



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

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Committee against Torture

**Information received from Poland on follow-up to
the concluding observations on its seventh periodic
report***

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* The present document is being issued without formal editing.



**Follow-up information relating to paragraph 20 (a) of the concluding observations
(CAT/C/POL/CO/7)**

1. The legal solutions and procedures currently adopted in the Police, including those concerning the conduct of disciplinary proceedings and control activities, constitute an exhaustive list of measures ensuring impartial, effective and prompt clarification of the circumstances of events of any misconduct on the part of police officers, thereby providing a basis for considering the recommendation as implemented.
2. The impartiality, expeditiousness and effectiveness of proceedings in the cases referred to in the above recommendation is guaranteed on the basis of the Guidelines of the Public Prosecutor General of 27 June 2014 on public prosecutors' conduct of proceedings for crimes related to deprivation of life and inhuman or degrading treatment or punishment, perpetrated by police officers or other public officials. Promptly upon receiving information about a suspected crime, the public prosecutor undertakes steps aimed at clarifying whether a police officer has committed a crime related to deprivation of life or inhuman or degrading treatment or punishment. As far as the impartiality of the proceedings is concerned, points 4 and 6 of the Guidelines requires specific attention.
3. Pursuant to Article 5b of the Police Act of 6 April 1990 (consolidated text: Journal of Laws of 2020, item 360, 956, 1610), the Police Internal Affairs Office is an organisational unit of the Police Internal Affairs Service which performs tasks throughout the country in the area of identifying, preventing and combating crime committed by police officers and police employees.
4. In line with the guidelines of the Prosecutor General, criminal proceedings against suspects, who are police officers, fall within the jurisdiction of the Public Prosecution Office. In practice, this means both personal involvement of the public prosecutor in the operations undertaken under Articles 307 and 308 of the Code of Criminal Procedure and in the investigations themselves. The participation of the Police Internal Affairs Office officers in such pre-trial proceedings is provided for in the situation where the investigating officer issues an order to entrust the performance of individual operations. The overriding role of the public prosecutor and limitation of participation of the Police Internal Affairs Office officers to the performance of operations that are expressly specified by the public prosecutor guarantees the impartiality of the procedural outcome of the case.
5. It should be added that the separation of the Police Internal Affairs Office which took place on 27 January 2018 and the creation of a separate organisational unit undoubtedly had a positive impact on the effectiveness and transparency of the official tasks provided for this unit.
6. As regards disciplinary proceedings, in 2017, recognizing the need to make the supervision of disciplinary proceedings more realistic and enhanced, in particular in cases regarding acts of considerable harm to both the society and the image of the Police, the Police Chief Commander instructed the Provincial (and Warsaw) Police Chiefs and Police School Chiefs to adopt the following principles for application.
7. In the event of disclosure of an act meeting the elements of a disciplinary offence:
 - consisting in the abuse of powers or failure to comply with the obligations to use direct coercive measures, firearms or temporary detention where another person has been harmed;
 - consisting in a violation of §4 or §6 of the *Police Code of Ethics*;
 - concerning exposure or violation of the safety of life or health of persons under Police supervision;
 - which also meets the elements of a criminal offence;
 - consisting in reporting for duty or performing duty while intoxicated;
 - having a local or nationwide media character, the disciplinary superior should put the investigation and disciplinary proceedings under particular scrutiny and supervision.
8. In these matters, he or she should:
 - Promptly notify the higher-level disciplinary superior in writing of the investigation measures being ordered and the procedure being launched. The higher-level

disciplinary superior should each time carry out a thorough analysis of the information collected in respect of the circumstances which demonstrate the need to disqualify the disciplinary superior and the disciplinary ombudsman, in particular, due to the occurrence of the circumstances provided for in Article 135c(2) of the Police Act;

- For investigation measures and disciplinary proceedings, appoint, as far as possible, disciplinary ombudsmen with the greatest experience in dealing with disciplinary matters;
- Ensure the utmost objectivity and guarantee the rights of the victim when conducting investigation measures and disciplinary proceedings.

9. In the above-mentioned disciplinary matters:

- Special care should be taken with regard to securing evidence (relating not only to the consequences, but also to the causes of a violation of the law), including from documents, surveillance recordings and recordings of conversations held with the on-duty service of Police organisational units by telephone and radio and, in the event of identifying victims who have suffered any damage to their health, a medical opinion, as well as with regard to findings of personal sources of evidence;
- In the course of evidence-taking measures, each time examine the decision-making process (directions and orders issued) concerning or affecting the course of the event which is the subject of the case and the role of superiors, as well as persons supervising or issuing orders in respect of such an event;
- Evidence derived from personal sources of evidence interested in a specific outcome, including in particular police officers involved in an event underlying the disciplinary case, should be assessed with particular prudence and objectivity;
- In the event of a disciplinary decision being appealed, consider carefully, in order to guarantee the utmost objectivity, whether or not a committee should be appointed to examine the appealed decision;
- When an act constituting a disciplinary offence at the same time meets the elements of a criminal offence, and criminal proceedings are conducted in the case – cooperate, as far as possible, with the competent public prosecutor in order to comprehensively clarify the case.

10. The Police Chief Commander also ordered that in the cases in question, together with a request for an extension of the time limit for the evidence-taking stage, the files of disciplinary proceedings should be forwarded. This rule applies to all disciplinary proceedings in which the time limit for extending the evidence-taking stage is to exceed 3 months from the date of initiation of disciplinary proceedings.

11. Moreover, he ordered that the authority examining the request be promptly informed about the occurrence of facts which make processing devoid of purpose, e.g. when disciplinary proceedings have been stayed or discontinued.

12. He also ordered that in the cases in question copies of decisions relevant to the course of disciplinary proceedings (e.g. regarding the initiation of disciplinary proceedings, change of charges or stay of proceedings) be forwarded to the higher-level disciplinary superior. The higher-level disciplinary superior, on the other hand, is obliged to analyse the documents submitted in terms of whether the decisions are properly issued.

13. It should also be noted that supervision over conducted disciplinary proceedings is exercised on a continuous basis by relevant higher-level disciplinary superiors, including the Police Chief Commander. Pursuant to Article 134i(2) of the Police Act of 6 April 1990, a higher-level disciplinary supervisor may initiate or take over disciplinary proceedings before a decision is issued if, in his or her opinion, the nature of the case so requires. It is worth stressing in this context that in the above-mentioned letter of 2017 the Police Chief Commander instructed higher-level disciplinary superiors, *inter alia*, to analyse information about events concerning the use of direct coercive measures, firearms or temporary detention in which another person has been harmed, in order to ensure that disciplinary cases are examined objectively.

14. The letter also stresses that the victim's rights must be guaranteed and evidence must be carefully secured. The provisions offering guarantees for victims are set out in the Police

Act, which in Article 134i(1)(2) specifies that the disciplinary superior, if there are reasonable grounds to suspect that a police officer has committed a disciplinary offence, may initiate disciplinary proceedings on the victim's request. The victim shall then be informed of the initiation of such proceedings and its outcome by sending to him or her a copy of a decision or order issued. The materials provided by the victim are enclosed with the disciplinary case file. Moreover, where the victim has submitted a request to initiate disciplinary proceedings, he or she has the right to challenge the decision refusing the initiation of disciplinary proceedings and a decision discontinuing the disciplinary proceedings under Article 135(2) of the Act referred to above. Guarantees for the victim are also offered by Article 135c(1)(4) of the Police Act which stipulates that the disciplinary superior or the disciplinary ombudsman are disqualified from participating in disciplinary proceedings if he or she and the defendant or the person harmed by the defendant are personally related to such effect that this may call his or her impartiality into question.

15. As part of its statutory tasks, the Control Office of the National Police Headquarters monitors, among other things, the occurrence of threats related to the use of violence by police officers on duty. As part of the supervision in this respect, solutions were implemented aimed at informing the management of the Control Office of the National Police Headquarters about extraordinary events with the participation of police officers and employees on a 24-hour basis. This gives an opportunity to directly (immediately) involve the control services of the National Police Headquarters and the Regional Police Headquarters / the Warsaw Metropolitan Police Headquarters in matters related to explaining the circumstances and consequences of such events, including the possibility to discuss the information collected in a given case during daily briefings of the Police management. This allows for an appropriate response, including the implementation of control or monitoring measures aimed at overseeing a reliable clarification of the circumstances of the case.

16. The police officers of the control divisions of the Police field units and the National Police Headquarters are involved in clarifying the events and immediately responding to any irregularities found. Both the circumstances of the event and the manner and correctness of response of officers' superiors are assessed.

17. This system is complemented by the performance of measures such as conducting complaint proceedings and analysing non-complaint information, which, on the basis of Decision No. 95 of the Minister of the Interior of 10 July 2014 on the introduction of the "Guidelines on the principles and procedures for providing complaint and non-complaint information by the Police and Border Guard to the Office of the Commissioner for Human Rights and the Ministry of the Interior" for application in the Police and the Border Guard. The complaint information provided relates to the allegations listed in complaint categories I and II, i.e. I. Inhuman and degrading treatment, II. Violation of the right to freedom and information about one's rights. As far as non-complaint information is concerned, the Police shall be obliged to provide information on events where there are grounds to suspect that an action or omission of a police officer related to the performance of his or her official duties:

- resulted in another person's death, attempted suicide, bodily harm or impairment to health;
- resulted in the sexual freedom of the person being violated (rape, other sexual acts);
- involved an unjustified use of direct coercive measures, physical or psychological violence against another person.

18. At the same time, in 2019, there was put in place in the Control Office of the National Police Headquarters an additional procedure to analyse the scope and assess the content of information generated by complaint coordinators, through periodic risk analyses of the listed events, in particular in terms of the adequacy of means used to explain them by supervising entities, as well as to check which of the analysed events are subject to monitoring by the Control Office of the National Police Headquarters. The above-mentioned measures are intended to search for events which have not been monitored to date, carrying a high risk of the illegal conduct of police officers, in particular through the use of violence and similar actions. In such cases, the Director of the Control Office of the National Police Headquarters forwards appropriate correspondence to the Police units containing instructions on how to clarify the matter and information about possible disciplinary and criminal consequences, as well as staffing decisions with regard to police officers.

19. To sum up, legal and institutional solutions guaranteeing rapid, effective and impartial investigation into cases of torture, inhuman or degrading treatment or punishment that may be perpetrated by police officers, supplemented by a system of enhanced police control over such cases and procedures carried out within the framework of the Police, regardless of an investigation conducted by the prosecution or disciplinary proceedings, seem to comply with the requirements of the UN Committee Against Torture.

20. The Pre-trial Proceedings Department of the National Public Prosecution Service monitors cases concerning crimes committed by police officers and civilian employees, which was initiated by a letter dated 8 August 2007 from the Deputy Prosecutor General, National Public Prosecutor, addressed to the Appellate Public Prosecutors, indicating the need to develop principles of cooperation with the units of the Police Internal Affairs Office which was established for the purpose of identifying and prosecuting prohibited acts committed by police officers and employees. The letter recommends the designation of one public prosecutor per circuit and appellate public prosecution service in order to ensure the proper implementation of tasks in this area, including the coordination of cases falling into this category, the provision of substantive consultations to the lead public prosecutors, the examination of appeals on incidental matters or the exercise of supervision.

21. Although the Polish Criminal Code does not provide for the definition of torture, under Polish criminal law crimes encompass all acts covered by the definitions of torture contained in international instruments such as violation of bodily integrity, punishable threats, ill-treatment of a dependent person, causing bodily injury or forcing another person by violence or unlawful threat into a specific behaviour. The Polish Criminal Code provides for sanctions with regard to a public official who has committed acts meeting the elements of torture. Article 246 of the Polish Criminal Code provides for the crime of extorting statements or evidence from a public official by means of violence, unlawful threat or physical or mental ill-treatment, which crime carried a sentence of imprisonment going for a term between one year and 10 years. Article 247 of the Polish Criminal Code penalises acts involving mental or physical ill-treatment of a person deprived of liberty, which carry a sentence of imprisonment for a term going between 3 months and 5 years, and acts involving particular cruelty carry a sentence of imprisonment going for a term between one year and 10 years. The same sentence is also faced by an officer who allows such acts to be committed.

22. The above-mentioned Guidelines of the Prosecutor General of 27 June 2014 on public prosecutors' conduct of proceedings for crimes related to deprivation of life and inhuman or degrading treatment or punishment, perpetrated by police officers or other public officials remain valid and are complied with. Public prosecutors initiating proceedings involving a given category of crimes are obliged to inform the superior prosecutor accordingly. Having regard to points 12 and 13 of the Guidelines, a six-monthly, cyclical file review is also carried out in order to analyse the correctness of the proceedings and the validity of the substantive decision taken.

23. In each regional and circuit prosecution service, there is a coordinator for crimes committed by police officers who supervises and monitors such cases. The practice of referring such cases, with the exception of the principle of local jurisdiction, to another organisational unit of the public prosecution service in order to ensure impartiality and objectivity is continued.

24. The National Public Prosecution Service has taken a number of measures to disseminate the judgments and standards of the European Court of Human Rights, such as those concerning the Dzwonkowski Group, and recently *Kancial v. Poland* judgment. To this end, it disseminates the judgments delivered by circulating letters among the relevant Regional Public Prosecution Services, indicating the irregularities underlying the decisions. Recently, the judgment in case of *Jabłońska v. Poland* has been passed on to all public prosecutors. Similar dissemination measures are being taken in relation to Court decisions approving settlements and unilateral declarations. Moreover, on the website of the National Public Prosecution Service, there is a tab intended for Court's standards where the Court's judgments issued in cases against Poland, that are related to the activity of the public prosecution service, are published, as well as an analysis of the outcomes of cases from the group of judgments *Dzwonkowski v. Poland*, with a view to identifying erroneous practices.

Follow-up information relating to paragraph 30 (e) of the concluding observations

25. The activities of the Prison Service also comply with the recommendations of the Committee. In accordance with the applicable legal regulations, including Order No. 1/2018 of the Director-General of the Prison Service dated 3 January 2018 regarding on-duty service in organisational units of the Prison Service, events that may occur in the Prison Service, and the manner of explaining and documenting them, both cases involving a prisoner's death and cases of suspected crime or minor crime are referred for the assessment by the territorially competent public prosecution office, and in the case of professional liability to the territorially competent authority such as the Regional Screener for Professional Liability of the Regional Medical Chamber (in the case of physicians). In view of the foregoing, the allegation that there are no independent control mechanisms is unfounded and, if the allegations are confirmed, a decision to impose a penalty is issued by the Court in the case of criminal and/or professional liability by a territorially competent authority independent of the Prison Service.

26. Since the practice of a physician is governed by the Act of 28 February 2020 on the Professions of Physician and Dentist (Journal of Laws of 2020, item 514), and that of a nurse by the Act of 3 March 2020 on Professions of Nurse and Midwife, (Journal of Laws of 2020, item 562), the suggestion that the independence of healthcare staff employed in penitentiary facilities cannot be guaranteed in the event of a violation of law or professional ethics cannot be accepted. The staff incurs criminal or professional liability, respectively, as described in response to recommendation CAT 20 A. It should also be noted that in the majority of cases medical staff employed in penitentiary units also provide services in non-prison medical entities and faces criminal liability for any violation of law and professional liability for any violation of professional ethics, including for example, in extreme cases, disqualification from practising the profession, which results in being disqualified from doing so in both prison and non-prison medical entities. Pursuant to Article 115 of the Penal Enforcement Code, medical services are provided to prisoners by medical entities for persons deprived of their liberty that are subordinate to the Minister of Justice. In all penitentiary facilities, there operate medical entities for persons deprived of their liberty which provide medical services to prisoners to the extent necessary for them. If it is impossible to carry out specialist tests and provide specialist diagnostics under the conditions of the prison health service, the prison health service cooperates with non-prison medical entities which are subordinate not only to the Minister of Health, but which are also, for example, commercial entities, to which the persons deprived of their liberty are referred by a prison doctor in order for being provided with multi-specialist medical care. Potential full handover of medical care over prisoners to the competence of the Minister of Health is not at the discretion of the Polish Government, which only fulfils its obligations under the applicable provisions of law. A decision on whether it is necessary to hire additional medical staff in penitentiary facilities depends on the needs in this respect and is made by the Directors of penitentiary facilities that are subordinate to individual circuit directors of the Prison Service.

Follow-up information relating to paragraph 24 (a) and (c) of the concluding observations

27. As a rule, institutions such as the Office of the Commissioner for Human Rights prepare the draft budget on their own at yearly intervals (similarly to the Lower House of Parliament (Sejm), the Chancellery of the President, the Supreme Court). The amount of expenditure included in the draft proposed by the Commissioner for Human Rights is not limited and is included by the Minister of Finance in an unchanged form in the draft state budget for each year. However, the final decisions are made in the Polish Parliament, which decides on the amount of funds allocated to an institution concerned. For this reason, the recommendation concerning the amount of budget funds allocated for day-to-day activities of the Commissioner for Human Rights falls beyond the remit of the Polish Government.
