



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

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**Written replies by the Government of Poland to the list of issues
(CAT/C/POL/Q/4/Rev. 1) to be taken up in connection with the consideration
of the fourth periodic report of Poland (CAT/C/67/Add.5)**

Addendum^{*}

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

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ARTICLE 1

Question 1

Taking into account the Committee's previous recommendations in the context of the second and third periodic reports of Poland, please explain the reasons why the definition of torture contained in article 1 of the Convention has not yet been incorporated into the Polish Penal Code. Are there any plans to incorporate such provision into domestic legislation?

1. As indicated in Article 1 "Definition of Torture" of the IV Periodic Report of the Republic of Poland on the implementation of the Convention *against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, hereinafter referred to as the Report, the Constitution of the Republic of Poland of April 2, 1997 unambiguously determined the status of international law in the Polish legal system. The Convention *against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* ratified by Poland, upon its promulgation in the Journal of Laws of the Republic of Poland became a part of the domestic legal order pursuant to the provision of Article 91 section 1 of the Constitution.
2. This means that the definition of torture contained in the Convention is functional in Polish law and constitutes the grounds for penalizing the acts indicated in it.
3. The fact that such acts are penalized under Polish law is borne out by the contents of Article 4 of the Report "Legal regulations for the penalization of acts of torture".
4. In light of the above, the introduction of the definition of torture into Article 115 of the Penal Code, containing "Definitions of statutory terms", would be an "empty" legislative measure since it would merely reiterate the already binding legal norm in another legal act.
5. In turn, the adoption in its full version of the definition of torture as attributes of one crime would infringe the adopted principles of the systematics of criminal law, following which criminal action is typified according to the kinds of infringement of the individual's rights protected by law.
6. The definition of torture is very comprehensive and comprises actions that meet the attributes of many crimes, which on account of the kind of the rights infringed are situated in different titles of the Penal Code (as was indicated in Article 4 of the Report).
7. Nevertheless, it should be pointed out that the draft amendments to the Penal Code, currently after inter-departmental consultations, attempt at homogenizing provisions related to tormenting particular categories of people.
8. On the basis of the currently binding Article 207 of the Penal Code (tormenting a person in a state of dependence) and Article 247 of the Penal Code (tormenting a person deprived of liberty) the draft amendment envisages the creation of a new type of crime under Article 191a penalizing any and all situations of physical and mental torment of another person and on the basis of the proposed § 3 of Article 191a, if the perpetrator tormented another person with particular cruelty then the act would carry the penalty of deprivation of liberty from 2 to 15 years.

9. The term “with particular cruelty” has already been interpreted in judicial and prosecutorial practice as comprising also all attributes of possible “torture or inhuman treatment”, which can also entail mental abuse and need not necessarily manifest itself in the infliction of physical pain on the victim.

10. The contents of draft Article 191a is as follows:

“Article 191a. § 1. Whoever torments physically or mentally another person, shall be subject to the penalty of deprivation of liberty from 6 months to 8 years.

§ 2. Whoever torments physically or mentally a juvenile or a person vulnerable because of his/her physical or mental condition, shall be subject to the penalty of deprivation of liberty from one year to 10 years.

§ 3. If as a consequence of the crime under § 1 or 2 above the injured person attempts to take his/her life, the perpetrator shall be subject to the penalty of deprivation of liberty from 2 to 15 years.

§ 4. The perpetrator of the crime under § 1 or 2 above who acts with particular cruelty shall also be subject to the penalty as defined in § 3.

11. The draft amendments to the Penal Code likewise envisage certain changes within another provision concerning torture – it is suggested that the upper limit of statutory penalization for the act defined in Article 189 § 2 of the Penal Code (unlawful deprivation of liberty coupled with particular torment) shall be raised to 12 years.

Question 2

Please provide updated information on the “work currently under way on the implementation into the Polish Penal Code and the Code of Criminal Procedure of the Rome Statute of the International Criminal Court, which entered into force on 1 July 2002”. Present any draft or relevant documentation currently under consideration. (State party report, para. 8)

12. Polish regulations concerning criminalisation of the offences covered by the Rome Statute and implementation of its provisions on co-operation with the International Criminal Court are the following:

Substantive criminal law

13. The Criminal Code includes Chapter XVI specifically devoted to crimes against peace, crimes against humanity and war crimes. The translation of the chapter is presented below.

Chapter XVI. Offences against peace, and humanity, and war crimes

Article 117. § 1. Whoever initiates or wages a war of aggression shall be subject to the penalty of the deprivation of liberty for a minimum term of 12 years, the penalty of deprivation of liberty for 25 years or the penalty of deprivation of liberty for life.

§ 2. Whoever makes preparation to commit the offence specified under § 1, shall be subject to the penalty of the deprivation of liberty for a minimum term of 3 years.

§ 3. Whoever publicly incites to initiate a war of aggression shall be subject to the penalty of the deprivation of liberty for a term of between 3 months and 5 years.

Article 118. § 1. Whoever, acting with an intent to destroy in full or in part, any ethnic, racial, political or religious group, or a group with a different perspective on life, commits homicide or causes a serious detriment to the health of a person belonging to such a group, shall be subject to the penalty of the deprivation of liberty for a minimum term of 12 years, the penalty of deprivation of liberty for 25 years or the penalty of deprivation of liberty for life.

§ 2. Whoever, with the intent specified under § 1, creates, for persons belonging to such a group, living conditions threatening its biological destruction, applies means aimed at preventing births within this group, or forcibly removes children from the persons constituting it, shall be subject to the penalty of the deprivation of liberty for a minimum term of 5 years or the penalty of deprivation of liberty for 25 years.

§ 3. Whoever makes preparation to commit the offence specified under § 1 or 2, shall be subject to the penalty of the deprivation of liberty for a minimum term of 3 years.

Article 119. § 1. Whoever uses violence or makes unlawful threat towards a group of person or a particular individual because of their national, ethnic, political or religious affiliation, or because of their lack of religious beliefs, shall be subject to the penalty of the deprivation of liberty for a term of between 3 months and 5 years.

§ 2. The same punishment shall be imposed on anyone, who incites commission of the offence specified under § 1.

Article 120. Whoever uses a means of mass extermination prohibited by international law, shall be subject to the penalty of the deprivation of liberty for a minimum term of 10 years, the penalty of deprivation of liberty for 25 years or the penalty of deprivation of liberty for life.

Article 121. § 1. Whoever, violating the prohibition contained in international law or in internal law, manufactures, amasses, purchases, trades, stores, carries or dispatches the means of mass extermination or means of warfare, or undertakes research aimed at the manufacture or usage of such means, shall be subject to the penalty of the deprivation of liberty for a term of between 1 and 10 years.

§ 2. The same punishment shall be imposed on anyone, who allows the commission of the act specified under § 1.

Article 122. § 1. Whoever, in the course of warfare, attack an undefended locality or a facility, hospital zone or uses any other means of warfare prohibited by international law, shall be subject to the penalty of the deprivation of liberty for a minimum term of 5 years, or the penalty of deprivation of liberty for 25 years.

§ 2. The same punishment shall be imposed on anyone, who, in the course of warfare, uses a means of warfare prohibited by international law.

Article 123. § 1. Whoever, in violation of international law, commits the homicide of

- 1) persons who surrendered, laid down their arms or lacked any means of defence,*

- 2) *the wounded, sick, shipwrecked persons, medical personnel or clergy,*
- 3) *prisoners of war,*
- 4) *civilians in an occupied area, annexed or under warfare, or other persons who are protected by international law during warfare, shall be subject to the penalty of the deprivation of liberty for a minimum term of 12 years, the penalty of deprivation of liberty for 25 years or the penalty of deprivation of liberty for life.*

§ 2. Whoever, in violation of international law, causes the persons specified under § 1 to suffer serious detriment to health, subjects such persons to torture, cruel or inhumane treatment, makes them even with their consent the objects of cognitive experiments, , uses their presence to protect a certain area or facility, or armed units from warfare, or keeps such persons as hostages shall be subject to the penalty of the deprivation of liberty for a minimum term of 5 years or the penalty of deprivation of liberty for 25 years

Article 124. Whoever, in violation of international law, forces the persons specified under Article 123 § 1 to serve in enemy armed forces, resettles them, uses corporal punishment, deprives them of liberty or of the right to independent and impartial judicial proceedings, or restricts their right to defence in criminal proceedings, shall be subject to the penalty of the deprivation of liberty for a minimum term of 3 years.

Article 125. § 1. Whoever, in an area occupied, taken over or under warfare, in violation of international law, destroys, damages or removes items of cultural heritage shall be subject to the penalty of the deprivation of liberty for a term of between 1 and 10 years.

§ 2. If the act pertains to an item of particular importance to cultural heritage, the perpetrator shall be subject to the penalty of the deprivation of liberty for a minimum term of 3 years.

Article 126. § 1. Whoever, in the course of warfare, illegally uses the emblem of the Red Cross or Red Crescent, shall be subject to the penalty of the deprivation of liberty for a minimum term of 3 years.

§ 2. The same punishment shall be imposed on anyone, who, in the course of warfare, illegally uses protective emblems for items of cultural heritage or other emblems protected under international law, or uses a national flag or the military markings of the enemy, neutral country or an international organisation or commission.

Chapter XI. Statutes of limitation

Article 101. §1. The amenability to a penalty for an offence ceases, if from the time of the commission thereof the following number of years have elapsed:

- 1) *30 - when the act constitutes a crime of homicide;*
- 2) *20 - when the act constitutes other crime*
- 3) *10 - when the act constitutes a misdemeanour subject to the penalty of deprivation of liberty exceeding 3 years;*

- 4) 5 - when the act is subject to the penalty of deprivation of liberty which not exceeding 3 years;
- 5) 3 - when the act is subject to the penalty of restriction of liberty or a fine.

Article 105. § 1. The provisions of Articles 101 through 103 shall not be applied to crimes against peace, crimes against humanity or war crimes.

Procedural criminal law

14. On November 23, 2004 entered into force a new law concerning co-operation with the International Criminal Court. The new regulations constitute a part of the Code of Criminal Procedure (Chapter 66a. *Cooperation with the International Criminal Court*). The chapter, principally, contains the issues which are specific for cooperation with the ICC i.e. issues which have not been so far regulated in the Polish law (e.g. the surrender institution), the issues in relation to which the Statute leaves States – Parties a certain degree of freedom as to the way of regulating them, or the regulations that enforce the Statute's provisions, e.g. the appointment of relevant authorities to execute the Court's requests for legal assistance. Apart from provisions of Chapter 66a, to co-operation with the ICC applied should be provisions of the Rome Statute - directly, and provisions of the Code of Criminal Provisions dealing with co-operation with states - respectively.

15. The translation of Chapter 66a of the Code of Criminal Procedure is presented below:

Chapter 66a. Co-operation with the International Criminal Court

Art. 611g. § 1. A request for co-operation of the International Criminal Court, hereinafter referred to as "the Court", depending on the stage of the proceedings, is executed by a competent court or prosecutor through the Minister of Justice.

§ 2. The provision of § 1 shall apply, respectively, to a request for judicial assistance addressed to the Court by a court or a prosecutor.

Art. 611h. § 1. In the event of a request of the Court for surrender of a person to the Court, as defined in the provisions of the Statute, prior to the first examination, the person whom the request concerns should be advised of his/her rights, as specified in the Statute, and of the possibility of raising an objection that a penal proceedings against him/her with regard to the conduct referred to in the request for surrender has been validly completed.

§ 2. Whenever circumstances occur which justify the objection referred to in § 1, a court shall notify the Minister of Justice thereof, and the latter may postpone the execution of a request for surrender.

§ 3. When adjudicating in a matter concerning the admissibility of surrender, the provisions of Art. 604 shall not apply.

§ 4. If, after a court's positive decision on admissibility of surrender of a person to the Court, the Minister of Justice postpones the execution of the request for the surrender due to the penal proceedings pending in the Republic of Poland or due to the fact that such person is serving a sentence of imprisonment for another offence, the person whom

the request concerns may be temporarily surrendered to the Court subject to the terms and conditions established in consultation with the Court.

§ 5. The consultation with the Court, as referred to in § 4, shall be carried out by the Minister of Justice.

Art. 611i. § 1. In the event of unscheduled landing in the territory of the Republic of Poland of a person who is being transported to the Court by air, the Minister of Justice may demand that the Court submits a request for transit.

§ 2. If, within 96 hours from unscheduled landing, the request referred to in § 1 is not received, the transported person shall be released.

Art. 611j. § 1. At the request of the Court for provisional arrest or arrest and surrender, a court shall order pre-trial detention.

§ 2. The pre-trial detention referred to in § 1 may be reversed or replaced with a more lenient preventive measure in the cases specified in the Statute. The provisions of Arts. 257-259 shall not apply.

§ 3. In the proceedings regarding the reversal or replacement of the preventive measure, a court or a prosecutor shall take into account the standpoint expressed by the Court.

Art. 611k. The Minister of Justice, prior to the consideration of the Court's request for a consent to proceed against, punish or detain the surrendered person for an offence committed prior to the surrender, other than the offence for which the person has been surrendered to the Court, may request that the Court provides additional information as well as a report containing the statement of the surrendered person regarding the offence specified in the Court's request.

Art. 611l. The Minister of Justice may grant his/her consent to the surrender to the Court of a person who has been extradited or surrendered to another state.

Art. 611m. If granting of judicial assistance provided for in the Statute, to the extent or in a manner specified in the Court's request, is in contradiction with the principles of legal order in the Republic of Poland, a court or a prosecutor shall not take a decision regarding the request, but shall submit the files of the case to the Minister of Justice who consults with the Court in order to resolve the matter.

Art. 611n. If a request of the Court for judicial assistance concerns measures other than those listed in the Statute, and its execution despite consultations with the Court is still prohibited by law, and such judicial assistance may not be granted subject to specified conditions, at a later date or in any other manner, a court or a prosecutor shall deny the Court's request.

Art. 611o. § 1. If a request of the Court concerns access to documents or other evidence containing information the disclosure of which could threaten the security of the Republic of Poland, a court or a prosecutor shall not take a decision regarding such request, but shall submit the files of the case to the Minister of Justice who, in co-operation with the competent body, consults with the Court in order to resolve the matter.

§ 2. If, despite the consultation with the Court, the granting of judicial assistance still threatens the security of the Republic of Poland, a court or a prosecutor shall deny the Court's request.

Art. 611p. If a request of the Court concerns provision of a document or other evidence made available to a relevant body or institution of the Republic of Poland by another state or international organization subject to an obligation of maintaining information contained therein as confidential, the provision shall take place only upon the consent of the originator of such document or evidence.

Art. 611r. § 1. At the request of the Court, in the course of the execution of a request for co-operation, the Prosecutor of the Court and other persons authorized by the Court shall be present during the performance of actions covered by the request.

§ 2. The persons referred to in § 1 may request that certain questions are asked and may record the course of the procedural actions for the needs of the proceedings pending before the Court.

§ 3. The Prosecutor of the Court shall be entitled to carry out procedural activities in the territory of the Republic of Poland subject to the terms and conditions specified in the Statute.

Art. 611s. The consultation with the Court, as referred to in the Statute, other than those specified herein, shall be carried out by the Minister of Justice.

ARTICLE 2

Question 3

Please provide further information on the steps taken by the State party to ensure the rights of persons in police custody from the very outset of detention, including prompt access to defence counsel, medical examination, and contact with family members, as well as any restrictions that may be imposed on these rights and their justification.

16. All measures undertaken by the Police are regulated and based on the provisions of law. Both the Act on the Police and its executive regulations precisely specify the method and actual foundations of measures undertaken by police officers.

17. While performing the arrest of a person the police officer is obliged to observe this person's rights specified in the Constitution of the Republic of Poland and in the Code of Criminal Procedure. However, it should be noted that oftentimes implementation of specific rights results from expression of will, desire of the detainee to enforce his rights. Therefore, some regulations in this matter have a facultative nature. Therefore we can speak of certain forms of "restrictions", however resulting from among other time, method and scope of implementation of a given right. This is illustrated by interpretation of rights of the detainee conducted on the basis of the Code of Criminal Procedure and the Act on the Police. According to the provisions of the Code of Criminal Procedure, the detainee has the right to:

a) Be immediately informed of the reasons for his detention and his rights and his explanations shall be heard. During detention or directly thereafter, the person should be informed about the reason of detention, however not prior thereto. Enforcement of this right can take place both verbally and written form (the legislator does not specify this), the detainee should know the motives of the detaining authority.

b) Contact a lawyer

The detaining authority should immediately inform the detainee about this right and facilitate contact of the detainee with the lawyer, for over the phone or via facsimile. This person should also be allowed to talk to a lawyer in person. The police officer detaining a person may reserve the right to be present when such conversation takes place.

c) Demand for the relative or indicated person, works place, school to be notified

In case of detaining a crime suspect – notification of person other than a relative is not a strict obligation. The workplace of the detainee is always informed in case when his absence could cause serious disruption to operation of this facility.

d) Lodge an interlocutory appeal with the Court with appropriate jurisdiction with respect to the legitimacy, legality of detention, as well as the way in which this was performed by the Police.

An interlocutory appeal shall be lodged immediately with the district court with jurisdiction over the place of detainment or conducting proceeding by the authority, which performed the arrest, within 7 days since it is applied. It should be lodged in writing, and the authority submitting it to the court should enclose documents justifying the use of this mean of coercion.

e) Lodge an interlocutory appeal against the taken actions with the Prosecutor's Office with appropriate jurisdiction.

A prosecution inspection shall take place only when the detainee – who does not lodge any interlocutory appeal with the court – shall appeal against the method of detainment performed by the Police. In case that such an appeal is lodged before the court, where the detainee shall prove both groundlessness of application of the mean, and inconsistency of this action with the law, the court shall comprehensively evaluate this detention.

f) Receive medical aid

Detainee shall be subjected to a medical examination in the following cases:

- (i) Upon request,
- (ii) When he lost consciousness or has visible bodily injuries,
- (iii) When he states that he is under continuous or periodic treatment, and disruption of such treatment may endanger his health,
- (iv) When Police information or the circumstances accompanying detention imply that the person is suffering from an infectious disease,
- (v) When the detainee is pregnant.

g) Receive a copy of the record of the detention

The copy of the record shall be served on the arrested person. A record shall include: the name, surname and position of the person conducting the action, the name and surname of the detainee, and in the event that identity of the detainee could not be established, a description of the said person, and the day, hour, place and reason for the detention and act for which he is

suspected. The statements by the detainee should also be recorded and the fact noted that he has been reminded of his rights.

18. In general the factual grounds of detention result from an event or circumstances which justify the use of means of direct coercion anticipated by the law. Detention of a person can take place only if that person has committed a crime or a petty offence or when the circumstances imply that that person poses a viable threat to public order in form of disturbance of the peace.

19. The following are among factual grounds of detention of a person:

- a) Good reason to suppose that this person committed a crime,
- b) It is feared that such person may escape or go into hiding or shall destroy the evidence of his offence,
- c) This person's identity could not be established,
- d) There are grounds to subject this person to summary proceeding in accordance with the Petty Offences Procedure Code.

20. Rights of a detainee are not subject to restrictions pursuant to other decisions and legal regulations. None of the regulations in force states that the police officer detaining a person decides about the scope of that person's rights.

Question 4

Please, provide additional information on the legal aid system for persons in police custody, particularly for juveniles, foreigners and handicapped persons, including access to a lawyer and the right to speak to a lawyer in private.

21. The regulations currently in force (the Code of Criminal Procedure) precisely specify cases and method of using services of defence counsel. According to Article 618 § 1 item 11 of the Code of Criminal Procedure, in a criminal trial the State Treasury incurs the expenses for among other legal aid granted by public defenders unpaid by the parties. Meanwhile pursuant to Article 632 item 2 of the Code of Criminal Procedure in case of acquittal of a defendant or discontinuation of the proceeding in cases of public prosecution, the costs shall be incurred by the State Treasury, except of the attorney fees for representation as a defence counsel or attorney of choice. However, in justified cases, the court can award remuneration of one defence attorney entirely or partially. Meanwhile in cases of private prosecution (concluded with an acquittal of the defendant or discontinuation of the proceeding) the parties may agree upon incurrence of trial costs (including charges for private aid).

22. Works on the governmental draft law on access to free legal aid provided to natural persons by the state are currently in progress. The designed regulations enable extension of access to private aid for the poorest and shall cause decrease of expenses connected with organization of the legal aid provision system (please refer to the response to question nr 5).

23. As far as detention of juvenile perpetrators of punishable offences is concerned, this case is regulated by the Act of the 26th of October 1982 on proceedings involving juveniles. According to this act the detained juvenile shall be immediately informed of the cause of detention and the right to lodge an interlocutory appeal against actions violating his rights and shall be instructed about his rights and responsibilities. The juvenile perpetrator of a punishable

offence has the right to a defence counsel, to provide explanation in writing in course of preparatory proceedings, if he wishes to describe the event in writing rather than to talk about it, to refuse to provide explanations or to refuse to answer questions, to demand examination with participation of an appointed defence counsel, whose absence shall not prevent the examination from being conducted.

24. The Act on proceedings involving juveniles contains a record about the possibility to detain a juvenile by the Police, and subsequently his placement in an emergency youth centre. Detention cannot exceed 72 hours. A juvenile staying in an emergency youth centre has the right to visitation of a defence counsel, to lodge requests, motions and complaints with the manager of the youth centre.

25. It should be added that Article 101 § 3b of the Aliens Act of the 13th of June 2003 states that the Code of Criminal Procedure shall apply to detention of an alien, in the scope not regulated by the Act on Aliens. Therefore remarks concerning use of legal aid by a person detained by the Police also refer to aliens. Meanwhile, access to a physician of choice is possible, pursuant to § 26 of the Annex to the Ordinance of the Minister of Interior and Administration of the 26th of August 2004 on conditions of guarded centres and detentions awaiting deportation and organizational and ordinal regulations for stay of aliens in guarded centres and detentions awaiting deportation, upon consent of the manager of the centre manager or the officer in charge of the detention.

Question 5

Has the draft Act on access to cost-free legal assistance, which was approved by the previous Government, been submitted to the Parliament (Sejm)? Please provide information on the human and financial resources currently allocated to the public legal aid service as well as available information about the last 5 years.

26. The draft law on access to free legal aid provided to natural persons by the state was submitted to the Sejm of the Republic of Poland in October 2005.

27. Given the fact that the draft law generated much controversy, in particular because of the creation of extremely costly structures, the exclusion of the participation of non-governmental organisations from the provision of such aid and the limitation of the scope of legal aid to a certain category of cases only, the Minister of Justice filed a request with the Speaker of the Sejm of the Republic of Poland to adjourn work on the draft law until the proposed solutions have been rectified, and in consequence until an amendment prepared by the Council of Ministers has been submitted.

28. The Ministry of Justice prepared a draft amendment to that draft law which in December 2006 was submitted for consideration to the Committee of the Council of Ministers.

29. Irrespective of the provisions contained in the above law, free legal assistance can be provided by professionally active defence attorneys (as of October 31, 2006 – 6,600 persons) and legal advisors. Free legal assistance to organizational entities can be provided by all professionally active legal advisors, i.e. 18,421 persons (the total number of attorneys at law authorized to take part in court proceedings – as of December 31, 2006 – 24,465 persons, including 12,461 women), while free legal assistance to natural persons can be provided by legal

advisors practicing in law offices or companies of legal advisors and companies of legal advisors and defence attorneys, i.e. 10,547 persons.

Question 6

How does the State Party guarantee the rights of persons seeking refugee status, particularly unaccompanied minors, and ensure that the procedures are expedient and timely, including designating a lawyer. Please provide information of any relevant procedures as to whether individuals seeking refugee status are properly informed of their rights.

30. The issues of guaranteeing rights and informing during proceedings are regulated by Articles 22 to 23 and 47 to 52 of the Act of 13th June 2003 on granting protection to aliens within the territory of the Republic of Poland.

31. According to the above mentioned regulations, the authority admitting the application shall inform the alien in a language understandable to him/her about the principles and procedures of the proceedings concerning the granting of the refugee status as well as about the rights vested to him/her, his/her obligations, and the legal effects of non-performance of his/her obligations and it shall also provide the alien with information on organisations dealing statutorily with refugees matters.

32. An alien applying for the refugee status may freely contact a representative of the United Nations High Commissioner for Refugees as well as any organisations dealing statutorily with the refugee matters. A representative of the United Nations High Commissioner for Refugees shall be allowed - at any time - to contact the alien applying for the refugee status. A representative of the United Nations High Commissioner for Refugees, at his/her request and upon a written consent of the alien, shall have the right to obtain any information on the course of the proceedings concerning the granting of the refugee status from the authorities conducting those proceedings, as well as to examine the files of the case and to make notes and copies thereof, except the files referred to in Article 74 (1) of the Code of Administrative Procedure. The authority admitting the application shall inform the alien about his/her right to express his/her consent.

33. The authority admitting the application for granting the refugee status submitted by a minor staying in the territory of the Republic of Poland without a legal representative, hereinafter referred to as „unaccompanied minor”, shall immediately submit to the court competent with respect to the minor’s place of residence an application for:

a) Appointing a guardian to represent the minor in the proceedings concerning the granting of the refugee status;

b) Placing the minor in a custodian–educational centre (if he/she is under 13 years old) or in a centre (if he/she is over 13 years old) for aliens applying for granting the refugee status, hereinafter referred to as the “centre”.

34. An unaccompanied minor shall not be placed in a guarded centre or arrested for the purpose of expulsion.

35. During proceedings concerning the granting of the refugee status to an unaccompanied minor, a custodian shall be appointed immediately. The custodian shall exercise custody over the person and property of the unaccompanied minor, and in particular:

- a) He/she shall supervise the provision of the minor with appropriate accommodation conditions as well as access to education and medical care;
- b) He/she shall cooperate in the arrangement of the minor's free time, including cultural, sports and recreation events;
- c) He/she shall assist in contacting national and international governmental organisations whose statutory aim is to act for the well-being of minors and refugees, in order to find the minor's family members.

36. In the procedures concerning the granting of the refugee status, the hearing of testimonies and explanations of the unaccompanied minor shall be effected i.a:

- a) In a manner taking into account the age of the unaccompanied minor, his/her maturity and mental state as well as the fact that his/her knowledge of the real situation in his/her country of origin may be limited;
- b) After providing him/her with the information on factual and legal circumstances which may influence the results of the proceedings concerning the granting of the refugee status;
- c) After informing him/her about the possibility to make a request for being heard in the presence of a person indicated by him / her;
- d) In a language understandable to him/her and, if needed, with the participation of an interpreter.

37. In proceedings concerning the granting of the refugee status to a minor staying in the territory of the Republic of Poland without a legal representative, the representative of the United Nations High Commissioner for Refugees shall have the right to obtain any information on the course of the proceedings concerning the granting of the refugee status from authorities conducting those proceedings, as well as to examine the files of the case and to make notes and copies thereof, except the files referred to in Article 74 (1) of the Code of Administrative Procedure, without the necessity to obtain the alien's written consent.

Question 7

Please inform the Committee on whether legislation prohibiting torture and cruel, inhuman and degrading treatment or punishment contains specific provisions regarding gender-based breaches of the Convention, including any type of sexual harassment and/or violence. Please also describe all, if any, effective measures taken to monitor the occurrence of and to prevent such acts, and provide data, disaggregated by the sex, age and ethnicity of the victims, and information on investigation, prosecution and punishment of perpetrators.

38. Chapter XXV of the Polish Criminal Code concerning offences against sexual liberty and decency – penalizes behaviours against sexual liberty, trait of which consist in breaking the resistance of a victim or behaviours when the victim has no possibility of sexual self-determination or this possibility is considerably limited. The invoked regulations are applicable to every person, regardless their gender, race, religion, citizenship, etc.

39. This is in particular Article 197 of the Criminal Code, the subject of which consists in widely understood lack of force in the area of sexual activities, freedom from any kind of pressure leading to infringement of freedom to make decisions in the area of sexual relations. Attacks on self-determination in the sexual area in this case may consist in forcing the victim to a specific act, desisting or tolerating a specific act of the perpetrator – with the use of force, illegal threat or deceit.

40. Meanwhile, Article 199 of the Criminal Code refers to situations when the perpetrator for the same reason uses or abuses the relationship of dependence of the victim on him or by taking advantage of the victim's critical situation. The relationship of dependence in this case is understood as actually providing one person with the possibility to make a certain type of influence (direct or indirect) onto the fate and situation of another person – from legal, economic, social perspective, etc. The relationship of dependence does not have to have a permanent nature - it is enough that it is determined by a specific situation (it is occasional), results from fulfilment or social functions or roles. Meanwhile the critical situation of the victim used by the perpetrator – usually consists in unfavourable series of circumstances independent on interpersonal relations (for instance an accident).

41. Events of homosexual nature are pursued on the basis of the same principles as events of heterosexual nature – as long as they exhaust the statutory traits of a prohibited act.

42. It should be noted that legal regulations in force, such as for instance Article 208 or 223 of the Code of Criminal Procedure aim at preventing the degrading treatment of persons. The first of the aforementioned Articles states that inspection or examination of the body, which may cause a sense of shame, should be conducted by a person of the same gender, unless this could cause particular difficulties. Other persons of a different gender can be present only if necessary. The second invoked article refers to personal search. Disposition of this provision states that, to the extent possible, it should be performed by a person of the same gender. Furthermore, with a view to preventing a recurrence of the victimisation of juvenile victims of offences against sexual freedom and morality, the Law of 3 June 2005 amended the Code of Criminal Procedure, introducing the obligation of only one examination of the injured party and the witness who have not completed 15 years of age in proceedings related *inter alia* to the above offences, unless special circumstances warrant a repetition of the examination (Articles 185a and 185b). At the same time the amendment introduces the obligation of recording image and sound from such examinations so that the recording may be presented during the principal trial (Article 147 §2).

43. In order to prevent adverse events, the Government takes the following measures:

a) Appropriate selection of candidates for the Police and the Border Guard to employ only those individuals who fulfil psychophysical characteristics and who are aware of the role, which this formation should play in the society;

b) Training and vocational training of officers, during which the tasks of public service and the method of its implementation are discussed, with the emphasis on the rule of law and strict observance of regulations not allowing for any extralegal infringement of physical and personal integrity of a person against whom official actions are undertaken. The problem of protection of human rights is included in the training programmes for the Police and the Border Guard on all levels;

c) Supervision carried out by superiors and functioning of units created with the view to consideration complaints. An indispensable element of the monitoring system is external control of these services conducted by, *inter alia*, the Ministry of Interior and Administration, the Prosecutor's Office, the Court, the Ombudsman, the Ombudsman for Children's Rights, the Supreme Chamber of Control, Sejm, Senate, as well as non-governmental organizations;

d) With respect to the Border Guard, the officers are obliged to fully respect human dignity and not to discriminate persons because of their gender, racial or ethnic origin, religion or beliefs, disability, age or sexual orientation. All travellers are also entitled to professional and polite treatment and information from Border Guard officers as to the nature of the performed checks. Officers are obliged to respect the rights of aliens not only in detention centres, but also when performing actions connected with detention and deportation from the territory of the Republic of Poland and to accept requests for refugee status;

e) Introducing into the Police practice the Regulation on methodology of intelligence gathering procedures by the Police forces appointed for detection of crimes and prosecuting its perpetrators – the so-called – “Intelligence Gathering manual”. The Regulation contains principles as to the conduct of Police officers in relation to the victims as well as to suspects (perpetrators of crimes). One of the principles contained in this Regulation is that the party aggrieved by crimes against sexual liberty and decency, should be, to the extent possible, examined by a properly trained police officer of the same gender;

f) Placement of aliens in rooms and residential rooms in guarded centres and detentions awaiting deportation has to be conducted under specific principles, which shall take into consideration the age and gender of the alien and the necessity to prevent aggression and self-aggression among aliens;

g) in rooms designated for detainees or persons arrested for the purpose of sobering in the Police units, the detained women and men and persons under 18 shall be kept separately rooms (there is a disposition in law to place women in individual zones, female detainees separated from the men, and minors isolated from the adults);

h) The draft Code of Conduct for Crime Victims is being prepared within the framework of the National Programme for Crime Victims, implemented by the interdepartmental Team for the Preparation of the National Programme for Crime Victims, set up on 1 February 2006. The Code is supposed to regulate, *inter alia*, standards of conduct with victims of violence against women, including victims of rape and sexual harassment.

44. In keeping with the standard adopted by the Ministry of Justice with regard to recording statistics on crime, the data on record indicate the qualification of the offence and the sentence. The statistics do not indicate details concerning victims such as information on their sex and age. The only distinction with regard to sexual offences as provided for by the Polish legislator is the division into offences to the detriment of adults and of juveniles.

Question 8

Taking into account the Committee's previous recommendation to the third periodic report of the State party related to the issue of the responsibility of a public official who executes an order from a superior officer and is considered as having committed a crime of torture or of cruel, inhuman or degrading treatment or punishment, please indicate what have been the measures taken in this respect.

45. In line with the recommendations of the Committee following the consideration of the 3rd Report of the Republic of Poland, a study was conducted of legal regulations on the accountability of a public official committing an offence as a result of the execution of an order of a superior. The study examined relevant provisions of the Penal Code (*inter alia* Article 115 § 18, Articles 318, 343, 344 and 246, 247, 231 – see Appendix N°1) and regulations from outside the Code. This stems from the fact that pursuant to the laws listed below, provisions of Articles 115 § 18, 318 and 344 of the Penal Code apply respectively to officers of all services based on the principle of discipline and subordination. These are the following officers: of the Police (Article 141a of the Law of 6 April 1990 on the Police), Internal Security Agency (Article 153 of the Law of 24 May 2002 on Internal Security Agency and Intelligence Agency), Border Guard (Article 143a of the Law of 12 October 1990 on the Border Guard), State Fire Service (Article 116 section 1 of the Law of 24 August 1991 on the State Fire Service) and the Prison Service (Article 58a of the Law of 26 April 1996 on the Prison Service). The study helped determine an absence of loopholes in the law which would make it possible for perpetrators of acts constituting torture to invoke a countertype in the form of an order from a superior and thereby claiming impunity.

ARTICLE 3

Question 9

Please provide further information on the specific safeguards against non-refoulement in place in Poland and the practice of the State party in this respect, including examples of cases where the authorities did not proceed with extradition, return or expulsion because of fear that the persons might be tortured.

46. According to Article 20 (1) item 3 of the Act of 13th June 2003 on granting protection to aliens within the territory of the Republic of Poland, the submission of the application for granting the refugee status shall cause, by the virtue of law, suspension of the execution of the decision on expulsion until the date of delivering to the alien the final decision on granting the refugee status.

47. With respect to the institution of tolerated stay, information on prohibition of expulsion of an alien was given in points 85 to 95 of the Report.

48. It could be added that the permit for a tolerated stay may be granted both as part of the expulsion procedure – in the decision on the refusal to expel an alien from the territory of the Republic of Poland, and as part of proceedings concerning the granting of the refugee status to an alien – in the decision on the refusal to grant the refugee status.

49. Due to the amendment to the Act of 13th June 2003 on granting protection to aliens within the territory of the Republic of Poland, which came into force on 1st October 2005, the

permit for a tolerated stay may be also granted in the decision on withdrawing the refugee status or asylum.

50. The permit for a tolerated stay may also be granted in a separate decision, when the circumstances stipulated in Article 97 (1) item 1 of the above mentioned Act emerged after issuing the above mentioned decisions.

51. In order to establish that there is a reason – like the one mentioned above - for granting the permit for a tolerated stay, a competent authority shall take into consideration the general situation in the alien's country of origin, as regards the respecting of human rights, by making use of widely available reports written – among others – by human rights organisations, and the explanations made by the alien him-/herself, which show that there is a probability of the threats mentioned in Article 97 (1) item 1 of the Act on granting protection to aliens within the territory of the Republic of Poland.

52. The likelihood that an alien could be subjected to torture in a country where he would be deported is not evaluated separately within the proceedings intended to analyse the reasons for granting the permit for tolerated stay.

53. Extradition proceedings concluded with a refusal to surrender the persons prosecuted on account of a threat of torture are registered in the Office of Foreign Legal Cooperation of the National Prosecution Office. For instance, one may refer here to the extradition proceedings conducted at the request of the authorities of Turkey with respect to Turkish citizens: Behsata Sakar and Mustafa Duzguncu.

54. In both cases the Turkish Party charged the sought individuals with, *inter alia*, membership in criminal organisations.

55. Negative decisions of the Minister of Justice (of 11 January 2005 – B. Sakar and of 10 February 2006 – M. Duzguncu) were a consequence of an obligatory taking into consideration of court decisions on the inadmissibility of extradition. In both cases the courts took the approach that the surrender would be in contravention of the Polish legal order, in connection with the assumption that Turkey does not comply with the norms of the European Convention of Human Rights and Fundamental Freedoms of November 4, 1950, containing a prohibition of torture and other cruel, inhuman or degrading treatment or punishment.

Question 10

Please provide statistical data with respect to the implementation of article 3 of the Convention in cases of expulsion or return (refoulement) of foreigners, indicating, in particular:

The number of persons seeking asylum and the number of returnees, including the countries of return

56. Statistical data attached:

a) Aliens who applied for the refugee status between 1st January 2004 and 8th February 2007 (Appendix N°2),

b) Aliens with regard to whom the President of the Office for Repatriation and Aliens issued the decision on expulsion from the territory of the Republic of Poland (execution of the decision has been withheld until the delivery of a negative decision on granting the refugee status) (Appendix N°3),

c) Aliens who were refused the refugee status by the President of the Office for Repatriation and Aliens and ordered by him to leave the territory of the Republic of Poland in the period from 1 January 2004 until 8 February 2007 (Appendix N°4),

d) Aliens who underwent the procedure of a voluntary departure from the territory of the Republic of Poland (in 2005 the departure of 116 (in 2006 139) persons was arranged by the Office for Repatriation and Aliens and the departure of 53 (in 2006 244) persons - by the Office in cooperation with the International Organization for Migration) (Appendix N°5).

How the probable risk of torture is assessed in the determination and the process to appeal the decisions and

57. In order to establish that within the proceedings on expulsion of an alien from the territory of the Republic of Poland, the above-mentioned reason for granting the permit for tolerated stay is relevant, the competent authority shall take into account a general situation related to the respect for human rights in an alien's country of origin, drawing upon public reports prepared among others by different organizations for human rights and explanations provided by an alien pointing to the likelihood of the occurrence or risks referred to in Article 97 (1) item 1 of the Act on granting protection to aliens within the territory of the Republic of Poland.

58. The likelihood that an alien could be subjected to torture in a country where he would be deported is not evaluated separately within the proceedings intended to analyse the reasons for granting the permit for tolerated stay.

The procedure for the examination of asylum requests submitted at the border.

59. The applications for granting the refugee status or asylum submitted on the border in compliance with the Polish law shall be examined according to the same rules which are applied with reference to the applications submitted on the territory of the Republic of Poland.

60. Data presented below indicate number of aliens who submitted the applications for granting the refugee status through the commanding officer of the Border Guard checkpoints in the period from 1 January 2004 until 8 February 2007

2004		2005		2006		2007	
Number of applications	Number of people	Number of applications	Number of people	Number of applications	Number of people	Number of applications	Number of people
2654	6960	2088	5052	1538	3432	113	220

Provide information about cases of expulsion, return (refoulement) or extradition by the State party filed to the European Court of Human Rights.

***Shamsa v. Poland*, Judgement of 27 November 2003, Appl. No. 45355/99 & 45357/99**

61. The applicants are **two Libyan nationals** who were **detained in the Warsaw international airport transit zone** after several failed expulsions. In May 1997, the Polish authorities decided to expel both of them to their country of origin since they were not able to show residence permits. The Warsaw District Prosecutor ordered their detention on 28 May 1997 in view of their expulsion, which had to take place within 90 days. Between August and September 1997, they were detained by the border police at the Warsaw airport from where the Polish authorities tried to expel them to Libya at least three times. Each time they were returned to Poland, since they refused to carry on their journey once in the transit country. Upon their last return to Poland on 11 September 1997, they were declared undesirable on Polish territory and kept in detention by the border guards at the Warsaw airport. However, they went on hunger strike and were taken to the hospital in October 1997. They managed to walk out free from the hospital. They lodged a complaint before domestic courts arguing that their detention at the Warsaw airport international transit zone between August and October 1997 was unlawful since the 90 days delay to expel them had expired on 25 August 1997. This action, as well as the successive appeals failed, the arguments of the domestic courts being that the transit zone is not the Polish territory and that the applicants were kept there because they thwarted the various expulsion attempts. Since they did not have the proper entry and stay documents, they remained in the transit zone but were not detained *stricto sensu*. The applicants' complaint before the Court is therefore based on **Art. 5 para. 1** of the ECHR, since they consider that they were unlawfully deprived of their liberty. The Court started by determining whether the applicants were in a detention situation while in the transit zone. It looked at the nature, duration and modalities of the restriction of liberty to conclude that they were in fact in a detention situation, since they were **guarded by the border police** and **had no freedom of movement**. Looking at the legality of the detention from 25 August to 3 October 1997, the Court noted the applicants were **kept in the transit zone only on the basis of the internal rules of the border guards**. For the Court, these rules cannot be considered as a legal basis for a detention measure. The Court identified a legal vacuum in Polish legislation in that there are no specific laws concerning detention of aliens after the expiry of the deadline for their expulsion. It further indicated that a detention measure lasting for a number of days must be decided by a tribunal, a judge or a person with judicial powers. **The detention of the applicants in the transit zone beyond the deadline for their expulsion was therefore declared contrary to Art. 5 para. 1 of the ECHR.**

***Gordyeyev v. Poland*, Decision of 3 May 2005, Appl. No. 43369/98 and 51777/99**

62. The applicant was a **Belarusian national**. On the basis of charges of forgery of documents by the Prosecutor of the Republic of Belarus, he was extradited from Poland in 2000 despite several requests to be released and appeals against the extradition decision. On 9 September 1997 the applicant, while in detention pending extradition, applied for **asylum**. He submitted that as a member of a Belarusian dissident organisation, i.e. the People's Belarusian Front "Restitution" he risked to be ill treated by the State authorities. He further alleged that the charges against him were based on entrapment by a former officer of the KGB. The application was rejected at all instances.

63. The applicant complained under **Articles 5 § 1 (c) and 5 § 1 (f) ECHR** that his detention was unlawful because it lacked a legal basis under Polish law and was based on an incomplete

request for his extradition to Belarus, which had not been supplemented in due time. He also alleged that the Polish authorities had failed to show diligence in handling the extradition. The Court found that the complaint was unsubstantiated and manifestly ill-founded and rejected it.

Question 11

Please provide more information on the new institution of “tolerated stay” introduced by Law on Granting Protection to Aliens of June 2003, including data on the number of persons who have benefited from it, their country of origin and the duration of the permit in each case. (State Party report, para. 86)

64. Information concerning the permit for tolerated stay introduced in the Polish legal order by the Act of 13 June 2003 on granting protection to aliens within the territory of the Republic of Poland was provided in the Report and in the response to question N° 9.

65. In addition it should be noted that an alien who has been granted the permit for tolerated stay shall be issued the residence card, which entitles him/her to cross the border without visa and is valid for one year. Aliens who have been granted the permit for tolerated stay shall enjoy the same rights as the Polish citizens in the scope of performing work without the necessity to obtain the work permit, initiating and carrying out economic activities and benefiting from social assistance.

66. Furthermore, it is possible to indicate that an alien who has been granted the permit for tolerated stay has the same rights as an alien who has been granted the residence permit for a fixed period unless the provisions of Acts stipulate otherwise.

67. An alien who has been granted the permit for tolerated stay must not be rendered the decision on obligation to leave the territory of the Republic of Poland or the decision on expulsion.

68. According to Article 102 of the above-mentioned Act, the permit for tolerated stay shall be withdrawn, if:

- a) the reason for granting the permit for tolerated stay has ceased to exist;
- b) an alien has voluntarily applied for protection to the authorities of the country of origin;
- c) an alien has left permanently the territory of the Republic of Poland;
- d) it may constitute a threat to the state security and defence as well as to the public security and policy.

69. Furthermore, according to Article 103 of the above-mentioned Act, the permit for tolerated stay shall expiry by the virtue of law on the day of:

- a) granting the refugee status to an alien;
- b) acquisition by an alien of the Polish citizenship;
- c) informing in writing the President of the Office for Repatriation and Aliens by an alien of resignation from the right to enjoy the permit for tolerated stay;
- d) obtaining by an alien the residence permit for a fixed period or the permit to settle.

70. Most of decisions on granting the permit for tolerated stay are issued within the procedure for granting the refugee status, in the decision on refusal to grant the refugee status. As far as nationality is concerned, the largest number of permits for tolerated stay has been granted to the citizens of the Russian Federation, mainly of Chechnyan nationality.

71. Data attached:

- a) Aliens who were granted the permit for tolerated stay by the President of the Office for Repatriation and Aliens or by the Refugee Board in the proceedings for granting the refugee status in the period from 1 January 2004 until 8 February 2007 (Appendix N°6),
- b) Aliens who were granted the permit for tolerated stay by voivods or the President of the Office for Repatriation and Aliens in the proceedings for granting the permit for tolerated stay in the period from 1 January 2004 until 8 February 2007 (Appendix N°7),
- c) Aliens who were granted the permit for tolerated stay by voivods or the President of the Office for Repatriation and Aliens in the proceedings related to expulsion of an alien from the territory of the Republic of Poland in the period from 1 January 2004 until 8 February 2007 (Appendix N°8),
- d) Aliens who were granted the permit for tolerated stay by voivods or the President of the Office for Repatriation and Aliens in the proceedings for granting the residence permit for a fixed period according to the Article 138 of the Act of 13th June 2003 on granting protection to aliens within the territory of the Republic of Poland in the period from 1 January 2004 until 8 February 2007 (temporary regulation enacted in relation with introduction of institution of “permit for tolerated stay” on 1 September 2003) (Appendix N°9),
- e) General number of persons who were granted the permit for tolerated stay in the period from 1 January 2004 until 8 February 2007 (Appendix N°10).

Question 12

Please comment on the allegations contained in the report of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe, dated May 2006, regarding the existence of a “secret detention centre” in the territory of the State party. Please provide information on the enquiry recently conducted by the Polish Parliament into these allegations and what the results of such enquiry have been. Include in your answer the structure and methodology of this investigation, the names of those who conducted it as well as a copy of its final conclusions.

72. Explanatory proceedings were conducted with regard to the recurring allegations of the existence in Poland of detention centres for aliens suspected of terrorist activity. The actions conducted were confidential since they related to issues subject to state secrecy, an area of competence of special services. The results of the work of the task team were forwarded – through the Sejm Commission for Special Services – to Polish parliamentarians. The official position of the authorities of the Republic of Poland in the relevant issue was presented to the general public in a statement of the Government spokesman on 10 November 2005, which stressed that “the Polish Government flatly refutes media allegations about the existence in the territory of the Republic of Poland of secret prisons for aliens suspected of terrorist activity. There are no such prisons in Poland and there are no prisoners incarcerated in contravention of the law and international conventions of which Poland is a signatory.”

Question 13

Please provide detailed information as to whether Poland has engaged or participated in any form with the so-called “extraordinary renditions”.

73. Poland has not participated and is not participating in any form in “extraordinary renditions” of persons suspected of terrorism. As regards combating international terrorism, Polish special services actively cooperate with international partners. This cooperation is characterised by mutual trust, professionalism, and respect for legal procedures.

ARTICLES 4 and 16

Question 14

Please explain the legal and administrative framework that regulates the resort to use of force by the police. Under which circumstances and in which situations are the public security forces authorized to use fire arms? Has there been any scientific study or verification of the effects and risks of the use of non-penetrating ammunition?

74. The Act on the Police of the 6th of April 1990 constitutes legal grounds for use of means of direct coercion (MDC). The records specifying the catalogue of means of direct coercion, which can be applied by Police authorities and police officers in case of failure to observe orders issued pursuant to the law are contained in Article 16 item 1. Whereas item 2 states that police officers may only apply means of direct coercion meeting the needs of a situation and necessary to have people obey orders given.

75. Pursuant to delegation of Article 16 item 4 of the Act, on the 17th of September 1990 the Council of Ministers has issued an Ordinance on determination of cases and conditions and ways of applying means of direct coercion by police officers.

76. Pursuant to the record of Article 17 “Should the means of direct coercion referred to in Article 16 item 1 appear insufficient or their use, due to the circumstances of a given situation, be impossible, the police office shall have the right to use firearms.” Circumstances wherein firearms may be used are mentioned in Article 17 item 1 of the Act.

77. The matters concerning the use of firearms by the Police unit have been regulated under Article 18 of the Act. It states that in case of threat to public safety or public disturbance, causing in particular:

- a) public threat to the life, health or freedom of citizens,
- b) direct threat to property of significant volume,
- c) direct threat to facilities or devices referred to as important for the country’s safety and defence, on the seats of principal authorities, principal and central state administration authorities or the judiciary, on facilities of economy and national culture and on diplomatic missions and consular offices of foreign countries or international organizations, as well as facilities supervised by armed protection unit established pursuant to the separate provisions,
- d) threat of an offence of a terrorist nature or committing such offence in relation to facilities of special significance to the country’s safety or defence, or offence which may result

in threat to the human life the President of the Council of Ministers may order the deployment of Police armed units or sub-units to ensure public safety or to restore public order.

78. In accordance with the delegation of Article 17 item 4, detailed issues concerning the deployment of firearms are regulated under the Ordinance of the Council of Ministers of the 19th of July 2005 on detailed conditions and methods of use of firearms by police officers and principles of use of firearms by units and serried sub-units of the Police. The invoked provision repealed the Ordinance of the Council of Ministers of the 21st of May 1996 on detailed conditions and proceedings with firearms by police officers.

79. The record of Article 17 item 3 specified that "Firearm should be used in a way doing the least possible damage to the person against whom the firearm was used." The aforementioned principles shall prevail at all times.

80. Within the scope of team effort, police officers forming a Police unit can use firearm only when ordered by the unit commander, who can issue this order only in cases mentioned in Article 17 item 1 of the Act upon obtainment of a previous consent of appropriate voivodeship Police commander or the Commander-in-Chief of Police. The consent is not required in cases when any delay in deployment of firearms would threaten the safety of human life. In case of inability to establish contact with the commander, the police officer has the right to use firearm, with observance of provisions of Article 17 item 1 of the Act, on principles in force for individual use of this mean of direct coercion.

81. Directly prior to issuing the order to use firearm by police officers forming a unit, the commander is obliged to:

- a) call persons to proceed in accordance with the law, and in particular to drop the weapon or dangerous tool and to desist from illegal actions or use of violence;
- b) threaten to use a firearm;
- c) issue an order to take a warning shot (warning volleys) in the safe direction.

82. The commander of the sub-unit may desist from implementation of the mentioned procedure only in situation when any further delay in deployment of firearms would threaten the safety of human life. The Police unit shall hold fire upon the order of the commander, immediately once the objective intended through the deployment of firearms has been obtained.

83. The National Police Headquarters have conducted an appropriate analysis in order to verify the results and risk of using the non-penetrating ammunition prior to its introduction into Police armament.

Question 15

Incidents that took place during the student holidays in May 2004 in Łódź resulted in the death of two persons due to the use of penetrating ammunition by the police forces. Did an investigation take place? Have responsibilities (e.g. administrative, civil, criminal, political, etc) been identified? And if so, what measures and/ or sanctions have been enforced? (State party report, paras. 117-199)

84. The course and circumstances of events during the student festival at the Łódź University in May 2004, was the subject of explanation of the inspection team of the National Police Headquarters. In connection with the found irregularities the Commander-in-Chief of Police instructed the voivodeship (capital) Police commanders to conduct an urgent inspection in the area of observance of:

- a) principles of recording, storing and issuing official weapons, especially smooth-bore rifles calibre 12/76, and ammunition for this weapon,
- b) the method in which this weapon is issued from hand storage and training of police officers on duty issuing weapons and emergency ammunition,
- c) conducting vocational trainings, in the area of shooting training of police officers who use rifles calibre 12/76.

85. Wanting to eliminate any possibility that a similar event shall repeat itself, the National Police Headquarters:

- a) has amended the Regulation of the Commander-in-Chief of Police on standards and types of weapons in Police armament;
- b) has introduced changes in standards of team and individual armament for Police units and sub-units, which among other rigorously specify what types of ammunition calibre 12/70 can be used by individual police formations.

86. Currently only police officers from anti-terrorist sub-units and the Central Bureau of Investigation at the National Police Headquarters are entitled to use all types of ammunition for smooth-bore rifles.

87. Regardless these undertakings, a working group was also appointed, and prepared the programme of specialization training in the area of using smooth-bore weapon calibre 12/76 and using non-penetrating bullets by sub-unit of the Police. It has been introduced to official use by virtue of a Decision No. 652 of the Commander-in-Chief of Police of the 14th of December 2004. Completion of training and positive result on the final exam constituted a condition for allowing the use of non-penetrating bullets by a sub-unit.

88. Since May 9, 2004 the Provincial Prosecution Office in Łódź has been conducting an investigation related to the Łódź events. The investigation concerns failure to perform professional duties by officers of the Police during the intervention on university campus on Lumumby Street in Łódź in the night from 8 May to 9 May 2004 and involuntarily causing the death of Damian T. and Monika K. – i.e. an offence under Article 155 of the Penal Code and under Article 231 § 1 of the Executive Penal Code in conjunction with Article 11 § 2 of the Penal Code.

89. The evidentiary material gathered in the course of the investigation helped to establish that during the intervention of the Police triggered by upheavals caused by participants of the "Juwenalia 2004" event, officers of the Police mistakenly fired 5 cartridges of the "Brenka" type with lead bullets instead of non-penetrating ammunition. Two of these bullets caused the death of Damian T. and Monika K. An additional 4 other persons were injured.

90. The charges of committing crimes under Article 231 § 1 and 3 of the Penal Code and under Article 165 § 1, 2 and 4 of the Penal Code were brought against officers of the Police:

Roman I. and Radosław S. Because of the necessity to conduct further investigative actions, e.g. receiving expert evidence from hearing 11 CDs of stenographic records, the investigation was extended until 9 February 2007. The case is closely monitored on an ongoing basis by the Office of Preliminary Proceedings of the National Prosecution Office.

Question 16

What has been the follow-up given to the Committee's previous recommendation according to which Poland should establish an independent oversight mechanism to ensure that acts of public officials are in conformity with the law.

91. Issues related to the oversight mechanism assuring conformity with the law of actions of public officials were described in detail in the chapter concerning Article 13 of the Convention – Complaints.

92. In connection with Poland's ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, work on the creation of the national preventive mechanism has been under way.

93. According to Article 18 of the Protocol, the tasks of the national mechanism shall be performed by an independent body. Therefore, it was decided to charge with the above mentioned task Polish Commissioner for Civil Rights Protection (the Ombudsman). The Ombudsman meets that requirement, as Article 210 of the Constitution of the Republic of Poland guarantees the Commissioner's independence in relation with other national bodies.

94. The tasks of the national preventive mechanism will be performed by the Executive Criminal Law Department within the Office of the Commissioner. The basic powers of national preventive mechanism stipulated by the Protocol are identical to the statutory tasks of that department e.g. regular control of treatment of people deprived of their liberty in the places of detention referred to in article 4 of the Protocol.

Article 5

Question 17

Please indicate whether the State party has rejected, for any reason, any request for extradition by a third State for an individual suspected of having committed an offence of torture, and thus engaging its own prosecution as a result. What is the status and outcome of such prosecution(s)?

95. There was no such a case.

Question 18

Please provide updated information on the amendment of article 113 of the Polish Penal Code related to the application of Polish penal law to Polish citizens and aliens who have committed an offence abroad but whose prosecution is binding for the Republic of Poland pursuant to international agreements. (State Party Report, para. 137)

96. The current reading of Article 113 of Polish Penal Code is the following:

“Notwithstanding regulations in force in the place of commission of the offence, the Polish penal law shall be applied to a Polish citizen or an alien, with respect to whom no decision on extradition has been taken, in the case of the commission abroad of an offence which the Republic of Poland is obligated to prosecute under international agreements”.

Article 10

Question 10

Please provide information on the instructions and training programmes for law-enforcement officials and other public officials with respect to human rights, specifically in relation to the treatment of detainees and vulnerable groups, including the Roma. Please inform the Committee as to whether civil society organizations are involved in the preparation and implementation of such programmes. In such case, please provide the list of such civil society organizations.

Trainings for judges and prosecutors

97. The National Training Centre for the Personnel of Common Courts and Prosecution Offices was established pursuant to the law of 1 July 2005 amended on 31 December 2005; it launched its activity on 1 September 2006. The National Centre aims at the introduction of the highest standards in the training of professionals of the judiciary. The trainings are geared to the following: judges, prosecutors, trainee judges, trainee prosecutors, court referendaries, assistant judges, professional probation officers, as well as clerks of courts and prosecution offices.

98. In the period 4-6 December 2006 the National Training Centre, implementing the tasks indicated in the National Plan for Combating and Preventing Trafficking in People for the period 2005-2006, held a training course for judges adjudicating in criminal cases on the subject “Selected issues of proceedings with aliens within the framework of the Law of 13 June 2003 on aliens and of the Law of 13 June 2003 on granting protection to aliens in the territory of the Republic of Poland”. The training programme, taking the form of lectures and a seminar, was attended by a total of 83 judges from all over Poland.

99. In 2006 trainings for judges comprised also the subject of foreign legal cooperation in the area of family law (abduction of a child abroad – the Hague Convention of 25 October 1980, legal status of unaccompanied juvenile aliens applying for refugee status, situation of alien children in care institutions – deprivation, restriction of parental rights of the parents, adoption) and in the area of procedures in the treatment of aliens used during detention, placement in a guarded institution and detention facility for the purpose of expulsion – the Law of 13 June 2003 on aliens and the Law of 13 June 2006 on the protection of aliens in the territory of the Republic of Poland (jurisdiction, reasons for detention for the purpose of surrender and placement in a guarded institution).

100. Training programmes for judges scheduled for 2007 will be devoted to the execution of the penalty of deprivation of liberty in cases when the court decided additionally on the treatment in a closed disaccustoming treatment institution, while training sessions for prosecutors will entail compensation for groundless conviction, temporary arrest or detention.

101. Issues related to criminal proceedings related to crimes of trafficking in people and illegal migration are in the programme of the Post-graduate Study Course on Organised Crime and Terrorism for Prosecutors, held by the National Training Centre in collaboration with the Faculty of Law and Administration of Warsaw University. The study course is attended by 103 prosecutors active in divisions for organised crime in the prosecution offices throughout the country. The above Post-graduate Study Course took place on 13 October 2006; it will be concluded in June 2007.

102. It is in order to point out that training programmes related to human rights were organised by civil society organisations thanks to the financial support of the Government, as part of the Phare 2003 programme *Enhancement of the Judiciary System* implemented by the Ministry of Justice. In September 2005 grants were allocated for the implementation of 45 projects; civil society organisations were involved primarily in projects aiming at the social reintegration and the enhancement of the legal awareness of people sentenced by courts (see Appendix N°11 – list of examples of the NGOs in cooperation with the Ministry of Justice).

103. One of the projects implemented was geared at the development of new forms of work with the Roma youth through the increase of their participation in defining and solving problems related to being a victim or perpetrator of a crime and through the adoption of a new concept of cooperation between public administration and the Roma community in solving the aforementioned problems. The project was implemented by the Crisis Intervention Centre from Cracow.

104. Furthermore, in the period 2002-2004 the Ministry of Justice in collaboration with the Helsinki Foundation of Human Rights and TAIEX held 7 training sessions for judges interested in human rights issues and in the case law of the European Court of Human Rights. The trainings were attended by a total of close to 180 people.

Prison Service

105. Issues connected with realisation of Convention against torture and other cruel, inhuman or degrading treatment or punishment, as well as prevention of racial discrimination, fighting and prevention of anti-Semitism, xenophobia and intolerance – in the context of human rights were introduced in programmes of all kinds of Prison Service schools and preparatory courses. These schools function at the Central Training Centre of Prison Service in Kalisz. Students study among others: legal issues, international standards of prisoners treatment, selected aspects of professional ethics, penitentiary issues, rules regulating execution of punishment and measures.

106. For example in the Officers' school of Prison Service the following subjects are studied: protection of rights of detainees, Convention against torture and other cruel, inhuman or degrading treatment or punishment and its definition of torture and inhuman treatment, organisations dealing with the rights of persons deprived of liberty (controlling activity of Ombudsman, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment – CPT, Amnesty International, Helsinki Committee), prevention of anti-Semitism, protection of the rights of migrants, refugees and national and ethnic groups, etc.

107. Detailed agendas of trainings related to human rights for the officers of the Prison Service were described in section 150 of the Report. Within the two years since that period the agendas have been slightly modified, but the range of their subjects has not changed.

Police

108. Trainings of Police officers in the area of human rights are organized on the basis of vocational training programmes on all levels: basic, specialist and advanced. As far as basic level is concerned, implementation of contents referring to human rights mainly consists in analysis of appeals against Police actions submitted to the European Human Rights Tribunal and interpretation of the Strasbourg jurisprudence. Classes in the area of police interventions, duties performed in rooms for detainees, etc. are conducted with the use of applications and recommendations of the European Human Rights Tribunal. When performing professional tasks, such as for instance detaining a person, interrogation of a suspect, searching a person and their belongings, etc. it is required to proceed in compliance with the human rights. The basic programme prepares police officers to work in accordance with these provisions.

109. In the specialist programs the problem of human rights involves the areas of the essence, classification and significance of human rights, human rights protection system – national one and the international ones (including the UN system of protection of human rights), the police practice and human rights – the role and tasks of the Police in the area of observance and protection of human rights.

110. In the program for university graduates the problem of human rights involves introduction to the problem of human rights, international instruments on human rights, international acts concerning the status and principles of Police operation, the system of checking observance of human rights standards.

111. The government attaches great importance to cooperation with the third sector. Also when developing the training programmes, Police is cooperating with non-governmental organizations, among other with the Foundation *Dzieci Niczyje* (Nobody's Children) the Helsinki Foundation for Human Rights, the Itaka Foundation and the La Strada Foundation.

Border Guard

112. Specialist trainings for the Border Guard officers include the specifics of their work as far as contacts with the aliens are concerned. The Border Guard officers who handle the administrative proceedings in relation to the aliens (including officers working in detention centres) participate in trainings aiming at familiarizing them with the problems connected with cultural diversity.

113. In 2006, two trainings were organized in the Central Border Guard Training Facility in Koszalin on "Strategies of communication with aliens staying in detention awaiting deportation." In the same year the United National High Commissioner for Refugees (with participation of the "La Strada" organization) organized a training of the officers of the Border Guard, on the subject of protection of refugees and victims of trafficking in humans, with consideration of issues connected with management in crisis situations.

Question 20

What monitoring and evaluation mechanisms have been used to assess the impact of the training programmes conducted for law enforcement personnel, if any? (State Party report, paras. 146-163)

114. The National Training Centre for the Personnel of Common Courts and Prosecution Offices has adopted as the foundation of the monitoring and evaluation mechanism the questionnaires filled out anonymously by participants of the trainings; the questionnaires include questions about the usefulness of the trainings for the positions occupied by their attendees and for their further professional career. These trainings are highly evaluated.

115. An evaluation of teaching programmes is made every time after the end of a teaching cycle at the Central Training Centre of Prison Service in Kalisz. Prison Service does not make an evaluation of in the context of influence of training programmes on the realisation of service activities by the prison officers included in the training. A programme of a long-term evaluation was worked out and at the moment it is expected to be implemented.

ARTICLE 11

Question 21

Please provide information on the minimum age of criminal responsibility and comment the fact that, in some cases, children as young as 10 years of age could be sentenced to educational measures. Please provide representative examples of such “educational measures”.

116. Polish criminal law stipulates that as a matter of principle the lowest threshold for accepting criminal liability is 17 years of age, which applies both to the liability for crimes (Article 10 § 1 of the Law of 2 August 1997 – The Penal Code) and for misdemeanours (Article 8 of the Law of 20 May 1971 – Misdemeanour Code).

117. All exceptions to his rule relate to extraordinary situations. Pursuant to Article 10 § 2 of the Penal Code, it is possible to hold criminally liable a person who, having reached the age of 15 years, committed particularly dangerous punishable offences, such as the following:

- a) homicide and its qualified forms,
- b) grievous bodily harm with the death of a human being as its consequence,
- c) causing an event that imperils life or health of many persons with the death of a human being or grievous bodily harm of many people as its consequence,
- d) abducting a watercraft or an aircraft,
- e) causing a catastrophe in land, water or air traffic which imperils life or health of many persons or property of a considerable extent with the death of a human being or grievous bodily harm of many people as its consequence,
- f) collective rape,
- g) taking a hostage with the death of a human being or grievous bodily harm of many people as its consequence ,

- h) robbery,
- i) an attempt on the life of the President of the Republic of Poland (Article 134 of the Penal Code), and the circumstances of the case and the degree of the development of the perpetrator, his characteristics and personal conditions warrant it, and in particular if the previously applied educational or reformatory measures have proved ineffective.

118. *The Law of 26 October 1982 on proceedings in cases concerning juveniles* regulates actions of courts with respect to juveniles who have committed punishable offences or have become demoralised, and does not limit the lowest age threshold of persons with respect to whom such actions may be taken. In the case when the court establishes that a juvenile exhibits traces of demoralisation or has committed a punishable offence, the Law allows the use of educational or reformatory measures with respect to this juvenile. A court may proceed as follows (art. 6 of the above mentioned Law):

- a) admonish,
- b) oblige a juvenile to a specific conduct, in particular to redress the damage inflicted, to perform specific work or services for the benefit of the injured party or a local community, to apologise to the injured party, to start going to school or work, to participate in appropriate educational, therapeutic, or training classes, to avoid particular company or abstain from staying in particular places, or to give up the consumption of alcohol or another substance for the purpose of becoming intoxicated,
- c) impose the trust custody of parents or a guardian,
- d) impose the custody of a youth organisation or another social organisation, a company, or a trustworthy person – providing a guarantee for a juvenile,
- e) apply the custody of a probation officer,
- f) direct a juvenile to a probation centre, as well as to a social organisation or an educational, therapeutic, or training institution working with juveniles, upon a prior consultation with this organisation or institution,
- g) decide on the ban on driving vehicles,
- h) decide on the forfeiture of objects obtained as a result of the commission of an offence,
- i) decide on the placement in a foster family, in an educational centre for juveniles, in a youth social therapy centre, or in a teaching and educational centre,
- j) decide on the placement in a reformatory,
- k) apply other measures that the Law invests with the family court as well as apply measures laid down in the Family and Guardianship Code.

119. The application of the severest reformatory measure is admissible exclusively with respect to a juvenile who has committed a punishable act being a crime or a fiscal crime (which denotes only a person who has reached 13 years of age but has not completed 17 years of age), if so warranted by the high degree of demoralization of the juvenile and the circumstances and the character of the act, in particular if other educational measures have proved ineffective or do not presage the social rehabilitation of the juvenile.

Question 22

What is the maximum duration of the pre-trial detention period established by the Polish legal system? Please comment on the high number of persons in pre-trial detention and the use of alternative custodial measures by the State party, if any.

120. Pursuant to Article 263 § 3 of the Code of Criminal Procedure, the total period of pre-trial detention until the moment of the issuance of the first sentence by the court of first instance cannot exceed 2 years, including the period of preliminary detention in the course of preparatory proceedings. In turn, pursuant to Article 263 § 2 of the Code of Criminal Procedure, the maximum period of pre-trial detention in the course of preparatory proceedings may be 12 months. An extension of the use of preliminary detention outside the above periods may only be decided on by an appellate court in whose district the proceedings are held, following an application of the court which is conducting the proceedings, and in preparatory proceedings following a motion of a competent appellate prosecutor. An extension of the use of preliminary detention by an appellate court is possible, however, only in the case when such a need arises in connection with the suspension of criminal proceedings, a proceeding aiming at verification of the identity of the accused, a prolonging psychiatric observation of the accused, a prolonging of the preparation of expert evidence, the execution of evidentiary actions in an especially complicated case or abroad, an intentional prolongation of proceedings by the accused, as well as because of other significant obstacles whose elimination was impossible (Article 263 § 4 and 4a of the Code of Criminal Procedure), with the last grounds inapplicable in preparatory proceedings.

121. However, if there is a need for the use of preliminary detention following the issuance of the first sentence by a court of first instance, each extension of the detention period may take place for no longer than 6 months (Article 263 § 7 of the Code of Criminal Procedure); in the case of deprivation of liberty preliminary detention may be applied until the moment of the commencement of the penalty (Article 249 § 4 of the Code of Criminal Procedure).

122. Polish legislation does not contain a provision that defines the upper time limit (deadline) for preliminary detention upon the commencement of the principal court trial, but there is a strict limit on the circumstances that warrant the necessity of the use and extension of this preventive measure, and relevant decisions may exclusively take the form of court decisions subject to instance monitoring, and the duration of the extension of preliminary detention must be each time strictly defined.

123. With regard to the question of a high number of persons in preliminary detention, it should be stressed that according to available statistics, with respect to courts of first instance the number of persons in preliminary detention, including those whose preliminary detention was in excess of 2 years, is beginning to decrease.

124. A high number of preliminary detentions stems *inter alia* from a steady increase, substantial since the year 2000, in the number of cases concerning organized crime (from 0.026% of the total number of indictments filed in 2000 to 0.12% in 2005) and from an increase in the number of cases related to offences committed by aliens, in particular from the countries of the East and the Far East. In the vast majority of these cases the use of preliminary detention is indispensable for securing evidence and safeguarding a proper course of the proceedings.

125. In turn, in each case that warrants the application of a preventive measure, which does not need to be a measure of an isolation character, prosecutors (in preparatory proceedings) and courts apply preventive measures in the form of a bail or police custody, less frequently in the form of suspension in the execution of professional duties, performing one's occupation, an order of abstention from a specific activity or from driving a specific kind of vehicles and the prohibition of leaving the country, which may be coupled with the seizure of the passport or another document authorizing its holder to cross the border, or with a prohibition of the issuance of such a document (Article 266-277 of the Code of Criminal Procedure).

Question 23

Please provide further information on the impact that some measures taken to address the increasing overcrowding of prisons might have had on the material conditions of detention in these prisons, in particular that common areas, such as community centres, fitness rooms, briefing halls etc... are being used for residential purposes. (Sate party report, para. 261)

126. In comparison with a period described in the Report, the number of accommodation places for detainees has increased. Moreover, the Prison Service has prepared a strategy for limiting overpopulation in penitentiary facilities in the period 2006-2009. It is aimed at enlarging of the accommodation base for detainees during the next 4 years by about 26,000 places. As a result of the measures included in the strategy, with an assumption that during this period no places will be excluded because of renovation, the prison system at the end of 2009 will have at its disposal about 97,000 places in agreement with the norm 3 m² of a cell space per one prisoner. This aim will be achieved through the following pre-investing actions:

Realisation of investments set forth in the "Programme of gaining 17,000 places in the facilities of the prison system in the period 2006-2009" accepted by the Government on 14th February 2006.

127. A detailed programme of gaining new places envisages:

- a) continuation of investment tasks started in the period 2004-2005,
- b) building new pavilions in the existing penitentiary facilities - typical accommodation pavilions of "Ustka" type with a capacity of 153 places each (a half-open type) and "Suwałki" type, each for 208 places (a closed type),
- c) adjustment of outbuildings, former factories, supporting buildings and other, located in the area of remand prisons and penitentiary facilities into penitentiary pavilions,
- d) building new penitentiary facilities in the area already managed by the prison system,
- e) reconstruction of penitentiary pavilions excluded from the capacity of the facilities on account of their a technical state,
- f) adjustment of objects obtained by the prison system from the military and not included in the aforementioned programme,
- g) using a public-private partnership for the building, expansion and management of penitentiary facilities.

128. Furthermore, legislation measures have been taken including enforcement of imprisonment sentences outside a penitentiary facility by means of a system of “electronic monitoring” and “weekend penalties”. Although these measures will not result in the enlargement of the accommodation base for prisoners, they will allow to vacate a number of places in penitentiary facilities. Providing that these new solutions can be applied to about 15,000 convicts, in 2009 the whole system of enforcement of imprisonment sentences and preliminary detention could include about 112,000 detainees.

129. Gradually thanks to the enlargement of the accommodation base, social activity rooms, gyms and other rooms adopted recently for residential purposes will be used according to their original purpose. By the end of 2005, in prisons and remand prisons there were about 609 social activity unit rooms, which statistically means about 3 social activity rooms per one penitentiary facility, together with outside units.

130. The Administration of penitentiary units tries to find additional rooms designated for physical exercise and provides them with equipment meeting standards of safe usage.

Question 24

Please provide information and clarify the provision of article 223a of the Executive Penal Code of 1 September 2003, which regulates the situation of “a person under preliminary detention with respect to whom the penalty of deprivation of liberty is executed in another case”, in particular with regard to the restriction of his/her rights to, inter alia, “visitations, correspondence, use of telephones and other means of cordless and wire communications, possession of objects in a cell, use the medical services (...)”. (State Party report, para. 214)

131. The provision of article 223a unambiguously confirms the possibility of a simultaneous execution of the penalty of deprivation of liberty and the use of preliminary detention with respect to the same person, commonly accepted in the practice of common courts as well as in the decisions of the Supreme Court.

132. The provision of Article 223a, in fact, refers to the content of the rules of the Executive Penal Code, which are applied to a legal situation of a person in preliminary detention. And as a consequence as regards for example:

- a) visits, it refers to rules described in Article 217,
- b) correspondence, it refers to provisions described in Article 217a,
- c) using the telephones, it refers to the provision of Article 217c, which constitutes that a person in preliminary detention cannot use a telephone and other means of wire and cordless communication,
- d) possessing objects in the cell, it refers to the provisions rules of Article 216.

133. A person in preliminary detention with respect to whom the penalty of imprisonment is executed in another case:

- a) before using the entitlement described in Article 141a of the Executive Penal Code (random pass until 5 days) needs to obtain permission from an authority at whose disposal he/she is,

- b) does not have the right to get a pass, no more often than once per two months, for a combined period not exceeding 14 days during a year,
- c) does not have the right to get a pass, no more often than once a month, for a combined time not exceeding 28 days per year,
- d) does not use permission for a visit without a supervision outside a penitentiary facility, with the nearest trustworthy person, for a period not exceeding 30 hours on a one-off basis,
- e) does not get permission to leave a penitentiary facility without a supervision, for a time not exceeding 14 days on a one-off basis.

134. Moreover, it should be underlined, that pursuant to § 3 Article 223a of the Executive Penal Code, an authority at whose disposal it stays, can administer other rules concerning preliminary detention towards temporary arrested person with respect to whom the penalty of imprisonment is executed in another case.

135. To sum up, the limitations of the rights of a convict who is at the same time under preliminary detention have been introduced with the view to secure the proper course of the criminal proceedings. These restrictions concern exclusively such rights, execution of which may impair the administration of justice. It should be stressed that in such situation a detainee is not deprived of his/her rights however the scope of these rights changes due to the shift of that person's legal status.

Question 25

Please comment on regulations contained in art. 115, section 7 of the Executive Penal Code according to which a person in a “correctional facility of a lock-up regime” is provided health care services in the presence of “an officer who is not a medical professional”. (State Party report, para. 280)

136. The Prison Service takes every endeavour to guarantee persons deprived of liberty the use of all the rights to intimacy and protection of personal data during the use of health care services. Prisoners are notified about the fundamental rights of a patient during a preliminary medical check-up after admission to a correctional facility. Furthermore, information on the provisions regulating these issues can be obtained in all detention centres and correctional facilities from educators and heads of out-patient's clinics.

137. Pursuant to Article 70 of the Executive Penal Code, correctional facilities of different types differ by the degree of security measures and isolation of convicts and resulting from that convicts' obligations and rights as to the movement inside and outside the correctional facility. In the Polish penitentiary system convicts serve the penalty of deprivation of liberty in correctional facilities of three types: lock-up, semi-open, and open.

138. Lock-up régime is applied for convicts who, because of their conduct, personal properties and demonstrated attitude, should serve the penalty of deprivation of liberty in conditions of increased discipline, supervision, monitoring and protection. As a consequence the most dangerous offenders are housed in facilities of such kind. That is the reason why Article 115 § 7 of the Executive Penal Code entails the provision of medical services to a convict in the presence of a person who is not a medical professional (in practice, it means the presence of a security

department officer). Nevertheless the second part of the provision states that “at the request of an officer or employee of the prison health care institution for persons deprived of liberty, health services may be provided to the convicted person in the absence of an officer who is not a medical professional”.

139. According to the data collected at the time of control/supervision (interviews carried out with persons providing health services), it can be stated that the presence of a prison officer of security department is limited only to the situations in which health services are provided for prisoners who can constitute a threat for persons providing a service, especially in a situation when these persons are female. According to the same data, in practice the rule is that the health service is provided to a convict without a presence of a prison officer and in case where the presence of a prison officer is deemed necessary the health examination is carried out in such a way to minimise the possible infringement of the convict's intimacy.

140. Legally confirmed assurance of protection of medical personnel, without being abused, has significantly improved a feeling of security of this staff. It should also be mentioned that interviews held with convicts during the visitations indicated that they did not lodge any complaints, which could prove their negative assessment of the practical execution of the above provision.

143. The provision of Article 115 § 7 of the Executive Penal Code does not envisage a possibility to call out a prison officer in the case of providing the health services by persons other than medical personnel of prison system. In practice it relates to situations when health services are provided in health care centres outside a prison. Also in these situations there is an intention to minimise an influence of the presence of prison officer on the way the health service is provided. The presence of a prison officer of security department in described situations considerably limits, as noted in practice, attempts of escape of detainees from surgeries and it may eliminate attempts of corruption. Also the issue of the necessity to provide security to doctors and nurses, who do not have a possibility to assess a scale of threat from the side of convicts who are subjected to a health examination cannot be underestimated.

Question 26

Please comment on the situation of asylum-seeking children and juveniles placed in emergency blocks, including information on the regime of stay of children, their separation from juveniles and the maximum duration of stay in emergency blocks. In this connection, please provide information on the status of the adoption of the new Juveniles' Code.

144. First of all, it should be emphasized that an unaccompanied minor applying for the refugee status shall not be placed in the emergency shelter for children.

145. The authority admitting an application for granting the refugee status submitted by a minor shall immediately apply to the competent court for appointment of a guardian to represent the minor in the procedure for granting the refugee status and placing the minor in the custodian-educational centre or in the centre for aliens applying for the refugee status.

146. According to the agreement concluded between the capital city of Warsaw and the Office for Repatriation and Aliens, unaccompanied minor aliens are placed in the Children's Home where living conditions are much better than in the centers. Permanent care is provided there for minors by three persons specifically hired for the purpose of exercising care over minors

exclusively. Children have single, double or three-person rooms which they can arrange and decorate themselves. Medical help is also provided for minors and all the minors can enjoy education at school (at different levels depending on their age). Minor aliens residing in the Children's Home have time to do homework and learn the Polish language.

147. Children admitted to the Children's Home are not separated from other children residing there. Living with Polish children has definitely a positive influence on the integration process of young aliens and enables them to get familiar with the Polish culture in natural environment.

148. The employee of the Bureau of Organization of Centers for Aliens applying for Refugee Status or Asylum at the Office for Repatriation and Aliens exercising custody over a minor shall supervise the provision of such minor with appropriate accommodation conditions and the access to education and medical care, shall cooperate on the arrangement of the minor's free time, including cultural, sport and recreation events and shall grant assistance, in order to find the minor's family members, in contacting national and international non-governmental organizations whose statutory aim is to act for the well-being of minors and refugees.

149. Minors who reached their maturity shall be transferred to the centre for aliens applying for the refugee status unless the procedure on granting the refugee status has been earlier finished.

150. On the basis of Article 52 of the Act of 13 June on granting protection to aliens within the territory of the Republic of Poland an unaccompanied minor who has been refused the refugee status shall remain in the centre or shall be placed in the location indicated by the custodian court until the minor alien is handed over to the authorities or the organizations of his/her country of origin whose statutory functions include issues of minors. The organizations directly involved in exercising care over unaccompanied minors include UNHCR, Nobody's Children Foundation or Warsaw University Law Faculty. Bureau of Organization of Centres for Aliens applying for Refugee Status or Asylum also cooperates with the Little Children's Home where generally children up to 3 years old are placed.

151. According to the latest draft Act on the change of the Act on granting protection to aliens within the territory of the Republic of Poland and some other Acts now referred to the dispute to the European Committee of the Council of Ministers, the authority accepting an application shall be obliged to provide an unaccompanied minor with a professional unrelated foster family of the kind of a emergency shelter or a custodian-educational centre. An unaccompanied minor shall stay in a professional unrelated foster family of the kind of a emergency shelter or a custodian-educational centre until the custodian court has issued a statement on his/her place of residence.

152. Neither the provisions of the currently binding legal regulation on the liability of juveniles (*the Law of 26 October 1982 on proceedings in cases concerning juveniles*) nor those of the planned regulation (*Juveniles' Code*) do not refer to the question of adoption. This issue is comprehensively dealt with in the provisions of Article 114 and the following Articles of *the Law of 25 February 1964 – Family and Guardianship Code - Title II. Adoption*) and at present no substantial changes related to this issue are being considered.

153. Furthermore, in the case of conducting proceedings with foreign entities, relevant substantive law related to adoption is indicated in compliance with the provisions of private international law (*Article 22 of the Law of 12 November 1965 - Private International Law*).

Question 27

Please comment and provide further information on measures taken with regard to the use of physical force and “direct coercion measures” with respect to persons on pre-trial detention and those imprisoned, particularly on the use of mechanical restraint measures in addition to placement in a security cell. Please provide information on the monitoring of the use of these methods through television and their registration as well as on the training of staff on their proper use. (State party report, para. 307) Please also provide information as to whether complaints have been filed on these matters and the outcome of such complaints.

154. Police is one of the organs entitled to use means of direct coercion. These rights can be enforced in case of failure to subject to the orders of Police authorities or its officers issued pursuant to the law. The types of direct coercion and situations, wherein they can be used have been contained in the Report.

155. Additionally, the principles which the Police should be guided by when using the means of direct coercion should be mentioned here. These are the following:

- a) the purposefulness principles – which implies that both use of any mean of coercion (admissible by the law), and the choice of a specific mean of direct coercion must depend on the circumstances of the event and aim to a specified objective. At the same time, if necessary, various means of direct coercion can be deployed.
- b) the warning principles – consisting in the obligation of previous request by a police officer to proceed according to the law, and then to warn about the use of direct coercion, shall the request turn out to be ineffective, this principles is not in force when there is a necessity to take immediate action, namely if the delay shall threaten the safety of human life or health, and in case of use of means other than weapon, also the property,
- c) the indispensability principles – orders use of coercion only within the scope indispensable to remove the threat, the use of means of coercion are abandoned, once the threat has passed (the person submitted to the order) or the use of coercion did not result and it is obvious that it shall not result in a desired effect,
- d) the effect minimization principles – formulates the obligation to use the means of direct coercion in a way that results in least harm, and in particular that does not result in bodily damage or upset to health.

156. As far as the use of *mechanical restraining means* (handcuffs and straitjacket), it should be stated that the Ordinance of the Council of Ministers on cases and conditions and methods of deployment of means of direct coercion by police officers of the 17th of September 1990 (as amended) constitutes a legal basis for their use. Use of handcuffs can be obligatory – upon request of the court or prosecutor, or facultative – in relation to convicts, persons temporary arrested or detained in order to prevent their escape or to prevent their active assault or active resistance. Handcuffs cannot be used on persons under 17, except of juveniles over 16 suspected of committing crime against life and health. In connection with the existing ban on use of handcuffs on persons under 17, the Police can use guides, in order to prevent their escape or to prevent an active assault or active resistance.

157. Straitjacket, straps or incapacitating net (...) are used on people whose behaviour cause a threat to human life or health, as well as property, if use of other means of direct coercion is impossible or turned out to be ineffective. The incapacitating net can be used when chasing a suspect of a crime or in order to prevent a convict, temporarily arrested or detained criminal from escaping. It should be emphasized that there are “safety cells” in police premises designated for detainees.

158. The problem of observance of human rights is dealt with at all stages of training and vocational training of police officers. During training the main emphasis is made on development of proper professional habits among police officers – mainly when undertaking actions such as for instance use of means of direct coercion. The intention of the organized trainings is for the police officer to learn the principles obliging him to respect human dignity, use of force only in case of absolute necessity, not using tortures, protection of health and life of detainees.

159. With reference to monitoring through television in premises for detainees or arrestees for the purpose of sobering, there is no provision that would provide for its obligatory application. However, in premises where such monitoring is already in place, it plays a “supervising” role also in relation to the correctness of performance of professional duties by police officers guarding the premises for detainees. With a comprehensive modernization of old premises for detainees as well as appropriate funds for this purpose at the disposal of commanders of Police units, the closed circuit television system (monitoring) is used. The situation is similar in case of constructing the premises for detainees from scratch.

160. According to § 1 section 3 of the Regulation of the Council of Ministers of 15 February 2005, amending *Regulation on specific conditions of the use of direct coercion measures and firearms or a service-trained dog by officers of the Prison Service and the way of relevant conduct* Prison Service was obligated to equip protection cells with a CCTV monitoring system allowing for recording and storing of picture and sound. This obligation has been fulfilled by all directors of remand prisons and correctional facilities. The directors systematically monitor the recordings of the use of means of direct coercion.

161. The issue of the use of means of direct coercion has been included in the agenda of trainings conducted by the Central Training Centre of Prison Service in Kalisz for officers, warrant officers, and non-commissioned officers. The issue is also included in the programme of courses for managers of security departments, commanders of shifts and prison officers on duty in accommodation units.

162. Taking into account the significance of issues concerning the use of means of direct coercion and documenting of their application, directors of the facilities were obliged to maintain appropriate, high level of training and to monitor, within the scope of supervision and control, whether direct coercion means are used in conformity with regulations in force. Moreover, regional directors of Prison Service were obligated to control a method of recording picture and sound a method of storing information concerning a stay of a prisoner in a protection cell and to check correctness of prison officers’ actions in this area.

163. The way in which § 1 section 3 of the Regulation is implemented, as well as the frequency of theoretical and practical trainings on the use of direct coercion means conducted in

the facilities are systematically controlled by officers of the Central Board of Prison Service and specialists from regional inspectorates of prison service supervising security issues.

164. In 2006 there were 1,026 cases of the use of the means of direct coercion in facilities of Prison Service. Placement in a protection cell was applied in 807 cases, handcuffs – in 312 cases, straitjacket – in 94 cases, one-piece restraining belt – in 275 cases, three-pieces restraining belt – in 82 cases. It should be stated, that handcuffs were generally used during transport of detainees, while the straitjacket, one-piece restraining belt and three-pieces restraining belt were used sometimes simultaneously with placement in protection cell.

165. In 2006 3,569 complaints concerned improper attitude of prison officers and workers of Prison Service towards prisoners. Out of 2,995 complaints examined by Prison Service 25 were considered as justified and none of those 25 concerned infringement of physical integrity of a detainee. Out of all complaints concerning improper attitude of prison officers and workers of Prison Service towards detainees - 29 concerned using means of direct force, 91 – battery, 449 - verbal aggression (1 was considered as justified) and 2,426 - other forms of improper treatment, among which 24 were recognised as justified. Other 574 complaints were directed to courts, prosecutor's office and Ombudsman's office.

166. See also Appendix N°12 illustrating the number of complains within the years 2003 – 2006 regarding treatment of detainees by the Police.

ARTICLES 12 and 13

Question 28

Please comment on the measures taken to ensure the anonymity of those who complain while in detention and how does the State Party guarantee that the lodging of their complaints does not have negative consequence for persons deprived of liberty.

167. Pursuant to Article 63 of the Constitution of the Republic of Poland of 1997, *“Everyone shall have the right to submit petitions, proposals and complaints in the public interest, in his own interest or in the interests of another person - with his consent - to organs of public authority, as well as to organizations and social institutions in connection with the performance of their prescribed duties within the field of public administration. The procedures for considering petitions, proposals and complaints shall be specified by statute.”* The law providing for a procedure of investigation of petitions, proposals and complaints of the citizens is the Code of Administrative Proceedings. Pursuant to Article 225 § 1 of that Code *“nobody can be exposed to any damage or charge as a result of submitting a complaint or a proposal or as a result of delivering a material for publication with the attributes of a complaint or a proposal, if he/she acts within the limits of law”*.

168. Also persons in preliminary detention and convicted to imprisonment have substantial rights to file complaints. Article 102 section 10 and 11 of the Executive Penal Code states that a convict has a right especially to: *“...file applications, complaints and requests to the adequate authority for consideration and to present them, in absence of other persons, to the administrative staff of the prison, supervisors of organisational units of the Prison Service, the penitentiary judge, the prosecutor and the Ombudsman”* (section 10) and to *“keep correspondence, without it being censored, with the Police, justice institutions and other State and local bodies and the Ombudsman”* (section 11). Pursuant to Article 7 of the Executive Penal

Code, a convict can refer to the Court a decision of the authorities of Prison Service, including a director of prison, a director of a remand prison, as well as a regional director and a director general of Prison Service, because of its incompatibility with the law, unless otherwise provided by law. Then Article 103 § 1 of the Executive Penal Code states that: *“The convicts, their barristers and plenipotentiaries and adequate non-governmental organisations have the right to file complaints to the bodies established on the basis of international agreements on human rights, ratified by the Republic of Poland. The correspondence of imprisoned persons, regarding these matters, should be immediately sent to the addressee and is not subject to censorship.”*

169. Consideration of prisoners' complaints in all facilities of the prison system is governed by a Regulation of the Minister of Justice of 13 August 2003 on the methods of consideration of motions, complaints and requests of persons staying in prisons and remand prisons. Article § 8 section 6 states that in particularly justified cases the complaint should be examined directly on the site by representatives of the facility superior to the facility where the event occurred. “Justified cases” mean especially complaints concerning battery, harassment, using means of direct coercion.

Question 29

According to information before the Committee, the State party's judiciary is facing substantive problems ranging from lack of standards of professional conduct and deficient training to allegations of corruption and/or lack of independence. Please provide concrete information on the difficulties faced by the judiciary, measures taken to improve the situation, such as selection procedures, remuneration, training, judicial inspection, disciplinary procedures and their results.

170. The Law on the structure of common courts in its Article 61 defines the requirements to be met by a candidate for the position of a judge (so-called judicial census). Apart from high professional qualifications, the candidates for the profession are required to possess also high moral standards, integrity, a high sense of responsibility, and broad intellectual horizons. According to the provisions of the Law: a judicial candidate should have an impeccable character (Article 61 § 1 subsection 2); an applicant for a vacant judicial position appends to the application form information from the National Criminal Register about his person (Article 57 § 1 second sentence); the Minister of Justice asks a relevant Police authority for information on each candidate for employment in the first judicial position, which information is subsequently forwarded to the National Council of the Judiciary (Article 58 § 4-6).

171. On 19 February 2003 the National Council of the Judiciary, pursuant to Article 2 section 1 subsection 8 of the Law of 27 July 2001 on the National Council of the Judiciary, adopted a professional ethics code of judges, stipulating the principles of performing judicial service and the rules of conduct for judges outside their service.

172. Furthermore, judges are guaranteed work conditions and remuneration adequate to the dignity of their office and the scope of responsibilities (Article 178 section 2 of the Constitution). The amounts of the remuneration of judges of courts of the same level differ only as to the duration of service and the functions performed (Article 91 § 1 of the above Law on the structure of common courts).

173. All reservations with respect to judges concerning their non-compliance with standards of professional conduct, including charges of corruption and/or partiality, are meticulously

scrutinized by the disciplinary ombudsman or his deputies as related to disciplinary liability, envisaged in Articles 107-133 of the above Law. Pursuant to Article 107 of the Law, a judge is subject to disciplinary proceedings in the case of professional negligence, including an obvious and blatant violation of the provisions of the law and the violation of the dignity of the office (so-called disciplinary violation); a judge is subject to disciplinary proceedings also when it comes to his conduct prior to taking office, if this conduct violated the duty of the state office held at that time or if he has proved unworthy of a judicial office.

174. A disciplinary ombudsman takes action on the request of the Minister of Justice, president of an appellate court or a provincial court, and a college of an appellate court or a provincial court, the National Council of the Judiciary, as well as on his own initiative, upon a preliminary clarification of the circumstances necessary for the determination of the attributes of the violation. In the event the allegations are confirmed, disciplinary proceedings are instituted, as a result of which the judge may be subject to the following sanctions: admonition, reprimand, removal from the position occupied, transfer to another position, removal from office. If the violation bears attributes of an offence, the disciplinary court examines the case *ex officio* and decides whether or not to hold the judge criminally liable, which does not bar the course of the disciplinary proceedings.

175. An analysis of case law in disciplinary proceedings indicates that in each case when the guilt of a judge is established, with charges of corruption the courts decided on the penalty of removal from office.

176. Out of all currently held disciplinary proceedings around 70% are proceedings related to offences committed by judges when performing their official duties; this includes 8 proceedings where charges of corruption were pressed against judges (in each of these cases parallel criminal proceedings take place). The remaining proceedings (ca. 30%) are related to violations committed by judges out of court (e.g. causing road accidents, etc.).

177. Furthermore, training programmes are held for the personnel of the judiciary; e.g. in November 2006 a training was organised for disciplinary ombudsmen of prosecution offices and members of Disciplinary Courts at the Prosecutor General of the Republic of Poland, attended by 100 prosecutors from all over the country. The training focused, among others, on issues related to disciplinary proceedings against prosecutors with respect to possible corruption in this professional group, with special emphasis on corruption-prone risk areas in this category of crimes. For the year 2007 The National Training Centre for the Personnel of Common Courts and Prosecution Offices has scheduled a series of trainings for the personnel of the judiciary concerning both the professional and ethical part of their work.

Question 30

Please provide updated information on the amendment of the Law on the Structure of Common Courts of 1 July 2005 related to the selection of lay judges, including new selection criteria, duration of mandate and reasons for termination of mandate.

178. The Law of 1 July 2005 on the amendment to the Law on the structure of common courts and selected other laws introduced *inter alia* changes in the selection of lay judges. First of all, the Law introduced provisions safeguarding the apolitical character of lay judges by the direct exclusion of political parties from among entities authorized to submit candidates for lay judges to municipality councils. Furthermore, the Law:

- a) limits the participation of lay judges in the hearing of selected cases,
- b) extends the catalogue of persons excluded from being lay judges, contained in Article 159 § 1 of the above Law, to comprise also councillors of the municipality which selects lay judges for the courts of a given area of jurisdiction,
- c) introduces the requirement of a lay judge having at least secondary education and of presenting an appropriate certificate stating that a candidate for a lay judge is capable to perform the duties of a lay judge because of his/her health status,
- d) apart from the obligation to append information from the National Criminal Register to the application of a candidate lay judge, it introduces the requirement of appending a statement of the candidate that no criminal proceedings against him/her are in progress,
- e) it lifts the requirement specified in Article 158 § 2 of the above Law related to special qualifications for a lay judge who would adjudicate in labour cases.

179. The Law did not introduce changes as to the term of office of a lay judge. The term of office of lay judges in provincial and district courts lasts four calendar years following the election year, however, the mandate of a lay judge additionally expires at the end of the term of office of all lay judges (Article 165 of the above Law).

180. The Law, however, introduced a substantial amendment concerning the expiry of the mandate of a lay judge; namely the mandate of a lay judge expires in the case of a valid and final sentence for an offence or misdemeanour, including a fiscal offence or misdemeanour.

Question 31

Please comment on the fact that racially motivated harassment and acts of violence against members of the Roma community have not been properly investigated by law enforcement agencies. Provide information on the number of violent acts, indictments (if any) and sentencing in those cases.

181. Provisions of Article 256 and Article 257 of the Penal Code lay down penalties for offences related to an unlawful violation of rights and freedoms on grounds of nationality, ethnic background, and race. The use of violence and unlawful threats with respect to a group of persons or a particular person or instigation of such an offence is prosecuted pursuant to Article 119 § 1 and 2 of the Penal Code.

182. Poland has one of the lowest percentages of national minorities in Europe (2.5-3 % of the population). That can be one of the reasons why the number of offences committed on the basis mentioned above is not high. No doubt, there exists an “unreported” number of actual events. It may be due to the way of collecting and documenting evidence indicative of the motivation of the perpetrator in the context of subjective attributes of the offences under Articles 119, 256 or 257 of the Penal Code. When the injured person notifies the Police about the offence, in many cases the Police officer establishes primarily the course of the event, e.g. a beating or an assault, paying less attention to the motivation behind the event and the way of conduct of the perpetrator, which in turn has a significant bearing on the qualification of these offences. The “base motives” referred to in Article 115 § 2 of the Penal Code (motivation, reprehensible conduct of the perpetrator), and thus the high degree of social damage which impacts the imposition of a more severe penalty, may in such circumstances be overlooked.

183. Difficulties in establishing whether a given offence was committed on grounds of race and its reflection in available statistics are another problem. This may stem from the fact that the forms of witness-victim examinations do not contain data on nationality and creed. Such data cannot be inquired about by the person conducting a procedural action, unless the injured party themselves disclose their nationality, creed, and reasons for the event or the person conducting a procedural action establishes this in another way. Because of the above difficulties work is under way to set up an adequate data base in the Ministry of Internal Affairs and Administration.

184. In 2004, 24 cases related to anti-Semitism were recorded, and the following year 29 ones. A total of 20 proceedings were concluded; 6 of them led to the filing of indictments to courts, 9 cases were discontinued, and in 5 cases the institution of preliminary proceedings was refused.

185. In 2005, a total of 37 cases were concluded; 7 of them led to the filing of indictments to courts, 17 cases were discontinued, whereas in 13 cases the institution of preliminary proceedings was refused.

186. In three quarters of 2006, 29 new cases were filed with the prosecution offices related to racially motivated offences and those motivated by xenophobia, including cases connected with the operation of web pages containing texts inciting hatred on grounds of nationality and creed. Data for this period indicate that 23 cases were concluded as to content; in 4 of them indictments were filed to courts, 14 were discontinued, and in 5 cases preliminary proceedings were not instituted.

187. A vast majority of proceedings related to offences on grounds of anti-Semitism and fascism. Only single cases of violations of rights of members of the Roma community were reported.

188. Interestingly, in the period 2004-2006 the influx of cases to prosecution offices in successive years was the following: 1,696,880 (2004), 1,662,800 (2005) and 1,556,611 (2006), which shows that offences committed on grounds of racism or xenophobia in Poland constitute a very small fraction of all crimes.

189. Allegations that officers of the Police do not adequately prosecute racially motivated offences are advanced extremely rarely. Over the past few years only one case of a non-governmental organization reporting an alleged discrimination against representatives of the Roma community – victims of offences, on the part of the Police was recorded. Comprehensive explanatory proceedings did not confirm the allegations. In the course of the proceedings it was established that the detection and proceedings took place in compliance with the procedural rules in force and with the provisions of law, and the Roma were treated in the same way as other citizens of our country.

190. In the years 2003-2006 three complaints were lodged with the Police on the manner of treatment of persons of Roma nationality by the Police: two of the complaints concerned an improper manner or circumstances of detention, while one related to the unlawful use of physical force and direct coercion measures during the detention.

Question 32

Please describe measures taken to eradicate the phenomenon of racism and discrimination, in particular racially motivated violence against Roma and other minority groups or foreigners, including prompt and impartial investigations into allegations of offences pursuant to articles 1 and 16 of the Convention.

191. As part of the government programme of the “Prevention of Racial Discrimination, Xenophobia and Related Intolerance 2004-2009”, the National Prosecution Office took action with a view to a more efficient suppression of offences committed on grounds of race, ethnic background, or nationality. As of 2004 (i.e. since the commencement of the implementation of the government programme) subordinate prosecution offices were recommended to subject all preliminary proceedings related to racially motivated offences to the official supervision of provincial prosecution offices in order to eliminate too hasty refusals to institute proceedings or the discontinuation of proceedings on account of a limited social damage. Appellate prosecution offices conduct periodic (once every quarter of the year) monitoring of cases related to this category of offences that were concluded with a refusal to institute proceedings or with their discontinuation as well as assess the justifiability of these decisions, forwarding information on these monitoring activities to the National Prosecution Office.

192. Upon an analysis of the results of the monitoring actions, the National Prosecution Office forwards the evaluations with remarks and observations to all prosecution offices throughout the country for further application with a view to homogenizing the methods of conducting preliminary proceedings in this category of offences. Each and every irregularity and error is discussed during trainings for prosecutors.

193. In the future, statistical data on and the assessment of this type of offences can be forwarded for use to the Data Base, under construction in the Ministry of Internal Affairs and Administration.

194. In 2005 the National Prosecution Office, within the framework of the government programme, took action with a view to establishing whether there are organizations in Poland that act on the basis of anti-Semitic or racist ideas. In this regard all appellate prosecution authorities were ordered to examine if such organisations “surfaced” in the proceedings conducted in their subordinate prosecutorial offices. Since no activity of such an organization was reported, no administrative and legal actions were taken with a view to their delegatisation.

195. In 2007, the systematic monitoring of proceedings related to this category of offences is continued with a view to ascertaining the correct character of the proceedings; it takes the form of quarterly analyses of concluded proceedings as to the justifiability of the decisions taken. An ongoing coordination of the methodology of the conduct of these proceedings will allow a unification of practice in all organisational units of the prosecution authority.

196. Furthermore, pursuant to § 44 of the inner Regulations of work of common organisational units of the prosecution authority, prosecutors are under an obligation to notify the superior prosecutor about cases of significant importance, as to their kind, character, and consequences. In such a case the superior prosecutor may assume official supervision of the proceedings.

Question 33

Please describe the measures taken by the State party to disseminate information on the availability of an individual complaints procedure under article 22 of the Convention.

197. Polish government undertakes actions aiming at the dissemination of knowledge on human rights among the general public in order to make citizens aware of their rights. This purpose is served by, i.a. the information presented on the Internet home pages of the Ministry of Justice, the Ministry of Internal Affairs and Administration, and the Parliament. Apart from the texts of the UN human rights conventions, the websites also include current periodical Government's reports, information on the possibility of submitting communications to specific Committees (also to the Committee against Torture), specimens of communications and relevant addresses. Ministry of Justice initiated also the practice of issuing in print free of charge publications including the text of the reports, summary protocols, concluding observations, and short information on the principles of consideration of reports by the Committees, text of the Covenant or the Convention, specimen of the communication and information about procedure of submitting the communication. The Ministry of Justice intends to continue this practice and to prepare similar publication after consideration of the 4th periodic report on the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The publication, as was the case with the previous ones, will be sent to the relevant NGOs, major state libraries, all university libraries, as well as to organs of government administration duty bound to implement the provisions of the Convention and particular recommendations of the Committee. Moreover, the Ministry of Justice plans to prepare a publication on the procedure of submitting the communications to the UN Committees. The publication will include texts of the relevant conventions, specimens of the communication and information on the procedure of submitting the communication, as well as the examples of the cases examined by the Committees.

ARTICLE 14

Question 34

Please provide further information on redress and compensation measures ordered by the courts and actually provided to victims of torture or their families, since 2000, in particular compensation arising from the limitation of human rights during periods requiring the introduction of extraordinary measures as stipulated by the Law on the Recompense of the Material Loss of November 2002. This information should include the data on the number of requests made, the number granted, and the awards in each case. (State Party report, para. 371)

198. In the period under consideration there were only four cases related to compensation arising from the restriction of human rights in periods necessitating the introduction of extraordinary measures as envisaged in the above law. The cases were examined by the Provincial Court in Rzeszow and by the Provincial Court in Katowice. In the first case, by the judgement of 25 June 2003 the plaintiff was awarded from the defendant - the State Treasury - 1st Fiscal Office in Rzeszow - the amount of PLN 230,000 with statutory interest as of 25 June 2003, whereas in the other case by the judgement of 22 January 2004 the plaintiffs were awarded from the defendant - the State Treasury - the Minister of State Treasury - the amount of PLN 11,584 with statutory interest as of 21 June 2001. In the other two proceedings the cases filed by the plaintiffs against the State Treasury (President of the Provincial Court in Katowice and the

Minister of Internal Affairs and Administration and the Commander of the Provincial Headquarters of the Police in Katowice) were rejected by the court.

ARTICLE 16

Question 35

Please describe any measures taken by the State party to address the problem of violence against women, including rape and sexual harassment, in particular in detention centres. Include additional information on cases denounced, indictments and sentences.

199. It should be emphasised that the Police are carefully analyzing all complaints concerning use of violence against women, with particular consideration of the stay on the police premises. In the years 2003-2006 the Police received 7 complaints against the use of violence against women, of which one has been confirmed. Within the same period, 4 complaints against sexual harassment and rape have been lodged. One complaint has been confirmed and handed over to the Prosecutor's Office.

200. As far as the Prison Service is concerned, in the period 2005-2006 no complaints were reported concerning the use of violence towards women on the part of prison officers of Prison Service as well as inmates.

201. Please refer also to the response to question N°7.

Question 36

Please provide updated information on any new legislation and/or measures adopted to prevent and combat sexual trafficking, particularly of women and children, and to provide assistance to victims, including sensitization of law-enforcement officials in contact with these victims.

202. The Polish government attaches great importance to the problem of fighting and preventing trafficking in humans. Being aware of the threat of the phenomenon of trafficking in humans increasing in Europe and around the world, it has undertaken various steps counteracting this problem.

203. Substantial criminal law allows for the prosecution of persons responsible for all kinds of conduct that bears the attributes of trafficking in persons (Article 253 and Article 204 § 4 of the Penal Code). Poland also ratified the Additional Protocol to the UN Convention on combating international organized crime, which contains a definition of trafficking in persons. Moreover, the Council of Europe Convention on action against trafficking in human beings was adopted on the 16th of May 2005 in Warsaw (the preparation for ratification of the Convention is currently in progress.) The following are among the objectives of the Convention: preventing and fighting trafficking in human beings with guarantee of gender equality and protection of human rights of victims of trafficking, development of a comprehensive plan aiming at protection and assistance to victims and witnesses, with guarantee of gender equality and ensuring of effective investigation and prosecution.

204. The amendment to the Penal Code referred to in the response to Question 1 envisages the penalization of preparations for the crime of trafficking in persons. The upper limit of the penalty of deprivation of liberty for the preparation for the crime of trafficking in persons is projected to

be up to 3 years. Furthermore, the amendment envisages changes in Article 204 § 4 consisting *inter alia* in the increase of the sanction (the previous one – from one year to 10 years, the proposed one – from 3 to 15 years).

205. A very significant change in the Polish law, from the point of view of fighting trafficking in human beings, was the adoption of the *Act amending the Aliens Act and the Act on protection granted to aliens within the territory of the Republic of Poland, as well as some other Acts* on the 22nd of April 2005. The Amendments (which entered into force on the 1st of October 2005) refer to the possibility of granting to an alien (a victim of trafficking in human beings) a residence visa or a permit to stay for a specific period of time to enable their cooperation with the Police. The implemented Programme for support and protection of victims of trafficking in human beings is directly connected with the provisions of the aforementioned *Act*. This Programme was launched within the framework of the *National Programme for the Prevention and Fight against Trafficking in Human Beings for the years 2005-2006* and has been implemented by the Ministry of Interior and Administration and the La Strada Foundation. It aims at securing the needs of a victim of trafficking in human beings (an alien) by granting a residence visa for the time necessary for the victim to decide whether to cooperate with the Police (reflection period) and, in case of the victim's consent to cooperate, a permit to stay in the territory of the Republic of Poland for 6 months (with the possibility to re-apply for a permit to stay for subsequent 6 months). Participation in the Programme is voluntary. The proposal to participate in the Program is made by an officer of the Police or the Border Guard or a representative of the La Strada Foundation who subsequently inform the person responsible for implementation of the Program within the Ministry of Interior and Administration thereof. In every case of a reasonable suspicion that an alien is a victim of trafficking in human beings, the Border Guard officers are obliged to inform the District Prosecutor of local jurisdiction thereof.

206. Besides, Poland has completed implementation of the Cooperation Programme signed in 2001 between the government of the Republic of Poland and the Czech Republic and the United Nations Office on Drugs and Crime of the Centre for International Crime Prevention entitled "Legal and penal reaction to trafficking in human beings in Czech Republic and in Poland." Experience obtained was used to develop the *National Programme for the Fight against Trafficking in Human Beings* adopted by the Council of Ministers on the 16th of September 2003. In 2004 the inter-departmental Team for Fighting and Prevention of Trafficking in Human Beings was created. The Team consists of representatives of governmental administration, the Police and non-governmental organizations dealing with the problem of trafficking in human beings. *The National Programme for the Prevention and Fight against Trafficking in Human Beings for the years 2005-2006* has been developed and then implemented as a result of works of the Team. Works concerning the adoption of the *National Programme [...] for the years 2007-2008* are currently in progress.

207. It is noteworthy that conduct guidelines for prosecutors, officers of the Police and the Border Guard carrying out investigations in cases of trafficking in persons were prepared as part of the implementation of tasks laid down in the *1st National Programme for the Prevention of Trafficking in Persons*. The National Prosecution Office coordinates investigations related to this type of offences and monitors the phenomenon. Prosecutors and judges regularly attend trainings on trafficking in persons.

208. In order to systematize the efforts of the Police undertaken in case of detection a crime of trafficking in human beings and in connection with implementation of the aforementioned Programme, in February 2006 the Police and Border Guard received "Algorithm of conduct of

Police officers in case of detection a crime of trafficking in human beings.” This algorithm is widely disseminated in all undertaking such as trainings, conferences, informative publications etc.

209. Moreover, the issues concerning trafficking in human beings are discussed on the level of basic training for Police and Border Guard officers. At these trainings, officers learn the principles of conduct in case of coming into contacts with victims of trafficking in human beings. Both the Ministry of Interior and Administration, and the Police and Border Guard officers have been for years actively cooperating with non-governmental organizations. The cooperation features exchange of experiences, mutual use of experts and multiplication of the acquired knowledge. The officers also participate in trainings organized by institutions in the third sector.

Question 37

Does Poland envisage withdrawing its reservation regarding article 20 of the Convention and if not, why not?

210. On 13 January 1986 while signing of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Poland submitted reservations to Article 20 and Article 30 § 1 of the Convention. These reservations were not confirmed when the ratification document was deposited on 26 July 1989. However, on the official web page of the Depositary of the Convention (untreaty.un.org) Poland is indicated as a state which made the aforementioned reservations. Therefore in order to avoid possible uncertainties, in October 2006, the Polish Government requested the UN Secretary-General to take a position on the matter. In November 2006 the UN Secretary-General submitted his position to the Polish Government, wherein he states as follows:

“Article 19 of the Vienna Convention on the Law of Treaties, which codifies customary international law in this respect, provides for reservations to be made at the time of signature or when depositing an instrument of ratification, acceptance, approval or accession. If a reservation is made upon simple signature (i.e., signature subject to ratification, acceptance or approval), it is merely declaratory and must be formally confirmed in writing when the State expresses its consent to be bound. In the present case, since the reservations were not confirmed, they are without any effect. In accordance with the practice of the Secretary-General, as depositary of multilateral treaties, a reservation may be formulated after ratification, acceptance, approval or accession. In such cases, the depositary circulates the “late reservation” to all States concerned assuming that it is in proper form (the reservation must be duly signed by the Head of State, head of Government or Minister for Foreign Affairs): The Secretary-General accepts the reservation in deposit only if no such State notifies him of its objection within 12 months from the date of notification of the reservation by the depositary.”

211. In the light of the above, the reservations made on signature of the Convention and not confirmed on ratification are not binding. Since the situation has been clarified, there is no need for Poland to take any further steps in this field.

Question 38

Please indicate whether there is legislation in Poland aimed at preventing and prohibiting the production, trade, export and use of equipment specifically designed to inflict torture or other cruel, inhuman or degrading treatment or punishment. If so, please provide information about its content and implementation. If not, please indicate whether the adoption of such legislation is being considered.

212. As concerns the prevention of the trade (export and import) in goods designed to inflict torture as well as prevention of the provision of technical assistance with respect to such goods, Poland is bound by the *Council Regulation (EC) No 1236/2005 of 25 June 2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment*, which entered into force on 30 July 2006.

213. In Poland the application of the provisions of the above Council Regulation is ensured by:

- a) Law of 10 March 2006 on the administration of international trade in services,
- b) Law of 16 April 2004 on the administration of international trade in goods,
- c) Regulation of the Minister of the Economy of 7 June 2006 on permits for the provision or acceptance of technical assistance with respect to certain goods which might be used for the execution of penalties or torture,
- d) Regulation of the Minister of the Economy of 7 June 2006 on permits for the import from a third country or export to a third country of certain goods which might be used for the execution of penalties or torture.

Question 39

Please provide information on the legislative, administrative and other measures the Government has taken to respond to the threat of terrorism, and please indicate if, and how, these have affected human rights safeguards in law and practice.

214. Combating terrorism in Poland takes place first of all on the basis of the Penal Code. Criminal proceedings in cases related to offences of a terrorist character are conducted on the basis of the provisions of the Polish Code of Criminal Procedure, which is applied also with respect to perpetrators of other crimes.

215. A law amending the Penal Code entered into force on 1 May 2004; implementing the Framework Decision of the Council of the European Union of 13 June 2002 on combating terrorism, it introduced a number of new provisions concerning the suppression of terrorism by means of criminal law. The major changes are as follows:

The introduction of a definition of an offence of a terrorist character.

216. The offence of a terrorist character consists in a prohibited act punishable by the penalty of deprivation of liberty whose upper limit is at least 5 years, committed for the purpose of:

- a) serious intimidation of many persons,
- b) forcing an agenda of public authority of the Republic of Poland or another state or an international organization to take or abstain from taking a particular action,

c) causing serious disturbance in the political or economic system of the Republic of Poland, another state or international organization, as well as threatening to commit such an act.

The imposition of a more severe penalty for the commission of an offence of a terrorist character.

217. A general provision obliging the court to impose a more severe penalty on perpetrators of offences in an organised group, repeat offenders and perpetrators who have turned the commission of offences into a source of steady income was extended to include *perpetrators of offences of a terrorist character*. In such cases the court imposes the penalty of deprivation of liberty above the lower limit and the upper limit of statutory sanctions envisaged for a given offence (raising the upper threshold is limited in the case of a crime).

The extension of domestic jurisdiction to include cases of an alien committing an offence of a terrorist character abroad.

The extension of the qualified type of the offence of participation in an organised crime group to include offences of a terrorist character.

218. The Penal Code provides for an offence consisting in the “participation” in an organised group aiming at the commission of offences. If such a group has a military character or aims at the commission of offences of a terrorist character, the perpetrator is subject to a more severe penalty.

The introduction of the possibility of imposing a sanction on a legal person subject to the *Law of 27 October 2002 on the liability of collective entities for punishable acts* in the event of the commission of offences of a terrorist character.

219. Apart from the Penal Code, the Law of 16 November 2000 on the prevention of entry into the financial market of material resources from illegal or undisclosed sources and on the prevention of financing terrorism is another major legal act containing regulations aiming at the prevention and elimination of money laundering. The Law allows, inter alia, the disabling of accounts of persons justifiably suspected of being linked to the commission of a terrorist act.

220. Furthermore, Poland is bound by a number of international agreements containing instruments for the fight with terrorism (United Nations conventions, the European Convention on the Suppression of Terrorism, etc.).

221. With regard to the recommendations of the UN Counter-Terrorism Committee, established pursuant to Resolution 1373 of 2001, which emphasise that a separate type of an offence should be adopted in domestic legislations consisting in the financing of terrorism, and in view of the provisions of the 1999 UN Convention for the Suppression of the Financing of Terrorism, the Ministry of Justice assumed legislative work towards the amendment of the Penal Code through the introduction of an offence penalizing the financing of terrorism.

222. Administrative measures include the establishment by Resolution 33 of the Prime Minister of 21 March 2005 of the Task Force for the Coordination of Operations and Reconnoitre Actions for the Suppression of Political Terrorism, an advisory body to the Prime

Minister. Its duties include an ongoing analysis and assessment of actual and potential threats of acts of political terrorism.

223. The above measures of combating terrorism are in compliance with international human rights standards and respect the safeguards of human rights as defined in international legal acts ratified by Poland.
