohibition of killing as presented in the previous Report have not been amended, nor have Poland's international obligations with respect to prosecution and punishment of perpetrators of the crime of genocide.

42. Poland is going to be bound by the *Second Optional Protocol to The International Covenant on Civil and Political Rights aiming at the abolition of the death penalty*. For the time being the procedure of inter-ministerial agreements concerning a request for ratification has been concluded.

##### **Recommendation 8 of the Human Rights Committee**

43. *Law on family planning (...)* defines tasks and activities of authorities of state administration and local government related to the protection of life and health. Provisions of the law are to safeguard optimum health conditions for women and children (including the foetus), assure women other conditions conducive to making decisions on having children and provide comprehensive care to both women during pregnancy, delivery and post-delivery and to the foetus throughout its development (*inter alia* through the creation of an education system, a wide range of health, social and legal services).

44. Pursuant to the provisions of the above Law, abortion may be performed exclusively by a physician in the following cases:

- The pregnancy poses a hazard to the health or life of the pregnant woman
- Prenatal tests or other medical indications show a high probability of a grave and irreversible impairment of the foetus or an incurable disease that threatens its life
- There is a justified suspicion that the pregnancy was a result of an offence

45. Action has been taken to ensure that women who can abort their pregnancy under Polish law may terminate pregnancy without additional difficulties.

46. A physician's refusal to perform abortion under the circumstances allowed by the provisions of the *Law on family planning (...)* may take place through the use of the conscience clause. The physician evoking the conscience clause is obliged to indicate a feasible possibility of a woman being granted abortion in another health care unit.

47. A physician who refuses to provide health services incompatible with his conscience, performing his profession on the basis of an employment contract or as an officer, is obliged to notify his superior in writing before such a refusal takes place. One of the feasible opportunities for a proper organisation of services in such a case is the health services provider subcontracting the service with a subcontractor.

48. It should be stressed at the same time that the conscience clause applies solely to a particular physician in a particular case and in no way can it be applied by the entire health care establishment according to the principle of collective conscience approved by general declarations of the management of the health establishment. Under Polish law the conscience clause cannot be evoked in an informal way because of the obligation to provide proper medical records and notify the superior, i.e. because of the obligation to carry out an appropriate procedure envisaged by law.

49. MH has no statistics on the physicians' use of the conscience clause.

50. In the event the relevant provisions of the Law are not complied with, a patient may report to the Office for the Rights of the Patient in operation at the Minister of Health. The tasks of the Office include the provision of information as well as acceptance and consideration of petitions and complaints related to the rights of the patient, in particular connected with the provision of health services by providers pursuant to the *Law on health care services financed from public resources*.

51. Furthermore, in the wake of an ECHR ruling in the case *Tysi c vs. Poland* (a patient was refused the right to abortion for health reasons) solutions have been adopted which lead to the introduction of an appeals procedure in the event a physician refuses to perform abortion on grounds provided for by Polish law. They were reflected in the draft legislation *on the protection of individual and collective rights of the patient and on the Commissioner for the Protection of the Rights of the Patient*.

52. The implementation of the provisions of the *Law on family planning (...)* is monitored on a regular basis. The CM compiles annual reports on the implementation of the Law and submits it to the Sejm. A report on the implementation of the Law is made accessible to the general public at the MH website. The observance of the conditions for the admissibility of abortion is likewise subject to annual analysis. Information on the observance of the law in this respect comes from law enforcement authorities and from the Office of the Rights of the Patient.

53. In 2006, 340 abortions were recorded, i.e. 115 abortions more than in 2005 and 147 more than two years before. 82 abortions were performed because of the threat to the life or health of a pregnant woman. 246 abortions were conducted as a result of prenatal tests indicating a high probability of a grave and irreversible impairment of the foetus or an incurable disease that threatens its life; the number of abortions for this reason exceeded that of 2005 by 78 abortions. In 12 cases abortions were carried out because pregnancy was a result of an offence (i.e. 9 abortions more than in 2005).

54. The Polish law penalizes abortions carried out in violation of the provisions of the *Law on family planning (...)*. The penalty of deprivation of liberty applies to “Anyone who, with the consent of the pregnant woman, performs an abortion in violation of the provisions of the Law” and “Anyone who assists a pregnant woman in an abortion in violation of the provisions of the Law or who induces her to do it”. In 2005, 56 such offences were recorded, and in 2006 - 47 ones. With a view to observing the provisions of the *Law on family planning (...)*, the Minister of Health issued twice (in 2003 and 2005) a statement to all Voivodeship Governors. The document details the legal grounds and methods of conduct in the case circumstances provided for in the Law occur and stresses the obligation of a strict observance of these provisions.

55. For data on convictions for crimes of performing illegal abortion or performing abortion without the consent of the pregnant woman - see: para. 7 of Annex I.

## **Recommendation 9 of the Human Rights Committee**

### **Contraceptives**

56. In Poland decisions on procreation are at the discretion of particular individuals. The MH takes no initiatives resulting in a restriction of the accessibility of any contraceptive methods.

57. In 2006 38 medicinal products used as contraceptives were allowed for sale in Poland.

58. In 2007 the list of refunded medications included the following hormonal contraceptives for internal use: Microgynon 21 (Schering AG), Rigevidon (Jenapharm) and Stedril (Wyeth). They are available at 30% of the price limit, plus a surcharge over the limit. This safeguards access to those preparations for patients who must or want to use them. The level of refunds of hormonal oral contraceptives in Poland is similar to that of the neighbouring states, e.g. Germany, where the number and kinds of refunded preparations are similar. It should be stressed that the current system offers an opportunity to adapt the prices of contraceptives to the financial standing of the patients. The price of refunded medicinal contraceptive products is in the order of 2.5 PLN to 12 PLN for a package sufficient for one month of use.

59. Studies show that in recent years there has been a significant change of the contraceptive methods used.

In 2004 over 65% of women aged 15 - 49 declaring active sexual life used contraceptives. In 1996 the most popular contraceptive method was the natural method and coitus interruptus, while 8 years later - the use of condoms, the pill and other hormonal contraceptives, e.g. plasters, injections (data: CSO, Warszawa 2006, *Stan Zdrowia Ludności Polski w 2004*).

According to surveys conducted in 2006, over half (58%) of sexually active women had used some contraceptive methods for the preceding 12 months (nearly 28% had not used any). The most popular methods were: the use of condoms (54% of respondents), birth control pills (30% of respondents) and coitus interruptus (21% of respondents). The percentage of couples having sexual intercourse without any contraceptives is on the decrease, with an attendant marked increase in the number of couples using hormonal contraceptives (data *Raport: Zdrowie kobiet w wieku prokreacyjnym 15 - 49 lat. Polska 2006*, published by UN Development Programme, Warszawa 2007).

### **Sex education**

60. The obligation of agendas of government administration and local government to ensure citizens free access to methods and means of conscious procreation arises from the provisions of the *Law on family planning (...)*. As stipulated in the Law, school curricula include sex education - "Education for family life". Classes are conducted in the 5<sup>th</sup> and 6<sup>th</sup> grade of primary school, in junior high and high schools. The subjects include: knowledge of human sex life, the principles of conscious and responsible parenthood, the value of the family in personal life, the value of life at the prenatal stage, the methods and means of conscious procreation (including health, psychological and ethical aspects), assistance in preparing young people to comprehend and accept transformations of the puberty period, development of a positive attitude to sexuality, building proper interpersonal relations.

Classes relate also to the following issues: sexually transmitted diseases (including AIDS) and their prevention; norms of sexual conduct (violence and sexual offences; ways of preventing and means of defence against them, means of psychological, medical and legal assistance); unplanned pregnancy; methods of seeking assistance in emergency situations; abortion as a risk to mental and physical health; domestic violence and sexual abuse (prevention; possibilities of obtaining assistance); risks for social life: alcoholism, drug abuse, aggression, sects, pornography; legislation related to the family; counselling for young people and family counselling in Poland.

At high school level the goals of education for life in the family strengthen the knowledge of the functions of the family, love, friendship, marital and parental roles, human sexuality and procreation.

A survey conducted in December 2006 showed that in the school year 2005/2006 classes of "Education for family life" were held in nearly 85% of schools - the biggest number in junior high schools (90.7%), and the smallest number in specialised secondary schools (81.5%) and



vocational schools (81.7%). Of the 3 772 736 students indicated in the survey, those classes were attended by close to 80%. The remaining 20% of students did not take part in those classes because of a lack of parental approval or they themselves did not wish to. The most students attended the classes in junior high schools (nearly 92%).

61. The issues of procreative health and sex education are present in curricula of all medical universities and in post-graduate programmes for health sector employees preparing for providing counselling on family planning. This counselling is meant to ensure information on the possibility of conscious decision making in procreation issues.

#### **Access to health services, AIDS counselling**

62. Pursuant to the Law of August 2004 *on health care services financed from public resources*, people have the right to health care services meant to preserve health, prevention of illnesses and injuries, early detection of illnesses, treatment, nursing and prevention of disability and its limitation. Services related to family planning are financed by the NHF (and are thus free of charge for those taking advantage of them). Within the framework of health care services such as outpatient specialist services, the NHF concludes and finances contracts related to the following: provision of services connected with the use of contraceptives, family planning, procreative conduct, treatment of infertility of women, pregnancy examinations and tests.

Furthermore, the NHF ensures access to health care services covered by public funds and related to the diagnostics and treatment of infertility. Hospital treatment covers the following kinds of health care services:

- Diagnostics and treatment of primary and secondary infertility
- Diagnostics through biochemical tests, including hormonal and imaging tests (HSG, USG, NMR/CT) and conservative treatment of female infertility
- Monitoring and modification of treatment (biochemical tests, USG) of female infertility

63. Pursuant to the regulation of the Minister of Health of October 2005 *on the range of tasks of a physician, nurse and midwife of basic health care*, tasks of a midwife of basic health care include a comprehensive nursing obstetrical, neonatal and gynaecological care, comprising *inter alia* education on family planning. As to the promotion of health and preventive treatment, the midwife is supposed to educate and counsel woman on the return of fertility after delivery and on fertility regulation methods.

64. Actions related to HIV prevention are carried out by the National AIDS Centre set up by the Minister of Health. In 2006 the Centre supervised the work of 17 consultation and diagnostic stations offering HIV testing coupled with counselling in line with the best international practices and recommendations. In 2006 13 511 tests combined with counselling were made, including 39.66% tests made for women at procreative age. Importantly, anti-retroviral therapy is provided free of charge in Poland.

As part of preventive activities, the National AIDS Centre holds social campaigns in the media disseminating knowledge on HIV infection and organises trainings targeted at different social and professional groups, in particular for the health care sector, and disseminates information and education materials.

### **Access to prenatal tests (including counselling)**

65. Pursuant to the provisions of the *Law on family planning (...)*, agendas of government administration and local government are obliged to provide free access to information and prenatal tests, in particular when there is a heightened risk or suspicion of a genetic or developmental abnormality of the foetus or an incurable illness threatening the life of the foetus.

66. The term “prenatal tests” refers to tests and diagnostic procedures used in the 1<sup>st</sup> and 2<sup>nd</sup> trimester of pregnancy to detect and recognise illnesses and developmental abnormalities of the foetus, including genetically-conditioned ones (prenatal diagnostics of genetic illnesses).

67. In the event of detection of an illness or defect of the foetus where treatment is possible, early detection facilitates the adoption of optimal therapy both during the pregnancy and after delivery. In the case of detection of a grave and untreatable defect or illness, parents have the right, pursuant to the provisions of the Law, to make a decision on abortion.

68. Prenatal tests are conducted in women with a higher than average risk of the incidence of an illness or defect, in accordance with indications in force in clinical genetics. They are as follows:

- The mother is over 40 years of age
- A chromosomal aberration of the foetus or child occurred in the previous pregnancy
- Structural chromosomal aberrations are detected in the pregnant woman or the child’s father
- An incorrect result of a screening test in the 1<sup>st</sup> and 2<sup>nd</sup> trimester of pregnancy
- Detection of a substantially higher risk of delivering a child with a mono- or polygenetic disorder
- Detection during pregnancy of an incorrect result of a USG or biochemical tests indicating a higher risk of chromosomal aberration or defect of the foetus

69. Prenatal tests are financed by the NHF and are performed in specialist medical centres.

70. Health care services comprise non-invasive and invasive prenatal tests and are provided to pregnant women by health care establishments and individual and group medical practices. Non-invasive prenatal tests (e.g. ultrasound) are now an element of standard medical procedure in the care of pregnant women. Invasive tests are carried out at the request of a gynaecologist in the case of a suspicion of a risk of occurrence of a genetic or developmental defect of the foetus or an incurable disease of the foetus that poses a threat to its life.

71. In 2006, there were 17 922 cases of genetic counselling (890 more than in 2005), 7 739 invasive prenatal tests were carried out (3 705 more than in 2005), as a result of which 707 pathologies of the foetus were detected (226 more than in 2005).

72. In Poland a wide range of non-invasive prenatal tests, such as ultrasound and biochemical tests: PAPP-A, AFP, B-hCG, Estriol are used. In the event of obtaining incorrect results, women are referred to specialist centres where they undergo cytogenetic molecular tests and invasive tests of the foetus (biopsy of a trophoblast, amniopuncture, cordocentesis, test of placental blood).

## Article 7

### Prohibition of torture (recommendation 11 of the Committee)

#### Recommendation 11 of the Human Rights Committee

##### Measures applied with respect to perpetrators of domestic violence

73. More on domestic violence against children - see: information related to Article 24 in this Report.

74. The Law of 2005 *on preventing domestic violence* is to ensure a heightened efficacy of prevention and elimination of negative social phenomena related to violence against family members. It contains a provision allowing abstention from the ordering of the strictest preventive measure - temporary detention - with respect to the perpetrator (the accused, a suspect) of domestic violence provided he leaves the premises occupied jointly with the injured party. Such a manner of treatment of people who use domestic violence is a significant element of reacting to their conduct, which may affect its change. A draft amendment of the relevant provisions of the CCP has been prepared to take full advantage of this opportunity; consultations of the draft are currently in progress.

75. Furthermore, the *Law on preventing domestic violence* stipulates that the court, when conditionally suspending criminal proceedings with respect to a perpetrator of an offence committed against a family member with the use of violence or unlawful threat, or suspending the execution of penalty for such an offence and ordering the perpetrator to abstain from contacts with the injured party or other persons in a specific way or ordering him to leave the premises occupied jointly with the injured party, determines the manner of contact of the convict with the injured party or may impose a restraining order on the convict with respect to the injured party in specific circumstances.

76. A restriction order should be imposed as: a prohibition of approaching the place of residence or workplace of the injured party within a specified distance and a prohibition of all contacts - direct and indirect (by telephone, letters, or electronic mail) with that person. Failure to comply with the restriction order and the eviction order as a preventive measure in preparatory proceedings, should result in temporary detention. Work on streamlining the operation of this obligation takes advantage of data from prosecution offices on isolation of perpetrators from victims.

## Compensation

77. Pursuant to the Law of July 2005 *on state compensation for victims of selected deliberate offences* persons who, as a result of a deliberate offence committed to their detriment with the use of violence, have suffered a specific impairment of the functions of a body organ or a deterioration of health, or are the closest relatives (with the meaning of the above Law) of the people who have died as a result of such an offence, are entitled to compensation. Compensation is awarded if the offence was committed within the territory of the Republic of Poland to the detriment of a person holding Polish citizenship or citizenship of another EU Member State. Compensation may be awarded in the amount covering *inter alia* costs of treatment resulting from an offence, irrespective of whether the perpetrators of the offence have been identified. Compensation is awarded in a situation when the costs have not been covered by resources claimed under insurance, social security or another source or entitlement. At present legislative work is in progress aiming at extending the catalogue of entities eligible for compensation by parties injured as a result of unintentional offences.

## **The National Programme of Preventing Domestic Violence implemented in the course of the *Law on domestic violence*, monitored by the Minister competent for social security issues**

78. The National Programme of Preventing Domestic Violence, approved by the CM on 25 September 2006, has been in progress for the years 2006 - 2016. Earlier prevention of domestic violence was implemented at the central level and by county and commune governments and non-governmental organisations. The preparation and implementation of the Programme aims at the coordination of actions and an interdisciplinary approach to combating domestic violence. Furthermore, it is supposed to decrease the incidence of domestic violence, change the attitude of the general public to violence, increase the number of people professionally involved in assisting victims and perpetrators of domestic violence, increase the number of assistance establishments, decrease the number of families where the Police and other services dealing with violence have to repeatedly intervene.

79. The Programme includes the following activities:

- Training of services involved in combating domestic violence
- Introducing subjects related to causes and consequences of domestic violence in professional training of people involved in dealing with domestic violence
- Raising social awareness, also through educational and support programmes
- Collecting information on the incidence of violence
- Assistance to the victims through the operation of specialist support centres, preparation of procedures of legal protection and psychological support for witnesses of domestic violence
- Studies of efficacy of assistance provided to families

The Programme includes activities targeted at perpetrators of violence, such as the following:

- Isolation of perpetrators and victims, an injunction to leave the premises even if the perpetrator is the main lodger or owner of the apartment
- Preparation and implementation of correctional and educational programmes
- The perpetrators' performance of community work

80. In 2006, 33 specialist support centres for victims of domestic violence were set up and correctional and educational programmes for perpetrators were launched. In the years 2007 and 2008 these activities were extended.

81. Monitoring of the implementation of the Programme is entrusted to the Inter-Ministerial Monitoring Team for the Implementation of the National Programme of Preventing Domestic Violence, set up on 16 March 2007 by the President of the CM.

82. Furthermore, the CM was obliged to submit to the Sejm an annual report on the implementation of the Programme. An ongoing evaluation of the Programme will contribute to its improvement and introduction of amendments, if necessary.

83. Results of the implementation of the Programme:

The implementation period is still too short to expect major changes in the incidence of domestic violence. It is noted, however, that actions contained in the Programme evolve and are of an interdisciplinary nature both at the level of government administration and local government. This means that the attainment of the targets assumed in the Programme is by all means feasible.

Analysis of the implementation of the Programme for the last two years has indicated that the following actions are necessary for ensuring a better coordination of measures taken at all levels of public administration:

- Support for commune authorities in the implementation of actions preventing domestic violence and a more efficient protection of victims of domestic violence
- Development of interdisciplinary trainings for staff of institutions dealing with preventing domestic violence with a view to building local coalitions
- Dissemination of information on new legal acts and the attendant obligations, in particular among local government authorities
- Extension of the operation of the Nation-wide Blue Telephone Line
- Increase in the number of institutions, esp. specialist support centres for victims of domestic violence

- Making it possible for all perpetrators of domestic violence to participate in correctional and educational programmes
- Amendment of the *Law on preventing domestic violence* and of the Programme:
  - Introduction of a prohibition of child abuse
  - Introduction of an injunction to vacate the premises by a person suspected of the use of violence
  - Indication of places where the perpetrators can be directed
  - Provision of free of charge forensic examination
  - Extension of the definition of domestic violence by economic violence
  - Introduction of the “Blue Card” procedure into the Law
  - Support for the prevention system at the level of commune governments and introduction of a statutory obligation of preparing and implementing local programmes of combating domestic violence
  - Adoption of a protective programme related to the prevention of domestic violence

84. Detailed information on combating domestic violence is included in the Report on Poland’s implementation of the provisions of the International Covenant of Economic, Social and Cultural Rights, for the years 2002-2006, submitted in August 2007.

#### **National Programme for Crime Victims coordinated by the Minister of Justice**

85. In 2004 MJ set up a Work Place for Crime Victims and in April 2006 a separate Division for Crime Victims. Its objectives include adoption of systemic solutions for strengthening the protection of the injured person and the creation of a national structure of providing interdisciplinary assistance to the injured persons, including victims of domestic violence. The Division cooperates in this respect with EU Member States.

86. At present the Division is e.g. in charge of the administration of a pilot programme referred to in the regulation of the Minister of Justice of August 2007 *on the implementation in selected voivodeships of the National Programme for Crime Victims and on the organisation and scope of activity of Local Support Centres*. The pilot programme was based on a close interdisciplinary cooperation between institutions and organisations providing assistance to crime victims, *inter alia* ministries, the Police, prosecuting office, court, probation officers, local government, non-governmental and church organisations. Therefore its effects will be instruments for the creation of both national and commune assistance systems.

87. As part of this programme 11 Local Support Centres were set up. They are active in Warsaw, Śląskie Voivodeship and Opolskie Voivodeship. Within the framework of the pilot programme Network of Assistance to Crime Victims, the centres provide free of charge comprehensive and interdisciplinary assistance to crime victims, including victims of domestic violence.

88. The Programme envisages the introduction of a new institution of a victim's guardian, i.e. a volunteer who helps the victim overcome all the effects of the crime incurred, not only for the duration of judicial proceedings but also after the verdict is reached. This applies in particular to victims of emotional and physical violence. The pilot programme was concluded on 30 June 2008 and was followed by an evaluation. Evaluation results will be submitted by the Task Force for the Preparation of the National Programme for Crime Victims to the President to the CM as a recommendation on possible solutions for the introduction of the National Programme in its final legal formula in the entire country.

89. The National Programme for Crime Victims is to be a comprehensive and interdisciplinary support programme targeted at all groups of crime victims, including victims of domestic violence. It is to be rooted in a particular national system that meets the basic EU standards (as to content and accommodation base) of providing assistance to victims of crimes; these standards will allow coordination, monitoring and evaluation of activities taken by central and local government institutions, NGOs, churches and other organisations involved in a broad range of interdisciplinary assistance measures offered to victims of various crimes.

90. The Programme is to contain in particular:

- Preparation of standards and specific services targeted at victims of crimes and detailed procedures of conduct with particular categories of victims of crimes, in particular with children, victims of sexual offences
- Determination of projected financial and social consequences of the suggested solutions of interdisciplinary actions for the sake of victims of crimes
- Identification of obligations of central government authorities and units of local government to take measures aiming at an effective support for the operation of the national system of support for crime victims
- Determination of the principles of monitoring, evaluation and supervision of the operation of the national system of support for crime victims
- The budget of the pilot programme amounts to 1 624 000 PLN

91. A regulation of July 2006 *on the standard of basic services offered by specialist centres providing assistance to victims of domestic violence, and special directions of applying corrective and educational activities* makes it possible to set up specialist centres providing assistance to victims of domestic violence, offering medical, psychological, legal and social counselling. At the level of communes or counties there are consultation stations, support centres, centres of emergency action, specialist support centres, homes for mothers with minor children and for women.

92. For statistics on the institutions and centres providing assistance to crime victims - see: paras. 11, 12 and 15 of Annex I.

### **Other initiatives**

93. Principles of conduct with a child participating in criminal proceedings, a raped person, and a victim of domestic violence have been adopted. Priorities in this respect include protection of the victim's dignity, respect, security, medical and psychological assistance, information of their rights and institutions providing support to victims, support of a guardian selected from an NGO, and counselling. Guidelines on "friendly examination rooms" have been prepared in cooperation with the Dzieci Niczyje [Nobody's Children] Foundation; such rooms are to minimize victims' stress and facilitate an efficient collection of evidentiary material. Standards in the form of recommendations of MJ were forwarded to all courts and prosecution authorities. Measures were taken with a view to establishing a procedure related to the proper certification of examination rooms and an efficient increase in the qualifications of persons taking part in an examination.

94. In July 2008 an agreement was signed on the implementation of a project of using EU resources (from the "Criminal Justice" programme) for the "Network of Assistance to Crime Victims". It provides for subsidies for the Network of Assistance to Crime Victims and study visits in partner states in centres providing assistance to crime victims.

95. For eight years now one week in February has been known as "A Week of Assistance to Crime Victims"; its objectives include stressing the needs and rights of people being victims of crimes, including victims of domestic violence. Committed to this initiative are agendas of the state, courts, prosecution authorities, the bar and non-governmental organisations.

96. Work is currently in progress on the amendment of the Polish Charter of Rights of the Crime Victim, setting out injured people's rights and obligations of all entities having contact with victims in their activities.

97. Initiatives are taken for the promotion of mediation in cases of domestic violence as a measure of conflict resolution; it is to be promoted as an alternative to court proceedings.

98. Social campaigns and conferences are organised to raise the general social awareness of domestic violence.

99. As of December 2004 crime victims have been able to use the assistance of Counselling Centres for the Psychotherapy of Preventing Domestic Violence (individual and group therapy, psychological assistance, legal and social counselling. In addition, assistance to victims is provided by professional curators).

100. Assistance is offered to former prisoners: in 2007, 19m PLN was spent on post-penitentiary assistance. Financial resources from the fund are transferred by probation officers to eligible individuals or NGOs. Subsidies are earmarked for programmes on providing assistance to women; e.g. the AGAPE Association in Borowy Młyn received 1 000 000 PLN for the provision of round-the-clock in-patient assistance to women leaving penitentiary units and support in their becoming self-dependent.



101. As part of the Government Programme for the Restriction of Crime and Asocial Behaviour "Safer together" (for the years 2007-2015), implemented by the MIA, in 2007 a subsidy of 452 800 PLN was offered to 9 projects of non-governmental organisations and units of local government related to *Domestic violence*. Dividing an earmarked reserve for the programme "Safer together", in 2008 MIA subsidized 14 projects for a total amount of 878 626 PLN. In 2007 the Minister of the Interior and Administration commissioned from units from outside the public budget sector a public task related to social security and prevention of social pathology *Combating violence against women, in particular in rural areas*, with a targeted subsidy of 40 000 PLN. In 2006 the Minister commissioned a task titled *Protection against abuse, harassment and violence*, with a targeted subsidy of 11 100 PLN.

102. Poland is in the process of implementation of the detailed Programme of the European Union for the years 2007 - 2013, Prevention and elimination of violence against, young people and women and the protection of victims and groups at-risk - Daphne III. MIA's role as the national coordinator is *inter alia* the widest possible dissemination of knowledge among eligible Polish entities of a possibility of applying for support from the Programme funds, as well as active participation in the work of the Daphne III committee. Until now a national expert has been appointed, a member of the Support Committee of the European Commission for the implementation of the Daphne III Programme and an inter-ministerial group of collaborating experts has been established. An information bulletin on the Daphne III Programme has been launched at the MIA website ([www.mswia.gov.pl](http://www.mswia.gov.pl)) and a special e-mail address ([daphne@mswia.gov.pl](mailto:daphne@mswia.gov.pl)) has been created. In addition, an international seminar "Together against violence - fighting violence against children, young people and women. Polish and European perspective" was held on 10-11 September 2007 (conference proceedings are currently being prepared for print). Numerous seminars and conferences on violence presented the DAPHNE III Programme.

103. A base of institutions and organisations providing assistance to victims of crimes, a list of legal acts regulating the legal status of a crime victim and information on legal instruments (e.g. mediation) providing compensation for the wrong incurred is available at the websites of MJ and CCRP.

#### **Trainings for judges, prosecutors and associate judges and prosecutors**

104. In the period covered by this Report, the following trainings and other initiatives were held related to domestic violence:

- 2005 - training titled "The child as a crime victim". It was attended by 58 prosecutors from all over Poland.
- 2006 - training titled "Protection of minors in the criminal law" (issues discussed: protection of minors in criminal law; mode and scope of protection - catalogue of protective penalties and penalty measures; issues related to an examination of a child; psychological analysis of testimonies of minor witnesses). It was attended by 83 judges adjudicating in criminal proceedings and prosecutors from all over Poland.

- 2006 - conference titled “Protection of the child as a victim of violence - European standards” (issues raised: psychological aspects related to the participation of children in legal procedures; principles of preparation of judicial expert’s evidence related to testimonies provided by children, victims of crimes; legal awareness and the age of the child; kidnapping of children; forced labour of children; a comparison of Polish and European criminal law regulations on the protection of the child in IT society; the role of *dyzurnet.pl* teams in protecting children against abuse over the Internet). The conference was attended by 69 prosecutors, 23 judges and 16 professional curators across the country.
- 2007 - training titled “Family violence – its origin and social consequences”. It was attended by 187 judges and associate judges adjudicating in criminal proceedings.
- 2007 - training titled “Prevention of domestic violence”. It was attended by 113 judges adjudicating in family proceedings.
- 2007 - two editions of the training titled “The child as a crime victim” (issues discussed: definition, forms of violence, psychological and social conditions, symptoms and social ramifications of violence against children; the child as a victim of emotional crime; medical diagnosis of injuries related to physical and sexual violence; self-violence; examination of a child - a crime victim). It was attended by 120 associate prosecutors from across Poland.
- 2008 - seminar titled “The child as a victim of domestic violence” attended by prosecutors and other entities.
- 2008 - training titled “The child in family crisis situations in international and Polish law”. It was attended by 180 judges adjudicating in family proceedings.
- In November 2008 a training will be held on mediation and domestic violence, targeted at judges adjudicating in criminal proceedings.

### **Trainings for officers of the Police**

105. In collaboration with non-governmental organisations, a programme of specialist courses on domestic violence for officers of the Police is being prepared. Teaching aids to be used during in-service internal courses held locally in units of the Police are being compiled. At present issues related to combating domestic violence are part of programmes of in-service training (basic and for graduates of colleges and universities) held in Police schools and in the Higher School of the Police in Szczytno; such issues are also covered by programmes of in-service training for officers of the Police held at the central level as specialist courses. In 2007 such courses, which were devoted *inter alia* to domestic violence questions, were attended by the following:

As part of basic training - 4 169 officers of the Police, as part of trainings for college and university graduates - 632, as part of a course for constables - 233, as part of a specialist course for officers of the Police in prevention service, specialising in issues of minors - 81 officers of the Police.

106. Furthermore, for many years individual Provincial Police HQ or Warsaw Police HQ have held trainings on the relevant issues for officers from local units. They are held by the Police as part of in-service training and frequently are attended by specialists from outside the Police force. Furthermore, officers of the Police take part in trainings on the prevention of domestic violence held by external entities. In 2007, 202 such trainings were attended by a total of 1 871 officers of the Police.

### **Trainings on the prohibition of torture and other cruel, inhuman or degrading treatment or punishment**

107. All training programmes for officers of the Police stress a proper performance of professional duties by the officer of the Police, including also the development of an adequate attitude among the officers. At each level of training attention is paid to professional ethics and human rights, with special emphasis on the prohibition of torture and inhuman or degrading treatment. Cases of ECHR judgements are discussed.

108. The development of an ability of a proper application of procedures and observance of rules of conduct, *inter alia* with respect to the use of direct coercion measures and firearms, serves the preparation of an officer of the Police for a proper performance of his profession. Training programmes are primarily practical and combine theory with practice to develop appropriate habitual reactions and correct attitudes. These are programmes prepared according to the methodology of the International Labour Organisation. Issues connected with ethics, human rights, psychology, etc. from the area of “attitudes” are discussed separately and are not abstract for the trainee-officer of the Police, but are treated as an integral part of professional activities.

109. Also disciplinary proceedings related to undignified treatment of the detainees by officers are subject to monitoring. Such incidents are rare (in 2002 4 cases were reported, in 2003 - 2, in 2004 - 1, in 2005 - 0, in 2006 - 2 and in 2007, by 30 September - 1), which proves the efficacy of educational measures dedicated to officers and employees of the PS.

110. In May 2008 Poland presented to the Committee Against Torture a detailed overview of actions taken for the implementation of the recommendation on the elimination of the “wave” (hazing, violence) in the army.

111. For statistics on domestic violence - see: paras. 8-19 of Annex I.

### **Information on the alleged existence of CIA secret prisons in Poland**

112. In the autumn of 2005 media notified the public opinion about the alleged existence of CIA secret prisons in Poland, which served as detention centres for people suspected of terrorist activity. The official position of the authorities of the Republic of Poland on the issue was presented in public in a statement by the Government spokesman on 10 November 2005. The statement observes that “the Polish Government flatly denies media allegations about the existence of secret prisons within the territory of the Republic of Poland, supposedly serving as detention places for foreigners suspected of terrorism. There are no such prisons in Poland and there are no prisoners detained against the law and international conventions to which Poland is a signatory”. In response to questions from deputies to the Sejm, who pointed out the need for a

thorough examination of the allegations disseminated by the communications media, a secret meeting of the Sejm Commission for Special Services was held on 21 December 2005. Deputies obtained information from the Minister Coordinator for Special Forces. At present, the case of alleged detention and illegal transportation of prisoners in Poland is subject to an NPO investigation with respect to an offence under Article 231 §1 PC (“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 8

### Prohibition of slavery

113. Polish law is in full compliance with the provisions of Article 8, the legal state has not changed with respect to that represented in the previous Report.

114. In Poland compulsory work of detainees does not exist. Statistical data on the work of detainees - see: information related to Article 10 of this Report.

### Trafficking in human beings

115. Since 2008 Poland has been a party to the *Council of Europe Convention on Action Against Trafficking in Human Beings*.

116. It follows from the data obtained by the Government that Poland is both a country of origin and a transit and destination country for women and children from Ukraine, Moldova, Romania and Bulgaria; they are sold for the purpose of providing sexual services. Few cases of Vietnamese citizens sold to Poland for forced labour were reported. Polish women are sold to Germany, Italy, Belgium, France, the Netherlands, Japan, and Israel for providing sexual services.

117. Having regard to the above and being aware of the danger concomitant with the increase of trafficking in human beings in Europe and worldwide, legislative, institutional and preventive measures are taken to combat it. For instance, in 2004 an inter-ministerial Team for Combating and Preventing Trafficking in Human Beings was set up, while in 2006 MIA appointed a Team for Trafficking in People, while the National Headquarters of the Police established a Central Team for Combating Trafficking in People, Human Organs, Child Pornography and Paedophilia.

118. Furthermore, coordinators and deputy coordinators for combating the crime of trafficking in human beings have been appointed in BG units, while in 2008 the Commander in Chief of the BG set up a *Team for ongoing monitoring and coordination of measures taken by the BG as to Combating and Preventing the Crime of Trafficking in Human Beings*. The chief objective of the Team is to take steps arising from the *National Programme of Combating and Preventing Trafficking in Human Beings*.

119. As part of the *Programme of support/protection of victims of trafficking in human beings* announced by the Minister of the Interior and Administration and implemented by the Foundation Against Trafficking in Human Beings and Slavery “La Strada”, assistance is provided to victims of trafficking in human beings; this takes the form of e.g. ensuring security,

providing an interpreter, medical and psychological consultations, assistance during contacts of the victim with law enforcement authorities and taking care of the legalisation of stay, taking care of a safe return to the victim's home country. In 2007 the *Programme* was used with respect to 20 women-victims (11 Bulgarians, 3 Ukrainians, 2 Belarussians, 1 Nigerian, 1 Kenyan, 1 Vietnamese, 1 Moldavian). 16 victims were reported by the Police and 4 by the BG.

120. Furthermore, for a few years, an information campaign targeted at people leaving for work in EU Member States has been run in cooperation with non-governmental organisations; it is dedicated to trafficking in human beings for the purpose of forced labour (e.g. leaflets and postcards were published for women planning emigration; the publications are distributed by partner institutions - schools, labour offices, social assistance centres, non-governmental organisations); this information campaign is also targeted at people arriving in Poland to find a job (e.g. leaflets in Russian and Ukrainian, a Vietnamese telephone help line used for providing assistance to citizens of Vietnam, victims of trafficking in human beings in Poland).

121. Periodic workshops are held for coordinators of the Police and BG on combating trafficking in human beings. The workshops, apart from officers of the Voivodeship HQs of the Police and BG Divisions and representatives of the National HQ of the Police and the National HQ of the BG, were attended also by representatives of MIA, NPO, Provincial Prosecuting Authorities and the Foundation Against Trafficking in Human Beings and Slavery "La Strada".

122. Since the PC does not contain a definition of trafficking in human beings, in this respect the definition of trafficking in human beings of the *Palermo Protocol* and of the framework decision of the European Commission of 19 July 2002 on combating trafficking in persons is applied. At the same time work is in progress on the amendment of the PC aiming at the introduction of such a definition.

123. See also: para. 52 A of Annex I.

## Article 9

### Liberty and security of persons (recommendation 13 of the Committee)

124. As was demonstrated at length in the previous Report, the *Constitution of the Republic of Poland* guarantees personal inviolability and liberty; deprivation or restriction of liberty is possible exclusively according to the principles and in the course of action laid down in the Law.

### Plenipotentiaries of Voivodeship Commanders of the Police for Human Rights Protection

125. Having regard to the unique role of the Police with respect to human rights protection and with a view to ensuring the dignity of treatment of people with respect to whom officers of the Police take action, in particular people at risk of interference with their right to personal liberty, a network of Police Plenipotentiaries for Human Rights Protection was set up.

126. The network was established in 2004 as a response to the need for coordination of numerous tasks of the Police arising from the recommendations of international organisations safeguarding human rights. A direct impetus for the establishment of the network was provided

by the participation of the Deputy National Commander of the Police in the 2004 session of the Committee Against Torture during the consideration of the V Periodic Report of the Republic of Poland on the implementation of the provisions of the International Covenant on Civil and Political Rights, during which Deputy Commander of the Police responded to allegations of non-observance of the provisions of the Covenant by Polish Police.

127. The network of Police Plenipotentiaries for Human Rights Protection is unprecedented in Europe and even in the world. Plenipotentiaries are answerable directly to the Commanders and represent the Commander with respect to human rights, which allows them to take and coordinate action within the entire garrison.

128. At the central level there is the Plenipotentiary of the National Commander of the Police for Human Rights Protection, and across the country there are 17 Plenipotentiaries of Voivodeship Commanders/Warsaw Commander of the Police for Human Rights Protection. Their duties include e.g.:

- Promotion of human rights in the Police, ensuring the observance of standards of human rights protection in the activity of the Police and representation of the Commander in projects dedicated to human rights
- Coordination and monitoring of activities of the Police with respect to the implementation of provisions of international conventions and recommendations of national and international institutions and organisations established to protect human rights, and of activities arising from national programmes of human rights protection
- Identification of risk areas and preparation of prevention programmes
- Compilation of reports on the activities of the Police in the area of implementing recommendations as a contribution to the Reports of the Government of the Republic of Poland submitted to the above organisations
- Compilation of information materials at the request of national and international institutions and organisations established to protect human rights
- Diagnosis of training needs, initiation / independent organisation of trainings

129. Polish Police is obliged to apply the best standards of human rights protection. This concerns first and foremost ensuring adequate treatment of persons by the Police, in a manner compatible with international human rights standards, as well as guaranteeing respect for rights of officers of the Police as rightful possessors of these rights. Being open to cooperation with institutions and non-governmental organisations active in the field of human rights has a major impact on the development of the image of the Police in the general public. This image is also determined by the speedy and adequate reaction of Police authorities to all cases of actions incompatible with human rights protection standards.

130. Guarantees of human right protection by officers of the BG were determined by law. Pursuant to the *Law on the Border Guard* of 1990, officers of the BG in the course of performing

professional activities are obliged to respect the dignity and observe the freedoms and rights of man and the citizen. At present the BG is creating a network of part-time human rights plenipotentiaries. In the National Headquarters of the BG the function of the Plenipotentiary is performed by an officer of the Inspectorate of Monitoring and Audit, who along with two other officers takes action for the construction of a system of human rights protection in this office. Part-time human rights plenipotentiaries are also appointed in BG units.

### **Recommendation 13 of the Human Rights Committee**

131. The currently binding legal regulations on temporary detention provide in principle a sufficient framework for the protection of the right to liberty and personal security of each citizen. The fundamental function of a preventive measure in the form of temporary detention is to safeguard a correct course of criminal proceedings. At the same time the measure protects society in that it prevents the suspect from committing another serious offence. CCP adopts a principle that temporary detention is not applied when another preventive measure is sufficient.

132. The above properties influence the number of persons in temporary detention. CCP precisely determines the circumstances allowing the use of temporary detention and in this regard there is practically no room for arbitrary decisions of both authorities requesting the use of this measure and those applying it. It seems that a bigger number of people in temporary detention is generated by the provision according to which temporary detention may be applied at all times when an act constitutes a crime or offence carrying the penalty of deprivation of liberty with the upper limit not lower than 8 years and in the case when “the projected penalty to be meted out by the court may be serious”.

133. The issue of prolonged temporary detention in practice appeared only in 2005, when a total of 640 cases of detention exceeding one year and 112 exceeding two years were recorded in preparatory proceedings; analogously in 2006 - 855 and 186, respectively, and in 2007 - 653 and 192, while in 2004 “only” 99 persons were detained for over one year, in 2003 - 24 persons were detained for over one year and only 1 person for a period of over two years.

134. This data should be, however, interpreted within the new context of phenomena with which prosecutors were not familiar and which required after their detection and during their analysis and consideration, the use of specialist knowledge and time-consuming performance of a series of complicated procedural activities. The number of people in temporary detention should be then tied with the scale and nature of crimes (primarily organised crime).

135. Polish CCP provides that the total duration of preparatory proceedings cannot exceed 12 months and the total duration of temporary detention until the first judgement of the court of first instance cannot exceed 2 years. Prolongation of the use of temporary detention over the periods stipulated above may occur exclusively for reasons defined in the Code.

136. MJ prepared a draft amendment to the CCP (now at the stage of inter-ministerial agreements) containing a major change limiting the list of reasons for the use of temporary detention:

- Proposal is made as to the elimination of “other significant obstacles whose elimination was impossible” as a circumstance justifying the prolongation of temporary detention in the course of judicial proceedings in excess of 2 years. The change is a reference to the content of the CT ruling of July 2006, where CT decided that the premise, to the extent it refers to preparatory proceedings, is in violation of the *Constitution* because of its especially imprecise nature, which makes its unequivocal interpretation impossible. While CT pointed out incompatibility with the *Constitution* of the above imprecise premise for the prolongation of temporary detention only during preparatory proceedings, the constitutional model indicated by CT should be referred also to the institution of temporary detention in judicial proceedings. Hence the proposed amendment.
- The draft amendment envisages the removal from the said catalogue the reason of a prolonged psychiatric observation of the accused. This change is a consequence of the adoption in the draft provisions of a 3-month period of psychiatric observation of the accused.
- The draft amendment envisages the removal of the “prolonged preparation of expert evidence”. The change stems from the conviction that the duration of preparing expert evidence agreed with the trial authority before an expert accepted this duty should be strictly observed.

The adoption of these amendments will result in temporary detention being prolonged exclusively for reasons defined precisely in this provision, and thus only when such a need arises in connection with the following: suspension of criminal proceedings, actions aiming at confirming the identity of the accused, performing evidentiary activities in especially complicated cases or abroad, a deliberate prolongation of the proceedings by the accused.

137. At present legislative work is in progress aiming at extending access of the parties to documentation of the case in preparatory proceedings. The changes are *inter alia* to ensure equality of the parties in the procedure of applying and monitoring the justifiability of temporary detention.

138. For statistics on the use of temporary detention - see: paras. 20-22 of Annex I.

139. With respect to improper treatment of persons in temporary detention, it is in order to emphasise that all cases of abuse of power by officers of the Police or PS are examined on an individual basis in the course of appropriate proceedings, provided the injured parties file appropriate notifications about such cases. This applies to all people deprived of liberty irrespective of their nationality, race or other properties.

140. Cases related to crimes committed because of race, nationality or religion are especially closely monitored by prosecution authorities. Provincial prosecution authorities conduct ongoing analyses of such cases concluded with decisions of refusal to institute proceedings or to discontinue them. Reports of these analyses are submitted on half-yearly basis to NPO, which coordinates criminal law and other actions of the prosecution authority in this respect.



## Article 10

### Right of detainees to be treated with humanity and dignity (recommendation 12 of the Committee)

#### Recommendation 12 of the Human Rights Committee

141. Overcrowding of correctional facilities and pre-trial detention centres continues to be a problem of the Polish prison system. The most serious effect of overcrowding is the inability to ensure adequate residential cell area to each prisoner.

142. The remaining “health requirements” (as stipulated *inter alia* in Article 10 of the UN Standard Minimum Rules for the Treatment of Prisoners) applied to premises used by prisoners are observed in Polish prisons. In particular this applies to adequate lighting, heating and ventilation conditions.

143. EPC sets out criteria to be met by residential quarters of prisoners: adequate furnishings, including a bed for every prisoner, 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 work. Implementation provisions to EPC determine precisely also norms of furnishing residential cells and other premises related to the execution of the penalty of deprivation of liberty with basic housing equipment. The above guidelines are observed in Poland.

144. It is difficult, however, to ensure to all prisoners in correctional facilities and pre-trial detention centres the area of 3 m<sup>2</sup> for one prisoner, as stipulated by Polish law.

145. As of 31 July 2008, there were 84 669 prisoners and 78 909 accommodation places in penitentiary institutions. The population of penitentiary units nationwide was at the level of 107.3%. The number of places missing in correctional facilities and pre-trial detention centres has markedly decreased in comparison with preceding years, as a result of intensive and consistent efforts of PS. Measures taken in this area bring ever better results.

146. Measures taken with a view to ensuring statutory obligations of the prison system, in the face of overcrowding penitentiary units, have proceeded along three lines:

- Investment
- Legislative initiatives
- Amelioration of effects of overcrowding

#### Investments of the prison sector in the years 2005-2007

147. 2005 was the first year of the “Programme of acquiring 10 000 places in units of the Prison Service in the years 2005 - 2009”. The above actions contributed to the acquisition of a total of 1 449 accommodation places, including:

- Because of investments - 940 places
- As a result of renovations - 509 places

In addition, at that time the standard of 496 accommodation places has increased.

148. On 26 February 2006 the CM adopted the “Programme of acquiring new accommodation places in penitentiary units in the years 2006-2009”. The Programme assumed an increase of new residential cells mainly through the implementation of the “Programme of acquiring 17 000 accommodation places in penitentiary units in the years 2006-2009”. Overall implementation costs of the Programme were estimated at the level of 1.695,9m PLN, including investment expenditure 1 090.7m PLN respectively: in 2006 - 125.0m PLN, in 2007 - 312.5m PLN, in 2008 - 403.2m PLN, in 2009 - 250.0m PLN.

149. The implementation of the “Programme of acquiring 17 000 accommodation places in penitentiary units in the years 2006-2009” commenced in 2006.

In 2006 an acquisition of 3 921 places was planned. A total of 4 142 accommodation places was acquired in 2006 (i.e. 221 more than planned), including:

- Because of investments - 2 788 places
- In three venues acquired by the end of 2006, a total of 409 temporary accommodation places were obtained
- As a result of renovations - 945 places

150. In 2007, continuing the above programme, plans were made to acquire 3 756 places. A total of 4 402 places were obtained in 2007, including:

- Because of investments - 2 848 places
- In premises taken over from the army and local government - 1 091 places
- As a result of renovations - 463 places

151. As a result of the implementation of the “Programme of acquiring 17 000 places in units of the prison system in the years 2006–2009” and because of renovations, since the beginning of 2006 until the end of 2007 a total of 8 544 new accommodation places for prisoners were obtained. The programme is going to be continued and the acquisition of ca. 8 500 places is scheduled to take place in the years 2008 and 2009. This offers an optimistic perspective for the solution of the problem of overcrowding in Polish prisons. As a result of a full implementation of the programme, at the end of 2009 the Polish prison system will have at its disposal around 88 000 accommodation places for prisoners, in accordance with the norm of 3 m<sup>2</sup> of cell space for one prisoner.

152. For statistics on the population and places in correctional facilities and data on penalties meted out in the years 1999-2006 - see: paras. 23-25 of Annex I.

### Legislative initiatives

153. In January 2008 a draft amendment of CCP was compiled, aiming at changing the principles of the execution of the penalty of restriction of liberty so that it may be a real alternative to the penalty of deprivation of liberty. The changes will concern in particular:

- A possibly broadest definition of entities where prisoners could perform, free of charge, supervised community work or socially useful work
- Reduction to a minimum of administrative activities of the employing entity, connected with the organisation and documentation of the course of execution of penalty
- Relieving the employing entity of most of the costs of prisoners' employment, previously incurred by employing entities
- Ensuring and acquiring new work places for prisoners

The draft amendment also suggests an introduction of a regulation offering each person sentenced to deprivation of liberty the right to apply for parole, a right which was previously restricted to a person sentenced to the penalty of deprivation of liberty for a period of over 6 months.

154. In 2007 the *Law on the execution of the penalty of deprivation of liberty outside a correctional facility through a system of electronic supervision* was passed. Work is in progress now on putting technical facilities in place before it takes effect. The law will make it possible to serve short-term penalties of deprivation of liberty outside the correctional facility in a system of electronic supervision. It is estimated that the implementation of this system will decrease the demand for 3 000-15 000 places in correctional facilities.

Permission for serving the penalty of deprivation of liberty under SES may granted to each person convicted:

- To the penalty of deprivation of liberty for up to 6 months
- To the penalty of deprivation of liberty for up to one year, provided the time remaining to its completion does not exceed 6 months
- With respect to whom a substitute penalty of deprivation of liberty has been used

Permission is not granted for persons convicted for a deliberate crime or a fiscal crime, who have been earlier sentenced to the penalty of deprivation of liberty (with the exception of situations when there are grounds for issuing a joint sentence).

155. It is estimated that the implementation of SES and the implementation of the programme of acquiring new accommodation places for prisoners, as well as a wider application of non-isolation penal measures and a change of granting parole will contribute to a significant amelioration or even provide a solution to the problem of overcrowding in Polish prisons.

156. In its judgement of May 2008, the CT ruled on the unconstitutionality of a CCP provision allowing (“in especially justified cases” and “for a specified time”) the placement of a prisoner in conditions where cell area for one person is less than 3 m<sup>2</sup>. The CT indicated the necessity of an amendment of the above provision with a view to assuring that the principles of placing a prisoner in such a cell will be clearly defined; this will eliminate doubts as to the exceptional nature of situations where it can take place, the maximum time of placement of a prisoner in such a cell, admissibility and principles of possible repeated placement in such a cell and the procedure of conduct in such cases. In accordance with the CT ruling, the said CCP provision will no longer be in force 18 months after the judgement is announced in the Journal of Laws of the Republic of Poland. As a consequence initial legislative work has been commenced to bring the revoked provision in line with the requirements of the *Constitution*.

157. The Supreme Court in its judgement of 2007 ruled that a stay in an overcrowded cell may infringe on personal rights and constitute grounds for claims for compensation for a wrong incurred. The ruling means that prisoners now have a real legal instrument of claiming compensation for infringement of their constitutional rights.

### **Mitigating effects of overcrowding**

158. Educational climate in penitentiary units and the adaptation of the manner of penitentiary impact to the changing circumstances and numbers of prisoners are monitored on a regular basis. The most significant activities taken to mitigate the effect of isolation are as follows: a dynamic development of group social reintegration programmes, an increase in the number of rehabilitation wards for prisoners suffering from drug and alcohol abuse, improvement of conditions of vocational training, creation of additional teaching facilities and venues for courses for prisoners, rational policy of granting permissions for a leave taken from a correctional facility without supervision, cultural, educational, fitness and sports projects, and the implementation of the following programmes and projects: “Action for restricting overcrowding of penitentiary units” (plan prepared by MJ) and of the Programme “New way for ex-offenders” within the framework of the Programme of an EU Initiative “Equal”. Furthermore, over the last few years employment of prisoners has increased dynamically - as of 31 December 2007 penitentiary units employed a total of 27 937 people, including 21 471 people receiving remuneration and 6 466 people not receiving remuneration. Employment of detainees was in excess of 36%.

### **Optional Protocol to Convention on the Prohibition of the Use of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment**

159. Furthermore, in 2007 Poland ratified the *Optional Protocol to Convention on the Prohibition of the Use of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*. The CCRP is entrusted with the function of the national mechanism as an authority meeting the requirements stipulated in the *Paris Rules*, ensuring full independence and with regard to the previous experience of the CCRP Office in the monitoring of conditions in detention centres (relevant activities of CCRP were presented in the previous Report). CCRP cooperates with non-governmental organisations in the performance of these activities.

## Article 11

### Prohibition of detention for debt

160. The Polish legal system does not contain legal norms allowing for the deprivation of liberty exclusively on account of a failure to meet contractual obligations.

## Article 12

### Freedom of movement

161. In the period covered by this Report a number of amendments have been introduced in the *Law on aliens* and the *Law on granting protection to aliens within the territory of the Republic of Poland*; some of them were modifications connected with Poland's EU accession (some of the changes enumerated below constitute implementation of provisions of directives of the Council of the European Union). The most significant changes introduced to the *Law on aliens* in the period covered by this Report are the following:

- As of 1 October 2005 a new kind of residence permit issued to aliens for an unspecified time has been in force, i.e. a residence permit for long-term EC resident. The permit is granted to aliens staying within the territory of the Republic of Poland, directly prior to filing an application, legally and continuously, for at least 5 years, provided they have:
  - Reliable and regular source of income sufficient for covering the living costs of both the applicant and dependant family members
  - Health insurance as understood by *regulations on common health insurance* or confirmation for coverage of treatment costs in Poland by the insurer

At the same time, the provisions related to granting permission for settling on conditions more advantageous than those defined above under special circumstances, i.e. spouses of Polish citizens, a child of a Polish citizen in parental care and a minor child of an alien having a settlement permit and born within the territory of the Republic of Poland, and also other specified persons subject to protection within the territory of the Republic of Poland.

Because of the above amendment, the provisions of *Law on aliens* related to aliens with a permit to settle were extended onto aliens with a residence permit for long-term EC resident:

- Modification of the provision of granting permission to settle to persons afforded protection within the territory of the Republic of Poland. At present such permission is granted to an alien who immediately prior to filing an application has resided continuously within the territory of the Republic of Poland for a period not shorter than 10 years under a permit for tolerated stay, 7 years in connection with being granted supplementary protection or for a period of 5 years in connection with being granted refugee status (under the previously binding provisions an alien with refugee status had to reside within the territory of the Republic of Poland in connection with being granted this status for 8 years).

- Because of Poland's commencement of full application (as of 21 December 2007) of acquis Schengen, provisions of the *Law on aliens* on, e.g. visas, were amended.

Previous short stay visas were replaced by uniform stay visas (Schengen visas), and long stay visas by national stay visas.

The possibility of obtaining a national stay visa issued for a period of from 3 months up to 1 year was likewise applied to entries for the purpose of paying a visit.

On the basis of uniform visas and residence permits issued by any Schengen state, aliens may move across the entire area of Schengen states for up to 3 months within 6 months of the day of first entry, on condition they meet general conditions of residence in this territory, and in the case of residence permits, if their data are not in the national register of unwanted persons of a given Schengen state.

Furthermore, according to the amended provisions of the Law, information on aliens entered into a national register of people whose stay within the territory of the Republic of Poland is unwanted can be forwarded to the Schengen Information System (SIS) for the purpose of refusal of entry. In addition, a new ground for refusing permission to reside for a specified time - i.e. when information on an alien is in the SIS for the purpose of refusal to grant entry and regulations were adopted on a system of consultations with the other Schengen states concerning granting and revoking stay permits:

- It is no longer possible to refuse granting permission for residence for a specified time to an alien who is a spouse of a Polish citizen or a person with a residence permit or a permit for a long-term EC resident within the territory of the Republic of Poland, because of illegal stay.
- The possibility of being granted permission for residence for a specified time for the purpose of joining families was extended onto family members of an alien residing within the territory of the Republic of Poland for at least 2 years under permission for residence for a specified time, also immediately before filing a petition for a permit to live in Poland for a specified time for his family member - on the strength of a permit issued for a stay not shorter than one year, and onto family members of scientists having a residence permit for a specified time. An application for a residence permit for a specified time to live together with one's family may also be filed in a situation when a family member is already staying within the territory of the Republic of Poland.
- Grounds for granting residence permits for a specified time as obligatory procedures were extended onto e.g. students, scientists, long-term EC residents from other EU Member States and their family members and victims of trafficking in human beings cooperating with law enforcement authorities. Furthermore, grounds for granting residence permits for a specified time as optional procedures were extended onto people with family ties in a broad interpretation of the word, with Polish citizens or EU citizens and members of the clergy.

- The Law stipulates that if an application for stay permit is filed within a period laid down by law, during a legal stay of an alien within the territory of the Republic of Poland (in the case of a residence permit for a specified time during a stay under a visa or a previous residence permit granted for a specified time), an alien is granted procedural visas allowing him to stay within the territory of the Republic of Poland until the conclusion of a procedure on granting stay permit in second instance.
- The Law envisages other grounds for issuing a visa in a specific course of action, i.e. despite the occurrence of circumstances that would necessitate a refusal of granting a visa to an alien - for victims of trafficking in human beings, for a period of stay necessary for an alien to make a decision to cooperate with an authority competent to conduct proceedings in the case of combating trafficking in human beings, which does not exceed 2 months.

162. The Law of July 2006 *on entry into the territory of the Republic of Poland, stay and departure from this territory of citizens of EU Member States and their family members* determines the chief principles of stay within the territory of the Republic of Poland with respect to EU citizens and their family members.

An EU citizen may stay within the territory of the Republic of Poland for a period not exceeding 3 months, solely on the strength of a valid travel ID or another valid ID confirming his identity and citizenship. A family member who is not an EU citizen is obliged to possess at this time a valid travel document and an entry visa if required. The obligation to possess an entry visa is waived for a family member who possesses a residence card of a family member of an EU citizen, issued by any EU Member State.

If the stay within the territory of the Republic of Poland exceeds 3 months, an EU citizen is obliged to register his stay, and a family member who is not an EU citizen is obliged to obtain a residence card of a family member of an EU citizen.

After 5 years of continuous residence within the territory of the Republic of Poland, an EU citizen acquires the right of permanent residence and upon his request the applicant is issued a document confirming the right of permanent residence.

A family member who is not an EU citizen acquires the right of permanent residence after 5 years of continuous residence within the territory of the Republic of Poland with an EU citizen, as a consequence of which he is obliged to file a request for the issuance of a permanent residence card of a family member of an EU citizen.

163. The amendment of the *Law on granting protection to aliens (...)* introduced as of 29 May 2008 a new form of international protection granted to aliens in Poland - supplementary protection. Each petition for refugee status is concurrently considered as a petition for supplementary protection. During the proceedings on granting refugee status, means of protection are considered in the following sequence: refugee status, supplementary protection, permission for tolerated stay. Grounds for granting permission for tolerated stay have been extended by respect for the right for family life and the rights of the child (the above provisions apply to married couples and people in common law cohabitation).

Supplementary protection is granted to persons refused refugee status but who in the event of returning to their country of origin are at a real risk of suffering a grievous harm by being sentenced to death penalty or executed, subject to torture, inhuman or degrading treatment or subject to a serious individual life or health hazard arising from a widespread use of violence with respect to civilians in circumstances of an internal or international armed conflict.

Aliens granted supplementary protection receive a residence card valid for a two-year period. After an expiry of this period an alien files an application for the issuance of another document.

As to social and living needs (education, employment, protection against unemployment, health care, social security), the rights of aliens granted supplementary protection are analogous to those granted to aliens with refugee status.

Refugees and people granted supplementary protection have the right to integration assistance awarded under the provisions of the *Law on social security*. Integration assistance comprises, e.g.: payment, covering health insurance premiums, community work, specialist counselling, including legal and psychological assistance, provision of information and support in contacts with other institutions and organisations. Integration assistance is provided for a period of up to 12 months as part of an individual programme agreed with an alien.

As of entry into force of the *Law on granting protection to aliens (...)* decisions on granting supplementary protection have *ex lege* been also decisions on granting permission for tolerated stay issued earlier; this is because of the fact that expulsion of a person may only occur to the country which would pose a threat to her right to life, freedom and personal security, where she could be subjected to torture or inhuman or degrading treatment or punishment or be forced to work or deprived of the right to a fair trial or be punished without legal grounds (in the case of being granted permission for tolerated stay in connection with the presence of circumstances other than those presented above, e.g. because of the unenforceability of the decision on expulsion, aliens retain the rights for a six-month period). Aliens who have in this way been granted supplementary protection are also entitled to integration assistance.

164. Actual and procedural provisions were extended related to proceedings on granting refugee status and provisions related to this type of proceedings with the participation of aliens who have been subjected to violence or are disabled, through the definition of the manner of ascertaining that in a particular case we deal with an alien in need of special treatment. The grounds for applying these provisions are a result of a psychological or medical test confirming that the alien has been subjected to violence or is disabled. The Head of the Office for Aliens guarantees the provision of such tests when an alien maintains he has been subjected to violence or is disabled or when his mental and physical condition indicates that. Previous provisions caused doubts as to the application of a special course of action. At present it is a result of a test that has decisive impact on this decision, rather than the discretion of an administration authority.

165. An alien placed in a centre is ensured, *inter alia*, teaching aids for children granted care in public establishments and attending primary, junior high or high schools and the reimbursement, if possible, of costs of extracurricular classes and sports and recreational classes for children.



166. In the school year 2006/2007, centres for aliens applying for refugee status had 742 children at school age (from 7 to 18 years), with 646 of them, i.e. ca. 87%, actually attending schools. In the school year 2007/2008 centres for aliens applying for refugee status had a total of 867 children at school age, with 836 of them, i.e. ca. 97%, attending schools.

167. At the local and central level the BG are in close contact with international and non-governmental organisations involved in issues related to aliens in proceedings on granting refugee status or proceedings related to expulsion. Representatives of these organisations visit (periodically or in emergency cases) detention centres and places which accept aliens' petitions for refugee status.

168. Aliens placed in guarded centres and temporary detention facilities for the purpose of expulsion have full access to health care and living amenities, undergo periodic medical check-ups (no less than once a month) and are referred to specialist physicians when necessary. Each centre offers psychological assistance to aliens.

169. Visitations of relevant centres are conducted also by CCRP.

### **Article 13**

#### **Protection of aliens and stateless persons against arbitrary expulsion**

170. Pursuant to the Law *on aliens*, a decision on the expulsion of an alien from the territory of the Republic of Poland may be taken provided any of the reasons under this Law has occurred. The following changes were introduced with respect to the legal state presented in the previous Report:

- The catalogue of reasons for issuing a decision on expulsion was extended by situations when the data of an alien are in the SIS for the purpose of refusal to grant entry, if an alien resides within the territory of the Republic of Poland under a short-term residence visa or under provisions of visa-free movement and by situations when an alien has been sentenced in the Republic of Poland by a final judgement for enforceable deprivation of liberty and there are reasons for instituting proceedings for such an alien's surrender abroad for the purpose of the execution of a penalty adjudged with respect to him.
- A decision on expulsion is not only *not* issued to an alien who has a settlement permit but also to an alien who has a residence permit for a long-term EC resident.

171. A decision of the expulsion of an alien is not issued and a decision already made is not enforceable, when:

- There are reasons for granting permission for tolerated stay within the territory of the Republic of Poland

- An alien is a spouse of a Polish citizen or of an alien who has a settlement permit or a residence permit for a long-term EC resident and his further residence does not pose a threat to the defence or security of the state or public security and order, unless marriage was concluded with a view to avoiding expulsion
- Proceedings are in progress to grant an alien refugee status

172. A decision of expulsion of an alien is issued by a Voivode. An alien has the right to appeal against the decision to the Head of the Office for Aliens, and appeal against the decision of the Head of the Office to the Voivodeship Administrative Court in Warsaw, and then file a cassation complaint to the Supreme Administrative Court.

173. Expulsion of juvenile aliens can only take place under special conditions, presented in the previous Report.

174. Observations of non-governmental organisations pointing out that people in informal relationships are discriminated against as they may fear expulsion, were taken into consideration in the *Law on granting protection to aliens (...)* (amendment of May 2008). It stipulates that permission for tolerated stay is issued in a situation when expulsion of an alien from Poland would infringe on the right to family life with the meaning of the *Convention for the Protection of Human Rights and Fundamental Freedoms* or would violate the rights of the child as defined in the *Convention on the Rights of the Child* to a degree posing a significant risk to his psychological and physical development, unless a further stay of an alien within the territory of the Republic of Poland is a threat to the defence or security of the state or to public security and order. This protection applies to married couples and people in common law cohabitation.

175. For data on the protection of aliens within the territory of the Republic of Poland - see: paras. 26-41 of Annex I.

## **Article 14**

### **Right to a fair trial (recommendation 14 of the Committee)**

176. The constitutional safeguards of the right to a fair trial indicated in the previous Report have not changed.

### **Recommendation 14 of the Human Rights Committee**

#### **Legal safeguards for people detained by the Police**

177. Provisions currently in force determine precisely the reasons and range of use of legal counsel, which is one of the elements of the implementation of the right to defence guaranteed in the *Constitution*. It must be emphasised that the very first activity of law enforcement authorities related to the prosecution of a specific person makes this person a subject of the right to defence.

178. Detailed principles and procedures of conduct with persons detained by the Police are laid down in the provisions of CCP. The Code stipulates that the detainee is entitled to contact and talk with a defence counsel. He should be instructed about this right immediately after arrest, and the fact of instruction should be entered in the arrest record, whose copy is given to the arrested person. A meeting with a defence counsel is not an obligation of the Police - the Police arrange it on the initiative of the arrested person.

179. Provisions of CCP do not determine the form in which contact with the defence counsel should take place. It is commonly accepted that depending on the technical facilities of a given unit of the Police, it takes an accessible form i.e. may take the form of direct conversation, a telephone conversation, using a fax or electronic mail. Furthermore, the arrested person may demand a direct conversation with the defence counsel, but the officer of the Police may (but does not have to) reserve his presence during the conversation. A general principle applied is that the conversation takes place in the absence of a Police officer - exclusively between the arrested person and the defence counsel. Exceptions from this principle apply in situations when this is supposed to prevent possible impediment of criminal proceedings, e.g. by transferring information of importance from the point of view of proceedings to his relatives or friends as well as to protect the defence counsel.

180. Officers of the Police are prepared for the performance of these activities as part of a series of courses and in-service trainings.

181. One of the measures to be taken as part of the plan to implement the recommendations of the Committee Against Torture and of the Council of Europe Human Rights Commissioner in the Police and to implement the Government Programme for the execution of ETPC judgements with respect to Poland is to ensure the observance from the beginning of arrest of fundamental legal guarantees of people detained by the Police, in particular the right of access to a lawyer and confidential consultation with him. Relevant activities are coordinated by the Plenipotentiary of the Commander in Chief of the Police for Human Rights Protection in agreement with the Criminal Office of the National HQ of the Police as well as with the Voivodeship HQs and the Warsaw HQ of the Police.

182. It is of significance that Article 83 § 1 CCP allows for appointing a defence counsel for a person in temporary detention even by another person; Article 73 § 1 CCP guarantees to a person in temporary detention communication with his defence counsel in the absence of other people and through correspondence (§ 2 and 3 contain exceptions to this rule, but pursuant to § 4 they can only be applied for 14 days, after which period they must not be resumed). Article 77 CCP allows the suspect to take advantage of the assistance of three defence counsels; Article 79 and 80 CCP regulate the institution of obligatory defence; while Article 78 § 1 CCP guarantees the appointment of a defence counsel by the court in the case costs of defence cannot be borne without the detriment to necessary maintenance of the arrested person and his family. In this last case it seems that the problem lies in insufficient legal awareness of those who might take advantage of this institution, although it should be also borne in mind that before a hearing of a suspect is conducted, the suspect is instructed about his rights. In addition, pursuant to specific provisions, the prosecutor in charge of or supervising particular preparatory proceedings is obliged to instruct the suspect about the right to demand a court-appointed defence counsel, if it follows from the circumstances of the case that he is unable to bear the defence costs.

Furthermore, in circumstances when the accused must have a defence counsel (when: the suspect is under age, deaf, mute or blind or when there is a justifiable doubt concerning his diminished responsibility or when the court finds it indispensable because of circumstances being an impediment to defence), the prosecutor is obliged to immediately file a relevant request with the president of the relevant court.

183. Furthermore, an amendment to the *Law on the Bar* of March 2007 sets out *inter alia* regulations meant to enhance the efficiency and effectiveness of disciplinary proceedings with respect to defence counsels and has extended the scope of competence of the Minister of Justice as to supervision over such proceedings. Cases of lack of contact between the defence counsel and the client may be regarded as a violation of the law and principles of professional ethics, which may result in the institution of disciplinary proceedings. At the same time MJ monitors cases of unjustified absence of defence counsels at trials and meetings, which also allows the monitoring of cases of a lack of contacts with clients.

### **Free legal aid for offence victims**

184. Provisions of CCivP and CCP guarantee crime victims access to free legal aid in the forms of a court-appointed counsel for the duration of court proceedings. MJ implements a pioneer pilot programme of offering free legal aid to crime victims in 11 Local Support Centres in bigger Polish cities. The programme is to be developed into the National Programme for Offence Victims (see: information related to Article 7 of this Report).

185. Free legal aid can be granted by active advocates and attorneys-at-law. The number of active defence counsels:

2005 - 6 179 advocates, 2006 - 6 651 advocates, 2007 - 6 930 advocates

The number of active attorneys-at-law:

2005 - 17 500, 2006 - 18 421, 2007 - 18 951

186. MJ is currently working on a draft comprehensive *Law on access to free legal aid*.

### **Unjustifiably long proceedings**

187. Poland takes a number of measures with a view to eliminating the problem of lengthy judicial proceedings and preparatory proceedings. Such measures were discussed at length in the previous Report and have been continued.

188. With respect to lengthy preparatory proceedings - their analyses are conducted on an ongoing basis by prosecution authorities. Results of studies indicate that the prolongation of some proceedings is caused by the need to perform a substantial number of procedural actions, including especially the need for long periods of waiting for specialist expert evidence (see information related to Article 9 of this Report). MJ emphasises in particular speeding up criminal proceedings, hence cases where the duration of investigation exceeds 3 and 6 months are monitored, and older and complicated cases are subject to monitoring by superior units to eliminate current unjustified delays.

189. MJ prepared a draft amendment of the *Law on complaint about a violation of the right of a party to have a case considered in judicial proceedings without unjustifiable delay*.

To increase the effectiveness of the complaint about unjustifiably long proceedings, a draft law envisages an adjudication by the court of an amount of money to the complainant. Furthermore, the introduction of a complaint about unjustifiably long preparatory proceedings may lead to the curtailment of unjustifiably long temporary detention.

The draft law stipulates that in the event a complaint related to unjustifiably long preparatory proceedings is justified, and in its complaint a party demanded that the court adjudicating on the case or the prosecutor in charge or supervising preparatory proceedings should issue binding recommendations, then the competent court is obliged to issue such recommendations (as long as they are not evidently unnecessary), setting a deadline for taking appropriate measures. The proposed solution of an obligatory issuance of recommendations is a real measure of addressing further unjustifiable delays in proceedings.

Moreover, the draft law provides for bigger amounts awarded by courts. It will be obligatory for a court to award an amount of 20 000 PLN for the complainant, provided they put forth such a demand and the complaint proves justifiable. Only in especially justified cases can this amount be lower.

The draft law includes a possibility of lodging a complaint related to unjustifiably long preparatory proceedings, with the assumption that the criteria established so far for the evaluation of the term “consideration of a case within a reasonable period” will be applied also with respect to preparatory proceedings.

Inter-ministerial agreements on this draft law are currently in progress.

190. For statistics on the duration of proceedings, number of cases filed to courts, cases to be adjudicated by one judge and data on compensation for wrongful convictions, use of a preventive measure and temporary detention - see: paras. 42-45 of Annex I.

## **Article 15**

### **Prohibition of retroactive criminal laws**

191. The prohibition of retroactive criminal laws is contained in the *Constitution* and in the PC. The legal state has not changed with respect to the state presented in the previous Report.

## **Article 16**

### **Right to legal personality**

192. Provisions guaranteeing the recognition of the legal personality of the human being have not changed with respect to the state presented in the previous Report.

## Article 17

### Right to privacy

#### Vetting proceedings

193. To ensure that vetting proceedings are in full compliance with all the safeguards of a state of law and with the respect of human rights, regulations in force were amended. The amendments are to guarantee a person subject to vetting proceedings a possibility of using notes from the vetting case file outside the office for confidential documentation and the service of a copy of the *ratio decidendi* for the judgement of the Vetting Court. These amendments are to remove the irregularities indicated in the ETPC judgements of 24 April 2007 in the case *Matyjek vs. Poland* and of 17 July 2007 in the case *Bobek vs. Poland*.

194. Pursuant to the *Law on disclosing information related to documents of state security authorities from the period 1944-1990 and the content of these documents*, a court ruling in vetting proceedings of first and second instance requires a statement of reasons. A court ruling issued in second instance is legally binding. The statement of reasons for a ruling is provided *ex officio* within 30 days of the date of issuance of the ruling.

195. Furthermore, vetting laws were subject to an audit conducted by the CT; this resulted in the adaptation of these regulations (including those on accessibility of information) to the constitutional principles of civil rights protection.

## Article 18

### Freedom of thought, conscience and religion (recommendations 15 and 19 of the Committee)

196. As was indicated in the previous Report, Polish legal regulations guarantee each person (including children) the freedom of thought, conscience and religion, including the freedom to profess and accept religion by personal choice; the freedom to manifest religion may be restricted solely by Law, only provided this is necessary for the protection of state security, public order, health, morality or freedoms and rights of other people. All churches and religious communities enjoy equal rights.

197. Freedom of religion is a feature of schools, too. Under the *Constitution*, religion of a church or a legally recognised religious community may be taught in schools, provided it respects the freedom of other people. Religious education of various denominations or ethics classes are organised in public nurseries and schools at the request of the parents (legal guardians) or adult students. So far 16 churches and religious communities have submitted curricula of religious education classes to the attention of the Minister of National Education.

As was indicated in the previous Report, in the case of a small number of interested people, teaching may proceed in an inter-school group or in a catechesis centre located outside school premises and operating within the public education system (for at least 3 people). Similar principles apply to the provision of ethics classes.

### **Recommendation 19 of the Human Rights Committee**

198. As of 24 October 2006 Poland has implemented the Law Enforcement Officer Programme on Combating Hate Crime of the OSCE Office for Democratic Institutions and Human Rights. As part of the *Programme* trainings are held for officers of the Police and prosecutors on e.g. hate crimes, devoted to the strategy of combating them on the basis of active leadership of the Police and social initiatives and procedures of collecting and disseminating statistics on such crimes. Work on a mechanism of cooperation between officers of the Police and prosecution authorities is in progress; its aim is to raise the efficiency of assessment whether an offence was committed in a particular case.

199. On 15 November 2007 the Commander in Chief of the Police ordered the Voivodeship Commanders of the Police to prepare biannual *Action Plans of the Police Implementing the Recommendations* (i.e. recommendations of international organisations active in the field of human rights) with due emphasis on *inter alia* intensifying anti-discriminatory activities of the Police and efforts for the protection of places of historical heritage and cemeteries of minorities. Evaluation Reports will be compiled in the early 2010; they will sum up and assess the implementing activities of the years 2008-2009 and recommending follow-up activities.

200. In November 2007 MIA held a conference titled *Prevention of racism, discrimination on grounds of ethnic background and xenophobia - cooperation, good practices and challenges of tomorrow*. It was attended by representatives of public administration (including e.g. Plenipotentiaries of Voivodeship Commanders of the Police for human rights protection and Plenipotentiaries of Voivodeship Governors for national and ethnic minorities and prosecutors), national and ethnic minorities and non-governmental organisations. Recommendations were adopted during the conference concerning institutional and legal measures as well as exchange of information and strategy, programmes and long-term actions aiming *inter alia* to enhance cooperation between non-governmental organisations and public administration and the identification of changes to be introduced in legislation towards a more efficient combating and prevention of discrimination in Poland. MIA website contains generally accessible information with presentations and statements; a publication of a brochure with conference proceedings is planned for future educational purposes.

201. Furthermore, protection of monuments of historical heritage, including cemeteries of national and ethnic minorities, is part of a the *Government programme of limiting crime and asocial behaviour "Safer together"*. Voivodeship Commanders of the Police were obliged to prepare annual action plans concerning protection of monuments of historical heritage and cemeteries of national and ethnic minorities in their subordinate areas. Moreover, preventive measures are taken, e.g. introduction of additional patrols in the vicinity of cemeteries and meetings with young people, organised by constables and related to combating racism and discrimination and to consequences of acts of discrimination. Furthermore, prevention and elimination of vandalism of cemeteries of national and ethnic minorities will be raised during trainings led as part of the programme of combating hate crimes, targeted at officers of law enforcement authorities.

202. MIA has a Task Force for Monitoring Racism and Xenophobia whose operation consists, *inter alia*, in collecting information on events of racist, xenophobic and anti-Semitic nature,

including instances of discrimination against representatives of the Roma minority and desecration of cemeteries. In the event of being notified about acts of discrimination, the Task Force takes measures to clarify whether a given case was properly considered during the actions of the Police. In some cases the Task Force notifies the prosecution authority about a justifiable suspicion of a crime having been committed.

203. Vandalisation of cemeteries, mainly Jewish and Catholic ones, is not frequent in Poland. Investigations in this category of cases relate to damage to property and desecration of burial places of the deceased, often in conjunction with a hate crime or a crime of instigating to hatred on grounds of national, ethnic or religious differences. It should be noted, however, that detection of such crimes is on the rise. Out of 62 proceedings conducted in 2007, charges were made with respect to 50 people in 25 of these cases. Out of 53 cases finished in 2007, 21 indictments were filed, 11 were discontinued because the perpetrators were not identified. For the sake of comparison: in 2006 only 12 indictments were filed, and as many as 15 cases were discontinued because the perpetrators were not identified. In the period from early 2004 till the end of June 2005, there were 36 proceedings carried out in similar cases; 9 indictments were filed, while 12 cases were discontinued. The above data shows that the Police and prosecution authorities are determined to efficiently prosecute such offences.

204. For statistics on hate crimes, crimes against freedom of conscience and creed and complaints about acts of discrimination - see: paras. 46-49 of Annex I.

### **Recommendation 15 of the Human Rights Committee**

205. The *Law on substitute military service*, replacing the provisions of Title VI "Substitute military service" of the law of November 1967 *on general obligation of defence of the Republic of Poland*, entered into force in January 2004. The Law defines the principles of referring persons to substitute service, directing them to a particular position and the performance of this service by persons subject to the general conscription obligation, whose religious beliefs or professed moral principles make it impossible for them to serve in the military.

206. *The Law on substitute military service* shortened substitute service from 21 to 18 months, and for conscripts-university graduates - from 9 to 6 months. The catalogue of entities where substitute military service can be performed was verified. The manner of financing remuneration paid out to conscripts in substitute service was altered. At present remuneration is covered by the state budget, which significantly reduced the costs of employment of conscripts in substitute service. Commissions competent to make decisions on referring conscripts to substitute service were set up at the level of voivodeship marshals and a minister for labour.

207. In January 2008, the CM adopted a resolution on guidelines for government administration on the Armed Forces of the Republic of Poland becoming professional. In keeping with the guidelines, the Minister of Labour and Social Policy is obliged to prepare a draft amendment to the Law on substitute military service; it will include provisions arising from a scheduled suspension of compulsory military service and will provide for referring persons for substitute service during mobilisation and at the time of war.



## Article 19

### Freedom to possess and express opinion

208. *The Constitution of the Republic of Poland* guarantees to each person freedom to possess and express opinion and acquire and disseminate information. Moreover, the *Constitution* guarantees also the freedom of the press and other communications media, prohibiting at the same time all preventive censorship of the communications media and the licensing of the press.

209. The question of access to public information was discussed at length in the previous Report.

210. To extend the guarantees of the freedom of the press and media and having regard to suggestions of non-governmental and international organisations, a draft law was prepared to amend PC provisions. The draft law stipulates that the principal type of the offence of slander will no longer carry the penalty of deprivation of liberty (but only the penalty of restriction of liberty and a fine); additionally, the offence of slander committed by means of communications media will no longer be penalised. Argumentation was adopted that the provision which lays down a stricter penal responsibility because of the perpetrator's use of communications media for slander infringes the freedom of the press and the freedom to perform the journalist profession.

## Article 20

### Prohibition of propaganda for war and advocacy of national, racial or religious hatred

211. Polish legal regulations ensure the observance of Article 20 of the Covenant, which was discussed at length in the previous Report.

212. The activity of extremist groups that question the constitutional order of the Republic of Poland, also instigating hatred on grounds of nationality, race or religion, is monitored e.g. by the Agency of Internal Security. In the event of obtaining credible information about the commission of a crime of instigating hatred on national or racial grounds, the Agency of Internal Security institutes criminal proceedings.

In 2005, as part of the *National Programme for Preventing Racial Discrimination, Xenophobia and Related Intolerance 2004-2009*, NPO took action aiming at establishing whether there are organisations in Poland based on anti-Semitic or racist opinions. In particular all appellate prosecutors were asked to identify such organisations in preparatory proceedings carried out by their subordinate prosecution units. In the event such an organisation is identified, particular provincial prosecution authorities are obliged to take administrative and legal action leading even to their ban.

213. In the period covered by this Report trainings were held for officers of the Police, prosecution authorities, PS and judges, sensitising these groups to the hate crime problem.

214. Detailed information on combating hate crimes were presented by Poland on 15 May 2008 in the follow-up to *IV Periodic Report of the Republic of Poland on the implementation of the provisions of the Convention on the prohibition of torture and other cruel, inhuman or degrading treatment or punishment for the period from 1 August 1998 to 30 September 2004*.

215. Furthermore, MIA signed an agreement with the Association of Bureaus of Citizen Advice with respect to combating discrimination on grounds of ethnic or national origin. As part of the agreement, the Association of Bureaus of Citizen Advice compiled in 2007 a report with a statistical analysis of cases of clients claiming discrimination on grounds of ethnic or national origin as well as racial discrimination, xenophobia and anti-Semitism.

216. At the request of MIA the Poznań Human Rights Centre of the Institute of Legal Sciences of the Polish Academy of Sciences compiled a first part of a report on the monitoring of racist, xenophobic and anti-Semitic content in the Polish press. Observations and suggestions included in the Report will be instrumental for the adoption of efficient modalities and instruments for combating *hate speech* in the future.

## Article 21

### Freedom of assembly

217. Freedom of assembly and participation in peaceful gatherings are guaranteed by the provisions of the *Constitution* and provisions of relevant laws, including the *Law on assemblies* (detailed information was provided in the previous Report).

218. At the same time, in response to the allegations put forth by non-governmental organisations that the current legal state does not ensure the consideration of an appeal against the decision of an executive authority of a commune (city) on the prohibition of a public gathering before the scheduled date of this gathering, MIA has begun work on changing the relevant provisions of the *Law on Assemblies*. These changes will respond to the allegations of non-governmental organisations of groundless non-issuance of permissions by authorities of a commune (city) for gatherings organised primarily by minorities.

## Article 22

### Freedom of association and trade unions

219. The relevant legal state has not changed with respect to that represented in the previous Report.

220. An amended *Law on trade unions* entered into force on 1 January 2003. It stipulates that a company's trade union is an organisation grouping at least 10 members employed or performing work on the strength of cottage work contracts at an employer where such an organisation operates or officers serving in a unit where such an organisation operates.

221. Trade union organisations may conclude collective labour agreements (such agreements cannot be concluded for the following: members of the civil service corps, staff of state offices employed as a result of nomination and appointment, local government staff employed after an election, nomination or appointment as well as judges and prosecutors).

222. See also: para. 52 B of Annex I.

223. Detailed information on freedom of association and trade unions is included in the Report on Poland's implementation of the provisions of the International Covenant of Economic, Social and Cultural Rights, for the years 2002-2006, submitted in August 2007.

### **Article 23**

#### **Protection of marriage and the family**

224. Principles of concluding marriage, separation and divorce have not changed with respect to those presented in the previous Report.

225. The spouses, both during marriage and in the event of separation or divorce, have equal rights and obligations.

The draft FGC adopted by the CM extends the obligatory part of a divorce sentence onto decisions about contacts with the child and the court is empowered to make decisions on parental authority having regard to the agreement reached between the spouses. Furthermore, the draft stipulates that contacts with the child are not only a right but an obligation of the parents and the court is empowered with the competence to oblige parents to appropriate conduct. Such a regulation offers the court a wider range of opportunities for contacts with the child, including the provision of "alternate care".

226. On the issue of maternity leaves - see: information related to Article 3 of this Report.

227. Detailed information on the protection of marriage and the family is included in the Report on Poland's implementation of the provisions of the International Covenant of Economic, Social and Cultural Rights, for the years 2002-2006, submitted in August 2007.

### **Article 24**

#### **Rights of the child**

228. As indicated in the previous and present Report, the child enjoys comprehensive protection under Polish law. Observance of the rights of the child is, in particular, entrusted to CChRP. Polish Parliament is currently working on the modification of the *Law on CChRP*, aiming at granting CChRP a scope of competence that facilitates a more efficient execution of his statutory obligations.

229. Poland's international obligations: in 2005 entered into force: the *Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict* (in May) and the *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography* (in March).

#### **Support for families with children**

230. Since 2004 the MIA has coordinated the implementation of the Programme for Prevention of Social Maladjustment and Crime among Children and Young People. One of its main

objectives is slowing down the dramatic increase in social maladjustment, elimination or mitigation of blatant manifestations of asocial behaviour, in particular those posing a hazard to the life and health of children and young people and having permanent detrimental effects on them, working out a permanent model and systemic schemes for the solution of problems of social maladjustment and juvenile delinquency at central government, local government and community level (neighbourhood, street, yard, school, etc.) and coordination between ministries and within communities, monitoring of and supervision over the implementation of the Programme. The Programme is evaluated on an ongoing basis. This allows its correction, if necessary, arising from the dynamically changing social situation and experience of actors implementing the provisions of the Programme.

231. The National Programme Social Protection and Social Integration for the years 2006-2008, which is composed of: the National Action Plan for Social Integration, National Pension Strategy and National Plan for Health Care and Long-Term Care, was adopted by the CM in October 2006. Since, according to the diagnosis of the social situation, the risk of exclusion and the problem of poverty relates first and foremost to extended families and families where there are unemployed individuals, support for families with children is one of priorities.

232. Action targeted at assistance for the family and children is meant first of all to bring to balance opportunities of children and families, eliminate educational deficits and improve accessibility of services which allow parents to combine professional careers with upbringing kids:

- An integrated system of assistance to families will be developed; it will include projects supporting the development of social housing and citizen and family counselling
- Improvement of the framework of income support for families with children is envisaged; it will include a system of family benefits, scholarship system, and a system of housing subsidies
- The programme of supplementary meals for children and providing meals to people deprived of it will be continued; this will in particular apply to people from areas with high unemployment rates and rural areas
- Action will be taken to facilitate combining professional careers with upbringing kids, which is supposed to encourage decisions to have children
- Action will be taken to increase social security of female employees after a delivery. Introduction of a flexible use of maternity and child-rearing leave is being considered and legal and financial solutions will be enhanced to create institutional and informal forms of care over a child and other dependants

The principal support instrument are family benefits as stipulated in the provisions of the *Law on family benefits*. Another legal act on financial assistance for families, in force from 1 September 2005 to 30 September 2008, was the *Law on treatment of persons avoiding paying child support and on child support down payment*. Since 1 October 2008, pursuant to the law of September 2007 on state assistance to persons entitled to child support, child support down payment was replaced by benefits from the child support fund.

233. Detailed information on support for families with children is included in the Report on Poland's implementation of the provisions of the International Covenant of Economic, Social and Cultural Rights, for the years 2002-2006, submitted in August 2007.

#### **Nationwide monitoring of the child's life history**

234. Integrated effort and observation of the child by many institutions with which the child has contacts may result in early detection of the threat of violence and limit the number of cases of violations of the rights of the child. The system will facilitate a flow of information between all the institutions involved in assisting the child's development.

235. It will consist in an electronic data base on the status of children. Children will be monitored from the moment of birth until the age of 18, which will contribute to obtaining a full picture of the child's life history. The first record to the system will be made by the hospital (the child's place of birth), or a representative of the health service (home delivery) who attends the delivery or registers it. Subsequently the information will be entered by a midwife (support visits), health service (timely inoculations, detailed medical check-ups of two-year-olds), crèche, nursery, and school. The system will also include data from the Police precinct, municipal social assistance centre and family court, provided the child has contact with them.

236. Insight into the process of growing up will also help determine the needs of children and, indirectly, of their families and will allow the detection of situations hazardous for children from families providing insufficient care. In the event of a suspicion of child abuse, such information will be forwarded directly to the county centre for the assistance to the family. It will launch investigation of the child's situation in the family, in cooperation with the Police precinct, communal or municipal social assistance centre and family court.

#### **Violence against the child**

237. The Polish legal system penalises each and every form of violence against the child. Polish PC does not discriminate against children and other victims of abuse, bodily harm, battery, infringement of corporal inviolability. Each such offence against the child is prosecuted by the prosecution authority. FGC allows for "scolding a minor" as a form of exercising parental authority, but this provision cannot in any way be interpreted as permission to use corporal punishment but needs to be interpreted in conjunction with the definition of parental authority as laid down in the Code, i.e. as acting solely for the benefit of the child.

238. Work is now in progress on the government draft amendment to FGC. Article 95 of the draft law stipulates *expressis verbis* that the exercise of parental authority needs to respect the dignity and rights of the child.

239. Poland plans to join the Council of Europe campaign for a complete elimination of corporal punishment against children in Europe.

240. Within the framework of actions for eliminating violence with respect to and among children and young people, Poland takes part in the activity of the Working Group for

Cooperation for Children at Risk. Materials resulting from meetings of experts, i.e. programmes, projects and results of studies will be available at [www.childcentre.info](http://www.childcentre.info) and could be used by all actors involved in work for children at risk.

241. Elimination of violence with respect to children is made possible first of all by programmes that raise awareness of the problem of domestic violence and programmes promoting positive upbringing methods. Therefore, in 2006 a nationwide social campaign was held titled "Childhood under protection", in 2007 - a social campaign "Love. Do not harm. Help", a media campaign "Small is fragile", as well as a social campaign for combating domestic violence.

242. For information on trainings on the protection of the child against violence targeted at judges and prosecutors - see: information related to Article 7 of this Report.

243. For statistics on domestic violence against minor - see: paras. 9, 15, 16 of Annex I.

### **Principles of administration of juvenile justice**

244. Polish legal regulations are in compliance with the provisions of the *Convention on the Rights of the Child*, in particular those related to the administration of juvenile justice. The notion of "criminal accountability of juveniles" is nonexistent in the Polish legal system.

The Law on proceedings with juveniles stipulates that a corrective measure can be applied by the family court with respect to a juvenile between the ages of 13 and 17 who has committed an offence; the court may apply educational measures with respect to juveniles up to 18 years of age who show signs of depravation. The execution of educational or corrective measures with respect to persons subject to them under a court ruling may take place no longer than by the time they attain 21 years of age.

There is no lower age limit for the use of educational measures since these measures are applied to a juvenile who remains at liberty (responsible parental supervision, supervision of a court probation officer, etc.) and are aimed at supporting parents in the upbringing of a juvenile and at preventing the depravation of a juvenile. The Polish justice system does not envisage "correctional facilities for juveniles". There are no grounds to suggest that children less than 13 years of age should not be subject to educational measures, which are solely pedagogical and socio-therapeutic and not penal.

245. Work is currently in progress on a new draft law regulating juvenile issues - the *Law on juveniles*. The draft is to make Polish law on juveniles even more compatible with international standards as laid down in the acts of international law, first and foremost in the *Convention on the Rights of the Child*, *European Convention on the Exercise Children's' Rights* and in *UN Minimal Rules*.

246. Detailed information on the principles of administration of juvenile justice is included in the *Report on Poland's implementation of the provisions of the International Covenant of Economic, Social and Cultural Rights*, for the years 2002-2006, submitted in August 2007.

## **Foster care**

247. Regulations on the system of care over a child partially or fully deprived of parental care are contained in the Law of March 2004 *on social security*. In 2007 a review of relevant bylaws was conducted as to care over a child and the family; the following steps were taken:

- Changes were introduced to streamline cooperation between county centres for the support of the family and foster families
- Support offered to foster families was extended
- Criteria for issuing permits for operating a care and educational facility were expanded
- A higher flat amount for the upkeep of a child in a family facility was defined
- Changes were made in the manner of audits in care and educational facilities. Supervision authorities were obliged to consult the child during audits

248. The work on the improvement of foster care, begun in 2007, is continued. Assumptions of a new system were prepared and are now subject to consultations. Emphasis will be placed on providing adequate care to children in the biological family. A new division of family foster care forms is envisaged as is a different mechanism for financing related families, foster families and family children's homes. Standards will be adopted for the management of such care and educational facilities and as a result of their implementation the number of children placed in facilities will be decreased.

249. For statistics on foster families - see: para. 50 of Annex I.

### **Article 25**

#### **Civil rights**

250. The legal state presented in the previous Report has not changed.

### **Article 26**

#### **Equality before the law and equal legal protection (recommendations 16 and 18 of the Committee)**

#### **Recommendations 16 and 18 of the Human Rights Committee**

251. The prohibition of discrimination ("all are equal before the law") is guaranteed in Poland by the *Constitution*. It determines the right to equal treatment by public authorities and the obligation of the authorities to guarantee this right. This general principle results in the prohibition of discrimination in political, social and economic life (and thus outside employment). Discrimination of this kind cannot be justified by any provisions and any reasons. The *Constitution* provides for no deviations and exceptions to the equality principle.

### **Law on equal treatment**

252. MLSP has prepared a draft *Law on equal treatment*. The Law is complementary to the existing relevant legal solutions. It is expected that the Law will be adopted by the Sejm within the next few months.

253. The Law is meant to safeguard equal treatment. The Law prohibits discrimination, in particular on grounds of sex, race, ethnic origin, nationality, creed or beliefs, political persuasion, disability, age or sexual orientation, marital and family status with respect to the following:

- Vocational training opportunities, including higher education, supplementary education, in-service trainings, vocational retraining and vocational internship
- Opportunities for launching and leading business and employment under civil law contracts
- Access to instruments and services offered by institution of the labour market and other entities active in offering employment, development of human resources and combating unemployment
- Access to and active participation in trade unions, employers' organisations, professional governance bodies and non-governmental organisations, as well as the exercise of rights granted to members of these organisations

254. The catalogues of discrimination grounds is open, in compliance with the aforementioned provision of the *Constitution*.

255. Moreover, the Law sets out a prohibition of discrimination on grounds of sex in social security and on grounds of race and ethnic origin in health care, primary, secondary and tertiary education.

256. The Law introduces the principle of equal treatment in the provision of and access to services and in the provision of and access to goods, irrespective of sex, race and ethnic origin.

257. Pursuant to provisions of the Law, a person with respect to whom the principle of equal treatment has been violated will be able to demand a discontinuance of discriminatory practices, removal of their effects and financial compensation for the harm incurred. The burden of proof was shifted from the plaintiff to the defendant.

The Law provides for a fine for violating the principle of equal treatment which will not be lower than remuneration for work and a fine for the teacher in the amount no less than 3 000 PLN.

258. The draft *Law on equal treatment* proposes the establishment of an authority for equal treatment, a General Inspector for Equality of Treatment, acting in the office servicing the minister for family affairs and equal treatment. The General Inspector would be appointed for a five-year term by a minister for the family and equal treatment, but a possibility of appointments by the President of the CM is also considered.



The General Inspector will carry out tasks arising from the Law, in particular will monitor the situation with respect to equal treatment, launch and implement action with a view to limiting the effects of the violation of the principle of equal treatment, cooperate with non-governmental organisations in the implementation of the equal treatment principle. The General Inspector was entrusted with the preparation of the National Programme for Combating Discrimination.

259. The draft law was consulted with non-governmental organisations and CCRP. The entities submitted a number of reservations.

260. On 30 April 2008 the CM appointed the Government Plenipotentiary for Equal Treatment, in charge of government policy of equal treatment and analysis and evaluation of legal solutions with regard to equal treatment.

261. On considering recommendations of the Committee Against Torture, the NPO adopted the position that it would be justifiable to take legislative initiative for the amendment of Article 256 PC and Article 257 PC by the introduction of a penal sanction of conduct such as instigating to hatred or intolerance with respect to people of a different sexual orientation, as well as insulting a group of people or a person because of their sexual orientation. When work is launched on the amendment to PC, Recommendation No. 19 of the Committee Against Torture as to the need of penalising “hate crimes (...) on grounds of sexual orientation” will be presented to the bodies in charge of drafting an amendment to PC and CCP.

262. Detailed information on regulations related to equality of treatment is included in the Report on Poland’s implementation of the provisions of the International Covenant of Economic, Social and Cultural Rights, for the years 2002-2006, submitted in August 2007.

263. Prosecution and punishment of offences and the equality principle.

It must be emphasised that each case where preparatory proceedings are in progress is from the start evaluated on an individual basis as to whether a given act can be regarded as an offence, irrespective of the sex, nationality, creed, race, profession, or other properties of the injured party. Possible irregularities do not stem from the adopted philosophy of treatment of such cases but from reasons generally appearing in pre-trial proceedings. They are corrected in court instances in the case a given decision is appealed against or by filing relevant evidentiary requests until the time the court issues a valid and final judgement.

### **Trainings**

264. PS

Questions related to international human rights norms and standards are included at all levels of in-service trainings programmes for officers and employees of the PS.

The trainings are also dedicated to issues connected with the rights of sexual minorities. Since early 2005 till the end of 2007 trainings held in detention centres and correctional facilities were attended by 607 officers and employees of the PS.

## 265. Police

Education in schools and training centres of the Police at the central level comprises issues of combating discrimination on grounds of sexual orientation; action is taken to raise the awareness of officers of the Police as to developing attitudes conducive to combating xenophobia and intolerance among officers of the Police. Basic training programmes for officers of the Police comprise the following issues: antidiscriminatory practices - 4 hours of classes, human rights - 4 hours, and professional ethics of an officer of the Police - 6 hours.

Furthermore, as part of in-service training of officers of the Police at the central and local level, a number of trainings were held in 2007 which sensitised officers of the Police to questions of diversity, tolerance and antidiscriminatory practices.

Furthermore, Plenipotentiaries for Human Rights Protection, as part of the tasks related to education of officers of the Police, work on the introduction of systemic solutions to provide specialist trainings for officers of the Police on hate crimes, including *inter alia* related to sexual orientation.

Furthermore, as part of the programme of combating hate crimes, targeted at officers of agendas of public order protection, launched by OSCE-ODIHR and coordinated by MIA, in September 2008 a seminar will be held for officers of the Police titled "Police forum against discrimination". The meeting is to provide a forum for the discussion of e.g. different aspects of hate crimes, including *inter alia* offences related to sexual orientation. Invitation to participate in the training is extended also to representatives of non-governmental organisations active in the area of combating discrimination on grounds of sexual orientation.

## 266. Prosecutors and judges

In the years 2005-2006 a series of trainings was held for prosecutors; they took the form of workshops on antidiscriminatory practices "Combating discrimination on grounds of race, national and ethnic origin and religion".

In 2007 the National Centre for Training Employees of Common Courts and Prosecution Authorities (NCTECCPA) implemented a project "The role of prosecutors in an effective prevention of discrimination" targeted at prosecutors active in tasks related to preventing discrimination on grounds of race, ethnic origin, religion and creed, age and sexual orientation. The project consisted in four series of trainings for ca. 240 prosecutors in 2007. The objective was to offer the attendees necessary knowledge on identification of discriminatory practices, including relevant legislation, methods of combating and preventing them and elimination of their incidence, as well as to sensitise the participants to potential possibilities of discrimination of various social groups.

In 2007, in collaboration with the Academy of European Law in Trier, NCTECCPA also held trainings dedicated to combating discrimination for judges. Similar trainings will be held for prosecutors.

In November 2008 a training will be held for criminal judges on combating discrimination on grounds of sex and sexual orientation.

## **European Year of Equal Opportunities for All**

267. Pursuant to a decision of the Council of the European Union and the European Parliament, the year 2007 was named the European Year of Equal Opportunities for All. Objectives of actions taken as part of the celebrations: *Law* - raising the level of awareness of domestic and European law on equal treatment and combating discrimination, attendant rights and obligations of citizens and states; *Representation* - encouraging discussion on ways of increasing social participation of little-represented groups; *Recognition of the value of diversity* - creation of a climate conducive to affirmation of diversity as a great value of a society which is composed by all people, irrespective of their sex, race, ethnic origin, religion, beliefs, age, disability and sexual orientation; *Respect and Tolerance* - promotion of a more coherent society through building relations between various social groups, elimination of stereotypes and prejudice.

In Poland action was taken primarily by non-governmental organisations, social partners and schools and universities. The activities included trainings, exhibitions, billboard campaigns and conferences, concerts, and scientific studies on the situation of sexual minorities and stereotypes related to age, disability, sex, creed, national and ethnic origin.

## **Article 27**

### **Protection of minorities (recommendations 17 and 20 of the Committee)**

268. Provisions of the *Constitution* guarantee Polish citizens who are members of national and ethnic minorities the freedom to preserve and develop their language, preserve custom and tradition and the development of their culture. National and ethnic minorities have the right to establish their educational and cultural institutions as well as institutions for the protection of their religious identity and to participate in resolving matters concerning their cultural identity. The exercise of these rights are safeguarded in provisions of a number of laws.

269. As of May 2004 Poland has implemented the National Programme for the Prevention of Racial Discrimination, Xenophobia and Related Intolerance, connected with the implementation of Poland's international obligations contained in the final documents of the *World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance* (Durban, 2001). The Programme aims at actions to combat xenophobia and racism, including anti-Semitism and the development of a broad culture of tolerance within Polish society. The implementation of the Programme is scheduled for the years 2004-2009, but it can be continued upon evaluation of its operation and an update of its objectives and tasks. Beneficiaries of the Programme include Polish citizens belonging to national and ethnic minorities (including representatives of the Roma community), aliens (including migrants and refugees) and other people, who may be subject to discrimination on ethnic or racial grounds. Actions within the *Programme* are taken in such fields as diagnosis of the situation and monitoring, involvement of public administration, labour market and socio-economic situation, health, education and culture, communications media, and international cooperation.

270. The Joint Commission of the Government and National and Ethnic Minorities, established in 2005, is active e.g. in expressing opinions on the exercise of rights and needs of minorities and

on programmes for creating conditions conducive to the preservation and development of the cultural identity of a minority, as well as actions for combating discrimination of people who belong to minorities.

271. The implementation of decisions of EU agendas related to the European Year of Intercultural Dialogue (EYID) (2008) is part of Poland's National Strategy for EYID. It aims to raise the awareness of multiculturalism among Polish society and to promote intercultural dialogue and tolerance. Implementation within the EYID will be monitored by the National Culture Centre.

### **Recommendation 17 of the Human Rights Committee**

#### **Programmes**

272. The generalising observation of Recommendation No. 17 on the discrimination of the Roma as to access to health care services, social support, education and employment, must be seen as untrue and unjust. While a raised level of dislike towards the Roma - connected with historical past, lack of mutual knowledge and prejudice - is noticeable and confirmed in many public opinion polls, still most of the problems of the Roma community in Poland (unemployment, poverty, social exclusion) are connected first and foremost with a very low education level of the Roma (frequent illiteracy), which results in a lack of vocational qualifications. Counteracting these negative trends and pursuing the main objective of enhancing the level of social integration of the Roma community, the comprehensive Government programme for the Roma community in Poland begun in 2004 (tasks related to education, improving the living standards and living conditions, health, combating unemployment, security, culture, dissemination of knowledge about the Roma community and civil education of the Roma) adopted as its priorities tasks that aim at raising the level of education. In 2007 annual expenditure for the implementation of the Programme was raised two-fold (to the amount of 10m PLN), which allowed an intensification of efforts and significantly increased the number of tasks (in 2006 149 entities completed 424 tasks, while in 2007, 185 entities implemented 533 tasks). This level will be continued in 2008. Moreover, the streamlining of transfer of additional resources from an increased educational subsidy for schools holding supplementary educational projects for Roma students was also helpful. Due to those additional resources in 2007 it was possible to extend the scope of financing and implementing tasks other than education, including first of all improvement of living conditions.

Reports on the implementation of the government programme for the Roma in its full form are published on a yearly basis at MIA website [www.mswia.gov.pl](http://www.mswia.gov.pl).

273. It should be noted that the activities taken as part of the Programme for the Roma community are meant to bridge the gaps separating this group from the rest of society through ensuring equal living standards in such areas of life as health (e.g. by employment of community nurses, organisation of so-called white days, purchase of medical services in health care establishments, etc.) and living conditions (renovations of existing buildings and apartments inhabited by the Roma, water and sewage infrastructure investments and financing regulations of the legal status of plots of land on which Roma households are located - clarification and

regulation of the legal status of this property is most often a precondition for taking further action with a view to improving living conditions). Furthermore, as part of the National Programme of Preventing Racial Discrimination, Xenophobia and Related Intolerance, trainings are held for leaders of the Roma minority on preventing racial discrimination, xenophobia and related intolerance.

## Education

274. In the years 2005-2007 the “Education” module of the Government programme for the Roma community in Poland for the years 2004-2013 was continued. The actions taken aimed at ensuring equal educational opportunities of Roma students e.g. by the purchase of textbooks and school aids for students of primary, junior high and high school level, purchases of basic equipment for nursery students, subsidies of foreign language courses, purchase of teaching aids, sports outfits and shoes.

The following amounts were earmarked for financing the above tasks:

Year	No. of applications	No. of tasks	Amount in PLN
2004	47	79	1 000 000
2005	74	104	700 000
2006	85	100	701 669
2007	82	100	600 000

Applications for particular tasks were filed by agendas of local government (in their capacity as school supervising authorities) and associations and organisations of the Roma from across Poland.

275. Since 2005, apart from the above amounts, additional funds have been earmarked for ensuring equal educational opportunities of Roma students as part of the educational section of the general subsidy for agendas of local government. Schools that take on additional education tasks for Roma students have the right to obtain subsidies 150% more per each Roma child. In 2006 a total amount of this increased subsidy was over 8 780 000 PLN.

276. The most frequent educational measures taken by schools for the sake of Roma students are remedial classes of Polish and other school subjects, employment of teachers supporting Roma students and employment of assistants for the education of the Roma.

277. The tasks of the assistants for the education of the Roma, who are by definition themselves Roma who have the trust of local Roma communities, include provision of comprehensive support to Roma students in contacts with the school community, building a positive image of the school and benefits of education within the community of adult Roma, emotional support for Roma students, monitoring their school attendance and educational progress, support for teachers and educators in uncovering the needs and possible problems of students, assisting students’ learning as well as help and mediation in difficult and conflict situations. The activity of assistants for the education of the Roma is subject to provisions of a number of regulations.

## Employment

278. Unemployment rate in the case of all ethnic or national minorities, with the exception of the Roma minority, is lower than the national average. The percentage of unemployed people among those declaring being representatives of the Roma minority was 30.98% (data from the National Census of Population and Households, 2002, based on respondents' declarations), while e.g. among Tatars it was 11.34% (the minority with the second highest unemployment rate), Armenian 9.36%, Germans 3.78%, Slovaks 3.06%, Karaim 2.86% (minorities with the lowest unemployment rates).

279. A Government programme for the Roma community in Poland has been in operation since 2004; within the framework of the programme action is taken with a view to changing the situation of the Roma minority on the labour market. A priority here is educational projects which constitute the basis for a commencement of professional activities. Measures are also taken to make representatives of the Roma community professionally active through the creation of new workplaces for the Roma and employment of the Roma; in the years 2005-2006, 785 417 PLN was earmarked for this purpose. In 2006 there was a marked increase in the number of the Roma taking advantage of places of subsidised work (86, a rise from 48 in 2005). Of significance here was the organisation of trainings improving vocational qualifications; in the years 2005-2006 the number of the Roma attending trainings was 97. The cost of measures taken on the labour market targeted at the Roma is relatively high while their efficacy remains limited. Therefore, in spite of efforts taken by the Government since 2004, the situation of the Roma on the labour market continues to be difficult, even if it can be observed that they steadily start to see the meaning of job-seeking activities.

## Access to health and social care

280. *The Constitution of the Republic of Poland* guarantees all citizens the right to health protection and equal access to health care services financed by public funds. The *Law of 24 August 2004 on health care services financed by public funds* does not differentiate between access to health care with respect to any nationality. Health care insurance and the level of premiums paid by the insured population are not contingent on nationality. The *Law on health care services (...)* envisages legal solutions which facilitate access to health care services to the indigent population, also to persons not covered by insurance (on the strength of administrative decisions issued by agendas of local government). Free of charge assistance is granted to people with special assistance needs, i.e. those who have not attained 18 years of age or women who are pregnant, have delivered a baby or are after delivery. The aforementioned solutions apply without exception to the members of the Roma community residing within the territory of the Republic of Poland.

281. Each citizen is also granted free of charge rehabilitation treatment of substance abuse. Over the past few years neither MH not the National Office for Combating Drug Abuse have received any information or complaints related to any forms of discrimination in access to such treatment. Rehabilitation centres for people with substance abuse in Poland provide treatment e.g. to Polish citizens of Roma nationality.

282. Cases of preventing access of representatives of the Roma community to social support have not been recorded.

### **Situation in places of deprivation of liberty**

283. Action is taken in Poland with a view to sensitising officers and employees of the prison system to questions related to the elimination of all forms of racial discrimination. Therefore, information on the number of complaints related to this question and the manner of dealing with them in units of PS is collected and analysed. Furthermore, questions related to the protection of civil and political rights are included in trainings in all types of schools of the PS and specialist trainings held for the prison system personnel dealing with complaints, requests and petitions of prisoners.

284. With regard to cases of representatives of the Roma community detained in prisons in the years 2005-2007, complaints were filed which related to their improper treatment by prison administration on grounds of their being members of this community: in 2005, 6 such communications were recorded, in 2006 - 3, and in 2007 - 5. The number of such communications is small and is a fraction of a percentage value of all complaints submitted by prisoners of correctional facilities and detention centres. Thorough explanatory proceedings related to those cases in the years 2005 - 2007 did not confirm but one of the allegations.

### **Recommendation 20 of the Human Rights Committee**

#### **Use of minority languages before public administration authorities**

285. In 2008 Polish Parliament completed work on a law on the ratification of the *European Charter for Regional or Minority Languages*. At present the Charter awaits ratification by the President of the Republic of Poland.

286. In 2005 the Polish Sejm adopted a *Law on national and ethnic minorities and on a regional language*. The Law includes a catalogue of rights of national and ethnic minorities, prohibition of discrimination on grounds of nationality and ethnic origin (the right to a free use of a minority language in private life and publicly and to disseminate and exchange information in the minority language) and a prohibition of assimilation. Moreover, the Law introduced amendments to the *Law on radio and television broadcasting* by defining tasks of public radio and television with respect to national and ethnic minorities.

287. A separate chapter of the *Law on national and ethnic minorities (...)*, dedicated to education and culture, contains regulations on learning of and in a native minority language and principles of financing cultural activity of national and ethnic minorities.

288. Pursuant to the provisions of the *Law on education*, the Minister for education is obliged to take measures with a view to disseminating knowledge about the history, culture, language and religious traditions of national and ethnic minorities and communities that use a regional language.

289. The *Law on national and ethnic minorities (...)* introduces for the first time in Polish legislation definitions of a national and ethnic minority. These definitions determine the criteria to be met by a group of Polish citizens to be regarded as a national or ethnic minority. These criteria are met by the following national minorities: Belarussian, Czech, Lithuanian, German,

Armenian, Russian, Slovak, Ukrainian and Jewish. Ethnic minorities are the following: Karaim, Lemka, Roma and Tatar. Furthermore, a regional language is protected within the territory of the Republic of Poland; pursuant to the aforementioned Law, it is the Kashubian language.

290. With regard to the question raised in Recommendation 20 on introducing a legal provision concerning the right of people who belong to national and ethnic minorities to be regarded as a minority it must be observed that pursuant to the provisions of the *Law on national and ethnic minorities (...)*. “Each person belonging to a minority has the right to freely decide on being treated as a member of a minority or as a person who is not a member of a minority, and this choice or exercise of the attendant rights does not entail any negative consequences”. “No one may be obliged, other than by law, to reveal information on their own membership in a minority or to reveal their origin, minority language or religion” and “no one may be obliged to prove their membership in a particular minority”. The Law makes it clear that “members of minorities may exercise the rights and freedoms arising from the principles contained in this law individually and together with other members of their minority.”

291. Moreover, the Law introduces into the Polish legal order principles concerning the use of minority languages in offices. Pursuant to the Law in question, a minority language may be used as an auxiliary language in contacts with commune authorities. This right may be exercised by residents of communes where the number of inhabitants who belong to a minority is not smaller than 20% of the total number of commune residents and who have been entered into the Official Register of Communes where an auxiliary language is used. The 20% threshold was a compromise solution adopted in the course of work on the legislation in the Sejm.

292. The possibility of using an auxiliary language means that people who are members of a minority have the right to apply to commune authorities in an auxiliary language in writing or orally (an application may be filed in an auxiliary language) as well as to be offered replies, when specifically requested, also in an auxiliary language, in writing or orally; the appeals procedure takes place solely in the official language.

293. An entry into the register is made by the minister competent for religious communities and national and ethnic minorities, following a request by the commune council. The Law defines the procedure to be followed in order for the commune to be entered into the register. The minister’s refusal to enter a commune into the register can be appealed against by the commune council to an administrative court. The Law lays down that a commune may be struck out of the register exclusively at the request of the commune council.

294. The Law introduced a mechanism which is to encourage local government personnel to learn auxiliary languages and as a result ensure a high quality of services provided to people who belong to minorities in their mother tongues. And so, in a commune entered into the register, personnel employed in the commune office, in commune auxiliary units and in commune units and budget sector, may receive a bonus on account of knowing an auxiliary language.

295. The Official Register of Communes where an auxiliary language is used began to operate at the moment of entry of the first commune, i.e. on 25 January 2006. The first commune to be entered into the register was Radłów in Opolskie Voivodeship, where German is an auxiliary



language. As of 25 March 2008 the register includes 20 communes, including 16 from Opolskie Province, where German is an auxiliary language, two from Podlaskie Voivodeship, in one of which Lithuanian is an auxiliary language, and Belarussian in the other, and two from Pomorskie Voivodeship, where the Kashubian language is an auxiliary language. The first applications submitted by communes for registration in the Official Register of Communes required supplementary information and corrections; currently, thanks to the experience gained, most of the applications are correct and an entry to the register takes no more than ca. two weeks.

296. Furthermore, the *Law on national and ethnic minorities (...)* envisages a possibility of using traditional names of villages and towns and physiographic objects and street names in a minority language, next to official names. An additional name of a village or town or a physiographic object in a minority language may be established pursuant to a request of the commune council, provided the number of residents of a commune who belong to a minority is not less than 20% of the total population of this commune or when the establishment of an additional name in a minority language was supported by over a half of the residents of a given town or village taking part in public consultations (so far, as of 20 February 2008, 3 communes have used the opportunity to introduce additional proper names). The Law likewise guarantees the right to an official transcription of first and second names in accordance with the rules of the native language of a given minority.

#### **Recommendation 7 of the Committee**

297. In response to Recommendation 7 of the Committee, plans are made to extend the mandate of the Inter-Ministerial Team for ETPC with opinions accepted by the Committee on the strength of the *First Optional Protocol to the Covenant* (Poland undertook such an obligation as part of the procedure of the General Periodic Review of the Human Rights Council).

The Team was set up pursuant to an ordinance of the President of CM in July 2007. The Team's objectives include the adoption of Government's positions on the communications and judgements issued by the Court, analysis of drafts of major legal acts with the *Convention on the Protection of Human Rights and Fundamental Freedoms*, as well as monitoring the implementation state of the Programme of Government Action concerning the execution of ETPC judgements related to Poland and presentation of appropriate suggestions. In order to carry out systematic action aiming at enhancing the efficacy of measures meant to improve human rights legislation and practices and to increase the efficacy of the execution of the Court's judgements, the CM adopted also (in May 2007) the Programme of Government Action concerning the execution of ETPC judgements related to Poland.

The Team includes, e.g. the Plenipotentiary of the Minister of Foreign affairs for proceedings in ETPC, his deputy and experts appointed by all ministries.

The planned extension of competence of the Team will contribute to a faster implementation of opinions expressed by the Committee on the strength of the *First Optional Protocol to the Covenant*.

### **Recommendation 21 of the Committee**

298. Over the past 10 years MJ has developed a practice of issuing publications, upon the consideration by treaty bodies (Committees) of Polish reports on the implementation of human rights conventions (*Covenant, International convention on the elimination of all forms of racial discrimination and the Convention on the prohibition of the use of torture and other cruel, inhuman or degrading treatment or punishment*); the publication contains the following:

- Information on the reporting obligation
- Texts of Reports
- Lists of issues compiled by the Committees
- Answers provided by the Polish Government
- Summary records from meetings of the Committees
- Concluding Observations of the Committees

Such publications were widely disseminated: handed over to university and public libraries involved in human rights, NGOs, institutions providing assistance, including legal counselling, to facilities for prisoners, for aliens, officers of the Police and BG, central offices, psychiatric hospitals. They are also forwarded to individuals and institutions at their request.

In addition, the publications are available at MJ websites, along with updated information on instruments of human rights protection, including individual communications.

This Report will be disseminated analogously.

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