



CPT/Inf (2011) 21

## **Response**

### **of the Polish Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Poland**

**from 26 November to 8 December 2009**

The Polish Government has requested the publication of this response. The report of the CPT on its November/December 2009 visit to Poland is set out in document CPT/Inf (2011) 20.

Strasbourg, 12 July 2011



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**Report of the Polish authorities for the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment**

The Polish authorities would like to express their thanks to the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment for submission of the Report which is a result of a periodic visit carried out by delegation of members of the Committee within the scope of implementation by Poland of the provisions of the European Convention Against Torture and Inhuman or degrading Treatment or Punishment of 26 November 1987.

The Polish authorities fully appreciate the activity of the Committee within the scope of raising standards of functioning of state institutions housing persons deprived of liberty which entails an involvement of Polish institutions in fulfilment of post-visit instructions and recommendations.

The reply of the Polish authorities to the presented report on the visit carried out by a delegation of the Committee on 26 November - 8 December 2010 adopts the systematic approach of the report of 30 July 2010, according to the recommendations contained therein.

**Introduction**

*remarks*

- *CPT trusts that appropriate steps will be taken by relevant authorities in order to enable delegations of the Committee to have effective access in the future to any files of criminal investigations concerning the claimed ill-treatment of detained persons (par. 6).*

In the Polish legislation, a procedure of providing access to information from the files of a criminal matter is regulated by Art. 156 of the Penal Proceedings Code and the provisions of the Law of 8 October 2001 on Access to Public Information.

The adoption of such concept constitutes an attempt to reconcile the interest expressed by gaining access to information contained in the files of the matter, in particular in the files of preliminary proceedings and the interest of the penal proceedings expressed by ensuring its proper course and achievement of its main objectives, i.e. identification of perpetrators of the offence and bringing them to justice.

We should, however, distinguish between gaining access to the information from the files of a finalized criminal matter and files of a pending criminal matter.

No doubts are evoked by a possibility of gaining access to information from completed preliminary proceedings, because according to the established jurisprudence, such information may be obtained according to the principles specified in the Law on Access to Public Information.

A different procedure applies in the event of an attempt to obtain access to information from pending preliminary proceedings. In the Polish penal proceedings, pending preliminary proceedings are classified and access to information from such proceedings, even to parties thereto, is very limited.

The legislator took the position that in such case, a decision whether, when and to what extent it is possible to give access to information from pending preliminary proceedings is taken independently by the prosecutor, on the basis of Art. 156 paragraph 5 of the Penal Proceedings Code - "Unless specified otherwise in the law, in the course of preliminary proceedings, parties, defence counsels, proxies and statutory representatives shall have access to the files, be able to make copies and photocopies, and may obtain, against payment, certified copies or photocopies thereof only at the consent of the person conducting the preliminary proceedings. At the consent of the prosecutor, in the course of the preliminary proceedings, the files may be made available, in exceptional cases, to other persons".

- *Polish authorities are encouraged to take necessary steps to ensure that the Law on Proceedings in Juvenile Matters is amended in order to introduce an absolute time limit of seven days on detention in police establishments of juvenile perpetrators who are suspects (paragraph 11)*

- *status of the debate concerning the adoption of a new juvenile code (paragraph 12).*

In the present legal state of affairs, according to Art. 40 of the Law on Proceedings in Juvenile Matters, the placement of a juvenile person in a police shelter for children may take place only in the situation when this is necessary due to the circumstances of the matter and only with regard to a juvenile in case of whom there is a justified suspicion that he has committed an offence and there are justified concerns that he will hide or conceal the traces of commitment of the offence, or when it is impossible to establish the identity of the juvenile person. A detained juvenile person is immediately notified of the reasons of detention, a right to submit a complaint and other rights he has. The fact of detention of a juvenile offender is immediately, in no case later than within 24 hours of the time of detention, notified to the competent family court, and the juvenile offender should be immediately released and handed over to his parents or legal guardians if the reason for detention ceases to exist, if this is ordered by the family court, if the deadline for notifying the court has lapsed or if, within 72 hours of the time of detention, no decision is announced to the juvenile offender on his placement in a shelter for juvenile offenders or his temporary detention at the educational centre for the youth, a socio-therapy centre for the youth or in another institution or establishment. A juvenile offender may also be placed in a police shelter for children if he is, at his own will, outside a shelter for juvenile offenders or a reformatory institution, and then the period of detention at such shelter may be such which is necessary to hand over the juvenile offender to the relevant institution, not longer, however, than 5 days.

A rule deriving directly and indirectly from the above standard is short period of stay of juvenile offenders in police shelters for children. In practice of authorities delegating juvenile offenders to shelters for juvenile offenders (district pedagogical supervision centres), such delegation orders are issued immediately, which means that the rule is that a juvenile offender may not stay in a police shelter for children for more than 7 days. Due to these reasons, the Department of Enforcement of Judgements and Probation does not conduct any legislative work aimed at statutory specification of the maximum time of the actual stay at police shelters for children.

A draft amendment to the Law on Proceedings in Juvenile Matters, which is currently being prepared at the Department of Enforcement of Judgements and Probation, is at the stage of inter-ministerial agreements.

This draft anticipates an amendment to Art. 40 § 7 of the Law on Proceedings in Juvenile Matters consisting of giving this regulation the following meaning: a juvenile offender may also be placed in a police shelter for children if he is, at his own will, outside a shelter for juvenile offenders or a reformatory institution, or outside an educational centre for the youth or a socio-therapy centre for the youth, and then the period of detention at such shelter may be such which is necessary to hand over the juvenile offender to the relevant institution, not longer, however, than 5 days. In the new Art. 40a, it is planned to state that a juvenile may also be placed in a police shelter for children for a duration of justified break in escort, not longer, however, than 24 hours, or, at the instruction of the court, for a period necessary to perform appropriate activities, not longer, however, than 48 hours. In the first instance, the Police may place a juvenile offender in a police shelter for children without an order of a family court, notifying the court of this fact, which has jurisdiction for a given police shelter for children. At the order of the court, the manager of the police shelter for children immediately releases the juvenile offender. In the second situation, it is possible to detain a juvenile offender if this is necessary in order to place him in a police shelter for children. A complaint may be lodged against the decision of the court.

requests for information

- *remarks of the Polish authorities regarding an issue of budgetary resources allocated to Ombudsmen for Civil Rights for carrying out the additional functions of the national preventive mechanism (paragraph 9)*

The accomplishment of the National Prevention Mechanism (NPM) tasks is financed from the state budget, precisely – from the part of the State budget which is allotted to the Ombudsman fulfilling the role of the NPM in Poland. Therefore, the funds granted to the NPM are not linked with the Government budget in any way. This regulation is one of the crucial guarantees of the independence of the NPM provided for in the Optional Protocol to the Convention against Torture (OPCAT).

According to the assessment made by the Ombudsman during the OPCAT ratification process in Poland (in 2005), the costs of the implementation of the NPM tasks may amount to around 426 thousand zlotys per year. Such an amount was indicated in the Statement of Reasons attached to the Government motion concerning the ratification of the OPCAT by the Polish Parliament.

The fulfilment of the NPM functions was assigned to the Ombudsman on January 18<sup>th</sup>, 2008. In 2008 the total budget of the Ombudsman was almost 32 million zlotys. As the Ombudsman was entrusted with the function in the course of the year 2008, no extra funds were guaranteed in the state budget for the implementation of the NPM tasks in that year. However, on July 1<sup>st</sup>, 2008 pursuant to the amendment to the budget, extra 426 thousand zlotys was allocated to the Ombudsman. In 2009 the total budget of the Ombudsman was over 33 million zlotys plus extra 1,4 million zlotys was dedicated to the NPM tasks. In 2010 the total budget of the Ombudsman is 33,6 million zlotys, while in 2011 – almost 35,5 million zlotys.

Since the beginning of the accomplishment of the NMP functions, par excellence in 2010, the Ombudsman has indicated that the funds allocated to the NMP are not sufficient. The Polish Government support this viewpoint. However this problem is linked to the general unfavourable budget situation resulting from the economic crisis. In consequence the Government is forced to limit state expenses, including these dedicated to many institutions, the Ombudsman, too.

At the moment the parliamentary works concerning the amendment to the *Law on the Ombudsman* aimed at the statutory confirmation of the Ombudsman fulfilling the function of the NPM in Poland are under way. The draft amendment underlines the fact that the NMP functions are new tasks for the Ombudsman. This provision may aid the Ombudsman to successfully apply for extra funds in the future. In these works the Ombudsman is fully supported by the Government.



## 1. Police establishments

### Recommendation

- *police officers throughout Poland should be informed that any forms of intentional ill-treatment (including verbal abuse) of persons deprived of their liberty are unacceptable and shall entail severe sanctions (paragraph 13)*
- *police officers should be reminded that at the time of detention it is not allowed to apply more violence than is absolutely necessary and, after controlling detained persons, there is no excuse for hitting them (paragraph 13)*
- *police officers should be trained in prevention and minimization of violence in the context of detention. In the events where use of violence is necessary, they should be able to apply professional techniques which reduce, as much as possible, a risk of damage of persons to be detained (paragraph 13).*

The arguments of the Committee that Polish policemen are not sufficiently informed about reprehensibility of behaviour consisting of abuse of violence during detention of persons, seem to be too general. These issues are regulated in a clear manner and possible penal liability for this type of behaviour is very severe.

Using violence or punishable threats to influence a witness, an expert, an interpreter, a prosecutor or the accused is a behaviour penalized by the provision of Art. 245 of the Penal Code and which is threatened with a penalty of imprisonment for a period from 3 months to 5 years. Use of violence by a civil servant in order to obtain certain testimony, explanation, information or statements, or any other abuse, all constitute an offence classified in Art. 246 of the Penal Code, which is threatened by a penalty of imprisonment for a period from one year to 10 years. Physical or mental harassment of a person legally deprived of liberty is described in Art. 247 § 1 of the Penal Code and is subject to a penalty of imprisonment for a period from 3 months to 5 years; the same penalty applies to a civil servant who, acting in violation of his duties, commits such act (Art. 247 § 3 of the Penal Code). The abuse of power by a civil servant, as referred to in Art. 231 § 1 of the Penal Code is threatened with a penalty of imprisonment for up to 3 years.

It should be emphasised that in the event of being sentenced by means of a final judgement for an intentional offence prosecuted *ex officio* - a policeman is dismissed from service. Understanding the importance of detention of a person, the Criminal Bureau of the Chief Police Headquarters systematically addresses directions in this regard to territorial units of the Police. For instance, by means of letter ref. no. I.dz. Ads-949/08 of 23 June 2008, the superiority of the constitutional standard was emphasised (Art. 41 of the Constitution of the Republic of Poland) as well as of the conventional standard (Art. 9 of the Convention on Protection of Human Rights and Fundamental Freedoms) which is a human right to personal freedom.

In this context, attention was drawn up to policemen for a need of absolute observation of the binding legal standards concerning detention of persons and proper documentation of such activities (proper preparation of a detention protocol was discussed), suggesting that this should be covered by local professional training sessions at local units and organizational entities of the Police. By means of letter ref. no. l.dz. Ads-1126/09 of 27 August 2009, the Criminal Office of the Chief Police Headquarters developed a modification of the binding form of protocol on detention of a person with special attention paid to legal grounds for the so-called procedural detention. In addition, attention was drawn up once again to the rights of the detained person, as listed in this protocol, deriving from the provisions of law.

Regardless of how full is the argumentation of CPT and how faithfully it reflects the objective reality, the Police has undertaken a series of activities aimed at respecting submitted requests and recommendations.

1. The list of recommendations and instructions was immediately sent to provincial commanders of the Police for the purpose of prompt and effective transfer of information to policemen in order for it to be absolutely and unquestionably applied in every-day service. Co-ordination of transfer of information as part of training or instruction procedure is performed by regional plenipotentiaries of provincial commanders of the Police for the protection of human rights.
2. The list of recommendations and instructions was immediately sent to five vocational police schools for the purpose of instructions to be transferred to policemen in the course of training at different levels.
3. A strategic decision was taken to supplement the process of recruitment of the Police with a test on tendencies for intolerant and discriminatory behaviour.
4. A strategic decision was taken for a basic training of policemen organized for persons joining the Police to be supplemented by issues falling within the domain of human rights and freedoms, with particular emphasis on prohibition of application of any forms of inhuman treatment. A decision was also taken to change the methodology of teaching which will take a form of more practical educational solutions (work on examples, police mistakes, judgements of the ECHR, control results, media reports, etc.).
5. A strategic decision was taken on starting-up local training for managers of Police units in the area of practical aspects of protection of human rights, taking into account, in particular, an absolute prohibition of using violence or other forms of inhuman treatment.
6. A discussion was commenced regarding possible establishment of a Council of the Chief Commander of the Police for Ethics and Human Rights. Conceptual work is under way and the establishment of the Council will depend on the forecasts of its effectiveness. The activities are co-ordinated by the Plenipotentiary of the Chief Police Headquarters for the Protection of Human Rights.

7. Current - system training activity of the Police:

**Basic vocational training (decision no. 9 of the Chief Commander of the Police of 11 January 2010).**

The curriculum of basic vocational training covered by the training unit entitled *Human rights, professional ethics of a policeman and history of the Police* (JM01JS09), students are taught about, among other things, the principles of professional ethics of a policeman, policeman's liability for non-ethical behaviour, taking into account penal, disciplinary and moral liability. Special emphasis is placed on policeman's conduct towards the disabled persons and victims of crimes. A large part of classes is devoted to protection of human rights, and in particular those rights and freedoms which are particularly closely related to the activity of the Police (the right to live; prohibition of torture, inhuman or degrading treatment or punishment; the right to personal freedom and security; the right to justice; to privacy; freedom of speech, gatherings). Classes are also held devoted to anti-discriminatory issues.

Training unit entitled *Preparation to use of measures of direct compulsion* (JM02JS03) covers issues concerning principles, conditions and cases of use of measures of direct compulsion, analysis of selected events connected with the use of measures of direct compulsion, preparation of documentation on the use of measures of direct compulsion. Classes are conducted as lectures and practical classes during which students analyse in groups the justification of use and accuracy of selection of measures of direct compulsion, taking into account the principles of professional ethics and the correctness of the applied procedure of use of measures of direct compulsion on the basis of reports, notes from territorial units concerning events with the use of measures of direct compulsion. The results of teamwork are presented at a forum by a group representative and then they are discussed with the use of examples from practice and Strasbourg jurisprudence in police matters.

Due to the foregoing, we should conclude that students, in the course of their basic vocational training, receive the knowledge which forms the contents of the recommendation, but Police officers throughout Poland were informed that any forms of intentional ill-treatment (including verbal abuse) are unacceptable and shall be an object of severe sanctions.

The problem of prevention and minimisation of violence occurs mainly in the training unit entitled *Detention of a person* (JM02JS06). The tactics of detaining persons is developed and discussed with the group, with special attention being paid to the observation of principles of ensuring safety of police officers, detained persons and third parties. Talks are held regarding more and more frequent instances of extraordinary events occurring at the time of detention of persons, as well as a necessity of applying special caution in the course of carrying out the detention procedure. Simulations take into account a variety of places and persons to be detained and a necessity is emphasised of paying attention to ethical aspects of detention of persons and observance of human rights. Emphasis is placed on promotion of equal, undiscriminating treatment of persons with different colour of skin, ethnic, national origin, age, religion, beliefs, sexual preferences etc.

In order to prevent ill-treatment of persons by police officers, in the course of conducting training covered by the training unit entitled *Intervention and dealing with persons who are under influence of alcohol or another substance having a similar effect* (JM02JS10), students are taught, among other things, the application of rules and procedures (legal and practical) connected with maintenance, during intervention, of security of all persons participating therein, observation of legal provisions and principles of professional ethics, with emphasis on penal and moral liability in the situation of abuse of power or failure to fulfil obligations. Students simulate police interventions, taking into account the specific situation of individual categories of persons and their needs. They are also reminded of a need of documenting, providing necessary legal information and offering first aid.

During a basic professional training students learn in what situations it is possible to apply physical force as a measure of direct compulsion. This is covered by training unit entitled *Application of physical force as a measure of direct compulsion* (JM10JS02). Gentle forms of controlled movement with application of gripping of a person who does not resist are discussed and practised.

*Technical skills to be applied during police intervention* (JM10JS03) is another training unit where the structure of movement or behaviour is reinforced by many repetitions until it becomes automatic. Its purpose is to prevent and minimise violence against persons covered by intervention. Each exercise is preceded by a theoretical description and presentation, with special attention drawn to the “node” places, important for proper, effective and safe performance of the activity. When discussing knocking down as a group of incapacitating techniques, it is emphasised that they are fighting techniques where attempts are made at knocking a person down and controlling his behaviour by various forms of restricting movement and not to inflict pain or humiliation.

*Truncheons as a measure of direct compulsion* (JM10JS04) is a training unit during which students are taught techniques of thrusting and hitting, which, due to a need of minimisation of effects of use of measures of direct compulsion, is always preceded by a discussion of places where truncheon may be used and those where it is totally forbidden to hit.

Moreover, as part of the training unit entitled *Giving first aid* (JM02JS05), on the basis of laws and executive acts, policemen’s duties are discussed in the area of giving first aid, with emphasis on a policeman’s moral duty to provide first aid to the injured (both the victim and the perpetrator). Students practice those practical first aid exercises.

Human rights with regard to detained persons or prisoners are discussed during execution of training unit entitled *Serving protective function in premises for detained persons* (JM04JS02). Students are reminded that in addition to Polish legal regulations, the rights of detained persons or prisoners are protected also under international conventions. Special attention is paid to a possibility of lodging an individual complaint to the European Court of Human Rights and the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

## **Specialised courses**

A specialised course for policemen detaining dangerous offenders (decision no. 781 of the Chief Commander of the Police of 26 October 2007).

Policemen of prevention service and criminal policemen dealing with detention of dangerous offenders are delegated for this course.

The training unit entitled *Tactics of detention of a person* (JM01JS01) discusses principles of conducting planned and immediate reconnaissance in the situation of immediate detention of a person. Emphasis is placed on the importance of collection of data in the situation of a necessity of withdrawal from intervention due to insufficient forces and measures or presence of third parties, as well as a checklist (a form) according to which all necessary information to conduct safe and effective intervention may be gathered. Renegotiations - establishment of an initial contact with the perpetrator - are discussed and practised.

*Specialised course in intervention tactics and techniques* (decision no. 878 of the Chief Commander of the Police of 5 December 2007).

The course prepares policemen to independent conduct of classes in organizational units of the Police and of examinations testing physical fitness, intervention tactics and techniques and skills of using truncheons.

The curriculum of the training unit entitled *Intervention tactics* (JM01JS05) anticipates lectures and practical classes in the area of application of the general rules of safety and security in the process of document checking and detention of persons, use of appropriate measures of direct compulsion and arms in justified circumstances in the process of detention of persons, reinforcement of appropriate habits and algorithm of activities in the intervention process. Tactics and co-operation between policemen are discussed, presented and then practised, taking into account different locations of interventions: indoors, public places, outdoors, as well as a number of persons and their behaviours: a person who listens to orders, a person who resists in a passive way, a person who resists in an active way, a person who violates policeman's inviolability, attacks.

As part of the training unit entitled *Increase of the level of professional knowledge in the area of conducting intervention* (JM02JS01), notions and contents of legal acts are discussed in the area of exercise of police rights, taking into account the limits of exercising of basic police rights during intervention and policeman's liability for exceeding the same. Principles and factors of selection of intervention tactics are interpreted, as well as execution of the intervention tactics from the point of view of location of conducting the same and a category of persons it covers. Policemen's actions are practised in typical intervention situations, indicating a need of maintaining security of participants in the intervention and third parties. The teacher is obliged to check the level of understanding and reinforcement of knowledge among students.

Moreover, this area is also covered by the issues incorporated in the training unit entitled *Mastering first aid skills* (JM02JS02). Based on extracts from laws and executive acts, policeman's duties are recalled in the area of first aid, indicating source literature to the students. An emphasis is placed on a moral duty of a policeman of providing assistance to injured parties (both the victim and the perpetrator, as well as a person against whom measures of direct compulsion have been used). After completing this training unit, the student will be able to, among other things: apply an appropriate algorithm of rescue activities on scene of the accident, depending on its type, secure the injured party, depending on his condition and the level of suffered injuries, conduct circulatory-breathing resuscitation, prepare the injured party for transport.

*A specialised course for policemen undertaking intervention against aggressive and dangerous persons* (decision no. 766 of the Chief Commander of the Police of 11 December 2008).

In situations of undertaking intervention against aggressive and particularly dangerous persons, the use of violence often becomes a necessity. In order to limit the use of physical compulsion, as well as in order to minimise effects entailed by use of force and other measures of direct compulsion, Police officers are trained during the aforementioned course in the area of, among other things, application of appropriate intervention techniques, tactics of detention of persons in premises and detention of persons moving in vehicles, as well as use of basic information falling within the scope of police negotiations. Principles are discussed of the conducts of planned and immediate reconnaissance in the situation of an immediate detention of a person. Emphasis is placed on the importance of collection of data in the situation of a necessity of withdrawal from intervention due to insufficient forces and measures or presence of third parties, as well as a checklist according to which all necessary information to conduct safe and effective intervention may be gathered. The curriculum covers simulations of detentions in various conditions (e.g. hostage situation, no reaction to policeman's orders) with the application of the acquired skills and the knowledge of negotiations.

The presented analysis of the curriculum contents gives grounds to claim that both the basic vocational training and the indicated curricula of the specialised courses meet the requirements formulated as recommendations of the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, so that the officers are aware at the time of detention that no more force may be applied than is absolutely necessary, that after gaining control over detained persons, there is no justification for hitting them, and that any forms of premeditated ill-treatment of persons deprived of their freedom will be an object of severe sanctions. On the basis of the aforementioned curricula, we may state that Police officers are trained in such a manner so as to prevent and minimise violence in the context of detention, and when it is necessary, they are trained in application of techniques which reduce a risk of damage which may be suffered by the detained persons to the minimum.

**requests for information**

- will the same computer system of gathering and analysing information about complaints concerning Police officers be also used by the Border Guards (paragraph 14);
- the following information regarding the period from 1 January 2009 to the present time:
  - the number of complaints concerning ill-treatment, submitted against Police officers and officers of the Border Guards, and number of criminal/disciplinary proceedings instituted as a result thereof;
  - specification of criminal/disciplinary sanctions imposed after such complaints (paragraph 15)
- copies of the latest annual report of officers for human rights from the Police and the Border Guards (paragraph 16).

In 2010, the Police started to construct and implement the Early Intervention System (EIS) whose main objective is to shape standards and professional liability in the organization. EIS is a pro-active system of multi-directional activities aimed at elimination and prevention of negative phenomena in the Police, including ill-treatment of persons deprived of liberty. As part of EIS, mechanisms are created aimed at strengthening of the management personnel - responsible for establishment of standards in subordinate units - by providing appropriate information, knowledge and skills. They will provide for identification of signals of undesirable behaviour of subordinate policemen and react to them as soon as possible. Another pro-active tool of prevention of irregularities is electronic *Newsletter EIS*. It is based on the principles of the "Lessons Learned" bulletins which contains case-study of undesirable behaviours of policemen, including judgements of the European Court of Human Rights. Now EIS is being constructed in five provincial police headquarters (Gdańsk, Łódź, Opole, Katowice and Rzeszów). By means of decision of the Chief Commander of the Police, beginning in January 2011, a process of gradual incorporation of EIS to the other 12 provincial police headquarters will start. The co-ordinator of construction and implementation of the Early Intervention System in the Police is the Control Office of the Chief Police Headquarters.

The Police (in the context of the Border Guards) does not have a telephone - computer system to gather and collect data about complaints. Currently work is being conducted on the creation of such system. If the planned project is implemented, then the data will probably start to be entered in the system in January 2011. I would also like to explain that since January 2009, the Police has changed the catalogue of complaints data, adapting it to international standards. However, a lack of telephone - computer system prevents gathering and processing of this data.

In 2009, the Police settled 18,459 complaints concerning the Police. The complaining parties complained about ill-treatment by the Police in 1,766 cases, including 727 complaints which were sent to the prosecutor's office and to the court for consideration. The Police does not have statistical data yet concerning 2010. The Police does not have a system of gathering and processing data concerning penal/disciplinary sanctions imposed as a result of such complaints.

In the period from January 2009 to 30 November 2010, throughout the country 108 disciplinary proceedings were held against policemen in connection with complaints (information) of ill-treatment in the widest sense of the word. During this period, 39 disciplinary proceedings were ended with the following disciplinary decisions: 10 on acquittal, 7 on discontinuation, 8 on finding the person guilty and waiving punishment, 11 on imposing a penalty in the form of reprimand, 1 on imposing a penalty in the form of declaration of partial unsuitability for the position held and 2 on dismissal from service. In addition, during this period, 46 proceedings were pending, and 23 were suspended.

Copies of reports from the activities of plenipotentiaries for the protection of human rights (as attached) are incomplete, because the reporting year in the Police ends in March of the following year. It was, among other things, for the purpose of facilitation of the work of domestic and international organizations guarding the observance of human rights that the Plenipotentiary of the Chief Police Headquarters developed a sample report for other plenipotentiaries, adapted to the Strategy of action adopted for 2010-2012 (Strategy - directions - attached).

### ***Investigation in cases of claimed ill-treatment***

#### **recommendations**

- *all complaints lodged by detained persons concerning alleged ill-treatment by judicial officers must be immediately transferred to a relevant prosecutor (paragraph 22);*
- *in every case, when the prosecutor learns that a detained person could be a victim of ill-treatment by judicial officers (even in the event that no clear complaint of ill-treatment is lodged), the person concerned must be immediately subjected to an examination by a court doctor (including, if necessary, by a court psychiatrist); such an approach should take place regardless of whether or not the person concerned has visible injuries (paragraph 22);*
- *an investigation in matters concerning possible ill-treatment by judicial officers must always be conducted immediately, accurately and promptly (paragraph 22).*

The procedure for pursuing justice in the Polish legislative system is specified at the level of numerous provisions. If a complaint lodged against a policeman exhausts the prerequisites of a notification of an offence or if proceedings are already pending in a given matter, complaint proceedings constitute supplementation of penal proceedings. The procedure for lodging complaints is regulated by the Administrative Proceedings Code which is a separate act from the Penal Proceedings Code. The legal system does not provide for automatic transfer of administrative matters to the disposal of a prosecutor, even though practice in this regard is effective and no need is observed in amendment to the domestic law in order to achieve the objectives assumed by CPT.



In this area, emphasis should be placed on the fact that penal proceedings against Police officers are conducted by the prosecutor, which derives directly from the Penal Proceedings Code. On the other hand, disciplinary proceedings against policemen and explanatory activities in their matters are conducted by a spokesman for disciplinary matters in a manner and subject to the terms and conditions specified in Chapter 10 *Disciplinary and Penal Liability of Policemen* of the Law of 6 April 1990 on the Police (uniform text, Journal of Laws of 2007, No. 43, item 277, as amended).

### **requests for information**

- *detailed information about the team which is to be established at the Office of the Ombudsman for Civil Rights in order to examine all complaints lodged with regard to ill-treatment by judicial officers (paragraph 20);*
- *result of penal and disciplinary proceedings instituted in two cases listed in paragraph 19 (paragraph 23).*

The matter described in the Report, concerning the abuse of power by officers from Bielsko-Biała (Department in Bielsko-Biała, Management in Katowice of the Central Investigation Office of the Chief Police Headquarters), was conducted by the District Prosecutor's Office in Kraków - Śródmieście zachód under ref. no. 4 Ds. 380/09, and it was discontinued at the *in rem* stage due to a lack of prerequisites of a crime. This matter was not an object of disciplinary proceedings.

In a matter concerning the abuse of power and beating up of a detained person by policemen from Kpów Szamotuły and SPAP in Poznań, an investigation was conducted by the District Prosecutor's Office in Gniezno, ref. no. 2 Ds. 480/098. On 17 March 2010, it was discontinued at the *in rem* stage on the basis of Art. 17 § 1 point 1 of the Penal Proceedings Code. This matter was not an object of disciplinary proceedings.

### **Security**

#### **recommendations**

- *undertaking steps aimed at ensuring that detained persons are informed whether or not it was possible to notify a relative or another person of the fact of their detention (paragraph 25);*
- *urgent development of a complete and properly-financed system of legal assistance for persons in police detention who are unable to pay for a lawyer, and application of the same from the very beginning of the police detention. If necessary, relevant legislation should be amended (paragraph 26);*
- *the Polish authorities should ensure that persons detained by the Police have, in every case, a possibility of communicating with a lawyer in private. In this context, Article 245 paragraph 1 of the Penal Proceedings Code should be amended (paragraph 27);*

- *the Polish authorities should implement the recommendations from the report on visit in 2004 in order to ensure that:*
  - *the rights of persons deprived of liberty by the Police of access to the doctor include the right - if so wished by the persons concerned - to being examined by the doctor of their choice (and it shall be understood that examination by such doctor may take place at the cost of the detained person);*
  - *all medical examinations are conducted outside the hearing range and - unless requested otherwise by the doctor - outside the vision range of Police / Border Guards officers;*
  - *results of every examination and any relevant statements of the detained person, as well as any conclusions of the doctor are formally written down in the form of minutes by the doctor and are made available to the detained person and his lawyer (paragraph 28);*
  
- *if the examined person bears any injuries which are evidence of possible ill-treatment, the relevant prosecutor should be immediately notified and should receive a copy of a report on injuries (paragraph 28);*
  
- *information concerning the health of the detained person should be kept in a manner ensuring respect for medical secret; the healthcare personnel may notify the officials from the detention centre, on a need-to-know basis, of the condition of health of the detained person, of taken medications and special health risks (paragraph 28);*
  
- *steps should be taken to ensure that all persons detained by the Police are fully informed about their rights. This should cover the provision of clear, verbal information at the very beginning of detention (i.e. when persons are forced to remain with the Police), to be supplemented at the first possible occasion (i.e. immediately after entry in the Police headquarters), handing of written information about the rights of a detained person (paragraph 30);*
  
- *the Polish authorities should prepare a separate page containing information about the rights of detained persons which could be signed and kept by a detained person. This form should be available in an appropriate range of languages. Particular care should be taken to ensure that detained persons could, in fact, understand their rights (paragraph 30);*
  
- *effective steps should be taken to ensure that detained foreigners who do not understand Polish are immediately provided with services of an interpreter and are not asked to sign any statements or other documents without such help (paragraph 31);*
  
- *appropriate steps should be taken to ensure that all persons aged under 18 who are detained by the Police are treated as juvenile offenders and are provided with appropriate special security for juvenile offenders (paragraph 32);*
  
- *an up-to-date information sheet listing the rights should be developed in order to be distributed to juvenile offenders detained by the Police at the suspicion of commitment of a penal offence. The information sheet should be comprehensible and special care should be taken to ensure that the information provided is in fact fully understood (paragraph 33);*

- *steps should be taken to ensure that each Police headquarters keep and maintain a record of all cases of persons deprived of liberty in the area covered by the jurisdiction of given Police headquarters (paragraph 34).*

The minutes on detention of a person, on page two, contain: a catalogue of rights of the detained person, including their legal basis and a requirement of placement of a signature confirming the obtainment of such information, then a statement of the detained person confirming such information, statement of the person in connection with detention (of a more general nature), statement of the detained person regarding his/her condition of health, including a description of possible injuries and providing reasons therefore, as well as information regarding the fact whether or not the detained person was (or was not) examined by a doctor. The minutes with such wording are read by the detained person him/herself or through the policeman, and once they are signed, a copy of the minutes are given to him/her against acknowledgment of receipt. It seems that - in case of persons using Polish - this constitutes an effective security of the rights of the detained person.

Whereas as regard detained persons who do not speak Polish, the Criminal Office of the Chief Police Headquarters, in April 2009, noticed the importance of this problem, developing a form entitled *Instruction for the detained person*, which was then translated into 14 languages and placed on the website of the Criminal Office of the Chief Police Headquarters under the heading "Procedural instructions - foreign language versions). Information in this regard was submitted, by means of a letter l.dz. Ads-578/09 of 17 April 2009, to all Provincial Police Headquarters in Poland and to the Metropolitan Police Headquarters.

At the stage of preliminary proceedings, policeman use multi-language forms of *Instruction of suspect of his/her rights and duties* and of the form of *Instruction of the victim of his basic rights and duties*.

The issue of contact of a detained person with a lawyer is regulated by means of provision of Art. 245 § 1 of the Penal Proceedings Code which the Police is obliged to apply. As regards the situation of persons who would like to exercise this right but who do not have funds to do that, we should mention that in 2010, the Government adopted assumptions for a draft law on legal information for natural persons, the preparation of which will constitute the responsibility of the Ministry of Justice. According to the assumptions prepared by the ministry, the provision of free legal assistance will depend on the financial situation of the person applying for the same. The criterion is supposed to be the holding of a right by a given person to obtain social aid in the form of regular or temporary benefit. Such a solution is supposed to mean that free assistance will be directed only to people whose family and financial situation was previously verified by the authorities providing social care. The solution is supposed to mean that, among other things, information will be provided about the current legislation, about the rights and obligations deriving from the binding provisions of law, as well as institutions having jurisdiction to settle the matter.

CPT concluded during its visit that juvenile offenders aged under 17 were interrogated in the presence of a parent, guardian or a person of trust, but this principle was not applied to persons aged 17 who were treated as adults and could not have a trusted person during the interrogation. This situation is caused by the fact that according to Art. 10 § 1 of the Penal Code, a person who commits an offence after reaching the age of 17 bears legal liability in the same manner as an adult person. But in case of a perpetrator who commits the offence after reaching the age of 17, but before reaching the age of 18, the court, instead of a penalty, applies educational, treatment or reparatory measures provided for juvenile offenders, if circumstances of the matter and the maturity of the offender, his characteristics and personal circumstances justify such procedure (Art. 10 § 4 of the Penal Code).

### **Conditions of detention in police establishments**

#### **recommendations**

- *living conditions need to be improved for inmates at the Municipal Police Headquarters in Rybnik, the District Police Headquarters in Biała Podlaska, with a view to the remarks contained in paragraph 35 (paragraph 35);*
- *common toilets at the Municipal Police Headquarters in Jaworzno and the Municipal Police Headquarters in Rybnik should be maintained in a good technical condition and clean (paragraph 36);*
- *persons kept in a Police detention establishment should be provided with adequate possibilities of getting washed, including a possibility of having a shower. Detained persons who are kept overnight should obtain means of personal hygiene (paragraph 36);*
- *all persons detained for 24 hours or longer at the police detention centre should be offered, as far as possible, a possibility of daily exercise outdoors (paragraph 37);*
- *the Polish authorities should take steps aimed at ensuring that juvenile offenders who are in Police establishments for children could wear suitable daytime clothes (including clothes suitable to exercise outdoors) (paragraph 41);*
- *the Polish authorities should undertake steps aimed at implementation, with no further delay, of a regular recommendation of CPT that all juvenile offenders detained at Police establishments should be provided with at least one hour of outdoor exercise per day (paragraph 43).*

Detention of detained persons or persons escorted to sober up in specially-designated police establishments is controlled both by means of supervision by designated Police officers and by penitentiary judges and representatives of the Office of the Ombudsman for Civil Rights. Moreover, respect of rights of persons placed in this type of establishments is controlled by non-governmental institutions, such as, for instance, the Helsinki Foundation for Human Rights. As a result of control, the aforementioned institutions prepare relevant reports and post-visit protocols which contain a description of possible shortcomings in the manner of performing their functions by policemen in premises for detained persons, in the equipment of such premises for detained persons or with regard to respecting rights of persons detained therein. In the cases in which it is established that the rights of persons placed in premises for detained persons are violated, relevant proceedings is conducted by control units of the Police.

The problem of long-term stay in Police shelters for children in case of juvenile offenders with regard to whom the court adjudicates a measure in the form of placement in a shelter for juvenile offenders, assuming in the decision that the period of waiting for a place in the shelter for juvenile offenders is to be spent at the Police shelter of children, is known by the Prevention Office of the Chief Police Headquarters. According to Art. 40 § 1 of the Law of 26 October 1982 on Proceedings in Juvenile Matters, if this is necessary due to the circumstances of the matter, the Police may detain, and then place in the Police shelter for children, with regard to whom there is a justified suspicion that he has committed an offence and there are justified concerns that he will hide or conceal the traces of commitment of the offence, or when it is impossible to establish the identity of the juvenile person. In practice, a significant difficulty for the Police is constituted by the fact that the legislator, in the Law on Proceedings in Juvenile Matters, did not specify a maximum time of keeping a juvenile offender in the Police shelter for children in the event that a decision is passed against such juvenile offender within 72 hours of the time of his detention that he should be placed in a shelter for juvenile offenders or in another establishment listed in Art. 40 § 6 section 4 of the Law on Proceedings in Juvenile Matters. The effect of this legal situation is a practice commonly used by family judges of placement, unlimited in time, of juvenile offenders in Police shelters for children - waiting for a place in a shelter for juvenile offenders. Such procedure means that the said shelters for children are treated as a substitute for shelters for juvenile offenders. Certainly, these are not establishments adapted to serve the function of a shelter. In practice, court judgements ending proceedings in a matter of a juvenile offender usually state that the juvenile offender should stay in the Police shelter for children until finding a place for him in a given shelter for juvenile offenders. Certainly the reason for such state of affairs is insufficient number of places in indicated establishments, which is inadequate compared with the number of decisions issued by courts, which is beyond the control of the Police.

According to the information in possession of the Prevention Office of the Chief Police Headquarters, a court, when passing a decision on placement of a juvenile offender in a shelter for juvenile offenders, submits a request to the local district pedagogical supervision team of a given regional court for indication of a shelter where the juvenile offender should be placed. The common practice is such that due to a lack of free places in the shelter, courts transfer a decision to the Police on placement of a juvenile offender in a shelter for juvenile offenders, without indicating a specific shelter or with an endorsement that there are no free places in the shelter or with a reservation that a place for the juvenile offender in the shelter will be vacated at a certain time. On the basis of Art. 40 § 6 section 4 of the said Law, it is impossible to release a juvenile offender and hand him over to his parents or guardians despite the lack of places in the shelter or another establishment, in the situation that the court issues a decision regarding the placement of a juvenile in a shelter or another establishment, because such decision constitutes a condition preventing such release of the juvenile offender. Moreover, we should take into account that according to Art. 41 of the Law on Proceedings in Juvenile Matters, supervision of, among other things, execution of a decision on placement of a juvenile offender in the shelter is performed by the family judge. Therefore, in the situation in which there are no places in the shelter, there is no possibility for the juvenile offender to stay at the Police shelter for children without the knowledge and consent of the court.

In view of the foregoing and due to other difficulties faced on a daily basis by police shelters for children, the Chief Police Headquarters reported to the Management of the Ministry of Internal Affairs and Administration and the Ministry of Justice a necessity of amending the Law on Proceedings in Juvenile Matters.

Recommendations in their part concerning access to doctors are carried out on the basis of the Law on the Police and on the basis of the executive provision of Art. 15 section 9 of that Law (Regulation of the Minister of Internal Affairs and Administration of 21 June 2002 on medical examination of persons detained by the Police). § 3 of the regulation indicates a doctor from the nearest healthcare centre as a person entitled to provide first medical aid or conduct medical examination of a detained person.

The recommendation that all medical examination should be conducted outside the hearing range and, unless the doctor requests otherwise, outside the range of vision of Police officers in practice is implemented differently, namely it is at the request of the doctor that policemen do not “assist” with the examination. From the point of view of the Police, standard behaviour should be the presence of the escort or a policeman on duty in the premises for detained persons or persons escorted in order to sober up, during medical examination of such detained or escorted person. In such cases, policemen are responsible for ensuring safety of both the examined person and the examining person. There are no detailed legal regulations concerning this issue. The only provision which, to some extent, regulates this matter is order no. 360 KGP of the Chief Commander of the Police of 26 of March 2009 regarding methods and forms of carrying out escorts by policemen. § 11 section 2 point 1 of this order states that during an escort, the escorting officers may not, among other things, leave the escorted person without supervision.

The recommendation that results of each examination, as well as any relevant statements of the detained person and conclusions of the doctor be formally recorded in minutes by the doctor and made available to the detained person and his lawyer may be implemented by issue of a copy of a medical certificate to the detained person who will also receive a copy of the minutes on detention. According to the Regulation of the Minister of Internal Affairs and Administration of 21 June 2002 regarding medical examination of persons detained by the Police, a doctor providing medical assistance or conducting medical examination issues a certificate confirming that there are no or that there are medical counter-indications for detention and placement in the premises for the detained or issues a letter to another healthcare centre in order for diagnostic tests or treatment to be performed. The certificate is attached to the documentation prepared in connection with the detention of the person. Forms of certificates or delegation letters seem to be sufficient (there is no need of preparing separate minutes on medical examination), only the scope of information contained in the certificate or delegation letter may be extended by, for instance, the type of injuries identified by the doctor and reasons for their occurrence provided by the injured person.

Similarly, this issue is regulated in § 5 and 6 of the rules and regulations of stay of persons placed in premises for the detained or persons escorted for the purpose of sobering up, constituting an attachment to the Regulation of the Minister of Internal Affairs and Administration of 13 October 2008 regarding premises in organizational units of the Police, designated for detained persons or persons escorted for the purpose of sobering up, as well as rules and regulations of stay in such premises.

The recommendation concerning a case where an examined person bears injuries which may indicate ill-treatment, and the prosecutor should be immediately notified and receive a copy of the report on injuries is connected with the previous recommendation. The widening of the scope of the certificate or delegation letter should satisfy these requirements.

Moreover, order no. 1061 KPG of 2 September 2009 regarding methods and forms of performance of tasks in premises designated for detained persons or persons escorted for the purpose of sobering up, in its § 17 section 2 states that “a document additionally required to allow access to the premises to a person having visible bodily injuries is constituted by an official note concerning the circumstances of their occurrence or a report - if this derives from separate provisions, prepared by the person directly performing the escort”.

In police premises for detained persons or persons escorted for the purpose of sobering up, documentation concerning persons placed therein, including medical documentation, is in files established separately for each such person. Moreover, results of medical examination, recommendations regarding further course of treatment, prescribed medications and the manner of their dosage, as well as information regarding admissibility of further stay of the detained person in the premises can be found in the book of medical visits which forms a part of the documentation kept at the premises for the detained (§ 6 section 1 point 3 of order no. 1061 KGP of 2 September 2009).

In police premises for detained persons or persons escorted for the purpose of sobering up, it is permitted to keep an electronic version of only “the book of record of persons placed in premises for detained persons or persons escorted for the purpose of sobering up” and “the book of service in premises for detained persons or persons escorted for the purpose of sobering up”. However, documentation kept in this form must be secured in a manner preventing its damage or destruction of data contained therein. (§ 6 section 2 point 5 of order no. 1061 KGP of 2 September 2009).

The fact of placement of each person in police premises for detained persons or persons escorted for the purpose of sobering up is documented in “the book of record of detained persons or persons escorted for the purpose of sobering up” and in “the book of service in premises for detained persons or persons escorted for the purpose of sobering up”. Moreover, in the above premises, evidence is kept of copies of protocols on detention of persons and of persons escorted for the purpose of sobering up (§ 6 section 1 points 1 and 2, section 2 point 3 of order no. 1061 KGP of 2 September 2009).

CPT recommended improvement of living conditions at the Municipal Police Headquarters in Rybnik, the Borough Police Headquarters in Racibórz, the Municipal Police Headquarters in Biała Podlaska, the Municipal Police Headquarters in Jaworzno with reference to proper access to sanitary facilities and ensuring proper ventilation in the premises, and this is obvious for the Police. The Regulation of the Minister of Internal Affairs and Administration of 13 October 2008 on premises in organizational units of the Police designated for detained persons or for persons escorted for the purpose of sobering up, as well as the rules and regulations of stay in such premises precisely specify the conditions which should be met by such premises. Duties deriving from such provisions do not exclude general rules concerning the maintenance of a proper technical and hygienic condition of those premises. Even more so, considering the fact that the binding provisions stipulate periodic check-ups of the sanitary and technical condition of those sites. According to the information in our possession, in the aforementioned organizational units of the Police appropriate steps were taken aimed at elimination of irregularities of the equipment of the premises for detained persons, as indicated in the report, whereas the premises in the Municipal Police Headquarters in Jaworzno were closed, and the detained persons were moved to the premises for detained persons belonging to the Municipal Police Headquarters in Katowice.

According to the currently-binding regulations, detained persons or persons escorted for the purpose of sobering up placed in police premises for detained persons do not have a possibility of any outdoor exercise (walks). The Regulation of the Minister of Internal Affairs and Administration of 13 October 2008 regarding premises in organizational units of the Police designated for detained persons or for persons escorted for the purpose of sobering up, as well as the rules and regulations of stay in such premises do not stipulate organization of walking areas. This results from a fact that detained persons or persons escorted for the purpose of sobering up stay in those premises for a short period of time (up to 72 hours). Even though the Executive Penal Code, Art. 112, stipulates the right of a convict to, among other things, one hour's walk during a day (and if we apply the extending interpretation of Art. 242 § 1 of the Penal Code, with reference to Art. 5 § 1 of the Penal Code, we may state that this provision applies also to detained persons), this seems unnecessary in the case of persons placed in premises designated for detained persons or persons escorted for the purpose of sobering up. Establishment of walking areas next to premises designated for detained persons or persons escorted for the purpose of sobering up would entail large financial expenditure and a necessity of changing the organization of the work of guards working in those premises (an increase in the number of jobs).

In September of the current year, the Chief Commander of the Police instructed Provincial (Metropolitan) Commanders of the Police to cause the undertaking of appropriate actions aimed at guaranteeing juvenile offenders who stay in Police shelters for children for more than 24 hours a possibility of outdoor recreation for a minimum of one hour during the day and providing them with appropriate clothes and shoes.

**remarks**

- *video observation should not replace regular inspections of cells by the supervisory personnel (paragraph 38)*

CPT recommended that control of behaviour of inmates placed in Police premises for detained persons or for persons escorted for the purpose of sobering up equipped with monitoring should not be limited to mere observation of images from monitoring cameras, but that regular direct controls of behaviour of the persons placed in the cells should also be conducted. This recommendation is implemented by policemen performing service at premises for detained persons. It derives from § 13 points 1-3 of order no. 1061 KPG of 2 September 2009 which stipulates that a policeman on duty in the division is obliged to control the behaviour of persons placed in the premises, on an on-going basis, through the spyhole placed in the door of the cell. Such control takes place at least every 30 minutes, and with regard to a persons requiring special supervision - at least every 15 minutes. In the situation that in the rooms where there are detained persons there are also monitoring devices, such control takes place, respectively, at least every 60 minutes, and with regard to a person requiring special supervision - at least every 30 minutes.



**requests for information**

- *the current situation concerning renovation work which is to be conducted in the police establishment for children in Będzin (paragraph 40)*

According to the obtained information, currently renovation work is being carried out at the Police Shelter for Children in Będzin, the completion of which is planned for the end of the current year. It is planned that during the first half of 2011, a recreation outdoor playground will be handed over for use, designed for children staying at the Police Shelter for Children in Będzin.

## **2. Detention of foreigners on the basis of legislation on foreigners**

### **Initial remarks**

#### **recommendations**

- *all efforts should be made to avoid resorting to deprivation of liberty of juvenile offenders in detention centres for foreigners (paragraph 48)*

According to the binding legal state of affairs, there is a possibility of placement - provided that proper conditions are maintained - of juvenile offenders in guarded centres for foreigners. However, an authority which detains a juvenile foreigner who stays in the territory of the Republic of Poland without any parent or guardian may - according to Art. 101 of the *Law of 13 June 2003 on Foreigners* - apply to the court having jurisdiction over the place of detention of the juvenile person with a request for placement of the person in an educational-care establishment. The costs connected with such placement and stay of the juvenile offender in an educational-care establishment are financed from the state budget, the part remaining at the disposal of the minister responsible for internal affairs, from the funds at the disposal of the Chief Commander of the Border Guards or the Chief Commander of the Police.

It should be noted that authorities of the Border Guards apply for placement of this group of persons in educational-care establishments. However, In individual cases, when such solution may not be applied or whose application is significantly hampered due to reasons remaining beyond the control of the Border Guards, a request is prepared for placement of a juvenile offender who does not have any guardian in a guarded centre. It should be emphasised here that conditions at the disposal of guarded centres in order to secure the needs of this group of persons meet all the standards binding in this regard. Such centres also organize recreational-didactic classes, taking into account the specific situation of juvenile offenders without any guardians.

### **remarks**

- *it would be desirable to extend the application of policy of not keeping juvenile offenders without guardians in Guarded Centres in Biała Podlaska and Lesznowola to all guarded centres in Poland (paragraph 48)*

### **Ill-treatment**

#### **recommendation**

- *officers of the Border Guards in the Guarded Centre and Deportation Detention Centre in Biała Podlaska and in the Deportation Detention Centre at the Airport in Warsaw should be reminded that disrespectful behaviour (including racist comments) is unacceptable and will be punished accordingly (paragraph 49)*

The experience so far with regard to contacts of Border Guards officers with foreigners indicate that there is no problem of bad physical treatment of detained persons, including disrespectful behaviour of officers and employees of the Border Guards in relation to persons staying in guarded centres and detention centres awaiting deportation. It should be noted that personnel of those sites participates in training concerning identification of cultural differences. Officers and employees follow the principle of respect for foreigners' rights and dignity.

Signals received by the Chief Headquarters of the Border Guards concerning possible infringement of dignity of foreigners staying in guarded centres and detention centres for the purpose of deportation are verified each time. So far, no infringements were identified in this regard. However, just as a reminder, the Management for Foreigners' Affairs of the Chief Headquarters of the Border Guards will send to commanders of divisions of the Border Guards recommendations in which attention will be drawn to an issue concerning a duty of respecting foreigners' rights.

### recommendations

- *mattresses in the Guarded Centre and the Deportation Detention Centre in Biała Podlaska should be replaced (paragraph 50)*

The Guarded Centre for Foreigners and Detention Centre for the Purpose of Deportation in Biała Podlaska is equipped with beds with barrack-type mattresses. Such type of mattresses were previously used by Border Guards officers and for the past two years they have been used in this site. During this time, no signals have been received by the administration of the site which would indicate that they have a negative impact on the well-being of the persons detained there. Moreover, beds have springs which should contribute to the comfort of their use. Replacement of all currently-used mattresses would entail significant expenses, and currently there are no funds to do that. Moreover, it is difficult to indicate that such replacement would contribute to an increase of the level of comfort of all persons placed in this site.

- *foreigners who are obliged to stay overnight at the detention centre in the transit area of the Warsaw International Airport should be provided with means of personal hygiene (paragraph 53)*

The Border Guards have competence only with regard to supervising persons who stay in the aforementioned premises. These premises form a part of the Warsaw-Okęcie airport managed by the administration of that port whose tasks include providing an appropriate standard of living conditions of persons delegated there.

- *food supplies should be verified in guarded centres/deportation detention centres in view of the remarks contained in paragraph 54 (paragraph 54)*

All menus are adjusted to needs and requirements of the provisions specified in the *Regulation of the Minister of Internal Affairs and Administration of 11 December 2007 regarding conditions of receiving meals and drinks by foreigners placed in a guarded centre or staying in detention centres for the purpose of their deportation, as well as the value of daily nutrition standard*, and they are additionally approved by, among others, a doctor.

Special diets are, according to the binding provisions, always prepared at the instruction of a doctor. Special meals reflecting “cultural” differences are prepared at a written request of a foreigner, are approved by the head of the division and depend on technical possibilities of the kitchen and food supplies.

A visit at the Guarded Centre in Lesznowola and the detention centre in Warsaw took place at the turn of November and December 2009. During this time, fruit is relatively expensive, which could entail (considering the feeding rates binding at that time) difficulties with maintenance of the required calorie value of meals. Provisions contained in the *Regulation of the Minister of Internal Affairs and Administration of 29 December 2009, amending the regulation regarding conditions of receiving meals and drinks by foreigners placed in a guarded centre or staying in detention centres for the purpose of their deportation, as well as the value of daily nutrition standard* (which came into force on 3 February 2010), entailed an increase in daily rates, which, in turn, entailed a possibility of changing menus and now children get fruit or, alternatively, sweets and fruit drinks, every day.

- *steps should be taken to ensure that:*
  - *all foreigners kept at the Warsaw Airport Deportation Detention Centre are offered at least one hour outdoor exercise per day;*
  - *children kept at the Guarded Centre in Lesznowola are provided with activities suitable for their age, whereas adults are offered a variety of special-purpose activities;*
  - *persons detained at the Deportation Detention Centre in Biła Podlaska could freely move within the detention area during the day;*
  - *all foreigners kept at the Deportation Detention Centre in Biła Podlaska and the Deportation Detention Centre at the Warsaw Airport should have access to television and be equipped with board games and reading materials (in most commonly-used foreign languages) (paragraph 57).*

According to Art. 117 section 3 point 2 of the *Law of 13 June 2003 on Foreigners*, foreigners placed in guarded centres have a right to move about the centre at the time and place designated by the head of the centre.

On the other hand, foreigners placed in detention centres for the purpose of their deportation are, according to Art. 117 section 4 points 1 and 3 of the Law, entitled to have a one-hour's walk outdoors, unless indicated otherwise by doctor's recommendations, as well as to use available games, without a right to gambling, at the time and place specified by the officer on duty at the detention centre. The above rights concerning exercising the freedom of movement in the area of the centre and one-hour's walk outdoors are respected at the detention centre. The situation is similar as regard foreigners' access to games in individual detention centres for the purpose of deportation. The level of safekeeping of the games derives from the actual needs identified in this regard as well as from financial possibilities.

Referring to the recommendation concerning a lack of organization of recreational-didactic activities in the guarded centre in Lesznowola, I would like to inform you that soon a person will be hired there with education and qualifications allowing him/her to conduct this type of classes in the centre. Currently classes are conducted in the area of basic education with children staying at the centre. 10 hours of classes per week are conducted by teachers from the Public Primary School in Lesznowola. The classes cover mathematics, computers, Polish, social-cultural classes and artistic education. In addition, the administration of the centre undertook steps aimed at supplementation of library resources and equipment of the centre, as well as the detention centre for the purpose of deportation with board games and sports equipment. Attempts are also made to obtain funds in order to establish premises for educational purposes and to create a playground.

**remarks**

- *certain parts of the detention area for men at the Deportation Detention Centre at the Warsaw Airport require renovation work (paragraph 52)*

At the detention centre for the purpose of deportation, forming a part of the organizational structure of the Nadwiślański Division of the Border Guards in Warsaw, renovation and repair work is undertaken on an on-going basis - as needs arise - for the purpose of improvement of living conditions of the foreigners residing there.

- *access of inmates to toilets at night should be revised at the Deportation Detention Centre in Biała Podlaska and at the Deportation Detention Centre at the Warsaw Airport, as well as any other identified shortcomings should be repaired; the same applies to provision of warm clothes in winter at the Deportation Detention Centre in Biała Podlaska (par. 55)*

Guarded centres and detention centres for the purpose of deportation are usually modern sites, designed according to the binding standards with regard to living conditions, having at their disposal developed sanitary facilities. Moreover, also the sites which were built in previous years are equipped with appropriate sanitary facilities allowing the foreigners residing there to use them as needs arise. Therefore, the situation referred to in this point is not highly probable, because, additionally, in this type of sites there is a 24-hour on-duty service, and a slight delay in allowing foreigners use toilets referred to in this point could result from the involvement of officers on duty in other, previously-commenced tasks. The current solutions flexibly regulate the issue of equipment of foreigners staying at such centres and detention centres with clothes. According to Art. 116 sections 1 and 2 of the *Law of 13 June 2003 on Foreigners*, foreigners placed in a guarded centre or at a detention centre for the purpose of deportation use their own clothes, underwear and shoes. If such things are not suitable for use or if their use is not permitted due to hygienic reasons, a foreigner may receive clothes, underwear and shoes against payment - suitable for the season of the year. In the event that a foreigner may not buy the clothes - they should be provided free of charge. The administration of guarded centres and detention centres for the purpose of deportation secures satisfaction of needs (individually) in this regard.

***requests for information***

- *the view of Polish authorities regarding 24-hour monitoring of detained persons in detention rooms at the Deportation Detention Centre in Biała Podlaska (paragraph 56)*

According to Art. 102 sections 1 and 2 of the Law of 13 June 2003 on Foreigners, a foreigner is placed at a guarded centre if:

- this is necessary to efficiently conduct proceedings in a matter for deportation or withdrawal of permit for settlement or a long-term residence permit for a citizen of the European Community;
- there is a justified concern that the foreigner will attempt to evade execution of the decision on deportation or a decision on withdrawal of permit for settlement or a long-term residence permit for a citizen of the European Community;
- he crossed or attempted to cross the border in contradiction with the binding provisions of law, unless he was immediately transported to the border.

On the other hand, detention for the purpose of deportation is applied against a foreigner if there arises any of the circumstances referred to above and there is a concern that the foreigner will not comply with the principles of stay binding at a given guarded centre.

Currently, detention centres for the purpose of deportation are used only in the event of foreigners whose behaviour indicates that they will not comply with the principles binding at the guarded centre. This also applies to foreigners delegated to guarded centres who, while being there, did not want to comply with the set rules and were transferred to detention centres for the purpose of deportation.

So detention centres for the purpose of deportation are used by courts which delegate there persons with regard to whom there is a justified concern that they will behave in contradiction with the principles of social co-existence (i.e. aggressively), thus constituting a real threat to other foreigners awaiting deportation, as well as the personnel of such sites. Equipment of housing cells with monitoring contributes to a decrease to the minimum of a risk of occurrence of dangerous situations initiated by this group of foreigners. Therefore, it should be stated that on-going observation is not applied systematically, but only in cases justified from security points of view.

### **Healthcare**

#### recommendations

- *steps should be taken aimed at ensuring that in all guarded centres/deportation detention centres:*
  - *there is a qualified nurse, not only during the week, but also at weekends;*
  - *there is a psychologist on regular basis;*
  - *newly-accepted inmates are systematically examined with a view to contagious diseases (including tuberculosis);*
  - *any time doctors are unable to communicate with inmates during examination/medical consultation due to language problems, interested persons use the services of a qualified interpreter;*

- *minutes prepared after medical examination of a detained person, whether newly-accepted or not, should contain:*
  - (i) *a full description of objective medical findings based on a detailed examination;*
  - (ii) *a full description of statements of the detained person concerned, regarding the medical examination, including all claims of ill-treatment raised by such person;*
  - (iii) *doctor's conclusions with view to (i) and (ii). In his conclusions, the doctor should indicate a degree of coherence between any claims and objective medical findings;*
- *each foreigner whose deportation is not effected due to resistance of the person concerned should be examined by a doctor after his return to the establishment of the Border Guards;*
- *medical secret should be observed in the same manner as in the external world; in particular, all medical examination should be conducted out of hearing range and - unless requested otherwise by the doctor in a particular case - out of the vision range of police officers; files of detained persons should not be made available to non-medical personnel, but they should be placed under the care of the doctor (paragraph 66)*

All guarded centres for foreigners and detention centres for the purpose of deportation have healthcare services provided which are financed by the Border Guards. The quality and organization of rendered medical services constitute the responsibility of Public Healthcare Institutions of individual divisions of the Border Guards. Services are provided on the basis of personnel of the Public Healthcare Institutions (e.g. the Nadodrzański Division of the Border Guards, the Bieszczady Division of the Border Guards) or by external entities, on the basis of a civil-legal agreement (e.g. the Nadburzański Division of the Border Guards, the Nadwiślański Division of the Border Guards), depending on location of the centre in relation to the Public Healthcare Institution of the Border Guards.

Nurses work on working days, from Monday to Friday, and if necessary, also on days free from work, performing various necessary functions. One of elements of the work of nurses is handing out medication to foreign patients. On public holidays, medications are handed by officers according to doctor's instructions, upon prior preparation of doses of medications by nurses and placing them in signed containers. The task of the officer is to hand out the containers with medications according to instructions given by nurses. This is a simplified task and so far it has not caused any problems or mistakes.

Consideration should be given to a need indicated in the report concerning the presence of a nurse on public holidays and on days free from work, both in guarded centres and in detention centres for the purpose of deportation, because, according to the binding provisions, the handing-out of medications prescribed by doctors, may be carried out by officers. Additional hiring of nurses who are now employees of the Border Guards will entail significant financial expenditure (overtime on days free from work and public holidays). Demand for nurses' work at guarded centres and detention centres for the purpose of deportation on days free from work is not, in fact, justified. In addition, we should point out that if there is a need of medical assistance in emergency cases, it will be provided by a doctor on duty at night and on public holidays or by an ambulance, according to the agreements concluded with the National Health Fund.

The binding legal regulations do not impose an obligation on the Border Guards to hire psychologists in guarded centres and detention centres for the purpose of deportation. However, taking into account the importance of the problem, psychological assistance is provided as needs arise, in connection with foreigners' stay at guarded centres or detention centres for the purpose of deportation. An example of such proceedings is constituted by a situation prevailing at the Nadwiślański Division of the Border Guards in Warsaw, where there are 3 psychologists - officers hired, who are at disposal and who offer help when summoned by telephone.

Medical examination of a person detained by the Border Guards takes place according to the regulation of the Minister of Internal Affairs and Administration of 27 June 2002 on the manner of conduct of medical examination of persons detained by Border Guards officers. In the event of suspected contagious disease in a foreigner or contact during an interview with a person suffering from a contagious disease, the doctor, already during the first examination, delegates the foreigner for additional tests, including lung X-ray in order to diagnose tuberculosis, if any.

Due to epidemiological situation in the border area of the Nadbużański Division of the Border Guards (frequent cases of tuberculosis among foreigners coming from across the eastern border), the manager of the Public Healthcare Institution, at the request of the provincial inspector of the Minister of Internal Affairs and Administration established guidelines for the Guarded centre for Foreigners in Biała Podlaska. According to the guidelines, each foreigner arriving at the guarded centre in Biała Podlaska has an X-ray of lungs. In other centres no such guidelines were set up due to a different epidemiological situation in this region. Managers of Public Healthcare Institutions are in regular contacts with sanitary inspectors of the Ministry of Internal Affairs and Administration in this regard. A decision on a necessity of conducting examination with a view of a possibility of occurrence of contagious diseases, hospitalization or other medical measures are issued by the provincial sanitary inspector of the Ministry of Internal Affairs and Administration on the basis of the provisions of the *Law of 5 December 2008 on Prevention and Combating Infections and Contagious Diseases Among People*.

During medical consultations, if necessary, an interpreter is called, unless the doctor and the patient share a language, e.g. Russian or English. However, there are cases when a foreigner intentionally refuses to establish contact or renders the establishment of such contact with the doctor and other representatives of the medical personnel difficult - even in the presence of an interpreter.

Persons kept in guarded centres and in detention centres for the purpose of deportation are, according to Art. 118 section 1 of the *Law of 13 June 2003 on Foreigners*, entitled to health benefits according to the rules specified in the *Law of 6 June 1997 - the Executive Penal Code*. According to Art. 115 § 7 of the Executive Penal Code, health benefits are provided in the presence of an officer who does not perform a medical profession.



It should be noted that medical measures undertaken by representatives of the medical personnel towards a foreigner placed in guarded centres and in detention centres for the purpose of deportation are covered by a secret. The presence of officers during such activities is limited to exceptional situations, where a foreigner exhibits aggressive reactions. This is justified in the event of a threat to safety of representatives of the medical personnel who are not trained in the area of application of measures of direct compulsion. In the majority of cases, doctors take a decision on examination of foreigners in organizational units of the Border Guards, with the maintenance of medical secret, without the participation of Border Guards officers. In exceptional cases, when a foreigner acts aggressively or there is a suspicion that such behaviour may take place, then an officer is present during an examination in order to ensure safety and proper conduct of the examination. That is because on numerous occasions situations arose where doctors working in guarded centres and detention centres for the purpose of deportation came across an obstructive attitude of foreigners who applied various methods to exert influence on a representative of the medical personnel and achieve release from the centre or the detention centre.

Each medical examination of a foreigner is completed by an entry in the medical documentation, prepared by the medical personnel according to the binding provisions, i.e. the *Regulation of the Minister of Internal Affairs and Administration of 25 October 2007 regarding the type and scope, as well as manner of processing of medical documentation in healthcare institutions established by the minister responsible for internal affairs.*

According to the *Regulation of the Minister of Internal Affairs and Administration of 26 August 2004 on the conditions which should be met by guarded centres and detention centres for the purpose of deportation*, each foreigner is examined before transportation. In the event of unsuccessful deportation by air, first the reason for lack of success of the operation must be determined. In the event that the reason for failure of the planned deportation is the worsening of the health condition or aggressive behaviour of the foreigner, then it is necessary to subject him to another examination - which shall be carried out immediately.

The drawing-up of minutes after each examination, as suggested by the report, and the data contained in such minutes do not find any reflection in the Polish legislation.

As regards the keeping of medical documentation, immediately after the visit of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, a procedure was applied for proper storage of medical documentation of foreigners at the establishments of the Border Guards. Medical documentation of foreigners is now kept at the doctor's surgery, in a closed cabinet accessible only to the medical personnel. In the event of deportation of a foreigner, medical documentation is placed in an envelope by a representative of the medical personnel, the envelope is sealed and attached to the other documentation of the foreigner which secures it against access by unauthorized parties.

Doctors rendering medical services for foreigners in organizational units of the Border Guards have been advised of a necessity of proper documentation of injuries identified in the course of examination of a foreigner. The preparation of special minutes and recording of a statement of a foreigner is in contradiction with the *Regulation of the Minister of Internal Affairs and Administration of 25 October 2007 regarding the type and scope, as well as manner of processing of medical documentation in healthcare institutions established by the minister responsible for internal affairs*. In the event that a doctor suspects that violence was used in contradiction with the binding law, a report should be submitted to the division commander of the Border Guards and the prosecutor's office.

### **Personnel**

#### **remarks**

- *the Polish authorities are encouraged to provide specialised training for all officers of the Border Guards working in direct contact with detained immigrants. It would also be desirable for designated officers to be provided with language training in most commonly-used foreign languages (paragraph 68)*

As part of the projects covered by the External Borders Foundation, "Language training for Border Guards officers" are conducted, participated in by representatives of all divisions of the Border Guards. As a result of such activities, in 2009-2010, 54 officers were trained who serve functions in guarded centres and in detention centres for the purpose of deportation. Implementation of the project will end in 2013, and its subsequent participants will be designated by division commanders of the Border Guards.

Beginning in the first quarter of 2011, project entitled "Raising competence of public administration authorities in the area of migration reconnaissance" will start to be implemented. The project, in which, according to the forecasts, 205 officers serving functions in guarded centres and detention centres for the purpose of deportation, will be implemented in 2011-2013.

Moreover, as part of the project entitled "Best practice in proceedings with foreigners placed in guarded centres and detention centres for the purpose of deportation", financed from the European Fund for Emigrants Return, it is anticipated that 25 officers serving functions in guarded centres and detention centres for the purpose of deportation will be trained.

It should also be noted that Border Guards officers took part in a series of training sessions devoted to cross-cultural differences, organized by training centres of the Border Guards and the Halina Nieć Centre of Legal Assistance, as well as by the Office for Foreigners' Affairs. Topics of training included, among others: Culture as a tool of foreigners' identification, Social-cultural dimensions of foreigners' identification, Social-cultural identification of foreigners from Africa and South-West Asia, Differences in world cultures, Inter-cultural communication.

Moreover, centres implement training and workshops addressed to foreigners from Caucasian countries. Their purpose is to widen the officers' and employees' awareness of cultural, religious, social differences, differences in social-economic situation and military situation of Caucasian countries.

## **Security and information for detained immigrants**

### **recommendations**

- *the Polish authorities should carry out priority plans of establishment of legal assistance services in guarded centres / deportation detention centres in order to ensure that all foreigners detained on the basis of legislation on foreigners are actually able to use legal assistance and, if necessary, legal representation. For poor foreigners, such services should be rendered free of charge (paragraph 71);*
- *the Polish authorities should take necessary steps to ensure that foreigners kept in the detention centre of the international airport who wish to meet a lawyer can effectively do that (paragraph 72);*
- *shortcomings observed in the transit zone at the Warsaw International Airport should be remedies, in particular with regard to provision of forms specifying rights and registration of placements in the detention centre (paragraph 73)*

### **remarks**

- *it would be desirable for foreigners to receive a written translation to their language of decisions concerning their detention/deportation, as well as information on the procedure and deadlines for lodging an appeal against such decisions (paragraph 71)*

According to Art. 117 section 1 of the *Law of 13 June 2003 on Foreigners*, a foreigner placed in a guarded centre or at a detention centre for the purpose of deportation is entitled to:

- 1) contact Polish state authorities, as well as diplomatic representations or a consular office of a foreign state, in personal and official matters;
- 2) contact non-governmental or international organizations dealing with providing assistance, in particular legal assistance, to foreigners;
- 3) dispose of the objects placed on deposit, as referred to in Art. 111 section 3 points 2 and 3 and section 4, if such objects are not secured according to the provisions on administrative enforcement proceedings;
- 4) have access to medical care and being placed in a healthcare institution if required by the condition of his health;
- 5) undisturbed sleep between 10 p.m. and 6 a.m., and on public holidays to 7 a.m., as well as at other times, provided that this is not in contradiction with the regulations of guarded centre or detention centre;
- 6) use sanitary equipment and have access to cleaning stuff necessary to maintain personal hygiene;
- 7) possess objects of religious cult, perform religious practices and use religious services, as well as to watch or listen in housing premises or at a place of his residence to religious services transmitted by mass media in a manner which does not disturb the peace of other inhabitants of the guarded centre or detention centre;
- 8) use the press, buy the press with his own funds and possess the press in a room for foreigners or in a housing cell;

- 9) purchase, with his own funds, food products and items of personal use, serving to maintain personal hygiene, as well as to possess them in a room for foreigners or in a housing cell; possession of such items in the housing cell is possible if they themselves or their packaging do not pose a threat to order or safety at the detention centre;
- 10) purchase, with his own funds, writing materials, books, games and have them in possession in a room for foreigners or in a housing cell;
- 11) receive parcels with clothes, shoes and other objects of personal use and with dressing and hygienic materials, as well as with medications which may be transmitted at the consent of a doctor, after checking their contents in the presence of the foreigner;
- 12) maintain correspondence and use means of communication, at the foreigner's own cost; in emergency life situations, the foreigner may be allowed to use means of communication or send correspondence at the cost of the guarded centre or the detention centre;
- 13) submit requests, complaints and petitions to:
  - a) the manager of the centre or the Border Guard authority or the Police authority to which the centre is subordinate;
  - b) the officer responsible for the functioning of the detention centre or the Border Guards authority or the Police authority to which the detention centre is subordinate;
- 14) visits of close relatives in premises especially designated for that purpose, at the consent of the Border Guards authority or the Police authority to which the centre or the detention centre is subordinate or person authorized by such authority.

A foreigner, after being admitted to a guarded centre or a detention centre for the purpose of deportation is advised in a language he understands of his rights and obligations and is advised of rules and regulations binding in such centres. In order to execute the provisions contained in Art. 117 section 1 of the *Law of 13 June 2003 on Foreigners*, foreigners who stay in guarded centres and in detention centres for the purpose of deportation have an opportunity of contacting non-governmental or international organizations dealing with providing assistance, including legal assistance, to foreigners. Therefore, in order to increase availability of legal assistance, guarded centres and detention centres co-operate with such entities as: the "Ocalenie" Foundation in Warsaw, Halina Niec Centre of Legal Assistance in Kraków, Representation Office of the High Commissioner of the United Nations for Refugees' Affairs, the Helsinki Foundation for Human Rights, the Association of Legal Intervention. During visits of their representatives at individual centres and detention centres, foreigners receive free advice and assistance regarding their legal situation.

In the nearest future, a recommendation will be sent to the commanders of all divisions of the Border Guards containing a reminder of a necessity of advising foreigners and making them aware of the developed and available "Information about rules, procedure, foreigner's duties and rights connected with the issue of a decision on his deportation from the territory of the Republic of Poland".

As regards an issue concerning a possibility of contacting a lawyer by foreigners who are in transit zones of airports and who are under supervision of Border Guards officers, it should be stated that access to this zone is restricted to persons exclusively authorized thereto. This derives from separate provisions, specifying rules of organization of work of airports, as well as we the scope of authority connected with access to individual places by persons hired thereat and services performing their functions therein.

## **Other issues**

### **recommendations**

- *the Polish authorities should revise their policy concerning use of tear gas in establishments of the Border Guards in view of the remarks listed in paragraph 77 (paragraph 77)*
- *manual paralysing devices identified in the Guarded Centre in Biata Podlaska should be eliminated from the arsenal of the Centre (similarly to all other Guarded Centres equipped with such weapons) (paragraph 78)*

### **requests for information**

- *the remarks of the Polish authorities on use of potentially lethal violence in situations when detained immigrants attempt to escape (paragraph 79)*

The issue of use of measures of direct compulsion and firing arms by Border Guards officers is regulated by Chapter 5 of the *Law of 12 October 1990 on the Border Guards* and the *Regulation of the Council of Ministers of 17 February 1998 on specification of conditions and manner of use of direct compulsion and firing arms by Border Guards officers, as well as conditions and manner of use of measures of direct compulsion and rules of use of firing arms by regional subdivisions of the Border Guards*.

The conditions of use of electric paralysing devices were specified in § 14 b section 1 of the aforementioned *Regulation*. Paralysing devices may be applied if application of other measures of direct compulsion is impossible or turns out to be ineffective in the following cases:

- incapacitation of a person who does not follow an order to immediately drop a dangerous tool;
- defence against attack;
- overcoming active resistance;
- detaining a person or chasing a person suspected of commitment of an offence;
- prevention of an escape of a detained or escorted person;
- prevention of damage or theft of property.

According to § 12 of the aforementioned *Regulation*, individual chemical devices such as gas weapons and manual gas throwers may be applied in the following cases:

- defence against attack;
- overcoming active resistance;
- chasing a person suspected of commitment of an offence;
- prevention of an escape of a detained or escorted person;
- prevention of damage or theft of property.

According to Art. 24 of the Law of 12 October 1990 on the Border Guards, an officer is entitled to use firing arms only if measures of direct compulsion prove to be insufficient or their use, due to circumstances of a given event, is impossible:

- 1) for the purpose of defence against direct and unlawful attack on life, health or freedom of the officer or another person, and for the purpose of preventing activities directly aimed at such attack;
- 2) against a person who does not follow an order to immediately drop a weapon or another dangerous tool whose use may threaten life, health or freedom of the officer or another person;
- 3) against a person who illegally attempts by force to take firing arms off the officer or another person authorized to possess such firing arms;
- 4) for the purpose of defence against direct, unlawful attack on sites whose purpose is to defend the state or which are important for the economy of the state, as well as on sites of the Border Guards or sites serving as protection of state borders;
- 5) for the purpose of defence against an attack on inviolability of the state borders on the part of persons acting in an organized manner who, by force, with the use of arms or a vehicle, attempt to extort the consent for the crossing of the state border;
- 6) for the purpose of defence against the attack on property, which at the same time causes a direct threat to life, health or freedom of humans;
- 7) during a direct chase after a person against whom it is possible to use arms in the cases referred to in points 1-6 or after a person against whom there is a justified suspicion of commitment of murder, a terrorist attack, kidnapping of a person for the purpose of obtaining ransom or certain behaviour, armed robbery, armed theft, armed extortion, premeditated grievous bodily harm, rape, arson or intentionally causing common danger to life or health otherwise;
- 8) in order to apprehend the person referred to in point 7, if such person is hiding in a place which is nearly inaccessible, and according to the circumstances of the case, we may deduce that the person will use firing arms or another dangerous tool whose use may constitute a threat to life or health;
- 9) in order to defend against a violent, direct and unlawful attack on an escort guarding persons, documents containing information constituting a state secret, money or other items of value;
- 10) for the purpose of apprehension or prevention of an escape of a detained person, a person under remand or a person serving a sentence of imprisonment, if:
  - a) the escape of a person deprived of liberty poses a threat to human life or health;
  - b) there is a justified suspicion that a person deprived of liberty may use firing arms, explosives or a dangerous tool;
  - c) deprivation of liberty takes place in connection with a justified suspicion or establishment that the crimes referred to in point 7 have been committed.

The use of firing arms may never be aimed at deprivation of life, it should take place in a manner causing the least possible damage to the person against whom such firing arms are used, and it may not expose any other persons to a danger of death or damage to health.

The experience of the Border Guards indicates that so far firing arms have not been used by officers against foreigners attempting to escape from guarded centres or detention centres for the purpose of deportation.

The training regarding use of measures of direct compulsion, including use of firing arms, extends to all officers of the Border Guards, both during their participation in professional training conducted by training centres of the Border Guards, and during local improvement of skills implemented by training entities of organizational units of the Border Guards. In training centres of the Border Guards, issues concerning measures of direct compulsion constitute a separate didactic block, whereas issues concerning the use of firing arms are included in the block devoted to shooting training. The number of hours of the aforementioned subjects and their thematic scope are strictly specified in programmes of individual stages of training. In organizational units of the Border Guards, the classes concerned are implemented on the basis of a professional improvement programme as part of hours devoted to physical education. The said training covers both the legal basis connected with the use of force and firing arms in the course of fulfilment of official duties, and practical classes devoted to elements of intervention techniques, shooting and manners of using measures of direct compulsion, such as handcuffs, truncheons, paralysing devices, runners, guns, etc., which are at the disposal of the Border Guards. It should also be pointed out that both the level of mastering skills in the area of use of the measures of direct compulsion and the use of firing arms are evaluated every year as part of tests covering all officers. An issue of use of measures of direct compulsion is evaluated as one of the elements of the “Annual test of fitness of officers of the Border Guards”, whereas the level of shooting skills is evaluated according to the “Shooting instruction for Border Guards officers”.

recommendations

- *steps should be taken in order to ensure that all vehicles of judicial agencies, used to transport detained persons, are equipped with appropriate security measures (paragraph 80)*

According to the standards concerning transport equipment, units responsible for transport currently use 80 vehicles to transport detained persons. The greatest number of used vehicles are so-called “little prison vans” - vehicles of various makes (VW, Renault, Ford), adapted to transport 4 to 6 detained persons. Only 4 vehicles are special Autosan vehicles which may transport 30 detained persons.

The equipment of the vehicles is appropriate for their purpose and expectations of users. Purchased vehicles met the requirements concerning equipment of special vehicles and vehicles of the Border Guards used for special purposes, as specified in the *Regulation of Ministers: of Internal Affairs and Administration, of National Defence, of Finance and of Justice of 24 November 2004 on technical conditions to be met by special vehicles and vehicles used for special purposes of the Police, the Internal Security Agency, the Intelligence Agency, the Border Guards, the fiscal control, the Customs Service, the Prison Service and fire brigades*, according to which it was not necessary to equip seats with safety belts.

Moreover, it should be noted that the last purchase of 15 Ford Transit vehicles was carried out also according to the provisions of the *Law of 17 November 2006 on the System of Evaluation of Compliance of Products for the Needs of State Defence and Security*. The vehicles were subject to evaluation of the compliance of the products covered by the list constituting an attachment to the *Regulation of the Minister of Internal Affairs and Administration of 25 September 2007 regarding a detailed manner of conducting the evaluation of compliance of products allocated for the needs of state security and their specification*. The solutions applied in the vehicles of the Border Guards do not depart from standards functioning in vehicles of other forces conducting transport of detained persons. With reference to the formulated recommendations, in the case of subsequent purchases of vehicles allocated for transport of detained persons, a possible need of equipment of seats for detained persons with safety belts will be considered.

**remarks**

- *the Polish authorities are asked to consider a possibility of allowing poor foreigners to have at least one free-of-charge telephone conversation in a month (paragraph 74)*

The issue of a possibility of making telephone calls by foreigners staying in guarded centres and in detention centres for the purpose of deportation was regulated in Art. 117 section 1 point 12 of the *Law of 13 June 2003 on Foreigners*, according to which they may use means of communication at their own cost, and in emergency situations, a foreigner may be allowed to use means of communication or send correspondence at the cost of the centre or the detention centre.

- *the management board of detention centres for foreigners is encouraged to ensure, as far as possible, areas free from passive smoking (which is known to entail negative consequences for health) for all detained who ask for it (paragraph 75)*

Foreigners placed in guarded centres or against whom detention has been applied for the purpose of their deportation are entitled to smoke according to certain provisions of law, i.e. Art. 117 of the *Law of 13 June 2003 on Foreigners*. Therefore, the manager of a unit is obliged to provide the persons with a possibility of exercising the above right, whether by letting them smoke in certain designated cells and housing rooms or by separation and appropriate adaptation of special premises. Nevertheless, it should be noted that smoking by the above persons is only allowed in separated and appropriately-adapted premises and it takes place only at the time set by the manager of the organizational unit of the Border Guards. The adopted principles guarantee the ensuring of areas free from smoking.



### 3. Prisons

#### *Initial remarks*

#### recommendations

- *the Polish authorities should, as soon as possible, revise the standards established by law for the living space per one prisoner, ensuring that they provide for at least 4 m<sup>2</sup> per inmate in multi-person cells (paragraph 83)*

The requirements concerning minimum floor space per one prisoner were specified in the national law in the Executive Penal Code of 6 June 1997. The standard space per one inmate was established to be at the level of 3 m<sup>2</sup>. As of today, we should state that this is a maximum space which the Polish state may offer its inmates. As of 3 December 2010, population in penitentiary units was at the level of 97.3%. On the basis of an analysis of population of penitentiary units over a few months, we may state that the population was stabilised at the aforementioned level.

At the moment, Polish prisons have at their disposal 21,423 housing cells (as of 22 July 2010), including 884 of housing cells which are single (general) cells. This constitutes 4.1% of all the cells. The Polish party declares and will make all efforts to try and reach the standard of 4 m<sup>2</sup> per one convict.

- *the Polish authorities should strengthen their efforts to develop programmes of activities for convicts and persons on remand. The purpose should be to ensure that both these categories of inmates are able to spend a reasonable part of the day (eight hours or more) outside their cells, involved in special-purpose activities of different nature (paragraph 84)*

In penitentiary units, in 2009, a total of 994 editions of the programmes were held devoted to prevention of violence, anti-alcohol and anti-drug prophylactic and for those who drive motor vehicles under the influence of alcohol. In total, 23,286 convicts participated in those programmes.

The programmes implemented at penitentiary units take into account needs of various groups of inmates. Below is a thematic scope of programmes addressed to convicted women:

1. Programme for convicted child-killers - mature motherhood without violence.
2. Programme for women convicted for crimes against family who themselves were victims of home violence.
3. Legal programme for homeless mothers - determination, negation of fatherhood, obtainment of maintenance from a father who is not mother's husband.
4. Emotional blackmail also constitutes violence - programme for juvenile mothers who gave birth to children as a result of rape.
5. Programme of psychological-educational impact upon convicted mothers, implemented at the Penitentiary Institution in Krzywaniec and at the Penitentiary Institution in Grudziądz where there are Homes for Mother and a Child.
6. Programme within the scope of legal counselling for women, with participation of influential women's organizations of nationwide and local range.

7. Programme: Prevention of Prostitution and Trade in Women (the programme based on the assistance from the La Strada Foundation).
8. Programme of social re-adaptation for convicted mothers by offering care for physically and mentally-impaired children, inhabitants of social care homes, children suffering from lethal diseases.
9. The “Nadzieja” [“Hope”] programme of coming out of homelessness.
10. Programme of integration with a family of women serving long-term sentences.
11. A training of constructive dealing with pressure and stress.
12. Educational-therapeutic programme for women - victims of violence, serving a sentence for killing their life partners, the inflictor of violence.

It should be noted that intensified efforts are undertaken aimed at an increase of the number of inmates covered by specialised impact.

In particular, such impact is applied against convicts who have committed crimes with use of aggression and violence, by means of implementation of the programme entitled “Aggression Replacement Training” (ART) as well as educational - correction programmes for perpetrators of home violence.

As regards organization of cultural-educational and sports activities, efforts were made to increase the frequency of organized classes, allowing large groups of inmates to participate in various cultural and sports events, both in the local community. Moreover, to a wide extent, convicts were involved in various undertakings to the benefit of local community. All of the aforementioned activities were aimed at changing attitudes of inmates, and emphasis was placed on ensuring access to activities to a varied group of convicts. In 2009, at penitentiary units, a total of 1,941 programmes were implemented, covering 81,464 inmates.

Attention should be drawn to the fact that a need of ensuring proper course of penal proceedings, as well as order and safety at the unit by isolation of co-participants in the crime, and a large number of such isolation groups do not make it easy to organize free time for persons detained on remand which would allow them to be out of their cells “*for a reasonable part of the day (eight hours or more)*”. The prison service will intensify its measures so that this group of inmates is provided with a possibility of participation in the largest possible number of activities outside the housing cell.

Convicts who are at penitentiary institutions of a semi-open type and of an open type are outside their housing cells and move around the penitentiary institution at the time and place specified in the internal rules and regulations binding for each individual penitentiary institution. The principle of progression in the Polish penitentiary system anticipates the widening of the scope of rights of the convict depending on the type of penitentiary institution at which he resides, and, in consequence, more possibilities of applying penitentiary measures outside a housing cell, also including getting convicts involved in out-of-prison social life.

- *the Polish authorities should undertake the necessary steps to separate young prisoners from adults (paragraph 85)*

Convicted young persons, as referred to in Art. 84 § 1 of the Executive Penal Code are qualified to a penitentiary institution for young convicts, i.e. for persons under the age of 21. According to the wording of Art. 209 of the Executive Penal Code, the relevant provisions applicable to execution of penalty of imprisonment apply to detention on remand.

The main principle in the Polish penitentiary system is imprisonment of young juvenile offenders separately from adults. Such regulations are present in the Executive Penal Code and in the following Regulations of the Minister of Justice:

- of 13 January 2004 on administrative activities connected with detention on remand and penalties and measures of compulsion entailing deprivation of liberty, as well as documenting such activities;
- of 25 August 2003 regarding organizational-order rules and regulations binding for execution of the penalty of imprisonment;
- of 25 August 2003 regarding organizational-order rules and regulations binding for execution of detention on remand.

The Executive Penal Code lists four types of penitentiary institutions, including ones for young offenders. This is the fulfilment of the principle of individualization of impact upon young offenders as a category of special importance. In a penitentiary institution for young offenders, penalty is served by those who are under 21. In justified cases, a convict may serve his sentence in such institution after reaching the age of 21. If this is justified by reasons of influence, an adult, convicted for the first time, exhibiting a particularly good attitude, may, at his consent, serve his sentence at the penitentiary institution for young offenders. Then he enjoys the same rights as such young offenders. A decision in this regard is taken by the penitentiary commission.

Art. 212 § 1 of the Executive Penal Code states that persons under detention on remand should be placed in an investigation detention centre in a manner which would prevent their mutual demoralization. In particular, first-time detained persons should be separated from those who previously served a penalty of imprisonment, and young should be separated from adults, unless special educational reasons justify the placement of an adult together with a young offender. When placing persons in housing cells, a need to ensure order and safety in the investigation detention centre is taken into account, as well as medical, psychological and rehabilitation recommendations, a need of creating a proper atmosphere, a necessity of prevention of self-aggression and commitment of offences in the course of detention on remand.

In the event of persons on remand, if special educational reasons justify placement of an adult with a young offender or offenders, the adult persons on remand, who previously did not serve a basic penalty of imprisonment or a penalty of military detention, exhibiting a very good attitude, may be placed in a housing cell, at his consent, with a young offender or offenders on remand.

The organizational-order rules and regulations of execution of penalty of imprisonment permit joint placement in a housing cell, if this is justified by a need of influencing a juvenile offender, of an adult convict who previously did not serve a basic penalty of imprisonment or a penalty of military detention, exhibiting a very good attitude, in a housing cell with a convicted young offender or offenders.

In practical terms, the above solutions are applied very rarely and in exceptional cases, requiring ensuring safety to a young prisoner or creation of an educational environment contributing to correction of his behaviour, by creation of an alternative for an immature group of peers participating in criminal sub-culture. The penitentiary personnel pays special attention to the educational criteria which may be met by the convict and person on remand in order to be placed in a cell with a juvenile. According to the practice, these are persons having a positive psychological opinion and holding promise of positive penitentiary and social-criminological prognosis, with a stable family situation.

- *the Polish authorities should revise their legislation concerning treatment of sexual offenders, taking into account the remarks contained in paragraph 87. In this regard, a comprehensive and detailed procedure should be developed, covering the following, additional security:*

- *criteria of inclusion and exclusion for such treatment;*
- *medical examination before, during and after treatment;*
- *access to external consultation, including an independent second opinion; and*
- *regular evaluation of treatment by an independent medical authority.*

*Administering anti-androgens should be combined with psychotherapy and other forms of counselling for the purpose of further reduction of risk of re-commitment of the offence. Moreover, anti-androgen treatment should not be a general condition for release of sexual abusers, but it should be applied to selected persons on the basis of an individual evaluation (paragraph 87).*

Issues concerning treatment of sexual offenders are regulated in the Law of 5 November 2009 on the amendment to the Penal Proceedings Code, the Executive Penal Code, the Fiscal Penal Code and certain other laws, and they refer to the time when convicts are free. Therefore, they do not apply to the area of operation of the Prison Service.

#### **remarks**

- *the Polish authorities are encouraged to continue efforts aimed at fighting against over-population of prisons and, in doing so, to follow Recommendation Rec(99)22 of the Committee of Ministers of the Council of Europe concerning over-population of prisons, Recommendation Rec(2000)22 on an improvement of implementation of European principles regarding Community sanctions and measures, Recommendation Rec(2003)22 on conditional release (parole) and Recommendation Rec(2006)13 on application of detention on remand, conditions for its application and ensuring security against its abuse (paragraph 83)*

Since 2000, a number of actions have been taken whose purpose was to reduce population of penitentiary units. Most of all, these actions concerned obtainment of additional (at the initial period of over-population, especially by adaptation for housing purposes of premises serving other functions so far) and new accommodation.

Since the beginning of 2006, the prisoner service implemented the programme adopted by the government, entitled “Programme of obtaining 17,000 places in organizational units of the prison service in 2006-2009”. The programme anticipated an increase in the accommodation base of prisons by 17,086 in 2006-2009.

In 2006-2009, as part of the “Programme of obtaining 17,000...”, places were obtained, including:

- in 2006 - 4,142 places (3,197 places as a result of an investment activity and 945 places as a result of renovation activity);
- in 2007 - 4,402 places (3,939 places as a result of an investment activity and 463 places as a result if renovation activity);
- in 2008 - 4,193 places (4,168 places as a result of an investment activity and 25 places as a result if renovation activity);
- in 2009 - 1,193 places (765 places as a result of an investment activity and 428 places as a result if renovation activity).

In 2010, 1,275 accommodation places were handed over for use. In addition, modernization is taking place as well as an extension of the existing accompanying infrastructure which is necessary for housing pavilions to function. Adaptation to new needs and the binding standards is required both by power lines and heating, gas lines and boiler chambers and kitchens.

Other activities aimed at elimination of over-population included:

- 1) adoption of the Law of 9 October 2009 on an amendment to the Executive Penal Code.

The coming into force on 6 December 2010 of a new provision of Art. 110 of the Executive Penal Code took place as a result of execution of the judgement of the Constitutional Tribunal and recommendations of the European Court of Human Rights contained in judgements passed in matters against Poland. The amendment to Art. 110 of the Executive Penal Code anticipates a possibility of placement of a convict in a housing cell where living space per one person is below 3 m<sup>2</sup> (never, however, less than 2 m<sup>2</sup>) only for a specified period of time, not longer than 14 days. A decision on placement of a convict in this type of conditions is taken by the director of the penitentiary institution or an investigation detention centre, and they are subject to control of the penitentiary judge.

- 2) introduction of an electronic supervision system.

Pursuant to the Law of 7 September 2007 on execution of a penalty of imprisonment outside a penitentiary institution, in the system of electronic supervision, as of 1 September 2009, a system of electronic supervision was introduced which provides for taking advantage of execution of a penalty of short-term imprisonment outside the penitentiary institution. Art. 6 of this Law provides for a possibility of serving the penalty in the system of electronic supervision by a person convicted for deprivation of liberty for maximum 1 year.

The system of electronic supervision permits the control of:

- execution of the penalty of imprisonment outside the penitentiary institution, consisting of observation by convicts of duties imposed by penitentiary courts;
- whether or not a person is at a given time at a designated place;
- observation by convicts of a duty to refrain from coming close to certain people or staying in certain places, with a possibility of on-going indication and recording of places where convicts are at a given time.

3) extension of application policy by directors of penitentiary units regarding the granting to convicts of conditional earlier release.

Moreover, activities aimed at reduction of over-population also included, among others:

- a) an introduction of a principle of individualization in setting deadlines for reporting to serve the penalty;
- b) extension of a possibility of applying the penalty of a fine by the court;
- c) changes in the manner of adjudicating and serving the penalty of limited freedom aimed at an increase of frequency of its application by, among others, extension of a group of entities to the benefit of whom the convicts are to perform work, as well as assumption by the State Treasury of some costs connected with employment (costs of medical examination of working convicts and their insurance);
- d) initiating of any pro-social activity of convicts which is implemented as far as possible in the area of the penitentiary institution, and mainly in the open environment for the purpose of reduction of problems connected with over-population.

### **requests for information**

- *practical modalities surrounding the entry into force of new legislation concerning compulsory pharmacological treatment of sexual offenders (paragraph 86)*

Exercising its rights deriving from the amendment of penal codification which impose stricter rules on liability of perpetrators of offences against sexual freedom, which came into force on 8 June 2010 and which introduced a new type of a security, the Minister of Health, in consultation with the Minister of Justice:

1) updated the Regulation of 2 December 2004 regarding a list of psychiatric establishments and institutions offering treatment of additions designated for carrying out observation, and manner of financing such observation, as well as security of establishments for persons deprived of freedom (Journal of Laws No. 269, item 2679, as amended), by, among other things, indicating therein the Regional Centre of Forensic Psychiatry in Gostynin-Zalesie (ROPS) as an establishment providing forensic-psychiatric observation services to persons suspected and accused of commitment of offences directed against sexual freedom within the scope of:

- a) determination of justification of application of a security measure
  - b) indication of a type of the security measure (closed establishment of an out-patient clinic)
- 2) issued a regulation specifying, among other things, a list of out-patient establishments and closed establishments designated to enforce a new security measure, i.e.
- a) Regulation regarding a list of out-patient establishments designated to enforce security measures adjudicated against perpetrators convicted for offences directed against sexual freedom (Journal of Laws of 2010, No. 230, item 1519);
  - b) Regulation regarding a list of closed establishments designated to enforce security measures adjudicated against perpetrators convicted for offences directed against sexual freedom, as well as their capacity and conditions of security (Journal of Laws of 2010, No. 230, item 1520).

At present, the Regional Centre of Forensic Psychiatry in Gostynin-Zalesie is prepared to fulfil the tasks listed in the Regulation. The other establishments which will enforce the new security measure are now completing or have just completed work financed by the Minister of Health as part of the programme entitled "Psychiatric Healthcare 2009-2013", connected with their adaptation to admit perpetrators (closed establishments) or providing out-patient services to perpetrators of acts directed against sexual freedom. It should, however, be noted that due to a lack of any application of the court to ROPS in Gostynin for an opinion regarding justification and type of security measure to be applied against a person convicted for the commitment of an offence against sexual freedom, we should state that there is no convict for whom a period of 6 months is underway, preceding his release from a penitentiary institution. Taking the foregoing into account, we may assume that the first convicts will be placed in closed establishments or directed to undergo treatment at out-patient establishment not earlier than in the second half of 2011.

### **Ill-treatment**

#### **recommendations**

- *the management of the Investigation Detention Centre in Poznań should provide the personnel with a clear message that any forms of ill treatment, including verbal abuse, are unacceptable and will be an object of sever sanctions (paragraph 88)*

Problems concerning ill-treatment of detained persons by the personnel of the Investigation Detention Centre in Poznań is analysed in an on-going basis by the management of the aforementioned penitentiary unit. The claims indicated in the wording of complaints are discussed in the course of official meetings with the team, and also, additionally, officers of the security division, during daily meetings before commencement of service, are made sensitive and are obliged to react both to any expressions of improper behaviour of officers towards inmates and of inmates towards the officers. In 2011, the psychologist of the Investigation Detention Centre in Poznań will conduct a series of training devoted to interpersonal relations between the personnel and prisoners. Moreover, all officers are informed, on an on-going basis, about disciplinary and penal consequences for improper, degrading and non-humanitarian treatment of inmates.

### **Prisoners classified as "dangerous" ("N" status)**

#### **recommendations**

- *steps should be taken aimed at:*
- *remedy of shortcomings observed in the cells at the Investigation Detention Centre in Poznań regarding access to natural light and ventilation;*
- *checking ventilation in the cells of the "N" unit at the Prison in Racibórz;*
- *making the outdoor exercise area in the Investigation Detention Centre in Poznań less oppressive and providing direct access to sunlight;*
- *equipment of the exercise areas in three visited establishments with some sort of protection against bad weather (paragraph 90).*

The complex of buildings of the Investigation Detention Centre in Poznań is in the area belonging to the urban-architectural complex of Poznań, entered in the register of monuments which determines the maintenance of the current shape of windows. According to the design double-glazed PCV windows were used, secured in the outside with shelters of reinforced glass, and on the inside with a grid of 5 mm. Access of fresh air is guaranteed by opening windows, central steering by the head of the division and through ventilation ducts which are in every cell.

Housing cells in the Penitentiary Institution in Racibórz have working gravitational ventilation equipped with ventilation grids through which air is replaced in cells. Airing of cells may also be done by opening the windows which may be opened at any time of day and night. Condition of ventilation ducts is checked at least once a year by a specialist. Such check-ups are confirmed by means of annual protocols on periodic control performed by a qualified chimney-sweep. Any controls conducted in this regard did not demonstrate any irregularities.

At the Investigation Detention Centre in Poznań, each of walking areas has a total area of 20.10 m<sup>2</sup>. Walking areas are covered with colourful polyurethane boards, attached to a steel structure and they serve a function of technical-protective security. The above is conditions by location of the building of the detention centre in direct vicinity of the court, residential buildings and a necessity of securing the court and prosecutor's proceedings conducted against inmates. The roof also serves the function of protection against sunshine and rain.

In the Penitentiary Institution in Rawicz, in 2011, as soon as funds are obtained, construction will be commenced of new walking areas for inmates of "N" category, equipped with securities against certain unfavourable weather conditions. Regardless of the above, by the end of 2010, additional sports and recreational equipment will be bought and installed for inmates with an "N" category.

In the Penitentiary Institution in Racibórz, walking boxes on walking field no. 1 have a surface area of 4 x 160 m<sup>2</sup>, on walking field no. 2 - 4 x 154 m<sup>2</sup>, whereas the pitch has a surface of 525 m<sup>2</sup>. In the summer of the current year, in all walking fields work was completed consisting of laying concrete paving stones. The placement of a roof over some walking fields will be possible in 2011. This task will be implemented as soon as funds are obtained.

- *the Polish authorities should revise the regime applied against "N" status prisoners and develop individual plans aimed at providing inmates with appropriate psychological and physical stimulation (paragraph 91)*



Adult victims classified in the category of so-called dangerous offenders have a possibility of selecting a system in which they serve their sentence of imprisonment, i.e. programmed impact or an ordinary system. The above does not apply to sentenced juvenile offenders who are classified as dangerous and who obligatorily serve their sentence in the system of programmed impact. In an ordinary system, a convict may use employment available at the penitentiary institution, as well as education and cultural-educational and sports classes. As far as such convicts are concerned, no plans are made for application of the individual programme of impact. The individual programme of impact is prepared in co-operation with the convict who declared that he wishes to serve his sentence in the system of programmed impact, which anticipates active participation of the convict in the process of re-socialization by means of fulfilment of tasks imposed upon him as part of the programme which are aimed at solving the problems constituting the grounds for the offences he committed.

Dangerous convicts qualified in a therapeutic system requiring specialized impact are presented with individual therapeutic programmes preceded by diagnosis, which encompasses:

- 1) a description of the causes of the event;
- 2) a description of irregularities in the area of cognitive, emotional and behavioural processes;
- 3) characteristics of the actual state of their psychological and physical condition;
- 4) a description of the problem constituting the grounds justifying delegation for the therapeutic system;
- 5) description of individual problems of the convict;
- 6) evaluation of motivation to participate in implementation of the individual therapeutic programme;
- 7) indication of positive features of personality and behaviour of the convict.

When developing an individual therapeutic programme, the following should be specified:

- 1) the scope of the conducted activities;
- 2) purpose of impact, possible to be undertaken in the conditions of a therapeutic ward or outside such ward, taking into account the properties of the convict;
- 3) methods of specialized impact;
- 4) criteria for implementation of an individual therapeutic programme.

Convicts qualified in the category of so-called dangerous are subjected to penitentiary impact with limitations deriving from the fact of causing by them of serious social threat or a serious threat to security of the institution. Moreover, they are subjected to impact whose purpose is to, in particular, decrease emotional tensions, as well as limitation of tendencies for aggressive or self-aggressive behaviours. In the individual programme of impact and the individual therapeutic programme conducted for him, methods and measures are specified which are aimed at mental and physical stimulation of the convict. It should also be emphasised that each inmate, including dangerous offender, exhibiting symptoms of worsening of his mental conditions is covered by psychological and psychiatric help. Moreover, dangerous inmates are also covered by intensive psychological supervision for the purpose of elimination of tensions resulting from an increased isolation.

The Polish prison system developed rules of organization and conditions of conduct of penitentiary impact against convicts, persons under detention on remand and punished persons who pose serious social danger or serious danger for security of the penitentiary institution or a detention on remand centre, kept in conditions ensuring increased security of the community and the security of the penitentiary institution. Such solutions are aimed at intensification and unification of impact against dangerous inmates, and in particular:

- directing the penitentiary work on preventing of negative consequences of limitation of social contacts by organization and initiation of desirable activity as part of cultural-educational and sports activities, re-adaptation programmes;
- undertaking measures connected with maintenance of mental hygiene, including the reduction of the level of stress and aggression;
- a need of allowing the inmate to commence or continue education (in particular in case of juvenile offenders);
- undertaking of employment in the division;
- impact based on educational and prophylactic programmes.

Recommendations of the Committee concerning development of individual programmes for dangerous convicts have been taken into account and are implemented according to the provisions binding in this regard.

- *immediate steps need to be taken in order to improve activities available to “N”-category prisoners in the Rawicz Prison (paragraph 91)*

In the Penitentiary Institution in Rawicz, 4 cells were designated for dangerous inmates, where there are a total of 6 places for this category of inmates. In the aforementioned unit, sentences are served by dangerous convicts who are qualified to therapeutic system. As of 9 December 2010, in the aforementioned penitentiary units there were 3 dangerous convicts. They are allowed to participate in daily cultural - educational activities and in physical recreation. Premises where activities are conducted are equipped with new sports-recreational equipment, board games and RTV equipment. The offer of sports activities will be additionally widened after implementation of tasks connected with renovation of walking fields designated for this category of inmates. The implementation of tasks in the area of physical culture and sport constitutes a responsibility of an officer from the penitentiary division, having appropriate qualifications and responsible for planning and direct supervision of activities. Moreover, this group of inmates may participate in organized cultural-educational activities as part of the programme offer available at a given time, taking into account limitations connected with being qualified in category “N”. It should, however, be emphasised that in the case of a group of inmates with non-psychotic mental impairments, mentally ill and addicted, a priority is to carry out specialized activities aimed at prevention of deepening of the pathological personality features, restoring of mental balance, shaping abilities of social co-existence and preparation for an independent life by providing psychological and medical assistance.

- *the Polish authorities should verify their current practice in order to ensure that the “N” status is appropriate and maintained only towards prisoners who do, in fact, require being qualified in such category (paragraph 92)*

In the Polish penal law, the basic legal act specifying criteria of qualifying inmates creating serious social danger or serious danger to security of the institution is the Executive Penal Code.

The aforementioned inmates are placed in a designated division or cell of a penitentiary institution or an investigation detention centre in conditions ensuring increased protection of the community and the security of the penitentiary unit. An authority authorized to verify a necessity of further stay of the inmate in a designated division or cell is a penitentiary commission. The penitentiary commission is obliged to verify its decisions in this regard at least once every three months. Decisions taken by the penitentiary commission shall be each time notified to the penitentiary judge, and in the event of detention on remand, also to the authority at whose disposal the inmate is. The penitentiary commission performed an inquisitive and, in every case, individual analysis of justification of the request for qualification, as well as verifies a necessity of continued stay of the inmates in delegated division or cell.

Moreover, attention should be drawn to the fact that each decision of the authority executing the judgement according to Art. 7 of the Executive Penal Code is subject to an appeal by the inmate.

Summing up the above, we can state that such frequent verification of this category of inmates, an analysis of behaviours and a legal situations gives a guarantee of real evaluation of the situation of the inmate and possible benefits deriving from continued application against him of an extended system of protection.

- *practice should be discontinued at the Investigation Detention Centre in Poznań of conducting personnel interviews with "N"-category inmates through the type of bars installed (paragraph 93)*

Conduct of conversations (interviews) with inmates through the bars is a rarity. It is applied only in exceptional cases, i.e. for the purpose of conducting an interview with an inmate who is particularly aggressive, against whom special security measures may and should be applied. This is connected with an individual approach to the inmate and does not constitute a commonly-adopted rules of conduct with inmates qualified to "N" category. The rule is such that conversation with each inmate is conducted in the premises of the tutor. On the other hand, as far as a particularly aggressive inmate is concerned, the highest measures of security are and will be applied.

- *a search with taking off clothes should be conducted only on the basis of concrete suspicion and in appropriate conditions, as well as with respect for human dignity (paragraph 94)*

The principles and procedures of performing personal search of the inmate and other persons in penitentiary institutions and investigation detention centres are regulated in the Executive Penal Code and the Regulation of the Minister of Justice of 31 October 2003 regarding means of protection of organizational units of the Prison Service. According to these provisions, personal check-up consists of examination of the body and checking clothes, underwear and shoes, including any objects in possession of the convict. Inspection of the body and checking-up clothes and shoes is each time performed by officers of the Prison Service in a separate room, in absence of any third parties and persons of a different sex, and is performed by persons of the same sex. The conducted control must, on many occasions have a prevention character, but it is always performed with respect for human dignity, applying the principle of humanitarianism and legality. The control is conducted for the purpose of finding dangerous and forbidden products and preventing an escape or in other justified cases. Departure from these rules would entail a realistic threat to security of the penitentiary unit and inmates kept therein.

### ***Material conditions of detention***

#### *recommendations*

- *steps should be taken at the Investigation Detention Centre in Poznań for the purpose of:*
  - *further reduction of population of cells, ultimately offering at least 4 m<sup>2</sup> of living space per inmate in multi-person cells;*
  - *renovation of Block A in order to eliminate the shortcomings listed in paragraph 97 (including with regard to showers and toilets);*
  - *an improvement of access to natural light and artificial lighting in Block A and C. The design of the windows should be revised in order to allow inmates to look outside the cells (paragraph 99)*

As of 10 December 2010, at the Investigation Detention Centre in Poznań, there were 577 inmates with the capacity of 600 accommodation places, which constitutes 92.2% of the population of the entity. The Polish party declares and will make efforts to try and reach the standard of 4/m<sup>2</sup> per each convict.

At the Investigation Detention Centre in Poznań, renovation was started of the wash room in building A. The anticipated date of completion of the work falls in the first quarter of 2011. Electrical installation is being replaced in buildings A and C which will provide for replacement of the existing sources of light with their equivalents providing for proper intensity of the light. In building A, the floor is replaced with tiles. The completion of this work is planned for 2012.

During maintenance work, wooden windows are replaced with a single glass windows made of PCV with an attached window. On the other hand, shelters made of reinforced glass are being replaced with shelters made of polycarbonate which is characterised by a significantly higher level of letting the light through.

- *steps must be taken at the Prison in Racibórz for the purpose of:*
- *further reduction of population in cells, ultimately offering minimum 4 ms of living space per prisoner in multi-person cells;*
- *repairs of identified shortcomings with regard to access to natural light and artificial light, as well ventilation in cells;*
- *renovation of sanitary equipment in cells (paragraph 103)*

As of 10 December 2010, at the Penitentiary Institution in Racibórz there were 762 inmates with a capacity of 763 places, which constitutes 99.8% of population of the unit.

The penitentiary buildings of the Penitentiary Institution in Racibórz are monuments listed in the register of monuments. The relation between the surface area of windows and the surface area of the floor in housing cells is not consistent with the currently-binding standards, but due to the fact that the sites are monuments, it is not possible to make any changes in the facade. All renovation work and investments made by the prison service are subject to current requirements, general provisions of the construction law. Project documentation must meet the above criteria and with regard to buildings entered in the register of monuments, it is also subject to an opinion of the provincial conservator of monuments. It should be noted that during planned and implemented renovation work and investments, an attempt is being made at adaptation of buildings to the binding provisions. This shall also apply to the requirements concerning lighting of premises with natural light. However, the provincial conservator of monuments often does not grant his consent to a change of appearance of the facade, which, in consequence, prevents the widening of window holes.

At the Penitentiary Centre in Racibórz, cells are equipped as a standard with 2 x 40W fluorescent lights, which meets the criteria regulating the intensity of lighting and bulb lighting for the control of the cell at night. At the consent of the director of the entity, inmates may have night lamps.

In sanitary niches there are toilet bowls and sinks with running cold water, which is consistent with the binding regulations, which do not impose an obligation to carry hot water to housing cells (Regulation of the Minister of Justice of 25 August 2003 on organizational-order rules and regulations of execution of penalty of imprisonment).

Sanitary niches in the majority of cells of the Penitentiary Institution in Racibórz are separated from the other part of the premises by means of a special wall made of non-transparent material and reaching the height of 1.2 m. The surface area of the niche amounts to 1.4 x 0.9 m. Currently, it is impossible to build sanitary niches to the full value due to missing additional ventilation ducts. The performance of full construction would be possible at the time of total renovation of the building. As soon as funds are obtained, renovation of sanitary facilities will be conducted.

- *steps must be taken at the Prison in Rawicz for the purpose of continued reduction of population of cells, ultimately offering minimum 4 m<sup>2</sup> of living space per prisoner in multi-person cells. The other premises for prisoners should be renovated, including sanitary facilities in cells in Block B. Toilets in cells in Bloc C should be equipped with a wall (paragraph 106)*

As of 10 December 2010, at the Penitentiary Institution in Rawicz, there were 817 inmates with the capacity of 826 beds, which constituted 98.9% of population of the unit.

Sanitary facilities in building A at the Penitentiary Institution in Rawicz are replaced and repaired on an on-going basis. Whereas, renovation of housing premises, together with modernization of water-sewage installations in this building is planned for implementation in 2011-2012. In building C all sanitary facilities will be equipped with a permanent wall in 2011.

**remarks**

- *the Polish authorities are summoned to verify the quality of food provided to inmates at the Investigation Detention Centre in Poznań, in view of the remarks contained in paragraph 98 (paragraph 99)*

In closed-type group nutrition institutions which include penitentiary units of the prison service, it is difficult to satisfy nutritional needs of all individuals, especially that expectations of each inmate are varied, in particular with regard to his culinary preferences deriving from his habits.

It is equally difficult to take into account expectations of a small population of inmates regarding the manner of preparation of meals in contradiction with the binding regulations.

Nevertheless, inmates staying in organizational units of the Prison Service have food provided in accordance with the binding provisions of law which are observed at each unit. Meals are controlled on an on-going basis. According to menus, meals have sufficient calorie contents, proper chemical composition and appropriate amount of vegetables and proteins. Vegetables are served every day, and their type, similarly to fruit, depends on the season and differences in prices. Fruit (most commonly apples) are served a few times a week as a separate component of a meal or as a component of salads.

It should also be emphasised that meals include various kinds of food products belonging to all categories of products containing carbohydrates, protein and fat, including diary products.

- *the Polish authorities are summoned to verify the quality of food delivered to prisoners at the Prison in Racibórz in light of the remarks contained in paragraph 102 (paragraph 103)*

Similarly to the Investigation Detention Centre in Poznań, in other penitentiary units as well, all efforts are made to provide prisoners with food whose quality and quantity corresponds to the appropriate nutritional value.

Inmates have food provided to them in accordance with the binding regulations which are observed at the Penitentiary Institution in Racibórz. According to menus, meals have sufficient calorie contents, proper chemical composition and appropriate amount of vegetables and proteins. Vegetables are served every day, and their type, similarly to fruit, depends on the season and differences in prices. Fruit (most commonly apples) are served a few times a week as a separate component of a meal or as a component of salads.

It should also be emphasised that meals include various kinds of food products belonging to all categories of products containing carbohydrates, protein and fat, including diary products.

- *the Polish authorities are called to consider an increase of frequency of use of showers by prisoners in view of Rule 19.4 of revised European Prison Rules (paragraph 107)*

According to the binding regulations, prisoners have a right to a hot shower once a week, women - twice a week. Introduction of more frequent showers in the present technical condition and organizational-financial situation of penitentiary units is connected with a launch of an investment programme and providing many millions of financial expenditure, as well as an increase in funds for non-pay expenditure due to larger consumption of water and costs of heating water.

In order to introduce certain rights, it is necessary to develop the infrastructure of many penitentiary institutions and investigation detention centres, including:

- construction of additional baths in penitentiary pavilions;
- extension of sources of hot water;
- development of hot water installation.

The Polish party declares and will make all efforts aimed at an increase of frequency of showers by persons deprived of liberty.

### **Activities**

### **Recommendations**

- *it is recommended that definite efforts are made to develop a programme of activities for persons under detention on remand at the Investigation Detention Centre in Poznań and at the Prison in Racibórz. The purpose should be to ensure both categories of prisoners to be able to spend a reasonable part of the day (eight hours or more) outside their cells, involved in special-purpose activities of various character (paragraph 112)*

At the Investigation Detention Centre in Poznań there are 9 day-time clubs where cultural and educational activities may be carried out (currently, due to over-population, two day-time clubs are designated for residential purposes). Day-time clubs may be used by prisoners between 8 a.m. and 10 p.m., with a division into walking groups. In order to enable all prisoners (including persons under detention on remand) to take advantage of cultural-educational activities, a schedule of activities is prepared, with specification of individual groups and their allocation for specific hours. In the situation that prisoners do not wish to participate in any activities, the day-time club is made available to another group.

Apart from activities in the day-time club, re-adaptation programmes are implemented at the detention centre. The programme of cultural-educational activities at the Investigation Detention Centre in Poznań is based on a correction, sports or artistic model, with the use of various forms of impact. Social re-adaptation programmes forming a part of the scope of cultural-educational activities constitute a form of impact on various spheres of functioning of prisoners for the purpose of their better socialization, both in penitentiary conditions and in out-of-prison conditions. The programmes are of an on-going nature, their intensity and sequence depend on topics of classes and psychological and physical predispositions of prisoners. The following programmes are implemented at the unit:

- 1) counteracting aggression and violence, co-operation with the “Będziesz” Foundation;
- 2) counteracting addictions and alcohol abuse or drug abuse, i.e. anti-addiction activities, AA group;
- 3) counteracting pro-criminal attitudes;
- 4) professional activity and promotion of employment, e.g. “Work as a Social Re-Adaptation Factor”;
- 5) shaping social skills, e.g. Pro-Symfonia;
- 6) shaping cognitive skills, e.g. ecological education, geography, history groups of interest;
- 7) family integration, e.g. family visits.

At the Investigation Detention Centre in Poznań, in 2009, a total of 7 group re-socialization programmes were implemented, addressed to prisoners (including psycho-correction activities for persons convicted under Art. 178a of the Penal Code - 2, counteracting home violence - 1, counteracting addictions - 4).

Moreover, as part of cultural, artistic and sports activities, prisoners have access to the day-time club in a given division, which is equipped with a mattress, a ladder, as well as a set of board games, darts, table tennis, football and educational literature and the press. Prisoners have an opportunity of taking part in recreational classes conducted at the walking area, where there are concrete table tennis. In addition, convicts have a right to use audio-visual devices in day-time clubs and housing cells.

At the Penitentiary Institution in Racibórz, 27 events were organized for convicts, such as meetings with Santa Claus, Christmas Eve, 9 sports tournaments, 2 concerts, arts workshops etc. and 12 programmes of social re-adaptation. New re-adaptation programmes are being developed for inmates who are in individual divisions of investigation detention centre.

- *efforts should be made to ensure that all prisoners, including working prisoners at Racibórz and Rawicz prisons could use outdoor exercise (paragraph 112)*

At the Penitentiary Institution in Racibórz, all prisoners can walk, have a possibility of participating in sports games, such as volleyball, table tennis and individual physical activities. Also weight polythlons are organized. Prisoners who fall within the “N” category may play basketball on walking fields and squash. On the walking fields, there are also benches for recreational-resting purposes. Sports activities and cultural-educational activities in the aforementioned unit take place in afternoon hours, between 2.30 p.m. and 5 p.m. Every day, hired prisoners, in the afternoon, as part of their walks, have a possibility of playing volleyball, table tennis (table tennis are set up in 2 walking fields), exercising of pulling oneself on a stick. Additional sports activities are organized for prisoners at the main day-time club (table tennis and table games).

Sports activities at the Penitentiary Institution in Rawicz take place in day-time care centres, recreational rooms and other premises designated for that purpose and on walking fields and on a football pitch, every day between 8 a.m. and 6.30 p.m. Schedule of sports activities is such that it enables all inmates to participate in sports activities in the afternoon and on Saturdays and Sundays. Employed convicts participate in cyclic division tournaments organized for all inmates and in institution-wide tournaments in various sports disciplines.



- *steps should be taken in order to enable working prisoners of a semi-open unit at the Racibórz Prison to borrow books from a library (paragraph 112)*

Convicts employed outside the unit may borrow books after their return from work. For that purpose, a library point was organized in a residential division. The other employed convicts returning to the unit during working hours of the administration are escorted to prison library.

- *if visited establishments wish to continue keeping juvenile offenders, necessary arrangements need to be made in order to allow them to participate in a regime suitable for their age group (paragraph 113)*

According to statistical data as of 4 January 2010, at penitentiary units there were in total 85,384 prisoners, including 75,212 convicts and 9,660 persons under detention on remand. The number of convicted juvenile offenders amounted to 2,584, juvenile offenders under detention on remand to 1,240. The system of programmed impact applied to 2,394 convicted juvenile offenders serving their sentence, whereas there were 47 such persons in therapeutic system and 47 in an ordinary system (punished persons). Imprisoned juvenile offenders constituted 4.5% of total population of persons serving their sentence of imprisonment and persons under detention on remand. Convicted juvenile offenders are the only ones who, obligatorily, serve the sentence of deprivation of liberty in the system of programmed impact. Execution of the sentence of imprisonment is aimed to evoke a will in the convicted person to co-operate in the shaping of attitudes which are socially-desirable, in particular the feeling of responsibility and observation of the legal order, and therefore, refraining from return to crime. Legal regulations oblige us to programme penitentiary impact, in particular towards convicted juvenile offenders. In individual programmes of impact, agreed upon together with the convict, mainly types of employment and education of convicts are agreed upon, their contacts with, most of all, their families and other close persons, use of free time, possibility of fulfilment of their duties and other undertakings necessary to prepare the convicts to the return to society. Impact is exerted upon the convicts through: work, education, cultural and educational activity, social activity and physical education, sports activities, disciplinary awards and penalties. Priority of action towards juvenile offenders who are placed in isolating institutions is to allow them to perform their school duty within the scope of primary and lower secondary schools.

As regards juvenile offenders, penitentiary impact activities are organized in a special manner, adapted to their developmental needs, according to the following:

- convicts are delegated for employment, working both for the penitentiary unit and for local community. The prison service implements a number of activities to the benefit of external entities in which juvenile offenders participate. They work for Homes of Social Care, Orphanages, local governments, sports clubs, etc., as well as other institutions and organizations;
- juvenile convicts participate in sports activities in a wider scope than other convicts;
- beginning in 2002, Polish penitentiary units implement a model programme of Aggression Replacement Training whose author is Psychology Professor Arnold Goldstein. The programme is aimed at development among juvenile convicts of basic social skills;

- participation of juvenile convicts in editing of prison newspapers, outdoor painting sessions and organized exhibitions of prison handicraft is ensured, as well as in activity of theatres and music groups, and in production of radio programmes. They are mainly encouraged to exhibit activity other than criminal and they are taught to plan and spend their free time;
- development of individual programmes of impact through an individual approach to each of the convicted juvenile offenders;
- extending more psychological care to juvenile offenders than to the other convicts, as well as providing them with corrective activities;
- intensified co-operation with families of convicts through organization of direct thematic and special meetings, interviews and questionnaires;
- careful reconnaissance of the social environment and knowledge of group structures.

Re-socialization programmes supporting preparation for social re-adaptation addressed to groups of convicted juvenile offenders are conducted within the scope of counteracting addictions, alcohol and drug abuse, pro-criminal attitudes, professional activity and promotion of employment, shaping of social skills, shaping of cognitive skills, family integration, cultural and educational activities, as well as activities in the area of physical education and sport.

*- the walking area at the Investigation Detention Centre in Poznań should be enlarged and steps should be taken to dispose of water which is collected in the walking area of the Racibórz Prison during rain. Moreover, walking fields in each of the three visited prisons should be equipped with a shelter in case of bad weather (paragraph 114)*

At the Investigation Detention Centre in Poznań, each of walking fields has a total surface area of 20.10 m<sup>2</sup>. Walking areas are covered with colourful polyurethane boards, attached to a steel structure and they serve a function of technical-protective security. The above is conditions by location of the building of the detention centre in direct vicinity of the court, residential buildings and a necessity of securing the court and prosecutor's proceedings conducted against inmates. The roof also serves the function of protection against sunshine and rain.

At the Penitentiary Institution in Rawicz, next year construction will commence of new walking areas for inmates qualifies to "N" category, which will be equipped with shelters in case of bad weather conditions. Additional sports and recreational equipment will be purchased for convicts of the "N" status.

In the Penitentiary Institution in Racibórz, walking boxes on walking field no. 1 have a surface area of 4 x 160 m<sup>2</sup>, on walking field no. 2 - 4 x 154 m<sup>2</sup>, whereas the pitch has a surface of 525 m<sup>2</sup>. In the summer of the current year, in all walking fields work was completed consisting of laying concrete paving stones. The placement of a roof over some walking fields will be possible in 2011.

### **Therapeutic units**

#### **recommendations**

- *steps should be taken in order to improve the technical condition and cleanliness of cells in the therapeutic unit at the Racibórz Prison (paragraph 115)*

At the therapeutic division in Racibórz, housing cells are subjected to thorough cleaning, and all identified defects were repaired. As a standard, cells are equipped with fluorescent lights 2 x 40 W, which meets the requirements concerning lighting intensity.

In 2011, as soon as funds are obtained, renovation of the whole therapeutic division is planned.

#### **remarks**

- *the approach applied at the Rawicz Prison, consisting of involvement of inmates delegated to therapeutic division in programmes and activities should be adopted at a national level in order to ensure coherence of developed programmes (paragraph 117)*

Regulations concerning substantive requirements in the area of construction of programmes for therapeutic divisions and conduct of specialized impact activities towards convicts who require such impact are regulated in the Regulation of the Minister of Justice of 14 August 2003 on the manners of conducting penitentiary impact in penitentiary institutions and investigation detention centres, according to which programmes of therapeutic divisions contain, in particular:

- 1) substantive and organizational assumptions, as well as detailed objectives of the programme;
- 2) methods and techniques of impact;
- 3) schedule of programme implementation and its duration;
- 4) specification of manners of measurement of effects and criteria of implementation of the programme's objectives.

The programme of a therapeutic division includes:

- characteristics of the population of convicts to whom the programme is addressed;
- a theoretical model, constituting the justification of the programme which explains how the items which are suggested in the programme affect the factors associated with criminal behaviours;
- identified risk factors whose changes will lead to a decrease of risk of return to crime;
- a spectrum of objectives;
- methods;
- specification of intensity, sequence and duration of the programme;
- framework weekly schedule of activities in the division;
- regular assumptions, characteristics of the premises base and specification of the necessary substantive and financial facilities;
- the manner of evaluation of the programme's effects.

In the aforementioned provision it is specified that a programme of a therapeutic division for addicted convicts should separate activities which are addressed to convicts who do not show any motivation in participation in therapy, which include, in particular, all activities of educational nature. Convicts are covered by intensive impact motivating them to be fully involved in the therapy process and to develop their own work. In the event that the impact has no effect, the scope of therapy may be limited to educational classes, and the duration of the convict's stay in the therapeutic division may be shortened, but by no more than 1/3 of the time specified in the programme of the division as the time of duration of therapy. Lack of co-operation on the part of the convict in execution of an individual therapeutic programme takes into account, in particular at the time of periodic evaluation of progress of re-socialization, opinion granting and provision of awards.

Programmes of therapeutic divisions are developed in penitentiary units where the so-called divisions with professional psychological personnel exist. Programme assumptions are consistent and do not require an introduction of the solutions adopted at the Penitentiary Institution in Rawicz.

## **Healthcare**

### **recommendations**

- *it is recommended that steps are taken at the Racibórz Prison to fill in the vacancy in the position of a GP and to ensure that someone qualified in providing first aid, preferably a person with recognized nursing qualifications, be always present at the prison (paragraph 118)*

At the Penitentiary Institution in Racibórz, a working post of a doctor of the above specialization was increased from 1.5 to 2.55 full-time posts. Outside the working hours of the medical personnel of prison healthcare centres, medical needs of inmates are secured by the system of the State Medical Rescue, according to the Law of 8 September 2006 on the State Medical Rescue. According to the above, health needs of persons deprived of liberty are secured 24 hours a day.

In addition, as part of the Norwegian Financial mechanism 2009-2010, funds were obtained to train officers of the Prison Service during specialized courses for giving first pre-medical aid.

- *it is recommended that measures are adopted to ensure that all newly-arrived prisoners are accepted by a member of the healthcare team (a doctor or a fully-qualified nurse responsible before the doctor) within 24 hours of the time of their arrival (paragraph 121)*

According to the binding provisions of the Executive Penal Code and the Regulation of the Minister of Justice of 31 October 2003 on detailed rules, scope and procedure of providing health services to persons deprived of liberty by healthcare institutions for persons deprived of liberty, initial examination: both subjective and objective is extended to a person deprived of liberty immediately upon his/her admission to the penitentiary institution, not later, however, than within 3 working days of the days of admission. In the event that a necessity arises to provide a prisoner with medical help, such help is provided immediately by a prison doctor or, in the event of his absence, by the State Medical Rescue. Any other system would require that nearly 150 penitentiary institutions have full-time doctors on days free from work, e.g. in the form of duty hours, which would require the hiring of a significant number of members of medical personnel and significant funds to cover their remuneration - such a model is not justified because it would double the functions served by the State Medical Rescue. Additionally, we should emphasise that persons detained by the Police before their detention at the penitentiary institution or an investigation detention centre are examined in social healthcare establishments in order to determine possibilities of their stay at a penitentiary unit.

- *minutes prepared after medical examination of a newly-arrived prisoner should contain:*

(i) *a full description of statements of the person concerned, regarding the medical examination (including a description of his condition of health and any claims of ill-treatment);*

(ii) *a full description of objective medical findings based on careful examination; and*

(iii) *doctor's conclusions with view to (i) and (ii), with an indication of a degree of coherence between any claims and objective medical findings (paragraph 122);*

- *results of each examination, including the aforementioned statements and doctor's conclusions should be immediately made available to the prisoner and his lawyer (paragraph 122);*

- *steps should be taken in order to ensure that any time a doctor registers any injuries consistent with claims of ill-treatment raised by the prisoner (whether at a time of arrival or at a later stage of his detention) or which, even with no claims being raised, indicate ill-treatment, such minutes should always be sent to a relevant prosecutor (paragraph 122)*

Each person newly-accepted to the penitentiary unit is examined by a doctor. The doctor makes an entry in the book of health record regarding the subjective examination (an interview with the patient), the prisoner confirms the provided information with his own signature, objective (physical) examination and recommendations. In the event that any injuries are identified, they are noted down in the aforementioned book, and in the event of suspicion of an offence being committed, the director of the penitentiary unit notifies a relevant prosecutor's office. In addition, at the Investigation Detention Centre in Poznań, in the event of identification of any injuries, procedures are implemented which are known as "Schedule of counteracting criminal sub-culture". Medical documentation is made available to prisoners in the form of photocopies and/or a possibility of having an insight therein in the presence of an employee of a health service.

- *"a register of post-traumatic injuries" should be kept by the healthcare service of each penitentiary institution (paragraph 122)*

Medical documentation, both out-patient and from hospitals is kept according to the Regulation of the Minister of Justice of 19 September 2007 regarding types and scope of medical documentation as well as manner of its processing which does not take into account a necessity of keeping a “register of injuries”. In the event of identifying any injuries, they are noted down in the health book, and in the event of a suspicion of commitment of a crime, the director of the penitentiary unit notifies the relevant prosecutor’s office. Only medical documentation may be a place where any diseases, including injuries, may be written down. An introduction of other documents, e.g. “a register of injuries” would force the medical personnel to unnecessary duplication of entries. Full information contained in the medical documentation regarding the condition of health, including possible injuries, is made available at the request of authorised institutions.

- *steps should be taken in order to adapt the practice of medical examination of prisoners to the considerations in paragraph 123. If necessary, the law has to be amended accordingly (paragraph 123)*

With regard to the recommendation that no officers who are not medical personnel, i.e. security officers, should be present at the doctor’s surgery, the provisions of the Executive Penal Code apply, according to which a convict serving a penalty of imprisonment in a penitentiary institution of a closed type is provided with medical services in the presence of an officer who does not perform the medical profession. At the request of an officer or employee of the prison healthcare institution for persons deprived of liberty, health services may be provided to the convict without the presence of an officer not performing the medical profession. Medical personnel of prison healthcare institutions, in the event that no threat exists to personal safety, may conduct medical activities without the presence of officers who are not medical personnel. In the majority of cases, in the situation that no threat exists on the part of the prisoner, no preventive protective measures are applied for the duration of a medical examination or other medical treatment.

- *the Polish authorities are called to discontinue the policy of routine application of measures of direct compulsion against prisoners of “N” category in the course of medical consultations (paragraph 124)*

According to the Polish provisions of law, application of measures of direct compulsion against prisoners qualified as “N” category is allowed during provision of medical advice. According to the Law of 9 April 2010 on Prison Service, in order to prevent an escape of a person deprived of liberty or prevent his active aggression or self-aggression, it is possible to apply, as preventive measures, a protective helmet, handcuffs, incapacitating belt or runners, as well as technical devices causing the blocking of the knee joint. In relation to this particular category of prisoners, the application of the most severe security measures is connected with great danger and, in this event, such measures are and will be applied preventively.

- *the Polish authorities should develop and implement a comprehensive policy of care of prisoners with drug-addiction problems (paragraph 125)*

Patients addicted to drugs in penitentiary units have medical, doctor's and nurse's, help, as well as psychological help. In order to continue therapy, they are delegated to therapeutic divisions located in penal institutions. For prisoners who are addicted to opium-type substances, substitution programmes are implemented. Currently, the prison service implements 7 substitution programmes in 21 penitentiary units. As of 15 February 2010, a new substitution programme was launched in 5 penitentiary units of the Bydgoszcz district (Penitentiary Institution in Potulice, Penitentiary Institution in Włocławek, Penitentiary Institution in Grudziądz, Investigation Detention Centre in Bydgoszcz, Penitentiary Institution in Bydgoszcz-Fordon), and in April 2010, another programme was started at the Investigation Detention Centre in Szczecin.

- *steps must be taken to ensure application of individualized approach regarding the dress of prisoners in hospital wards at the Prison Hospital in Poznań (paragraph 128)*

At the psychiatric ward of the Investigation Detention Centre in Poznań, each patient receives pyjamas on the date of his admission to hospital. His own clothes - after changing into pyjamas - are kept in the cell. It is only up to the patient whether he will change into his own clothes or whether he would wear pyjamas 24 hours a day.

- *practice should be discontinued at the psychiatric ward at the Prison Hospital in Poznań of conducting interviews and medical procedures through bars (paragraph 131)*

Medical examination at the psychiatric ward at the Investigation Detention Centre in Poznań are performed at the surgery, and not in the cell. Nurse's services are provided in the surgery, whereas doctor's and psychologists' consultations take place in doctor's rooms. Information confirming this fact is contained in paragraph 133 of the report.

The only procedures which take place through the bars is handing over medications for a given patient. An identical system of distribution of medications, i.e. their distribution to all patients' rooms, operates in all closed medical establishments (hospitals). Apart from medical personnel and the patient, no third parties are aware of the applied pharmacology.

- *steps should be taken at the psychiatric ward at the Prison Hospital in Poznań to establish individual treatment plans for patients, based on a wider scope of therapeutic, rehabilitation and recreational activities. This means hiring a sufficient number of appropriate personnel (paragraph 132)*

Using a day-time club and a therapy room takes place in accordance with a certain schedule. The aforementioned rooms are generally-accessible to all patients of the psychiatric ward, as long as they voice such need. Patients of the psychiatric ward have a possibility of conducting individual talks with psychologists, they may participate in an activity therapy, and they may perform exercises during walks.

As part of meetings which take place in the arts room, art therapy workshops are held in the form of:

- activities with paper (collage, origami, pattern reproduction, making Christmas cards, making other cards for special occasions, making souvenirs, serviette holders, passe-partout);
- painting on canvas (with the use of acrylic paints, pastels, coal, decoupage, varnish, turpentine);
- painting on wood (with the use of aging techniques, decoupage, acrylic paints, aerosol paints);
- painting on glass with the use of transparent paints and paints for ceramics;
- gypsum casts made from ready silicone moulds and made with the patient's own hands;
- spatial figures and low reliefs made with self-hardening clay;
- activities with dried flowers (use of dried leaves and flowers, sea riff, calamus roots, moss and other bunches of generally-accessible and exotic flowers);
- activities with the use of fabric (using fabric scraps to fill in collage elements, souvenirs, Christmas decorations and other decorative elements, as well as decorations for festivities and exhibitions of artistic works);
- preparation of Christmas and other floral table decorations for special occasions.

In day-time clubs of individual divisions artistic classes are conducted with the use of watercolours used to paint on paper, during which elements of stage design are prepared for theatrical performances which take place in the institution. Artistic works are also prepared with the use of self-hardening clay, based on prisoners' own ideas or on the basis of a previously-prepared project.

In the current year, the psychiatric division at the Investigation Detention Centre in Szczecin was modernized, modernization of other units is planned for the purpose of improvement of conditions both for patients and for the personnel.

Currently, a reform of the prison healthcare system is being implemented whose purpose is to introduce high standards of medical care for prisoners of penitentiary institutions and investigation detention centres. One of key elements of the reform is an increase of employment of additional medical personnel, mainly as part of civil-legal agreements in prison healthcare institutions, with particular emphasis on an integrated system of specialized care. As of 30 September of the current year, the structure of employment is such that 524 new contracts of employment were signed with:

- 114 doctors of basic medical care
  - 57 doctors on duty in hospitals
  - 263 specialist doctors - consultants (including 40 psychiatrists)
  - 20 nurses
  - 70 other (X-ray technicians, analysts, medical rescuers).
- *all persons staying at the prison psychiatric ward should be offered, if that is permitted by their health, at least one hour of outdoor exercise per day in a place which is reasonably vast and safe (paragraph 132)*

Each patient who stays in prison hospital may use at least one-hour's walk a day during which he may exercise. The rule is that all patients whose health condition allows them to do that, are encouraged by the medical personnel to exercise outdoors.



- *steps should be taken to ensure that rules concerning direct compulsion, as described in paragraph 135 are applied at the psychiatric ward of the Prison Hospital in Poznań, as well as in all other prison psychiatric wards in Poland (paragraph 135)*

Application of measures of direct compulsion against persons with mental diseases takes place according to Art. 18 of the Law of 19 August 1994 on Protection of mental Health and the Regulation of the Minister of Health and Social Care of 23 August 1995 on the manner of applying measures of direct compulsion. A decision in the aforementioned matter is taken by the doctor and each instance of application of a measure of direct compulsion is noted down in medical documentation (history of the disease, nurse's report and card of medical recommendations), according to the provisions binding in this regard and concerning all, which means also out-of-prison healthcare institutions. A patient against whom a measure of direct compulsion is applied at the psychiatric ward at the Investigation Detention Centre in Poznań is placed in a single, monitored cell. According to the requirements of the aforementioned regulation, an "immobilization or isolation card" is established which contains the required personal data, type of immobilization or isolation, duration of application of the measure (date and time), as well as a signature and stamp of the doctor issuing the recommendation. Apart from monitoring, a nurse checks every 15 minutes the condition of the immobilized person and provides assistance (meals, physiological and hygienic needs). The aforementioned provisions concerning the application of measures of direct compulsion in persons with mental problems are applied in all institutions of both penitentiary and social healthcare.

#### **remarks**

- *a possibility should be considered of increasing the number of hours of presence of a psychiatrist at the Racibórz Prison and the Rawicz Prison (paragraph 118)*

At the Penitentiary Institution in Rawicz a specialist psychiatrist is hired part-time who provides medical services to prisoners to a sufficient extent. In January 2011, the director of the Penitentiary Institution in Rawicz plans to enter into a civil-legal agreement with a psychiatrist whereby the number of hours of work of this specialist will be increased and this will also contribute to an increase in availability of psychiatric care to prisoners.

At the Penitentiary Institution in Racibórz the number of hours of work of the doctor of the aforementioned specialization was increased from 1.5 to 2.55.

- *the Polish authorities are called to appropriately reorganize the system of medical consultation at the Investigation Detention Centre in Poznań and at the Racibórz Prison (paragraph 119)*

At the Investigation Detention Centre in Poznań, according to the internal rules and regulations, a doctor sees patients according to an established schedule. Prisoners who require sudden nurse or doctor consultation are admitted without queuing as part of emergency procedure, available 24 hours a day. Patients who have appointments according to the schedule are admitted on the next day, without undue delay. This provides for the planning of the number of doctor's consultations in a given day and to properly examine each prisoner. In order to ensure the widest possible access to healthcare benefits, prisoners receive specialist advice and consultation from doctors performing their civil jobs, i.e. a cardiologist, a laryngologist, a surgeon, an urologist, a radiologist, a pulmonologist, an ophthalmologist, a psychiatrist, a gastroenterologist, an orthopaedist, and a specialist of contagious diseases. Such a system was developed thanks to many years of practice and it provides for good organization of visits of prisoners at the doctor's.

At the Penitentiary Institution in Racibórz, specialist doctors admit prisoners on the basis of a letter from a GP who is responsible for the treatment of a given prisoner. Additionally, a prisoner may be send to a psychiatrist also by a psychologist. A schedule of appointments for visits at GPs was established in the internal rules and regulations, and according to the same, prisoners are admitted by the doctor as part of their residential divisions at least twice a month. On the other hand, prisoners who require sudden medical consultation are admitted on a daily basis - outside the established schedule. In special justified cases, in order to provide medical assistance to a prisoner, an ambulance is called or a prisoner is transported to a relevant hospital outside the territory of the penitentiary institution.

Such procedure, similarly to the Investigation Detention Centre in Poznań, fully satisfies all needs of prisoners in this regard.

- *the Polish authorities are called to provide a more pleasant and more personalised environment at the psychiatric ward at the Prison Hospital in Poznań; in particular, the present oppressive appearance of patients' rooms should be verified in order to create an accommodation structure which shows respect for patient's dignity (paragraph 131)*

Cells of hospital wards are patients' rooms, and therefore their equipment and decoration corresponds, in its professional and sanitary aspect, to the Regulation of the Minister of Health of 10 November 2006 regarding professional and sanitary requirements to be met by premises and equipment of a healthcare institution. Moreover, activities will be undertaken aimed at individualization of the appearance of residential rooms at the psychiatric ward so that they are more patient-friendly.

## **Other issues**

### **recommendations**

- *the Polish authorities should revise arrangements concerning contacts with the external world for persons under detention on remand, taking into account the remarks from paragraph 138 and Rules 24.1 and 99 of the European Prison Rules (paragraph 138)*

A preventive measure which is detention on remand is applied in order to secure proper course of penal proceedings. Contact with the outside world is limited due to the good of the proceedings which are conducted against a person under detention on remand. According to Polish law, a person under detention on remand may have a visit if such visit is consented to by the authority at the disposal of which the person remains. On 8 June 2010, an amendment came into force of the Executive Penal Code according to which a person under detention on remand is entitled to at least one visit a month of a persons belonging to the circle of his closest persons. In the event that there are no counter-indications for more frequent contacts with the outside world, such visits are granted more often.

- *the rules regulating disciplinary sanctions should be revised in view of the remarks contained in paragraph 140 (paragraph 140)*

A disciplinary penalty in the form of placement in an isolation cell is imposed on a convict who commits a contravention infringing, to a significant extent, the discipline and order binding at the penitentiary institution. This is the most severe disciplinary penalty applied in the Polish law and it may be imposed only on convicts who significantly violate the binding provisions. When imposing a disciplinary penalty, a degree of fault as well as principles of individualization are taken into account, considering, in particular, the type and circumstances of the act, an attitude to the committed contravention, the attitude so far, personality features and the condition of health of the prisoner, as well as educational objectives. In a situation justified by educational reasons, the director of the penitentiary institution may suspend the execution of the penalty for a period of 3 months. After the lapse of a period of suspension, the penalty shall be deemed to have been executed. The severity of this penalty is connected with certain sanctions which include, among other things, deprivation of a possibility of having visits and of using telephones. It should be noted that a person placed in the isolation cell is not deprived of a possibility of sending letters. According to the Executive Penal Code, the director of the penitentiary institution may, in cases justified by family, personal and educational reasons, grant his consent to a visit or a telephone conversation.

- *all disciplinary cells whose measurements are less than 6 m2 should be increased or withdrawn from use. Moreover, access to natural light should be improved in cells at the Racibórz Prison (paragraph 141)*

Disciplinary cells have a minimum 4 m2 and they are cells where only one prisoner stays at a time, which is consistent with the Executive Penal Code in its part concerning the space per one prisoner, whereas the other isolation cells at the Penitentiary Institution in Racibórz have a surface area of 6 m2. Cells are equipped as a standard with 2 x 40W fluorescent lights, which meets the criteria regulating the intensity of lighting, and bulb lighting for the control of the cell at night.

Standards specifying requirements concerning natural light in premises are contained in the Regulation of the Minister of Infrastructure of 12 April 2002 on technical conditions which should be met by buildings and their locations. They are applied at the time of designing, construction, extension and reconstruction, as well as at the time of changing the purpose of use of buildings, provided that in case of buildings and areas entered in the register of monuments or areas covered by the protection of conservator of monuments, the documentation is also subject to arrangement with the provincial conservator of monuments.

All renovation and investment work carried out by the prison service is subject to the requirements of the up-to-date, general provisions binding for the construction industry. The project documentation must meet the above requirements, and as regards buildings entered in the register of monuments, it is also subject to an opinion issued by the provincial conservator of monuments. It should be noted that during planned and implemented renovation and investment work, efforts are made to make the buildings consistent with the binding provisions, which also applies to the requirements concerning lighting of premises with natural light. However, the provincial conservator of monuments does not, on many occasions, grant his consent to a change in the appearance of the facade, which, in turn, prevents an increase of window holes.

- *it is recommended that the existing regulations and practice concerning the role of prison doctors with regard to disciplinary issues was revised. Doing this, attention should be paid to the European Prison Rules and the remarks made by CTP in paragraph 53 of its 15 General Report (paragraph 142)*

A disciplinary penalty in the form of placement in an isolation cell is an arduous penalty due to the fact that the punished person is in a single cell, so, before the imposition of such penalty, the convict is subjected to psychological or doctor's consultation whose purpose is to evaluate whether he is able to sustain such penal from the point of view of his mental, physical health and to eliminate any possible auto-aggressive tendencies. Positive relations between the doctor or psychologist and the convict are not affected, because they derive from the former's care about the latter's safety.

- *it is recommended to undertake steps aimed at revision of application of measures of direct compulsion at the Racibórz Prison and, if needed, in other Polish prisons, with a view to the remarks listed in paragraph 144 (paragraph 144)*

The Prison Service shares the view of the Committee that measures of direct compulsion should be applied no longer than till the moment of ceasing of the conditions justifying their application. Application against persons placed in a security cell of additional measures of compulsion is perceived as a situation requiring particular attention.

At the Penitentiary Institution in Racibórz, in majority of cases, measures of compulsion are applied against prisoners qualified to the therapeutic division for prisoners with neuro-psychotic mental problems or persons mentally impaired. Prisoners are each time subjected to medical examination, both before, during and after the application of the measure, despite the fact that the binding provisions do not impose such an obligation in the event that no injury was suffered by the prisoner, no threat occurred to his life or health and when he does not voice such a need. Measures of direct compulsion are applied only if such need arises and only for a necessary period of time. The quantity and type of applied measures of compulsion are limited to the necessary minimum. Prisoners are also subjected to intensified psychological and educational impact.

- *security cells in the Rawicz Prison should either be enlarged or withdrawn from use (paragraph 145)*

At the Penitentiary Institution in Rawicz, modernization of security cells consists of an increase of their space and it will be taken into account in the schedule of work for 2011.

**remarks**

- *it would be desirable for certain prisoners to have a right to at least one visit a week (paragraph 136)*

The binding provisions specify that a person convicted and placed in a penitentiary institution of a closed type may use two visits per month, a person convicted and placed in a penitentiary institution of a semi-closed type may use three visits per month, and a person placed in an open penitentiary institution of a closed type may use an unlimited number of visits. Attention should be drawn to the fact that, regardless of the type of the penitentiary institution where the convict serves his sentence, he may, as an award, be allowed to have an additional or longer visit, a permission to have a visit without a supervising person, a permission to have a visit in a separate room, without a supervisory person. Moreover, according to the Executive Penal Code, in cases particularly justified by family or personal conditions of the convict, awards may be applied as releases. Penitentiary institutions differ, in particular, from the point of view of the level of their security, isolation of convicts and rights and obligations deriving therefrom in regard of the freedom of movement around the institution and outside its premises. That is why in a penitentiary institution with the most severe regime, the number of visits is limited to two per month. In order to create conditions contributing to individual treatment of a convict and in order to encourage convicts to improve their behaviour, they are granted awards in the form of, among other things, additional visits.

- *the Polish authorities are called to introduce a system of reservation of visits at the Investigation Detention Centre in Poznań and to add at least one weekend day to the schedule of visits at the Racibórz Prison (paragraph 137)*

It should be emphasised that according to the Regulation of the Minister of Justice of 25 August 2003 on organizational-order rules and regulations of execution of penalty of imprisonment, the director of a penitentiary institution specifies in internal rules and regulations the days, times, places and agenda of visits. The binding provisions do not oblige the director to establish the time indicated in the remarks.

At the Investigation Detention Centre in Poznań, visits are carried out according to the binding provisions of law and according to the limits specified in the Executive Penal Code. Visits for convicts are held every Friday and on the three first Saturdays and three first Sundays of each month, between 8 a.m. and 12 noon. On average, about 60 visits per day are granted, with the capacity of 38 places for visitors. Visits for persons under detention on remand take place on Mondays and Tuesdays, Thursdays and on each fourth Saturday of the month. The above solution proves effective in practice. All visiting persons have a possibility of participating in the visit. Taking into account the specific character of the unit, an introduction of a system of reservations of visits could affect the contact of prisoners with their relatives. This applies, in particular, to newly-admitted prisoners and prisoners transported from other establishments. Reservation requires planning and scheduling of visits for particular prisoners on particular days, and then it would be difficult to grant a visit to a convict who is admitted, for instance, on Thursday, while the family wants to visit him on Friday.

At the Penitentiary Institution in Racibórz, in January 2011, Saturday was included in the schedule of visits.

- *the objective should be to offer a person under detention on remand weekly visits lasting at least one hour (paragraph 138)*

A preventive measure which is detention on remand is applied in order to secure proper course of penal proceedings. Contact with the outside world is limited due to the good of the proceedings which are conducted against a person under detention on remand. According to Polish law, a person under detention on remand may have a visit if such visit is consented to by the authority at the disposal of which the person remains. On 8 June 2010, an amendment came into force of the Executive Penal Code according to which a person under detention on remand is entitled to at least one visit a month of a persons belonging to the circle of his closest persons. A visit lasts 60 minutes. In the event that there are no counter-indications for more frequent contacts with the outside world, such visits are granted more often.

- *the Polish authorities are called to introduce a system at each institution where minutes would be kept of all types of disciplinary sanctions (paragraph 139)*

There is no need of keeping a separate register of disciplinary sanctions. The Prison Service has at its disposal a Central Database of Persons Deprived of Liberty NOE Net, where, apart from personal details of each prisoner, also disciplinary sanctions are listed. Additionally, requests for imposition of disciplinary sanctions are also entered in part B of the files of a prisoner.

- *remarks and recommendations made in paragraph 77 concerning application of tear gas also apply to penitentiary institutions (paragraph 144)*

The Law of 9 April 2010 on the Prison Service allows officers of the Prison Service to apply measures of direct compulsion against persons deprived of liberty. One of such measures of compulsion is constituted by chemical incapacitating agent or other substances of similar action (gas, gel). Each time, after an application of a measure of direct compulsion, such as gas or gel, the prisoner is provided with professional medical aid.

In the first half of 2010, in Polish penitentiary institutions and investigation detention centres, measures of direct compulsion were allied in total 700 times, including 6 times of application of chemical incapacitating agents or other means of similar action. According to the aforementioned statistics, chemical incapacitating measures or other measures of similar action are used by the prison service sporadically.

Officers of the Prison Service are regularly trained in the area of application of measures of direct compulsion, including chemical incapacitating measures or other measures of similar action. This is an obligatory topic of training forming a part of the preparatory course, training in military schools and in schools for warrant officer, as well as in schools for officers of the Prison Service. A duty of training officers in this regard constitutes a responsibility of managers of penitentiary units.

### **requests for information**

- *remarks of the Polish authorities concerning delays in providing replies to prisoners' complaints (paragraph 146)*

A complaint concerning the operation of organizational units and conduct of officers and employees of the Prison Service is considered by the manager of the organizational unit, if it is addressed to him, and if it does not concern his direct activity or direct activity of his deputy and the decisions taken by them, unless it is considered to be justified in this regard.

A complaint is considered by the regional director of the Prison Service in the event that it applies to the organizational unit it supervises and it has not been settled by the director of such unit.

In the event that a complaint is addressed to the Central Management of the Prison Service and it concerns the activity of organizational units and conduct of officers and employees of the Prison Service, it is immediately transferred, depending on territorial jurisdiction, for the purpose of its consideration, to an investigation detention centre or a penitentiary institution or to the regional director of the Prison Service supervising such organizational unit.

The submission of complaints by prisoners to the Ministry of Justice or the Central Management of the Prison Service delays their delivery to the relevant authority, and therefore, it lengthens the time of their consideration.

In the event that a complaint is sent directly to the director of an investigation detention centre or a penitentiary institution or the regional director of the Prison Service, prisoners have guaranteed prompt and proper consideration of the same.

In addition, I wish to advise that in 2008 1 case was identified of untimely consideration of a complaint, and in 2009, 11 such cases were identified.

#### **4. Social care and psychiatric establishments**

##### ***Living conditions***

##### **recommendations**

- *it is recommended that steps are undertaken by the management of the Home of Social Care in Bytom to ensure that all inhabitants suffering from physical impairment received the necessary help in order to be able to effectively use at least one hour of outdoor exercise (if the condition of their health is such that it is made possible) (paragraph 152)*

An assurance was obtained from the management of the Home of Social Care in Bytom that, as far as possible, inhabitants of that Home, including those with severe physical dysfunctions, will participate in various forms of therapeutic activities, including activating forms conducted outdoors.

The Minister of Labour and Social Policy obliged heads of provinces to create conditions enabling inhabitants who are in beds and those with significant physical dysfunctions (with the exception of persons who have specific counter-indications) to use outdoor exercises.

##### **requests for information**

- *the current situation regarding renovation of the Home of Social Care in Bytom (paragraph 151)*

The Silesia Department of Social Policy informed us of completion of the renovation work in the premises of the Home of Social Care in Bytom. All residential sites of the Home underwent complex renovation work. The conducted control performed by the inspectors from the aforementioned Department allowed us to establish that the Home meets the standards specified in the Regulation of the Minister of Social Policy of 19 October 2005 regarding homes of social care (Journal of Laws No. 217, item 1837). This provided for an issue of an administrative decision - a permit to operate the Home of Social Care in Bytom and 7 Dworcowa Street.

##### **recommendations**

- *a register of application of measures of direct compulsion should be introduced in the Home of Social Care in Bytom (paragraph 155)*

Post-visit findings mean that now the Home of Social Care in Bytom keeps a register of cases of use of measures of direct compulsion against its inhabitants.

The Minister of Labour and Social Policy drew the attention of heads of provinces to the Committee's recommendations included in the Report concerning an issue of keeping a register of application of measures of direct compulsion in homes of social care.



Moreover, currently a draft regulation is being prepared at the Ministry of Health which will include relevant provisions ensuring the implementation of the recommendation of CPT within the scope of a duty of keeping a register of application of measures of direct compulsion by homes of social care where persons with mental diseases reside. An amended legal act will also clearly and categorically specify the maximum time of application of measures of direct compulsion.

In the prepared draft, it will also be possible to introduce entries implementing recommendations of CPT regarding registration.

- *application of mechanical means of immobilization should be revised at the Psychiatric Hospital in Lubliniec in view of the remarks contained in paragraph 158 (paragraph 158)*

- *the Regulation of the Minister of Health and Social Care of 23 August 1995 regarding manners of application of measures of direct compulsion should be amended taking into account the remarks specified in paragraph 159 (paragraph 159)*

Currently a draft regulation is being prepared at the Ministry of Health which will include relevant provisions ensuring the implementation of the recommendation of CPT within the scope of a duty of keeping a register of application of measures of direct compulsion by homes of social care where persons with mental diseases reside. An amended legal act will also clearly and categorically specify the maximum time of application of measures of direct compulsion.

In the prepared draft, it is also possible to introduce provisions implementing recommendations of CPT regarding registration of application of chemical compulsion (administration of medications) in special forms, and notification of the director of the establishment of this fact, as well as an obligation to monitor, on a regular basis, the mental and physical condition of a person against whom a measure of direct compulsion is applied by a member of the medical personnel.

It should, however, be noted that implementation of these postulates must be spread in time, because the above changes of legislative nature will force healthcare institutions to introduce organizational changes in their functioning, and these will contribute to an increase of costs of operation of an establishment.

## **Security**

### **recommendations**

- *it is recommended to undertake steps aimed at ensuring that all inhabitants placed in a home of social care by force, as well as their guardians are systematically notified in writing of court decisions and that they are notified in writing and verbally by reasons of decisions and ways/deadlines for appealing against such decisions (paragraph 164)*

- *relevant legislation has to be amended in order to establish automatic revision at regular time intervals, by an independent authority, of a necessity of continued compulsory detention (paragraph 165)*

The above recommendation of CPT will be taken into account during the work on another amendment to the Law on Protection of Mental Health. However, an introduction of a relevant change must be preceded by consultations with the Ministry of Justice which will be aimed at obtaining information regarding the justification of the proposed changes and organizational possibilities of courts.

- *it is recommended to take steps at the Home of Social Care in Bytom and, wherever it is appropriate, in other institutions of social care in Poland, in order to ensure that all inhabitants unable to express their valid consent for their placement, having no guardian and having no possibility of leaving the establishment be reported to a relevant court (paragraph 166)*

The Minister of Labour and Social Policy obliged heads of provinces to take steps to ensure that all inhabitants unable to express their valid consent for their placement, having no guardian and having no possibility of leaving the establishment be each time reported to a relevant court.

- *the Polish authorities should attempt to find alternative solutions which will guarantee in a better manner the independence and impartiality of guardians (paragraph 167)*

A necessity of searching for an alternative solution for appointment of legal guardians for incapacitated persons from among the personnel of homes of social care where they reside is perceived by the Polish authorities. However, the appointment of a legal guardian often entails lots of difficulties, because even members of families do not always want to serve this function. That is why, in many cases, the only possible solution is to impose such an obligation on an employee of the home of social care, even though this solution is not accepted by the Ministry of Labour and Social Policy.

- *welfare courts should be encouraged to adopt a more active approach regarding talks with inhabitants during inspections of social care institutions (paragraph 168)*

Article 43 section 2 of the amended Law on Protection of Mental Health obliges the Minister of Justice to issue a regulation which would specify in detail the manner and procedure of exercising control in psychiatric hospitals and homes of social care for persons suffering from mental diseases or mentally impaired, taking into account a need of protection of rights and dignity of persons who are in psychiatric hospitals and homes of social care, as well as taking into account different kinds and types of these establishments. An introduction of a duty of a visiting judge to hold an interview with a patient would be possible under a newly-issued Regulation of the Minister of Justice.