



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

Distr.: General
15 November 2012

Original: English

Committee against Torture

**Consideration of reports submitted by States parties under
article 19 of the Convention**

**Combined fifth and sixth periodic reports of States parties due in 2011,
submitted in response to the list of issues (CAT/C/POL/Q/5-6)
transmitted to the State party pursuant to the optional reporting
procedure (A/62/44, paras. 23 and 24)**

Poland* ** ***

[22 May 2012]

* For the fourth periodic report of Poland, see CAT/C/67/Add.5; it was considered by the Committee at its 769th and 772nd meetings (CAT/C/SR.769 and 772), held on 10 and 11 May 2007. For its consideration, see CAT/C/POL/CO/4.

** In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not edited.

*** Annexes can be consulted in the files of the Secretariat.

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List of abbreviations

BG – Border Guard

CAP – Code of Administrative Procedure

CAPS – Central Administration of Prison Service

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

CCP – Code of Criminal Procedure

CCivP – Code of Civil Procedure

CM – Council of Ministers

CPT – European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

CSO – Central Statistical Office

CT – Constitutional Tribunal

EMS – electronic monitoring system

ECHR – European Court of Human Rights

EPR – European Prison Rules

EU – European Union

EPC – Executive Penal Code

FGC – Family and Guardianship Code GPET – Government Plenipotentiary for Equal Treatment

HFHR – Helsinki Foundation of Human Rights

ISA – Internal Security Agency

LC – Labour Code

MH – Ministry of Health

MIA – Ministry of the Interior and Administration

MJ – Ministry of Justice

MNE – Ministry of National Education

MND – Ministry of National Defence

MLSP – Ministry of Labour and Social Policy

NHP – National Headquarters of the Police

NPM – National Preventive Mechanism

NPPDV – National Program for Preventing Domestic Violence

OC – Ombudsman for Children

OF – Office for Foreigners

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

OPR – Ombudsman for the Patient’s Rights

PC – Penal Code

PCCPHRP – Plenipotentiary of the Commander in Chief of the Police for Human Rights Protection

PNSJPP- Polish National School of Judiciary and Public Prosecution

PG – Prosecutor General

PS – Prison Service

RD – Room for Detainees

RP – Republic of Poland

SCA – Supreme Court of Administration

I. Introduction

1. The previous – fourth – periodic report of the Republic of Poland on the implementation of the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Journal of Laws of 1989, No. 63, item 378, annex) covered the period from 1 August 1998 until 30 September 2004. Furthermore, additional information related to the period between October 2004 and May 2007 was submitted to the Committee during the session concerning the fourth report, held between 10 and 11 May 2007.

2. Consequently, the present combined fifth and sixth report pays special attention to the changes taking place in Poland from May 2007 until 15 October 2011. Since selected statistics furnished by the report are gathered annually, sometimes it was impossible to provide data updated beyond the end of 2010.

3. A major institutional change occurred in the period covered by the report. An amendment of the law on prosecution authority¹ entered into force on 31 March 2010 (Journal of Laws of 2009, Nr 178, item 1375); it separated the offices of the Minister of Justice and the Public Prosecutor General. Previously the office of the Public Prosecutor General had been combined with the office of the Minister of Justice, a member of the Government. The separation of the functions is meant to remove any and all doubts as to the full independence and freedom from political influences of the prosecution authority in Poland. Apart from the above division, the amendment introduced further changes. The Public Prosecutor General is appointed for a single 6-year term of office. Heads of all district and provincial appellate prosecution authorities are also appointed for terms of office of 6 and 4 years, respectively. The amendment likewise sets out principles of accessibility to the profession of a public prosecutor and sets in order questions of official supervision within the prosecution authority. The amendment of the law on prosecution authority enhances the status of so-called front desk public prosecutors that work on particular cases. Earlier, superiors of such prosecutors had the right to interfere with their work and the decisions they issued. It was hard to find traces of such interference. The amendment of the law on prosecution authority changed that. While superiors can still issue orders to their subordinates, they must do so in writing and there is an obligation to append a relevant document to the case file. The National Council of Public Prosecutors, which was set up pursuant to the amendment (patterned after the National Judiciary Council), monitors continuous learning and promotion paths of public prosecutors. Mechanisms were introduced which make the promotion of a public prosecutor contingent solely on professional criteria.

II. Replies to questions raised in the list of issues (CAT/C/POL/Q/5-6)

Reply to question 1 – Implementation of the Convention

4. The 1997 Constitution of the Republic of Poland sets out that Poland observes the international law binding upon her and that international agreements (including the Convention) are part of domestic legislation and are applied directly, unless their execution

¹ The Law of 20 June 1985 on prosecution authority (Journal of Laws of 2008 No. 7 item 39 as amended).

is dependent on the enactment of a separate law. The Convention against Torture occupies a special position in Polish legislation since as an international agreement concerning human rights, ratified with the consent of Polish Parliament, it takes precedence over domestic law. This means that in the event of a discrepancy between the provisions of the Convention and the provisions of relevant laws, the provisions of the Convention will be applied.

5. As to the question concerning a definition of torture raised by the Committee in the final observations – see reply to recommendation 2.

Reply to question 2 – Definition of torture

6. The Polish Penal Code does not contain a separate offence of torture. However, pursuant to the provisions of the Constitution quoted in response to question 1, a definition of torture as set out in Art. 1 section 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) is part of Polish legislation and provides a basis for penalising the offences indicated therein.

7. All the characteristic elements provided for in the definition of torture under CAT are penalised in Poland as constitutive elements of different offences set out by the Penal Code. The Polish Penal Code envisages the penalty of deprivation of liberty for a term of between 1 and 10 years for the use of force, unlawful threat, or another form of physical or mental abuse by a public official or anyone acting under his orders for the purpose of obtaining specific testimony, explanation, information or representation. Furthermore, the Penal Code envisages a penalty for abusing a person legally deprived of liberty; besides, a public official who, despite his duties, allows the perpetration of such act is also subject to a penalty. Any other abuse of authority of a public official perpetrated during or in connection with the performance of their official duties, as long as it is notified by the injured party or in any other way is communicated to the law enforcement authorities, is subject to an inquiry as a separate offence of abuse of authority or professional negligence, possibly in combination with other relevant penal provisions.

8. The content of the PC provisions providing the basis for penalising perpetrators of torture under the meaning of Art. 1 of the Convention was presented in the previous report, in observations concerning Art. 4 of the Convention “Legal regulations allowing the penalisation of acts of torture” (the content of the two most significant provisions of the Penal Code in this context is included once again below).

9. A change of the legal status presented in the previous report consists in the introduction by an amendment of the Penal Code (in force as of 8 September 2010) of Art. 247a, pursuant to which the provision of Art. 246 PC (extortion of testimony by a public official) applies respectively to an offence committed in connection with proceedings before any international criminal court or its body acting under an international agreement to which Poland is a party or established by an international organisation set out in an agreement ratified by Poland. The current version of Art. 246 of the Penal Code reads as follows:

Article 246. A public official or anyone acting under his orders for the purpose of obtaining specific testimony, explanations, information or a statement, uses force, unlawful threat, or otherwise torments another person either physically or psychologically shall be subject to the penalty of deprivation of liberty for a term of between 1 and 10 years.

Article 247.

(1) Whoever torments either physically or psychologically a person deprived of liberty shall be subject to the penalty of deprivation of liberty for a term of between 3 months and 5 years.

(2) If the perpetrator acts with aggravated cruelty, he shall be subject to the penalty of deprivation of liberty for a term of between 1 and 10 years.

(3) A public official who, despite his duties, allows the act specified in § 1 or 2 to be committed, shall be subject to the penalty specified in these provisions.

10. As a consequence, the introduction into the PC of the definition of torture enshrined in the Convention is immaterial from the point of view of human rights protection in Poland because, as indicated above, it would only be a reiteration of the already binding legal provisions. In turn, the adoption in full of the definition of torture as characteristic elements of only one offence would violate the principles of typology adopted for Polish criminal law, according to which criminal offences are divided into types on the basis of a kind of infringed interests of an individual protected by law. The Convention's definition of torture is very broad and covers criminal action related to many crimes, which because of the kind of infringed interests of an individual are provided for in different parts of the Penal Code.

11. To sum up: all the elements of the definition are reflected in the Polish Penal Code.

Reply to question 3 – Temporary detention

1. General observations

12. Improvement of the standards of use of temporary detention is one of the Government's priorities. Over the past few years a number of legislative, logistical and supervision actions have been taken; their positive effects have already become apparent. This development was likewise noted by the Human Rights Committee, which in its concluding observations of October 2010 (CCPR/C/POL/CO/6) stressed the progress made by Poland in the praxis of temporary detention.

13. It should be furthermore noted that the number of sentences where the European Court of Human Rights identified a violation by Poland of personal freedoms and the right to a fair trial dropped significantly: the Court observed a violation of Art. 5 of the ECHR (the right to personal liberty and security, including the practice of temporary detention) as many as 47 times in 2008, 35 times in 2009 and 14 times in 2010. In turn, the Court identified a violation of Art. 6 of the ECHR (the right to a reliable process of law within a reasonable time) as many as 72 times in 2008, 71 times in 2009 and in 59 times 2010.

14. It should be borne in mind that further consistent efforts need to be taken with a view to reaching a state that would be satisfactory to both the Government and the general public. Such activities are and will be taken.

15. The Minister of Justice monitors on an ongoing basis the length of proceedings and the use of temporary detention, as well as takes legislative, educational, supervisory, and logistical steps meant to streamline judicial proceedings and minimise the duration of temporary detention in criminal cases.

16. Statistical data prove that the above actions are efficient (see below – “Effects of the action taken” under section 3 (c)).

2. Introduction – principles of use of temporary detention

17. Polish law provides that to secure an adequate course of criminal proceedings and in exceptional cases also to prevent the perpetration of a new serious crime by the accused, the court and a public prosecutor in pre-trial proceedings may use specific preventive measures, but only the court may use temporary detention. The measures include: Police custody, bail, social guarantee, guarantee of a trustworthy person, suspension of the accused in the provision of professional duties or in the performance of an occupation or an injunction to abstain from particular activities or from driving a particular kind of vehicle, an injunction to vacate premises occupied jointly with a victim of an offence committed with the use of violence, the prohibition to leave the country as well as temporary detention.

18. Statistics on the use of preventive measures – see Appendix 3 A.

19. Temporary detention is a preventive measure that interferes the most acutely with the freedoms of the person with respect to whom it is applied. Polish law allows its use exclusively in strictly defined situations and for a duration stipulated by law.

(a) Exceptional guarantees of the use of temporary detention

20. Temporary detention may be used solely by a court of law and exclusively when the use of another preventive measure is insufficient. When using temporary detention the court may reserve that the measure will be changed the moment a designated bail is submitted by a particular deadline (Art. 257 CCP).

21. A decision on the use of any of the above preventive measures should contain a presentation of evidence indicating that the accused has committed an offence and an introduction of circumstance indicating the reasons for and need to use a preventive measure. In the case of temporary detention, the court should furthermore explain in the ratio decidendi why it has deemed the use of another preventive measure insufficient.

(b) Reasons for use

22. Preventive measures, including temporary detention, may be used solely when the evidence accumulated indicates a high probability of the defendant having committed an offence. Furthermore, they may be used to safeguard an adequate course of proceedings and only in exceptional cases to prevent another serious offence. Article 258 CCP enumerates situations when temporary detention may be used; these are as follows:

(a) A justified risk that the accused will escape or remain in hiding, especially when his or her identity cannot be proved or he or she is not a permanent resident in Poland;

(b) A justified risk that the accused will abet others to provide false testimony or explanation or in another unlawful way hamper criminal proceedings;

(c) The gravity of the potential penalty in a situation when the accused has been charged with an offence carrying a penalty of deprivation of liberty with the upper limit of at least 8 years, or if a court of first instance sentenced him to a penalty of deprivation of liberty for a period exceeding 3 years.

23. In exceptional cases, temporary detention may be applied when there is a justified concern that the accused charged with a crime or premeditated offence may commit a crime against life, health or general security, especially when they have threatened to commit such a crime.

24. Despite the occurrence of the above reasons, unless this is justified by special circumstances, temporary detention should not be used if the detention of the accused would: (1) pose a serious risk for his or her health or life; (2) have especially grave

ramifications for the accused or his family. Furthermore, temporary detention is not used when on the basis of the circumstance of the case it can be predicted that the court will sentence the accused to a penalty of deprivation of liberty and suspend its execution or to a less severe penalty or that the period of temporary detention will exceed the predicted duration of the penalty of deprivation of liberty without its exceptional suspension. Temporary detention cannot be used if an offence carries a penalty of deprivation of liberty for a period not exceeding one year, unless the perpetrator was caught in the act or directly afterwards. The two last limitations do not apply when the accused remains in hiding, persistently fails to appear in court or in another unlawful way hampers the proceedings or when his or her identity cannot be proved.

(c) Duration of use

25. The duration of temporary detention starts on the day of arrest (Art. 265 CCP).

26. Temporary detention may be used only for a designated period of time defined by the court in a decision on its use (Art. 251 § 2 CCP). Provisions of CCP set out the maximum duration of temporary detention, i.e. up to 3 months in pre-trial proceedings in the event of the use of this preventive measure of isolation. Because of special circumstances due to which pre-trial proceedings could not be concluded within this time, if necessary the court having jurisdiction over the case may extend temporary detention, but its total duration cannot exceed 12 months. The total duration of temporary detention until the first sentence of the first instance court is issued cannot exceed 2 years. An extension of temporary detention beyond these periods may exclusively be made by an appellate court in the province where the proceedings take place and exclusively in cases enumerated in the CCP.

27. In the period covered by this report a significant change occurred that limited the admissibility of extension of temporary detention. Amendment of CCP of 24 October 2008 (Journal of Laws of 2008, No. 225, item 1485) eliminated the following reasons from among those justifying an extension of temporary detention during judicial proceedings beyond the maximum periods indicated above (1 year and 2 years): “other significant obstacles whose removal was impossible”, “prolonging psychiatric observation of the accused” and “prolongation of the preparation of expert evidence”.

28. As a consequence of the above amendment, temporary detention may be extended exclusively when this is necessitated by: a suspension of criminal proceedings, actions taken to confirm the identity of the accused, collecting evidence in a case of exceptional complexity or conducted abroad, purposeful extension of proceedings by the accused.

(d) Other guarantees

29. The court without delay notifies a person closest to the accused about the use of temporary detention (this may be a person indicated by the accused). Furthermore, at the request of the accused another person may be notified in lieu of or apart from such a person.

30. The decision to apply a preventive measure may be appealed by the accused within 7 days. The complaint should be transferred within 48 hours since filing to a competent appellate court. Such a complaint is considered by the appellate court without delay.

31. Temporary detention and other preventive measures should be removed without delay or changed if the reasons justifying its use no longer appear or there are reasons justifying its removal or change. Such a request may be lodged by the accused at all times. The request is considered by the public prosecutor and upon the bringing of charges by the court hearing the case, at the latest within 3 days.

3. Action taken with a view to shortening the duration of temporary detention

32. The Minister of Justice takes legislative, educational, supervisory, and logistical action meant to minimise the duration of temporary detention in criminal cases.

(a) Legislative changes

33. In recent years a number of legislative changes have been introduced with a view to limiting the use of temporary detention, shortening its duration and minimising the duration of temporary detention in criminal cases, including e.g.:

(a) See the amendment discussed in paragraph 27 (Journal of Laws of 2008, No. 225, item 1485);

(b) The duration of psychiatric observation in a single case is determined to take a maximum of 4 weeks; it can be extended for a maximum period or up to 8 weeks. Furthermore, reasons for taking decisions on medical examinations of the accused combined with observation in a medical facility have been adopted; this is possible only when the evidence collected indicates a high probability that the accused has committed the offence (amendment of CCP; entered into force on 24 February 2009, Journal of Laws of 2009, No. 20, item 104);

(c) A new solution provides that in the event temporary detention coincides with the penalty of deprivation of liberty served by the accused in another case, the maximum periods of temporary detention in pre-trial proceedings, i.e. 12 months and 2 years of a total time until the first court sentence, include the period of the person under temporary detention serving the penalty of deprivation of liberty (amendment of CCP; entered into force on 24 February 2009, Journal of Laws of 2009 No. 2020, item 104);

(d) During pre-trial proceedings the suspect and his or her defence counsel are allowed to inspect the case file in the part containing evidence indicated in the request for the use or extension of temporary detention and enumerated in the decision on the use or extension of temporary detention. A public prosecutor may refuse consent to make available the case file in this part exclusively when there is a justified risk that this would jeopardise the health or life of the accused or another party to the proceedings, would risk the destruction or concealment of evidence or creation of false evidence, would jeopardise the identification and capture of an accomplice to the offence with which the suspect is charged or perpetrators of other offences revealed in the course of proceedings, would disclose current operation and detection activities or potentially hamper pre-trial proceedings in another unlawful way (amendment of CCP which entered into force on 28 August 2009, Journal of Laws of 2009, No. 127, item 1051). The above amendment is the execution of a CT judgement of June 2008 (K 42/2007), where the Court recognised that CCP was at variance with the Constitution since it allowed an arbitrary inaccessibility of files of pre-trial proceedings justifying the request for temporary detention filed by a public prosecutor. A request for consideration of this particular case was lodged with the CT by the Ombudsman.

(b) Non-legislative action

34. Directions of supervision over the operation of common courts are adopted on an annual basis. They indicate issues that are to be of special attention for presidents of courts as part of their administrative supervision. In recent years the directions have taken into account the question of temporary detention, including its duration. The Minister of Justice, referring to the standards of duration of temporary detention, obliged presidents of appellate courts to the following:

(a) (As of 15 January 2008) to exercise special supervision over cases where charges have been brought and the total duration of temporary detention exceeds 2 years, and to submit quarterly reports with information about the progress of such proceedings and about action taken as part of the supervision;

(b) Obligated presidents of courts of all levels and, respectively, heads of departments, to designate in such cases dates of hearings outside the regular schedule and to issue adequate resolutions assuring a smooth progress of proceedings.

35. The Minister of Justice also pointed out the need to precisely justify decisions on the use and extension of temporary detention, with references to particular evidence gathered. These questions were to be the focus of particular attention during meetings led by heads of criminal divisions of courts of all levels. Audits of pending cases where the total duration of temporary detention has exceeded 2 years is carried out in selected courts. Audits focused also on the degree of diligence and precision of ratios decidendi of decisions on an extension of temporary detention (no irregularities in this respect were identified during audits carried out in the past few years) and efficiency of supervision of court presidents and heads of divisions over prolonged criminal proceedings with the use of temporary detention. Audits are conducted by judges delegated to the MJ.

36. MJ widely disseminates information on international standards of the duration of temporary detention by: issuing publications, editing the MJ website and dispatching reports addressing this question to all courts.

(c) Effects of the action taken

37. The statistics provided in annual reports on the operation of common courts indicates that successive legislative changes combined with systematic supervision over the activities of common courts and dissemination of international standards on the use and extension of temporary detention bring about tangible effects. Relative to earlier years, the number of cases of temporary detention and the number of people under temporary detention dropped. Similarly, the number of people whose total duration of temporary detention during judicial proceedings exceeded 2 years decreased, too. For example, in 2008, 27 441 requests of a public prosecutor for the use of temporary detention were filed with district courts as a result of investigations or inquiries, which was 24.7% less than in 2007 (36 408 requests). The courts approved 24 145 requests, i.e. 22.8% less than in 2007 (31 271 requests). As of 31 December 2008, there were a total of 8 149 people at the disposal of district and provincial courts, i.e. 2 312 people (22.1%) less than in 2007 (10 461 people), while at the disposal of a public prosecutor there were 25 472 people under temporary detention, i.e. 7 637 people (23%) less than in 2007 (33 109 people).

38. Detailed statistics on the use of temporary detention – see Appendixes 3A - 3C.

4. Equitable remedy and compensation

(a) Equitable remedy for unjustified temporary detention

39. Pursuant to Art. 552 CCP, compensation and equitable remedy can be awarded to an accused for unjustified conviction, arrest, use of a preventive measure, and unjustified temporary detention:

Art. 552 CCP.

(1) An accused who as a result of resumed proceedings or cassation was acquitted or received a lighter sentence, is eligible for compensation from the State Treasury for the damage incurred and equitable remedy for the wrong suffered, as a

result of his or her being subject to part or entire penalty, which should not have been applied to him or her;

(2) Provision of § 1 applies also if upon the revocation of a sentencing judgement proceeding were dropped because of circumstances that were not taken into account earlier;

(3) The right to compensation and equitable remedy arises also in connection with the use of a preventive measure under the circumstances defined under § 1 and 2;

(4) Compensation and equitable remedy can be claimed also in the event of an undoubtedly unjustified temporary detention or arrest.

40. Statistics on the application of Art. 552 CCP – see Appendix 3 D.

(b) Complaint concerning an infringement of the right of a party to have a case considered in court without undue delay (re. A law of 17 June 2004 on a complaint concerning an infringement of the right of a party to have a case considered in pre-trial proceedings led by or supervised by a public prosecutor and in judicial proceedings without undue delay – Journal of Laws of 2004, No. 179, item 1843 – amended by a law of 20 February 2009)

41. Pursuant to the above law, a party may lodge a complaint demanding a confirmation that the (judicial or pre-trial) proceedings with her participation violated her right to have a case considered without undue delay. Such a violation is confirmed by the court if the proceedings to which the complaint refers take longer than necessary for the clarification of those factual and legal circumstances of the case that are indispensable for its resolution or longer than necessary to conclude an enforcement case or another case related to the enforcement of a court ruling (undue length of proceedings).

42. To conclude whether the proceedings were of undue length, the court should in particular assess the timeliness and adequacy of the action taken by a court to issue a decision concerning the matter of the case or of the action taken by a public prosecutor leading or supervising pre-trial proceedings to conclude these pre-trial proceedings or of the action taken by a court or a court executive officer to conduct and conclude an enforcement case or another case concerning the enforcement of a court ruling, taking into account the nature of the case, the level of its actual and legal complexity, significance for the complainant, the issues resolved in the case and the conduct of the parties, in particular of the party claiming the undue length of proceedings.

43. Persons eligible to lodge a complaint include:

(a) In proceedings in cases of fiscal offences and fiscal contraventions – a party;

(b) In proceedings in cases of contravention – a party;

(c) In proceedings related to the accountability of collective entities for punishable offences - a party or an applicant;

(d) In criminal proceedings – a party and a victim, even if not a party;

(e) In civil proceedings – a party, a third party and a participant to the proceedings;

(f) In administrative court proceedings – the claimant and a participant to the proceedings in the capacity of a party;

(g) In an enforcement case or another case concerning the enforcement of a court ruling – a party and another person exercising their rights in these proceedings.

44. When approving the complaint, the court represents that the proceedings to which the complaint refers took longer than necessary. At the demand of the claimant or ex officio the court recommends the resumption of the case by the court considering the matter of the case or the taking of adequate action by the public prosecutor leading or supervising the pre-trial proceedings within a designated time, unless the issuing of such recommendations is naturally dispensable. The recommendations cannot interfere with the scope of the factual and legal assessment of the case. When approving the complaint, the court, at the demand of the claimant, awards an amount of money ranging from 2,000 PLN to 20,000 PLN from the State Treasury, and in the case of a complaint concerning the undue length of proceedings led by a bailiff – from a bailiff. The party whose complaint was approved may in separate proceedings claim a redress of the damage incurred because of this undue length of proceedings from the State Treasury or jointly and severally from the State Treasury and a bailiff. The party who did not lodge a complaint concerning the undue length of proceedings may claim redress of the damage incurred because of this undue length under the provisions of the Civil Code, upon a binding conclusion of proceedings as to the matter of the case. A comprehensive assessment of the effectiveness of the amended law will be made on the basis of the monitoring in place.

Reply to question 4 – Rights of a person deprived of liberty

45. Rights of a person deprived of liberty are protected by Polish law.

1. Information about the possibility of having a defence counsel

46. Polish criminal procedure contains safeguards that guarantee a person under arrest to be notified about the right to a defence counsel. Pursuant to Art. 244 § 2 CCP, a person under arrest must be immediately notified about the reasons for arrest and their rights, including the right to a defence counsel; the person's explanations must also be heard out. The obligation of notifying such a person will only be fulfilled if the information is communicated in a manner assuring its comprehension by the person under arrest. The manner of notification should take into account, inter alia, the mental state of the person under arrest, his or her intellectual capacity, health status, and the command of the Polish language.

47. Pursuant to § 3 Art. 244 CCP, a record of the arrest shall be made in which the following should be included: the name, surname and position of the person conducting the action, the name and surname of the arrested person, and in the event that identity of the arrested person could not be established, a description of the said person, and the day, hour, place and reason for the arrest, and act for which he is suspected. The statements by the arrested person should also be recorded and the fact noted that he has been reminded of his rights, including the right to contact and talk directly to a defence counsel. The copy of the record shall be served on the arrested person.

48. Article 245 1 CCP stipulates that the arrested person, upon his demand, shall be given the opportunity to contact a lawyer by any means available, and also to talk directly with the latter. The person who made the arrest may reserve the right to be present when such a conversation takes place. See below a similar right of a person under temporary detention, Art. 215 EPC.

49. A relevant communication about the scope of rights and obligations is likewise received from the person conducting an examination by a person who is a suspect the moment he or she is presented with charges. Apart from being notified orally, the suspect furthermore receives the above information also in writing. The scope of rights includes also adequate communication of the right to a defence counsel. Immediate contact with the defence counsel should be made possible as soon after the arrest as this is technically possible. Contact with the defence counsel may be made in any way, feasible in the venue

the arrested person is staying, via telephone, fax, electronic mail, a letter written by the arrested person, delivered by the authority making the arrest, another institution or person.

2. Access of persons deprived of liberty to information about their rights

50. Persons under temporary detention, like other people deprived of liberty, have access to legal acts in libraries in penitentiary units. Each such library contains acts of criminal law: EPC, PC and CCP. If possible, the stock of these libraries is supplemented and updated on a regular basis.

51. In each penitentiary unit there is access to the electronic legal system "LEX", whose content is updated electronically. Detainees may obtain legal acts printed out from this system, if they communicate such a request to the tutor. Furthermore, the Central Administration of Prison Service launched a website accessible to all the administration employees of penitentiary units. The website contains inter alia CT rulings and regularly updated legal acts concerning the execution of the penalty of deprivation of liberty, which may be printed out at any time and made available to the detainees.

3. The right of persons under temporary detention to confidential contact with the defence counsel

52. Provisions of the code of criminal procedure comprehensively account for confidential contact of suspect and an accused under temporary detention with an attorney. Art. 215 - 1 EPC guarantees to a person under temporary detention the right to communicate with a defence counsel or attorney who is a defence counsel or legal advisor in the absence of third parties. Contacts with the above persons are not subject to limitations concerning direct personal contacts of detainees with their close family members. As a rule, contacts with the defence counsel or attorney take place in a manner allowing direct contact, are not monitored by a PS officer and are not limited to 60 minutes.

53. Pursuant to Art. 215 - 1 EPC, the authority at whose disposal a person under temporary detention remains may, however, reserve their presence or the presence of an authorised person during direct personal contact with the defence counsel or attorney. In such a situation a visit takes place in a manner indicated by this authority. This limitation follows CCP provisions, which set out that the reservation of the presence of a public prosecutor or a person authorised by him during a visit of a defence counsel or attorney cannot be retained or made after 14 days of the day of the suspect's temporary detention (Art. 73 - 4 CCP). As follows from jurisprudence, this kind of reservation should be made in exceptional circumstances and be motivated by an actual need to safeguard the interest of the proceedings.

54. The rights of a person under temporary detention under Art. 215 § 1 EPC apply likewise to his or her communication with the defence counsel or attorney via correspondence or a telephone. The provision of Art. 217a EPC, according to which the correspondence of a person under temporary detention can be retained, censored or monitored, does not apply in this situation. Furthermore, the provision of Art. 217c EPC that prohibits a person under temporary detention from using a telephone and other means of wireless and wire communication does not apply to contacts with the defence counsel or attorney. However, as in the case of direct visits, a public prosecutor may reserve monitoring of a suspect's correspondence with the above persons (Art. 73 § 3 CCP). A public prosecutor may not order or retain such monitoring after 14 days of the day of temporary detention in the case he has not reserved it earlier (Art. 73 § 4 CCP).

4. Access to a physician

55. A person detained by the Police is offered immediately first medical aid or is subject to a necessary medical examination in the event this person is in a state putting his life or

health at risk, in particular when he has visible bodily injuries or has lost consciousness; represents that he suffers from ailments requiring permanent or periodic treatment; demands first medical aid or a necessary medical examination

56. Prior to placement in a Police Room for Detainees, a detainee undergoes a medical examination checking if placement in such a room will not adversely affect his or her health status. Should the RD staff or the detainee identify a deterioration of the health status, professional medical help is provided without delay. An examination is carried out and medical help provided by a health care facility that has signed an agreement with the Police for providing such services. In case of an emergency, medical help is provided under general rules (medical ambulance).

57. RDs are equipped with first-aid kits with a basic medical package. More and more Police units are equipped with resuscitation sets. Police officers already during the basic training program are taught first pre-medical aid.

5. Right to notify a family member

58. CCP stipulates (Art. 245 and 261 CCP) that the authority making an arrest and the court deciding on the use of temporary detention are obliged to immediately notify the closest family member of the detainee (at his or her demand) and of an accused (ex officio). At the demand of a detainee/accused also another person may be notified instead of or apart from the closest family member. According to PC provisions, the closest family member includes a spouse, parents and grandparents, children and grandchildren, brothers and sisters, mother in law and father in law, brothers in law and sisters in law, daughters in law and sons in law, adoptee and his or her spouse, as well as a cohabitant. CCP indicates that a detainee/accused may indicate a person to be notified. If they fail to do so, such a person is indicated by the relevant authority. In such a situation the choice of the person to be notified from the above immediate family members should not be determined by the degree of relations but the relationship between the detainee/accused and that person.

59. Furthermore, upon placement in a detention facility, an accused has the right to immediately notify about the place of his or her stay the closest family member or another person, association, organisation or institution, as well as their defence counsel, and a foreigner has moreover the right to notify an appropriate consular office and in its absence a relevant diplomatic representative (Art. 211- 2 EPC).

Reply to question 5 – Legal aid

1. Conditions for obtaining free of charge legal aid – legal regulations (including those related to the institution of voluntary acceptance of a penalty – Art. 387 CCP²)

60. An accused who has not chosen a defence counsel may demand an appointment of one, provided he or she duly demonstrates that they are unable to bear the costs of defence

² Art. 387 CCP

1. Until the conclusion of the first examination of all the accused persons during the first instance trial, the accused charged with an offence may file a request for a convicting sentence and subject him or herself to a penalty or a punitive measure without evidence being collected; if an accused has no defence counsel of his or her own choice, the court may appoint one to him or her.

2. The court may approve a request of an accused for a convicting sentence when the circumstances of the offence do not raise doubts and the objectives of the proceedings are reached without a full trial; approval of such a request is possible only when a public prosecutor and the victim duly notified about a time of the trial and about a possibility of the accused filing such a request, do not object to it.(...).

without the detriment to the upkeep of themselves and their family (Art. 78 § 1 CCP). To this end the accused should file a written representation about his or her material status.

61. When an accused has not chosen a defence counsel, the president of the court considering the case appoints for him or her a defence counsel in the following cases:

(a) If the accused duly demonstrates that they are unable to bear the costs of defence without the detriment to the upkeep of themselves and their family;

(b) In the event of obligatory defence, i.e. when the accused is underage, deaf, mute, blind, or when there is a justified doubt concerning his or her sanity;

(c) Or when the court deems it necessary because of the circumstances hampering the defence (Art. 79 CCP);

(d) In proceedings before a provincial court as a court of first instance, where the accused is charged with a crime or is deprived of liberty (Art. 80 CCP);

(e) If a court does not order the forced appearance of the accused who has no defence counsel for a hearing in appellate proceedings (Art. 451 CCP).

62. According to Polish criminal procedure, when deciding on appointing a defence counsel the court takes into account the need of real protection of the interest of the accused, especially with respect to his or her right to defence. At the same time it should take into account the status and personal conditions of the accused.

63. Furthermore, the court, if it sees a possibility of resolving the case through a voluntary acceptance of a penalty (Art. 387 CCP) and concludes that the accused at the beginning of a trial has no defence counsel (either chosen or appointed), should instruct the accused about the possibility of filing a request for an appointment of a defence counsel.

64. In civil proceedings, the reason for providing legal aid ex officio is a request filed by a party to the proceedings for the appointment of a defence counsel or attorney. According to Art. 117 CCivP, this request may be filed by a party together with a request for a waiver of court fees or irrespective of this request.

65. In this respect, an amendment of CCivP which entered into force in April 2010 (Journal of Laws of 2010, No. 7, item 45), introduced a change that significantly extends the group of people eligible for free of charge legal aid of a defence counsel or attorney. Previously, a party was eligible for appointment of a qualified attorney during the proceedings exclusively in a situation when this party was earlier exempt from all or part of court fees by a court ruling or was subject to a statutory waiver of court fees. This regulation was found in contravention of the Constitution by the CT, as unduly limiting the right of access to court (a ruling of 16 June 2008, file No. P 37/07). Pursuant to the CT ruling, a refusal to appoint legal aid ex officio may take place exclusively when it is inadmissible or there is no prospect of a positive resolution of a case for a party, or the appointment of this aid is not indispensable because of the interest of the judicial system.

66. A request for the appointment of a defence counsel of a party who is not exempt from court fees and is a natural person should contain a statement that it is unable to bear the costs of remuneration of a defence counsel or attorney without the detriment to the upkeep of themselves and their family, while a legal person and another entity granted a possibility to appear in court by statute should make a representation indicating that it has insufficient means to cover the costs of remuneration of a defence counsel or attorney.

67. The court approves the request if it concludes that the participation of a defence counsel or attorney is indispensable (Art. 117 § 5 CCivP), e.g. because of the high factual or legal complexity of the case. A decision of a court refusing the appointment of a defence counsel or attorney can be appealed to a court of second instance.

68. A request should be considered immediately and it follows from jurisprudence that its belated consideration may lead to the annulment of proceedings due to the deprivation of a party of the defence of their rights.

69. It should be indicated that while in principle the appointment of an attorney takes place at the demand of a party, in cases under the law of 19 August 1994 on the protection of mental health (Journal of Laws of 2011, No. 231, item 1375 as amended), the court may appoint an attorney for a person to whom the proceedings apply even without a request, if this person because of his or her mental health status is unable to file a request and the court deems necessary the participation of an attorney in the case.

70. In Poland, free of charge legal aid can be provided by active defence counsels or legal advisors. Their numbers grow year by year:

(a) The number of active defence counsels: year 2005 – 6,179, year 2006 – 6,651, year 2007 – 6,930, year 2008 – 7,260, year 2009 – 7,699, year 2010 – 8,998.

(b) The number of active legal advisors: year 2005 – 17,500, year 2006 – 18,421, year 2007 – 18,951, year 2008 – 19,279, year 2009 – 19,309, year 2010 – 20,430.

71. The increase in the number of defence counsels and legal advisors results, *inter alia*, from the policy of the Government, aiming at facilitating access to legal professions, which is to contribute to improving the accessibility of the general public to legal services.

72. Between 2007 and 2010, over 394 million PLN (ca. 100 m euros) was paid from the state budget to cover costs of free legal aid. Data for 2011 will be available in 2012.

2. Legislation drafts

73. Questions related to access to free of charge legal aid provided by the state to natural persons were worked on by the Polish parliament during its 5th term of office (2005–2007). According to the principle of discontinuation of parliamentary work, the drafts discussed by the Sejm at that time were later discontinued.

74. At the end of December 2008, MJ prepared draft assumptions for a draft law on free of charge legal aid and legal information for natural persons, envisaging the provision of pre-trial legal aid (dependent on the level of income) and provision of legal information (without any limits). The tasks of providing legal aid and legal information, as official tasks of government administration, were to be carried out by county family support centres and social welfare centres. Free of charge legal aid would be provided to people whose family and material status has been assessed by agendas of social welfare.

75. The draft was subject to consultation with governmental and non-governmental institutions and the Ombudsman. On 4 May 2010, the Council of Ministers adopted a preliminary draft of a statute in the part dedicated to free of charge legal information for natural persons. According to the assumptions adopted by CM, legal information should include, *inter alia*, the provision of knowledge about the current legal provisions, the rights and obligations arising from relevant provisions and about the institutions competent to resolve a given case. The right to legal information will not be limited by any criterion and will be available to all natural persons. Information will be available as a free of charge helpline. Legal information is one of the elements of the entire system of providing legal aid to the indigent, hence the creation of a network of institutions of legal information aims at assuring these people with legal know-how necessary for different life situations and is a step towards the creation of a comprehensive, sustainable and coherent system of legal aid. At the same time, CM decided that the Minister of Justice will prepare and conduct a pilot program of free of charge legal aid, whose effects will contribute to a reliable and thorough assessment of the financial results of the future law of out-of-court free of charge legal aid

for natural persons. The pilot program would be conducted in one voivodship. Work is underway at present to conduct such a pilot program.

3. Other initiatives

76. In addition to an implementation of the above planned mechanism, the system of legal aid will be supplemented by a number of initiatives which are already fully operational now. These are as follows: university consultancies, non-governmental organizations and public institutions in charge of social welfare and human rights protection.

77. The Ombudsman plays a significant role with respect to granting legal assistance and aid to Polish citizens and foreigners staying in Poland. Lawyers providing legal counselling and assistance to all interested parties are on duty in regional branches of the Office of the Ombudsman. The Ombudsman is authorised to initiate proceedings and apply to relevant state authorities on being notified about an alleged infringement of human and civil freedoms and rights, including the principle of equal treatment. In 2009 the Office of the Ombudsman admitted 6,758 interested individuals and held 22,960 telephone conversations, providing explanations and counselling; in 2010 the Office admitted 6,217 interested individuals and held 20,763 telephone conversations, providing explanations and counselling. Data for 2011 will be available in 2012.

78. University Law Clinics (established at many public universities) are a popular system of free legal assistance offered by law students and their scholarly supervisors. Students gathered in a student counselling centre provide legal aid to indigent persons who cannot afford to pay the services of a defence counsel or legal advisor. Moreover, assistance offered by students has an invaluable educational aspect, conducive to the creation among young legal professionals of an ethos of work pro publico bono. Among others, the clinic at Warsaw University received financial support of the European Refugee Fund for the implementation of the project known as a Law Clinic for Refugees. Such projects are supported by the Helsinki Foundation of Human Rights, which in 2006 adopted a special textbook and guide for law clinics for the benefit of refugees and migrants. The Ombudsman signed cooperation agreements with so-called university law clinics (at present they operate at: Jagiellonian University, Warsaw University, Białystok University, Academy of Public Administration in Białystok, Nicolas Copernicus University in Toruń, Szczecin University, Łódź University, Śląski University, Wrocław University, Gdańsk University, Catholic University of Lublin, Maria Curie-Skłodowska University in Lublin, Leon Koźmiński Academy in Warsaw, R. Łazarski Academy of Commerce and Law in Warsaw) and Offices of Civil Counselling, Akademia Iuris Foundation, and the Foundation of University Law Clinics. The office of the Ombudsman issued over 50 guidebooks edited by students active in university law clinics in a series Informator RPO. Some of the publications are uploaded on the website of the Ombudsman in the bookmark “e-poradniki” [e-guidebooks]. Furthermore, the Ombudsman publishes a popular legal handbook *Codziennik Prawny*. As part of their cooperation, the law clinics submit to the Ombudsman cases which to their mind require his intervention. These are cases of clients of university law clinics, forwarded with the consent of these clients, as well as more general issues, e.g. concerning improper practices of offices or testifying to the need of amending particular legal provisions. Furthermore, the Office of the Ombudsman facilitates internships for students active in university law clinics. As part of the aforementioned cooperation, periodic conferences and debates have been held, including e.g. 6.10.2004 “Access to information and legal counselling – comprehensive solutions” and 31.03.2005 “Public access to free legal aid”. The Ombudsman granted an award of the Ombudsman to the Stowarzyszenie Akcja Społeczna (SAS) association for their action aimed at raising the legal awareness of the general public.

79. Furthermore, MJ coordinates action taken within the framework of the project “Assistance Network for Crime Victims”. Detailed information is provided in replies to questions 31-33.

4. Specialist counselling – social welfare

80. The basic legal act that regulates the principles of specialist counselling is the law of 12 March 2004 on social welfare (Journal of Laws of 2009, No. 175, item 1362 as amended).

81. Specialist counselling (legal, psychological and family) is one of the tasks of a lower tier administration unit (county, PL: powiat). Specialist counselling is provided to individuals and families who have problems or indicate a need for support in the resolution of their daily problems irrespective of their income. Legal counselling is provided by supplying information on binding provisions of family and guardianship law, social security, protection of residents’ rights. In 2010 this kind of counselling was provided by 369 entities across Poland. Psychological counselling takes the form of diagnosis, prevention and therapy. Family counselling refers to a comprehensive range of issues related to family life, including problems of rearing children in biological and foster families and problems of care of a person with a disability, as well as family therapy.

82. Supervision over the operation of entities providing specialist counselling is conducted by county authorities with the aid of a county family assistance centre.

83. Voivods (authorities of a higher tier of administrative division, a voivodship or province) keep a register of entities providing specialist counselling. These registers are commonly accessible and are published annually in an official journal and are likewise published on the voivodships’ website. This is to provide access to the general public and facilitate access to facilities offering specialist care and make it possible for judges to refer a family to an adequate facility which will provide it with comprehensive assistance.

84. Apart from separate and specialised facilities, specialist counselling is likewise provided by social welfare units:

- County family assistance centres;
- Social welfare centres;
- Emergency care facilities;
- Adoption and care centres;
- Specialist support centres for victims of domestic violence.

Reply to question 6 – Violence against women

1. Information on legal provisions – domestic violence

85. On 29 July 2005 a law was adopted on preventing domestic violence (Journal of Laws of 2005, No. 180, item 1493 as amended). Its objective is to increase the efficiency of domestic violence prevention and social awareness of the reasons and effects of domestic violence.

86. The law defines domestic violence as a single incident or recurring action or inaction that violates the rights or personal interests of the closest family members and other persons sharing the same residence or household, in particular exposing these persons to the risk of a loss of life, health, violating their dignity, personal inviolability, freedom, including sexual freedom, resulting in damage to physical or mental health, as well as inflicting

suffering and moral damage in persons affected by violence (Art. 2 item 2 of the above law).

87. Polish PC does not define the offence of domestic violence. However, a number of offences penalised in the PC exhibit the features that refer to domestic violence. One of them is the offence of abuse under Art. 207 § 1 PC. It envisages sanctions in the form of the penalty of deprivation of liberty for mentally or physically abusing a person close to him, or another person being in a permanent or temporary state of dependence to the perpetrator, a minor or a person who is vulnerable because of his mental or physical condition. Depending on the form of violence and its intensity, the behaviour of the perpetrator may answer the description of other offences, e.g. rape (Art. 197 PC), unlawful threat (Art. 190 PC) or homicide (Art. 148 PC).

88. After a few years of operation of the law on preventing domestic violence it was deemed necessary to increase the efficacy of protection of different categories of victims of domestic violence, in particular women and children. As a result, provisions of the law on preventing domestic violence and other laws were amended (the amendment entered into force on 1 August 2010).

89. The most significant changes in the law on preventing domestic violence included:

(a) An obligation was imposed on local government units to prepare and implement programs of domestic violence prevention and protection of victims of domestic violence;

(b) An obligation was imposed on local governments to create interdisciplinary task groups;

(c) An obligation was imposed on the voivods to set up a voivodship coordinator for the implementation of the National Program for Preventing Domestic Violence;

(d) The tasks of the minister competent for social security were extended with the preparation and financing of programs of domestic violence prevention: within the framework of the project “Support of Local Government Units in the Creation of a System of Domestic Violence Prevention”, municipalities (lowest local government units) may apply for government financial support for local programs of violence prevention (in 2011 an amount of 2,875,000 PLN, i.e. ca. 750,000 euros, was earmarked for this purpose). These local programs are supposed to help families affected by domestic violence and those at risk of domestic violence;

(e) Principles of implementing the “Blue Card” procedure were determined; according to it representatives of entities of social welfare, municipality commission for the resolution of alcohol-related problems, education, health protection, and the Police take action for the benefit of persons suspected of being affected by domestic violence and people suspected of perpetrating domestic violence;

(f) Forms of help provided to victims of domestic violence were extended by a possibility to undergo a free of charge medical examination to determine the causes and kind of bodily harm and to issue a medical statement in this case (previously the costs of such examinations carried out on the initiative of the victim were borne by the victim);

(g) An obligation was imposed on persons who because of their professional or occupational duties suspect an offence prosecuted ex officio involving domestic violence to notify about it without delay the Police or public prosecutor;

(h) An obligation was imposed on witnesses of domestic violence to notify relevant authorities about it;

(i) A social worker was entitled to remove a child from a family in the event of a risk of life and health (such actions will be carried out by a social worker in the presence of the Police and health care workers);

(j) A new mode of issuing decisions on a perpetrator of domestic violence vacating the premises shared with the victim;

(k) A new entitlement was introduced for a probation officer to file a request with a court to order a penalty of deprivation of liberty that was earlier suspended or the revocation of conditional parole.

90. Furthermore, the amendment introduced the following changes:

(a) In PC through the inclusion of:

- New penal measures in the form of an injunction to vacate premises shared with the victim (Art. 39 item 2e PC in conjunction with Art. 41a PC) and a restraining order (Art. 39 item 2b PC in conjunction with Art. 41a PC);
- New probation measures such as a restraining order (Art. 72 § 1 item 7a PC) and the entitlement of the court to suspend the execution of a penalty and to rule on the convicted person's participation in corrective and educational programs without his or her prior consent (before the amendment the consent was necessary);
- An obligation imposed on a court to rule on the penalty of deprivation of liberty with respect to a perpetrator of domestic violence, if the perpetrator during a suspension of a penalty repeats the use of violence or unlawful threat against the closest family member sharing a place of residence with the perpetrator.

(b) CCP by the introduction of:

- A clear legal basis allowing (or demanding – in the case the perpetrator of violence uses a hazardous object) the Police to arrest a perpetrator of domestic violence (previously the Police did not have this obligation, and a perpetrator of domestic violence was arrested in the event of a risk for the life or health of the victim);
- New preventive measure (Art. 275a CCP) in the form of an injunction issued to the person validly sentenced for the offence of domestic violence against a person sharing a place of residence with the perpetrator to vacate the shared premises if there is a justifiable risk that the person convicted of this offence will repeat the offence with the use of violence against this person, especially if the perpetrator has threatened to commit such an offence.

(c) EPC, by the introduction of an obligation of revoking conditional suspension by the court if a person validly sentenced for the offence of domestic violence, during the period of conditional parole, repeats the use of violence or unlawful threat against the closest family member sharing a place of residence with the perpetrator.

2. Actions of the Ministry of Justice

91. MJ has for a number of years taken extensive efforts with a view to strengthening the position of crime victims, including victims of domestic violence. One of the earlier activities, also ones taken in cooperation with the National Headquarters of the Police and non-governmental organisations, was the publication by MJ of a “Charter of Rights of a Person Affected by Domestic Violence”. The “Charter of Rights” includes a fundamental set of entitlements and a list of support facilities. All interested parties will find there inter

alia a telephone number to the Police, an emergency telephone number 112, a telephone number to the National Emergency Service “Blue Line” and to support facilities offering assistance to victims of such offences. At present the “Charter of Rights” is being distributed, e.g. to common courts and Marshals of voivodships (heads of the executive authority of voivodships), and via them to Specialist Support Centres for Victims of Domestic Violence and other support entities. More information on the actions taken by MJ in response to questions 31-33.

Emergency and information telephone line

92. In January 2011 an information and intervention telephone line was launched (i.e. the National Emergency Service for Victims of Domestic Violence “Blue Line”, phone 801 12 00 02) targeted at persons victimised by the offence of domestic violence. The telephone helpline was launched thanks to the support of MJ, National Headquarters of the Police and the State Agency for Resolving Alcohol-related Problems (PL: PARPA) to provide comprehensive and efficient support to victims of offences perpetrated by persons previously validly sentenced for the use of violence against family members.

93. The operating procedure of the telephone helpline assumes that the consultants on duty, once notified by the victim (by the emergency telephone helpline) that a person previously validly sentenced for the use of violence against family members repeats the use of violence, notify the Police and probation officers. The Police and probation officers, in turn, take their statutory actions leading to the court’s issuing a decision on the enforcement of the penalty of deprivation of liberty (if the perpetrator of violence has been put on parole) or revoking the parole (if the perpetrator of violence is on parole). Here the legislative changes described in section 87 above are of special significance.

94. Details on the telephone helpline available at www.parpa.pl and www.niebieskalinia.info.

95. Fliers and posters were prepared and disseminated containing information about the information and intervention telephone line, about what domestic violence is and about the steps that should be taken by the victim of such violence. Fliers and posters were disseminated in Police units, prosecution authorities, district and provincial courts, including among probation officers. They were posted in generally accessible places, i.e. on bulletin boards, client service offices, secretariats and document collection units. Furthermore, interactive banners forwarding the interested party to the website of the National Emergency Service for Victims of Domestic Violence “Blue Line” were installed on court websites. This material was also forwarded to Support Centres for Crime Victims to be distributed among individuals applying for assistance.

3. National Program for Domestic Violence Prevention

96. Tasks defined in the provisions of the law on domestic violence prevention are implemented by the NPPDV, approved by the Council of Ministers on 25 September 2006 and covering the period 2006–2016. Implementation reports are published on the MJ and MLSP websites.

97. The NPPDV is addressed to:

- (a) Victims of domestic violence:
 - Women
 - Men,
 - Children
 - People with disabilities

- Seniors

- (b) Perpetrators of domestic violence
- (c) Witnesses of domestic violence

98. Actions of NPPDV to decrease the level of domestic violence are implemented via the following.

(a) Ongoing diagnosis of domestic violence

99. Among the activities taken within the NPPDV, every year MLSP commissions a diagnosis of domestic violence. The first such study was a diagnosis of this question across Poland, while subsequent ones were targeted at individual categories of victims listed in the Program. The need to conduct a general study followed by detailed ones arose from the fact that no diagnoses concerning detailed characteristics of categories of victims of domestic violence had been conducted in Poland. In 2007 the TNS OBOP Public Opinion Centre carried out a study on domestic violence, and in 2008 extended this study with domestic violence against children. In 2009, a study on domestic violence against senior citizens and people with disabilities was conducted by the Polish Academy of Sciences, while in 2010 the TNS OBOP Public Opinion Centre diagnosed domestic violence against women and men. The results of studies are uploaded on the website of MLSP.

100. It follows from the study conducted in 2010 that:

(a) Of the total number of victims of domestic violence, 39% are men and 61% women. Women are the biggest percentage of the total number of victims of sexual abuse in the family (90%). When it comes to physical violence in the family, women account for 63% of the total number of victims, and men for 37%. Similarly, when it comes to psychological abuse, 64% of the victims are women and 36% men. When it comes to economic abuse, 70% of the victims are women and 30% men;

(b) Perpetrators of domestic violence (in general, irrespective of the form of violence): 70% are men and 30% women. When a woman is the victim of domestic violence, men constitute a still greater group (79% vs. 21%). However, when a man is the victim, the situation looks slightly different, since men account for 53% of the total number of perpetrators and women for 47%;

(c) Perpetrators of mental abuse in the family: 70% are men and 30% women. When a woman is the victim of this kind of abuse, men constitute a still greater group (81% of perpetrators are men and 19% women). However, when a man is the victim of mental abuse, the situation looks different, with male and female perpetrators being equal in numbers (50% men, 50% women);

(d) Perpetrators of economic violence in the family: 68% are men and 32% women. When a woman is the victim of this kind of abuse, men constitute a still greater group (79% of perpetrators are men and 21% women). However, when a man is the victim of economic abuse, the situation looks different: 42% of perpetrators are men and 58% women;

(e) Perpetrators of physical violence in the family: 75% are men and 25% women. 84% of perpetrators of physical violence against women are men and 16% are women. However, when a man is the victim of physical violence, 60% of perpetrators are men and 40% women;

(f) Perpetrators of sexual violence in the family: 91% are men and 9% women. 95% of the perpetrators of physical violence in the family against women are men and 5% are women. In turn, 62% of the perpetrators of physical violence in the family against men studied are men and 38% are women. (The results concerning the profile of perpetrators of

sexual violence should be regarded with great caution because of the small number of subjects studied).

(b) Raising the awareness of and sensitivity to domestic violence in the general public:

101. Affecting a change of public awareness is a matter of utmost importance. The NPPDV envisages social campaigns at the central and local levels.

102. In 2007 a nationwide campaign was carried out aimed at raising the awareness of and sensitivity to domestic violence in the general public. One of the elements of the campaign included the distribution to Voivodship Offices of 4 000 posters and 400 000 fliers for further dissemination. The priority task of the campaign consisted in providing information on assistance to victims and witnesses of domestic violence.

103. Between 2008–2009, a nationwide campaign was carried out aimed at preventing violence against children. The campaign was implemented by MLSP in cooperation with two foundations, Krajowe Centrum Kompetencji and Dzieci Niczyje. Its first part, “Kocham – nie biję” “I love and do not spank” (TV spots featuring celebrities showing how to properly take care of a child) was targeted at persons affected by violence, children and young people, parents, representatives of institutions involved in domestic violence prevention, and perpetrators of violence. The second part of the campaign, “Kocham – reaguję” “I love and react”, was targeted at the general public and encouraged reactions to instances of child abuse (TV and radio spots, posters, fliers, brochures, website, and emergency telephone line of Krajowe Centrum Kompetencji). The third part, “Dobry Rodzic” “Good Parent”, was targeted at parents and guardians of small children (aged 0 to 3 years). Its objective was to provide information about the ways of coping with the stress of the process of child rearing and to sensitise the target groups to the inefficiency of spanking as an education method (TV and radio spots). The posters, fliers and brochures prepared by the foundation were forwarded to Marshals of voivodships to be further disseminated among counties and municipalities. The last part, “Dzieństwo bez przemocy” “Childhood without violence”, was to show the inefficiency of physical violence in child rearing (TV spot, fliers and brochures showing educational methods alternative to the use of violence).

104. The “Nationwide Social Campaign for the Prevention of Domestic Violence Against Seniors and People with Disabilities” was launched in 2010.

105. The campaign aimed at raising the awareness of and sensitivity to domestic violence with respect to senior citizens and people with disabilities in the general public and endeavoured to reach out to victims and witnesses of domestic violence.

106. Within the campaign, 6 100 posters and 61 000 fliers were made and then forwarded to Marshals of voivodships.

107. The above materials were distributed to entities of social welfare, specialist support centres for victims of domestic violence and places accessible to the general public. They were moreover used during trainings for “First contact” employees dedicated to prevention of domestic violence. Within the campaign, a handbook for first contact employees was prepared entitled *Przemoc w rodzinie wobec osób starszych i niepełnosprawnych. Poradnik dla pracowników pierwszego kontaktu* (Domestic violence with respect to senior citizens and people with disabilities. Handbook for first contact employees) and a spot was broadcast by public television “Nie krzywdź, a nie będziesz krzywdzony” (Do not do harm, and you shall not be harmed).

108. At the end of 2011 a nationwide social campaign will be launched dedicated to women and men who have been victims of domestic violence.

• (c) **Training for services involved in the prevention of domestic violence**

109. Trainings are targeted at persons who have a direct contact with victims of domestic violence, namely social workers and county family support centres, Police officers, probation officers, school educators, representatives of the health service, members of commissions for the solution of alcohol-related problems at municipality level, staff of social therapy day centres, care and education facilities and adoption and care centres, employees of non-governmental organisations, psychologists, representatives of the clergy, officials coordinating questions related to the prevention of domestic violence and therapists from addiction therapy centres. Trainings are dedicated to the creation of local systems of domestic violence prevention and to the implementation of relevant tasks in collaboration with interdisciplinary teams. The principal objectives of the trainings are as follows:

- (a) Provision of fundamental knowledge concerning domestic violence;
- (b) Increase of efficient elimination of domestic violence;
- (c) Provision of knowledge on how to diagnose domestic violence;
- (d) Provision of knowledge on how to work with the victim and perpetrator of domestic violence;
- (e) Creation of interdisciplinary teams;
- (f) Provision of knowledge on how to work with the victim of domestic violence who is a senior or a person with a disability.

Table 1
Numbers of first contact employees attending training

2007	2008	2009	2010
4,543	4,593	1,872	5,519

110. Actions taken with a view to assuring protection and assistance to persons affected by violence through the activity of specialist centres performing tasks defined in the regulation of the Minister of Labour and Social Policy of 22 February 2011 on standards of basic services provided by specialist centres of support for victims of domestic violence, qualifications of the staff of these facilities, detailed directions of corrective and educational activities targeted at perpetrators of domestic violence and qualifications of the persons leading corrective and educational activities (Journal of Laws of 2011, No. 50, item 259). There are a total of 36 specialist support centres for victims of domestic violence in Poland. They provide shelter and offer free of charge assistance in the form of psychological, medical, legal, and social counselling.

Table 2
Numbers of people using the assistance of specialist centres of support for victims of domestic violence

2006	2007	2008	2009	2010
916	4,944	7,590	7,554	8,676

(d) **Impact on persons using violence through corrective and educational programs**

111. Corrective and educational programs for perpetrators of domestic violence are carried out as individual meetings or group work. Classes follow “The Duluth Model”

program or the “Partner” model (patterned on “The Duluth Model” program). The duration of corrective and educational programs varies and may take from 3 up to 12 months. The envisaged effects of such programs are meant in particular: to reduce violent behaviour, improve relations in the family, marriage, between parents, increase the awareness of the perpetrators of issues related to domestic violence, teach perpetrators how to resolve conflicts, how to abstain from alcohol and undergo treatment, and finally to enhance the overall quality of social relations. Monitoring the effects of corrective and educational programs for those who have completed them takes place inter alia via attendees’ filling out an evaluation questionnaire and personal contact of trainers of the program and the registration of changes taking place in the conduct of those who have completed the program (thanks to the information obtained from family members, local community, contacts with the staff of institutions cooperating with the perpetrator upon the conclusion of the program, inter alia with probation officers, social workers, Police, school pedagogues). Former attendees of the program are monitored for a period ranging from two months up to three years. Furthermore, corrective and educational programs are implemented in penitentiary units, e.g. in 2010 there were 315 editions of the program for perpetrators of domestic violence according to the Duluth Model, including its various modifications (261 editions in 2009, 175 editions in 2008), attended by a total of 3 609 people sentenced under Art. 207 PC (5 520 in 2009, 3 346 in 2008). Furthermore, in 2010 as many as 90 editions (93 in 2009) of the ART program (Aggression Replacement Training), attended by a total of 721 sentenced individuals (779 in 2009, and 642 in 2008). Altogether, corrective and educational programs and the ART program, both addressed at perpetrators of domestic violence, was in 2010 implemented in 405 editions (354 in 2009), for 4 019 sentenced individuals (6299 in 2009).

Table 3

Numbers of people taking advantage of corrective and educational programs

<i>2006</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>	<i>2010</i>
1,081	2,922	4,214	4,403	4,791

4. Action assuring equality in labour law – Labour Code amendments

112. The most recent LC amendment related to equal treatment was the law of 3 December 2010 on the implementation of selected European Union legislation on equal treatment (Journal of Laws of 2010, No. 254, item 1700; entry into force 1 January 2011). The provision of Art. 183b § 4 that contains an exception to the principle of equal treatment was redefined. According to this provision it is possible to limit access to employment on grounds of religion, denomination or beliefs; it applies to churches and other religious associations as well as organisations whose ethics are based on religion, denomination or beliefs.

113. A comprehensive LC amendment as to equal treatment entered into force on 18 January 2009 (Journal of Laws of 2008, No. 223, item 1460). The changes introduced then included in particular:

(a) The definition of indirect discrimination was made more precise (amendment of Art. 183a § 4). The definition was supplemented with a conditional mode and with an indication of an element of a legal objective;

(b) Circumstances constituting discrimination were made more precise (amendment of Art. 183a § 5), through the enumeration of actions that might result in the creation of an unfavourable atmosphere for an employee;

(c) The definition of sexual harassment was made more precise (amendment of Art. 183a § 6), through the enumeration of actions that might result in the creation of an unfavourable atmosphere for an employee;

(d) Introduction of a prohibition of any negative sanctions with respect to an employee subject to harassment or sexual harassment or who counters harassment or sexual harassment (new 7 in Art. 183a). Previous provisions did not include such a legal guarantee;

(e) Circumstances constituting unequal treatment in employment were clearly defined (amendment of Art. 183b § 2). The new provision stresses the need for proportionality in order to reach the legal objective of differentiating the situation of an employee;

(f) The scope of protection of an employee taking advantage of entitlements arising from the violation of the principle of equal treatment in employment was clearly defined (amendment of Art. 183e). Not only cannot an employee's taking advantage of entitlements arising from the violation of the principle of equal treatment in employment be the reason for his or her dismissal, but it cannot result in any other unfavourable treatment of an employee or the use of any negative sanctions with respect to an employee;

(g) Protection is granted to an employee providing assistance to another employee taking advantage of entitlements arising from the violation of the principle of equal treatment in employment (addition of § 2 in Art. 183e). The scope of this protection is identical to that of an employee taking advantage of entitlements arising from the violation of the principle of equal treatment in employment.

5. Platform of Action “Stop Sexual Violence in Poland”

114. An inter-ministerial and inter-sectoral Platform of Action “Stop Sexual Violence in Poland” was launched on 25 November 2009. The Platform members, i.e. MJ, MLSP, MH, MND, MIA, Police, PG, National Council for Radio and Television Broadcasting, and non-governmental organisations, agreed to create the first in Poland inter-sectoral coalition for an efficient elimination of the problem of sexual violence. The objectives of the Platform include inter alia: monitoring institutions and enterprises as to the observance of the principle of equal treatment, including prevention of sexual harassment of women; implementation of stricter educational programs preventing violence; implementation of a system of fast assistance to women notifying about sexual violence; promotion of specialist round-the-clock telephone helplines; training of relevant services about standards of contacts with women-victims of sexual violence.

115. So far the results of actions taken within the Platform are inter alia: the first in Poland Procedure of operation of the Police and a medical facility with victims of sexual violence and an extension of the curriculum of PNSJPP by training modules on domestic violence.

116. Action of the Platform is continued.

6. Government Program for Limiting Crime and Anti-Social Behaviour “Safer Together”

117. The Program has been implemented since 2007 pursuant to a resolution of the Council of Ministers No. 218/2006 of 18 December 2006. It combines actions taken by the Police, government and local administration and social partners interested in raising the level of safety and security. One of the program's basic assumptions is to encourage citizens to establish permanent and natural partnerships with the Police and other institutions of public safety and security, and the prevention of domestic violence is one of

the areas covered by the program. As of 2007, the state budget has allocated three million zlotys as an earmarked reserve for the implementation of the program. Projects relating to the prevention of domestic violence received in 2007 an amount of 452,800 PLN, in 2008 – 878,626 PLN, in 2009 – 337,815 PLN, in 2010 – 911,600 PLN and in 2011 – 983,463 PLN. It should be borne in mind that the above amounts are only subsidies from MIA and consequently the total value of the projects is substantially higher. The subsidised projects are meant among others to promote actions relating to the prevention of domestic violence and limiting its effects, the increase of social commitment to issues connected with the prevention of domestic violence by raising social awareness of broadly-construed violence, and to increase the knowledge of the general public about domestic violence.

7. Statistics

118. Below: statistics on the penalties rule with respect to perpetrators of selected offences where mainly women are victimised, including the offence of abuse of close family members (Art. 207 PC) and rape (Art. 197 § 1 PC).

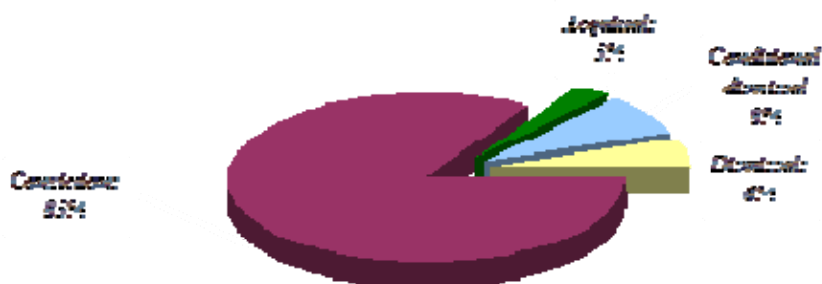
• (a) Court rulings related to the offence of abuse of close family members (Art. 207 PC)

119. In 2010 district courts in Poland held trials under Art. 207 § 1 PC with respect to a total of 16 239 people³ (in 2009 – 17 413). The number includes both male perpetrators (a vast majority) and women. Of this number:

- 13 569 were convicted;
- 432 were acquitted;
- 1 304 proceedings were conditionally discontinued;
- 927 proceedings were discontinued.

Figure 1

Percentage of kinds of rulings in district courts in Poland under Art. 207 § 1 PC



120. In 2010 district courts in Poland convicted under Art. 207 § 1 PC a total of: 13 569 people⁴. Of this number, there were:

- 193 fines (statutory);
- 173 unconditional;
- 20 with a conditional suspension of execution;

³ Data from the Statistics Department of the Ministry of Justice. Preliminary data for 2010.

⁴ *Ibidem*.

- 712 restrictions of liberty;
- 667 unconditional;
- 45 with a conditional suspension of execution;
- 12 664 deprivations of liberty;
- 1 603 unconditional;
- 11 061 with a conditional suspension of execution.

Figure 2

Percentage of kinds of penalties ruled on in Polish district courts under Art. 207 § 1 PC

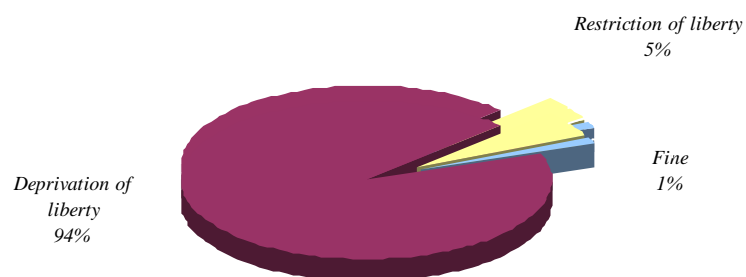
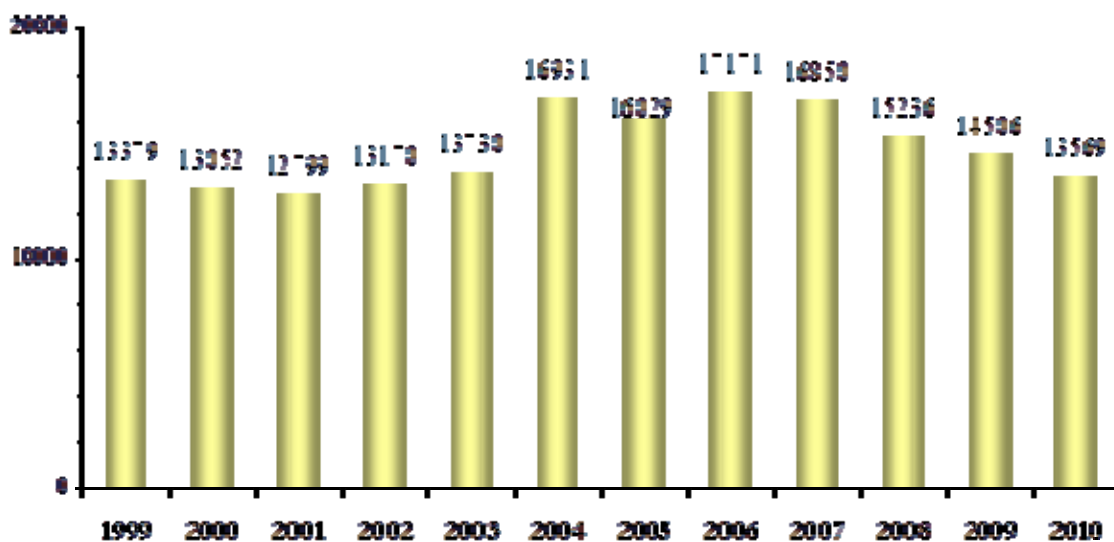


Figure 3

Convictions in district courts for the offence under Art. 207 § 1 PC; 1999–2010



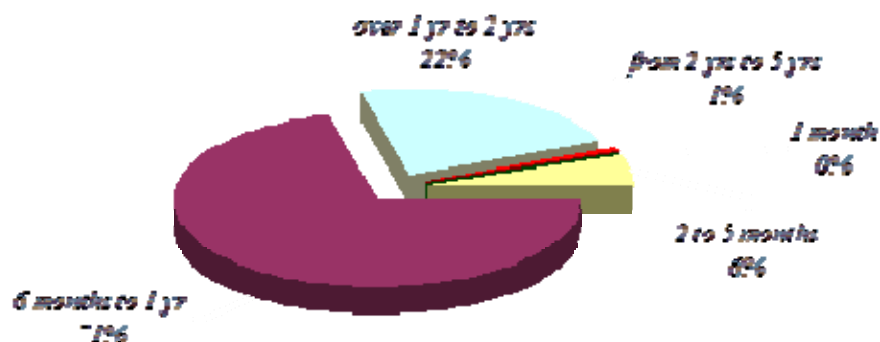
121. To sum up, out of 11 061 people convicted in 2010 under Art. 207 § 1 PC and sentenced to the penalty of deprivation of liberty conditionally suspended, 7 424 people

were entrusted to the custody of a probation officer, which accounts for as much as 67% of all the persons sentenced to this penalty⁵. In 2009, 7 344 perpetrators of abuse were put in the custody of a probation officer (62%). There is a marked increase in the number and percentage of perpetrators put by courts in the custody of a probation officer. This is of paramount importance from the point of view of an efficient impact on convicted individuals on probation, view a view to their social rehabilitation consisting in a change of conduct and limitation of their repeating an offence.

122. A convicted person put in the custody of a probation officer is monitored on an ongoing basis during the probation period, and any changes of behaviour may result in the court's imposition of stricter control (new, more intense probation obligations) or conversely, in more lax monitoring (revocation or change of probation obligations). A probation officer is obliged to adequately respond and suggest to the court through filing relevant requests, a flexible manner of impact on a perpetrator of domestic violence.

⁵ *Ibidem.*

Figure 4
Percentage of sentences to the penalty of deprivation of liberty ruled on in district courts in Poland in 2010 under Art. 207 § 1 PC



123. The above graph on the scope of penalties of deprivation of liberty applied by courts to perpetrators of abuse of close family members demonstrates that courts generally do not apply the lower limits of this penalty. In total, the penalty of deprivation of liberty from 6 months up to 2 years accounts for as much as 93% of the total number of prison sentences.

124. Furthermore, in the vast majority of cases, the penalty is applied with a conditional suspension of its execution, which accounts for 87 % of the total number of prison sentences for perpetrators of abuse.

125. Among the victims of the offence under Art. 207 § 1 PC, in 2010 there were 3 003 minors (in 2009 – 3,526) and 11,828 women⁶ (in 2009 – 12 597). Because of the decrease in the number of convictions, the numbers of victims of such offences dropped accordingly.

(b) Court rulings related to the offence of rape (Art. 197 § 1 PC)

126. In 2010 district courts in Poland held trials under Art. 197 § 1 PC of a total of 553 people⁷ (in 2009 - 662). Of this number:

- 506 were convicted;
- 35 were acquitted;
- 12 proceedings were discontinued.

⁶ *Ibidem.*

⁷ *Ibidem*

Figure 5
Percentage of sentences of district courts in Poland related to Art. 197 § 1 PC

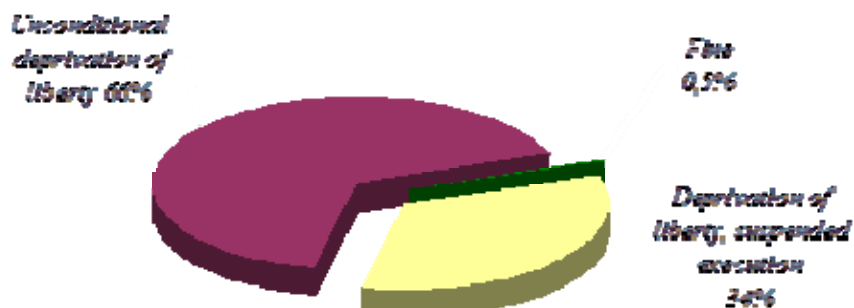


127. In 2010 district courts in Poland convicted under Art. 197 § 1 PC (basic type) a total of 506 people⁸. In this number there were:

- 1 fine (statutory);
- 505 penalties of deprivation of liberty;
- 335 unconditional;
- 170 with a conditional suspension of execution.

128. Under Art. 197 § 2 PC (subjection to another sexual act – 147 people, 197 § 3 PC – gang rape – 18 people).

Figure 6
Percentage of kinds of sentences of district courts in Poland
 (Art. 197 § 1 PC)



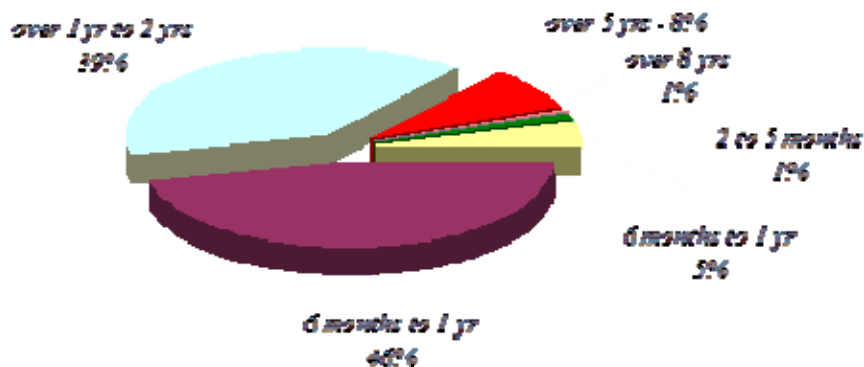
129. To sum up, out of the 170 people sentenced in 2010 under Art. 197 § 1 PC to the penalty of deprivation of liberty with a conditional suspension of its execution, 100 people were put in the case of a probation officer, which accounts for as much as 58% of all the

⁸ *Ibidem.*

persons sentenced to this penalty⁹. A vast majority of sentences (335) were unconditional deprivation of liberty.

Figure 7

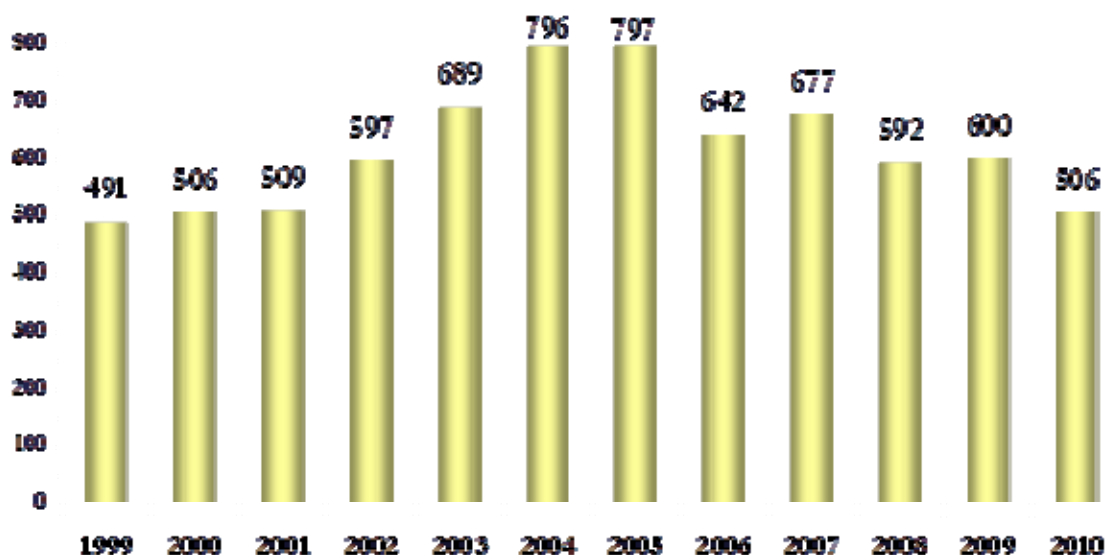
Percentage of the application of the penalty of deprivation of liberty in district courts in Poland in 2010 under Art. 197 § 1 PC



130. Offences under Art. 197 PC are treated by courts more severely than other offences as to the use of the penalty of deprivation of liberty. Courts most often sentence perpetrators to the penalty of unconditional deprivation of liberty for a period from one year to 5 years.

Figure 8

Convictions in district courts for the offence under Art. 197 § 1 PC between 1999–2010



⁹ *Ibidem.*

131. Since 1990 until 2010, the annual number of convictions remains at a similar level, rising slightly between 2003–2007. In 2010, the number of convictions for the offence of a rape was the same as in 2000.

132. Among the victims of the offence under Art. 197 § 1 PC, in 2010 there were 51 minors (in 2009 - 116) and 263 women¹⁰ (in 2009 - 339). Because of a substantial drop in the number of convictions, the numbers of victims of this kind of offence have dropped accordingly.

133. Additional statistics: Detailed statistics on the kinds of penalties ruled for perpetrators of rapes (Art. 197 PC) and abuse of close family members (Art. 207 PC) between 2005 – 1st half of 2011 can be found in Appendix 6B, while data on the number of instituted pre-trial proceedings and pre-trial proceedings concluded with bringing charges in relevant cases are included in Appendix 6 C. Furthermore, Appendix 7B contains information on the number of persons convicted in first instance courts for sexual offences (Art. 204 § 4 PC) and for the offence of trafficking in human beings (Art. 253 § 1 PC), with an indication of the number of women victims of these crimes.

134. Discrimination in employment – statistics: see Appendix 6 A

Reply to question 7 – Trafficking in human beings

1. Definition of trafficking in human beings

135. The amendment of 20 May 2010 (Journal of Laws of 2010, No. 98, item 626 – the law entered into force on 8 September 2010) introduced into the PC a definition of trafficking in human beings, patterned on definitions from relevant acts of international law, in particular the Palermo Protocol:

Art. 115 - 22. Trafficking in human beings includes recruitment, transport, supply, transfer, harbouring or receipt of a person with the use of:

- (1) Violence or unlawful threat,
- (2) Abduction,
- (3) Deception,
- (4) Misleading, exploitation of a person's mistake or their inability to properly comprehend the action being undertaken,
- (5) Abuse of a relation of dependence, taking advantage of a critical situation or state of helplessness,
- (6) Giving or receiving of payments or benefits or its promise to achieve the consent of a person having control over another person, for the purpose of exploitation, even with the person's consent.

Exploitation shall include, at a minimum, the exploitation of the prostitution of others, pornography, or other forms of sexual exploitation, forced labour or services, beggary, slavery or practices similar to slavery, servitude or the removal of cells, tissues, or organs against the regulations of the article. Should the perpetrator's behaviour concern a minor, it shall be considered "trafficking in human beings" even if this does not involve any of the means set forth under items 1-6.

¹⁰ *Ibidem.*

136. Art. 189a PC introduced by the amendment penalises the offence of trafficking in human beings (it replaced Art. 253 PC)¹¹ and, a novelty in Polish law, also the preparation of the offence:

Art. 189a § 1. Whoever conducts trafficking in human beings shall be subject to the penalty of deprivation of liberty for a minimum term of 3 years.

2. Whoever makes preparations for the offence under § 1, shall be subject to the penalty of deprivation of liberty for a term from 3 months to 5 years.

137. The above amendment introduced at the same time a definition of slavery to PC, according to which slavery is a state of dependence where a human being is treated as an object or property. Furthermore, the amendment changes the provision penalising the offence of slavery. The earlier wording: “Whoever affects the state of slavery of another person or conducts trade in slaves, shall be subject to the penalty of deprivation of liberty for a minimum term of 3 years”; the content of the amended provision: “Whoever affects the state of slavery of another person or preserved her in this state or conducts trade in slaves, shall be subject to the penalty of deprivation of liberty for a minimum term of 3 years.”(Art. 8 of the law Provisions introducing PC, Journal of Laws of 1997, No. 88, item 554 as amended)

138. In November 2008 Poland ratified the Council of Europe Convention on Action Against Trafficking in Human Beings (Journal of Laws of 2009, No. 20, item 107).

2. National Action Plan against Trafficking in Human Beings

139. The National Action Plan against Trafficking in Human Beings (hereinafter: National Plan) is the core document related to the operation of a system of combating and preventing trafficking in human beings in Poland. This is a 2-year government program approved by the CM that imposes tasks related to trafficking in human beings on individual institutions of government administration. In January 2011 the inter-ministerial Task Force for Combating and Preventing Trafficking in Human Beings adopted a draft of a new edition of this document for the years 2011–2012.

140. The principal objective of the tasks enshrined in the National Plan is first of all to increase detection of trafficking in human beings, and as a consequence an increase in the number of criminal proceedings on cases of trafficking in human beings and an increase in the number of cases where victims of this offence are provided with assistance and protection. Actions envisaged in the National Action Plan are as follows:

- Dissemination of knowledge about the offence among potential victims, representatives of institutions providing support to them and institutions in charge of prosecuting the offence of trafficking in human beings;
- Increase in the efficiency of action of institutions in charge of prosecuting the offence of trafficking in human beings via improvement of legal tools, structures and implementation of the best practices;

¹¹ Prior to the entry into force of the amendment, the crime of trafficking in human beings was penalised under Art. 253 PC. The provision was repealed by the said amendment.

The wording of Art. 253 PC prior to amendment:

1. Whoever conducts trade in humans even with their consent shall be subject to the penalty of deprivation of liberty for a minimum term of 3 years.

2. Whoever, in order to gain material benefits, organises the adoption of children in violation of the law, shall be subject to the penalty of deprivation of liberty for a term of between 3 months and 5 years.

- Extension of the offer and improvement of the operational standards of support for victims of trafficking in human beings.

141. Detailed information on the contents of National Plans in force between 2007–2010 and reports on their implementation can be found at the website: www.msw.gov.pl/thb (bookmark: documents).

142. In 2008 the Commander in Chief of the Police set up a Task Force for the preparation of an Action Plan of the Police for the period 2008–2009 concerning the provision of adequate specialist training for Police officers on trafficking in human beings; the Task Force was led by PCCPHRP. The team prepared a document entitled Analysis of training actions related to trafficking in human beings implemented by the Police. The principal conclusion of the Analysis was the indication of the need to organise a specialist course dedicated to the Police officers involved in combating trafficking in human beings. Furthermore, the document indicated the need for:

(a) Trying to increase the number of trainings meant both to disseminate knowledge and develop skills useful for Police officers in the prevention and detection of trafficking in human beings, identification of victims, prosecution of perpetrators, and provision of efficient assistance to victims of trafficking in human beings;

(b) Targeting classes primarily to Police officers indicated as addressees of training in the document prepared by the Task Force;

(c) Taking into account in the programs of continuous training of a local catalogue of knowledge and skills related to trafficking in human beings developed by the Task Force;

(d) Involvement in the training of Police psychologists and representatives of non-Police entities, including non-governmental organisations;

(e) Close cooperation of coordinators for combating trafficking in human beings in local headquarters of the Police and Plenipotentiaries for Human Rights Protection as to initiating, organising and implementing training for Police officers of a given garrison.

143. Furthermore, the Task Force prepared “The scope of knowledge and skills related to trafficking in human beings”, “List of contents of central-level continuous training programs related to trafficking in human beings”, and a “Plan of action of the Police for the period 2008–2009 as to providing specialist training on trafficking in human beings for Police officers”.

144. Following up on the conclusions reached by the Task Force, a curriculum of a specialist course on combating trafficking in human beings was developed; the implementation of the course was entrusted to the Police Academy in Szczytno, Police College in Piła and Police College in Katowice. The course is targeted at Police officers involved in combating trafficking in human beings or teaching on this issue. The duration of the course is 38 teaching hours, i.e. 5 days.

145. Moreover, BG actively participates in the implementation of the National Action Plan Against Trafficking in Human Beings. Pursuant to the decision of the Commander in Chief of the BG, a Task force for ongoing monitoring and coordination of BG activities concerning the prevention and elimination of the offence of trafficking in human beings was set up in 2008. Furthermore, part-time coordinators and deputy coordinators for combating trafficking in human beings were appointed at the BG National Headquarters and BG units. Their obligations include inter alia coordination of actions of BG units, of cooperation with the Police and of action within the Program of support/protection of a victim/witness to trafficking in human beings. Furthermore, they coordinate cooperation with non-governmental organisations involved in tasks related to the protection of victims.

146. Further information on training related to trafficking in human beings – see the reply to question 15.

3. Statistics

147. See appendices 7 A – 7 C.

Reply to question 8 – Refugee system

148. The Asylum Systems Quality Assurance and Evaluation Mechanism (ASQAEM) was implemented in Poland between 1 January 2008 until 28 February 2010 and was preceded by a pilot project.

149. The Project aimed at taking action for the implementation in EU Member States of one of the most fundamental protection tasks of the Office of the United Nations High Commissioner for Refugees (UNHCR): sustainable support of the development of reliable and efficient proceedings on granting refugee status based on the full application of the 1951 Convention relating to the Status of Refugees. The above objective was implemented through the following: evaluation of the decision process, proposals of actions improving the quality, reliability and efficiency of refugee status proceedings and training for personnel who consider relevant petitions.

150. It follows from the UNHCR report that the objectives of the Project in Poland were successfully reached, in particular thanks to the commitment and openness to debate of the institutions involved, i.e. OF and the Voivodship Administrative Court in Warsaw.

151. Some of the major effects of the project include: introduction of mechanisms of internal assessment of procedure quality in the asylum system; a comprehensive exchange of ideas during seminars for judges and workshops for personnel who consider petitions for refugee status. The adopted model of cooperation with UNHCR should contribute to a further improvement of the system of granting refugee status in Poland.

152. Some of the major tasks carried out by UNHCR within the project in Poland include:

(a) Organisation of a five-day training for OF personnel involved in refugee status proceedings “Zrozumieć ofiary przemocy” (Understanding victims of violence), dedicated to the progress of refugee status proceedings of victims of violence;

(b) Monitoring of decisions taken in refugee status proceedings in Poland;

(c) Monitoring of examinations conducted during refugee status proceedings in Poland (including examinations in guarded centres for foreigners and detention facilities for the purpose of deportation);

(d) Joint organisation with “Dzieci Niczyje” foundation of a two-day training on refugee status proceedings of minors;

(e) Adoption of recommendations on examinations and decision-making in refugee status proceedings and their discussion with the personnel who consider relevant petitions;

(f) Organisation of a training for OF personnel dedicated to the following questions: decisions in refugee status proceedings from the perspective of the court, analysis of reasons for granting international protection, burden of proof in refugee status proceedings, credibility assessment, preparation of a proper ratio decidendi;

(g) Joint organisation with ACCORD (Austrian Centre for Country of Origin and Asylum Research and Documentation) of a training for OF staff related to information on countries of origin;

(h) Support provided to OF through guidelines and information related to international protection.

153. Detailed recommendations for a first instance authority considering requests for granting refugee status related to the following issues:

(a) Additional practical training on assertiveness and intercultural communication skills, useful in proceedings with crime victims;

(b) Enhancement of modes of cooperation between OF officials and psychologists;

(c) Provision of regular psychological supervision of officials exposed to aggressive conduct of applicants;

(d) Entering the dates and places of events on the file;

(e) When referring in a decision to in-house and internal OF materials it is necessary to provide detailed information about their nature and content;

(f) Assessment of the credibility of the documents should be conducted on a one-by-one basis;

(g) Assessment of the applicant's status should be conducted on a one-by-one basis;

(h) Generalised comments should be replaced by remarks on the individual situation of the applicant;

(i) If the applicant left his or her country of origin a long time ago, this fact should not adversely affect the applicant and the decision should document the applicant's explanations or their absence;

(j) In the event of discrepant assessments of credibility of particular information, the decision should contain explanations of such assessment, incompatibility and the applicant's explanations;

(k) In the event of discrepant evidence, the applicant should be asked to provide explanation, which should be recorded in the decision;

(l) In reference to Art. 10 CAP (active participation of a party in proceedings), the decision should contain information on the party being notified in writing about the right to make a statement on the evidence gathered prior to the issuance of the decision;

(m) Standard legal information should be provided to the applicant prior to and after the examination;

(n) It is recommended that an examination should be recorded or transcribed,

(o) The applicant's access to legal aid should be enhanced;

(p) Technical means improving the progress of an examination, e.g. by reducing external noise, should be considered;

(q) It is recommended that a child should be taken care of during an examination, especially in the case of single parents;

(r) The decision taken in an expeditious course should contain a legal and factual ratio decidendi for the adoption of this mode and it is recommended that the ratio decidendi be provided in points for a greater clarity of the decision's content;

(s) Spelling mistakes, especially concerning the data of the applicant, should be avoided;

(t) Legal advice should be delivered in a language which the applicant understands;

(u) Because of a short time for appeals, the applicant should be given a chance to get familiar with the evidence gathered in the case;

(v) Interpretation during the proceedings should be done by a qualified interpreter who understands his or her unique role;

(w) Copies of examination notices should be appended.

154. No direct recommendations were given to second instance proceedings. The regional Office of the United Nations High Commissioner for Refugees in Budapest recommends that Poland should guarantee free of charge legal aid for people seeking refugee status. No gaps of a systemic nature were detected during the studies.

155. The ASQAEM project was continued from April 2010 until September 2011 as Further Developing Asylum Quality in the European Union (FDQ).

156. Action taken by UNHCR within the FDQ project consisted in particular in:

- Independent and objective monitoring and evaluation of proceedings related to granting international protection and verification and, if necessary, supplementation of recommendations agreed under the ASQAEM project;
- A series of thematic meetings and training for OF personnel and international study visits;
- Supporting OF in consolidating an internal mechanism of evaluating the quality of procedures of granting international protection, in particular through the evaluation of ongoing effects of the application of this mechanism;
- Provision to OF of current monitoring reports, with relevant evaluation and recommendations, when necessary.

Reply to question 9– Extradition and deportation of foreigners

157. Provisions of Polish law are in compliance with Art. 3 of CAT.

1. Deportation of foreigners

(a) Guarantees arising from the law of granting protection to foreigners and from the law on foreigners

158. Poland applies the so-called standardised asylum procedure. The proceedings related to granting refugee status check not only the conditions for being recognised as a refugee but also, should they be deemed insufficient, other circumstances resulting in obtaining protection against deportation.

159. The principal act that addresses these questions is the amended law of 13 June 2003 on granting protection to foreigners on the territory of the Republic of Poland - Journal of Laws of 2009, No. 189, item 1472 as amended (hereinafter: the law on granting protection to foreigners).

160. A foreigner is granted refugee status if, as a result of a justified concern that he might be persecuted in his country of origin on grounds of race, religion, nationality, political beliefs or membership to a particular social group, he cannot or does not want to make use of the protection of his state. Persecution is seen as a serious (as to its nature or frequency) violation of human rights, in particular non-derogable rights, including freedom from torture, or a combination of different actions or neglected action, including those constituting a violation of human rights whose impact is as severe as the aforementioned persecution.

161. A foreigner who does not meet the criteria for granting refugee status is granted supplementary protection. This takes place in the case when a return to the country of origin might expose him to the actual risk of serious jeopardy by his being sentenced to the death penalty or execution, torture, inhuman or degrading treatment or punishment, serious and personalised threat to life or health arising from a commonplace use of violence with respect to civilians during an international or domestic armed conflict, and because of this risk cannot or does not want to make use of the protection of his state of origin.

162. If a foreigner is not granted refugee status and supplementary protection, premises are examined ex officio for granting to him a domestic form of protection, i.e. consent for tolerated stay. In proceedings concerning refugee status a foreigner is given consent for tolerated stay in the territory of RP if his deportation:

- Might only take place to a country where his right to life, freedom and personal security might be at risk, where he might be subjected to torture or inhuman or degrading treatment or punishment or forced to work or deprived of the right to a reliable court trial or be punished without a legal basis as set forth in the European Convention of Human Rights;
- Would violate the right to family life as set forth in the European Convention on Human Rights;
- Would violate the right of the child set forth in the Convention on the Rights of the Child in the degree jeopardising his mental and physical development.

163. Furthermore, a foreigner may be given consent for tolerated stay in the territory of RP if his deportation could only take place to a country where a deportation of a foreigner is inadmissible pursuant to a court ruling on the inadmissibility of a deportation of a foreigner or pursuant to a resolution of the Minister of Justice, refusing his extradition, taking into consideration the reason why extradition of a foreigner was refused and the interest of RP. To establish if a foreigner is eligible for tolerated stay in the territory of RP, all the circumstances of the case are taken into account, including the explanations provided by the foreigner concerned as well as information on the respect for human rights in the foreigner's country of origin.

164. Only after due consideration of the above three forms of protection and confirmation that none of them applies to a particular foreigner is it possible to issue a ruling on the extradition of a foreigner. Decisions on refugee status issues are taken in the first instance by the Head of OF.

165. A deportation of a foreigner is possible only when the relevant decision becomes valid and final. In this context it is important that an appeal against the decision on the status of a foreigner ex officio suspends its enforcement until the day of the foreigner being delivered the decision of a second instance authority (Council for Refugees). The suspension of the deportation decision enforcement is also possible when a court monitors the ruling issued by the Council for Refugees.

166. Consent for tolerated stay in the above respect is also examined in proceedings related to revocation of asylum. It may be granted in a separate decision in a situation when

the above circumstances occurred after the issuance of the above decision, as well as after the issuance of a negative decision in proceedings concerning refugee status. If a foreigner does not seek refugee status, the deportation procedure is regulated by the law of 13 June 2003 on foreigners (Journal of Laws of 2011, No. 264, item 1573). According to its provisions, a decision on the deportation of a foreigner is not issued and a decision already issued is not enforced if there are circumstances justifying consent for tolerated stay.

(b) Statistics

167. Statistics on the number of deported individuals and the number of cases where deportation was refused (with a list of cases where such refusal was based on premises enumerated under Art. 97 § 1 of the law on granting protection to foreigners) were presented in appendices 9 A – 9 E.

(c) Guarantees arising from the Code of Administrative Procedure

168. Proceedings concerning issues under the law on foreigners, including proceedings concerning a deportation of a foreigner from the territory of Poland, follow CAP provisions, which envisage different types of procedural guarantees for the parties to the proceedings.

169. And so, during the proceedings bodies of administrative authority stand guard over law and order and take all the measures necessary for the clarification of the factual state and for the resolution of the case, taking into account social interest and the legitimate interest of citizens. They are obliged to diligently collect and consider all evidence, and each case is considered on an individual basis. CAP requires that all that can contribute to the clarification of the case and is not in contravention of the law should be allowed as evidence. In particular, documents, witness testimonies, expert's evidence and examinations may be admitted as evidence. A body of administrative authority makes an evaluation whether a given circumstance was proven on the basis of all the evidence collected.

170. Bodies of administrative authority are obliged to ensure active participation of the parties at each stage of proceedings and allow them to make representations as to the evidence and materials collected and the demands put forth prior to the issuance of a decision.

171. An authority conducting the proceedings in cases concerning a deportation of a foreigner from the territory of Poland instructs a foreigner in a language he understands about the principles and course of proceedings and about his rights and obligations. This instruction contains inter alia information on the right to appeal against the decision of deportation to a second instance authority, the manner of and the deadline for its submission. If the proceedings concerning a deportation of a foreigner from the territory of Poland are instituted at the request of an authority who detained a foreigner, the instruction is made by the authority who filed a request for a deportation decision. Written instructions in a language a foreigner can understand are handed in by BG bodies who detain a foreigner and request a competent authority for a decision of a deportation of a foreigner from the territory of Poland.

(d) Appeals against the decision

172. A party dissatisfied with the decision of a first instance authority ruling on a deportation from the territory of Poland has the right to appeal, within the statutory period of 14 days of the day of the decision being delivered, to a higher authority, i.e. in the above issues the Head of OF.

173. In turn, as concerns a decision of a second instance authority, a party has the right to appeal via this authority to a competent voivodship administrative court, within the period of 30 days of the day of the decision being delivered, which court has judicial control of the activity of public administration as to conformity with the law. In turn, a ruling of a voivodship administrative court is subject to a cassation complaint to the Chief Administrative Court.

174. Filing a complaint to an administrative court does not suspend the enforcement of the appealed decision. If a complaint is lodged against a decision, the authority who issued the decision may, in specific circumstances, suspend its enforcement. When a given authority has refused it, the complainant has the right to file a request to a court for the suspension of the enforcement of the decision.

175. If a cassation complaint is lodged with the Chief Administrative Court against a decision of a voivodship administrative court, a decision of a suspension of the enforcement of the appealed decision may also be taken by the Chief Administrative Court.

2. Extradition of foreigners

176. Information on the progress of an extradition procedure and on the European arrest warrant was provided in the preceding report (sections 33ff).

177. An amendment to the Constitution connected with Poland's accession to the EU and cooperation related to the European arrest warrant and with Poland's ratification of the Rome Statute of the International Criminal Court entered into force in 2007 (Journal of Laws of 2006, No. 200, item 1471). The amendment changed the contents of Art. 55 of the Constitution:

- (a) Art. 55 of the Constitution prior to amendment:
 - (1) Extradition of a Polish citizen is prohibited;
 - (2) Extradition is prohibited if it concerns a person prosecuted for the commission of an offence without the use of violence for political reasons;
 - (3) The courts shall adjudicate on the admissibility of extradition.
- (b) Art. 55 of the Constitution after amendment:
 - (1) Extradition of a Polish citizen is prohibited with the exception of the cases set forth under sections 2 and 3;
 - (2) Extradition of a Polish citizen may be granted upon a request made by a foreign state or an international judicial body if such a possibility stems from an international treaty ratified by Poland or a statute implementing a legal instrument enacted by an international organisation of which the Republic of Poland is a member, provided that the act covered by a request for extradition:
 - Was committed outside the territory of the Republic of Poland, and
 - Constituted an offence under the law in force in the Republic of Poland or would have constituted an offence under the law in force in the Republic of Poland if it had been committed within the territory of the Republic of Poland, both at the time of its commitment and at the time of the making of the request.
 - (3) Compliance with the conditions specified in para. 2 sub-paragraphs 1 and 2 shall not be required if an extradition request is made by an international judicial body established under an international treaty

ratified by Poland, in connection with a crime of genocide, crime against humanity, war crime or a crime of aggression, covered by the jurisdiction of that body.

- The extradition of a person suspected of the commission of a crime for political reasons but without the use of force shall be forbidden, just as an extradition which would violate rights and freedoms of persons and citizens.
- The courts shall adjudicate on the admissibility of extradition.

178. Pursuant to Art. 603 CCP, as to an extradition request of a foreign state, the resolution is made by a (provincial) court. Prior to the decision, it should allow the person under prosecution to make explanations orally or in writing, and in the case of a request for extradition, in order to conduct criminal proceedings it must on a justified request of this person gather evidence available in Poland. A defence counsel may take part in the proceedings.

179. Pursuant to Art. 604 § 1 CCP, extradition is inadmissible e.g. if: there is a justified risk that the state demanding extradition may rule on or perform the death penalty on the extradited person (item 6) or there is a justified risk that the state demanding extradition may violate the freedom and rights of the extradited person (item 7).

180. In order to determine whether such circumstances occur in a particular case, the court takes into account the information provided by domestic (Polish and those active in the foreigner's country of origin) and international non-governmental organisations, including in particular HFPC, Amnesty International and Human Rights Watch, as well as opinions of international institutions, including ECHR and United Nations treaty bodies.

181. Furthermore, a major guarantee of human rights protection, the principle of non-refoulement, is the fact that Poland does not apply the so-called diplomatic assurance – Polish authorities recognise that the assurance of the state to which a foreigner might be extradited as to the observance of the rights of this person, does not constitute a sufficient guarantee of human rights protection.

182. A court decision on extradition can be appealed against.

183. A request of a foreign state is resolved by the Minister of Justice – if the court finds it admissible, the Minister may take a decision on an extradition or refuse to extradite a foreigner. If the court issued a ruling that an extradition is inadmissible, extradition must not take place.

Statistics

184. In the period from 6 July 2007 until August 2011, Poland received 94 extradition requests and 7 requests for consent to extending criminal prosecution, including:

- From Albania - 1 extradition request
- From Belarus - 24 extradition requests and 3 requests for consent to extending criminal prosecution
- From Iceland - 2 extradition requests
- From Israel - 2 extradition requests
- From Norway - 4 extradition requests
- From Russia - 19 extradition requests
- From Switzerland - 1 extradition request

- From Turkey - 2 extradition requests
- From Ukraine - 21 extradition requests and 2 requests for consent to extending criminal prosecution
- From Vietnam - 1 extradition request
- From Italy - 2 requests for consent to extending criminal prosecution
- From USA - 17 extradition requests

185. In the period indicated above, in 1 case the Minister of Justice issued a decision on discontinuing the enforcement of an extradition decision because of the temporary measure used by the ECHR, due to a complaint lodged by the person under prosecution.

186. In the period indicated above, in 20 cases the Minister of Justice refused to extradite prosecuted persons since he was bound by the opinions of the court finding such extradition inadmissible (Art. 603 § 3 CCP).

187. In extradition proceedings, the court may find extradition inadmissible on condition obligatory reasons for refusing extradition, defined under Art. 604 § 1 CCP, occur:

Art. 604. § 1. Extradition is inadmissible if:

- 1) The person defined in the extradition request is a Polish citizen or enjoys the right of asylum in the Republic of Poland;
- 2) The act does not contain elements of an illicit act or if the law stipulates that the act does not constitute an offence or that the perpetrator does not commit an offence or is not subject to penalty;
- 3) It is subject to a statute of limitations;
- 4) Criminal proceedings concerning the same act of the same person has been legally and finally concluded;
- 5) It would be in contravention of Polish law;
- 6) There is a justified risk that the state demanding extradition may rule on or perform the death penalty on the extradited person;
- 7) There is a justified risk that the state demanding extradition may violate the freedom and rights of the extradited person;
- 8) It concerns a person prosecuted for the commission of an offence without the use of violence for political reasons.

188. In the period indicated above, Polish courts issued negative opinions having found as follows:

- In 5 cases the persons under prosecution had Polish citizenship - Art. 604 § 1 item 1 CCP;
- In 3 cases there was no principle of dual criminality - Art. 604 § 1 item 2 CCP;
- In 1 case the act being the basis for the request was subject to a statute of limitations - Art. 604 § 1 item 3 CCP;
- In 3 cases the court found that the extradition would be in contravention of Polish law - Art. 604 § 1 item 5 CCP;
- In 5 cases the court found that there is a justified risk that the state demanding extradition may violate the freedom and rights of the extradited person - Art. 604 § 1 item 7 CCP;

- In 6 cases the court found that the extradition would be in contravention of Polish law and concluded that there is a justified risk that the state demanding extradition may violate the freedom and rights of the extradited person - Art. 604 § 1 items 5 and 7 CCP.

189. Referring to the obligatory reasons for refusal to extradite because of the amendment of the provision under Art. 55 of the Constitution, special attention should be paid to the contents of Art. 604 § 1 item 1 CCP concerning citizenship. At present, Polish citizenship is no obstacle for extradition if it is based on an international agreement that envisages such a possibility and is ratified by Poland.

190. Poland has so far signed and ratified 1 bilateral agreement laying legal grounds for extradition of own citizens. This is an agreement concerning extradition, concluded between the Republic of Poland and the United States of America of 10 July 1996, supplemented by an agreement concerning the application of the above agreement, signed in 2006.

Reply to questions 10 and 25 – CIA secret detention facilities

191. An investigation on the circumstances defined in the question was conducted by the Appellate Prosecution Authority in Warsaw (ref. No. Ap V Ds. 37/09) and concerns suspicions of public officials exceeding their authorities to the detriment of public interest, i.e. an offence under Art. 231 § 1 PC: Art. 231. § 1. A public official who, exceeding his authority, or not performing his duty, acts to the detriment of a public or individual interest shall be subject to the penalty of deprivation of liberty for up to 3 years.

192. Proceedings were installed upon the revelation of facts justifying the launch of an investigation and the need of a verification in proceedings of the circumstances connected with the resolution of the European Parliament demanding an inquiry into alleged use of European countries by the United States' Central Intelligence Agency for the transportation and illegal detention of prisoners suspected of terrorist activity.

193. Action taken within the proceedings verify the circumstances of landings of aircraft used by the US Central Intelligence Agency, with no customs and tariff clearance, between 2002–2003, in Szymany airfield and a suspicion of illegal detention in a detention centre of persons suspected of terrorist activity.

194. The investigation is carried out in a specialised unit of the Polish prosecution authority (Department for Organised Crime and Corruption), which shows the importance that Poland attaches to the respect for human rights and the need to clarify any and all suspicions of violations of international standards safeguarding these rights.

195. Furthermore, the investigation is for its entire duration supervised by the Department for Organised Crime and Corruption of PG and is the focus of interest of PG executives.

196. Because of the fact that the proceedings are confidential, any more extensive account of the results of the investigation, its scope, detailed progress and methodology is impossible. At the current stage of development, the conclusion of investigation cannot be predicted, even roughly.

Reply to question 11 – Foreigners

197. Pursuant to Art. 101 section 1 of the Law of 13 June 2003 on foreigners (Journal of Laws of 2011, No. 264, item 1573), a foreigner with respect to whom there are circumstances that justify the decision of deportation or who deliberately fails to perform

the obligations defined in the decision of deportation, may be detained for a period not exceeding 48 hours.

198. One of the reasons for issuing a decision of a foreigner's deportation from the territory of RP is, pursuant to Art. 88 section 1 item 7 of the law on foreigners, a foreigner's not leaving (voluntarily) the territory of RP at a time defined inter alia in a decision obliging him or her to leave this territory.

199. The obligations of the authority who arrested a foreigner and the manner of conduct related to the placement of a foreigner in a guarded centre or his detention for the purpose of deportation are set forth in the provisions of chapter 9 of the law on foreigners.

200. It seems that the Committee indicates a fact of stay in an airport transit zone of persons (foreigners) refused entry into RP territory and awaiting a return to the country from where they departed by the nearest possible flight of a carrier on whose board they came to the Polish border. Persons awaiting a return to the country from where they departed to the Polish border have an injunction to remain on premises designated for people refused entry into RP territory (supervised by BG) – issued as an administrative decision. Such decisions are issued exclusively in cases when there is a justified risk that the foreigner refused entry into RP territory may attempt to cross the national border in contravention of the law (from an airport transit zone).

Reply to question 12 – Extradition

201. This situation did not take place.

Reply to question 13 – Training programs, human rights

1. Training and educational programmes for relevant personnel

(a) Police

202. Police officers receive regular training on the protection of human rights. This kind of training is conducted within the basic curriculum, inter alia as part of the teaching module: "Human rights, professional ethics of a Police officer and the history of the Police", "Induction to the use of direct coercion measures" and "Interventions and procedures of conduct with persons under the influence of alcohol or a substance with similar effects". Questions of the protection of human rights are moreover taught at a number of specialist courses, including "A specialist course for Police officers taking interventions against aggressive and dangerous individuals" and "A specialist course on intervention tactics and techniques".

203. A number of classes are dedicated to the protection of human rights, in particular those rights and freedoms which are in a special way related to the action of the Police (the right to life; prohibition of torture, in human or degrading treatment or punishment; right to personal freedom and security; right to a court; to privacy; freedom of speech, association). Furthermore, classes are dedicated to anti-discrimination issues stressing the promotion of equal and non-discriminatory treatment of individuals on the grounds of the colour of their skin, ethnic and national background, age, religion, beliefs, sexual orientation, etc. Classes are often conducted as lectures and practical workshops. Excerpts of laws and by-laws are used to remind Police officers of their obligations of the provision of first aid, with an indication of relevant literature. Lecturers stress the moral obligation of a Police officer to provide assistance to people in need (the victim, perpetrator and the person subject to direct coercion measures).

204. Within the basic curriculum and during specialist courses, Police officers are offered knowledge sensitising them to the fact that all kinds of deliberate mistreatment (including verbal abuse) are inadmissible and will be severely sanctioned. They are taught to prevent and minimise violence during an arrest, and where it is necessary they should apply techniques that reduce the most the potential risk to the person under arrest.

(b) Border Guard

205. To ensure training of BG officers as to the impact of their work on the state of respect for human rights, the Training Centre of the BG in Kętrzyn and the Central Training Facility of the BG in Koszalin conduct the following classes within the basic training schedule (basic courses for non-commissioned officers, warrant officers and officers):

- (a) Forms of protection of foreigners in RP;
- (b) Refugee status and other forms of protection of foreigners in RP;
- (c) Selected questions of human rights protection;
- (d) International and European human rights protection and forms of protection of foreigners;
- (e) Case law of international bodies, including ECHR;
- (f) International, EU and Polish law related to border checks;
- (g) Refugee status in light of international, EU and Polish law.

206. Questions of human rights protection are also implemented during qualified training in line with the teaching curriculum and cover general issues related to European human rights protection. The courses are meant to teach BG officers about monitoring mechanisms of respect for human rights and freedoms and about examples of ECHR case law.

207. On 20 April 2010 the Central Training Facility of the BG in Koszalin prepared a curriculum of an on-the-job course: "Prevention of torture and inhuman or degrading treatment or punishment". The course is addressed to BG officers in direct professional contact with persons deprived of liberty, i.e. officers of the division for foreigners, escorting detainees, performing service in guarded centres for foreigners and detention facilities for the purpose of deportation, as well as involved in regular operations, detection, inquiries, investigations, and border checks. In September 2010 lecturers of the Central Training Facility of the BG in Koszalin held the first edition of the course during an away session in the Nadodrzański Branch of BG.

(c) Prison Service

208. Questions of human rights protection, including the principles of treatment of persons deprived of liberty, implementation of CAT and prevention of discrimination are part of the curriculum of preparatory courses for newly admitted officers and employees and all PS school types. They are also taught during on-the-job courses, conferences, seminars, discussions, meetings. Knowledge of human rights is treated as part of professional know-how indispensable for a professionally qualified PS officer. Training relates to international and domestic law concerning human rights protection; at present international standards and instruments of human rights protection, including case law of international bodies (including ECHR) and CPT reports are treated as a priority.

209. Information on the training of each officer in the field of human rights is recorded in the personal file. According to the regulation of the Director General of PS of 4 June 2007 on personal files of PS officers, Section A of such personal files contains inter alia "a representation of learning binding legal provisions and their respect, in particular the

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly of the United Nations on 10 December 1984 (...).”

210. Between 2008-2010 new, abridged curricula were introduced for the school of non-commissioned officers and officers. This did not result in a marked decrease in the number of subjects and teaching hours dedicated to the above questions.

211. During an induction course, the following relevant subjects are covered during 3 teaching hours:

- International treaties as sources of law
- ECHR
- European standards of the treatment of prisoners

212. Curricula of all PS schools cover human rights issues and are implemented during 24 teaching hours within the following subject modules:

(a) Selected issues of constitutional law, in particular constitutional freedoms, rights and obligations and legal mechanism of the protection of rights and freedoms;

(b) International standards of conduct with persons deprived of liberty, in particular: United Nations Minimum Rules, EPR, bodies and organisations involved in the protection of rights of persons deprived of liberty;

(c) Protection of the rights of migrants, refugees and national and ethnic minorities;

(d) Human rights protection in international law, including CAT and OPCAT (in particular the questions of adequate treatment of prisoners by personnel of a penitentiary facility);

(e) United Nations system of human rights protection, activity of the Committee against Torture;

(f) European Committee for the Protection of Torture (CPT).

213. Personnel of penitentiary facilities receive training about the activity of the Ombudsman, who has been entrusted in Poland with the role of the National Preventive Mechanism.

214. The teaching module “International Standards of Conduct with Persons Deprived of Liberty” aims at strengthening the skills of practical thinking and action on the basis of international standards of human rights protection. It moreover introduces the operation of the Polish penitentiary system via international legal norms, so that the participants may better realise that a uniform protection of human rights in all legislations of all the parties to treaties is a true measure of efficiency of the system. Subjects discussed include first of all: the rights of prisoners in the international system of human rights protection (on the basis of the United Nations Minimum Rules and EPR), standards of admission of prisoners to penitentiary units, their preparation for release and post-penitentiary assistance, standards of the organisation of life of prisoners (living conditions, medical and pastoral care), standards of methods and measures and programs of penitentiary influence, standards of personnel and their relations with prisoners, standards of conduct with special categories of prisoners and instruments, authorities and organisations active in the protection of the rights of prisoners.

215. The teaching module “Pragmatics of the Prison Service” addresses the question of equal treatment, in particular on the grounds of sex, age, disability, race, religion,

nationality, political beliefs, membership in a trade union, ethnic origin, denomination, sexual orientation and the prohibition of any discrimination.

216. The teaching module “Selected legal aspects” highlights the constitutional principle of equality before the law and the principle of equal treatment by public authorities, as well as the absolute prohibition of discrimination reason in political, social or economic life.

217. The teaching module “Penitentiary issues” discusses questions of international standards of conduct with persons deprived of liberty, their legal status, their rights and obligations.

218. This knowledge is supplemented during “Situational workshops” run by psychologists. During the workshops officers learn skills of developing tolerant contacts with representatives of minorities and learn to understand, tolerate and accept difference.

219. Furthermore, the subject of standards arising from international agreements related to the prohibition of torture and other cruel, inhuman or degrading treatment of punishment and other international standards is the core element of training for the personnel of penitentiary facilities (psychologists and educators). They are aimed at disseminating knowledge about the rights of persons deprived of liberty, prohibition of discrimination inter alia on grounds of ethnic origin, religion, sex or sexual orientation. Furthermore, group programs targeted at specific groups are implemented in penitentiary units to promote tolerance, and teach prisoners aggression-free resolution of conflicts and respect for the rights of other people. The courses organised by CAPS for the position of an educator and senior educator cover issues of the use of physical and mental violence and teach (during workshops) the detection of symptoms of violence behaviour among prisoners. The courses moreover allow an exchange of hands-on experience and acquisition of new relevant skills to the penitentiary personnel.

2. Evaluation of training/educational programmes

(a) Border Guard

220. The Central Training Facility in Koszalin, upon the completion of classes, evaluates specialist training and on-the-job courses. The course “Prevention of torture and other cruel, inhuman or degrading treatment of punishment” is also subject to such evaluation. The course was highly appreciated by the attendees, with a mean score of 5.71 on a scale of 1 to 6. Furthermore, in the open part of the questionnaire the attendees observed that the subjects addressed during the course will be extremely helpful in the performance of service and the course offered them an in-depth familiarity with the issue.

(b) Prison Service

221. The Central PS Training Facility in Kalisz conducts an ongoing and periodic evaluation of the teaching process, an assessment of the efficiency of training and curricula. Such evaluation is carried out regularly among attendees during and after a course. The study results confirm that course graduates have adequate knowledge about the prohibition of torture and other cruel, inhuman or degrading treatment of punishment and about widely-construed human rights, and acquire practical skills on the basis of relevant international standards.

3. Detection of symptoms of torture and abuse

222. To ensure a wider awareness of the Istanbul Protocol among all services, including representatives of law enforcement agencies, prison service, physicians, and the general public, MJ is going to have the text of the Protocol translated and widely disseminated in

2012. The Polish version of the Protocol will be forwarded to interested parties, including non-governmental organisations, and will be uploaded on the MJ website.

Public health care

(i) Higher Education Institutions

223. In 2010, MH took action with a view to sensitising medical tertiary schools to the questions of detection and assistance to victims of violence (e.g. domestic violence) and legal obligations of health care personnel in connection with a suspicion of violence. As a result, Presidents of Medical Universities and Colleges were asked to provide information about whether the relevant issues are addressed in particular medical schools and how many teaching hours are dedicated to them. Should the curricula not include such issues, a request was expressed to introduce them. At the same time, the issue was addressed at a meeting of Teams for the educational reform of physicians and dentists on 29 December 2010 and will be considered by experts during the adoption of new standards of education of the professional groups. Replies to the above document on the detection of violence and provision of assistance to victims of violence (e.g. domestic violence) and legal obligations of health care personnel in connection with a suspicion of violence were provided by the following medical schools: University of Medical Sciences in Białystok, Ludwik Rydygier Collegium Medicum in Bydgoszcz, University of Medical Sciences in Lublin, Karol Marcinkowski University of Medical Sciences in Poznań, Jagiellonian University in Krakow, University of Medical Sciences of Pomerania in Szczecin. At the above schools, questions of detection of violence (e.g. domestic violence) and assistance to its victims as well as obligations of health care personnel when there is a suspicion of a use of violence are addressed at several majors (e.g. physicians, dentists, dietetics, nursing, obstetrics, public health) and in a variety of courses, including: sociology of medicine, psychology for physicians, social problems, health care, community nursing, applied psychology, emergency interventions, social pathologies, basis of psychology, social policy, forensic medicine. At the same time, some schools conduct lectures, seminars and workshops for physicians, students, nurses, midwives, pupils, teachers, social workers or tutors in children's homes inter alia on such subjects as: aggression and violence in school (lectures for physicians and nurses); a battered child syndrome – prevention (lectures for different groups: medical students, physicians, nurses of paediatrics wards, teachers and social workers, tutors in children's homes); the right of the child to be treated with respect (lecture for nurses); sexual exploitation of children (conference for school nurses, teachers); the right of the hospitalised child to play and leisure (lectures for physicians and nurses); domestic violence as a major social problem (lectures for physicians).

224. Furthermore, as a result of the amendment of the Law on higher education, which envisages regulations itemising model educational results for individual study majors, MH set up teams preparing such draft regulations for medical majors. They are to include issues such as the detection of violence and assistance to victims of violence and legal obligations of health care personnel in connection with a suspicion of violence.

(ii) Model educational results

225. As a result of the amendment of the Law on higher education, which envisages regulations itemising model educational results for individual study majors, MH set up teams preparing such draft regulations for medical majors. They are to include issues such as the detection of violence and assistance to victims of violence and legal obligations of health care personnel in connection with a suspicion of violence.

(iii) *Postgraduate education of physicians*

226. In the education of physicians and dentists, issues indirectly connected with a correct identification of signs of torture and abuse are included in the curricula of specialist education in the following specialised fields: family medicine, general surgery, neurosurgery, psychiatry.

227. Furthermore, issues connected with violence against children are included in the curricula of the following specialised fields:

(a) Psychiatry of children and young people (induction into the principles and features of work with the family affected by violence – sexual exploitation and physical and mental abuse; induction into the principles of cooperation with general practitioners, with schools and educational facilities, with entities of the Ministry of Justice, youth and social organisations working with children and young people in the region, including cooperation connected with violence against children and young people). The above subjects are addressed as:

(i) An induction course “Induction to the psychiatry of children and young people” (principles of family diagnostics and of systemic consultations);

(ii) Course “Therapy of a family with a child-patient and a young patient” (features of work with the family affected by violence – sexual exploitation and physical and mental abuse);

(iii) Internship in community psychiatry (in a ward of community psychiatry for children and young people or in a ward for children and young people). During the internship a physician gets to know e.g. the specific features of community therapy of children and young people with mental disorders resulting from the use of violence;

(b) Paediatrics (induction to questions related to the child in the family, family and social pathology, of provision of information to a family about the possibilities and ways of obtaining legal aid if necessary; recognition of developmental disorders of mental aetiology and adoption of recommendations for referring a child to a psychologist);

(c) Child neurology (issues of violence against the child, including the diagnosis of the battered child syndrome are addressed in particular during the induction course “Induction to child neurology”, as part of the curriculum of child psychiatry “The problem of a battered child”, and in the curriculum of an internship in child psychiatry –“Mental disorders of battered children”).

(iv) *Health service in prisons*

228. Programs of training conducted in the Central Training Facility of the PS in Kalisz and in the Training Facility of the PS in Kule include questions of correct identification of signs of torture and abuse. The training courses address the following issues: aggressive behaviour of prisoners, unique nature of the prison community, negative aspects of prison subculture, analysis of risk factors, social communication (conversation, observation, analysis of behaviour), use of preventive measures (collection, processing and flow of information), ways of resolving difficult and conflict situations in contacts with prisons, especially those showing all kinds of behaviour or personality disorders (situational workshops). The objective of these classes is the provision to officers of tools for the recognition of risks of mistreatment of prisoners (and violence among prisoners; more on this issue in the reply to question 27), which is to allow him to effectively prevent such phenomena. Classes are dedicated to all special fields of prison personnel during professional training. All PS officers, including the health care personnel of prisons, undergo training on international standards of human rights protection (e.g. EPR),

mechanisms of monitoring of the rights of persons deprived of liberty (e.g. CPT activity), principles of professional ethics and statutory obligations of PS officers. The objective of these classes is to sensitise the attended to ethical issues and to the respect of human dignity and of humanitarian principles. Furthermore, the questions addressed in the Istanbul Protocol are a subject of permanent training of the health care personnel of prisons during classes held in the Central Training Facility of the PS in Kalisz.

Reply to question 14 – Training programs, coercive measures

1. General comment

229. Principles of application of direct coercion measures, including firearms, are defined precisely under Polish law in specific acts, e.g. the law on the Police, the law on the BG and the law on the PS, with detailed relevant bylaws. These laws determine precisely when and on what grounds officers can use firearms or direct coercion measures, and assure at the same time that this possible exclusively when necessary and in accordance with the principle of proportionality. The justifiability of use of these measures is subject to regular monitoring by superiors and independent authorities. The questions are monitored by representatives of the Ombudsman performing his statutory obligations and acting in the capacity of the NPM. Officers of all services who have the right to use direct coercion measures undergo thorough training, with special emphasis of the human rights context.

2. The Police

230. At all levels of instruction, Police officers take part in practical classes when they analyse in groups the justifiability of use and adequacy of choice of direct coercion measures, with due emphasis on the principles of professional ethics and correctness of the procedure of the use of such measures. Classes are based on reports and notes of local units concerning incidents with the use of direct coercion measures. During the classes, results of team work are introduced to all the other participants by a group representative and then discussed with the application of practical examples and Strasbourg case law in cases related to the Police. Police officers are sensitised to the fact that excess force during an arrest is prohibited and after the arrest there can be no justification for the beating of the arrested individuals and that all forms of deliberate mistreatment of persons deprived of liberty will be severely penalised.

3. Border Guard

231. To guarantee adequate training of BG officers, within their principal training program the BG Training Centre in Kętrzyn and the BG Central Training Facility in Koszalin hold classes on:

- Direct coercion measures in SG;
- Conditions and principles of the use of firearms by BG officers;
- Direct coercion measures during service and when serving on the border;
- Use of firearms in service.

232. Subjects related to the use of direct coercion measures are discussed at length, with emphasis on the principles of their discontinuation after the disappearance of the grounds for their application and their use solely to the extent necessary. When learning how to use a baton, officers are taught to target admissible spots and not to use grips that stem the flow of blood. Training on the use of handcuffs includes safety principles, in particular concerning spontaneous closure of handcuffs that results in tight grips and blocks. Techniques of incapacitation and lever are taught to effect necessary subordination to

orders, with special emphasis on minimisation of the use of force. A video teaching model “To shoot or not to shoot” is used during the shooting training to teach the skill of the use of firearms exclusively in cases allowing its application.

4. Prison Service

(a) Training

233. Training on the use of direct coercion measures and firearms takes place at all levels of instruction of PS officers. Curricula, starting from an induction course through a school for non-commissioned officers, warden officers and officers, include subjects related to the use of direct coercion measures, their types and principles of legal use. The same training is provided on the use of firearms. Furthermore, the relevant knowledge of officers is regularly monitored, verified and upgraded during training conducted in all PS units.

(b) Discontinuance of armed posts in the Prison Service

234. The PS takes action with a view to discontinuing the use of armed posts manned by officers equipped with firearms and their replacement with additional technical and electronic protective measures.

235. As a result of the action taken by CAPS related to a general use of electronic protective systems in correctional facilities and detention centres instead of armed posts, the following effects were identified:

- As of 31 December 2009 there was a total number of 440 armed posts in all penitentiary facilities in Poland. Until 31 December 2010, as a result of financial outlays of PS, 147 armed posts were removed and replaced by additional technical and electronic protective measures that guarantee the same level of security and order as armed posts;
- In 2011 the above actions are continued, which should within one year allow the removal of another 50 armed posts (for an amount of ca. 4.4 m PLN). It is estimated that as of 31 December 2011 the number of armed posts in all correctional facilities and detention centres should be reduced by 50 % relative to that of 2009 and should be ca. 240).

236. The PC, within its financial resources, has since 2010 exchanged its firearms. New firearms are meant to be used typically by the Police rather than, as the firearms used previously, by the army. For examples, PS officers in service in external posts, so-called turrets, will be equipped in modern machine pistols with a lower effective range, allowing shots with the use of non-ricochet ammunition, replacing the earlier AKMS rifles (“Kalashnikov”), used typically by the military with live rounds.

237. In 2010, a total of 2 345 P99 Walther pistols were bought to replace P-64 and MAG pistols used typically by the military. Because of the exchange of firearms and their parameters, new training programs for PS officers of the prevention division were adopted.

238. The Law of 9 April 2010 on the Border Guard envisages the use of prevention services inter alia in electrical stunning devices.

Reply to question 15 – Training programs, trafficking in human beings

239. See also the reply to question 7.

240. Training programs for representatives of institutions committed to combating trafficking in human beings, including officers of the Police and representatives of the judiciary, are held regularly, as described below.

1. Examples of training programs for law enforcement officials, judges and prosecutors

241. Training programs concerning trafficking in human beings were held within the framework of successive National Programs of Combating and Preventing Trafficking in Human Beings in the years 2003–2004, 2005–2006, 2007–2008 and within the current National Action Plan against Trafficking in Human Beings in the years 2009–2010. Within the framework of these programs and the plan of action, resources have been dedicated to the following: training programs for officers of the Police and Border Guard, public prosecutors, judges, labour inspectors, staff of the Office for Foreigners conducting interviews with persons applying for refugee status and working in centres for foreigners and for training programs on trafficking in children, for directors of care and educational facilities and representatives of provincial offices exercising supervision over them.

242. The first training concerning trafficking in human beings was held by MLSP in 2004, while the following ones were organised in cooperation with the Ministry of Internal Affairs and Administration within the Task Group for Combating and Preventing Trafficking in Human Beings. Training programs were organised in all provinces and were attended by officers of the Police, social workers, judges, and public prosecutors. Training programs were organised as lectures and workshops led by people supporting victims of trafficking in human beings, public prosecutors of the National Prosecution Authority, employees of the Ministry of Internal Affairs and Administration and members of the Task Group. Training programs familiarised social workers with issues related to trafficking in human beings and facilitated contacts with representatives of other services committed to combating trafficking in human beings.

243. Since 2004, MLSP has held its own series of training programs on general issues related to trafficking in human beings. Individual modules concern the questions of adult and children victims of trafficking in human beings. Training programs take place 4 times a year. Until 2010, 10 training programs were held. Training programs are financed in full by the MLSP. Six training programs financed by the European Union have been held within the “IRIS” Partnership for Development.

244. In 2005 a training was held for 26 judges and 36 public prosecutors including the following subjects: trafficking in human beings from the perspective of EU legislation; protection of a witness to trafficking in human beings, manner of examining a witness – a victim of trafficking in human beings (an adult and a child).

245. Questions concerning criminal proceedings related to crimes of trafficking in human beings and illegal migration are taught in a post-graduate study course on Organised Crime and Terrorism for public prosecutors, held by the Polish National School of Judiciary and Public Prosecution in cooperation with the Faculty of Law and Administration of Warsaw University. The post-graduate course was led twice and was attended by all public prosecutors employed in Departments of Crime and Corruption in Appellate Prosecution Authorities from across the country.

246. In 2007 La Strada Foundation conducted a series of seminars for judges, held in cooperation with the Embassy of the United Kingdom and the Ministry of Internal Affairs and Administration; they were organised as part of a specialist pilot training program “Trafficking in human beings in case law as a crime and a circumstance for committing other crimes”. Other training sessions of this kind, in particular regions of Poland, were held in 2008 (the training was attended by 70 judges).

247. In March 2009, PNSJPP organised specialist training sessions on trafficking in human beings. Training courses were dedicated to a group of around 60 public prosecutors, consultants for cases of trafficking in human beings. The consultants are public prosecutors appointed in all Appellate Prosecution Authorities, who have ample expertise in combating trafficking in human beings; their task is to provide support in complicated cases of that kind. The training programs focused, inter alia, on the notion of trafficking in human beings, the rights of the victim, methodology of criminal proceedings (workshops), and cooperation between the public prosecutor and the Police, Border Guard and non-governmental organisations in the course of proceedings concerning trafficking in human beings.

248. To follow up on the recommendations of the Council of Europe Human Rights Commissioner on providing officers of the Police with specialist training programs on trafficking in human beings and domestic violence, a Program of a specialist course on combating trafficking in human beings was prepared. The program was implemented in 2009. The course is dedicated to officers of the Police who work with cases related to combating trafficking in human beings and/or conduct classes related to combating trafficking in human beings.

249. In December 2010 training programs were scheduled for a group of 50 judges. The classes focused on “Criminal law aspects of combating discrimination on grounds of race, ethnicity, religion, sexual orientation or gender. Forensic science, criminological and legal aspects of trafficking in human beings”.

250. In June, September–November 2011, 11 one-day courses “Trafficking in Human Beings Under Criminal Law” were held in cities being seats of appellate prosecution authorities. The courses were targeted at a total of 440 prosecutors and 110 judges presiding over criminal cases.

251. The problem of preventing trafficking in human beings has been included in the training schedule of PNSJPP for the year 2012.

252. Within the framework of implementing the National Plan of Action Against Trafficking in Human Beings for the Years 2011-2012, new courses related to human trafficking, with special emphasis on trafficking in children, are planned for officers of the Police and BG, public prosecutors and judges.

253. Non-governmental organisations such as La Strada and Dzieci Niczyje Foundation are the principal partners cooperating with public authorities in the organisation of courses on trafficking in human beings.

2. Training programs for the diplomatic and consular corps

254. In May 2010 the Ministry of Internal Affairs and Administration organised training for the diplomatic and consular corps in cooperation with the Council of the Baltic Sea States, International Organisation for Migration, Moldova, and domestic experts. Furthermore, the Ministry of Foreign Affairs included a special module concerning trafficking in human beings in a training for the diplomatic and consular corps.

3. Training programs for the Border Guard

255. Questions related to human trafficking were introduced into the general system of trainings for BG officers. Furthermore, BG officers teach and attend relevant specialist courses.

256. Implementing the aforementioned National Plan of Action against Trafficking in Human Beings for the Years 2009 – 2010, in December 2010 the Commander in Chief of

BG approved a four-tier “System of Training Programs on Trafficking in Human Beings for BG Officers”:

(a) Level I – familiarising BG officers with basic issues concerning trafficking in human beings, basic principles and activities concerning the identification of the victim and mode of information flow;

(b) Level II – extension of information raised at level I;

(c) Level III – preparing BG officers for the implementation of tasks concerning the prevention and combating of trafficking in human beings, identification of victims and organisation of support and assistance to victims; exchange of experience between the attendees and adoption of the best practices related to trafficking in human beings;

(d) Level IV – targeted primarily at coordinators for trafficking in human beings: enhancing coordination and honing the competence of an expert or leader in the field of combating trafficking in human beings.

257. An intranet platform is scheduled to be launched within BG with basic information on trafficking in human beings and the documents whose completion is necessary for the implementation of relevant activities. Besides, the platform will be an education tool. The implementation of the above system was commenced in early 2011.

258. To enhance the sensitivity and awareness of BG officers as to the application of binding provisions on trafficking in human beings, the BG Training Centre in Kętrzyn and the BG Central Training Facility in Koszalin held classes within the principal training program on the following issues:

(a) Trafficking in human beings and smuggling people across Poland’s national border;

(b) Trafficking in human beings – forms of international trans-border crime;

(c) Illegal migration and human trafficking.

259. Furthermore, in October 2010 the BG Training Centre in Kętrzyn, in collaboration with La Strada Foundation, celebrated the European Day against Trafficking in Human Beings, while in February 2011 classes on providing help to victims of trafficking in human beings were held within the Week of Assistance to Crime Victims.

260. The BG Central Training Facility in Koszalin held the following training programs:

(a) In the 2nd half of 2007:

(i) Course for coordinators for trafficking in human beings – (5 days) 1 edition;

(ii) Workshops: practical combating and prevention of trafficking in human beings for public prosecutors from Appellate Prosecution Authorities and coordinators for trafficking in human beings – BG and Police officers – (2 days) 1 edition.

(b) In 2008:

(i) Course for coaches and plenipotentiaries for human rights protection on trafficking in human beings - (2 days) 1 edition;

(ii) Workshop for coordinators from Police schools, BG branches and prosecution authorities on trafficking in human beings – (3 days) 1 edition,

(iii) Identification and prevention of trafficking in human beings – on-the-job course for BG officers – (3 days) 1 edition.

(c) In 2009:

- (i) Course on the issue of trafficking in human beings, for the State Labour Inspectorate - (1 day) 1 edition;
 - (ii) Classes on the issue of trafficking in human beings, for student priests of a Seminary - (1 day) 1 edition;
 - (iii) Course on the issue of trafficking in human beings, for public prosecutors - (1 day) 1 edition;
 - (iv) Training program on the issue of trafficking in human beings, for social workers - (3 days) 4 editions;
 - (v) Conference and seminar for coordinators for the issue of trafficking in human beings - (3 days) 1 edition;
 - (vi) Identification and prevention of trafficking in human beings – on-the-job course for BG officers – (2 days) 1 edition;
 - (vii) Course on the issue of trafficking in human beings – cooperation with ISA - (3 days) 1 edition.
- (d) In 2010:
- (i) Identification and prevention of trafficking in human beings – on-the-job course for BG officers – (3 days) 2 editions,
 - (ii) Working meeting on trafficking in human beings organised for BG officers – (1 day) 1 edition,
 - (iii) Workshop for coordinators for the issue of trafficking in human beings – (3 days) 1 edition,
 - (iv) “Odessa” project – a course consisting in an exchange of know-how between Polish officers and officers of German Police on combating trafficking in human beings (3 days) – 1 edition,
 - (v) Course on providing support to victims of trafficking in human beings for MLSP – (2 days) 4 editions,
 - (vi) Course within the “Odessa” project for officers of Ukrainian BG on combating trafficking in human beings (3 days) – 1 edition,
 - (vii) Electives for basic training students on “Trafficking in human beings – cooperation and information exchange”.

261. In 2011 the BG Central Training Facility in Koszalin planned 5 editions (3 training days each) of an on-the-job course for BG and Police officers on the socio-cultural identification of victims of trafficking in human beings.

262. BG moreover cooperates with the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union in the field of preventing and combating trafficking in persons. The THB Project – Trafficking in Human Beings – was launched in 2010. In 2011 meetings were held with a view to preparing a handbook of the best practices, helpful in the event of identifying instances of trafficking in human beings during the crossing of the EU external border (23-24.02 Cesena/Italy, 10-12.05 Lubań/Poland, 07-09.06 Vienna/Austria, 25.07 Brussels/Belgium, 5-8.09 Lyon/France, and 28-29.11 Warsaw/Poland). The project moreover envisages a training for trainers – multipliers for the implementation of nationwide trainings for BG officers in the relevant field.

Reply to question 16 – Training programs, Law Enforcement Officers Programme on Combating Hate Crimes and the role of public prosecutors in an effective prevention of discrimination

1. Law Enforcement Officers Programme on Combating Hate Crimes

263. The Law Enforcement Officers Programme on Combating Hate Crimes (LEOP) has been implemented since 2006. The Program is coordinated by the Ministry of Internal Affairs and Administration and implemented in the Police in cooperation with the Office for Democratic Institutions and Human Rights Organization for Security and Co-operation in Europe (ODIHR OSCE).

264. As part of the pilot program, in September 2008 the Police School in Słupsk held a seminar on the Police Forum against Discrimination; apart from officers of the Police, it was attended inter alia by representatives of national and ethnic minorities and non-governmental organisations concerned with human rights protection.

265. The Program involves, inter alia, a system of multi-tier continuous training sessions for officers of the Police. The training program, approved for implementation by the Commander in Chief of the Police in September 2009, is dedicated to issues of identifying, adequately responding to and preventing hate crimes as well as collecting relevant evidence. Individual classes are taught by Police specialists, ODIHR experts, representatives of the prosecution authority, MIA, and non-governmental organisations. Two kinds of courses are held within the Program:

- At the central level – a five-day specialist course on preventing and combating hate crimes for trainers;
- At the local level – a one-day continuous training on preventing and combating hate crimes for Police officers.

266. The specialist course is composed of two parts: one provides information about the relevant issues and the other one is meant for trainers since its aim is to prepare the participants for the role of trainers of local course on preventing and combating hate crimes. Until the end of 2010 a total of 4 editions of the course were held, attended by 50 people (including plenipotentiaries of Police commanders for human rights protection).

267. Since early 2010, one-day local training programs have taken place across Poland. These classes are attended by officers who deal directly with hate crimes (i.e. primarily officers of the criminal division, prevention and investigation). The training program will continue at least until the end of 2012 – until 15 October 2011 over 20,000 officers attended the trainings.

268. As the LEOP coordinating authority, MIA carries out an ongoing monitoring of local trainings with a view to assuring their consistently high standard.

269. Furthermore, to assist the teaching process implemented within the Program, a publication was issued titled “Przestępstwa z nienawiści. Materiał pomocniczy dla trenera” [Hate Crimes. Handbook for Trainers], edited by representatives of the Police and MIA, in collaboration with representatives of the prosecution authority, “Nigdy Więcej” Association and ODIHR OSCE. The above publication was issued by ODIHR OSCE.

2. The role of prosecutors in an efficient combating of discrimination

270. The project “The role of prosecutors in efficient combating of discrimination” was carried out in 2007 as a one-off venture. It was aimed at prosecutors who perform tasks related to combating discrimination on grounds of race, ethnic origin, religion, denomination, age and sexual orientation. It comprised the organisation of four workshops

for around 240 attorneys. The purpose of such workshops was to familiarise the participants with the knowledge concerning the identification of the instances of discrimination, including relevant legislation, methods of preventing and combating discrimination, as well as to sensitise workshop attendees to potential instances of discrimination against various social groups.

271. In subsequent years successive workshops within this area were carried out, inter alia:

- Since 2008 regular workshops on combating discrimination have been organised by PNSJPP in collaboration with The Academy of European Law. They were aimed at judges and prosecutors. As yet, from 2008 to 2010, 52 people in total have participated in the workshops. Data for 2011 will be available in 2012.
- Between 6–8 and 14–17 December 2010, training programs were held for a group of 50 and 45 judges, respectively. The classes focused on “Criminal law aspects of combating discrimination on grounds of race, ethnicity, religion, sexual orientation or gender. Forensic science, criminological and legal aspects of trafficking in human beings”.

272. The problem of combating discrimination has been included in the training schedule of PNSJPP for the year 2012.

Reply to question 17 – Examinations

273. In the period under consideration no new principles of examination of persons were introduced at the level of a statute.

274. As of 20 February 2009, when examining an injured party, Police officers have taken into consideration guidelines of the PG as to actions for the benefit of a victim. The guidelines enhance the guarantees of victims availing themselves of all their entitlements in criminal proceedings.

Reply to question 18 – Detention for the purpose of deportation

1. Binding provisions

275. Regulations on the stay of foreigners in a guarded centre or a detention centre for the purpose of deportation are set out in Chapter 10 of the Law of 13 June 2003 on foreigners (Journal of Laws of 2011 No. 264 item 1573) and in relevant by-laws, i.e. regulations of the Minister of the Interior and Administration. Relevant provisions are as follows.

276. Art. 114 of the Law on foreigners stipulates that a foreigner admitted to a guarded centre is placed in a room for a foreigner, while a foreigner admitted to a detention facility for the purpose of deportation is placed in a residential cell (for the sake of clarity the two premises will be hereinafter jointly referred to as “rooms”). The area of a room cannot be lower than: 3 m² for 1 man and 4 m² for 1 woman or minor. A room is fitted with furnishings assuring a foreigner a separate place for sleep, adequate hygiene, adequate inflow of air, and a temperature level corresponding to the time of the year, in line with the standards for residential premises, as well as lighting fit for reading.

277. Pursuant to Art. 115 of the Law on foreigners, foreigners of opposite sexes are placed in separate rooms. The binding legal provisions also allow placing minors in guarded centres, contingent on the satisfaction of adequate standards. When possible, foreigners in guarded centres with a minor in their care are placed in one room with such minors. With respect to unaccompanied minor foreigners, BG authorities request their

placement in care and educational facilities. However, on a case-by-case basis, should such a solution be impossible or difficult, a request is filed for the placement of an unaccompanied minor in a guarded centre. An unaccompanied minor in a guarded centre is placed in a separate section of the facility in a manner preventing contact with the adults placed in this facility. The facilities of guarded centres meant to secure the needs of this particular group of people meet all the necessary relevant criteria. In addition, the recreation and education program takes into account the unique situation of unaccompanied minors.

278. Pursuant to Art. 117 section 1 of the law on foreigners, a foreigner placed in a guarded centre or a detention facility for the purpose of deportation has the right to the following:

- (a) Contact the state authorities of the Republic of Poland and the diplomatic mission; or
- (b) The consular post of the foreign country in personal and official cases;
- (c) Contact the non-governmental or international organisations dealing with granting assistance to aliens, especially legal aid;
- (d) Dispose of the objects deposited, referred to in Art. 111 sec. 3 p. 2 and 3 and sec. 5, unless those objects have been safeguarded according to the procedure set forth in the regulations on the administrative enforcement;
- (e) Benefit a medical treatment and - if it is justified by his / her state of health - be placed in a medical care centre;
- (f) Undisturbed sleep between 10 p.m. and 6 a.m., on off days until 7 a.m. and at other times unless it is contrary to the rules of stay in the centre or the arrest;
- (g) Use sanitary devices as well as toiletries;
- (h) Possess objects of religious worship, practice their religion, enjoy religious services listen to or to watch in the accommodation facilities to divine services broadcast by mass media, unless it is contrary to the rules of stay in the centre or the detention facility;
- (i) Use the press, buy the press, at his / her expense, and possess it in the room for aliens or in the residential cell;
- (j) Buy, at his / her expense, food, toiletries and keep those objects in the room for aliens or in the residential cell; those objects may be kept in the residential cell only if they or their packing shall not constitute a threat to the order and safety in the detention facility;
- (k) Buy, at his / her expense, stationery, books and games as well as to possess those items in the room for aliens or the residential cell;
- (l) Receive packs containing clothing, footwear and other objects of personal use as well as containing dressing and toilet articles, if those packs have been checked in his / her presence. The packs containing medicines may be handed over to a foreigner only with a doctor's consent;
- (m) In emergency events a foreigner may be allowed to use communications means and send correspondence at the expense of the centre or of the detention facility;
- (n) Submit petitions, complaints and requests to:
 - The head of the Police or Border Guard authority which supervises the centre,
 - The officer responsible for functioning of the detention facility or to the Police or Border Guard authority which supervises the detention facility;

(o) Meet with relatives in specified facilities, with the consent of the Police or the Border Guard agency supervising the centre or the detention facility as well as with the consent of the person authorised by that authority.

279. Foreigners placed in a guarded centre have the right to move about the centre at a time and in a place designated by the head of the centre. Foreigners placed in a detention facility for the purpose of deportation have the right to a one-hour daily walk in the open air, unless this is against doctor's orders, as well as play club games, without gambling games, at a time and in a place designated by the officer on duty in the detention facility. The kind and number of games available correspond to relevant actual needs and available finances. Furthermore, the head of a guarded centre or an officer in charge of a detention facility may allow a foreigner to keep in the room audio-visual and computer equipment and other objects, including those that enhance the aesthetics of the room or are a token of the cultural interests of a foreigner.

280. Foreigners in a guarded centre or a detention centre for the purpose of deportation have the right to smoke tobacco, and the head of a facility is obliged to facilitate actual exercise of this right, either by allowing the smoking of tobacco in designated rooms, or by setting aside and adapting separate rooms. Still, smoking tobacco is allowed in designated areas and takes place at a time appointed by the head of a particular BG unit. The principles adopted guarantee the provision of areas free from smoking.

281. The current legal provisions moreover address the questions of providing clothing to foreigners in a guarded centre or a detention centre for the purpose of deportation. Pursuant to Art. 116 sections 1 and 2 of the law on foreigners, foreigners in a guarded centre or a detention centre for the purpose of deportation use their own clothing, underwear and footwear. If these articles of clothing are unfit for use or if their use is inadmissible for hygienic reasons, a foreigner may receive free of charge clothing, underwear and footwear corresponding with the time of the year. If a foreigner cannot buy them, the provision of the above articles is free of charge. Administration of guarded centres and detention facilities for the purpose of deportation covers the (individual) needs. Furthermore, a foreigner receives free of charge toiletries for personal hygiene.

282. Pursuant to Art. 118 of the law on foreigners, foreigners in a guarded centre or a detention centre for the purpose of deportation also receive meals and beverages. Legal provisions on principles of providing food to persons in such facilities take into account in particular foreigners' age, health status and their religious and cultural needs. As a consequence, all menus are adjusted to the needs and requirements stipulated in the regulation of the Minister of the Interior and Administration on the conditions of providing meals and beverages to foreigners in a guarded centre or a detention centre for the purpose of deportation and the daily nutritional value, and are in addition approved by a physician. "Diet" meals, in line with the current provisions, are invariably prepared on doctor's orders. "Culture-specific" meals are prepared upon a written request of a foreigner, approved by the head of a department and adjusted to the technical facilities of the kitchen and to supply.

283. Children placed in guarded centres can take part in education classes. As of 1 September 2011, families of foreigners placed in guarded centres with children of school age, are directed to the Guarded Centre for Foreigners in Kętrzyn, where their children can take part in schooling appropriate to their age group. To make education of such children possible, on 14 July 2011 the Commander of the Varmia and Masuria Chapter of BG and the Mayor of Kętrzyn signed an agreement on cooperation on providing education to foreigners placed in a Guarded Centre for Foreigners in Kętrzyn; this agreement entered into force on 1 September 2011.

284. Guarded centres or detention facilities for the purpose of deportation are mainly modern facilities, designed in line with the currently binding residential standards.

Renovation and repairs meant to increase the living standards take place on a regular basis in response to new needs.

285. To sum up: the living standards in guarded centres or detention facilities for the purpose of deportation are defined in great detail by relevant legal provisions. The facilities themselves and the living standards meet international criteria.

286. It should be stressed that the living standards in deportation facilities are monitored on a regular basis. The Administration for Foreigners of the National Headquarters of BG monitors all guarded centres or detention facilities for the purpose of deportation. The visitations of the facilities allowed the adoption of conclusions that the standards in guarded centres or detention facilities for the purpose of deportation and the level of the medical care they offer meet the requirements laid down in the regulation of the Minister of the Interior and Administration on the standards to be met by guarded centres or detention facilities for the purpose of deportation conditions and the in-house rules of stay of foreigners in the above facilities.

287. Furthermore, the standards of the facilities are monitored by other state institutions (e.g. the Ombudsman, as part of the obligations under the Constitution and in the capacity of the National Preventive Mechanism) and independent institutions, including non-governmental organisations, e.g. Association of Legal Intervention or HFHR.

2. The law on foreigners – draft assumptions

288. At present MIA continues work on draft assumptions for a draft law on foreigners. The new provisions are planned to be in force in mid-2012. The draft regulations cover also the issue of foreigners' stay in a guarded centre or a detention centre for foreigners.

289. Plans are made to limit the placement in guarded centres of unaccompanied minors. Hence the proposal that this should only relate to people over 13 years of age. An obligation was introduced to place minors with parents in a shared room in all situations, rather than, as previously, when possible. Furthermore, a solution was introduced to allow minors in guarded centres to participate in educational classes, in particular in lessons and sports and recreation classes.

290. The authors of the draft law extend the catalogue of rights of foreigners placed in the above facilities. A foreigner in a guarded centre or a detention centre for foreigners would be additionally entitled to receive free of charge clothes, underwear and footwear corresponding with the season of the year. Furthermore, the number of hours a foreigner placed in a detention facility for foreigners may spend in the open air has been increased. According to the draft law, a foreigner placed in a detention facility for foreigners may take at least a two-hour walk in the open air, unless doctor's orders stipulate otherwise.

291. Furthermore, proposed provisions introduce the supervision of a penitentiary judge over the legality and correctness of the stay of foreigners in guarded centres or detention facilities for foreigners.

Reply to question 19 – National preventive mechanism

292. OPCAT was ratified by Poland in 2005, is part of Polish law and is applied directly.

293. In Poland the NPM tasks are implemented by the Ombudsman. This capacity was entrusted to him in January 2008.

294. The Ombudsman is a constitutional authority established in 1987 by the law of 15 July 1987 on the Ombudsman. Pursuant to the provisions of the 1997 Constitution and the above law, the Ombudsman "safeguards the freedoms and rights of persons and citizens"

and “examines whether a violation of the law and principles of social coexistence and justice has not occurred due to action or inaction of authorities, organizations and institutions obliged to respect and implement these freedoms and rights”.

295. The Ombudsman is an authority that meets the standards set forth in the Paris Principles. The Constitution of the RP assures him independence of the executive. The Ombudsman is appointed by the lower chamber of Polish Parliament (Sejm), with the consent of the Senate. Only Parliament may discharge the Ombudsman prior to the end of his term of office in the event he has refused to perform his function, has become permanently incapable to perform the office or has acted against his oath.

296. The Ombudsman must be a person of outstanding legal knowledge, professional experience and high prestige due to his moral values and social sensitivity and cannot carry out any activity incompatible with the dignity of his office. These regulations safeguard a reliable, professional and independent performance of duties by the Ombudsman and his personnel.

297. Furthermore, since the very start of the office, the Ombudsman has conducted regular visitations of correctional and detention facilities to ascertain whether the rights of their inmates are observed. This fact, too, was a major argument for entrusting the tasks of NPM to the Ombudsman.

298. Initially the NPM tasks were implemented by designated personnel of different targeted teams operating in the Office of the Ombudsman. All the designated employees were properly prepared to carry out preventive visitations. On 14 October 2010, as a result of a reorganisation carried out in the Office of the Ombudsman, a seven-person “NPM” group was set aside. The “NPM” task force is supported in visitations by the personnel of other teams of the Office of the Ombudsman and personnel of Branch Offices of Plenipotentiaries.

299. The “NPM” task force conducts visitations of detention facilities in line with an adopted visitation schedule. Each visitation is followed by a record containing inter alia an account of the irregularities identified and recommendations whose implementation is meant to eliminate violations of the law.

300. In 2008 members of NPM conducted 73 visitations, in 2009 – 99, in 2010 – 80, and in 2011 until 15 October – 74. The choice of venues depends on the kind, size and location in Poland. Furthermore, all available information on problems of individual facilities was taken into consideration.

301. The information gathered during visitations is followed by recommendations concerning amendments of the provisions in place or removal of legal loopholes, as well as recommendations concerning particular situations, e.g. standards of a particular detention facility. Such recommendations are later forwarded to competent authorities.

302. Polish authorities analyse NPM reports and the recommendations they contain. Examples of changes introduced in 2010 as a follow-up on NPM visitations include:

- Preparation by CAPS of information on the rights and obligations of convicted individuals and persons under temporary detention, its translation into five foreign languages and placement on the PS website;
- Preparation by CAPS of information on the rights of a patient for prisoners and persons under temporary detention.

303. An amendment of the law on the Ombudsman entered into force on 18 November 2011; its objective is to strengthen the position of NPM and to extend its competences by inter alia additional rights concerning the collection and processing of personal data of persons deprived of liberty.

304. NPM recorded no situation that would indicate the use of torture in Poland.

Reply to question 20 – Mandate of the Ombudsman

1. The Ombudsman

305. General information about the Ombudsman – see the reply to question 19.

306. The Ombudsman has authority in cases of violation of civil right or freedoms due to the actions or inaction of public authorities. As a result, he also has authority in cases of violations of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In cases of complaints concerning the violation of CAT, the usual procedure is to supervise the criminal proceedings until their legally binding completion. In cases dismissed in the stage of pre-trial proceedings, the Ombudsman investigates the record of the proceedings and in the case of any irregularities being identified, the Ombudsman refers the case to superior authorities. Complaints concerning Police officers, members of the Prison Service and members of the Border Guard are investigated by the Legal Department of the Office of the Ombudsman. The Office of the Ombudsman does not collect separate statistics on complaints related to violations of CAT. Generally, then, it should be indicated that since early 2006 until the end of 2010 (data for 2011 will be available at a later time), a total of 5,654 complaints on the activity of the Police and other law enforcement authorities were considered (including 2,935 complaints related to the PS), which accounted for 4 % of the total number of new complaints (141,112) filed within this time to the Office of the Ombudsman. Some of the complaints (3,119) were considered on an individual basis while some (25) provided the basis for filing a more general communication to a relevant authority. In the remainder of cases the complainants were provided with explanations and information, their requests were submitted to relevant authorities or they were asked to supplement them, or cases were dismissed. In 294 of the cases considered by the Office of the Ombudsman within the period under consideration the solutions met the expectations of the complainant.

2. The Ombudsman for Children

307. The Ombudsman for Children is an institution independent of public authorities established to safeguard the rights of the child. He has judicial entitlements, monitor and initiates proceedings, signals questions and disciplines. The Ombudsman for Children was established pursuant to the law of 6 January 2000 (Journal of Laws of 2000, No. 6, item 69), later amended, as a result of which the competences of the Ombudsman for Children were significantly extended.

308. The Ombudsman for Children is independent of other state authorities and is answerable only to the Sejm on principles defined in a separate law. His budget is independent of the Government. The Ombudsman for Children is an institution independent of public authorities is appointed by the Sejm with the consent of the Senate for a term of office of 5 years; one re-election is possible. After the completion of the term of office, the Ombudsman for Children is guaranteed employment on the previously held position.

309. The Ombudsman for Children cannot be held criminally responsible or deprived of liberty without prior consent of the Sejm. Pursuant to the Polish Constitution, he cannot combine his function with any other post, except a professorship in an institute of higher education, nor perform any other professional activities, belong to a political party, or perform other public activities incompatible with the dignity of his office.

310. The Ombudsman for Children safeguards the rights of the child set forth in the Polish Constitution, Convention on the Rights of the Child and other legislation. He acts for the benefit of the rights of the child, in particular for:

- (a) The right to life and protection of health;
- (b) The right to being brought up in the family;
- (c) The right to decent living standards;
- (d) The right to education;
- (e) The right to protection against violence, cruelty, exploitation, moral corruption, neglect, and other mistreatment;
- (f) The rights of children with disabilities.

311. The Ombudsman for Children takes action to assure the child a full and harmonious development, with respect of his dignity and identity.

312. The Ombudsman for Children performs his obligations on the basis of the provisions of the Polish Constitution, Convention on the Rights of the Child and the law on the Ombudsman for Children, including in particular:

- (a) The principle of the best interest of the child;
- (b) All the activities are taken in the best interest of the child;
- (c) The principle of equality;
- (d) Concern with the protection of the rights of each child;
- (e) The principle of respect of the responsibility, rights and obligations of both parents for the child's development and education.

313. The Ombudsman for Children takes action envisaged in the relevant law on his own initiative, taking into account the information notified to him and indicating a violation of the rights or the best interest of the child. He also addresses individual cases, if they have not been adequately resolved despite the exhaustion of all the possible legal measures. The Ombudsman for Children does not replace specialised services, institutions and associations involved in the protection of the child but intervenes in a situation when the previously applied procedures have proved ineffective or have been dismissed.

314. When the Ombudsman for Children is notified about or identifies a violation of the rights or the best interest of the child, he takes action set forth in the relevant law:

- (a) Examines, even without prior notice, each case on site;
- (b) Demands explanation or information from public authorities, organisations or institutions, as well as access to files and documents, including those containing personal data;
- (c) Announces participation in proceedings before the Constitutional Tribunal initiated on request from the Ombudsman or concerning a complaint of incompatibility with the Constitution and related to the rights of the child and takes part in such proceedings;
- (d) Lodges requests to the Supreme Court for resolving discrepancies in the interpretation of legal provisions related to the rights of the child;
- (e) Lodges a cassation appeal or a cassation complaint against a valid and final judgement, in a manner and according to principles defined in separate provisions;
- (f) Demands the institution of proceedings in civil cases and takes part in pending proceedings and has the rights similar to those of a public prosecutor;
- (g) Takes part in pending proceedings related to minors, and has the rights similar to those of a public prosecutor;

- (h) Demands the institution of pre-trial proceedings in cases related to offences;
- (i) Demands the institution of administrative proceedings, lodges complaints with an administrative court, takes part in such proceedings, and has the rights similar to those of a public prosecutor;
- (j) Applies for the imposition of penalties in contravention proceedings, in a manner and according to principles defined in separate provisions;
- (k) Commissions studies, experts' evidence and opinions;
- (l) Applies to competent public authorities or institutions for taking adequate measures for the benefit of the child within their competence;
- (m) Introduces to competent public authorities or institutions assessment and conclusions aimed at providing efficient protection of the rights and interest of the child and the manner of resolving relevant issues;
- (n) Applied for an adoption or amendment of acts of law, but cannot propose draft laws on his own and has to submit such proposals via competent authorities.

315. Actions of the Ombudsman for Children are targeted at all public authorities (inter alia: Sejm, President, CM, CT, the Supreme Court, common courts), local governments, governmental institutions, and non-governmental organisations.

316. The Ombudsman for Children is obliged to submit an annual report to the Sejm and Senate about his actions and provide information on the state of respect for the rights of the child in Poland. Since this information is made publicly available, it provides a perfect opportunity for a nationwide debate on the state of respect for the rights of the child in Poland.

3. The Ombudsman for Patients' Rights

317. The Ombudsman for Patients' Rights is a body of government administration established in 2009, competent for the protection of the rights of the patient as defined e.g. in the law of 6 November 2008 on the rights of the patient and The Ombudsman for Patients' Rights (Journal of Laws of 2009, No. 52, item 417 as amended; hereinafter: the law on the rights of the patient). The Ombudsman for Patients' Rights performs his tasks with the support of the Office of the Ombudsman for Patients' Rights. The law on the rights of the patient indicates the rights of the patient such as the right to information on his or her rights, to health services and benefits, to information about his or her health status and confidentiality of related information, to oppose an opinion or statement of a physician, to the respect of intimacy and dignity, respect of private and family life, to the presence of a family member, and to pastoral care. In individual cases of the rights of the patient, the Ombudsman for Patients' Rights examines if no violations of the rights of the patient have occurred. If he has obtained information that at least makes a violation of the rights of the patient probable, he has the right to institute explanatory proceedings on his own initiative or at a request (which is as little formal as possible). He may apply for the examination of the case to competent authorities, in particular authorities of supervision, prosecution authority, state, occupational or social control. The Ombudsman for Patients' Rights has the right to examine, even without prior notice, each case on site. He may demand explanations, access to the file of each case taking place before public administration or governing bodies of medical professions. Upon the conclusion of proceedings and adoption of a solution, he may demand information on the status of the case conducted by courts, prosecution authority and other law enforcement authorities and demand access in the office of a court file and prosecution file and documents of other law enforcement authorities. Upon explanatory proceedings, the Ombudsman for Patients' Rights may inter alia apply to an institution where he has identified a violation of the rights of the patient. In

civil cases related to violations of the rights of the patient, the Ombudsman for Patients' Rights may ex officio or at the request of a party: demand the institution of proceedings and take part in proceedings and has the rights similar to those of a public prosecutor.

318. Further information on the rights of the patient – see reply to questions 31-33.

4. Ombudsmen for the Rights of Patients of Psychiatric Hospitals (ORPPH)

319. ORPPH guarantees the protection of patients of psychiatric hospitals (see: Law of 19 August 1994 on the protection of mental health; Journal of Laws of 2011 No. 231, item 1375 as amended). Their tasks include: providing information about the rights of patients of a psychiatric hospital, assistance in the exercise of the rights connected with admission to hospital, treatment, conditions of stay and release from a psychiatric hospital, explanation or assistance in the explanation of patients' complaints, cooperation with the family, patients' statutory representatives or guardians.

320. ORPPH have the right to access medical files with the consent of the patient, his statutory representatives or guardians. An amendment (of 3 December 2010) of the relevant law granted them rights of access to all the premises of a psychiatric hospital connected with the provision of health services. Until the entry into force of the amendment, they were only allowed to enter the premises of a hospital. ORPPH have the right to request all members of health care facility personnel to take action for the elimination of the cause of the complaint or the irregularities identified.

321. ORPPH are employed in the Office of the Ombudsman for Patients' Rights, rather than individual hospitals where they operate and are independent in their actions from hospital management and MH, which is a guarantee of an adequate implementation of their tasks. ORPPH may however cooperate with other entities to ensure proper respect for the rights of persons with mental disorders, as witnessed by joint visitations in psychiatric hospitals conducted by employees of the Office of the Ombudsman for Patients' Rights and MH.

322. To assure the possibility of easy access to assistance provided by ORPPH, the law imposes an obligation on directors of psychiatric care facilities to post information about the hours and venues of work of ORPPH on a bulletin board.

Reply to question 21 – Abuse

1. Reaction to unprofessional conduct of law enforcement authorities

(a) Police

323. In the event of complaints about the action of a Police officer submitted to the Police and constituting communications of an offence committed by a Police officer, including an offence with the properties of torture or abuse, in each case they are submitted for recognition to an independent external authority, i.e. a public prosecutor. The Police, in turn, offer assistance to the extent defined by a public prosecutor, e.g. through the performance of concrete actions in a given investigation, as well as conduct their own actions, such as regular operations. Furthermore, the Police are authorised to take action with a view to safeguarding traces and evidence against loss, damage or distortion – in emergency cases (Art. 308 CCP). Upon the conclusion of this activity, if the case concerns a Police officer, all the evidence gathered is forwarded to a public prosecutor.

324. Unprofessional conduct of Police officers (deliberate mistreatment, abuse of force) was a subject of discussion during the meeting of the highest Police executives held on 7 December 2010. The talks were attended by the Commander in Chief of the Police, all of

his deputies and voivodship commanders of the Police and of Police schools. Thanks to an online broadcast, the meeting was followed by commanders acting on a local level throughout the country and their higher subordinates. The panel on human rights protection was led by PCCPHRP. Discussed during the meeting were recommendation of the Human Rights Committee and recommendations of CPT put forth at the same time; a speedy implementation of both Committees' recommendations was recognised. One of the commands issued during the meeting related to the resumption of training on the practical aspect of human rights protection for heads of Police units as local superiors of Police officers.

325. Questions of abuse by public officials are regulated in a clear manner and criminal accountability for this type of offence is severe. Exerting an influence on a witness, expert, interpreter, prosecutor or defendant by force or unlawful threat is an offence penalised under Art. 245 PC and carries a penalty of deprivation of liberty for a term from 3 months to 5 years. The use of force by public officials to obtain specific statements, testimonies, explanations or information or abuse in any other way is an offence under Art. 246 PC, which carries a penalty of deprivation of liberty for a term from one year to 10 years. Physical or mental abuse over a person legally deprived of liberty is defined under Art. 247 § 1 PC and carries a penalty of deprivation of liberty for a term from 3 months to 5 years; the same penalty can be adjudged with respect to a public official who in contravention of his obligations allows the perpetration of such an offence (Art. 247 § 3 PC). Abuse of power of a public official defined under Art. 231 § 1 PC carries a penalty of deprivation of liberty for a term of up to 3 years. Interestingly, in the case of a final conviction for a deliberate offence prosecuted ex officio, a Police officer is discharged. Noting the importance of the question of arrest, the NHP Criminal Office systematically issues relevant guidelines to local Police units. It brings to the attention of Police officers the need to an unconditional respect for binding law concerning an arrest of a person and adequate documentation of this action (a correct completion of an arrest record was discussed) and suggests that the subject be raised in local continuous training in Police units. In 2009, the NHP Criminal Office prepared a modified form of an arrest record with special emphasis of legal bases, so-called trial arrest. At the same time once again attention was brought to the rights of a person under arrest as arising from the law.

326. With respect to criminal offences, the rule is to suspend Police officers in the performance of their service. Depending on the circumstances of the case and the progress of an investigation, Police officers are suspended in the performance of their service or come back to service. This decision is made on a case-by-case basis and is dependent on particular circumstances. Compensation to potential victims is paid after court proceedings are concluded with a valid and final judgement.

327. Other action taken by the Police to protect the rights of detainees against abuse:

(a) Recommendations and guidelines of international organisations are forwarded without delay to voivodship commanders of the Police to be quickly and efficiently forwarded to Police officers for absolute and unconditional application in daily service. Coordination of forwarding such information is entrusted to regional plenipotentiaries of voivodship commanders of the Police for human rights protection;

(b) Recommendations and guidelines of international organisations are forwarded without delay to five vocational Police schools to be forwarded to Police officers during training at different level of education;

(c) In 2011 a strategic decision was taken to strengthen the recruitment process to the Police with tests of inclinations for intolerant conduct and discrimination;

(d) A strategic decision was taken to extend basic training for Police officers for newly admitted officers with issues of human rights and freedoms, with special emphasis

on the prohibition of any forms of inhuman treatment. The teaching methodology was changed by focusing on more practical educational solutions (work with case studies, mistakes of the Police, ECHR rulings, audits results, media coverage, etc.). In 2011 a methodological guidebook was prepared for Police teachers “Służyć i chronić” (To serve and to protect) with the best practices of teaching human rights of young Police officers during basic training;

(e) A strategic decision was taken to launch local trainings for heads of Police units on practical aspects of human rights protection, with special emphasis on the prohibition of the use of violence and any forms of inhuman treatment;

(f) Debate was launched on the possibility of establishing a Council of the Commander in Chief of the Police for Ethics and Human Rights. Work coordinated by PCCPHRP is currently underway on this concept;

(g) In 2010 the Police launched the creation and implementation of the Early Intervention System (EIS), whose principal objective is to create standards and responsibility of professional accountability. EIS is a proactive system of multidirectional actions meant to eliminate and prevent negative phenomena in the Police, including mistreatment of detainees. The EIS envisages mechanisms that strengthen commanders, who are responsible for creating the standards of their units, with adequate information, knowledge and skills. They will allow an identification of signals concerning undesirable conduct of subordinate Police officers and react to them early enough. Furthermore, an electronic EIS Newsletter is created based on “Lessons Learned” bulletins. It contains case studies of unwanted behaviour of Police officers, including ECHR case law. Until the end of the period under consideration, EIS will be installed in all Police HQs. The NHP Audits Office coordinates the creation and implementation of EIS in the Police;

(h) In February 2011 PCCPHRP, as part of team network with the support of the Ombudsman, HFPC and MIA, developed a program of workshops for city and county commanders of the Police on Human Rights in Police Management. The program continues activities started in 2002 by the National Working Group of the Police for Human Rights Protection, which implemented a similar initiative, but which was mainly a theoretical compendium. The new formula will be composed solely of training package addressed at heads of Police units, during which these commanders will hone their actions in relations between superiors and subordinates as well as head of Police units and the local community.

(b) Border Guard

328. The BG implements a program of providing the Ombudsman with information on complaints and extraordinary incidents related to improper conduct of officers in cases usually ruled on by the ECHR. The procedure of forwarding to the Ombudsman information about complaints and other relevant information was begun on 15 February 2010. Provision of information in BG is coordinated by the Plenipotentiary for Human Rights Protection of the Commander in Chief of BG, who in connection with the introduction of the program trained local Plenipotentiaries operating in local units (BG branches). The Ombudsman is notified about incidents resulting in bodily harm or deterioration of health. Besides, the Commander in Chief of BG obliged commanders of BG branches to publish on their websites unified information about the possibility of addressing the Ombudsman directly in the event of improper conduct of BG officers.

329. According to the law of 12 October 1990 on the Border Guard (Journal of Laws of 2011 No. 116, item 675 as amended), Chapter 14 titled “Disciplinary and criminal liability of Border Guard officers” (vide Art. 134-147b) regulates general substantive provisions relating to the principles of disciplinary liability of Border Guard officers. The general

principle of disciplinary regulations is that a BG officer guilty of punishable offences or contravention or violations of professional ethics and dignity is held liable in disciplinary proceedings, irrespective of criminal responsibility. Pursuant to a provision of Art. 136b section 6 of the above law, the Minister of the Interior and Administration in a regulation of 28 June 2002 on conducting disciplinary proceedings against Border Guard officers (Journal of Laws No. 118, item 1015, as amended), introduced bylaws for the procedure of disciplinary proceedings against Border Guard officers. Furthermore, the law stipulates that in matters not regulated in the above bylaw, relevant provisions of CAP will apply to such disciplinary proceedings.

(c) Prison Service

330. In all cases of suspected violations of the law, also in the event of suspected use of torture and abuse, law enforcement authorities are notified (prosecution authority, Police) and they conduct the proceedings. Since 2007 until the end of February 2011 no compensation was granted in penitentiary facilities to “(prisoners) victims for acts of torture and abuse by PS officers”. This confirms the reliability and efficiency of the complaints procedure since court rulings confirm resolutions of complaints.

331. Provisions of the regulation of the Minister of Justice of 13.08.2003 on ways of considering petitions, complaints and requests of persons in correctional facilities and detention centres (Journal of Laws No. 151, item 1467) apply to the procedures used by the Prison Service in the event a prisoner lodges an oral or written complaint indicating that he has been subjected to torture or inhuman treatment or punishment. Pursuant to the above regulation, the justifiability of allegations raised in complaints is examined in explanatory proceedings, where relevant documents are collected (officers’ official memos, representations, photocopies of necessary documents). In the event of complaints concerning infringement of personal inviolability, after such a charge is submitted by a prisoner immediately after the incident, the prisoner is subject to a medical examination to establish injuries if they have occurred. In turn, when a longer time elapsed since the incident described, the medical file is subject to a thorough scrutiny. In especially justified cases provision of § 8 section 6 of the above regulation applies, according to which a complaint should be considered immediately on site by representatives of a PS unit superior to the one to which the complaint applies. Then complaints are considered by officers of District PS Inspectorates directly in subordinate penitentiary units. Use of direct coercion measures is based on provisions and procedures defined in the law on PS and a relevant regulation of CM.

332. In 2010, PS penitentiary facilities considered a total of 503 complaints of prisoners concerning physical abuse by officers, verbal aggression and use of direct coercion measures; 1 complaint was found justified. Data for 2011 will be available in 2012. The reason why the complaint was found justified was the commission by ward officers of an act violating binding provisions. A loss of self-control and the beating of a prisoner was unquestionably improper conduct. Prosecution authority was notified about an offence under Art. 158 § 1 PC. In the above case, when the fault of administration proved unquestionable, appropriate action was taken to eliminate similar violations and irregularities in the future. Because of a written notification asking for discharge from service filed by the officers taking part in the incident, disciplinary proceedings regarding them were discontinued. On 15.12.2010 these officers were discharged.

333. To prevent any negative behaviour, officers are made aware on an ongoing basis about e.g. ECHR case law and recommendations and comments of non-penitentiary institutions and organisations monitoring the work of penitentiary units that consider complaints. (More on training for PS officers and staff – see the reply to question 13).

334. The CAPS Penitentiary Office analyses reports of extraordinary incidents such as abuse, rape and battering. The Office may demand additional explanations, evaluate the propriety of the action taken and procedures applied, putting forth communications about irregularities identified to district directors of PS and directors of correctional facilities and detention centres with a view to preventing the above incidents in the future.

335. Each information that might indicate the use of torture or abuse is subject to a thorough analysis. In the case of abuse of a prisoner, his beating or rape procedures are put in place defined in the Instruction of the PS Director General of 29 December 2003 on notifications about extraordinary incidents; the procedures include inter alia an obligation of:

- (a) Immediate notification of superior units about such an incident;
- (b) Conduct of explanatory proceedings or actions which should be concluded no later than within 21 days of the day of the decision in this case;
- (c) Notification of a penitentiary judge and public prosecutor having jurisdiction over the facility;
- (d) Notification of a disposing authority when the incident involved a prisoner with respect to whom proceedings are pending led by this authority. Furthermore, when the perpetrator of the incident is identified, disciplinary sanctions apply.

2. Mandate for the consideration of allegations of improper conduct

336. Within the Office of the Ombudsman there is no group of experts appointed to analyse improper conduct of Police officers.

337. Cases related to improper conduct of officers of the Police, BG and City (Municipality) Guards, and PS are considered by the employees of the Team of Criminal Law in the Office of the Ombudsman. Each request is examined on a case by case basis at a request of an interested party or ex officio.

338. As of January 2010 the Ombudsman has received information on complaints lodged with Police units during a given month (information is supplied on the 15th day of each month) from the NHP Audits Office and from the Plenipotentiary of the Commander in Chief of the BG for Human Rights Protection, and on an ongoing basis receives information that are not complaints about incidents involving officers. Information is submitted to the Team of Criminal Law and is analysed whether there is a need to institute official explanatory proceedings.

339. In cases approved for consideration letters are submitted to a competent authority asking whether official proceedings are pending, and to competent prosecution authority asking information whether proceedings are pending in a given case and what the current status of the case is. If criminal proceedings are instituted, the case is monitored until its valid conclusion. If proceedings are discontinued and the decision raises doubts, the case file is examined and in case irregularities are identified communications are submitted to a superior public prosecutor.

340. The above rules of procedure apply to extraordinary events with the participation of persons deprived of their liberty, including those detained by the Police.

341. Since 2008, the Ombudsman has regularly received information from MJ, NHP and MNE (since 2009) about extraordinary events (deaths, beating, mistreatment by officers, etc.), taking place in units subordinate to these institutions, where persons deprived of their liberty stay (i.e. correctional facilities, juvenile detention centres, sobering-up centres, Police stations) all over Poland. This allows their systematic analysis by the personnel of

the Office of the Ombudsman and their swift reaction in the event of identifying a probable violation of civil rights and liberties.

3. Statistics

342. Statistics – see appendices 21A and 21B.

343. The NHP conducts annual assessment of criminal acts in the Police on the basis of results of its operation. No separate statistics are held on instances of torture and abuse committed by Police officers; torture and abuse are placed in the category of offences penalised under Art. 231 PC, i.e. abuse of authority.

Reply to question 22 – Prosecution of crimes against persons of “at-risk groups”

344. The standards of inquiries and investigations in cases of offences committed against minorities are no different than those generally adopted by the Police as to the time and manner of reaction. They are treated with as much determination as other categories of offences.

345. The Police implement a number of activities aimed to raise the awareness of the problem of discrimination and anti-Semitism. These activities are mainly regional but are coordinated from the NHP level by the implementation of formally approved directions of action of plenipotentiaries for human rights protection for the years 2010–2012. The following tasks are carried out within the action program “Enhancement of the attitude and behaviour of tolerance”:

(a) Nation-wide workshops on tolerance and elimination of all kinds of prejudice in connection with preparations for the EURO 2012 football tournament and implementation of comments and recommendations in everyday operations of the Police;

(b) Meetings with plenipotentiaries of Police school commanders for human rights protection to review occupational training programs related to human rights and development of an adequate methodology for teaching these subjects;

(c) Workshops sensitising Police officers to questions of diversity, tolerance and anti-discrimination activities (in cooperation with MIA, ODHIR and HFPC) in local Police units;

(d) Ongoing collection and processing for the purpose of training of information on events, phenomena and offences related to discrimination and improper conduct of the Police (analysis and proposals of actions aimed at improving the quality and manner of operation of the Police);

(e) Visitations of Police units checking the respect for the rights of clients;

(f) Meetings with commanders and officers to discuss current instances of unprofessional conduct of Police officers;

(g) Publication of articles on human rights protection in the activity of the Police in Police periodicals and other publications.

346. These actions take place within the framework of the network of 23 full time plenipotentiaries for human rights protection.

347. LEOP training program – see the reply to question 16.

348. The training program at all levels of instruction of Police officers discusses questions of anti-discrimination (basic course, specialist courses and training for university

graduates and in the module “internal security” – within the subject human rights and ethics of officers of state services for Police officers and civilian students). The classes are interactive and are conducted on the basis of an anti-discriminatory handbook for Police officers (2009, Pro Humanum Association). Classes address moreover the question of preventing hate crimes.

349. Implementing the recommendations of the Council of Europe Commissioner for Human Rights from the 2007 Memorandum to the RP Government concerning the protection of minority monuments and cemeteries, out of respect to minority groups and to preserve the common heritage, the Police developed local action plans for the period 2008-2009 dedicated to ensuring special protection of minority monuments and cemeteries. Police officers took part in workshops (involving also representatives of non-governmental organisations). Educational materials were prepared (brochures, fliers, handbooks); together with non-governmental organisations actions were taken to raise the awareness of citizens; awareness-raising meetings were held with custodians of cemeteries and students. The questions of non-discrimination and the importance of places of memory, monuments and cemeteries, were included in training sessions and meetings with school students which were led by Police officers from the crime prevention division. Because the local plans have been in operation for a short time only, at this point it is impossible to objectively evaluate their effects on decreasing crime and pathologies. Awareness of Police officers of discrimination and sensitivity to its manifestations as well as knowledge on how to combat racist crimes have increased. This initiative is going to be continued. There is also an ongoing cooperation with cemeteries administration with a view to eliminating incidents of destruction of minority monuments and cemeteries. Cooperation with churches and religious organisations is in progress (in particular related to the protection of sacred buildings), and with Voivodship Conservators of Historical Monuments and the National Centre for Research and Documentation of Historical Monuments.

350. Other regional activities include:

- (a) Creation of training teams to conduct training for Police officers from local units on tolerance, human rights and combating stereotypes;
- (b) Preparation at a regional level of a guidebook on hate crimes, submitted to Police officers from local units;
- (c) Establishing cooperation with scholars of some higher education institutions, where meetings for students are held discussing questions such as human rights, discrimination and hate crimes;
- (d) Implementation of the program “Integrated System of Academic Security”, with the principal objective of protecting foreign students and trainings for trainers;
- (e) Participation in a social campaign “Bo byłem przybyszem” [For I was a stranger] to assist their integration in Polish society;
- (f) Establishing cooperation with the Regional Network of Support for Emigrants as to assisting them in their integration in Polish society;
- (g) Implementation in collaboration with Polish Radio of a prevention program “Patrol – Human Rights”, an initiative of 11 radio broadcasts on human rights. Each program was composed of two parts:
 - (i) Preparation of footage – participation in a prevention patrol;
 - (ii) Commentary to the recording in the studio, followed by a live broadcast. The program recorded was also used as a teaching aid helping discuss particular actions of Police officers and difficulties identified in the context of human rights. Furthermore, this activity promotes a positive image of the Police;

(h) Ongoing diagnosis of nationalist, anarchist and other similar communities consisting in firm reactions of Police officers in the event of identifying actions to the detriment of any social, national or religious group. During their trainings and meetings with commanders Police officers are instructed about the sensitive nature of questions of racial discrimination and the need to take firm action in the event of identifying or being notified about instances of intolerance;

(i) Monitoring of discrimination on the basis of information obtained from the media, Internet, from citizens, as well as anonymous information (monitoring for anti-Semitic content of local websites, comments posted in electronic media and on social fora);

(j) Preventive action aimed at combating racism, racial discrimination and xenophobia, in particular through promoting the idea of human rights and educational activities in the area of human rights, including so-called inter-cultural education. Special emphasis during meetings with members of the general public is laid on the development of the awareness of all social groups to create an atmosphere of tolerance and respect for human rights and cultural diversity;

(k) Cooperation with representatives of non-governmental organisations with a view to raising human rights protection standards, including the prevention of discrimination (Polska Akcja Humanitarna, Amnesty International, Local Committees of Protection of the Rights of the Child, "Ocalenie" Foundation, "La Strada" Foundation, etc.);

(l) Preparation of regional guidelines for Police units stressing the need to consider discrimination as a reason for committing an offence;

(m) Ongoing allocation of tasks to Police officers involving a proper reaction to all manifestations and incidents of discrimination.

351. With respect to improving the efficiency of prosecution and penalisation of racially motivated hate crimes, on 16 October 2009 a request was addressed to all appellate prosecutors to ensure taking all possible and more effective action in the subordinate prosecution authorities to respond to the concerning increase in the number of racially motivated crimes since the early 2008, not accompanied by a corresponding increase in the number of detected perpetrators. Recommendations were moreover made to take non-prosecution action such as filing applications for outlawing organisations operating in contravention of Polish law and promoting hatred and racial discrimination, if such organisations are subject to pending criminal proceedings and the evidence gathered during the proceedings indicates such activity.

Reply to question 23 – Investigative methods

352. In Poland investigative methods are determined precisely by law. Some of the methods may limit the civil rights and freedoms of the person they are applied to, such as the right to privacy or the confidential character of communication. These limitations must be and are precisely determined by provisions of relevant laws. They are permitted exclusively to the indispensable extent and comply with the principle of the rule of law. The application of investigative methods is subject to supervision by an independent court.

353. In the period covered by the Report changes were introduced to further enhance the enjoyment of rights of persons with respect to whom investigative methods are applied. An amendment of the CCP (Journal of Laws No. 53, item 273) which entered into force on 11 June 2011 concerned the use of tapping as well as made more efficient the supervision by court or by a public prosecutor over relevant law enforcement activities. The amendment increased the efficiency of supervision by court or by a public prosecutor over tapping used

by law enforcement which interferes with the right of a citizen to privacy. It introduced a so-called follow-up court consent to the interception and recording of conversations if during an audit conducted by a public prosecutor (pursuant to a court ruling), information is obtained about the commission of a crime other than that defined in the ruling or about the commission of an offence by a person other than that defined in the ruling. The amendment aimed also at assuring control as to content of an application of an authority authorized to conduct such monitoring at all stages of the procedure. Authorities applying for monitoring and the extension of its use were obliged to provide evidence confirming the circumstances justifying the use or continuation of monitoring to the relevant public prosecutor and court. Evidence obtained from tapping in cases concerning crimes other than those defined in CCP as those that permit the use of tapping is inadmissible; tapping may only be used in the most severe crimes and only in such cases can the data gathered during tapping be admitted as evidence. A notification of the person subjected to an interception and recording of telephone conversations may be postponed for the benefit of the proceedings but only for an indispensable period. Furthermore, such a notification in pre-trial proceedings cannot take place later than at the moment the proceedings are concluded.

354. The amendment introduced changes concerning the destruction of recordings. Earlier only a court and a public prosecutor were able to order the destruction of recordings unused in criminal proceedings. The amendment allows the parties to the proceedings and other persons with respect to whom operational audits have been used to file relevant requests.

355. The amendment moreover obliges the Prosecutor General to provide the Sejm and Senate with statistics about operational audits and recording of conversations, as well as data on the supervision of their application by court or by a public prosecutor.

356. It should be noted that the information obtained with the use of unlawful investigative methods will not be admitted as evidence in any proceedings.

357. Law enforcement officers who have used unlawful investigative methods or in an improper way used legal investigative methods are subject to criminal and disciplinary proceedings.

358. Attention should be paid to the change described in a reply to questions 31-33 of the Committee, i.e. the separation of the authority of the Prosecutor General and the Minister of Justice, which change enhanced the independence of the prosecution authority of any possible political pressure.

Reply to question 24 – Compensation

359. In Poland the State Treasury Solicitors' Office is an institution authorised to represent the State Treasury before a court. Between 2005–2009 the State Treasury Solicitors' Office represented the State Treasury in over 12 000 civil cases, including those where the accountability of the State Treasury was connected with the actions of law enforcement and the judiciary.

360. Between 2005–2009, around 60 people annually were sentenced for the offence of abuse (Art. 246 and 247 PC). Victims of these offences have the right to file a civil case against the State Treasury to claim compensation.

361. A review conducted by the State Treasury Solicitors' Office of the cases where it has represented in court the State Treasury indicates that in cases of abuse committed by a public official, between 2005–2010 there was no final ruling obliging the State Treasury to remedy damage.

362. Data for 2011 concerning the above issues will be available in 2012.

Reply to question 25

363. See reply to question 10.

Reply to question 26 – Penitentiary system

1. Subparagraph (a)

364. Since 2008 until the end of 2010 around 1,100 accommodation places were refurbished. Other renovation works was also conducted to upgrade inter alia cell sanitation facilities for prisoners and prison hospitals. Data for 2011 will be available in 2012.

365. The accommodation base of prisoners in wards is increasing steadily year by year. This year the resources allocated for this purpose in the PS budget will allow the creation of an additional 308 new accommodation places.

366. As of 14 October 2011, the number of persons deprived of liberty was 81 408, with 79 783 prisoners in prison accommodation, which accounts for 96.4 % of the total capacity of residential wards, i.e. 82 236. The number does not include 2 141 prisoners in infirmaries, cells and wards for dangerous prisoners, hospitals, homes for mothers and children, and branches of temporary accommodation of prisoners. Furthermore, to ensure prisoners the norm of 3m² of space as defined in the relevant code, there are still (despite the fact that the correctional facilities globally are not filled to their full capacity) 2 385 additional accommodation places. Moreover, despite the non-existence of overcrowding on a national scale as of 14 October 2011, directors of correctional facilities issued to 28 prisoners decisions on accommodating them despite overcrowding pursuant to Art. 110 § 2d EPC, because of a lack of accommodation space in residential wards and in additional residential cells. All information on the current capacity levels of penitentiary units is available at the PS website. It is moreover submitted monthly to a number of institutions, including the Ombudsman.

367. PS carries out ongoing activities to limit the effects of overcrowding. New regulations were adopted concerning the so-called transportation policy (prisoners are not transferred to correctional facilities where there is no accommodation available) and initiated changes of purpose of correctional facilities so that their profile corresponded to the actual needs of the state penal system (Director General of PS by means of regulations establishes on an ongoing basis a new purpose of already operational correctional facilities, liquidating for examples wards for repeated offenders and creating instead wards for persons serving a sentence for the first time).

368. Furthermore, the improvement of conditions of serving the penalty of deprivation of liberty is meant to be achieved via a number of legislative initiatives conducted recently by the Government:

(a) According to an amendment of EPC (Journal of Laws 2009, No. 206, item 1589), which entered into force in June 2010, each convicted person serving the penalty of deprivation of liberty may apply for parole on having served at least half of the sentence. Earlier this was only possible for convicted persons serving the penalty of deprivation of liberty of over 6 months;

(b) In recent years a change was introduced in Polish law concerning the principles of execution of non-custodial penalties. As of June 2010 the State Treasury has covered part of the costs related to the execution of this penalty, arising directly from the obligation of prisoners performing work for the community (costs of medical examinations, insurance of convicted employees); in addition, a list of entities that can benefit from this

work was extended, inter alia by churches, religious organisations and non-governmental organisations.

369. PS units have since 2008 systematically implemented the System known as the Central Database of Persons Deprived of Liberty Noe.NET, which since October 2010 has allows a precise indication of the legal basis for incarceration despite overcrowding, how long a prisoner remained in such conditions and in which correctional facility. The right to humane treatment under Art. 40 of the RP Constitution was one of the reasons for the amendment of Art. 110 EPC (the amendment entered into force on 6 December 2009; Journal of Laws No. 190, item 1475). The content of Art. 110 EPC was changed so that:

(a) It includes a precise definition of reasons when prisoners may be incarcerated in conditions when cell space per one prisoner is below 3 m², stressing the extraordinary nature of such a decision;

(b) It defines the maximum period of placement of a prisoner under such conditions;

(c) It determines the mode of conduct of bodies in charge of the execution of penalties concerning the incarceration of a prisoner in conditions when cell space per one prisoner is below 3 m² (see below – reply to question 26 subparagraph c).

370. The provision of Art. 110 § 5 EPC obliged MJ to issue on 25 November 2009 a regulation on the mode of conduct of competent authorities in the event the number of prisoners in correctional facilities or pre-trial detention centres exceeds nationwide the total capacity of these institutions (Journal of Laws No. 202, item 1564). The regulation defines in particular the mode of conduct of:

(a) Director General of PS, district directors and directors of correctional facilities or pre-trial detention centres, obliging them to notify about exceeding penitentiary capacity, respectively, in the entire country, in the area of operation of the district inspectorate and in correctional facilities or pre-trial detention centres;

(b) Directors of correctional facilities or pre-trial detention centres obliging them to assure additional residential cells;

(c) Presidents of courts and heads of units of the prosecution authority in the event of overcrowding in correctional facilities or pre-trial detention centres above the designated overall capacity.

371. The provisions of the regulation are meant first of all to address information flow between the above authorities and facilitate supervision in the event of overcrowding seen as a situation when the numbers in correctional facilities or pre-trial detention centres and in their subordinate external units exceeds globally in Poland the overall capacity of these institutions. The activities envisaged by the regulation are initiated by the Director General of PS within 7 days of the day of being notified about overcrowding taking place, submitting relevant information to MJ, district PS directors and directors of correctional facilities or pre-trial detention centres.

372. To limit overcrowding, the Instruction of the Director General of PS of 13 August 2010 on transporting prisoners sets out conditions to meet the request of the prisoner to be transferred to another correctional facility to prevent an unjustified increase of the number of prisoners in individual penitentiary units.

System of electronic monitoring (SEM)

373. The problem of overcrowded prisons in Poland is moreover addressed by the actions taken by the Government to introduce alternative penalties into Polish law.

374. On 1 September 2009 entered into force the Law of 7 September 2007 on the execution of the penalty of deprivation of liberty outside a correctional facility under SEM (Journal of Laws No. 191, item 1366 as amended), which introduced a new system of execution of a short-term penalty of deprivation of liberty ruled on by a penitentiary court and allowing a stay of the sentenced individual outside correctional facilities. It introduced at the same time an extensive restriction of the sentenced individual's liberty via the monitoring of his stay in a place and time designated by a court. After the amendment of the relevant law, which entered into force on 25 June 2010 (Journal of Laws of 2010, No. 101, item 647), the population of sentenced individuals eligible for serving their penalties in this system increased four-fold; the amendment increased the threshold of penalty of sentenced individuals who may be subject to electronic monitoring from 6 to 12 months, extended the scope of use onto persons who have previously committed an offence (except repeated offenders) and individuals sentenced for deliberate crimes and fiscal offences and abolished an earlier charge paid by the sentenced individual for serving a penalty under this system.

375. At present, SEM is used in selected courts of appeal and as of 30.09.2011, since the introduction of the system it was applied with respect to 2 953 persons, including 1 459 currently serving the penalty and 1 494 who have concluded serving it.

376. Furthermore, it is predicted that as of 1 January 2012, SEM will cover the entire territory of Poland and a maximum number of 7 500 sentenced individuals.

2. Subparagraph (b)

377. The "Program of acquiring 17 000 places in penitentiary facilities between 2006–2009" (implemented until 2010) resulted in the acquisition of ca. 15 000 places.

3. Subparagraph (c)

378. The Program of Modernising the Prison Service between 2009–2011 was not approved for implementation by CM.

4. Subparagraph (d)

Limitation of stay of prisoners in conditions not satisfying 3 m² per one prisoner

379. An amendment of EPC (Journal of Laws No. 190, item 1475) executing the CT ruling of 26 May 2008 (SK 25/07) identifying the incompatibility with the Polish Constitution of Art. 248 § 1 EPC (see the reply to question 1 of the Committee concerning case law) entered into force on 6 December 2009. The amendment envisages precisely defined standards of incarceration in conditions of overcrowding. The change affected Art. 110 EPC, pursuant to which the placement of a sentenced individual in a residential cell in conditions when cell space per one prisoner is below 3 m² (never, however, less than 2 m²) is possible exclusively for a designated period of time, not exceeding 14 days, and with the consent of a penitentiary judge up to 28 days. Only in exceptional circumstances (martial law, epidemic and threat to the security of a person) may this continue up to 90 days. Such a decision is taken by a director of a correctional facility or a pre-trial detention centre, who is at the same time obliged to minimise the deterioration of conditions of enforcement of the penalty. Such a decision must determine the duration of and reasons for the placement of a sentenced individual in such conditions, and specify the time by which a sentenced individual is to stay in such conditions. A complaint against such a decision is recognised by a court within 7 days. To improve the conditions of stay in correctional facilities a provision was moreover introduced which stipulates that in the event a sentenced individual is placed in conditions when cell space per one prisoner is below 3 m², such a prisoner

should be assured daily walks longer by half an hour and the use of additional cultural and educational offer or sports activities.

Reply to question 27 – Violence between prisoners

1. Correctional facilities

380. The strategy of preventing and eliminating violence among prisoners is implemented by the PS in two ways, by adjusting regulations on penitentiary influence taking into account the dynamics of social life and practical activities within programs of preventing aggressive behaviour among prisoners and through training of penitentiary personnel.

381. Interestingly, from the point of view of efficient penitentiary action, the development of adequate relations between prisoners and between officers and staff and prisoners is the foundation of efficient prevention of aggressive behaviour and crimes of prisoners.

382. A multi-tier development of adequate relations is based on the following:

- (a) A correct classification of the prisoner, including assignment to an adequate type, kind and system of penalty execution and arrangement in a residential cell;
- (b) Psychological and pedagogical diagnosis;
- (c) Kind of penitentiary impact addressed to the prisoner showing behavioural disorders that are a threat to co-prisoners.

383. Art. 82 EPC enumerates among the objectives of a classification of the prisoner the prevention of negative impact of morally corrupt prisoners and assurance of personal safety and security. The classification is conducted taking into account inter alia the age, degree of moral corruption and social threat posed and the kind of offence committed by the prisoner.

384. EPC moreover envisages a possibility of a classification of the prisoner to so-called dangerous ones (Art. 88 a § 1 EPC). One of the features of classification into this category of prisoners is rape or abuse of a sentenced, penalised or temporary detained individual when serving a previous or current sentence of deprivation of liberty.

385. When assigning a place in a residential cell (Art. 110 § 4 EPC) due consideration is given to medical, psychological and rehabilitation recommendations and to the need of developing a proper atmosphere among prisoners, as well as the need to prevent self-aggression and commission of offences when serving a sentence in prison.

386. A regulation of the Minister of Justice of 14 August 2002 on the manner of exerting penitentiary impact in correctional facilities and detention centres determines that the action taken by the Prison Service should prevent aggressive behaviour of prisoners (§ 7 section 1 item 3) and may include establishing educational groups, introducing prisoners to the development of a sense of responsibility, self-control and self-discipline, indicating socially accepted ways of conflict resolution, assisting prisoners in conflict situations, appeasing antagonisms and preventing mutual harassment among prisoners.

387. Psychological tests defined under Art. 84 § 3 EPC are meant to establish the prisoner's personality and his psychological and social behaviour as well as to define recommendations and guidelines about the manner of impact; the provision of the above article says that a juvenile prisoner with at least 6 months of prison left with the right to apply for parole or presenting educational problems are subject to psychological tests.

388. A psychological statement for the purposes of the penitentiary system is made in particular in the case of a sentenced individual posing educational problems, first of all

someone whose behaviour indicates a high level of moral corruption, mental disorder or a special inability to adjust to the conditions and requirements of the facility.

389. A sentenced individual is moreover subject to a personality examination, especially to establish the reasons and development of social disintegration, prognoses determining the predicted proneness of a sentenced individual to penitentiary impact on the basis of e.g. prior criminal record, level of a sentenced individual's influence by criminal subculture, capacity to adjust to the conditions and requirements of the facility and his social contacts.

390. It is mandatory to obtain a psychological opinion of a sentenced individual in the event of disorders consisting inter alia in aggressive behaviour or a tendency for self-aggression and significant problems in interpersonal contacts, especially a propensity for dominance or subordination that disturb educational atmosphere.

391. An order of the Director General of PS of 24 February 2004 sets out detailed activities taken by PS to prevent aggressive behaviour of prisoners. The order defines the following:

(a) Symptoms of negative behaviour linked to sub-culture: aggression, violence and abuse of fellow prisoners, self-aggression being a result of group pressure, subordination by informal groups of morally corrupt prisoners of other prisoners and their taking control of fields of operation of a correctional facility;

(b) Ways of preventing unwanted behaviour linked to membership in informal groups, including paying due attention to prisoners who because of their personality traits may be the object of harassment, intolerance or aggression, and as a consequence victimised by crime subculture;

(c) Action taken directly during the admission of a prisoner to a penitentiary institution;

(d) Action taken during the execution of the penalty of deprivation of liberty consisting in observations of prisoners' behaviour that might demonstrate their links with subculture, the roles fulfilled and potential related risks for the safety and security of a penitentiary institution.

392. The action taken, including a consistent policy of conduct with perpetrators of abuse through stringent disciplinary penalties, changes of the type of a penitentiary institution, placement in a designated ward or cell for prisoners posing a serious social risk or a serious threat to the safety and security of a penitentiary institution, are an effective if only a temporary measure. The application of additional isolation and protective measures will not allow a greater elimination of behaviour leading to abuse and rape. The application of measures meant to prevent aggressive behaviour leads to a decrease in the number of such incidents. However, an extension of action is at present significantly limited for financial reasons. There is a need to intensify preventive impact, including subjecting perpetrators of violence to long-term programs depending on the reasons of the behavioural disorders resulting in aggressiveness, guaranteed planning, continuity and selection of methods. The introduction or continuation of programs related to "preventing aggressive behaviour" (with elements of training behaviour in the field of interpersonal communication and emotional management, including in therapy wards for prisoners with non-psychotic mental disorders or with a mental impairment). Interestingly, the programs have for years been extremely popular among prisoners; in 2010 there were 90 series of Aggression Replacement Training, completed by 721 convicted individuals. Data for 2011 will be available at a later time.

2. Centres for foreigners

393. At present there are 13 centres for foreigners seeking refugee status in Poland. The centres are managed by the OF Department of Social Assistance and are open facilities. To safeguard safety and security of residents, each centre is protected by round-the-clock security personnel. The Police are notified about all reported or identified incidents of violence; depending on a particular situation, such information is submitted to a court and a public prosecutor. For the purpose of prevention and also as a result of conflict situations it is possible to transfer a foreigner to another centre or providing assistance outside the centre, i.e. granting an allowance for covering a stay in Poland on one's own.

394. An Agreement on standard procedures of conduct for the recognition, prevention and reaction to instances of sexual violence or violence related to sex with respect to foreigners in centres for persons seeking refugee status was signed on 25 March 2008 between: OF Head, Commander in Chief of the Police, UNHCR, "La Strada" Foundation, and Halina Nieć Legal Counselling Centre.

395. The main objective of the Agreement is to create a formal framework of cooperation between the above entities to prevent violence on grounds of sex and sexual violence against foreigners. The main aim is to adopt standard procedures of conduct in the case of the following types of violence: bringing a person to a sexual intercourse; bringing a person to subjugation or performance of a sexual activity; presentation of sexual content in a way that may be imposing on a person who does not want this; depriving in another way of sexual freedom and integrity; use of domestic violence.

396. Within the agreement, local cooperation teams operating in each centre for foreigners are the basic form of organising cooperation. The teams are composed of an OF employee in charge of a particular centre; head of the local Police unit (or a designated officer), a representative of a non-governmental organisation. To prevent violence against foreigners staying in a centre, the local cooperation team advises foreigners staying in the centre about the question of violence, methods of its prevention and reaction to incidents of violence.

397. The Team reacts to instances of violence used against foreigners staying in a centre and for this reason:

- (a) Takes action to safeguard personal safety to a victim or potential victim of violence and her family members;
- (b) Takes action to satisfy health, psychological and social needs of a victim of violence and her family members;
- (c) Assures assistance to a victim of violence to contact an organisation providing legal aid;
- (d) Takes action to institute criminal proceedings;
- (e) Assures a flow of information about incidents of violence.

398. A Police officer who is a member of a Team prepares a half-annual analysis of the risk of violence, defining in particular: the number of reported incidents of violence, the number of instituted criminal proceedings and the manner of their conclusion, factors contributing to occurrence of violence and action that should be taken to prevent violence.

399. Furthermore, in November 2010, OF launched a centre in Warsaw for single women and single mothers. This centre greatly contributed to providing adequate care and protection to this group of foreigners.

400. Furthermore, OF took appropriate action to establish permanent cooperation with facilities providing a safe place of residence and care for women in emergency situations that might jeopardise their life and health.

401. The information in possession of the Board for Foreigners of the National Headquarters of the Border Guard supervising detention centres demonstrates that in guarded centres and detention facilities for the purpose of deportation there is no violence among detainees. Conflict situations and tensions between detainees in centres and facilities occur infrequently since the level of satisfaction and behaviour of foreigners are monitored on an ongoing basis by qualified personnel. Conflict situations are most often caused by cultural difference between detainees arising from their religions and mentality, and personal characteristics of some foreigners. Should such incidents occur, appropriate action is taken immediately, mainly consisting in joint problem solution not to prejudice any of the parties to the conflict. Integration programs for foreigners help avoid social tension or conflict situations.

402. BG officers and civilian staff working in guarded centres and detention centres for the purpose of deportation participate in training on intercultural differences held by BG training centres and the Halina Nieć Centre for Legal Aid and OF. Training was dedicated to topics such as Culture as a tool of foreigner's identity, Social and cultural aspects of foreigners' identity, Social and cultural identity of foreigners from Africa and South-East Asia, Differences in the cultures of the world, Inter-cultural communication. Furthermore, the centres implement training and workshops targeted at foreigners from the Caucasian states. The training is dedicated to raising the awareness of BG officers and staff to cultural, religious differences, to customs, social, economic, and military situation of the Caucasian states.

Reply to question 28 – Army hazing

403. The incidence of hazing in the Polish Armed Forces was significantly reduced. Predictably, as a result of the Polish Army becoming professional, incidents of this kind will be completely or almost completely eradicated.

1. Provisions of penal law:

404. Polish PC in the Chapter "Offences Against the Rules of Behaviour to Subordinates" contains a number of provisions penalising the offence of abuse in the army:

(a) Art. 350

(1) A soldier who degrades or insults a subordinate, shall be subject to the penalty of restriction of liberty, military custody or the penalty of deprivation of liberty for up to 2 years;

(2) The prosecution occurs upon a motion from the injured person or the commanding officer of the unit.

(b) Art. 351

A soldier who strikes a subordinate or in another manner violates his bodily inviolability shall be subject to the penalty of military custody or deprivation of liberty for up to 2 years.

(c) Art. 352

(1) A soldier who torments either physically or psychologically his subordinate shall be subject to the penalty of deprivation of liberty for a term of between 3 months and 5 years;

(2) If the act specified in § 1 is coupled with a particular cruelty, the perpetrator shall be subject to the penalty of deprivation of liberty for a term of between 1 and 10 years;

(3) If the act specified in § 1 or 2 results in an attempt by the injured person on his own life, the perpetrator of the initial act shall be subject to the penalty of deprivation of liberty for a term of between 2 years and 12 years.

(d) Art. 353.

The provisions of Articles 350–352 shall be applied accordingly to the soldier who perpetrates the act specified in these provisions, with respect to a soldier of a lower rank or of the same rank but junior in terms of the duration of military service.

2. Remedial program of military discipline in the Armed Forces of the Republic of Poland in the years 2008–2009

405. To improve conditions conducive to developing military discipline and their adjustment to an accelerated professionalisation of the Armed Forces, the “Remedial program of military discipline in the Armed Forces of the Republic of Poland in the years 2008–2009” was implemented in the above period. The Program defined tasks related to creating formal, legal and structural conditions conducive to developing military discipline, taking preventive action and efficiently reacting to instances of its violation by soldiers. The implementation of the program involved all the divisions of the Ministry of National Defence, as well as the Chief Military Prosecution Authority and the MJ Department of Military Courts. The Program led to the implementation of various projects at all levels of command, also with the cooperation of local government and non-governmental organisations. One of the principal objectives of the Program was a consistent prevention of violations of moral principles in interpersonal relations, and first and foremost improper conduct with subordinates, soldiers who have served shorter in the army and soldiers of other corps of professional cadre. The Program led to the adoption of modern legal tools for the development of military discipline, meeting the standards of professional armed forces, i.e. the law of 9 October 2009 on military discipline and the 6 regulations issued on its basis, criminal law and the law on Military Police and military law enforcement. Legal and organisational changes were introduced facilitating the use of disciplinary preventive measures (e.g. placement in a detention facility of soldiers under the influence of alcohol or drugs) adjusted to the needs of a professional army. The liquidation of military disciplinary detention centres and the establishment of detention facilities serving new purposes was a major development. Furthermore, the Army Centre for the Execution of the Penalty of Restriction of Liberty in Ciechanów was liquidated as its operation became unjustified.

406. The “Remedial program of military discipline in the Armed Forces of the Republic of Poland in the years 2008–2009” contributed significantly to the development of military discipline, especially with respect to professional soldiers, including first of all the corps of professional privates.

3. Strategy of enhancing discipline, prevention of addictions and social pathologies in the Armed Forces of the Republic of Poland in the years 2010–2015

407. A “Strategy of enhancing discipline, prevention of addictions and social pathologies in the Armed Forces of the Republic of Poland in the years 2010–2015” was issued in 2010, by the order of the Minister of National Defence; it took into account both the changing reality of the operation of the Armed Forces of the Republic of Poland and the dynamics of external factors affecting the army. The major ones included among others: the Armed Forces becoming professional and military service voluntary; changes in the legal order,

including the introduction of new military discipline provisions; growing number of soldiers taking part in the implementation of tasks abroad and the educational role of the army. Moreover, attention was paid to the fact that the military community continues to be at risk of social pathologies, in particular alcohol and drugs abuse, violations of principles of social coexistence, corruption, etc.

408. The Strategy was the basis of a “Program of enhancing discipline, prevention of addictions and social pathologies in the Armed Forces of the Republic of Poland in the years 2010–2011”, whose successive editions will be implemented in biannual cycles. Furthermore, local annual programs are developed at all levels of command on the basis of the above biannual program. Activities within the Program are grouped in five priorities, including the following:

(a) Priority of developing ethical conduct in service and work and an adequate style of command and management in the army. To implement it, training programs for soldiers and professional soldier candidates started to include questions of an ethical code of a professional soldier and command principles;

(b) Priority of developing disciplined attitude among soldiers. Special trainings were therefore organised and counselling was provided on the new military discipline provisions. Furthermore, handbooks and sets of materials related to prevention were prepared. Moreover, 80 military units and complexes received breathalysers, which will allow a more efficient use of preventive disciplinary measures and other prevention activities to eliminate alcohol abuse on military premises and performance of professional duties under the influence;

(c) Priority of developing social conditions of service and proper interpersonal relations. The objectives of the priority will be reached inter alia via eliminating all forms of violence in interpersonal relations, support of soldiers’ integration and their adaptation in military service, as well as creation of social conditions and a proper atmosphere of military service. Courses and workshops for soldiers and military staff are conducted on stress, conflicts, aggression, violence (including mobbing and harassment) and discrimination, as well as educational prevention and prevention of social pathologies in the army. Information materials and teaching aids were prepared on legal aspects of violence and discrimination in interpersonal relations.

4. Effects of the action taken

409. So far violations of the law and dysfunctional behaviour (also including improper interpersonal relations) in the RP Armed Forces were mainly committed by draft soldiers. The shift to voluntary military service increased the level of military discipline, also as to the elimination of pathologies, including criminal behaviour. Furthermore, expected results were reached thanks to regular prevention efforts and education among soldiers of all levels as well as firm sanctions or disciplinary actions with respect to perpetrators.

410. Since one of the main reasons for crimes against principles of conduct with subordinates involved the occurrence in some military subunits and structures of hazing, the principal educational and preventive effort was directed at soldiers in compulsory military service and the eradication of this very phenomenon. Irregularities in interpersonal relations consisted mainly in deliberate effecting of mental or physical problems. Cases of violating social relations among soldiers had a broader context and were in the main related to pathologies in the civilian environment, emotional immaturity and personality deficits, but also a lack of respect for the law.

411. The efficiency of actions aimed at limiting aggressive behaviour connected with hazing in the army was based on a reliable diagnosis of conditions, establishment of factors and circumstances contributing to its occurrence. Conclusions reached on the basis of

studies and analyses led inter alia to the introduction of a system of permanent passes, enhanced monitoring of leisure time and evening and nights in military barracks, and disciplinary actions with respect to soldiers involved in hazing. Representatives of military prosecution authorities and Military Police met with new recruits, discussed the issue of hazing and the penal sanctions involved. Equally successive were preventive organisational action, such as a system of professional supervision and monitoring, educational activities and severe penal and disciplinary reactions to perpetrators of offences.

412. Furthermore, a 2006 decision of the Minister of National Defence on the creation of educational structures provided a significant support to commanders in the process of developing military discipline and preventing unfavourable phenomena in military service. Relations within subunits were favourable affected also by a successive promotion to lower rank commanders (of squads, crews and teams) of non-commissioned officers, better prepared for assuming the role of superiors and creators of proper interpersonal relations.

413. The systematic efforts of the Ministry aimed at preventing hazing in the army included also the adoption of more stringent criteria of selection of conscripts to military service (in particular limiting the conscription of convicted individuals and of lower mental and physical capacities); enhancing the competence of commanders in educational and preventive activities; closer cooperation of unit commanders with the Military Police, military prosecution authority and military courts; creation of an efficient system of assessment of military discipline, including reporting, and enforcing commanders' responsibility for creating conditions conducive to military discipline; increased legal awareness of soldiers, inter alia concerning the conditions of military service, developing proper social relations, rights and obligations of soldiers, including legal protection; activities related to preventing social pathologies; enforcement of the ban of alcohol and consumption on the premises of military barracks.

414. Of major impact on the limitation of irregularities in social relations was the continuing process of the army becoming professional, which initially limited and in 2009 concluded compulsory conscription, as conscripts were the principal group of perpetrators of these offences.

415. The fact that the RP Armed Forces became professional and military service voluntary has a significant impact on the motivation of candidates, attitudes of soldiers and their compliance with legal and ethical norms. At the same time prevention of pathologies, especially in the field of social relations, remains one of the top priorities of educational and preventive actions implemented by the RP Armed Forces.

5. Statistics

416. Analyses of negative phenomena in interpersonal relations indicate that in recent years their intensity in the armed forces has been systematically decreasing. In the period under analysis, (2007–2010) a steady decrease in the number of military perpetrators of offences against principles of conduct with subordinates, lower-rank soldiers or soldiers with a shorter military service. According to the data of the Chief Military Prosecution Authority, in the year 2007 there were 196 perpetrators of such offences, in 2008 – 155, in 2009 – 63, and in 2010 – 16. Interestingly, the decrease was accompanied by a drop in the number of offences related to hazing in the army, from 77% of perpetrators of offences in this category in 2007 to 25% in 2010.

417. Furthermore, analysis of the manner of conclusion by military prosecution authorities of criminal proceedings involving perpetrators of offences against rules of conduct with subordinates, lower-rank soldiers or soldiers with a shorter military service shows a decrease in the brutality of these offences. The number of criminal proceedings concluded with an indictment with respect to perpetrators of this category of offences

decreased successively relative to petitions filed to courts for a conditional discontinuance of proceedings (from 94% in 2007 to 44% in 2010).

418. Similar conclusions can be drawn from the analysis of data of the MJ Department of Military Courts on the kinds of court judgements related to offences against rules of conduct with subordinates, soldiers of a lower rank or shorter military service. While 99.4% of the 177 soldiers found guilty of such offences were convicted in 2007, in successive years the percentage of convictions was lower and amounted, respectively, to 87% in 2008, 82% in 2009, and 47% in 2010. This means that a conditional discontinuance of proceedings is a more and more often used manner of concluding criminal proceedings. Moreover, analysis of penalties ruled on by military courts with respect to perpetrators of such offences shows a steady diminishing of their intensity. While between 2007 and 2008 the penalty of deprivation of liberty or military detention was ruled on with respect to, respectively, 138 and 145 perpetrators of this category of offences, which accounted for close to 80% of all penalties, in 2009 the penalty was applied to 33 perpetrators (i.e. 53% of the total number), and in 2010 only 2 (which accounted for 22% of all penalties). Data for 2011 will be available in 2012.

6. Statistics on pre-trial proceedings:

419. Between 2005–2010 military prosecution authorities recorded a total of 810 notifications about offences under Art. 350 – 353 PC, including:

- 2005 – 178
- 2006 – 159
- 2007 – 196
- 2008 – 151
- 2009 – 91
- 2010 – 35

420. Between 2005–2010 a total of 724 pre-trial proceedings in relevant cases were instituted, including:

- 2005 – 149
- 2006 – 161
- 2007 – 186
- 2008 – 124
- 2009 – 77
- 2010 – 27

421. In relevant cases between 2005–2010 there was a total of 452 indictments, including:

- 2005 – 102
- 2006 – 111
- 2007 – 116
- 2008 – 70
- 2009 – 46
- 2010 – 7

422. It should be borne in mind that in 2006 the number of notifications is smaller than the number of instituted proceedings since in those cases criminal proceedings are instituted on the basis of findings of military prosecutors themselves.

Table 4

Convicted persons and those subject to a conditional discontinuation of proceedings in relation to offences under Art. 350-353 PC in the Military Provincial Court in Poznań (one of two districts into which Poland is divided) between 2005-2010

Year	No. of convicted persons	Kind of penalty				
		Deprivation of liberty	Restriction of liberty	Deprivation of liberty with conditional suspension	Restriction of liberty with conditional suspension	Conditional dismissal
2005	116	1	11	78	17	9
2006	136	4	13	92	22	5
2007	118	1	2	93	17	5
2008	111	-	4	86	15	6
2009	38	-	7	19	7	5
2010	4	-	-	1	1	2

7. Polls among soldiers

423. Periodic polls among soldiers conducted by the Military Office of Social Polls are a major element of the system of monitoring and recognition of status of social relations. Interestingly, in recent years interpersonal relations belong to aspects of military service soldiers value the highest. The General Satisfaction Survey conducted among the last soldiers of military service drafted in a conscription (spring 2009), nearly 90% of soldiers polled anonymously defined relations with soldiers of a subunit as good or very good. A vast majority of the soldiers polled (67%), also relations with commanders of the subunit were either good or very good. In 2009, 54% of soldiers observed that there is no hazing in their subunits and the percentage of soldiers approving hazing in the army was low (17%).

424. Since initially the corps of professional privates included mainly soldiers of compulsory military service, there were concerns that hazing might be transferred to the youngest corps of professional soldiers. These concerns have proved groundless, however, as studies conducted in successive years show that there is no resurgence of hazing among professional privates. Moreover, commanders of military units polled did not indicate a risk of this phenomenon among professional privates.

425. Monitoring the state of interpersonal relations in the army is conducted also by a complaints system and two intervention channels, whereby problems may be submitted by telephone or e-mail.

8. Complaints and Military Helpline

426. According to the information submitted by the MND Office for Complaints, between 2007–2010 no complaints filed with the Office concerned hazing in the army.

427. In the period under consideration the number of cases of improper relations between soldiers of basic service communicated via the Military Helpline dropped systematically.

While in 2007 there were 22 notifications of incidents of hazing in the army, in 2008 – 7 incidents, in 2009 only two such communications, and in 2010 no such cases were reported. Moreover, in the period under consideration the Military Internet Helpbox received very few communications of incidents of improper interpersonal relations related to hazing in the army. For examples, from among all incidents reported in 2008, 9 related to hazing in the army, in 2009 – 2, while in 2010 no such cases were reported. Communications most often related to excessive intensity of cleaning assignments, the need to report to higher-rank soldiers in leisure time, serving on them or performing physical exercise. A large group of notifications related to the use of terms of abuse with respect to junior soldiers.

428. All signals of irregularities were brought to the attention of superior authorities of a given military unit and submitted for clarification to competent military authorities or were clarified in an emergency mode.

9. Assistance to victims

429. The system of psychological assistance in the Armed Forces of the Republic of Poland implemented between 2007–2010 guaranteed access to psychological counselling to all victims of hazing in the army.

430. Psychologists of military units sat on draft boards and welcome commissions in military units, making a preliminary assessment of persons demonstrating characteristics predisposing them to groups of “assailants” and “victims”. Psychologists held classes for newly recruited and newly admitted soldiers meant to assist their adaptation to military service. Each soldier had unlimited access to personal consultations. Psychologists took part in the implementation of prevention programs via courses, lectures and workshops for commanders and soldiers on preventing social pathologies, including “hazing” in the army.

431. Professional duties of psychologists in military units included consultations with commanders of sub-units on conduct with soldiers demonstrating problems in service and with soldiers violating principles of discipline in the army; creation of psychological support groups to prevent pathologies, and interventions in emergencies.

Reply to question 29 – Prevention of discrimination

1. Subparagraph (a)

432. During its 6th term of office the Sejm discussed a deputies’ draft amendment of the PC. The amendment envisaged an extension of a catalogue of reasons for discrimination that constituted offences under Art. Art. 119, 256 and 257 (new reasons of the draft amendment underlined):

(a) Art. 119 - 1. Whoever uses violence or makes unlawful threat towards a group of persons or a particular individual because of their national, ethnic, political or religious affiliation, or because of their lack of religious beliefs, as well as on grounds of sex, gender, age, disability or sexual orientation shall be subject to the penalty of deprivation of liberty for a term from 3 months to 5 years;

(b) Art. 256 - 1. Whoever publicly promotes fascist or another totalitarian state system or incites or disseminates hatred or contempt [previous wording: incites hatred] on grounds of differences in nationality, ethnic origin, race, religion or a lack of religious beliefs, sex, gender, age, disability or sexual orientation shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to 2 years;

(c) Art. 257. Whoever publicly insults a group of persons or a particular individual because of their national, ethnic, political or religious affiliation, or because of their lack of religious beliefs, as well as on grounds of sex, gender, age, disability or sexual

orientation or for such reasons violates another person's inviolability shall be subject to the penalty of deprivation of liberty for up to 3 years.

433. Because of the principle of discontinuation of parliamentary work, nothing can be said whether the draft will be discussed by the Sejm during its 7th term of office.

2. Subparagraph (b): National Program for the Prevention of Racial Discrimination, Xenophobia and Related Intolerance for the Years 2004-2009:

(a) Action taken by the Government

434. On 7 May 2010, CM approved a Report on the implementation of the National Program for the Prevention of Racial Discrimination, Xenophobia and Related Intolerance for the Years 2004-2009. A report compiled on the basis of information submitted by the institutions implementing the Program, prior to their submission to CM, was discussed and evaluated during meetings of the Monitoring Group.

435. The Monitoring Group of the National Program for the Prevention of Racial Discrimination, Xenophobia and Related Intolerance, an advisory and consultation body of the Prime Minister, was set up in February 2009. The tasks of the Group included inter alia an analysis of the Program and the submission of proposed changes and the preparation of assumptions for the activity of the Government following up on the Program. The Team included representatives of ministries and institutions implementing the program and representatives of selected non-governmental organisations (HFPC, Nigdy Więcej Association, Otwarta Rzeczpospolita Association Against Anti-Semitism and Xenophobia, Polskie Forum Migracyjne Foundation, Pro Humanum Association). The Monitoring Team was headed by GPET, coordinating since July 2008 the National Program for the Prevention of Racial Discrimination, Xenophobia and Related Intolerance.

436. The following actions were inter alia taken within the framework of the National Program during the five years of its implementation:

(a) The core curriculum of general education, the basis of education in Polish schools, takes into consideration the development of tolerance in students and elimination of xenophobia;

(b) Individual subject curricula and textbooks approved by education authorities to be used in schools are evaluated as to a development in students of tolerance and respect for the rights of national and ethnic minorities; experts evaluating school textbooks are obliged by the Minister of National Education to analyse textbook contents with a view to promoting equal treatment and preventing discrimination on grounds of sex, race, ethnic origin, nationality, denomination, religion, beliefs, disability, age, sexual orientation, marital and family status;

(c) A series of courses were conducted for teachers on preventing discrimination and publications about the subject were issued;

(d) The questions of human rights, including discrimination, were included in the training curricula of the Police, BG, Customs Service, PS and the army at all levels of instruction;

(e) Teaching aids for the development of racist-free attitudes and combating xenophobia and intolerance were prepared and disseminated among the Police, BG, National Customs, PS and the army;

(f) A network of plenipotentiaries for human rights protection was created in the Police and BG;

(g) Training was organised for judges and public prosecutors, where case law with regard to crimes committed on grounds of race, nationality or ethnic origin was discussed and analysed;

(h) Law enforcement authorities more often than prior to the introduction of the Program institute proceedings in cases related to incidents on grounds of racism and xenophobia;

(i) Crimes committed on grounds of racism carried out by prosecution authorities are subject to permanent professional supervision; statistics about these cases for a period from 2007 are available in the Internet, earlier statistics are available on request;

(j) More often than prior to the introduction of the Program there are sentences invoking the PC provisions penalising crimes committed on grounds of racism and xenophobia.

437. On 29 October 2009, the Prime Minister took a decision to continue the National Program for the Prevention of Racial Discrimination, Xenophobia and Related Intolerance for the Years 2010-2013.

438. According to the recommendations included in the report from the previous edition of the Program, an adoption of a catalogue of permanent tasks, periodically assessed and modified on the basis of such evaluations is planned. The Council for the Prevention of Racial Discrimination, Xenophobia and Related Intolerance, an advisory and consultation body of the CM and the Consultation Council, composed of people actively involved in the elimination of racial discrimination, xenophobia and intolerance or representing groups and communities at risk of discrimination on grounds of race, nationality or ethnic origin, were set up to recommend priority actions and to ensure their coordination and evaluation.

(b) Action taken by the Ombudsman

439. The Ombudsman takes action with a view to creating a favourable social climate around national and ethnic minorities, their rights for the preservation of their own culture, traditions and mother tongue, and to sensitising the need for comprehensive efforts for the improvement of the situation of some of the Roma. These questions are raised by the Ombudsman in various public addresses, in the communications media, during conferences and meetings dedicated to the prevention of discrimination.

440. As of 1 January 2011, the Ombudsman has been an independent authority on equal treatment, whose tasks include inter alia:

(a) Analysis, monitoring and support of equal treatment of all people and submission of relevant reports;

(b) Independent research on discrimination,

(c) Ongoing cooperation with domestic non-governmental organisations and international bodies and organisations for the sake of the protection of the rights and freedoms of a person and citizen in the area of equal treatment.

441. Complaints about unequal treatment or a violation of the prohibition of discrimination are recognised in competent Teams of the Office of the Ombudsman. The structure of the Office of the Ombudsman contains a separate Division of Anti-Discrimination Law within the Team of Constitutional and International Law. The Division coordinates work and implements other obligations of the Ombudsman as an authority on equal treatment.

3. Subparagraph (c)

(a) Government Plenipotentiary for Equal Treatment

442. In April 2008, the Office of the Government Plenipotentiary for Equal Treatment was set up, which results in the State's policy on anti-discrimination issues being now focused in one hand. The Plenipotentiary, being affiliated at Prime Minister Office as Secretary of State, has been intentionally located closest to the very centre of the decision making Government's structure. The mandate of the Plenipotentiary is wider than the mandate of the equal treatment institutions that existed in Poland before.

443. The principal task of the Plenipotentiary is the coordination of inter-ministerial actions with respect to equal treatment, including preventing discrimination, in particular on grounds of sex, race, ethnic origin, nationality, religion or faith, political views, age, sexual orientation, marital and family status. The obligations of the Plenipotentiary include moreover:

- (a) Implementing the equal treatment policy of the Government, including preventing discrimination in particular on grounds of sex, race, ethnic origin, nationality, religion or faith, political views, age, sexual orientation, marital and family status;
- (b) Providing opinions on relevant draft legislation and other government documents;
- (c) Carrying out analyses of binding legal regulations as to their compliance with equal treatment, suggesting amendments to legislation when necessary;
- (d) Monitoring the situation of equal treatment;
- (e) Promoting and disseminating issues related to equal treatment.

444. To streamline the implementation of her tasks, the Government Plenipotentiary for Equal Treatment has set up several advisory bodies, for example Council for preventing racial discrimination, xenophobia and related intolerance (former Monitoring Team of the "National program for preventing racial discrimination, xenophobia and related intolerance) and task forces for preventing discrimination against: women, minors in electronic communications media, chronically ill children, fathers and seniors. The groups are composed of representatives of ministries, public institutions, trade unions, non-governmental organizations, and experts in all the individual areas.

445. The Plenipotentiary participates in inter-ministerial groups, such as: Task Force for the Roma of the Joint Commission of the Government and National and Ethnic Minorities; Parliamentary Group for Seniors; Meetings on sexual minorities organised by the Ombudsman.

446. Examples of activities of the Plenipotentiary:

- (a) On 16 October 2009 the Government Plenipotentiary for Equal Treatment, in cooperation with the Ministry of Sport and Tourism, Ministry of the Interior, and the Polish Olympic Committee, held a conference "No to racism in sport". It was attended by representatives of all major sports unions active in Poland, athletes, officials, and journalists. The conference was concluded with the signature of a declaration "No to racism in sport". The declaration (signed by representatives of the Government and 44 out of the 68 sports unions registered in Poland) makes references inter alia to the recommendations of the Commission against Racism and Intolerance on combating racism and discrimination in sport, which is a public recognition of the commitment of organisers of professional sport to the construction through sport of an open and tolerant society, free from racism and xenophobia;

(b) In October 2010 in Warsaw, the Plenipotentiary together with the European Commission held a “Diversity Day”. The objective was the presentation in a public forum of issues related to the lives of non-heterosexual persons, their problems and the phenomenon of discrimination on account of sexual orientation and gender;

(c) A law on the implementation of selected EU provisions on equal treatment entered into force on 1 January 2011 (Journal of Laws of 2010, No. 254, item 1700); the last stage of its preparation was entrusted to GPET. The law is meant to implement EU law and systematise the work of various institutions actively involved in the elimination of discrimination on grounds of sex, race, ethnic origin, nationality, denomination, religion, beliefs, disability, age, and sexual orientation.

(b) Action taken by the Ministry of the Interior and Administration

447. To ensure a full observance of binding legal and administrative measures related to the prevention of discrimination and mistreatment of human beings on grounds of ethnic origin, between 2006 – 2008, the Minister of the Interior and Administration provided a number of grants for the implementation of civil counselling in cases concerning discrimination on grounds of ethnic origin or nationality. These tasks were meant to provide free of charge and widely accessible civil counselling for natural persons-victims of discrimination on grounds of race, nationality or ethnic origin, as well as to organise courses and seminars to raise the level of social awareness of antiracism.

448. Furthermore, MIA becomes involved in mediations to resolve social conflicts between Roma minority communities and the rest of the local community. In the period covered by the Report, representatives of MIA participated twice in such mediations.

(c) Statistics

449. See Appendixes 29 A and 29 B.

450. *General comment on a limitation of collecting statistical data.* Pursuant to Art. 8 of the law on statistics, statistical studies with the participation of natural persons cannot collect, as an obligation, information about race, religion, personal life and philosophical and political beliefs. This provision is based on the Constitution, which stipulates that public authorities cannot acquire, gather and disseminate information about the citizens other than necessary in a democratic state of law and no one may be obliged other than by law to disclose information about himself. As a consequence, crime victims are not obliged to provide to law enforcement authorities information concerning, inter alia, their origin or religion. Sometimes they do it on their own initiative and sometime this information is requested by a court. As a consequence, it is not possible to collect full data concerning victims disaggregated as to their nationality, race, sexual orientation, etc.

Reply to question 30 – Terrorism

1. Legal regulations concerning terrorist crimes – Penal Code

451. PC in Art. 115 § 20 contains a definition of a terrorist crime: “A terrorist crime is a prohibited act subject to the penalty of deprivation of liberty with the upper limit of at least five years, committed in order to: 1) seriously intimidate many persons; 2) compel public authority of the Republic of Poland or of the other State or an international organization agency to undertake or abandon specific actions; 3) cause serious disturbance to the constitutional system or the economy of the Republic of Poland, the other State or an international organization - and a threat to commit such an act.” The provision refers to prohibited acts whose features are defined in provisions in the specific section of the Penal Code – in its detailed section.

452. The Amendment of 25 June 2009 (Journal of Laws No. 166, item 1317) introduced into PC Art. 165a which penalises the offence of financing a terrorist crime: “Whoever collects, transfers or offers legal tenders, financial instruments, securities, foreign currency, property rights or other movables or immovables to finance a terrorist crime shall be subject to the penalty of deprivation of liberty for a term from 2 to 12 years.”

453. The Amendment of 29 July 2011 (Journal of Laws No. 191, item 1135) introduced into PC Art. 255a which penalises the dissemination or public introduction of content that might facilitate the commission of an offence of terrorist nature with the intent that such an offence should be committed. This offence carries the penalty of deprivation of liberty for a term from 3 months to 5 years. The provision will enter into force on 14 November 2011.

454. The terrorist nature of an offence is an aggravating circumstance that increases criminal liability.

455. Art. 65 § 1 PC, regarding the application of penalization principles with respect to perpetrators who have turned the perpetration of an offence into a permanent source of income or committed an offence acting in an organised group or association aimed at perpetrating an offence, as well as with respect to perpetrators of terrorist crimes, provides for a mandatory increase of the penalty for the perpetrators of the above crimes according to the same principles as those applied to repeat offenders.

456. In turn, Art. 258 PC penalises participation in an organised group or association aimed at perpetrating an offence or a fiscal offence. If such a group or association means to perpetrate a terrorist crime, the person who establishes them or leads them is subject to a stricter penalty, i.e. the penalty of deprivation of liberty for a term of at least 3 years.

2. Impact of legal regulations related to combating terrorism on the enjoyment of human rights

457. Persons suspected of involvement in terrorist activity enjoy at each stage of proceedings identical rights and guarantees as persons suspected of having perpetrated any other offence.

458. No Polish legal regulation related to terrorism and antiterrorist activity has resulted in a limitation or revocation of any of the rights enshrined in CAT.

459. The scope of activity planned during the introduction of procedures of reaction to terrorist threats in venues where there are people deprived of liberty, i.e. in correctional facilities and pre-trial detention centres, will not affect the legal and factual status of prisoners and pre-trial detainees and on the guarantees of the legal enforcement of the penalty of deprivation of liberty and temporary detention.

460. The Office of the Ombudsman did not receive communications about the use of “antiterrorist measures” and non-compliance with relevant international standards by any services.

3. Training

461. Officers of relevant services are trained to prevent terrorist threats; during training special attention is paid to human rights protection. The subject of terrorist threats is taken into account in periodic preventive exercises coordinating the action of PS officers with the Police, State Fire Brigade and other emergency services.

4. Antiterrorist activity

462. Under Polish antiterrorist system, tasks of preventing and combating terrorist threats and neutralising the effects of terrorist attacks are implemented by competent services and

entities operating within individual ministries as well as bodies of government administration and special services. These actions consists mainly in the monitoring of terrorist threats, their analysis and evaluation, submission of opinions and conclusions, initiation, coordination and monitoring of actions taken by competent bodies of government administration.

463. Until now no terrorist threat has occurred in Poland and therefore no relevant action has been taken. So far neither the above provisions of Art. 115 § 20 nor those of Art. 165a PC have been applied.

Reply to questions 31 and 33 – Other actions taken

1. Plenipotentiaries of the Border Guard for Human Rights Protection

464. As was brought to the attention of the Committee during the session dedicated to the previous Report, in 2004 the Police created a unique network of Plenipotentiaries of Commanders of for Human Rights Protection. In recent years efforts were taken to create a similar network in BG. The Plenipotentiary of the Commander in Chief of BG for Human Rights Protection was appointed on 24 July 2008. As of 13 September 2011 he was replaced by the Plenipotentiary of the Commander in Chief of BG for Human Rights Protection and Equal Treatment. Furthermore, in order to streamline and comprehensively address issues of human rights protection in BG, the Commander in Chief of BG ordered the appointment of plenipotentiaries at BG branches. In 2008 all BG branches had Plenipotentiaries for Human Rights Protection.

2. Extension of protection of patients with mental disorders

465. The law amending the law on mental health protection entered into force on 11 February 2011 (Journal of Laws of 2011, No. 6, item 19); it introduced a number of major changes in the protection of rights of patients with mental disorders, inter alia via the transfer to a higher statutory level of many regulations concerning the use of direct coercion, or via the introduction of new regulations related to mandatory psychiatric examination and enforcement of court commitment orders concerning placement in a psychiatric hospital or a social home.

466. Pursuant to the previous provision of Art. 18 of the above law, a physician and in exceptional cases a nurse employed in a psychiatric hospital or a social home had the right to use direct coercion. As the law of 8 September 2006 on Emergency Medical Services envisages the operation of EMS teams without a physician (so-called basic teams) and in view of the fact that such teams are increasing in number, a situation occurred when many persons not staying in health care institutions or social homes were deprived of adequate assistance. In a situation when someone behaved in a way justifying the use of direct coercion and an EMS team without a physician was called in, the members of the team, i.e. a paramedic, rescuer and driver were unable to provide any assistance to such a person nor transfer him to a competent health care facility. As a result, Police officers were frequently involved who had not taken special training related to conduct with this special group and the direct coercion measures used by them might have been inefficient or actually dangerous for a patient with a mental disorder, whose conduct need not be rational. At present, Art. 18 of the law on mental health protection contains unchanged premises for the use of direct coercion with respect to mental patients, envisaging at the same time a possibility of use of specific direct coercion measures, such as holding and immobilising, by the person in charge of the emergency medical services provision in a particular case. The use of this entitlement will exclusively be possible in situations when it is impossible to use the assistance of a physician or a nurse in a psychiatric hospital or a social welfare facility. Furthermore, the duration of the use of direct coercion measures was limited to

take place up to the moment of obtaining the assistance of a physician or for the duration of transport of a patient with a mental disorder to a health care institution. The above amendment also introduced an obligation of the person ordering the use of direct coercion notifying a relevant medical operator and this fact has to be recorded in the patient's medical file.

467. Such provisions guarantee both the provision of efficient assistance to patients with mental disorders by operational health care institutions and adequate protection of their rights.

468. The above amendment of the relevant law necessitates the issuance of a large number of new by-laws. Pursuant to Art. 3 of the amendment, previous provisions of by-laws are in force until the issuance of new by-laws. In the case of the regulation of the Minister of Health and Social Welfare of 23 August 1995 on the use of direct coercion measures, a new regulation that takes into account the changes introduced by the amendment must be issued by 1 July 2012.

469. With regard to other by-laws, they need to be issued no later than 24 months of the day of entry into force of the amendment.

470. At present MH is preparing 4 draft regulations for the amended law, whose issuance rests with the Minister of Health and a draft regulation of CM on mental health promotion.

471. Information on RPPSP – see the reply to question 20.

3. Prison Service – Improvement of Human Rights protection

472. Polish prisons offer the inmates all kinds of penitentiary measures aiming at their social re-integration and return to life in society. Social re-integration programs are both efficient and renowned in the world. For instance, in June 2009 the Polish Prison Service received the main award in a competition organised by the European Commission and the Council of Europe – “Crystal scales of the judiciary”. This major European award is granted to institutions that promote and improve the operation of the system of public judiciary in the Member States of the European Union and the Council of Europe. Polish penitentiary staff received an honourable mention for the project “Voluntary work of convicts in Poland”, a program meant to bring together people deprived of liberty with hospices and social homes for people with disabilities and senior citizens. Within the framework of the program the prisoners help out those most in need.

473. Prisoners were also involved in the implementation of another new unique program for the Prison Service under the name of “TIKKUN”. The project consists in making convicts aware of the traditions and customs of various religions and includes the maintenance of cemeteries. For example, recently in Eastern Poland they have taken part in maintaining cemeteries of Poles, Jews, Belarusians, and Ukrainians. Within the program convicts learn tolerance and history as well as come to respect differences between various communities.

474. Since the last Report, no new legal solutions have been introduced for the promotion and protection of human rights. At the practical level, on the basis of the law in force in Poland on the execution of the penalty of deprivation of liberty, the standards of impact are increased on an ongoing basis:

(a) As to action taken with a view to assisting women serving the penalty of deprivation of liberty together with children up to three years of age, the conditions in correctional facilities adopt the highest standards from external facilities and recommendations of domestic institutions involved in the development of a small child. As of 2011 both homes for mothers and children within the prison infrastructure in the Polish penitentiary system, have been equipped as a permanent element of the structure of these facilities with “Studios for the education of mothers and children”. Their objective is to

enhance the opportunities for the psychological and social development of children, whose mothers are prisoners and have low parental qualifications. At the same time the studios will be venues where mothers serving the penalty of deprivation of liberty will be provided permanent education with a view to raising their parental and social competences. 20 000 PLN was earmarked for the establishment of the above studios in homes for mothers and children in 2011;

(b) Elements of education about human rights and their promotion and protection included:

(i) Programs of organising and financing legal counselling, promotion of employment and occupational activity from the resources of the Post-penitentiary Assistance Fund in entities of the PS, in 2010 for a total amount of ca. 600 000 PLN;

(ii) Aggression Replacement Training (ART) – in 2010 there were 90 series completed by 721 graduates. Some programs were run with no additional expenses incurred due to the use of PS facilities by specialised trainers, some were outsourced;

(iii) Group social rehabilitation programs implemented:

- Aggression prevention – 201
- Development of social skills – 310
- Development of cognitive skills – 241
- Family integration – 78

475. The above programs were financed from the budget of the Post-penitentiary Assistance Fund and the state budget.

476. Also implemented was the National Program for the Protection of Mental Health (CM regulation of 28 December 2010 setting out tasks of the penitentiary system for the promotion of mental health and prevention of mental disorders, and in particular the implementation of the program of violence prevention among persons deprived of liberty). According to the above program, the total recommended outlays for prevention and promotion for the period 2011-2015 will be 3.75 m PLN.

477. Between 2007-2010 Polish Prison Service continued action aimed at improving the standards of serving a sentence of deprivation of liberty by assuring 3 m² of space per 1 prisoner, increasing the safety of the prisoners by enhancing protection within accommodation pavilions, increasing monitoring in cells. An amendment of CCP of 18 June 2009 and the resulting regulation of the Minister of Justice of 16 October 2009 on the kind of equipment and technical facilities for transmission, re-broadcasting and recording image or sound from the monitoring system in correctional facilities are to reconcile in the best possible way the rights to intimacy of persons deprived of liberty with the need for monitoring cells.

4. The rights of the patient

478. A law on the rights of the patient and the Ombudsman for the Rights of the Patient entered into force in Poland in 2009 (Journal of Laws of 2009 No. 52, item 417, as amended). The law significantly extended the rights of the patient, in particular via the introduction of a possibility of an objection to the opinion or diagnosis of a physician. Such an objection may be filed by a patient if the opinion / diagnosis affects his rights or obligations. An objection is lodged with the Physicians' Commission operating at the OPR, which must issue a decision without delay, no later however than within 30 days of the appeal. When considering objections, the Commission is obliged to take into account the need to issue decisions within a time framework without prejudice to the patient's right to exercise his rights. ECHR in a

judgement in a Polish case (*R.R. vs. Poland*, complaint No. 27617/04) observed that the fact the physicians fail to refer a patient for a few weeks for prenatal tests if the circumstances warranted such tests (probability of a deformation of the foetus), which actually prevented a pregnant woman from having an abortion, was an instance of degrading treatment, i.e. a violation of Art. 3 of the European Convention on Human Rights. The judgement is not final and the Government of the Republic of Poland filed for the consideration of the case by the Grand Chamber. It should be borne in mind that the situation considered in the case *R.R. vs. Poland* took place prior to the introduction of major changes in the situation of a patient, introduced by the above law on the rights of the patient.

5. Assistance to crime victims

(a) Network of Assistance to Crime Victims

479. Within the project “Network of Assistance to Crime Victims” (hereinafter: the Network), MJ set up 16 voivodship Centres of Assistance for Crime Victims (hereinafter: Centres). The Centres provide free of charge legal and psychological assistance to crime victims and some of them also social welfare. The Centres also use the help of volunteers, who are assistants of victims who help them in everyday activities, which additionally accelerates the return of the victim to the state from prior to the crime. Assistance provided by volunteers is addressed in particular to victims of domestic violence, children and women. One of the tasks of the Network is cooperation with law enforcement and the judiciary, local governments, churches, other religious organisations, and non-governmental organisations to extend assistance to crime victims across Poland. At present, the Network was enlarged by 13 branches of Centres.

480. The Network project consists in providing not only assistance but also information throughout Poland. That is why in the period from 2009 until June 2010 the Ministry of Justice led a number of trainings on “Methodology of work with a crime victim” for judges, public prosecutors, Police officers, and social workers. The courses aimed at improving qualifications of persons dealing on a daily basis in the course of their professional duties with crime victims in order to diagnose their needs and assuring them professional protection. Around 1000 specialists from all over Poland took part in a lecture on the examination of children and work with them.

481. Furthermore, PNSJPP organises courses and scholarly conferences related to work with different categories of crime victims.

(b) Changes in Ministry of Justice structure

482. In December 2009, MJ created the Department of Human Rights. Its range of competences covers also questions related to crime victims.

483. All the actions taken by MJ with a view to providing assistance to crime victims and preventing violence engage also other entities, including non-governmental organisations. In March 2009 the Minister of Justice set up the Council for Crime Victims, consisting of eminent academics, representatives of non-governmental organisations involved in assisting crime victims and lawyers. The tasks of the Council include expressing advice on draft legislation and documents containing proposed amendments in the field related to crime victims as well as the presentation of proposed directions of relevant changes.

(c) Compensation

484. The law on state compensation awarded to victims of some crimes entered into force in 2005.

485. Thanks to the amendment of the law taking place in 2009, a catalogue of situations when crime victims may be granted compensation was extended. After the changes compensation requests may be filed by victims of both deliberate and unintentional offences. Requests for compensation are considered by the district court having jurisdiction over the place of residence of the victim, which greatly facilitates the submission of such requests. Furthermore, compensation requests may be filed by a public prosecutor if the crime victim cannot do it himself.

(d) Website www.pokrzywdzeni.gov.pl

486. In February 2009 a website for crime victims was launched where victims may obtain information about their rights in criminal proceedings (the bookmark “Informator pokrzywdzonego” [Guidebook of a victim]) and information about Centres and other institutions offering assistance to victims on a local level. The website is written in accessible language. In 2011 the website was upgraded and is interactive now.

(e) Social campaigns.

487. MJ is engaged in numerous social campaigns, including ones supporting crime victims.

488. A campaign “Know your rights. Leave the shadow. Let others help you” was launched on 14 February 2011. It took advantage of radio, television and billboards. It aimed at raising the awareness of the general public about the rights of crime victims. The campaign took place from January through November 2010. Informator pokrzywdzonego (Handbook of a victim) was published and distributed during this time.

489. MJ and the Dzieci Niczyje Foundation have for years jointly held campaigns: “Wysoki Sądzie, boję się.”, “Wysoki Sądzie, mam prawo się nie bać.”, “Będę przeSŁUCHANA/przeSŁUCHANY” [“Your honour, I am afraid.”, “Your honour, I have the right not to be afraid.”, “I will be HEARD”]. The campaigns are supposed to sensitise judges, prosecutors and other professional groups dealing with children who are either witnesses or victims of crimes to their special needs and to the introduction of high standards of their examinations.

490. Furthermore, MJ implements the project “Facilitating access to the judiciary”, part-financed by the EU, within which inter alia in 2010 Polish Radio broadcast 430 programs on the rights of victims. Subjects discussed by experts involved domestic violence (with separate emphasis on violence against women and men, and changes in the amendment of the law on preventing domestic violence), trafficking in human beings, rape, etc.

(f) National Conference “Assistance to Child Victims of Violence”

491. As of 2004, MJ, Municipality of Warsaw and the Dzieci Niczyje Foundation have held an annual National Conference “Assistance to Child Victims of Violence”

492. The conference addresses comprehensively the question of assistance to children, victims of offences. It is annually attended by 2,000 people (judges, public prosecutors, defence counsels, Police officers, probation officers, expert psychologists, scholars, staff of assistance facilities for children) from around Poland.

(g) Certificates granted to friendly examination rooms

493. In 2007 MJ and the Dzieci Niczyje Foundation together with the Coalition for Friendly Examinations of Children put forth standards of examination of children to be met by Friendly Examination Rooms for Children. The standards define the requirements to be met by examination premises and their technical facilities and take into account the child’s

psychological needs and requirements of the judiciary related to the examination procedure. The rooms that meet the standards receive a certificate of MJ and the Dzieci Niczyje Foundation. In Poland there is around 300 friendly examination rooms for children, 54 of which have been subject to an audit held by representatives of MJ and psychologists, and thus have received the relevant certificates.

(h) Week of Assistance to Crime Victims

494. MJ in collaboration with courts, prosecution authorities, entities subordinate to MLSP, MH, MIA, MNE and non-governmental organisations have for years organised a Week of Assistance to Crime Victims. Celebrated between 22–28 February, it is linked with the International Crime Victim Day of February 22. During the week, crime victims are provided free of charge legal information. Numerous conferences raising the awareness of the general public are held across Poland.

495. As of 2011 the celebrations of the Week of Assistance to Crime Victims were shifted from courts to non-governmental organisations, members of the Network. As a result of the change, victims have not only access to free of charge legal information but also to free of charge psychological assistance. In 2011, the numerous groups of entities joining the celebrations of the Week were inter alia the Ombudsman, the Ombudsman for Children, PG, NHP, National Council of Probation Officers, Supreme Chamber of Defence Attorneys, and the National Council of Legal Advisers.
