



**Optional Protocol to the
Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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**Subcommittee on Prevention of Torture and Other Cruel,
Inhuman or Degrading Treatment or Punishment**

**Comments of Poland on the recommendations and
observations addressed to it in connection with the
Subcommittee visit undertaken from 9 to 18 July
2018* ****

[Date received: 9 January 2020]

* The present document is being issued without formal editing.

** On 9 January 2020, the State party requested the Subcommittee to publish its replies, in accordance with article 16 (2) of the Optional Protocol.

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I. Introduction

1. The Subcommittee on Prevention of Torture carried out its first visit to Poland from 8 to 19 July 2018. The Subcommittee met with officials and individuals from the Ministry of Foreign Affairs, Ministry of Justice, Ministry of the Interior and Administration, Ministry of Health, Ministry of Family, Labour and Social Policy, Ministry of National Defence, Ministry of National Education, Bureau of the Commissioner for Patients' Rights, Central Board of Prison Service, Office for Foreigners, General Police Headquarters, Polish Border Guard Headquarters, Military Gendarmerie Headquarters, Regional Court of Warsaw, National Public Prosecutor's Office, National Preventive Mechanism, Office of the Commissioner for Human Rights, United Nations and representatives of the civil society (Association for Legal Intervention, International Humanitarian Initiative Foundation, Helsinki Foundation for Human Rights, Polish Centre for Rehabilitation of Tortured and Warsaw Bar Association). The Subcommittee visited also seven correctional institutions, sixteen places of Police detention and four juveniles. Two places of deprivation of liberty were visited jointly by the national preventive mechanism and the Subcommittee.
2. Poland continuously remains open to a fruitful cooperation with the Subcommittee as well as other UN Special Procedures. We strive to achieve the highest standards of protection of human rights in accordance with the international law.
3. Following the visit, on 25 June 2019 the Subcommittee presented the report containing its observations and recommendations addressed to Poland (hereinafter 'the report'). We welcome this document and wish to present the following substantive comments that present the developments since.

II. Overarching Issues

A. Legal and Institutional Framework for the Prevention of Torture

Definition and criminalisation of torture

4. **Para. 35 of the report** indicates the need to introduce a regulation on tortures as a separate crime, in line with Article 1, 2 and 4 of the Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.
5. According to the Ministry of Justice, the current criminal law regulations in this regard are sufficient to satisfy all international obligations of the Republic of Poland. Polish law includes such crimes as: violation of bodily integrity (Article 217 §1 of the Criminal Code), punishable threats (Article 190 §1 of the Criminal Code), forcing another person with violence or unlawful threat into specific conduct (Article 191 §1 of the Criminal Code), abuse of power by a public officer (Article 231 §1 of the Criminal Code), causing a health impairment (Article 156 and 157 of the Criminal Code), abuse against a dependant (Article 207 §1 of the Criminal Code). Factual circumstances covered by the definition of torture included in the convention may be also classified under Article 245–247 of the Criminal Code, namely influencing a witness, an expert witness or the defendant with the use of violence or threat (Article 245), use of violence or threat to obtain testimonies, evidence, statements or information (Article 246) or abuse against a person deprived of liberty (Article 247).
6. The tortures consisting in actions listed below will be deemed an abuse of power by an officer, and possibly also a violation of bodily integrity:
 - (a) Physical influence not causing an effect (e.g. waterboarding);
 - (b) Psychological treatment other than unlawful threats (e.g. false information on the death of a relative), if it does not concern a person deprived of liberty (Article 247 of the Criminal Code) or is not applied to use specific testimonies, evidence, information or statements (Article 246 of the Criminal Code) or to influence personal sources of evidence (Article 245 of the Criminal Code), therefore, when such treatment is applied, for example, to punish a free person, to intimidate, to exert pressure or for any other purpose arising from discrimination (tortures may be used in the regime of Article 57a of the Criminal Code).

7. The definition of tortures included in Article 1 of the Convention is, therefore, fully reflected by Polish law, but due to its extensiveness and character, specific provisions are included in various parts of the criminal code, depending on the rights violated. In view of the above, the potential introduction to the Criminal Code of a definition of tortures included in the Convention would have no meaning from the perspective of the protection of human rights in Poland; this would be only a repetition of provisions already existing in Polish law. Additionally, accepting in full the definition of tortures as elements of only one crime would violate the rules of classification adopted in the Polish criminal law, according to which criminal acts are classified according to the type of violations of individuals' rights protected by law.

8. As far as the matters raised in the recommendation in point 46 are concerned, the legal status quo in this regard has been discussed in the remarks made in reference to point 35.

Separation of categories

9. **With regards to paras. 38 and 39 of the report**, the manner of prison population's placement is regulated by the Act of 6 June 1997 of the Penal Enforcement Code (Journal of Laws of 2017, item 665 as amended). The actions of the prison administration in this regard are monitored in accordance with the rule of judicial control over out-of-court enforcement bodies and also through the inspections of the representatives of the Commissioner for Human Rights and the National Mechanism for the Prevention of Torture. It should be emphasised that the Prison Service pays due attention to the area discussed, taking into account the architectural design of organisational units. In particular, the placement has an impact on security, as referred to in Article 108 of the aforementioned Act, and on preventing harmful influences of demoralised convicted persons.

10. The Prison Service strictly respect the provision of Article 212 § 1 of the Penal Enforcement Code, which requires that first-time inmates be separated from those who have already served time in prison, and that juveniles be separated from adults. In addition, the recommendations of the authority at whose disposal the detainee remains shall be taken into account in order to safeguard the proper conduct of criminal proceedings and to ensure detainee safety in a pre-trial detention centre. Another provision important for the placement of convicted persons is Article 110, in particular its § 4, specifying the criteria to be taken into consideration.

11. In response to the allegation that convicted persons and persons awaiting trials are from time to time detained in the same ward or even placed in the same cell, and that people detained for what was referred to in the report as 'civil offences' were placed in the same cell with people detained for criminal offences, as of 9 October 2019 in pre-trial detention centres and in correctional facilities there were 8,534 persons under pre-trial detention, 64,911 convicted persons (including 1,052 convicted persons under pre-trial detention) and 857 persons sentenced under misdemeanour law (including 44 persons sentenced under misdemeanour law under pre-trial detention).

12. In penitentiary facilities located within the Republic of Poland, persons under pre-trial detention, who are not covered by the regulations on the execution of imprisonment sentence, are placed in wards and cells separately from convicted persons and they are subject to different treatment, which reflects their status of non-convicted persons. Also persons subject to the penalty of custody for misdemeanour or penalties for the breach of order, as well as persons made subject to coercive measures resulting in the deprivation of liberty, are separated from convicted persons.

13. Additionally, when making placements for persons subject to pre-trial detention, the administration of the pre-trial detention centre takes into account the instructions of the body at whose disposals such persons remain, with a view to ensure the correct course of criminal proceedings and security in a pre-trial detention centre. Persons linked to one another are separated based on written information from the disposing body or the court that ordered pre-trial detention. To ensure proper isolation of persons under pre-trial detention linked to one another, to whom the regulations on the execution of imprisonment sentence do not apply, they are divided into groups. The number of groups and their

placement in residential buildings and wards are decided by the director. Groups of detainees subject to pre-trial detention should be arranged in a manner preventing the exchange of information between detainees from different groups. Detainees under pre-trial detention which are supposed to be separated from each other cannot be allocated to the same group. While being outside the residential cell, detainees cannot have any possibility of making contact with people allocated to another group.

14. Detainees under pre-trial detention, convicted persons and persons convicted for misdemeanours may be released to take part in procedural activities at the request of judicial and public prosecutor's bodies for the purposes of criminal matters where pre-trial detention was not ordered and civil matters.

15. It should be pointed out that point 39 concerning the division of convicted persons into categories in line with the Nelson Mandela Rules is reflected in national regulations, in particular in the Ordinance of the Minister of Justice of 21 December 2016 on the organisational and order rules for the execution of detention penalty (Journal of Laws of 29 December 2016), in particular the provisions of chapter 3 concerning the placement of convicted persons. The provisions of the rules apply to persons subject to imprisonment, persons subject to custody for a misdemeanour or penalty for a breach of order, as well as to persons made subject to coercive measures resulting in the deprivation of liberty. Pursuant to § 10 of the rules, the convicted persons are placed in residential cells, taking into account their sex, age and previous convictions or military detention penalty. To persons subject to pre-trial detention the Ordinance of the Minister of Justice of 22 December on the organisational and order rules for pre-trial detention enforcement applies. The above ordinances are also related to recommendation No. 106 and 107.

Staff-related issues

16. **Regarding para. 43 of the report**, taking actions aimed at increasing the remuneration of officers and staff of the Prison Service led to pay rises in the recent years. However, taking into consideration the specificity of the service in the Prison Service and the conditions of service that are incompatible with the conditions of employment offered outside the Service, both financially, and psychologically and socially, the Prison Service experiences issues with recruiting adequate candidates.

17. Another problem is a high number of resignations from the Prison Service; for instance, in 2017 1,478 officers handed in resignations, in 2018 the respective number was 1,689, and in 2019, by 30 September 2019 – it was 1,540 officers.

18. Taking into account the specificity and the conditions of the service, high requirements related to physical and mental fitness, as well as disproportionately low, according to candidates, remuneration given the conditions and difficulties of the service, the Prison Service experiences issues in recruiting candidates. Even in case of positive completion of the qualification procedure and the admission to the Prison Service of candidates who were approved by medical committees of the Ministry of the Interior and Administration, a great number of officers who started service resign soon and leave the service due to the conditions of the service, psychological burden, lack of satisfactory earnings or the negative social perception of the service.

B. Workshops for judges and public prosecutors

19. The National School of Judiciary and Public Prosecution puts significant emphasis on awareness-raising activities in the area of human rights, targeted at judges, public prosecutors and other employees of the judiciary. The schedule of workshops of the National School of Judiciary and Public Prosecution for 2020 includes a number of workshops on substantive and procedural law focused on the implementation of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the Optional Protocol to the Convention. Substantive coordinators of specific workshops, representing the School, will ask trainers to draw the attention of judges, public prosecutors, trainee judges and trainee public prosecutors, judicial clerks (referendaries), judge assistants and public prosecutor assistants to the provisions of the

Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the Optional Protocol to the Convention relevant to the issue discussed.

20. List of workshops for the judiciary staff scheduled for 2020 which concern the topics covered by the Convention

(a) *Communication with people with disabilities and respecting their rights in criminal proceedings and civil proceedings*: 4 editions, 70 participants each – 16 hours. Reasons for covering the topic: Ensuring all citizens equal access to the widely understood judiciary and equal treatment of people with disabilities within proceedings are of paramount importance and of interest to the public. Therefore, it is important to present legal obligations towards people with disabilities, both during proceedings and in terms of access to information and infrastructure in courts and public prosecutor's offices. During the training workshop, people with disabilities will point out difficulties experienced in their contact with courts and public prosecutor's offices and they will present methods that facilitate communication. Specific topics, such as: respecting the rights of people with disabilities; rules of communication with people with disabilities; overcoming barriers in communication with the people who are deaf, speech impaired, the blind and visually impaired; planning and organising procedures with a person with disability taking into account the type of disability.

(b) *Medical law in the case-law of guardianship courts*: 2 editions, 75 people each – 16 hours. Reasons for covering the topic: The topic is still the most frequently reported training need in the area of family and guardianship law. Issues discussed cover the role of the guardianship court in cases based on the provisions of the Act of 19 August 1994 on the Protection of Mental Health (consolidated text, Journal of Laws of 2018, item 1878 as amended) and the Act of 5 December 1996 on the Profession of Doctor and Dentist (consolidated text, Journal of Laws of 2019, item 537, as amended). Specific topics, such as: proceedings concerning the placement of a person in Long-term Care Facility (ZOL) and Nursing Home (DPS); forced detention in mental health institutions, both emergency-based and request-based; constitutional and international standards of forced psychiatric treatment; approval of the guardian court for medical procedures on a patient.

(c) *Crimes against sexual freedom and decency – selected aspects*: 2 editions, 70 people each, 16 hours. Reasons for covering the topic: The issue of combating crimes against sexual freedom and decency is difficult and complex. Cases of this nature are the subject of wide public interest and hearing such cases requires a lot of sensitivity and psychological, psychiatric and sexology-related knowledge on the part of judges and public prosecutors. The need to organise the workshops arises from the continuous interest of stakeholders in improving knowledge in this domain. The workshop session is also justified by the currently proceeded legislative work in the Sejm concerning the draft Act amending the Criminal Code and Certain Other Acts (Sejm Print No. 2154). Specific topics, such as: sexual exploitation of minors, characteristics of perpetrators; special procedure for interviewing child victims of crimes against sexual freedom, psychological opinions; psychiatric opinions and sexology opinions in cases concerning crimes against sexual freedom; dealing with a perpetrator with sexual preference disorders; strengthened protection of aggrieved persons in the light of proposed amendments.

(d) *Enforcement proceedings in criminal cases – selected aspects*: 11 editions, 55 participants each, 8 hours. Reasons for covering the topic: The topic of enforcement proceedings in criminal cases is traditionally of interest to the target group and it is present in the educational offer of the National School each year. Current topics related to enforcement proceedings are presented. In 2020, the workshop session will be focused on increasing effectiveness of cooperation between the court and a court-appointed guardian (*kurator*).

As tasks of court-appointed guardians are defined by the court's decisions, while actions taken by professional court-appointed guardian are of paramount importance for the court's decision, it is necessary to create a platform for sharing experience. Specific topics, such as: proper supervision over the convicted person – obligation of the court and the professional court-appointed guardian; ordering of imprisonment (selected aspects) and replacement of imprisonment with non-custodial sentence – importance of the professional court-appointed

guardian's interview; postponement of the execution of imprisonment sentence – selected aspects; execution of sequential penalties, execution of imprisonment sentence; intertemporality issues.

(e) *Human trafficking – crime victim as a personal source of evidence*: 2 editions, 30 people each, 16 hours, Reasons for covering the topic: One of the greatest challenges encountered by authorities in charge of investigation and court proceedings in cases concerning human trafficking is to carry out procedures with the crime victim correctly. The correct procedures require skills in the area of interrogating such persons, taking into account their different cultural background. The workshop session on this topic is also justified by the need to ensure the continuity of the project in connection with the financing agreement No. 1/INMF PL 15/2014 of 19 March 2015 concerning the series of training sessions 'Workshops for the staff of the judiciary and public prosecutor's offices in the area of combating and preventing cross-border and organised crime'. Specific topics, such as: methodology of interviewing a human trafficking victim; assessment of the credibility of statements given by human trafficking victims; competences and cultural background of the interviewer; equality-based attitude and ability to shift perspectives as important interpersonal skill resources of the interviewer; consequences of cultural differences in verbal and non-verbal communication during hearings.

(f) *Preventive measures in criminal proceedings*: 11 editions, 55 participants each, 8 hours, Reasons for covering the topic. Introduction of a new list of preventive measures and conditions for their application, as well as a significant level of interest among judges and prosecutors in introducing this topic to the training offer of the National School. Specific topics, such as: Conditions for ordering a preventive measure; ruling on a preventive measure and enforcing a ruling on a preventive measure; decriminalisation and partial decriminalisation of the act and the execution of a preventive measure; expert witness opinion issues; participation of the defence counsel in proceedings on the application of preventive measure; case-law of the Supreme Court, ECHR.

(g) *Procedural safeguards for children who are suspects or accused persons in criminal proceedings in the light of EU regulations*: 11 editions, 55 people each, 8 hours. Reasons for covering the topic: On 11 June 2019 the deadline expired for the implementation by EU Member States of Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings (OJ L 132). The aim of the directive is to establish procedural safeguards to ensure children (being persons under the age of 18) who are suspects or accused persons in criminal proceedings, the ability to understand and follow the course of proceedings and exercise their right to a fair trial, to prevent repeated commission of a prohibited act and to support their social inclusion. The need to ensure that judges and public prosecutors possess specialised knowledge on children's psychology and child interrogation techniques may be derived directly from Article 20 of the Directive. Specific topics, such as: minimum safeguards, procedural rights of suspects and accused persons in the light of the EU law, review of EU directives; rules of criminal liability of children in Polish criminal law; psychological aspects of interrogating children; procedural rights of a child in criminal proceedings.

(h) *Rights of crime victims in the light of EU regulations*: 11 editions, 55 participants each, 8 hours. Reasons for covering the topic: The scope of rights enjoyed by crime victims is widely protected and it changes in parallel to legal regulations developed at the EU level. The aim of the workshop session is to update and put in the systematic order the knowledge of regulations ensuring the protection of all crime victims, irrespective of the type of crime committed to their harm, as included in Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (OJ L 315), as well as sectoral solutions envisaged for the specific types of crimes (human trafficking, sexual exploitation of children or terrorism). One of the topics raised will be the European Protection Order guaranteeing the victims of crimes right to protection, analogical to the protection ensured in the place of crime if the victim changes their place of residence. Specific topics, such as: Minimum standards in terms of rights, support and protection of crime victims – in the light of the EU law, review

of EU directives; protection of crime victims under the Polish criminal law, procedural rights of crime victims arising from the Code of Criminal Procedure and code-related statutory acts (including the Act of 7 July 2005 on the State's Compensation for the Victims of Selected Prohibited Acts – consolidated text, Journal of Laws of 2016, item 325); the scope of rights enjoyed by crime victims in cross-border relations – presentation of Directive 2011/99/EU on the European protection order (OJ L 338/2).

(i) *Ethical and psychological aspects of public prosecutors' work*: 1 edition, 60 participants, 16 hours. Reasons for covering the topic: The proposed event is a continuation of workshops on the psychological aspects of public prosecutors' work carried out in the last years. In 2019, the training offer was extended with a module focused on ethics and emphasis was put on the effective communication between the public prosecutor and the widely understood social environment. The training workshops will aim to improve psychological and social skills, such as interpersonal communication, managing work stress, workplace bullying and professional burnout, as well as self-presentation and building a positive image of the institution represented. Specific topics, such as: public prosecutor's ethics, exemplary behaviour within the service and outside the service; social competences of a public prosecutor, managing emotions in professional relations; communication between a public prosecutor and the social environment; exemplary communication; aspects of private life related to the work of a public prosecutor; prevention of professional burnout.

(j) *International cooperation in criminal proceedings – workshops for public prosecutors specialising in international legal cooperation*: 2 editions, 70 people each, 16 hours, Reasons for covering the topic: The complexity of the topic and practical difficulties related to the application of various instruments on international legal assistance, including the European Investigation Order introduced by the Act of 10 January 2018 amending the Code of Criminal Proceedings (Journal of Laws of 2018, item 201) justifies the necessity to discuss this topic, taking into account practical aspects of applying specific legal instruments. The training workshops are targeted at public prosecutors specialising in international legal cooperation. Their special significance arises from the scope of professional duties and the fact that they provide substantive assistance to other public prosecutors. For this reason, they need highly specialised knowledge and the training session is a response to their needs. Specific topics, such as: jurisdiction of Polish courts, liability for crimes committed abroad – practical aspects; European Investigation Order (EIO); submitting the decisions on freezing property or evidence for the purposes of their execution; European Arrest Warrant (EAW); European protection order as a consistent mechanism of protecting and supporting victims; international cooperation in criminal cases implemented through Police authorities (Interpol, Europol).

(k) *Cultural diversity of the participants of criminal proceedings – a challenge for public prosecutors and judges in the course of criminal proceedings*: 2 editions, 60 people each, 16 hours. Reasons for covering the topic: In the course of criminal proceedings, judges and public prosecutors increasingly often encounter parties or witnesses representing diverse cultural backgrounds. Due to the differences in perceiving the world, communication and narrating events by people rooted in different cultures, it is important to acquaint judges and public prosecutors with knowledge from the field of culture studies, communication studies and cultural anthropology. This will allow them to conduct interviews, interrogations and hearings properly, while respecting the dignity of such people, and to assess the evidentiary value of given statements properly. Specific topics, such as: intercultural communication – sources of barriers in intercultural communication, language and cultural taboo, non-verbal communication barriers, clothing and appearance – cultural differences; communication studies and cultural anthropology on otherness, linguistic picture of the world and its impact on perceiving 'Us' and 'Them'; linguistic aggression and depreciation/malicious discrimination in communication; linguistic and communicative stereotypes, description vs. characteristics, communication automated behaviours.

(l) *Electronic Monitoring System*: 11 editions, 55 participants each, 8 hours. Reasons for covering the topic: Long-term imprisonment sentences, penal measures and preventive measures may be executed by means of the electronic monitoring system, which

consists in controlling the behaviour of the convicted person who stays outside the prison facility with the use of electronic monitoring devices. Benefits of electronic monitoring for the convicted person and their families, as well as for the judiciary, justify the inclusion of this subject to promote this form of the execution of rulings. The training workshop will be conducted in cooperation with the Office for Electronic Monitoring, which is responsible for the substantive and technical supervision over the functioning of the Electronic Monitoring System and for the correct functioning of the Monitoring Centre, which is a part of the system. Specific topics, such as: legal regulations on electronic monitoring in Poland; general characteristics of the electronic monitoring system as a form of enforcing penalties, penal measures and preventive measures; the most important organisational, technical and logistic aspects of the functioning of the Electronic Monitoring System (SDE24 communication and monitoring system, monitoring centre, supervising entity and field teams, monitoring devices, main electronic monitoring procedures and the rules of control and monitoring over its execution, most important SDE users); practical aspects of using electronic monitoring and supervision, case-law on electronic monitoring.

(m) *Communication with people with addictions for court-appointed guardians:* 11 editions, 55 people each, 8 hours. Reasons for covering the topic: In 2020, the National School will launch a series of training workshops aimed at improving social and psychological skills of professional court-appointed guardians in the area of communicating with various groups of clients and supervised clients with dysfunctions. Firstly, the issue of communication with people with addictions will be discussed. Methods of work that will help court-appointed guardians to identify the symptoms of addiction based on observations and interviews, as well as the stages of informative and educational work with such clients will be presented during the session. Specific topics, such as: Structure of an interview with a supervised person (selection of form and content, identification of needs); communication techniques effective in difficult situations – managing addicted and aggressive clients by court-appointed guardians; the role of a professional supervisor in shaping adequate attitude; how to talk to influence, motivate, inspire to taking action in the area of treatment; art of interviewing (observation, recognition of personality types); meaning and preparing personal background diagnosis and resocialisation diagnosis for the supervised person/minor.

21. Additionally, in 2020 judges, public prosecutors, trainee judges, judicial clerks (referendaries) and assistants will take part in international workshops devoted to the widely understood scope of protection specified by the OPCAT, i.e. to anti-discrimination law, international cooperation in criminal proceedings, substantive criminal law and human rights, the details of which and limits of places available to Polish participants will be announced at the end of 2019.

III. Situation of persons deprived of their liberty

A. Police

(i) Ill-treatment

22. **With regards to paras. 44 to 46 of the report,** Poland respectfully submits the following. Regarding the case described by OPCAT delegation as an example of ill-treatment situation caused by Police officers in one of the police units in Krakow, it is necessary to point out that perceived improvement in this area (also described in Report) is a result of numerous preventing actions and control mechanisms that were implemented within the framework of the Polish Police structures in last few years.

23. Currently, the Police is at disposal of various resources and perverting tools that give possibilities to take immediate actions by high ranking management of Police units, as well as directly involve external institutions such as prosecutors or Ombudsman and let them conduct their own procedures, interrogations or findings in order to assess whether potential obstruction of justice took place.

24. As examples of that mechanisms should be mentioned: Regulations issued by Ministry of Internal Affairs and Administration imposing general obligation to communicate all cases of complaints, requests and unspecified information regarding

suspicion of ill-treatment and violation of the rights of arrested individuals in particular by abuse of power, as well as documents in a digital form via electronic network coming through Internet from police units of basic level to the highest ranked. Data is collected in the Internal Control Bureau in General Headquarters – unit entitled to take actions aimed at demystify every detail, inform disciplinary supervisors as well as give over the information and gathered documents to the Ministry, Ombudsman, and relevant prosecutor.

25. It is necessary to point out that disciplinary proceedings can be initiated regardless of criminal liability for the same behaviour or actions undertaken by Police officers. Disciplinary sanctions include: reprimand; prohibition to leave the place of residence; warning of inadequate fitness for the service in the post presently occupied; transfer to a lower post; downgrading; dismissal from the service.

26. In 2019, Internal Control Bureau also set up additional procedures making use of mechanism for monitoring and supervising ways of reactions by the lowest level management of Police units, especially if they use internal procedures and disciplinary measures to examine that kind of cases directly after they gain knowledge about them, or if they do not; this is the obligation to explain that, and simultaneously, to undertake necessary steps to clear up incident, indicate consequences, establish new method on how to prevent similar situations and report the measures to the General Police Headquarters.

27. In conclusion and with reference to above mentioned information on the case in Krakow, it is needed to clarify that in order to explain that case, all data gathered by the internal control officers were forwarded to public prosecutor to check criminal liability, regardless of disciplinary procedures taken by the Commander of Unit.

28. Police activities (organisational and training) after cases of torture and other training of interest to the UNCAT: Activities in the field of prevention of inappropriate behaviour, unworthy of police services, have a long history in the Police and do not constitute only a spontaneous and unique reaction to revealed cases of such behaviour. Respect for the dignity of every human being and the prohibition of torture and inhuman or degrading treatment are a constant and regular feature of police education.

29. Since 2004, there are specialized units for human rights protection in the Police, which undertake training activities, e.g. concerning the prevention of abuse by police officers, multicultural and diversity. They are closely cooperating with state institutions, non-governmental institutions and international organisations.

30. Referring to the question concerning implemented training activities within the scope of *the Convention against Torture (UNCAT)*, it should be stressed that trainings for all Police officers, including managerial staff, are conducted in the Police. A special training programme named “Prevention of Torture” was implemented at the end of 2017. The programme includes torture and violent behaviour in psychological and legal aspects and a module on torture prevention. In addition, it includes concepts of *whistleblowing* and *the blue wall of silence*. The Istanbul Protocol is also discussed during the training. By the end of June 2019, almost 26 thousand police officers had been trained in this course.

31. Training on human rights protection is carried out systematically in all Police units, with such activities being implemented as a priority in those units where human rights violations have occurred or are suspected. Post-incident educational projects were implemented, among others, in the Police units mentioned in the speeches of the Committee members during the session of 23 July 2019, where irregularities occurred or could have occurred, e.g. in Wrocław, in connection with the case of Mr. Igor Stachowiak, in Lidzbark Warmiński in connection with the case of *K.J. and K.W. v. Poland*, or in the mentioned police unit in Ryki. For example, in Ryki, in April 2019, a training course on Prevention of Torture was held for the management of this unit. They were conducted by the inspectors of the National Torture Prevention Mechanism at the Ombudsman’s Office. In Wrocław, on the other hand, numerous trainings were held on counteracting torture and taking action by Police officers in situations of increased risk. Additionally, this year a conference is planned to be held, among others, with the Local Representative of the Ombudsman, on building cooperation with citizens and institutions.

32. **Regarding para. 47 of the report**, procedural basis for recording of procedure by device registering vision or sound constitutes art. 147 of the Criminal Procedure Code (CPC). This act, having regard to exceptions enumerated in § 3, is not compulsory (art. 147 § 1 CPC) and lies within the remit of processing authority. It shall be underlined that value of a record of explanations of the defendant (witness statement) consists on recording his/her own statements, and put into record by a third person (transcription). It allows for more appropriate assessment of spontaneity of explanations or statements made. Full recording, including both vision and sound, should be taken into account in cases where it is justified to get a „full image” of conduct of activities – statements and gesture of persons taking part in it. In particular, as the Police practice is concerned, recording should be used in complicated cases, as well as during procedural activities when acquired explanations or statements shall be crucial for the evidence. Recording may refer to every recorded activity, i.e. activity in which the act requires (art. 143 § 1 CPC) or allows for (art. 143 § 2 CPC) a transcript to be made. It should be noted that Article 147 of the Code of Criminal Proceedings provide for the possibility of recording activities covered by reports, such as hearing a witness or an interrogation of a suspect, with the use of a device recording image and sound, but the decision to this effect is taken by the person in charge of proceedings and is optional.

33. In accordance with art. 147 § 1 CPC, persons participating in the procedure should be advised of recording. However, decision of authority whether record an activity or not is not dependent of the consent of person with whom the activity is being made – only advising of it is mandatory. It should be noted that recording by means of a device registering vision or sound must be regarded solely as a form of recording the course of procedural activity and thus it does not release from an obligation to make a transcript. In accordance to art. 147 § 3 CPC, in these circumstances the transcript may be limited to the most important statements made by persons participating therein.

34. Recording of procedure under art. 147 CPC shall be done in accordance with requirements as set out in the Minister of Justice regulation of 11 January 2017 on registration of vision or sound for the purpose of judicial proceedings in criminal procedure (JoL, pos. 93).

35. It should be underlined that in Police units premises, where possible, rooms for interrogation are designated, equipped with appropriate recording device. In newly built premises designation of rooms of this type is a standard.

(ii) Fundamental legal safeguards

Information about rights

36. **With regards to paras. 49 to 50 of the report**, rights of a person arrested were regulated in Division VI of the CPC – Use of force, chapter 27 – Arrest. The rights are as follows:

- *Right to information.* The arrestee is immediately informed of the reasons for the arrest and of his/her rights. The ground should be justified (important and duly evidenced), as well as prescribed by law (art. 244 § 2 CPC);
- *Right to obtain a copy of the arrest report.* It is evidence that the officers duly fulfilled their obligation to inform and to hear (art. 244 §3 CPC). The document can be read by the arrestee in person or by a Police officer (eg. in case of a person with visual impairment or blind) and signed by this person subsequently. When the arrestee is not able to provide his/her signature, a Police officer in the report shall evidence the fact that the document had been read to that person and that the person cannot or refuses to sign the document;
- *Right to make a statement or to deny to make a statement in the case* (not to provide answers on questions given) of the arrestee, as well as to refer to the cause of arrest (art. 244 § 3 CPC);

- *Right to notify* the arrest to the next of kin of the arrestee, or other person indicated by the him/her, the employer, the school or another higher educational establishment etc. (art. 245 § 2 in relations with art. 261 § 1 i 3 CPC);
- *Right to contact an advocate or attorney-at-law* in an available form and have a direct conversation with him/her. If the arrestee is a foreigner – to contact appropriate consular office or diplomatic mission;
- *Right to gratuitous help of an interpreter*, if the arrestee does not have a sufficient command of Polish (art. 72 § 1 CPC);
- *Right to contact the competent consular office and, in the absence of a consular office, a diplomatic mission* (provided the arrestee is not a Polish citizen). In case of the arrest of a stateless person – right to contact a diplomatic mission of a State, where this person permanently resides (art. 612 § 2 CPC). It should be noted that if a binding consular agreement between Poland and a state of whom the arrestee is a citizen provides so, relevant consular office or diplomatic mission shall be notified of the arrest regardless the arrestee request;
- *Right to submit an interlocutory appeal* to a court (art. 246 § 1 CPC);
- *Right to submit an interlocutory appeal* to a public prosecutor (art. 15 paragraph 7 of the Act on Police);
- *Right to necessary medical aid* (art. 245 § 3, 246 § 1, art. 261 § 1, 2 and 3 CPC);
- *Right to be released from the arrest*. It occurs when maximum detention period expires, i.e. when within 48 hours from the arrest by the authorised agency, the arrestee was not surrendered to the jurisdiction of the court with a motion to order detention on remand, or when within 24 hours of being surrendered to the jurisdiction of the court, the motion to order detention on remand was not granted (art. 248 CPC). The right is strictly related with the detention period. According to art. 248 CPC, the arrestee is released immediately if the reasons for his arrest cease to exist, maximum after 48 hours in detention. In case the public prosecutor filed a motion to the court to order detention on remand, the arrestee should be surrendered to the jurisdiction of the court within 48 hours; the court shall issue an order concerning granting (or not granting) detention on remand within 24 hours. It is not permissible to arrest a person second time in a row on the basis of the same facts and evidence.

37. On the basis of art. 244 § 5 CPC, the Minister of Justice defined the form of the instruction for the arrestee in criminal proceedings. It is also referred to in § 87 of the Police Commander-in-Chief Guidelines on performance of certain investigation actions undertaken by Police officers of 30 August 2017 with the following wording: „6. In the arrest record should be put statements made by the arrestee after being informed on the apprehension cause and his/her rights, in a way as indicated in paragraph 1. While giving instruction on the rights in criminal proceedings, its content shall simultaneously be explained. Copy of the instruction signed by the arrestee shall be enclosed to the main proceedings files.” § 87 paragraph 7 thereof indicates that: to the arrestee who does not command Polish a translated caution on the rights in a suitable language shall be given by a Police officer. If a text in a suitable language is not available, a fact of providing oral translation by an interpreter should be stated in the record, together with giving instruction on possibility to request written instruction on the rights in a comprehensible language”.

38. Fact of getting the arrestee acknowledged as the rights and obligations are concerned, shall be stressed in the record and confirmed by the arrestee’s signature. It must be noted that every document made in the course of actions undertaken by a Police officer that require getting acquainted the person concerned with its content, may be read by that person or by a Police officer (eg. in case of a person with visual impairment or blind) and signed subsequently. As the person concerned is not able to sign the document, the Police officer shall note in the record a fact that the document has been read to that person and he/she cannot or refuse to sign it down.

Access to a lawyer

39. The matter of exercising the right to a public defender, described as a recommendation **in para. 52 of the report**, is regulated by Article 244 § 2 of the Code of Criminal Proceedings. When arresting a suspect, the Police is obliged to immediately notify such person of the reasons for arrest and his or her rights (including the right to consult a lawyer). If the arrested person requests so, they should be immediately allowed to make contact in any form available with a lawyer and to speak to the lawyer in person. The arresting party may reserve its right to be present during such conversation. However, if the arrested person is not able to hire a lawyer, the law does not provide for the possibility of appointing a public defender at this stage of proceedings. This limitation arises from the fact that at this stage of proceedings it is not clear whether criminal proceedings *in personam* are to be initiated and whether it will be necessary for the arrested person to defend herself or himself. It seems that this legal status quo is not in breach of Article 42(2) of the Constitution of the Republic of Poland. Pursuant to Article 300 § 1 of the Code of Criminal Proceedings, before the first interrogation suspects must be cautioned of their rights, such as the right to a lawyer, including the right to apply for a public defender.

40. In accordance to art. 245 § 1 of CPC and art. 46 § 4 of the Act of 24 August 2001 – Code of procedure for misdemeanours (CPM), the arrestee for an offence as well as for a misdemeanour, shall have a right to e.g. to be allowed to contact an advocate or attorney-at-law in an available form and have a direct conversation with him/her and right to submit an interlocutory appeal to the court within 7 days following the day of apprehension.

41. The arrestee, at his request, should be allowed to contact an advocate or attorney-at-law in an available form and have a direct conversation with him/her in order to acquire professional legal advice. In exceptional cases, justified by particular circumstances, the arresting authority may reserve that it will be present during said conversation. Approval for that contact is mandatory solely upon express request of the arrestee. Performance of that obligation may consist on informing indicated advocate/attorney-at-law on fact and cause of the arrest, to have a direct conversation or to inform via arresting authority. As the arrestee makes such a request (for a contact), it shall be proceeded immediately regardless the question of having a direct conversation with him/her.

42. While exercising the aforementioned right, the Police make use of e.g. provisions issued under art. 517j CPC – namely, regulation of the Minister of Justice of 23 June 2015 on the manner of ensuring the assistance of a defence counsel to the accused, in accelerated proceedings.

43. It should be stressed that in Poland there is a mechanism granting to an arrestee information on advocates/attorneys-at-law in an appropriate town whom assistance he/she may seek (list of advocates and attorneys-at-law). Such a solution was introduced in an amendment to criminal proceedings, and was described in details in the Minister of Justice's regulation of 23 June 2015 on the manner of ensuring the assistance of a defence counsel to the accused in accelerated proceedings (JoL pos. 920). To this system a reference was given in the Police Commander-in-Chief guidelines no. 3 in the following wording: "In order to enable the arrestee's contact with an advocate or an attorney-at-law, procedure set out in the Minister of Justice's regulation of 23 June 2015 on the manner of ensuring the assistance of a defence counsel to the accused in accelerated proceedings shall apply respectively."

44. The arrestee, while submitting an interlocutory appeal, may demand that the grounds, legality and propriety of the arrest be examined (art. 246 § 1 CPC, art. 47 § 1 and 2 CPM). The appeal is immediately referred to the district court having the jurisdiction over the place where the arrest was made or the proceedings are conducted (art. 246 § 2 CPC). If the arrest is found groundless, unlawful or improper, the court notifies the public prosecutor thereof and the supervisory body of the arresting authority (art. 246 § 4 CPC). Moreover, under art. 15 paragraph 7 of the Act on Police, the arrestee shall have a right to submit an interlocutory appeal to a public prosecutor having the jurisdiction over the place where the arrest was made. As it stems from the cited provisions, persons arrested by the Police have a right to an effective remedy – the fact being noticed to them when the arrest is made.

Immediately after the arrest is made, the arrestee receives appropriate caution on his/her rights in criminal proceedings as well as in misdemeanour proceedings.

Preliminary medical check-ups

45. **With respect to paras. 53 to 55 of the report**, Poland submits the following. In accordance with art. 15 paragraph 5 of *Act on Police* (consolidated text of 2019, item 161), a detained person should be immediately subjected – if justified – to a medical examination or first aid.

46. However, by virtue of regulation (§ 1 paragraph 3 point 1 and 2) of the Minister of the Interior *on medical examinations of persons detained by the Police* (Journal of Laws of 2012, item 1102), a detained person undergoes a medical examination in the case of, if:

- the person declares that he/she suffers from diseases requiring permanent or periodic treatment, the interruption of which would endanger life or health, request a medical examination or have visible bodily injuries not indicating a state of sudden health threat;
- from the information available to the Police or from the circumstances of the detention it appears that the detained person is: a pregnant woman, a breastfeeding woman, a sick person, a person with mental disorders, a minor under influence of alcohol or other similar measure.

47. Simultaneously, § 5 paragraph 1 point 2 and 3 of the abovementioned regulation (...) indicated that during the examination of a detained person, the examining physician states that there are no medical contraindications for staying in rooms intended for detained persons or there are medical contraindications for staying in such rooms and there is a need to refer the person to the right healthcare institution.

48. The cases of medical examination of a person detained by the Police have been precisely defined in the abovementioned legal act and do not impose on the Police obligation of medical examination of every person detained by Police officers.

49. Referring to the remark regarding the presence of Police officers during a medical examination of a detained person, it should be stated that this issue is regulated by the provision of § 4 paragraph 2 of the regulation of the Minister of the Interior *on medical examinations* (...). Pursuant to the aforementioned regulation, the decision on the presence of a Police officer during a medical examination of a detained person is made by the physician performing the examination.

50. Usually, such situations take place in cases of aggressive persons being investigated, or in regard to which there is a reasonable suspicion of an attack on health or one's own life. The presence of a police officer is aimed at p a person from escaping and ensuring the security of both the examining physician and the examined person.

Right to inform a member of the family or other third party

51. **Regarding paras. 56 to 57 of the report**, right of the arrestee to immediately notify the arrest to next of kin of the arrestee or other person indicated by him/her was regulated in art. 245 § 2 in conjunction with art. 261 § 1 and 3 CPC. Possibility to make use of that right is being noticed to the arrestee directly after the arrest is made. To notify it in the record is mandatory; the record should contain statement of consent as the performance of the right. Content of the report is confirmed by the arrestee by his/her signature. It must be noted that every document made in the course of actions undertaken by a Police officer that require getting acquainted the person concerned with its content, may be read by that person or by the Police officer (eg. in case of a person with visual impairment or blind) and signed subsequently. As the person concerned is not able to sign the document, the Police officer shall note in the record a fact that the document has been read to that person and he/she cannot or refuse to sign it down.

52. In case of foreigners, notification of the arrest may be transferred to a consular office or diplomatic mission of the state whose citizenship the arrestee holds. In case of the arrest of a stateless person – right to contact a diplomatic mission of a State, where this person

permanently resides (art. 612 § 2 CPC). It should be noted that if a binding consular agreement between Poland and a state of whom the arrestee is a citizen provides so, relevant consular office or diplomatic mission shall be notified of the arrest regardless the arrestee request.

Diplomatic assistance/translation

53. In the case of the recommendation included in **para. 58 of the report**, if the arrested person is not a Polish citizen, he or she is entitled to contact a consular official or a diplomatic representation of the state whose citizen he or she is. If such person has no citizenship, he or she is entitled to contact a representative of the state in which he or she resides permanently (Article 612 § 2 of the Code of Criminal Proceedings). If a consular agreement between Poland and the state of which the arrested person is a citizen states so, the competent consular office or diplomatic representation will be notified of the arrest even without the arrested person's request.

54. **Regarding para. 59 of the report**, right to an interpreter is anchored in the provisions of the Polish Constitution (art. 42) as well as in CPC. It stems from the Code provisions that the arrestee shall be immediately informed on the right to a gratuitous help of an interpreter, if the arrestee does not have a sufficient command of Polish. On the basis of art. 244 § 5 CPC, the Minister of Justice defined the form of the instruction for the arrestee in criminal proceedings. Police officers, in a situation when a foreigner is being arrested, are obliged to deliver to him/her a caution on the rights in a comprehensive language. It is also referred to in § 87 of the Police Commander-in-Chief Guidelines on performance of certain investigation actions undertaken by Police officers of 30 August 2017 with the following wording: „6. In the arrest record should be put statements made by the arrestee after being informed on the apprehension cause and his/her rights, in a way as indicated in paragraph 1. While giving instruction on the rights in criminal proceedings, its content shall simultaneously be explained. Copy of the instruction signed by the arrestee shall be enclosed to the main proceedings files.” § 87 paragraph 7 thereof indicates that: to the arrestee who does not command Polish a translated caution on the rights in a suitable language shall be given by a Police officer. If a text in a suitable language is not available, a fact of providing oral translation by an interpreter should be stated in the record, together with giving instruction on possibility to request written instruction on the rights in a comprehensible language”.

55. As the right to immediately notify the arrest to the next of kin of the arrestee or other person indicated by him/her, as already mentioned, the arrestee is being informed directly after the arrest is made. It is duly notified in the report, confirmed by the arrestee's signature. In case of foreigners, it may refer to a consular office or diplomatic mission of whom the arrestee is a citizen. In case of the arrest of a stateless person – right to contact a diplomatic mission of a State, where this person permanently resides (art. 612 § 2 CPC). It should be noted that if a binding consular agreement between Poland and a state of whom the arrestee is a citizen provides so, relevant consular office or diplomatic mission shall be notified of the arrest regardless the arrestee request.

(iii) Conditions of detention at police stations

Material conditions

56. **With respect to paras. 61, 63, 65 and 67 of the report**, elimination of irregularities in the field of adapting rooms to applicable technical standards in many cases requires considerable financial outlays. For this reason, the process of improving living conditions in rooms intended for detained persons has been going on for several years, and its implementation is successive, although it depends on the budget allocated to the Police.

Transportation standards

57. **Regarding the recommendation in para. 69 of the report**, police is taking ongoing measures to improve the rolling stock, including those intended for the transport of detained persons.

58. Simultaneously, technical conditions of police means of transport meet the criteria set out in the provisions of generally applicable law for this type of vehicles.

59. In the context of the recommendation concerned, it should be noted that basic rights and obligations of Police officers are contained in the Police Act. In accordance with art. 1 paragraph 1, the Police was created as an uniformed and armed formation serving the society and intended to protect people's security, to maintain public safety and public order.

60. By commencing the implementation of statutory tasks using the powers granted to the Police, officers may use strictly defined means of coercion and firearms. This results from the regulation of the Act on direct coercion measures and firearms (Journal of Laws of 2018, item 1834, as amended).

61. Pursuant to the provisions of the abovementioned Act, means of direct coercion in the form of handcuffs can be used to ensure convoy safety or detention.

62. The aforementioned Act also entitles so-called preventive use of handcuffs to include escape detained or escorted person, as well as to prevent symptoms of aggression or self-aggression of these persons.

63. Considering the above information, the police use direct coercion measures in the form of handcuffs in accordance with applicable law.

B. Prisons

(i) Ill-treatment

64. The officers of the Prison Service do not use violence to 'form' first-time prisoners, but they have at their disposal statutory measures to influence prisoners, which are established by the provisions concerning work with persons deprived of liberty. Allegations concerning verbal abuses and irregularities in the conduct of the Prison Service' officers cannot be deemed accurate as no proofs were presented to confirm such situations. The Prison Service responds to any manifestations of incorrect treatment of prisoners.

65. In case of identifying or suspecting incorrect treatment of prisoners, an investigation is launched and notifications of potential crimes are submitted to the public prosecutor's office. There are no known cases referred to in **para. 71 of the report**, namely violence used to 'form' first-time prisoners. The lawfulness of actions taken by officers is subject to supervision exercised by the management of the facility and the penitentiary judge. In this context the convicted person's right referred to in Article 102(10) of the Penal Enforcement Code is important. In each case when officers of the Prison Service are suspected of abusing their powers, an investigation is initiated and findings are presented to the person that submitted the complaint.

66. At the same time it should be emphasised that each officer and member of the staff of the Prison Service takes an oath to respect legal regulations and ethical principles of professional conduct, in particular those related to respecting human dignity.

67. It should be stated that the provisions of Article 4 to 7 of the Penal Enforcement Code are of crucial importance for the officers of the Prisoner Service and are strictly respected. An important form of control are the inspections carried out by the representative of the Commissioner for Human Rights and the National Mechanism for the Prevention of Torture, who pay attention to the manner in which the rule of humanitarian and lawful treatment of prisoners is respected.

68. **With regards to para. 72 and 73 of the report**, in accordance with applicable regulations, collective punishment is not allowed. A request for punishment accompanied by the statement of reasons is drafted for every convicted person who committed a disciplinary misconduct. The supervisor of the prisoner (*wychowawca*) issues an opinion on the request. A decision to punish is made by the director of the facility or another person appointed by the director after consulting the body of supporting materials and interviewing the prisoner. It may happen, however, that the breach of the rules applicable in the penitentiary facility is caused by a group of prisoners. Imposing the same disciplinary sanctions may appear as collective punishment, but this is only a consistent reaction to the

conduct of prisoners who breached the order rules of the penitentiary facility to the same degree.

69. In reference to allegations concerning racist persecution and discrimination to which the attention of the representatives of the UN Subcommittee was drawn **in para. 74 of the report**, it should be pointed out that this area of issues is monitored by the Prison Service's bodies. According to the analysis of the complaints submitted by detained persons prepared each year, in 2018 35 claims of racial-based or ethnic-based discrimination were recorded in reference to the officers and members of staff of the Prison Service. They were considered unfounded in the course of procedures carried out. Professional workshops for the officers and the members of staff of the Prison Service cover such topics as '*UN International Standards for Dealing With Persons Deprived of Liberty*'.

70. **As far as para. 75 of the report is concerned**, it should be mentioned at this point that in Correctional Facility No. 1 in Wrocław:

- No collective punishment is applied. Each request for disciplinary sanction is analysed on a case-by-case basis by the person in charge of penitentiary wards. Prisoners in penitentiary facilities are required to behave correctly, respect the rules and report any threats that they may encounter. Pursuant to Article 116a(1) of the Penal Enforcement Code, prisoners are not allowed to belong to informal structures of the prison subculture. The prison subculture intends to fight against the administration of the correctional facility and discriminate against prisoners who are not members of the subculture. The example of disciplinary sanction applied, as alleged by the report, to two prisoners involved in a fight was a result of analysing individually requests for punishment issued for each of them and not of a collective punishment practice.
- The action of the facility's administration consisting in giving the prisoners a half of cash sent to them by their families is in line with applicable regulations, i.e. Article 126 § 1 and 2 of the Penal Enforcement Code. The remaining part of cash is deposited on the accounts of prisoners and paid to them upon release from the correctional facility.
- Personal hygiene is maintained with personal care articles provided to each prisoner by the administration of the correctional facility. Women receive such articles as: soap, toothpaste, washing powder, toilet paper, toothbrush, shampoo and sanitary accessories under such terms and in such numbers as specified in the applicable Ordinance of the Minister of Justice on living conditions of detainees of correctional facilities and pre-trial detention centres. Subject to the approval of the Director of the Correctional Facility, prisoners may receive packages with personal care articles and other items of personal use from their relatives.
- Meals are prepared taking into account the requirements on energy value, size of portions, nutrient levels (percentage of fats, proteins and carbohydrates), as well as on the minimum amount of vegetables, as specified in the Ordinance of the Minister of Justice on the nutrition of prisoners in correctional facilities. The obligation to ensure a daily intake of food expressed in energy value and the levels of nutrients (fats, proteins and carbohydrates) and vegetables is strictly adhered to. The common room of the K pavilion is equipped with domestic appliances, such as oven, a microwave and a kettle, where the prisoners may prepare an additional meal for themselves.
- Correctional Facility No. 1 in Wrocław is equipped with an automated system responding to weather conditions. The system adjusts the heating functions according to the weather conditions outside and the target temperature settings in heated rooms. In interim periods, when significant temperature amplitudes are recorded, the heat distribution substation is activated or de-activated depending on the temperature outside. The minimum outside temperature at which the substation is active is 100 C and above this temperature the substation is automatically shut off. The automated control is set according to the calculated temperature tables for heated rooms. Additionally, an inspection of the sources of heat, transmission network, heating installation and equipment was carried out and no irregularities

were found concerning the functioning of the installation. Any failures or irregularities are removed on an on-going basis after they are reported. Prisoners receive washed and dried clothes from the Correction Facility No. 1 in Wrocław. The K Pavilion is equipped with a washing-machine and a drying-machine, which may be used by the women accommodated in the pavilion.

- The detained women accommodated in the K Pavilion are in the closed correctional facility. For this reason, in accordance with legal regulations, doors and barred gates to residential buildings and wards are opened for as long as necessary. The officers of the security division performing their duties at night in the pavilion for men and for women have keys to residential cells and to barred gates. To ensure safety of the facility, keys to entrances to residential buildings are available only in the guardroom at the shift commander's disposal. It should be added that in closed correctional facilities, the adopted rules of security specified in the Ordinance of the Minister of Justice of 17 October 2016 on the protection of Prison Service organisational units require that doors and entrance gates to residential buildings and wards, as well as entries to buildings and gates within the organisational unit be opened only for as long as necessary. The officers on duty have all necessary keys at their disposal to be able to unlock any gate or exit immediately.

71. Having regard to the remarks on the manner of dealing with female prisoners and discriminatory treatment in **paras. 76 and 77 of the report**, it should be pointed out that the Director General of the Prison Service in his Instruction No. 2/2018 of 21 November 2018 on Dealing with Female Prisoners defined actions and tasks in this area. Additionally, Instruction No. 3/2017 of 26 July 2017 on Dealing with Pregnant Prisoners, the Director General of Prison Service specified actions and tasks related to organisational matters and corrective efforts.

72. The Prison Service makes effort to ensure detained women adequate conditions during their stay in penitentiary facilities and personal security. It should be emphasised that as part of cooperation with professor Barbara Toroń-Fórmanek, the head of the Department of Criminology and Resocialisation of the University of Zielona Góra, a study entitled 'Sense of security among women detained in penitentiary facilities' was carried out among all women detained in correctional facilities and pre-trial detention centres and the research shows that 85% of them feel totally secure.

(ii) Excessive length of detention on remand

73. Having regard to the duration of pre-trial detention **mentioned in paras. 78 and 79 of the report**, the director of pre-trial detention centre is an enforcement body in this regard, i.e. the director executes the preventive measure exclusively on the basis of the court order which defines the duration of detention and specifies the date to which the detention is supposed to last. A document required upon admission to the facility of a person subject to pre-trial detention is a copy of the valid court decision ordering or extending pre-trial detention accompanied by an admission order. A prisoner is released from the penitentiary facility on the date when the period of pre-trial detention expires or on the date when the penitentiary facility in which the person is detained receives documents resulting in release, unless any later date is specified in such documents.

(iii) Conditions of detention

Material conditions

74. **Regarding para. 81 of the report**, everyone detained in accordance with the Penal Enforcement Code may use various forms of spending time outside the residential cell, including visits (Article 105 of the Penal Enforcement Code), a walk (Article 112 of the Penal Enforcement Code) and other forms of collective activities. It is true that each convicted person (Article 79b of the Penal Enforcement Code) admitted to the pre-trial detention centre or correctional facility (provided that admitted after the period of liberty) are placed in a temporary cell for a necessary period of time, but for no longer than 14 days, in order to undergo initial medical tests, sanitary procedures and initial personal background tests and in order to be presented with basic legal acts concerning the execution

of imprisonment sentence or the internal rules of the pre-trial detention centre. Detention in the temporary cell does not mean any restriction in the use of rights arising from the Penal Enforcement Code. Additionally, the claim that in the Correctional Facility in Plock 'during the quarantine period of 14 days prisoners were not allowed to stay outside cells' is not true as no proofs were presented to confirm the occurrence of such situation. At the same time in the facility's records there are no references to the fact that in June and July 2018 prisoners were subject to medical quarantine involving isolation or depriving prisoners of their rights.

75. As for the implementation of the recommendation to increase the minimum standard for personal living space per inmate, the Committee expresses the view that, despite subsequent visits and earlier recommendations, not all recommendations have been implemented, in particular those referring to the need to introduce changes to the Polish legal system in order to ensure the minimum standard for personal living space of 4 square metres in multiple-occupancy cells and at least 6 square metres in single cells, with space of sanitary annexes being excluded from this calculation.

76. For several years, the issue of overcrowding in correctional facilities has been of interest to the Ministry of Justice and the Prison Service. The requirements concerning the minimum standard for personal living space per inmate defined in the Penal Enforcement Code (*Kodeks karny wykonawczy*) as 3 square metres (Article 110 of the Penal Enforcement Code) seem the maximum space that can be ensured by the Polish State to detainees, given in particular the current number of staff in correctional facilities and pre-trial detention centres and restructuring required.

77. The above opinion does not exclude, obviously, steps on the part of Poland to take actions of organisational character and make investments aimed at increasing the standard living space per inmate.

78. As of 9 October 2019, the occupancy of residential units in correctional facilities was about 92.9%. The overall capacity of correctional facilities and pre-trial detention centres as of the same day was 80,669 places, including 78,162 places in residential wards. 72,637 inmates were placed in residential wards of penitentiary facilities, while 1,662 detainees were placed in residential cells in hospital wards, wards and cells of the prison or detention centre that ensured enhanced protection of the society and security of the facility, solitary confinement cells, closed healthcare centres, rooms located in facilities for mothers and children, as well as in temporary accommodation for convicted persons, which are excluded from the total capacity of penitentiary facilities pursuant to § 2(2)(1) of the *Ordinance of 25 November 2009 concerning the mode of procedure applied by competent authorities in case if the number of detainees in correctional facilities and pre-trial detention centres exceeds the general capacity of such facilities* (Journal of Laws of 2018, item 946).

79. The above statistics show that ensuring at least 4 square metres per inmate in multi-occupancy cells and 6 square metres per inmate in single cells does not seem to be achievable currently due to the aforementioned occupancy rate for pre-trial detention centres and correctional facilities.

80. An important element of decreasing the population of prisoners is the option to execute the imprisonment sentence outside the correctional facility by means of electronic monitoring. As of 14 October 2019, sentences are enforced by means of electronic monitoring in the case of 4,618 prisoners.

81. Initially, the electronic monitoring of convicted persons in Poland was applied based on the Act of 7 September 2007 on the Execution of the Imprisonment Sentence outside the Correctional Facility by Means of Electronic Monitoring, which applied in its original until 31 August 2014. Since 1 July 2015 it has been replaced by the provisions included in the Criminal Code (*Kodeks karny*) and Penal Enforcement Code (*Kodeks karny wykonawczy*). The amendment of the Criminal Code and certain other acts introduced a major change in a manner of ordering and executing electronic monitoring due to the elimination of previous options of applying the electronic monitoring to convicted persons sentenced to up to 1 year of imprisonment and replacing it with the exclusive possibility of applying this system to convicted persons sentenced for up to 1 year of restricted personal liberty. As a result of the

aforementioned provisions, by the end of 2015 (by 7 months), the courts ordered electronic monitoring only in the cases of 28 persons sentenced to restriction of personal liberty, which means 4 convicted persons per month on average.

82. Another amendment of the Criminal Code and the Penal Enforcement Code (effective since 15 April 2016) restored the possibility of applying the electronic monitoring for the sentences of imprisonment up to 1 year and maintained previously applicable options to use the electronic monitoring in case of penal measures and preventive measures.

Chart 1

Number of people under electronic monitoring from January 2015 to November 2017

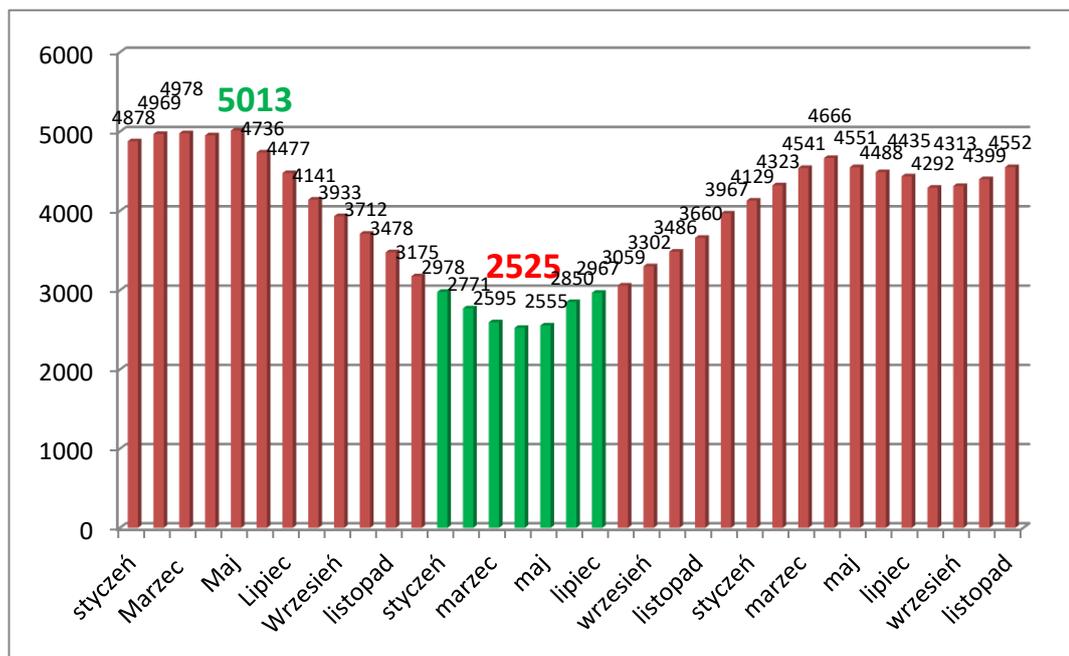
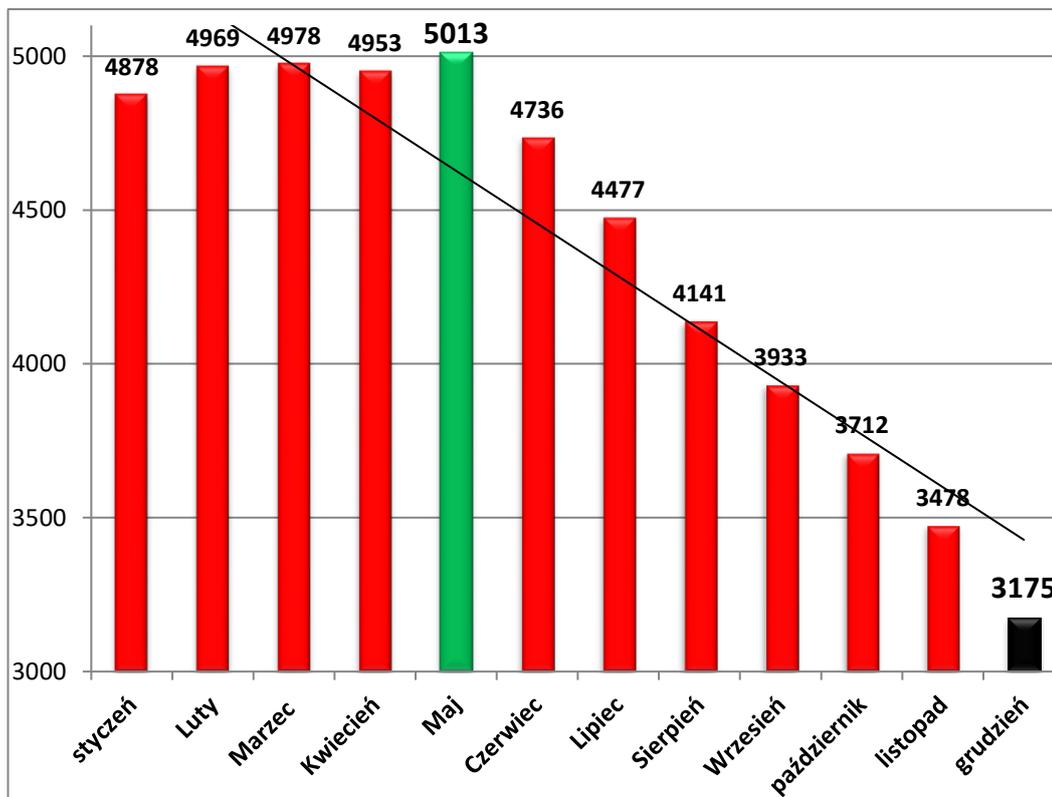


Chart 2

Number of persons covered by electronic monitoring in 2015

(data as of the end of the month)



Main assumptions of the conception for the modified system of electronic monitoring in the light of the amended legislation.

83. The main intention of this concept was to delegate some tasks of the monitoring authority related to substantive and technical activities, in a form of actions and duties of intervention patrols and staff resources, to the unit supervised by or reporting to the Minister for Justice, namely the Prison Service. The implementation of the change will decrease the potential scope of the new public procurement procedure for electronic monitoring, which would be limited to the supply of monitoring devices, technical equipment and IT and telecommunications support.

84. The main advantages of the modified option are as follows:

- **Security** – during the seven years of cooperation with private entities (Comp and Impel) very serious security-related issues were experienced in connection with this service. The most serious threat was serious disruptions in the continuity of the functioning of the electronic monitoring system and the contractor's right withdrawal from the performance of the Contract. This risk is seen also at the moment (Impel's claim for PLN 167 million). In the modified version, this threat no longer occurs as the tasks of Intervention Patrols are entrusted to the officers of the Prison Service. Additionally, the officers of the Prison Service are much more mobile to perform duties related to electronic monitoring and they enjoy wider statutory rights and legal protection, and they may cooperate with other services and public bodies based on existing legal regulations;
- **Competitiveness** – higher number of companies – Polish companies included – could take part in the public procurement procedure (contract covers equipment and software operation only);
- **Image and higher efficiency of the administration of justice** – in the new version the strategic part of substantive and technical activities related to electronic monitoring is carried out by the Prison Service, performing its statutory duties. By

introducing new solutions and functions within the electronic monitoring system, the Minister of Justice will not be restricted by the time limits and formal requirements arising from the contract entered into with a private entity.

85. On 1 July 2018 the Act amending the Penal Enforcement Code and the Act on the Prison Service entered into force. The amendment enabled the delegation by the Minister of Justice to the Prison Service of the functions and tasks of the Monitoring Authority that is in charge of performing substantive and technical activities related to electronic monitoring.

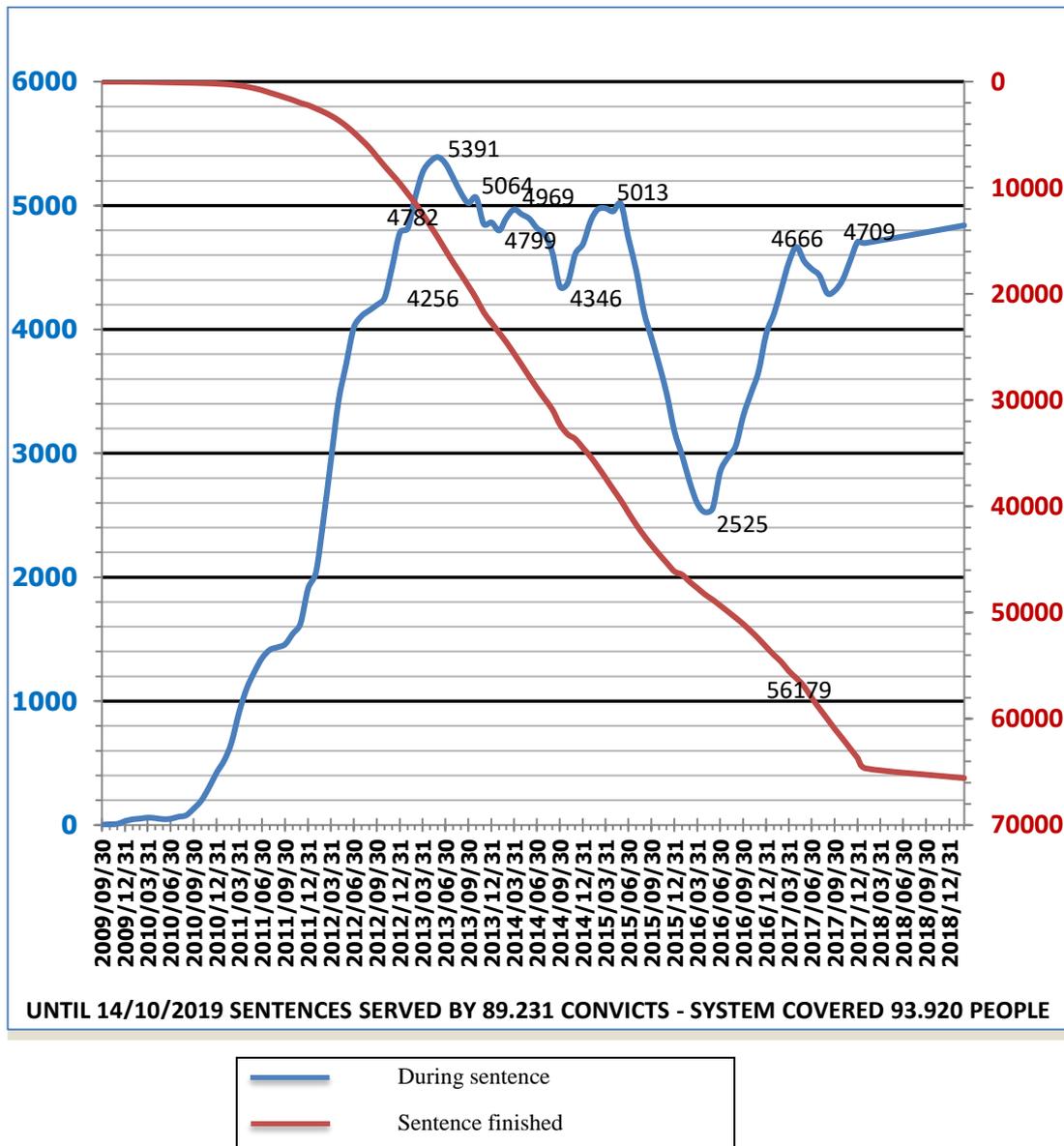
86. In order to enable the performance of statutory tasks of the Monitoring Authority, twenty-five Field Teams were established around the country, which are located in twenty-three field organisational units of the Prison Service.

87. Since 20 August 2018 statutory substantive and technical activities related to the Electronic Monitoring System were performed by the total of 312 officers and civil servants of the Prison Service who were members of Field Teams (104 women and 208 men).

88. The effectiveness and efficiency of executing the sentence in the Electronic Monitoring System is over 90% on average. From 7% to 10% failures are witnessed in the execution of penalties, penal measures and preventive measures by means of the Electronic Monitoring System, which result in revoking the courts' decisions.

Chart 3

Number of convicted persons covered by the electronic monitoring system



89. **With regards to para. 83 of the report**, the Prison Service arranges overhauls of the residential rooms of the total capacity of 3,081 places, which are excluded for use for such purpose in 46 penitentiary facilities. The overhaul of the existing residential resources is performed in as short periods of time as possible and in a manner enabling the exclusion of the possibly lowest number of places (rotation) to avoid limiting the space available to prisoners.

90. **With regards to para. 84 of the report**, in order to create the environment supporting individual work with prisoners, prevent harmful influences of demoralised prisoners and ensure personal safety, the choice of proper execution of the sentence and the type of correctional facility and placement is based on the classification taking into account five detailed criteria, such as sex, age, previous convictions (imprisonment), intentional or unintentional character of the prohibited act committed, remaining period of time to be served, physical and mental health condition, including alcohol addiction, addiction to narcotic or psychotropic drugs, degree of demoralisation and threat to the society, as well as the type of crime committed. What is important is also the fact that the classification is assigned by a penitentiary committee, i.e. enforcement body, whose decisions may be appealed against by the prisoner before the court.

91. Besides, it should be pointed out that the classification is assigned on the basis of personal background tests, which according to the legal regulations on the execution of imprisonment sentences, allow to re-classify a person in connection with, among others, periodic reviews of the prisoner's progress in resocialisation. The essential part of the assessment, therefore, is the result of changes in the prisoner's behaviour and attitude, which are manifestations of the slow progression rule.

Regime: work, education, other recreational activities

92. **With regards to para. 87 of the report**, one of the basic tasks of the Prison Service included in Article 2(2)(1) of the Act on Prison Service is to carry out corrective and resocialisation efforts for prisoners during their imprisonment, in particular by means of arranging employment to encourage the development of professional qualifications, learning opportunities, cultural and educational activities, sports activities, as well as specialised therapeutic efforts.

93. Additionally, it should be emphasised that Poland is a party to the Forced Labour Convention (No. 29) of the International Labour Organisation. Article 2(2)(c) states clearly that 'the term forced or compulsory labour' does not include, for the purposes of [that] Convention, 'any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private entities.

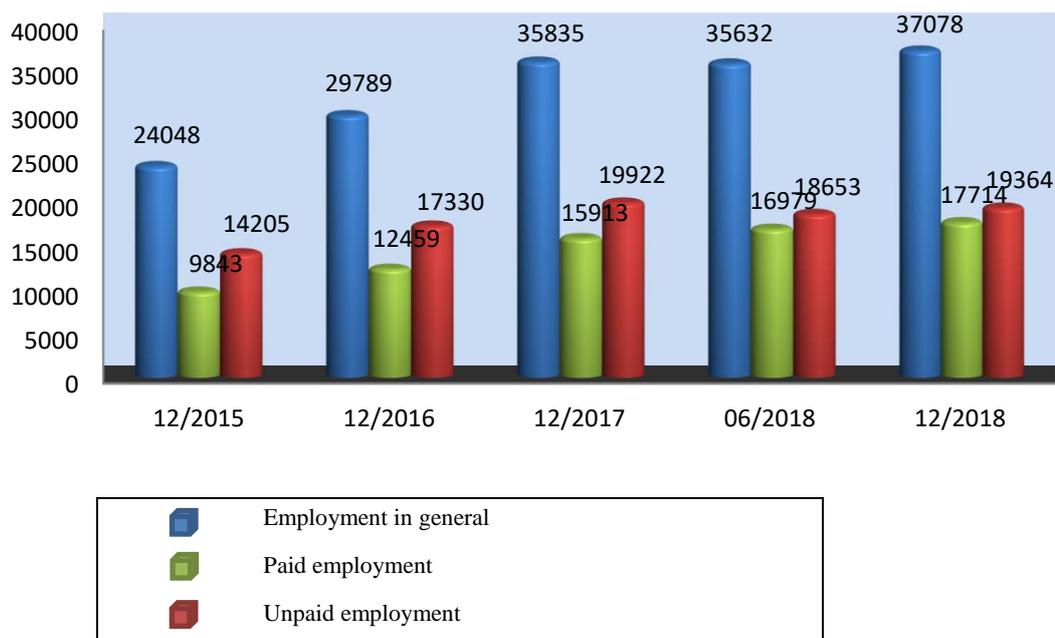
94. Pursuant to Article 121 §2 of the Penal Enforcement Code, the convicted person 'is allowed to perform paid work under an employment contract, commission contract, contract for a specific work, tolling contract or under another legal instrument.' The fact that labour is allowed suggests that it cannot entail forcing the prisoner to perform work under the aforementioned legal instruments. Additionally, it should be emphasised that as far as the employment under Article 123a§2 and 3 of the Penal Enforcement Code is concerned, the convicted person is entitled to refuse work of specific forms and types.

95. **Regarding para. 88 of the report**, continuous Education Centres at correctional facilities, being public educational institutions established to follow the curriculum and teaching contents, are subject to legal regulations of the Ministry of National Education. The school year calendar set by the Minister of National Education specifies holiday break, during which educational institutions, including Continuous Education Centres, do not operate. Other short forms of workshops (courses) organised by correctional facilities, which are funded from the post-penitentiary aid and the POWER programme, are offered throughout a year, in all calendar months.

96. **With regards to para. 89 of the report**, as part of corrective and resocialisation efforts addressed to convicted persons, steps were taken to increase the employment rate of persons deprived of liberty, consisting among others of implementing the 'Employment for

Prisoners’ programme. Before the launching of the programme, the employment of convicted persons and persons subject to penalties for misdemeanours was 36%, i.e. 24,048 people were employed (as of 31 December 2015). As of the end of 2018, it was 37,078 of convicted persons and persons subject to penalties for misdemeanours, while the rate of employment was above 57%. The average number of convicted persons in employment in 2018 was 36,186 and was higher from the average for 2015 by 11,439 people. Within the group of convicted persons eligible to work, 82.3% of inmates found employment. In the last months of 2018, the rate was almost 85%.

Chart 4
Employment rate in 2015–2018



97. This means that as a result of the steps taken, the number of convicted persons in employment was increased by 13,000, while the rate of employment increased by 21 percentage points. The scale of increase and the achieved level of employment is the highest for the last thirty years.

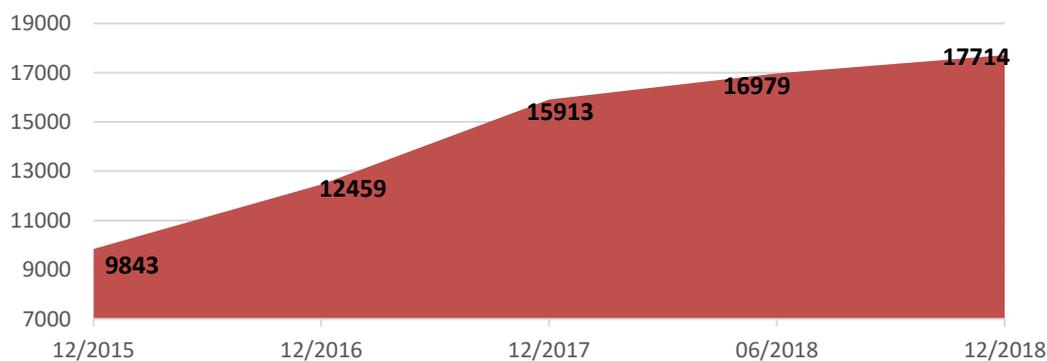
98. The rate of employment in the group of convicted persons described as eligible to work as of 31 December 2018 was 84.78% (as of the end of 2015, this was 58.34%).

Table 1
Employment rate in 2012–2018

	2012	2013	2014	2015	2016	2017	2018 /as of 31.12.2018/
<i>Total Employment</i>							
<i>Average monthly employment, paid and unpaid</i>	23 630	24 442	25 182	24 762	26 850	34 106	37 078
<i>Rate of employment (Rate of employed prisoners to the total number of prisoners)</i>	31%	32%	35%	36%	40%	51%	57%

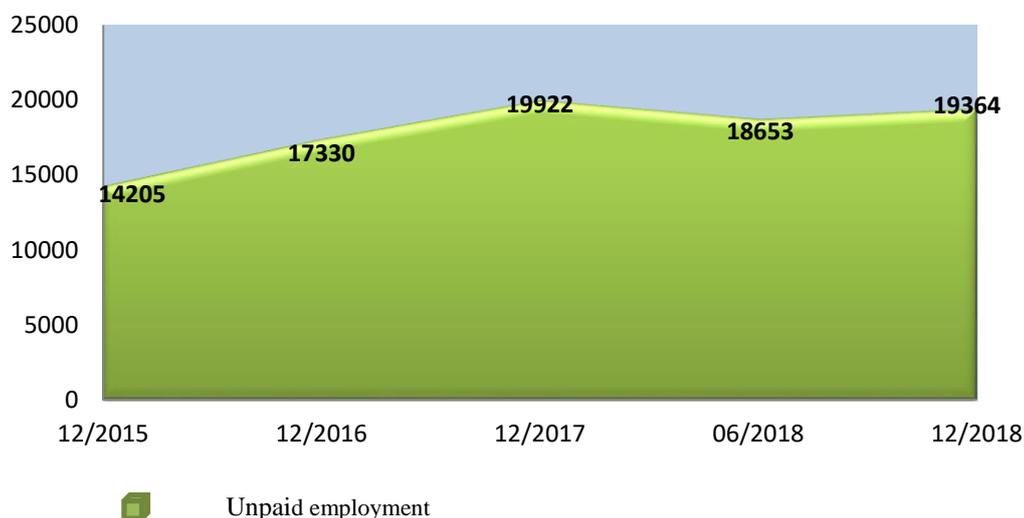
99. A particularly demanded and achieved result of the ‘Employment for Prisoners’ programme was increasing paid employment opportunities. New jobs enabled referrals to work for much more prisoners with child maintenance liabilities.

Chart 5
Paid employment in 2015–2018



100. The total number of prisoners in paid employment increased from 9,843 at the end of 2015 to 17,714 at the end of 2018, i.e. by 80%.

Chart 6
Unpaid employment in 2015–2018



101. The total number of prisoners in unpaid employment increased from 14,205 at the end of 2015 to 19,364 at the end of 2018, i.e. by 36%.

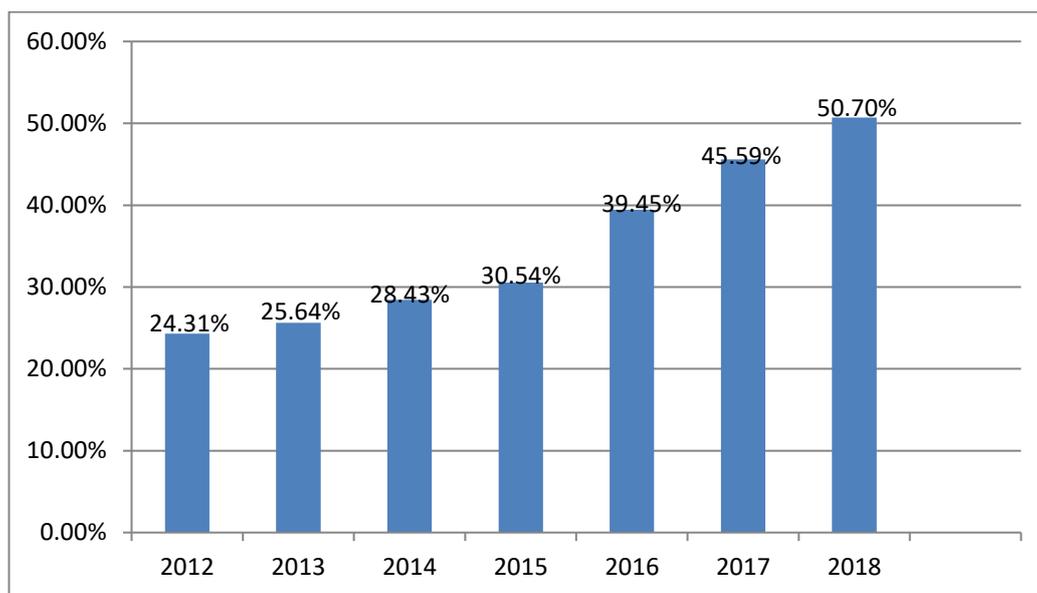
Employment for prisoners with child maintenance liabilities

102. Since the governmental ‘Employment for Prisoners’ programme was launched, a considerable increase in the rate and the number of paid employed prisoners with child maintenance liabilities has been witnessed.

103. The rate of employment among prisoners with child maintenance liabilities: – in 2015 on average 3,797 prisoners per month (26.90%), while at the end of 2018 – 6,269 prisoners (50.70%). This means the increase of 2,500 people and the increase of employment rate by almost 24%.

Chart 7

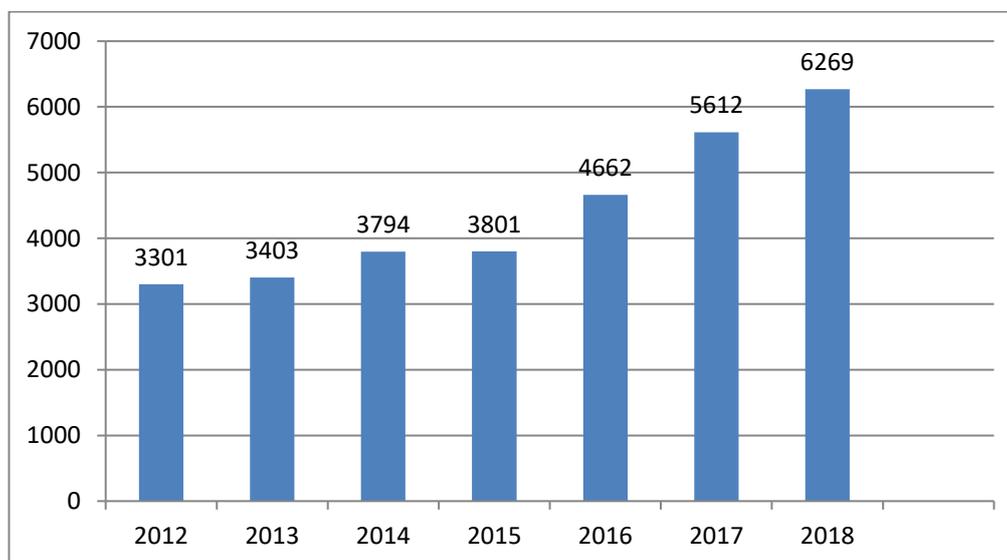
Rate of employment among prisoners with child maintenance liabilities in 2012–2018



Employment rate among convicted persons with child maintenance liabilities as of 31 December

Chart 8

Number of prisoners with child maintenance liabilities employed in 2012–2018

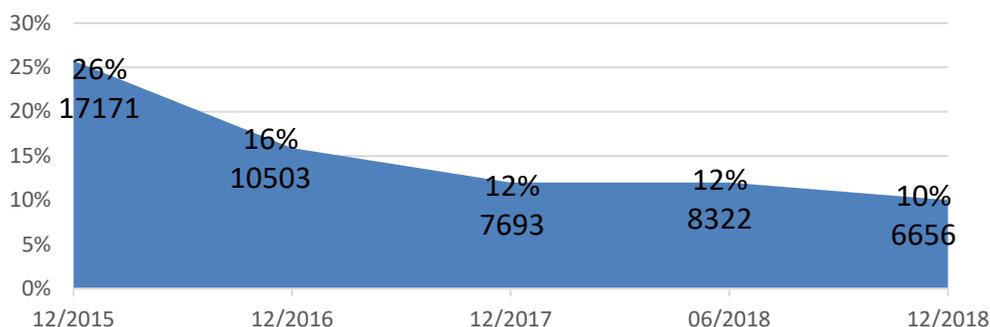


Number of employed convicted persons with child maintenance liabilities as of 31 December

Unemployment rate in 2015–2018

104. Before introducing the ‘Employment for Prisoners’ programme, the unemployment rate among prisoners in penitentiary facilities was 26%, while at the end of 2018 it was only 10%.

Chart 9
Unemployment rate in 2015–2018



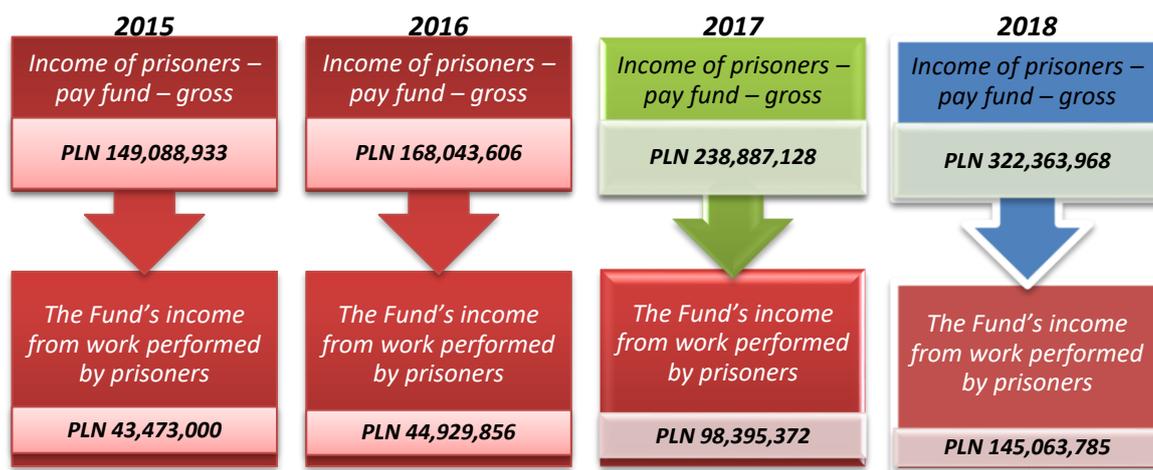
Fund for economic activation of convicted persons

105. The development of paid employment means also measurable financial benefits and new employment opportunities, which are among the most important forms of resocialisation.

106. Legislative changes introduced by the government in the area of deductions made from the convicted person’s remuneration (from 25% to 45% of the remuneration to which a convicted person is entitled) significantly increased, during the last 2 years, the proceeds to the Fund for Economic Activation of Convicted Persons originating from their remunerations:

- in 2015 – PLN 43,473,000.
- in 2016 – PLN 44,929,856.
- in 2017 – PLN 98,395,372.
- in 2018 – PLN 145,063,785.

Chart 10
Income of prisoners and proceeds to the fund for economic activation of convicted persons (FAZS) in 2015–2018



107. Within the last three years, the proceeds to the Fund have increased three times since the ‘Employment for Prisoners’ programme was implemented, while the income of prisoners increased by PLN 173 million.

Construction of production halls

108. Financial resources from the Fund for Economic Activation of Convicted Persons are used to create new jobs, among others by constructing production halls.

109. In 2016–2018, 25 modern production halls were accepted for use, creating more than 2,000 new jobs.

110. Currently, 11 production facilities are under construction, in which already in 2019 at least 1,000 convicted persons will find employment.

Actions complementary to the ‘employment for prisoners’ programme. Knowledge–education–development operational programme – (power) for 2016–2020

111. Project title: ‘Increasing professional qualifications of prisoners to integrate them into the labour market after the imprisonment period’:

- Systemic project value: PLN 131.2 million;
- Scheduled project period: 4 July 2016 to 31 December 2020;
- The main assumptions are as follows:
 - Training for at least 46,128 prisoners;
 - At least 3,844 training and reintegration cycles;
 - Employing at least 56% of those who completed the training (27,750 people);
 - Areas of corrective efforts within training and reintegration cycles;
 - professional courses in attractive fields (such CNC operator, electrician certified by the Association of Electrical Engineers, caretaker for the elderly, welder);
 - economic activation training sessions;
 - first aid courses.

112. In total, in 2016–2018, 2,167 workshops were organised, during which 25,395 prisoners were trained. 70,1% of those who completed such training programme were employed. To achieve this objective, the amount of PLN 65,192,155.12 was spent, which accounted for 49% of funds available for the objective.

Disciplinary and restraint cells

113. **With regards to paras. 94, 95 and 97 of the report**, Poland submit the following. The penalty of solitary confinement is applied only for gross violations of order and discipline and, being a special regime, it is regulated in detail in the Penal Enforcement Code. Prior to its application, a doctor or a psychologist issues an opinion on whether the convicted person may be made subject to this type of penalty. If the penalty is supposed to last for the period longer than 14 days, an approval from the penitentiary judge is required. The rule of humanitarian treatment safeguards the convicted person’s right to appeal against the decision of the director before the court and in justified cases it may be decided not to apply disciplinary sanctions or suspend the execution of the penalty imposed, replace it with less severe or remit it. When the penalty is applied, the convicted person is constantly subject to psychological and educational supervision so that an immediate reaction may be taken and appropriate decisions may be made by a competent body authorised to execute the penalty.

114. It should be emphasised that in any case before applying disciplinary sanction the person accused of disciplinary misconduct is heard, the opinion of the supervisor is solicited and, if necessary, the person applying for punishment is interviewed, opinions of other people are taken into consideration and witnesses’ statements are collected. Proceedings may be carried out in presence of other convicted persons, if this is justified by formative reasons. Informing the convicted person about the possibility of appealing against a decision issued is an established course of procedure and it results from the regulations governing the execution of imprisonment sentences.

115. A disciplinary sanction consisting in solitary confinement is a burdensome punishment, entailing specific burdens related to the punished person’s stay in a single cell. For this reason, before such penalty is applied, the convicted person undergoes medical and

psychological consultations which are supposed to establish his or her ability to be made subject to the penalty of this kind in terms of mental and physical condition and to exclude such person's disposition to auto-aggressive behaviours. The doctor's opinion concerning the effects of the penalty for the convicted person's health, depending on the conclusions, may be a ground for deciding not to apply the penalty, replacing it with another penalty or ordering a penalty, but suspending its execution. Positive relations between a doctor or a psychologist and the convicted person are not distorted as actions taken by them are aimed at protecting the person's safety.

116. A disciplinary sanction of solitary confinement up to 28 days is provided for in Article 143 §1(8) of the Penal Enforcement Code, while the manner and rules of execution of the sanction are separately described in detail in Article 143 §3 of the Penal Enforcement Code. The above seems to fully implement the recommendations included in points 94–95 of the document, but it is possible to provide more details of executing the disciplinary sanction in question. Personality-related or mental health issues constitute a negative condition preventing the application of the measure, if decided so by a doctor under general rules. It seems that there is no actual risk of applying this measure to people with diagnosed dysfunctions or mental health issues, both from the perspective of the assessment of the social gravity of the offence and the counterproductivity of the sanction. Potential legislative work on making the issue raised in Recommendation No. 97 more specific may be considered.

117. A medical doctor does not have access to information on the use of physical coercive measures, if their use was justified by reasons of security. The provisions of Polish law do not require informing a medical doctor about each case of using physical coercive measures. This is, however, obligatory whenever the use of physical coercive measures resulted in an injury or another visible symptoms that endanger the life or health of a person who has been made subject to such measures. At the same time, it should be emphasised that pursuant to Article 115 of the Penal Enforcement Code (Journal of Laws 1997.90.557 as amended), convicted persons have guaranteed access to free healthcare services and may use such services after registering for a medical appointment without being required to disclose a reason for such appointment to unauthorised persons.

Food

118. **Concerning paras. 100 and 101 of the report**, in reference to the wording of the part of the document concerning the delays in the delivery of food packages: '[...] sometimes after the expiry dates for food products'. It should be stated that the convicted person is entitled, at least three times a month, to purchase food products and tobacco products and other products allowed to be sold in the correctional facility for the deposited cash available to his or her disposal. Moreover, the convicted person is entitled to receive, once a month, a food package consisting of food products or tobacco products bought through the correctional facility. What is important is that the convicted person receives the package after making a written order and paying the cost of preparing the package. The order may be submitted by a relative. In accordance with the procedure adopted, packages are delivered immediately after the order is processed. It should be emphasised that the prices of products and expiry dates are subject to regular control.

Health care

119. **With respect to para. 104 of the report**, in all prisons and detention centres there are medical facilities for persons deprived of liberty, in which prisoners are provided with health services to the necessary extent. In units equipped with prison hospitals, medical staff provides medical care 24 hours a day, seven days a week.

120. Prison health care cooperates with non-prison medical facilities in order to provide persons deprived of their liberty with highly specialized medical care. The prison doctor decides on the method and place of treatment.

121. Pursuant to the Ordinance of the Minister of Justice of 14 June 2012 on the provision of healthcare services by medical treatment facilities for persons deprived of liberty (Journal of Laws of 2012, item 738 as amended), a person deprived of liberty

undergoes initial subjective (interview) and objective (physical) examination upon being admitted to the penitentiary facility and no later than within 3 working days of admission.

122. Medical examination of people to be imprisoned is carried out by doctors and nursing staff immediately. It is a rule that on the day of admission the convicted person is made subject to sanitary and epidemiologic assessment and the interview is conducted to establish the patient's history in terms of illnesses, in particular tuberculosis, epilepsy, viral hepatitis, HIV. The procedure of medical examination includes the chest X-ray to rule out tuberculosis. Additionally, upon admission patients are informed about HIV contraction issues and, if they give consent, they may be tested for HIV.

123. Any other system would require providing, in almost 120 penitentiary facilities and external wards, medical staff for public holidays, e.g. in a form of duty hours, which would require the recruitment of the significant number of medical staff and the significant financial resources for salaries; this model is not justified as it would mean doubling the functions of the State Emergency Medical Service. Additionally, it should be emphasised that persons arrested by the police, before being placed in a correctional facility or a detention centre, are examined in public healthcare facilities for the purpose of determining whether they may be placed in a penitentiary facility.

124. According to the Penal Enforcement Code, at the request of the officer or a member of staff of the prison medical treatment facilities for persons deprived of liberty, healthcare services may be provided to the convicted person without the presence of the officer who is not a health professional. In the majority of cases the medical staff of prison medical treatment facilities for prisoners, resign from applying preventive security measures for the period of medical examination or other medical procedures if there is no risk of danger on the part of the prisoner. The staff in question possess substantive knowledge on the circumstances in which healthcare services objectively require intimacy and respecting the patient's dignity, with the rules of security being followed at the same time.

125. **In relation to paras 106 and 107 of the report**, medical records are kept in accordance with the Ordinance of the Minister of Justice of 26 February 2016 on the types and scope of medical records kept in medical treatment facilities for persons deprived of liberty and processing of such records (Journal of Laws, 2016, item 258), which does not require any 'register of injuries' to be kept. If any injuries are discovered, relevant notes are made in the book of health. The only place to record any disorders, including injuries, is medical records. The introduction of other documents, such as 'the register of injuries', would force medical staff to unjustified duplication of entries.

126. If an injury is discovered, a medical doctor takes a relevant note in the book of health, describing the location and scope of the injury. Additionally, the doctor notifies the director of the penitentiary unit in a memo. Full information on health condition, including potential injuries, contained in medical records are made available to the prisoner and authorised bodies and institutions in accordance with the provisions of the Act of 6 November 2008 on the Patient's Rights and the Patient's Ombudsman (Journal of Laws, item 1318, consolidated text) and the Ordinance of the Minister of Justice of 26 February 2016 on the types and scope of medical records kept in medical treatment facility for prisoners and processing of such records (Journal of Laws of 2016, item 258).

127. The officers and civil servants of the prison medical treatment staff attend regular workshops, also in the area of making medical staff more sensitive to human rights aspects and the content of 'Istanbul Protocol'. Since July 2017, the schedules of workshops for prison medical treatment facility staff in all penitentiary facilities and Prison Service Training Centres include topics covered by the Protocol. At the same time during training sessions for prison medical treatment facility management, topics covered by 'Handbook on Effective Investigating and Recording in Cases Related to Torture and Other Inhuman or Degrading Treatment or Punishment' are also raised. In general, the priority legal act that governs the conduct of a medical doctor, also if they are members of prison medical treatment staff, is the Act on the Profession of Doctor and Dentist dated 5 December 1996 (Journal of Laws of 2017, item 125) and the Medical Code of Ethics.

128. **As far as paras. 108–109 of the report** are concerned, as regards the conclusions relating to methadone substitution therapy in penitentiary facilities the Subcommittee

erroneously notes that therapy is only accessible as continuation for those who were participating in such programmes before entering the prison.

129. Patients addicted to drugs are provided with medical support offered by doctors, nursing staff and psychologists. Within the structures of penitentiary facilities there are therapeutic wards for prisoners addicted to narcotic drugs or psychotropic substances.

130. Additionally, in accordance with the Substitution Programme for Detainees in Penitentiary Facilities in Poland, apart from prisoners who continue their substitution treatment, also a detainee who was not subject to substitution treatment before being detained may start substitution treatment after satisfying the following criteria:

- (a) Exclusively after a place in the ‘non-custodial’ programme is guaranteed by the director of the programme;
- (b) Satisfying the eligibility criteria specified in the applicable legal regulation;
- (c) Written consent to start treatment within the programme and acceptance of the programme’s requirements.

131. Decisions on qualifications to the substitution treatment are made by the director of the programme or a medical doctor authorised by the director who perform tasks for the purposes of the programme.

132. Detainees of pre-trial detention centres and correctional facilities are informed upon admission on HIV contraction issues and take part in workshops on the harmful effects of drug use and on the mitigation of damages.

133. The Prison Service is ready to provide support to detainees with drug issues. Actions in this area have been systemically regulated by law. In accordance with the Penal Enforcement Code, the imprisonment sentence is executed within the system of programmed corrective efforts, therapeutic system and ordinary system. The therapeutic system is an exceptional solution applied to convicted persons with non-psychotic mental disorders, including persons convicted for the crime under Article 197 to 203 of the Criminal Code, committed in connection with sexual preference disorders, persons with mental impairment, as well as those addicted to alcohol or other narcotic drugs or psychotropic substances. The sentence is executed within the therapeutic system in the therapeutic ward of specific specialisation. In Polish prisons, there are 17 therapeutic wards for convicted persons addicted to narcotic drugs or psychotropic substances, 33 wards for convicted persons addicted to alcohol, 23 wards for convicted persons with non-psychotic mental disorders or mentally impaired persons (in 7 of which corrective efforts are addressed to convicted persons sentenced for the crimes under Article 197 to 203 of the Penal Enforcement Code in connection with sexual preference disorders). The total capacity of wards is 3,663. In 2018, specialised therapeutic corrective efforts covered 6,036 convicted persons addicted to alcohol, 1,697 convicted persons addicted to narcotic drugs or psychotropic substances and 2,501 convicted persons with non-psychotic mental disorders or mentally impaired persons, including 469 convicted persons diagnosed with sexual preference disorders.

Strip search

134. Strip search – **mentioned in para. 110 of the report** – is performed only if required by the reasons of security of the penitentiary facility and it serves to prevent the smuggling of unauthorised and dangerous items, drugs and alternative substances and it is aimed at ensuring the security of the prisoner searched and other prisoners, as well as the security of officers and staff members of the Prison Service, wherever the number of assaults has increased in recent periods. It should be added that strip searches are carried out based on applicable regulations and a cavity search is performed only visually and not manually. Strip searches are performed also on visitors in connection with information received by the officers of the Prison Service about the risk of smuggling unauthorised objects or narcotic drugs into penitentiary facilities or if non-disclosure of all items possessed is discovered.

135. The Prison Service works on introducing changes to the Penal Enforcement Code and the Act on Prison Service aimed at comprehensively regulating the matter of

controlling prisoners and visitors at the statutory level so that its officers would enjoy adequate powers in comparison to other uniformed services.

Complaint mechanisms

136. **With regards to paras 112 and 113 of the report**, detainees of penitentiary facilities enjoy a constitutional right to lodge complaints in a free and unrestricted manner. Complaints are processed in accordance with the rules of striving for the lack of bias and the determination of objective truth.

137. In accordance with the provisions of the Penal Enforcement Code, complaints lodged by detainees of correctional facilities and pre-trial detention centres are handled within a procedure provided for in Article 6 and Article 7 of the Code. Pursuant to Article 6 § 2 of the Penal Enforcement Code, a convicted person may lodge applications, complaints and requests to bodies that are competent to execute the judicial ruling. Article 7 of the Penal Enforcement Code, in turn, stipulates that the convicted person may appeal against a decision of the body named in Article 2(3–6) and 10 before the court on the ground of its unlawfulness.

138. To illustrate this according to statistical data in 2017 1,239 claims were raised in reference to the manner of handling a complaint, out of which 32 were considered justified, while in 2017 the number of claims was 2,526, out of which 48 were considered justified.

139. No example was recorded of a justified complaint concerning the use of retaliation against prisoners who have lodged complaints or concerning lack of contact with the free helpline operated by the Commissioner for Human Rights' Office.

140. In 2018 organisational units of the Prison Service decided on 50,591 claims included in complaints and provided clarifications to the Commissioner for Human Rights in 1,836 cases. The data above shows that prisoners are able to contact the Commissioner for Human Rights' Office freely and they are able to lodge complaints.

141. It should be, therefore, emphasised that convicted persons deprived of cash do not incur the cost of sending complaints and requests and that they receive paper and envelopes from the facility's administration. The fact that prisoners use special mailboxes located in residential wards to send correspondence to international human rights protection institution is a choice made by prisoners themselves and independent of the administration's will.

142. Within the penitentiary facilities prisoners may use pre-paid card stationary telephones in accordance with the provisions of the Penal Enforcement Code and internal regulations. External telecom operators do not introduce any restrictions in access to the helpline operated by the Commissioner for Human Rights and making calls to this helpline does not require special authorisations.

143. Also, on 9–10 October 2019 a random control of call options for the Commissioner for Human Rights' helpline, i.e. 800 676 676, was carried out with the use of phone devices available to prisoners in the following facilities:

- Correctional Facility in Strzelin – Orange and Dialtech;
- Correctional Facility in Wołów – Orange and Dialtech;
- Correctional Facility No. 1 in Wrocław – Orange;
- Correctional Facility in Siedlce – Telestrada;
- Pre-trial Detention Centre in Piotrków Trybunalski – Orange and Ahmes;
- No restrictions in calls to the helpline were identified during the inspections.

144. Information on the right to phone calls is made available to prisoners through operators' helplines and in leaflets distributed in cells, posters available in shared spaces or stickers attached directly on phone equipment.

Contact with the outside world

145. As for the recommendation concerning the safeguard that persons under pre-trial detention (including foreigners) could be visited and call family members and other people (**paras. 114–117 of the report**), each person under pre-trial detention, upon admission or immediately after being admitted to the pre-trial detention centre, may exercise their right to inform a relative or another person, association, organisation or institution and the defence lawyer, competent consular authority or competent diplomatic representation, in the case of foreigners, about their whereabouts by means of a written notification sent to the address specified by the detainee.

146. The administration of penitentiary facilities grants the family and other persons the right to visit a detainee under pre-trial detention, to whom the regulations on the execution of imprisonment do not apply, based on a visit approval from the disposing authority. It is also the disposing authority (the authority at whose disposal the detainee is) that decides, by means of a relevant instruction, on whether the detainee under pre-trial detention may use a phone. The detainee under pre-trial detention may use a phone based on the provisions of the organisational and order rules governing the execution of pre-trial detention.

147. In response to the recommendation to ensure confidentiality of lawyer–client communication, both via phone and traditional letters, and to remove any barriers in access to and communication with a lawyer of persons arrested within investigation proceedings, if there are any limitations in this regard, they are related exclusively to the need to ensure the proper course of criminal proceedings. Detainees under pre-trial detention are entitled to communicate with their defence counsel, legal representative who is an advocate or an attorney-at-law, as well as with a representative who is not an advocate or an attorney-at-law, but has been approved the President of the European Court of Human Rights’ Chamber to represent the convicted person before the Court in absence of other persons and for correspondence purposes. If the authority at whose disposal the detainee under pre-trial detention is, determines that a visit is possible but a representative of such authority or another authorised person must be present during the visit, the visit is proceeded with in such a manner as specified by the authority. The Prison Service grants the defence counsel or the representative who is an advocate or an attorney-at-law the right to visit a detainee under pre-trial detention, to whom the regulations on the execution of imprisonment do not apply, based on a visit approval from the disposing authority. It is also the disposing authority (the authority at whose disposal the detainee is) that decides, by means of a relevant instruction, on whether the detainee under pre-trial detention may use a phone. As a rule, any correspondence of the detainee under pre-trial detention with their defence counsel or representative who is an advocate or an attorney-at-law is sent directly to the addressee, unless the authority at whose disposal the detainee is, decides otherwise in particularly justified cases.

148. As for the steps taken by the Prison Service officers to ensure proper translation and interpreting services for foreigners, communication without language barriers between officers and the staff of penitentiary facilities and detained foreigners is important at each stage of administrative procedures related to the execution of pre-trial detention, penalties and coercive measures resulting in the deprivation of liberty. Therefore, as part of a project funded from the Norwegian Financial Mechanism for 2009–2014, the Prison Service purchased for each penitentiary facility mobile language translation devices which respond to the needs and specific nature of correctional facilities and pre-trial detention centres.

149. Additionally, the funds from the programme were also spent on English courses for the Prison Service staff. The administration of penitentiary facilities has information brochures in foreign languages for foreigners.

150. As far as Recommendation No. 115 is concerned, the applied practice in this regard arises from the decision made by the authority in charge of criminal proceedings and it is difficult to introduce uniform rules in this regard. Equally controversial is the recommendation described in point 117. Contact between the lawyer and the client should be free and unhindered, but in the case of pre-trial detention, due to the nature of this measure, it will be always subject to rationing and registering carried out by the authority in charge of proceedings.

Table 2
Persons under pre-trial detention who are imprisoned for another case

<i>Total</i>	<i>1. Number of rulings</i>	<i>2. Number of people</i>		
	1 121	1 092		
<i>Pre-trial detention period</i>	<i>Number of rulings</i>	<i>Number of people</i>		
		<i>Total</i>	<i>Women</i>	<i>Men</i>
1. Up to 6 months	624	624	22	602
2. From 6 months to 1 year	302	302	8	294
3. From 1 year to 1 year and 6 months	111	111	3	108
4. From 1 year and 6 months to 2 years	48	48	0	48
5. From 2 years to 2 years and 6 months	13	13	1	12
6. From 2 years and 6 months to 3 years	7	7	0	7
7. Above 3 years	16	16	0	16

Source: Central Database of People Deprived of Liberty Noe.NET.

Author: Lidia Idzikowska.

Table 3
Persons under pre-trial detention who are not imprisoned for another case

(3)

<i>Total</i>	<i>3. Number of rulings</i>	<i>4. Number of people</i>		
	8 644	8 594		
<i>Pre-trial detention period</i>	<i>Number of rulings</i>	<i>Number of people</i>		
		<i>Total</i>	<i>Women</i>	<i>Men</i>
1. Up to 6 months	5 213	5 212	299	4 913
2. From 6 months to 1 year	2 031	2 031	117	1 914
3. From 1 year to 1 year and 6 months	767	767	50	717
4. From 1 year and 6 months to 2 years	372	372	25	347
5. From 2 years to 2 years and 6 months	135	135	5	130
6. From 2 years and 6 months to 3 years	75	75	1	74
7. Above 3 years	51	51	1	50

Source: Central Database of People Deprived of Liberty Noe.NET.

Author: Lidia Idzikowska.

C. Juvenile

Juvenile correctional facilities

151. **Regarding para. 124 of the report**, pursuant to the § 15 of the Ordinance of the Minister of Justice of 17 October 2001 on juvenile detention centres and temporary youth detention centres (consolidated text, Journal of Laws of 2017, item 487) each juvenile detention centre (*zakład poprawczy*) and each youth temporary detention centre (*schronisko dla nieletnich*) have their schools whose organisation and functioning is regulated by separate provisions governing the educational system applicable in Poland.

152. The learners detained in juvenile detention centres may attend a primary school or a vocational school. The process of schooling is carried out in accordance with the regulations issued by the Minister of National Education, i.e. Educational Law Act (consolidated text, Journal of Laws of 2019, item 1148 as amended) and implementation regulations to this Act, including ordinances concerning the curriculum for the general education in public schools. In each school year, the Minister of Justice approves the

facility organisational work sheet, which refers also to the functioning of specific types of schools, e.g. hiring qualified teaching staff who will ensure proper educational classes adjusted to the educational requirements and abilities of learners and who will prepare them adequately to external examinations at the respective levels of education. Both the organisation of the schools and the documentation of teaching process is subject to the provisions on education applicable to regular schools.

153. The educational process and educational results of learners educated in juvenile detention centres are subject to external and internal control. As for general education subjects, the schools are subject to the control exercised by the competent Education Supervisor (Kurator Oświaty), while any remaining aspects of schooling are controlled by the Minister of Justice.

154. To exercise the educational supervision and general supervision, the representatives of the Ministry of Justice supervise the functioning of juvenile detention centres and their schools on an ongoing basis, evaluate the schools' work, and no less frequently than in once in 5 years they carry out inspections concerning the overall functioning of facilities, including schools.

155. Educational activities at the schools functioning in juvenile detention centres and youth temporary detention centres are subject to the same quality assessment as activities with learners at public schools. Judges delegated to the Ministry of Justice appointed as inspectors conduct each year an evaluation of such schools in accordance with the requirements set in the ordinance issued by the Minister of National Education.

156. **Regarding para 126 of the report**, coercive physical measures against minors, including placement in solitary confinement, are applied only in exceptional circumstances if psychological and pedagogical corrective efforts are ineffective. The option of applying the measure of solitary confinement as a coercive physical measure against minors is regulated by the Act on Juvenile Delinquency Proceedings (consolidated text, Journal of Laws of 2018, item 969), the Act on Coercive Measures and Firearms (consolidated text, Journal of Laws of 2017, item 1839) and the Ordinance of the Minister of Justice on security cell and solitary confinement room (Journal of Laws of 2013, item 638).

157. Whenever a minor detainee is to be placed in a solitary confinement room, the aforementioned regulations and procedures applicable in the facility are respected. Under such regulations and procedures, any case of solitary confinement applied to a minor detainee is properly documented with the use of video surveillance and relevant entries are made in relevant documents. The Department of Family and Juvenile Matters, as part of its supervision activities, imposed an obligation on the directors of juvenile detention facilities and youth temporary detention facilities to provide detailed information on the use of coercive measures together with video surveillance material. Conclusions and recommendations arising from the exercised supervision are communicated to the directors on an ongoing basis or during briefings. The accumulated analysis of the use of coercive measures carried out in 2017 and 2018 did not show any irregularities in terms of exceeding the solitary confinement period allowed by the provisions of law.

158. The Department of Family and Juvenile Matters will continue to pay particular attention to its supervision of the use of coercive measures against minors, including the measure of solitary confinement.

159. It should be added that the recommendation specified in point 126 may be subject to a further analysis. It needs to be taken into account, however, that in the case of the Polish Criminal Code, the age of criminal liability is, as a rule, 17 years.

160. **Regarding to para. 128 of the report**, the priority in the supervision activities conducted by the Department of Family and Juvenile Matters is to verify how the directors and employees of juvenile detention centres ensure that minor detainees' rights are respected. One of such rights is a right to the protection of family ties and a right to contact the world outside, exercised by means of visits or phone calls. The rules governing phone calls or visits are specified in detail in the organisational rules of specific facilities. Detainees have a guaranteed possibility of meeting visitors in special rooms, without direct presence of the facility's staff.

161. The minors' right to privacy and the right to contact the world outside is an aspect controlled during each inspection in juvenile detention centres and youth temporary detention centres carried out by the Department of Family and Juvenile Matters of the Ministry of Justice. Potential irregularities result in relevant instructions being issued by the Director of the Department.

Juvenile psychiatric facilities

162. **Referring to paras. 131 and 133 of the report**, Ministry of Health of the Republic of Poland informs that conclusions and recommendations concerning the functioning of National Centre for Juvenile Forensic Psychiatry in Garwolin will be forwarded to this Centre for future reference.
