



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

Distr.
GENERAL

CAT/C/POL/Q/4/Rev. 1
26 February 2007

Original: ENGLISH

COMMITTEE AGAINST TORTURE
Thirty-eighth session
Geneva, 30 April – 18 May 2007

**List of issues to be considered during the examination of the
fourth periodic report of POLAND (CAT/C/67/Add.5)**

Article 1

1. Taking into account the Committee's previous recommendations in relation to the second and third periodic reports of Poland, please explain the reasons why the definition of torture contained in article 1 of the Convention has not yet been incorporated into the Polish Penal Code. Are there any plans to incorporate such provision into domestic legislation?
2. Please provide updated information on the "work currently under way on the implementation into the Polish Penal Code and the Code of Criminal Procedure of the Rome Statute of the International Criminal Court, which entered into force on 1 July 2002". Present any draft or relevant documentation currently under consideration. (State party report, para. 8)

Article 2

3. Please provide further information on the steps taken by the State party to ensure the rights of persons in police custody from the very outset of detention, including prompt access to defence counsel, medical examination, and contact with family members, as well as any restrictions that may be imposed on these rights and the justification for them.
4. Please provide additional information on the legal-aid system for persons in police custody, particularly for juveniles, foreigners and handicapped persons, including access to a lawyer and the right to speak to a lawyer in private.
5. Has the draft Act on access to cost-free legal assistance, which was approved by the previous Government, been submitted to the Parliament (*Sejm*)? Please provide information on the human and financial resources currently allocated to the public legal-aid service, as well as available information about the last five years.

6. How does the State party guarantee the rights of persons seeking refugee status, particularly unaccompanied minors, and ensure that the procedures are expedient and timely, including designating a lawyer? Please provide information on any relevant procedures as to whether individuals seeking refugee status are properly informed of their rights.
7. Please inform the Committee whether the legislation prohibiting torture and cruel, inhuman and degrading treatment or punishment contains specific provisions regarding gender-based breaches of the Convention, including any type of sexual harassment and/or violence. Also, please describe all, if any, effective measures taken to monitor the occurrence of and to prevent such acts. Please provide data, disaggregated by the sex, age and ethnicity of the victims, and information on investigation, prosecution and punishment of perpetrators.
8. Taking into account the Committee's previous recommendation in relation to the third periodic report of the State party on the issue of the responsibility of a public official who executes an order from a superior officer and is considered as having committed a crime of torture or of cruel, inhuman or degrading treatment or punishment, please indicate what measures have been taken in this respect.

Article 3

9. Please provide further information on the specific safeguards against non-refoulement that are in place in Poland and the practice of the State party in this respect, including examples of cases where the authorities did not proceed with extradition, return or expulsion because of fear that the persons might be tortured.
10. Please provide statistical data on to the implementation of article 3 of the Convention in cases of expulsion or return (refoulement) of foreigners, indicating, in particular:
 - (a) The number of persons seeking asylum and the number of returnees, including the countries of return;
 - (b) How the probable risk of torture is assessed in status determination proceedings and in the process to appeal the decisions;
 - (c) The procedure for the examination of asylum requests submitted at the border;
 - (d) Provide information about cases of expulsion, return (refoulement) or extradition by the State party filed to the European Court of Human Rights.
11. Please provide more information on the new institution of "tolerated stay" introduced by Law on Granting Protection to Aliens of June 2003, including data on the number of persons who have benefited from it, their country of origin and the duration of the permit in each case. (State party report, para. 83)
12. Please comment on the allegations contained in the report of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe, dated May 2006, regarding the existence of a "secret detention centre" in the territory of the State party. Please provide information on the enquiry recently conducted by Parliament into these allegations and what the results of this enquiry have been. Include in your answer the structure

and methodology of this investigation, the names of those who conducted it, and a copy of its final conclusions.

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

Article 4 and 16

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

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

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

Article 5

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

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

Article 10

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

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

Article 11

21. Please provide information on the minimum age of criminal responsibility and comment on the fact that, in some cases, children as young as 10 years of age could be sentenced to “educational measures”. Please provide representative examples of these types of measures.
22. What is the maximum duration of the pre-trial detention period established by the Polish legal system? Please comment on the high number of persons in pre-trial detention and the use of alternative custodial measures by the State party, if any.
23. Please provide further information on the impact that some measures taken to address the increasing overcrowding of prisons might have had on the material conditions of detention in these prisons, in particular that common areas, such as community centres, fitness rooms, briefing halls etc. are being used for residential purposes. (State party report, para. 261)
24. Please provide information and clarify the provision of article 223a of the Executive Penal Code of 1 September 2003, which regulates the situation of “a person under preliminary detention with respect to whom the penalty of deprivation of liberty is executed in another case”, in particular with regard to the restriction of his/her rights to, inter alia, “visitations, correspondence, use of telephones and other means of cordless and wire communications, possession of objects in a cell, use the medical services (...)”. (State party report, para. 214)
25. Please comment on regulations contained in art. 115, section 7, of the Executive Penal Code according to which a person in a “correctional facility of a lock-up regime” is provided health-care services in the presence of “an officer who is not a medical professional”. (State party report, para. 280)
26. Please comment on the situation of asylum-seeking children and juveniles placed in emergency blocks, including information on the regime of stay of children, their separation from juveniles and the maximum duration of stay in emergency blocks. Also, please provide information on the status of the adoption of the new Juveniles’ Code.
27. Please comment and provide further information on measures taken with regard to the use of physical force and “direct coercion measures” of persons on pre-trial detention and those imprisoned, particularly information on the use of mechanical restraint measures in addition to placement in a security cell. Please provide information on the monitoring of the use of these methods through television and their registration as well as on the training of staff on their proper use (State party report, para. 307). Please also provide information on both whether complaints have been filed on these matters and the outcome of such complaints.

Articles 12 and 13

28. Please comment on the measures taken to ensure the anonymity of those who complain while in detention and on how the State party guarantees that the lodging of their complaints does not have any negative consequence for persons deprived of liberty.
29. According to information before the Committee, the State party’s judiciary is facing substantive problems ranging from lack of standards of professional conduct and deficient training to allegations of corruption or lack of independence. Please provide concrete

information on the difficulties faced by the judiciary, measures taken to improve the situation, such as selection procedures, remuneration, training, judicial inspection, disciplinary procedures and their results.

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

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

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

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

Article 14

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

Article 16

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

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

Other

37. Does Poland envisage withdrawing its reservation regarding article 20 of the Convention? If not, why not?

38. Please indicate whether Poland has legislation aimed at preventing and prohibiting the production, trade, export and use of equipment specifically designed to inflict torture or other cruel, inhuman or degrading treatment or punishment. If so, please provide information about its

content and implementation. If not, please indicate whether the adoption of such legislation is being considered.

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