



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

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## Committee against Torture

### Concluding observations on the fourth periodic report of Poland

#### Addendum

#### Information received from Poland on follow-up to the concluding observations \*

[23 November 2012]

#### Reply to the recommendation in paragraph 9 of the conclusions and recommendations (CAT/C/POL/CO/4)

1. The Government has no information of cases when individuals sentenced under article 387 of the Criminal Procedure Code claimed that the decision about voluntary submission to penalty was coerced by measures set out in the Convention against Torture. In particular no such complaints were filed to the European Court of Human Rights; such a claim does not appear in the jurisprudence of appellate courts and of the Supreme Court. Nor were such irregularities reported in any of the scientific studies quoted below or in widely accessible legal literature.
2. In the period covered by the report, from 1 September 1998 until 31 December 2004 motions under article 387 of the Code of Criminal Procedure (voluntary submission to penalty during a trial) were filed by 224,334 defendants. During this period a total of 2,753,235 criminal cases were filed with common courts. For comparison's sake, in 2011 the number of criminal cases filed with common courts was 483,029, while motions about voluntary submission to penalty during a trial were filed in 41,711 cases.
3. It follows from studies conducted in 2005 by the Institute of Justice in district courts across Poland (Dr M. Jankowski, Dr A. Ważny, *Instytucja dobrowolnego poddania się karze (art. 387 k.p.k.) i skazania bez rozprawy (art. 335 k.p.k.) w świetle praktyki ogólnopolskiej* [The practice of voluntary submission to penalty (Art. 387 of the CCP) and conviction without a trial (Art. 335 of the CCP). Nationwide study results], Warsaw, 2005, p. 22) that by far the most numerous cases where article 387 of the Code of Criminal Procedure was applied concerned driving under the influence (21.5%). This was followed

\* The present document is being issued without formal editing.



by fraud (10.6%), often consisting in misrepresentations during purchases on credit (of stereophonic equipment, etc.) and subsequently by forced entry burglary, abuse of a family member, theft, failure to provide alimony, and perjury.

4. Over 90 per cent of motions under article 387 of the Code of Criminal Procedure were filed by defendants who were not under temporary detention. Slightly over 4 per cent were filed by defendants under custody and in the case of nearly 5 per cent of applicants, while temporary detention was used, it was lifted at the time of filing the application. Research shows that motions are filed predominantly by persons remaining at liberty, who are in principle not in danger of torture, cruel or degrading treatment or punishment. The authors of the study conclude as follows: “When applying the measures discussed – beneficial not only for the defendant (suspect), but also for the other parties to the proceedings – judicial authorities comply with the fundamental principles of a criminal trial, leading to finalising shortened proceedings solely by means of a non-coerced representation of the defendant him- or herself, admitting the commission of the offence in an unequivocal manner, with due consideration to the position of the public prosecutor and the victim of a crime” (Dr M. Jankowski, Dr A. Ważny, *Instytucja dobrowolnego poddania się karze (Art. 387 k.p.k.) i skazania bez rozprawy (Art. 335 k.p.k.) w świetle praktyki ogólnopolskiej* [The practice of voluntary submission to penalty (Art. 387 of the CCP) and conviction without a trial (Art. 335 of the CCP). Nationwide study results], Warszawa 2005, p. 34). Defendants most often applied for less strict penalties whose execution is usually suspended. Only 4 per cent of defendants filed for the penalty of imprisonment without its conditional suspension. The penalty of conditionally suspended restriction of liberty was far more popular, as it was applied for by slightly more than 86 per cent defendants. The penalty of restriction of liberty was filed for by some 7 per cent of defendants and less than 10 per cent of defendants applied for the imposition of a fine. Research conducted in 1999 indicates no cases when the defendant would like for example to receive a penalty of five years of imprisonment fearing that during a regular trial the court would sentence him or her to seven years (Dr M. Jankowski, *Przepisy art. 335 i 387 nowego Kodeksu postępowania karnego (wniosek o skazanie bez rozprawy i dobrowolne poddanie się karze) w praktyce sądowej i prokuratorskiej* [Provisions of Art. 335 and 387 of the new Code of Criminal Procedure (motion for a sentence without a trial and voluntary submission to penalty) in judicial and prosecutorial practice], Warszawa 2000, p. 13). Furthermore, research conducted in 2011 (concerning the period following the one covered by the Report, but of potential significance for the evaluation of the strictness of penalties administered after the application of voluntary submission to penalty and without its application) shows that there is no statistically significant difference in the administration of punishment in either category of cases (Dr M. Jankowski, *Wpływ stosowania instytucji z art. 335 i 387 k.p.k. na wymiar kary* [Impact of the application of measures under Art. 335 and 387 of the Code of Criminal Procedure on the scope of penalty], Warszawa 2011, pp. 16 and 19). The above research demonstrates, then, that defendants do not file applications for voluntary submission to penalty motivated by the need to obtain a less strict sentence than the one they would be sentenced to during a regular trial. This excludes the element of “indirect pressure” exerted on the defendant (falsely admitting to committing an offence in return for a more lenient sentence). The exclusive benefit for the defendant is the acceleration of proceedings, which in the case of a consensual conclusion finish during the first hearing in the case in 95 per cent of cases. The above statistics do not indicate that any pressure was used with respect to the persons filing motions under article 387 of the Code of Criminal Procedure.

**Reply to the recommendation in paragraph 19 of the conclusions and recommendations**

5. Below I enclose results of studies conducted among soldiers after 2008, statistics on identified perpetrators of offences against rules of conduct with subordinates between 2011-2012 and the number of communications concerning such conduct, filed to the Office of Complaints of the Ministry of National Defence and to the military help line.

6. The results of studies by the General Satisfaction Poll carried out in the spring of 2009 among last-year conscription soldiers demonstrated that interpersonal relations were elements of military service that were highly appreciated by the soldiers. Close to 90 per cent of the soldiers polled anonymously defined their relations with the fellow soldiers of their subunits as good or very good. The vast majority of the soldiers polled (67%) saw the relations with the subunit staff as also very good or good. In 2009, 54 per cent soldiers believed that there was no "wave" in their subunits. The percentage of soldiers approving of the "wave" phenomenon was low (17%).

7. In 2010 another study was conducted among soldiers following the suspension of drafting soldiers for compulsory military service. The study did not indicate the incidence of the "wave" phenomenon among the soldiers polled. 70 per cent of the soldiers polled gave a positive assessment of interpersonal relations at the place of military service, while 69 per cent of professional privates expressed satisfaction with their relations with immediate superiors. Professional privates most often indicated such faults of interpersonal relations as a big distance in contacts with non-commissioned officers and officers and instances of being ordered to carry out cleaning jobs that were not part of official duties.

8. According to the results of the most recent study of the Military Office for Social Studies of June 2012 (*Zachowania dysfunkcyjne wśród żołnierzy zawodowych* [Dysfunctional conduct of professional soldiers]), 87 per cent of soldiers expressed satisfaction with interpersonal relations at the place of military service and only 5 per cent of the soldiers polled expressed their dissatisfaction with them. According to the respondents, the most frequent infringements of standards of social conduct in interpersonal relations were the use of dirty language and verbal abuse.

9. Furthermore, the statistics on offences against rules of conduct with subordinates show a continued downward trend in the number of this type of offences. The limitation of the number of perpetrators of these offences is one of the effects of the Polish army becoming professional.

10. In 2011 there were 17 perpetrators of offences against rules of conduct with subordinates, junior soldiers or soldiers with a shorter duration of military service, with respect to whom military prosecutions authorities concluded pre-trial proceedings. Offences in this category consisted in infringements of bodily inviolability (13 perpetrators) and physical or mental harassment (4). Most of the offences were committed by non-commissioned officers (7), less often by officers (5), privates (3), or non-professional soldiers (2).

11. Between January and August 2012 criminal proceedings were completed against 4 perpetrators of offences against rules of conduct with subordinates (2 officers and 2 non-commissioned officers). The offences consisted in humiliating or insulting subordinates (3 perpetrators), and in one case in an infringement of bodily inviolability.

12. As was aptly pointed out by the Committee against Torture, no complaints or applications related to harassment in the army as such were filed to the Office of Complaints of the Ministry of National Defence between 2007-2010. After the Polish army became professional, in 2011 the Office received 3 complaints of soldiers concerning

broadly understood “improper interpersonal relations” in a military unit, while between January and September 2012 such communications were submitted by 5 soldiers.

13. Between 1 January 2011 and 20 September 2012 the military help line received 38 reports on cases of irregularities in interpersonal relations. As a result of follow-up explanatory proceedings, 12 reports were confirmed, none of which qualified as offences.

14. I wish to highlight that the statistics of the fourth (CAT/C/67/Add.5) and combined fifth and sixth periodic reports (CAT/C/POL/5-6) on the implementation of the provisions of the Convention against Torture submitted to the Committee and the data from the reply of 18 June 2008 to the recommendation in paragraph 19 of the Committee’s conclusions and recommendations related to offences and other serious incidents connected with the “wave” phenomenon as an informal hierarchy and custom among conscription soldiers. In 2010, as the Polish army became fully professional, the conscription of soldiers to compulsory military service was suspended and therefore the statistics and results of studies for the years 2011-2012 mainly concern professional soldiers and relate to incidents within the category of interpersonal relations, embracing a wider spectrum of problems than the “wave” phenomenon (e.g. mobbing). As a consequence, data for the years 2011-2012 cannot be compared and judged against data concerning the “wave” phenomenon for the period when the army was based on conscription soldiers.

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