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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION

Third periodic reports of States parties due in 1998

Addendum

POLAND*

[11 November 1998]

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* The initial report submitted by the Government of Poland is contained in document CAT/C/9/Add.13; for its consideration by the Committee, see documents CAT/C/SR.160 and 161 and Official Records of the General Assembly, forty-ninth session, Supplement No. 44 (A/49/44, paras. 66-73). For the second periodic report, see CAT/C/25/Add.9; for its consideration, see CAT/C/SR.276, 277 and 279 and Official Records of the General Assembly, fifty-second session, Supplement No. 44 (A/52/44, paras. 95-110).

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I. BACKGROUND INFORMATION

A. Ratification of the Convention

1. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984 was adopted and ratified by Poland on 21 October 1989 (promulgated in the Journal of Laws - Dziennik Ustaw - Dz.U. of 1989; No. 63; items 378, 379).

2. Poland, by virtue of the resolution of the Council of Ministers of 30 March 1993, has recognized the competence of the Committee against Torture in respect of receiving and examining complaints submitted by States and individuals. Until the present day no complaints have been reported.

B. General information on the system of government

3. The period covered by this report is characteristic of further, extremely intensive social and legal transformations. Above all, the National Assembly, on 2 April adopted the new Constitution of the Republic of Poland, which has been approved by the nation in a referendum. The new constitutional act (Dz.U. No. 78; item 483) has been in force since 17 October 1997. The passing on 6 June 1997 of the new criminal codifications (the Penal Code - Dz.U. No. 88; item 553, the Code of Criminal Procedure - Dz.U. No. 89; item 555, and the Punishment Execution Code - Dz.U. No. 90; item 557), all of which will enter into force as of 1 September 1998 - was also an important element of those transformations.

4. The Constitution is the supreme law of the Republic of Poland. Its provisions are applied directly, unless the Constitution provides otherwise. The main principle of the State system of government has been expressed in article 10, which stipulates that “The system of government of the Republic of Poland shall be based on the separation of and balance between the legislative, executive and judicial powers”.

5. The competence of the Sejm (Parliament), specified in further constitutional provisions may be divided into:

- legislative (passing statutes, adopting resolutions);

- electoral (electing members of the Tribunal of State and judges of the Constitutional Tribunal, adopting resolutions in respect of vote of confidence for the government appointed by the President);

- supervisory (exercising control over the Council of Ministers, within the scope specified by the provisions of the Constitution and statutory acts, by means of - among other things - the analysis of government reports on the execution f the State budget act, adopting resolutions on vote of acceptance of accounts for the government, appointing investigation commissions);

- applying political and constitutional responsibility (adopting votes of no confidence for the Council of Ministers and individual ministers, bringing indictments to the Tribunal of State in

respect of members of the Council of Ministers, deciding - in the capacity of the National Assembly together with the Senate - on impeachment of the President before the Tribunal of State).

Other powers of the Sejm include also declaring a state of war and making peace.

6. The competence of the Senate covers first of all passing bills and adopting resolutions. The Senate has not been vested with control functions by the new Constitution.

7. The executive power is exercised by the President and the Council of Ministers. The Constitution, in article 126, stipulates that the President of the Republic is the supreme representative of the Republic of Poland and the guarantor of the continuity of State authority. He 1/ ensures observance of the Constitution, safeguards the sovereignty and security of the State as well as inviolability of its territory. The powers of the President specified by the new Constitution include:

- the powers within the scope of responsibilities of the head of State in domestic and foreign relations, his supreme command of the armed forces, the country's defences as well as security of the State in times of peace and war;

- the competence to balance powers with respect to the Sejm and the Senate, the Government and the judicial authority;

- creative and organizational competence in the field of State leadership.

8. The President ratifies and renounces international agreements (before ratifying an international agreement he may refer it to the Constitutional Tribunal with a request for adjudication on its conformity to the Constitution), appoints and recalls plenipotentiary representatives of the Republic of Poland to other States and international organizations, receives letters of accreditation and recall of diplomatic representatives of other States, cooperates with the Prime Minister and other appropriate ministers in respect of foreign policy. He is the supreme commander of the armed forces, has the power of pardon, grants Polish citizenship and gives consent for its renunciation, issues official acts (regulations and executive orders which, with the exceptions specified in the Constitution, require the signature of the Prime Minister in order to be valid), makes changes in the composition of the Council of Ministers upon the motion of the Prime Minister, proclaims elections to the Sejm and the Senate, introduces legislation, signs bills, puts forward motions to the Constitutional Tribunal and - for an audit - to the Supreme Chamber of Control, nominates and appoints the Prime Minister, accepts the resignation of the Council of Ministers, dismisses a minister in respect of whom the Sejm has passed a vote of no confidence, appoints judges upon the motion of the National Council of the Judiciary, appoints the

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1/ Whenever the male pronoun is used in this text, it should be understood to refer also to the female unless the context requires otherwise.

First President of the Supreme Court, presidents of the Supreme Court, the President of the Chief Administrative Court and its vice-presidents, appoints the President of the Constitutional Tribunal.

9. The President may be held accountable before the Tribunal of State for an infringement of the Constitution or a statute, or for the commission of an offence.

10. The Council of Ministers is the chief executive and administrative organ of State authority. It is responsible, and reports to the Sejm and, between the terms of office of the Sejm, to the President. The principal powers of the Council of Ministers include: harmonizing and managing the operation of the ministries and other subordinate organs, assigning the objectives of their work, issuing regulations for the purpose of carrying out statutes and, based on them, adopting resolutions and ensuring their execution. The Council of Ministers also exercises general control in the field of relations with other States, organization of the armed forces and national defence, concludes international agreements (which require ratification), as well as manages the work of local organs of government administration.

11. The control bodies of the chief organs of public authority are the following: the Constitutional Tribunal (which adjudicates on the conformity to the Constitution of statutes and other normative acts of chief State organs), the Tribunal of State (adjudicates on the responsibility of persons holding highest State offices for violations of the Constitution or of a statute), the Supreme Chamber of Control (audits economic, financial, organizational and administrative activities of the organs of State administration and subordinate enterprises with regard to legality, economic prudence, efficiency and diligence), the Commissioner for Citizens' Rights (safeguards civil rights and freedoms).

12. The courts and tribunals constitute a separate power and are independent of other branches. They pronounce judgements in the name of the Republic of Poland.

13. The administration of justice is carried out by: the Supreme Court, the common courts of law, administrative courts and military courts. Court proceedings have at least two stages. The organizational structure and jurisdiction, as well as the proceedings before courts, are specified by statute.

14. Judges, within the exercise of their office, are independent and subject only to the Constitution and the statutes. Judges are protected by immunity. They may not, without prior consent granted by the court, be held criminally responsible or deprived of liberty. A judge may be neither detained nor arrested, except in cases where he has been apprehended in the commission of an offence and if his detention is necessary for securing the proper course of proceedings. A judge may not belong to a political party or a trade union, or perform public activities incompatible with the principles of independence of the courts and judges.

15. The National Council of the Judiciary safeguards the independence of the courts and judges.

16. The constitutional provisions do not regulate the structure and tasks of the public prosecutor's office, which safeguards the rule of law and administers the prosecution of offences. However, the relevant provisions are provided in the Act on the Public Prosecutor's Office of 20 June 1985, as amended in 1996. The most important changes introduced by the latest amendment include, among other things, the creation at the Ministry of Justice of the National Public Prosecutor's Office, the establishment of the position of the National Public Prosecutor who, by statute, is the deputy to the Prosecutor General, the establishment of the official position of a prosecutor at the National Public Prosecutor's Office, as well as the broadening of prosecutors' independence in performing actions related to legal proceedings.

17. The National Public Prosecutor's Office is the supreme organizational unit in the system of public prosecution. The tasks of the Office on the central level (apart from supervisory functions over its subordinate units) include: submitting applications to the Supreme Court for the extension of the period of provisional custody, legal transactions with foreign countries, participation in proceedings before the Supreme Court in criminal, civil and administrative matters, participation in cases examined by the Constitutional Tribunal and the Chief Administrative Court.

18. The position of the public prosecutor as an organ in legal proceedings is specified by the principle which stipulates that a public prosecutor is independent of other State organs and merely carries out the instructions of his superiors. As regards the internal relations within the Public Prosecutor's Office, the binding rule is the principle of hierarchical subordination, which stipulates the obligation to carry out the instructions and orders of the superior public prosecutor. This is not contrary to the principle of the public prosecutor's independence in undertaking actions stipulated by the statutes, since the public prosecutor takes actions independently and is responsible for their propriety and execution within the prescribed time limits.

19. A new element in the Polish constitutional practice is the introduction in the present Constitution of provisions which specify the means for the defence of freedoms and rights of citizens. These are:

- giving everyone the right to obtain compensation for any harm done to him due to an action of an organ of public authority in breach of law (art. 77, para. 1);

- establishing the principle which stipulates that the statutes may not bar the recourse to court by any person in pursuit of claims alleging infringement of freedoms or rights (art. 77, para. 2);

- giving each party the right to appeal against judgements and decisions made at first instance (art. 78);

- giving everyone whose constitutional freedoms or rights have been infringed the right to appeal to the Constitutional Tribunal for its judgement on the conformity to the Constitution of a statute or other normative act upon which basis a court or organ of public administration has made a final decision on his freedoms or rights

or on his obligations specified in the Constitution (art. 79, para. 1);

- giving everyone the right to apply to the Commissioner for Citizens' Rights for assistance in protection of his freedoms or rights infringed by organs of public authority (art. 80).

C. Position of the Convention within the system of domestic law

20. The new Constitution of the Republic of Poland is the first Polish supreme law which regulates the question of effectiveness of international law within the system of the Polish domestic law. Article 9, as well as the articles included in chapter III entitled "Sources of Law", are of key importance for the general position of international law within the domestic legal order. Article 9 stipulates that "The Republic of Poland shall respect international law binding on it". This provision expresses the general idea that Poland - in its whole territory - respects the law binding on it on the international level.

21. Further constitutional norms (chap. III) stipulate the following sources of the universally binding law in the Republic of Poland: the Constitution, statutes, ratified international agreements, and regulations (art. 87, para. 1); they further provide that a ratified international agreement, after its promulgation in the Journal of Laws (Dziennik Ustaw), constitutes part of the domestic legal order and is applied directly, unless its application depends on the enactment of a statute (art. 91, para. 1). Besides, the Constitution stipulates that an international agreement ratified upon prior consent granted by statute (the head of State's authorization for ratification) has precedence over statutes if that agreement cannot be reconciled with such statutes (art. 91, para. 2).

22. Ratification of an international agreement by the Republic of Poland as well as renunciation of such an agreement requires prior consent granted by statute - if the agreement concerns:

- peace, alliances, political or military treaties;

- freedoms, rights or obligations of citizens, as specified in the Constitution;

- the Republic of Poland's membership in an international organization;

- considerable financial responsibilities imposed on the State;

- matters regulated by statute or those in respect of which the Constitution requires the form of a statute.

23. Within the current legal status, it is beyond any doubt that the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment can be applied directly. The direct application of the Convention is facilitated by the self-executing character of the majority of its norms.

Thus there is no need to implement into the domestic law such provisions of the Convention as, for example, the definition of torture from article 1 of the Convention. The most important elements of the definition of torture are reflected in the provisions of both the Polish substantive and procedural law, and in some cases the Polish regulations even include provisions of a wider scope than those stipulated by article 1 of the Convention, i.e. they also cover the provisions of article 16 of the Convention (acts of inhuman treatment other than "torture") - which is corroborated by the information included in Part II of this report.

II. INFORMATION ON SPECIFIC ARTICLES OF THE CONVENTION

Article 1

See paragraphs 20-22 and 51-70 of this report.

Article 2

24. The introduction in the new Constitution of the norm which stipulates that "No one may be subjected to torture or cruel, inhuman, or degrading treatment or punishment" (art. 40) was an important step in the process of implementing the provisions of article 2 of the Convention.

25. The new Constitution, in article 30, imposes on public authorities the obligation to respect and protect the dignity of the person. Besides, the provisions of the Constitution guarantee: immunity from compulsory scientific experimentation, immunity from corporal punishment (art. 40), personal inviolability and personal liberty (art. 41), treatment in a humane manner of a person deprived of liberty (art. 41, para. 4), the right to defence at all stages of the proceedings for a person against whom criminal proceedings are conducted (art. 42, para. 2). Article 43 stipulates no statute of limitation regarding war crimes and crimes against humanity.

26. The norms that safeguard citizens against the use of torture, and cruel or inhuman punishment or treatment are also included in the provisions of the Penal Code, Code of Criminal Procedure and Punishment Execution Code, as well as in the following legal Acts: on the Police (Dz.U. of 1990; No 30; item 179 with subsequent amendments), on the Prison Service (Dz.U. of 1996; No 61; item 283 with subsequent amendments), on the State Security Office (Dz.U. of 1990; No 30; item 180 with subsequent amendments) and on the Border Guard (Dz.U. of 1990; No. 78; item 462 with subsequent amendments). These acts impose on public officials the obligation to respect human dignity as well as to respect and protect human rights while performing their official duties (art. 14, para. 4 of the Act on the Police; art. 9, para. 5 of the Act on the Border Guard; art. 7, para. 4 of the Act on the State Security Office, art. 3 of the Act on the Prison Service). The regulations of the Codes as well as the above-mentioned Acts penalize the behaviour specified in article 1 of the Convention. They also form a system of exercising control over the propriety of actions taken by law enforcement organs. A detailed review of individual questions will be presented in further paragraphs related to subsequent provisions of the Convention.

27. The new regulations concerning the death penalty need to be emphasized. By virtue of the Act of 12 July 1995 on the change of the Penal Code (Dz.U. No. 95; item 475) an interdiction to execute the death penalty was introduced for the period of five years from the date of entry into force of the Act (i.e. from 20 November 1995).

28. In the period covered by this report seven persons were sentenced to death (for the felony of homicide), however, as a result of appeal proceedings concluded with a final judgement, in four cases the death penalty has been changed to the penalty of life imprisonment and in two cases to the penalty of deprivation of liberty for 25 years. In one case the appeal proceedings are still pending.

29. The new Penal Code has abolished the death penalty. The sentences of death adjudicated so far with final effect will be changed by force of law to the penalty of deprivation of liberty for life, which will be the most severe penalty in the Penal Code (art. 14, para. 1 of the Act of 20 March 1997 - the regulations introducing the Penal Code - Dz.U. No 88; item 554).

30. It should be mentioned that the new Penal Code, in accordance with international obligations, stipulates the principle of no statute of limitation with respect to crimes against peace, humanity and also war crimes, which become punishable under the new Code. This principle also covers intentional offences against health, life or freedom committed by public officials in connection with the performance of their official duties (art. 105), which so far has been treated according to the general principles. Pursuant to article 9 of the regulations introducing the Penal Code, the limitation period in respect of the above mentioned offences (including offences against the administration of justice) ceases to apply in respect of offences which are punishable with the deprivation of liberty for more than three years and were committed by public officials in the period from 1 January 1994 to 31 December 1989 (sic) in the exercise of their official duties or in connection thereof.

31. Referring to the implementation by Poland of the obligations stipulated in article 2, paragraph 2, of the Convention, it should be noted that during the period covered by the report no actions were taken for the purpose of suspending the application of the provisions of the Convention.

32. The questions relating to martial law or a state of emergency are regulated by the new Constitution of the Republic. Without going into detail on the grounds for introducing extraordinary measures, it should be emphasized that martial law or a state of emergency may not restrict civil freedoms and rights which protect the dignity of the person and guarantee humane treatment, access to the courts, protection of life and personal property, freedom of conscience and religion, the right to submit complaints to organs of public authority, as well as compliance with the principles of criminal responsibility.

33. The new legal acts on states of emergency have not been passed yet (the President's draft bills in this area have been submitted to the Sejm). Nevertheless, the following acts of law are still in force: the Act of 5 December 1983 on state of emergency as amended on 18 July 1997

(Dz.U. No. 66; item 297) as well as the decree of 12 December 1981 on martial law (Dz.U. No. 29; item 154). These acts were discussed in the previous report.

34. During the examination of the previous Polish report on the implementation of the provisions of the Convention, the Committee drew attention to the disturbing question concerning the regulation of legal responsibility of a public official who carries out orders of a superior authority (see CAT/C/SR.279, para. 5 of concluding observations).

35. The regulations in this field (included in the Penal Code and the Acts on the Police, State Security Office, Prison Service and Border Guard) have not been changed. The Polish solutions comply with the general principles concerning criminal responsibility based on the standards adopted in democratic countries. For a public official to be held responsible for the commission of an offence while following an order or command, it is necessary to prove his knowledge of or at least consent to a prohibited act. Criminal responsibility of the person in command, however, is borne pursuant to the general provisions. The Penal Code of 1969 provides that an order constitutes a command to take or refrain from taking a specified action, issued officially to a member of the armed forces by his superior or an authorized member of the armed forces of a superior rank. According to the Polish practice of judicial decisions, whether or not a command to take or refrain from taking a specified action issued to a subordinate constitutes an order subject to execution is decided not by the form in which the command has been issued, but the actual and explicit will of the superior expressed in such a way that the subordinate understands the contents of the command issued to him and obliging him to perform or refrain from performing a specified act in compliance with the will of the superior.

36. The new Penal Code does not introduce any substantial changes in the matter under consideration. Similarly to the existing solutions, criminal responsibility of the recipient of the order is based on his awareness of the criminal nature of the order. The idea of this awareness consists in actual incompatibility of the order with the provisions of the penal law, which makes the recipient of the order convinced that if he carries out such an order he will commit an intentional offence (art. 318 of the Penal Code with regard to a member of the armed forces). According to the new provision, a member of the armed forces who commits a prohibited act in carrying out an order does not commit an offence unless, while carrying out the order, he commits an offence intentionally. Such construction results in the adoption of a new solution, i.e. clear designation of the penal legal situation of a member of the armed forces who has been instructed to carry out an order and who refuses to follow it or does not carry it out. Such member of the armed forces is not responsible for the refusal to carry out the order (art. 344, para. 1, of the Penal Code). The person who issued the order is then held responsible for the perpetration; however, if the recipient of the order has only attempted to perform the act, or has not even attempted it, then the person in command is responsible - depending on his behaviour - for perpetration, instigation or abetment.

37. The provisions concerning criminal responsibility in this field will be, as of the date of entry into force of the new Penal Code, applied respectively in respect of officers of the Police, State Security Office, Prison Service and Border Guard.

Article 3

38. In Polish law extradition is regulated by the provisions of the Constitution (art. 55), the Penal Code (arts. 118 and 119), concluded bilateral and international agreements, as well as the provisions of the Code of Criminal Procedure (arts. 532-538), the international agreements having precedence over the other provisions if they regulate a given matter differently (art. 541, para. 1, of the Code of Civil Procedure).

39. According to the provisions of the Code of Criminal Procedure the decision on granting or refusing extradition falls within the competence of the Prosecutor General. Extradition proceedings commence upon the submission by an organ of a foreign State of an extradition request in respect of a person sought for the purpose of conducting criminal proceedings or enforcing the punishment adjudicated against such person. The public prosecutor interrogates such person and, depending on the needs, secures the evidence located within the country. Next, the request is transmitted to the competent provincial court (art. 532 of the Code of Criminal Procedure). The court examines the admissibility of extradition at a sitting in which the person sought as well as his counsel for the defence may take part (art. 533, para. 1, of the Code of Criminal Procedure). Upon a justified motion of the person sought, the court takes the evidence located within the country. There are no provisions in Polish law which would specify the scope and the aim of such specific taking of evidence. According to the general principles of criminal procedure the evidence should be taken in such a manner that the circumstances of the case are clarified in a comprehensive way.

40. The Code of Criminal Procedure, in article 534, specifies the general framework for the court to examine the admissibility of extradition. In the light of article 534, paragraph 1, the court refuses extradition if the person sought:

- is a Polish citizen; this provision reflects the following norms: a constitutional provision (art. 55, para. 1, of the new Constitution of the Republic) and a penal one (art. 118 of the Penal Code), which stipulates that extradition of a Polish citizen is forbidden; and

- enjoys the right of asylum in Poland; this provision is reflected in the regulation of article 119 of the Penal Code.

41. The optional grounds for the refusal of extradition are the following:

- the offence has been committed in the territory of the Republic of Poland, or on a Polish ship or aircraft;

- criminal proceedings are being conducted or were conducted and have been concluded with a final sentence in respect of the same

act of the same person, or if there exist other circumstances referred to in article 11 of the Code of Criminal Procedure, which specifies circumstances whose occurrence excludes proceedings, e.g. non-commission of a prohibited act, statute of limitation, or lack of features of a criminal offence;

- pursuant to the law of the State which requests extradition, the offence is punishable with the penalty of deprivation of liberty for a period of up to one year or shorter, or a punishment which does not exceed such sentencing has been adjudicated;

- according to Polish law the offence is subject to prosecution upon private accusation;

- the State which has submitted the request does not provide reciprocity in this regard.

42. The above-specified optional grounds for refusal to extradite the person sought are not exhaustive. The Polish legislator has left to the adjudicating court the discretion of decision, which means that the court has the authority to determine whether the provisions of the law in force, including the international agreements binding on Poland, provide for admissibility or inadmissibility of extradition of the person sought to the requesting State. Thus, extradition of the person sought where there is probability of his being subjected to torture in the requesting State (art. 3 of the Convention) will be considered inadmissible.

43. The decision of the court on legal admissibility (inadmissibility) of extradition is subject to complaint (art. 533, para. 1, of the Code of Criminal Procedure). Paragraph 2 of this article stipulates that a final decision of the court stating legal inadmissibility of extradition is binding on the Prosecutor General. The Prosecutor General, after deciding on the request, notifies the relevant organ of the requesting State of his decision (art. 533, para. 3, of the Code of Criminal Procedure).

44. The new Code of Criminal Procedure formulates the obligatory grounds for refusal of extradition in a broader scope, namely article 604, paragraph 1, which stipulates that extradition is inadmissible if:

- the person sought is a Polish citizen or enjoys the right of asylum in the Republic of Poland;

- the act does not have the features of a prohibited act, or the statute stipulates that the act does not constitute an offence or is not subject to punishment;

- a statute of limitation applies;

- criminal proceedings in respect of the same act committed by the same person have been concluded with a final judgement;

- it would be incompatible with Polish law (including, with regard to the constitutional norms on the sources of law, the regulations binding on Poland which introduce restrictions on extradition, e.g. article 3 of the Convention).

45. Optional grounds for the refusal of extradition have been listed, by way of example, in article 604, paragraph 2, of the new Code of Criminal Procedure. According to this provision extradition may be refused in particular if:

- the person sought is domiciled in the Republic of Poland;

- the offence has been committed in the territory of the Republic of Poland or on a Polish ship or aircraft;

- criminal proceedings are being conducted in respect of the same act committed by the same person;

- the offence is subject to prosecution upon private accusation;

- pursuant to the law of the State which requests extradition the offence is punishable with the penalty of deprivation of liberty for the period of up to one year or shorter, or such punishment has been adjudicated;

- the offence in connection with which extradition is requested is a political, military or fiscal offence;

- the State which requests extradition does not provide reciprocity.

46. An example of referring to treaty regulations in the formulation of an opinion on legal inadmissibility of extradition in the current legal status occurred recently in the examination of the case of citizens of the People's Republic of China. By virtue of the decision of 7 March 1997 the Provincial Court in Warsaw gave an opinion on the request submitted by the People's Republic of China to the effect that the extradition of the persons concerned was considered to be inadmissible. In justifying its decision the Provincial Court indicated the existence of positive grounds for extradition; at the same time, however, the court took the position that giving an opinion on the legal admissibility of extradition to the People's Republic of China of the persons sought would violate article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (which prohibits the use of torture, inhuman or degrading treatment or punishment). The court argued, among other things, on the basis of a report presented by Amnesty International that there are grounds to assume that the persons to be extradited could be subjected in the requesting State to treatment prohibited by the provision in question.

47. The decision of the Provincial Court has been appealed by the public prosecutor. The judgement of the Court of Appeal in Warsaw, passed after the examination of the appeal, was then quashed on cassation by the Supreme Court which, by virtue of its decision of 29 July 1997, finally determined that the implications emanating from the norms of international law, which stipulate,

among other things, the prohibition of using torture, should be taken into account in giving an opinion on the question of legal admissibility of extradition.

48. Below are the statistical data concerning the extradition requests carried out by Poland in the period covered by this report:

(a) In 1994, 20 extradition requests were made for the extradition from the territory of Poland of persons sought by virtue of an international warrant of arrest. During the extradition proceedings, in 18 cases positive decisions were taken to extradite the persons sought and those persons have been transferred to the requesting States. In the other two cases decisions refusing extradition were taken;

(b) In 1995, 23 requests for extradition from the territory of Poland were made. In 18 cases positive decisions were taken and the persons sought have been transferred to the requesting States. In two cases extradition was refused and in the remaining three cases the proceedings are under way;

(c) In 1996, 27 requests for extradition from the territory of Poland were made. In 23 cases positive decisions on extradition were taken. The persons sought were transferred to the requesting States. In two cases extradition was refused, and in two cases proceedings are still under way;

(d) In 1997, 20 requests for extradition of persons sought were transmitted to Poland. In seven cases decisions to grant extradition were taken, and in 13 cases the proceedings have not been concluded yet.

49. In the period from 1994 to 1997, in consequence of extradition proceedings, Poland extradited 58 persons to requesting States, whereas in six cases such proceedings were concluded with a decision refusing extradition. The following grounds constituted the basis for the negative decisions:

- ascertainment that the person sought had Polish citizenship;

- ascertainment that the act with which the person sought had been charged did not satisfy the condition of dual criminality, which results in the lack of jurisdiction of the Polish courts;

- ascertainment that extradition would violate article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms;

- determination by the Prosecutor General that the personal and family circumstances of the person sought supported the refusal of extradition.

50. Extradition should be distinguished from expulsion of an alien, which constitutes a unilateral administrative act and may take place not only as a result of the commission of an offence by an alien. The institution of expulsion is regulated by the act on aliens. Its new norms (the Act of 25 June 1997 - Dz.U. No. 114; item 739) fully satisfy the requirements of

article 3 of the Convention, since they introduce an absolute prohibition on expelling an alien to a country in which he could be subjected to persecution due to his race, religion, nationality, membership in a specific social group, political convictions, or be subjected to torture, inhuman or degrading treatment, or be punished in such a way (art. 53). This provision also makes Poland satisfy the requirements of article 33 of the Convention relating to the Status of Refugees.

Article 4

51. The Polish criminal legislation does not specify a separate offence which would cover the use of torture in the meaning of article 1 of the Convention. However, the Penal Code of 1969 penalizes acts resulting in grave detriment to health, including mental health, or other impairment of the functioning of a bodily organ, or disturbance of health, unlawful deprivation of liberty (which was discussed in the previous report), as well as the use of violence or unlawful threat against a witness, expert or translator for the purpose of exerting influence on their actions, or making an assault on such persons in connection with the actions performed by them (subject to the penalty of deprivation of liberty for a period from six months to eight years - art. 253).

52. It is worth emphasizing that the Code regulations in all these cases use the phrase “Anyone who causes ....” Thus, the mere occurrence of the effect specified by the regulations makes it imperative for the perpetrator to be held criminally responsible.

53. As regards persons who are in a relationship of dependence on the perpetrator, Polish law also penalizes acts consisting in physical or mental cruelty (art. 184, para. 1), which does not have to lead to any specific consequences.

54. This broad coverage by Polish law of persons subject to penalty for causing severe pain or physical or mental suffering to the injured person marks the main difference between the Polish legislation and the provisions of the Convention, since the Convention considers torture to be only actions of public officials resulting from all forms of discrimination, irrespective of the cause of such an action, or actions taken by persons other than public officials but for specific purposes listed in the Convention, if such an action inflicts intentional suffering. Since each action in the meaning of “torture” mentioned in the Convention causes pain or suffering (i.e. specific effect), then the regulations of the Polish Penal Code, which penalize actions performed by anyone who causes such effect (regardless of the perpetrator's position), fully meet the obligations resulting from article 4 of the Convention.

55. It should be added that an attempt, as a general form of committing an offence, is punishable by Polish law and subject to the penalty stipulated for the commission of an offence.

56. The system of Polish criminal law includes some specific regulations stipulating responsibility of a public official for offences which violate the personal interests of citizens and have been committed in the exercise of

official duties. Although those regulations are not directly related to torture in the meaning of article 1 of the Convention, they include some of its elements.

57. The Penal Code of 1969, in its military part, penalizes behaviour of a member of the armed forces which consists in:

- abusing authority with the purpose of causing trouble for a subordinate or one of lower rank (subject to the penalty of deprivation of liberty for up to five years - art. 319);

- insulting a subordinate or one of lower rank (subject to the penalty of deprivation of liberty for up to three years - art. 320);

- violating the bodily inviolability of a subordinate or one of lower rank (subject to the penalty of deprivation of liberty for up to five years - art. 321).

58. The Act on the Police stipulates:

- that a policeman who, in the exercise of his official duties, oversteps his powers, thus violating the personal interests of a citizen, is subject to the penalty of deprivation of liberty for up to five years (art. 142);

- that a policeman who, for the purpose of obtaining an explanation, testimony or statement, uses violence, unlawful threat or moral cruelty is subject to the penalty of deprivation of liberty for up to five years (art. 143).

59. Similar regulations with regard to the kinds of penalized offences and sentencing are stipulated by the Acts on the State Security Office and Border Guard.

60. To sum up - the Polish legal system guarantees prosecution and punishment of criminal acts covered by the Convention. To illustrate the scale of offences committed by public officials we can present some data concerning acts which satisfy the provisions of articles 142 and 143 of the Act on the Police, the corresponding regulations of the Acts on the State Security Office and Border Guard, as well as articles 319-321 of the Penal Code (offences against the rules of behaviour towards subordinates). We are not in possession of statistical data concerning common offences committed by public officials, since they are not classified with regard to the position of the perpetrator.

Legal qualification	1994	1995	1996	1997
Articles 142-143 of Act on the Police	63	57	61	59
Articles 125-126 of Act on State Security Office	-	-	-	-
Articles 144-145 of Act on Border Guard	-	-	-	-
Articles 319-321 of Penal Code	No data available	No data available	54	83

61. The offences committed by policemen with regard to the provisions mentioned above consisted mainly in using physical force against detained persons, thus causing bodily injury, or battery. However, more drastic instances of aggressive behaviour of policemen are known; some of them have been presented below:

(a) The commanding officer of the police station in ºomazy, on 6 January 1997, while performing official duties, caused the death of a detained person by shooting that person with his service gun; he was sentenced for this act (qualified under article 148 of the Penal Code as homicide) to 15 years of deprivation of liberty by virtue of the judgement given by the Provincial Court in Lublin; the sentence is not yet final;

(b) Two policemen in Jelenia Góra on 6 December 1997 committed battery on a witness, thereby forcing him to write a statement withdrawing prior information on the commission of an offence that had been submitted by him; the Provincial Public Prosecutor's Office in Jelenia Góra is currently conducting an investigation into this case in respect of an act specified in article 253 of the Penal Code (quoted above) and article 158 of the Penal Code (the offence of battery);

(c) A policeman in S»upsk on 10 January 1998, during an intervention, unintentionally caused the death of a minor due to improper use of a truncheon. The Public Prosecutor's Office in S»upsk made an indictment charging the perpetrator with the commission of an act specified in article 142, paragraph 1, of the Act on the Police, in connection with article 152 of the Penal Code (accidental killing).

62. About 60-70 per cent of the offences under articles 319-321 of the Penal Code committed by conscripted soldiers are related to the so-called fala (“the wave”) phenomenon, which consists in the creation of informal structures and divisions into “younger” soldiers and “older” ones according to the length of service. In the community of conscripted soldiers fala is a set of rules that govern specific patterns of behaviour, obligations and privileges, depending on the length of service. Informal military customs and rituals are one of the manifestations of the fala phenomenon. It should be emphasized that the fala has a different scope and character in different military units.

In some units instances of violating personal dignity and battery are frequent; in others, however, they hardly ever occur or do not occur at all and the fala exists mainly in soldiers' minds.

63. The main type of behaviour related to the fala phenomenon is the urging of young soldiers by the older ones to choose the so-called “service by the wave”, and the enforcing of rights and privileges by those soldiers who are placed higher in the informal hierarchy. Below are some typical examples from the proceedings which have been concluded with a final sentence:

(a) Newly conscripted sailors were forced by those of higher rank to perform personal menial services, and all manifestations of disobedience were punished with battery;

(b) The perpetrator, taking advantage of the relationship of service dependence, forced the injured persons to perform specific actions, threatening them with battery in case of disobedience.

64. As regards common offences with which public officials have been charged, it can be stated by way of illustration that currently criminal proceedings are under way against former officials of the past Ministry of Public Security who were charged with the commission, in the period from 1945 to 1955, of acts consisting in causing serious bodily injury and disturbance of health, as well as physical and mental cruelty against political prisoners for the purpose of forcing them to provide specific testimony.

65. One of the former officials of the Ministry of Public Security, the Director of the Department of Investigations, was sentenced on 2 July 1998 by virtue of a final judgement to the aggregate penalty of seven years of deprivation of liberty. It was considered to be a proved fact that he had hit the injured persons with a whip with a metal ball on its end, hit them with a truncheon, kept them in a dark cell and, when it was cold, in a cell with an open window.

66. In the period from 1994 to August 1998 sentences for torturing prisoners were pronounced in respect of 19 former officers of the security services of the People's Republic of Poland.

67. When discussing the new regulations of the Penal Code of 1997 it should be noted that the notion of “torture” was introduced in article 123, paragraph 2, in the chapter entitled “Offences against Peace, Mankind and War Crimes”. The regulation stipulates punishment for anyone who, in violation of international law, causes grave disturbance of health to persons listed in paragraph 1 (persons who, having thrown down their arms or lacking any means of defence, have surrendered; the wounded, the sick, castaways, medical personnel or clergymen; prisoners of war, the civil population of an occupied or taken territory in which military operations are under way, or other persons enjoying international protection), who uses against those persons torture, cruel or inhuman treatment, conducts - even with their consent - scientific experimentation, uses them to protect by means of their presence a specific territory, an installation or his own troops against military operations, or holds them hostage. It should be emphasized that the quoted provision has a very wide substantive scope. It stipulates the penalty of

deprivation of liberty for a period of not less than 10 years, the penalty of 25 years of deprivation of liberty or the penalty of life imprisonment for anyone, regardless of the office held, whether the person has issued or merely followed an order, and irrespective of whether the person in question is acting with the explicit or tacit consent of a public official (as stipulated by article 1 of the Convention).

68. The Penal Code of 1997 also introduces new types of offences in article 246 and article 147 (the chapter covering offences against the administration of justice). Pursuant to the provision of article 246 a public official or a person acting on his order who, for the purpose of obtaining specific testimony, explanation or a statement, uses violence, unlawful threat or in any other way inflicts physical or mental cruelty against another person is subject to the penalty of deprivation of liberty for a period of 1-10 years.

69. Article 247 stipulates that anyone who uses violence against a person lawfully deprived of liberty is subject to the penalty of deprivation of liberty for a period of three months to five years, and where the perpetrator acts with particular cruelty the penalty is increased to 1-10 years of deprivation of liberty. The same penalties are imposed on public officials who, contrary to their responsibilities, inflict cruelty on prisoners.

70. The relevant provisions of the new Penal Code will be applied in place of the criminal provisions which regulate the responsibility of officers included in the Acts on the Police, State Security Office and Border Guard.

Article 5

71. The scope of competence of Polish criminal jurisdiction depends mainly on whether the offence has been committed in the territory of the Republic of Poland or abroad, and to some extent on whether or not the perpetrator is a Polish citizen, as well as on the nature of the offence. In the period covered by this report the provisions regulating criminal responsibility for acts committed abroad did not change. However, by virtue of the Act of November 1996, which entered into force as of 7 February 1997, the reading of the provision which specifies the principle of territorial jurisdiction was changed: article 3 of the Penal Code now stipulates that the “Polish penal statute shall be applied to a perpetrator who has committed an offence in the territory of the Republic of Poland, as well as on a Polish ship or an aircraft, unless an international agreement to which the Republic of Poland is a party stipulates otherwise”. Thus, the rule expressing the principle of territorial jurisdiction is applied only when an international agreement has not regulated the question of jurisdiction of criminal courts in a different way.

72. The Polish substantive law, apart from the exclusion specified above, does not make any other exceptions to the principle of territorial jurisdiction. Such an exception, however, is made by the law of criminal procedure, which stipulates that persons belonging to diplomatic representations of foreign States and members of their families, as well as consuls and consular officers, are not subject to the jurisdiction of the

Polish courts. Such immunity is not enjoyed by persons who are Polish citizens or who are domiciled in Poland (arts. 512-518 of the Code of Criminal Procedure).

73. By virtue of the Act of 21 June 1995 on the change of the Code of Criminal Procedure and other Acts (Dz.U. No 89; item 444) new regulations have been introduced which make it possible for a Polish citizen or a person domiciled in the territory of the Republic of Poland to be prosecuted for acts committed abroad. In such a case the Prosecutor General may apply to the competent organ of a foreign State for the transfer of prosecution, or he may receive such an application (art. 531 (a) of the Code of Criminal Procedure).

74. The new Penal Code repeats the reading of article 3 of the currently binding penal statute (which defines the principle of territorial jurisdiction). However, the grounds for responsibility in respect of offences committed abroad (chap. XII) have been regulated differently. The Polish legislator, when specifying the new rules of such responsibility, took into account to a greater extent the developments in international relations that have taken place recently in the area of prosecuting offences. A rule has been adopted that the Polish penal statute is applied to a Polish citizen as well as an alien who has committed an offence abroad. However, criminal responsibility of an alien exists only in the case of the commission by him of the following offences (rather than, pursuant to the Code of 1969 the commission by him of any offence):

- an offence against the interests of the Polish State, a Polish citizen, Polish legal person, or Polish organizational unit without legal personality (art. 110, of para. 1, of the Penal Code); or

- another offence punishable with the penalty of deprivation of liberty exceeding two years, on the condition that the perpetrator is in the territory of the Polish State and that no decision has been taken to extradite him to the court authorities of the place where the offence has been committed (art. 110, para. 2, of the Penal Code).

75. The general prerequisite for responsibility for an act is the existence of a relevant prohibition in the place where the act has been committed; article 114, paragraph 1, of the new Penal Code stipulates that the prerequisite for responsibility for an act committed abroad is the requirement that such an act should be considered an offence also under the law in force in the place of its commission. Any differences between the law of the place where the act has been committed and Polish law may be taken into account by the court in favour of the perpetrator (art. 114, para. 2). The dual criminality condition does not apply to: Polish public officials who have committed an offence in connection with the performance of their duties, persons who have committed an offence in a place which is not covered by any State authority; aliens for offences prosecuted under international agreements if the alien is not to be extradited (art. 113); Polish citizens and aliens who have committed offences against the interests of the State as listed in article 112, namely:

- offences against the internal and external security of the Republic of Poland;

- offences against Polish offices or public officials;

- offences against essential Polish economic interests;

- offences of false testimony submitted before a Polish office.

Article 6

76. The new Constitution of the Republic of Poland, in article 41, paragraph 2, guarantees to anyone deprived of liberty, except by sentence of a court, the right to appeal to a court for an immediate decision on the lawfulness of such deprivation. It stipulates, in the same article, that the deprivation of liberty should be immediately known to the family of, or a person indicated by, the person deprived of liberty. The Constitution of the Republic of Poland, apart from personal freedoms and rights, stipulates also the right of a detained person to be informed, immediately and in a manner comprehensible to him, of the reasons for such detention (art. 41, para. 3). The same article stipulates further that the detained person should, within 48 hours of detention, be given over to a court for consideration of the case; the detained person has to be set free within 24 hours of his being given over to the court unless a warrant of preliminary custody, along with the specification of the charges brought, has been served on him. It follows from the construction of the constitutional provisions that detention may last for a maximum of 72 hours: a motion for preliminary custody must be made within 48 hours and the court has 24 hours to decide. However, court practice shows that decisions on preliminary custody are taken within 48 hours of detention, in accordance with article 207 of the Code of Criminal Procedure in force, which stipulates that a detained person should be set free immediately unless, within 48 hours of the detention, he has been served with a certified copy of the warrant of preliminary custody.

77. Since the date of entry into force of the new Constitution only one case has been reported where the court issued a warrant of preliminary custody after the expiration of 48 hours from the moment of detention (before the expiration of 72 hours, however), invoking the Constitution (art. 41 para. 3) as a superior act of law.

78. In reporting on the implementation of the Committee's recommendations (CAT/C/SR.279, paras. 11 and 14 of the concluding observations), it should be noted that since 4 August 1996 legal proceedings in Poland have been governed by the amended Code of Criminal Procedure according to which preliminary custody may be applied only by a court (art. 210, para. 3).

79. Before deciding on preliminary custody the court is obliged to hear the suspect. A counsel for the defence designated by the suspect, or a person close to him, may take part in the hearing. A preventive measure applied by the court (including preliminary custody) may, in preparatory proceedings, be quashed or changed to a milder one also by the public prosecutor (art. 213, para. 2, of the amended Code of Criminal Procedure).

80. Pursuant to article 222, paragraph 1, of the amended Code of Criminal Procedure the court, when deciding on preliminary custody, determines its duration for a period of not longer than three months. Paragraph 2 of that article specifies the grounds for the extension of preliminary custody, however, the maximum period of its application may not exceed one year and six months, and in cases involving felonies, two years (art. 222, para. 3, of the Code of Criminal Procedure). An extension of preliminary custody for a specified period of time exceeding the above-mentioned time limit may be ruled, in particularly justified cases, only by the Supreme Court upon a motion of the court which is hearing the case, and in preparatory proceedings upon a motion of the Prosecutor General (art. 222, para. 4, of the Code of Criminal Procedure).

81. A decision on preliminary custody and extending its duration, except where the decision has been made by the Supreme Court (art. 222, para. 4, of the Code of Criminal Procedure), may be appealed to a higher court..

82. The amendment to the Code of Criminal Procedure, which has been in force since 1996, introduced a preventive measure that had not been known to Polish law before, i.e. an interdiction for the suspect (the accused) to leave the country in conjunction with the taking away of his passport or another document authorizing him to cross the border. The broadening of the catalogue of preventive measures reduces the necessity of preliminary custody and, at the same time, ensures the presence of the suspect (the accused) within the country. Article 235, paragraph 1, of the Code of Criminal Procedure (after the amendment which entered into force as of 1 January 1996) reads as follows: “In case of justified fear of a flight of the accused, an interdiction to leave the country may be applied as a preventive measure; such interdiction may involve the taking away of his passport or another document authorizing him to cross the border, or it may involve an interdiction to issue such a document”. Such measure may be applied by the court and - in preparatory proceedings - by the public prosecutor. If the interdiction to leave the country by the suspect (the accused) involves the taking away of his passport, a certified copy of the judgement in this regard should be sent to the organ which has issued the passport; in the case of an alien, a certified copy of the judgement is sent to the consular office of the State of the alien's citizenship. Preventive measures applied in respect of an alien are made known to the competent consular office.

83. The new Code of Criminal Procedure has broadened substantially proceedings with respect to the security of detained persons. First of all, it stipulates that a complaint against detention may question the justifiability and lawfulness of the detention and request its immediate quashing. The complaint may also seek to ascertain and criticize inappropriate execution of such preventive measure (art. 246, para. 1, of the new Code of Criminal Procedure).

84. The new provision of article 245, paragraph 1, is of great importance for the protection of the rights of the individual; it stipulates that a detained person should be provided with an immediate contact with a legal counsel and be able to directly communicate with him. In case a citizen of a foreign State is detained, he should also be provided, upon request, with the

possibility of establishing contact with a competent consular office or diplomatic representation (art. 612, para. 2, of the new Code of Criminal Procedure).

85. The new codification has harmonized the norms specifying the maximum time limit of detention with the constitutional norms. It has repeated the provision on the exclusive competence of the court to make decisions on preliminary custody but has not changed the provision specifying the maximum duration of such measure, with one exception: it has introduced a uniform, two-year long period of its application with respect to both felonies and misdemeanours.

86. Pursuant to the provision of article 605 of the new Code of Criminal Procedure preliminary custody may be applied to a person who is suspected of having committed an offence and an extradition request in this regard has been submitted to the Polish side, provided, however, that the request concerns an extraditable offence. The reading of article 605 of the new Code of Criminal Procedure stipulates as follows:

> "1. If the extradition request concerns an extraditable offence, the court, ex officio or upon a motion of the public prosecutor, may issue and order on preliminary custody of the person sought; the provision of article 263 (concerns the time limit of preliminary custody) shall be applied accordingly.
>
> "2. Before the extradition request has been submitted, the court may issue an order on preliminary custody of the person sought for the period not longer than one month if this has been requested by the organ of a foreign State with the assurance that the person sought has been sentenced in that State with a final judgment, or a decision on preliminary custody has been made.
>
> "3. The decision of the court on preliminary custody may be appealed.
>
> "4. The date of preliminary custody shall be made known forthwith to the Minister of Justice of the Republic of Poland as well as to the diplomatic representation or consular office, or the prosecuting organ of the foreign state."

Article 7

87. In case of disclosing an offence committed by an alien in the territory of the Republic of Poland the competence of the Polish courts results from the principle of territorial jurisdiction, which was discussed in the remarks on article 5 of the Convention. The perpetrator is then held responsible according to the general principles.

88. In case the persons prosecuted by foreign States are not extradited and if the offence has been committed outside the territory of the Republic of Poland, articles 113-119 of the Penal Code apply (which specify the principles of liability for offences committed abroad).

89. The liability of Polish citizens is regulated in article 113 of the Penal Code, which stipulates that the Polish penal law applies to Polish citizens who commit an offence abroad. According to Polish penal law a Polish citizen is subject to punishment for an act committed abroad regardless of whether or not such an act is prohibited abroad under penalty. Thus, he is not subject to punishment for acts which are prohibited solely by the law of the country in which they have been committed. In case an act does not constitute an offence in the place of its commission, it is open for preliminary assessment whether or not - due to the degree of its social noxiousness - it should be subject to prosecution. This is because prosecution is instituted only upon the decision of the Prosecutor General of the Republic of Poland (art. 111 of the Penal Code). Such a decision is a prerequisite for the institution of criminal proceedings.

90. The basis for applying Polish penal law to aliens who commit an offence abroad is specified by the regulation of article 114, paragraph 1, of the Penal Code, which stipulates that the Polish Penal Code is applied to aliens who commit an offence abroad provided that such act is recognized as an offence also by the law in force in the place where it has been committed. The provision of this article does not specify the detailed nature of such an act; thus, any type of offence may be involved. The formulation of the dual criminality condition corresponds to the regulation specified in article 114, paragraph 2, of the Penal Code, which stipulates that if there are differences between the Polish law and the law of the place where the act has been committed, the differences may be taken into account in favour of the perpetrator while applying the Polish law. The degree to which the differences between the laws are taken into account has been left to the discretion of the court. However, in applying Polish law, the court may not adjudicate a penalty or apply a measure which is not known to Polish penal law. Nevertheless the court may, for example, consider a substantially lower minimum penalty in the foreign law to be a ground for extraordinary mitigation of the punishment.

91. Irrespective of the provisions in force in the place where the offence has been committed, Polish penal law applies to aliens who have committed the following offences (art. 115 of the Penal Code):

- an offence against essential political or economic interests of the Republic of Poland;

- an offence subject to prosecution by virtue of an international agreement.

Thus, the provision of article 115, paragraph 2, of the Penal Code provides ground for the prosecution of perpetrators who are in the territory of the Republic of Poland, have been charged with the commission of an offence under a convention and are not to be extradited to a foreign State. The principle of universal repression expressed in article 111, paragraph 2, of the Penal Code has been repeated in the new penal codification - article 113, which was presented in the discussion of article 5 of the Convention.

Article 8

92. Poland has acceded to the European Convention on Extradition (including two Additional Protocols - one of 15 October 1975 concerning, among other things, war crimes and crimes against humanity, and the other of 17 March 1978 relating to, among others, tax and customs offences). Its provisions entered into force in respect of Poland as of 13 September 1993.

93. Besides, Poland has concluded a number of bilateral agreements on legal assistance, which include provisions on extradition. In the period covered by this report, Poland concluded such agreements with Belarus and Latvia and earlier agreements had been concluded with the following countries: Algeria, Egypt, Iraq, Yugoslavia (binding also in relations with Bosnia and Herzegovina, Croatia, the former Yugoslav Republic of Macedonia and Slovenia), Republic of Korea, Cuba, Libyan Arab Jamahiriya, Morocco, Mongolia, Russian Federation, Romania, Syrian Arab Republic, Tunisia, Ukraine, United States of America, Viet-Nam. As regards Slovakia, an agreement on supplementing and facilitating the implementation of the European Convention on Extradition has entered into force. With respect to the United States, a new extradition treaty was signed on 10 July 1997. It has not entered into force yet, as is the case with the agreement concluded with Australia on 3 June 1998.

94. The legal regulations concerning extradition were presented in the discussion of article 3 of the Convention.

Article 9

95. The legal regulations in force relating to legal assistance and serving of documents in criminal matters were not amended in the period covered by this report. The information presented in the previous report is still valid.

96. The only changes that have been introduced in the new Code of Criminal Procedure concern the provisions on the admissibility of disclosing at a trial evidence taken in other cases by a foreign State. Namely, article 587 of the new Code of Criminal Procedure stipulates that not only may official reports made at the request of Poland be read at a trial, but also inspection reports, minutes of the hearing of the accused, witnesses and experts, or reports on other actions of taking evidence by the courts or public prosecutors of foreign States or organs acting under their supervision may be read at a Polish trial (pursuant to the general principles), provided, however, that the mode of execution of such action is not contrary to the legal order of the Republic of Poland.

97. In the period covered by this report no instances of refusing legal assistance were reported. There were, however, instances of non-execution of requests but this is not tantamount to a refusal to execute them. The most frequent reason for non-execution of requests for legal assistance is the lack of sufficient data necessary for the execution of the requested action.

98. On 17 June 1996 the European Convention on Legal Assistance in Criminal Matters, together with its Additional Protocol, entered into force in respect of Poland. Poland is bound by numerous bilateral agreements on the provision

of legal assistance in criminal matters. In the period covered by this report Poland concluded such agreements with Belarus, Canada and Latvia.

Article 10

99. Following the recommendation of the Committee (CAT/C/SR.279, para. 12 of the concluding observations) the programmes of educating public officials have been intensified.

100. The issue of the protection of human rights is being included in the Polish educational system to an ever-growing extent. At some universities (Gda½sk, Pozna½, Toru½, Lublin, Warszawa) human rights have become a topic of regular lectures. A number of human rights publications have been issued. They are universally available in bookshops and libraries. The judgements of the European Commission and the European Court of Human Rights in Strasbourg are widely published both in professional periodicals (e.g. Prokuratura i Prawo (Prosecution and Law), Palestra (The Bar)), as well as in the daily press (the legal supplement to the daily Rzeczpospolita (The Republic)).

101. The Ministry of Justice has been organizing training sessions for judges and public prosecutors on the protection of human rights. Probation officers and the staff of educational institutions also undergo such training. The Supreme Court organizes seminars on this topic as well. Particularly intensive training sessions are also conducted by the Association of Adjudicating Judges Iustitia.

102. The training services of the Police conduct, within the framework of the programme of training and professional development, training sessions on human rights, particularly in the field of protection of individual rights and freedoms. They are focused on the development of proper professional habits by police officers, particularly in undertaking such actions as checking identity documents, detention and the use of means of direct coercion. The training aims at making policemen accept as their own the principles obliging them to respect human dignity, to use force only when absolutely necessary and to protect the health and life of detained persons. In order to attain the desired international standards in the field of human rights all policemen are obliged to acquaint themselves with selected documents of the Council of Europe and the United Nations. The implementation of the programme is also assisted by the films presented by the Helsinki Foundation for Human Rights, “Dignity, Equality, Freedom” and “The Limits of Power”. All police instructors have completed a course for lecturers on human rights.

103. A similar programme is conducted for the officers of the Prison Service (this group also includes doctors employed at penitentiary institutions). That each officer is made aware of the contents of the Convention, is confirmed by him in writing. The training programme for Prison Service officers is guided by the principle that proper training of the personnel develops their ability to conduct themselves towards prisoners in a manner that creates more favourable conditions for having a positive influence on them, extending beyond mere supervision and control.

104. A special training programme has been organized by the National Agency for Solving Alcohol-Related Problems for the medical personnel attending alcohol-dependent prisoners who undergo two- or three-day courses on proper conduct towards such detained persons.

Article 11

105. Supervision over the execution of the penalty of deprivation of liberty, the penalty of arrest, and over preliminary custody (penitentiary supervision) is regulated in the following legal acts:

- Code of Execution of Penalties;

- Regulation by the Minister of Justice of 2 May 1989 on the by-laws of the execution of the penalty of deprivation of liberty (hereinafter called the By-laws of the execution of the penalty of deprivation of liberty);

- Regulation by the Minister of Justice of 2 May 1989 on the by-laws of preliminary custody (hereinafter called the By-laws of preliminary custody).

106. Supervision over the legality and the process of execution of the penalty of deprivation of liberty, the penalty of arrest, the penalty of military arrest, as well as over preliminary custody (penitentiary supervision) is exercised, pursuant to the Code of Execution of Penalties, by the penitentiary judge and public prosecutor. With respect to persons sentenced by military courts, regardless of whether they serve a sentence of deprivation of liberty or military arrest, penitentiary supervision is also exercised by a designated military judge, in addition to a penitentiary judge.

107. The penitentiary judge ensures in the first place that the adjudicated penalty or the applied measure is correctly executed (art. 28 of the Code of Execution of Penalties). The public prosecutor ensures, among other things, that the adjudicated penalty or applied measure is carried out legally, including the observance of the rights and obligations of persons deprived of their liberty, the legality of incarceration and continued imprisonment, as well as the observance of safety regulations there (art. 29 of the Code of Execution of Penalties).

108. Persons exercising penitentiary supervision by virtue of statutory regulations have the right of entry, at all times and without any restrictions, onto the premises of the institution and to the rooms occupied by persons deprived of liberty. The penitentiary judge and the public prosecutor also have the right to inspect documents and request explanations from the management of the institution, communicate in private with the prisoners and hear their complaints and explanations (art. 31 of the Code of Execution of Penalties).

109. The following forms of penitentiary supervision can be mentioned:

- inspections of penal institutions and issuance of post-inspection recommendations;

- issuance by the penitentiary judge of orders to change or quash decisions made by the management of the institution and its organs, or orders by the penitentiary judge or public prosecutor, to stay the execution of the decisions of such organs;

- submission of requests, opinions and applications to the management of penal institutions;

- provision of necessary explanations and instructions by the penitentiary judge;

- receipt and examination of complaints, petitions and requests from prisoners and examining the way they are handled by the management of the institutions.

110. The supervision exercised by the penitentiary judge and the public prosecutor is not tantamount to administrative supervision over penal institutions; it does not give them the right to give orders of an administrative character. If, in the opinion of a penitentiary judge or a prosecutor who exercises control, it is necessary to make a decision which does not fall within his competence, in particular a decision of an administrative character, he transmits his opinions, accompanied by appropriate recommendations, to the competent organ.

111. The following data may illustrate the scale of incoming complaints examined within the framework of penitentiary supervision concerning, in a broad sense, the attitude of prison service officers towards the imprisoned persons:

Year	No. of complaints submitted	No. of complaints justified
1994	1 524	24
1995	1 496	26
1996	1 462	11
1997	1 373	11

The complaints dealt mainly with instances of overstepping the rules of permissible conduct by prison officers when using means of direct coercion, as well as inadequate health care.

112. The new Code of Execution of Penalties repeals penitentiary supervision exercised by the public prosecutor. Pursuant to article 32 of the new Code of Execution of Penalties only the penitentiary judge is authorized to exercise such supervision. Its scope covers both the legality and the correctness of the process of execution of the penalty of deprivation of liberty, the penalty of arrest, preliminary custody, the preventive measure of being put in a closed institution and penalties imposed for breach of order, as well as coercive measures resulting in deprivation of liberty. Within the framework of his supervision over the legality of the execution of penalties involving

isolation, the penitentiary judge has been given the right to suspend or abrogate an unlawful decision of the adjudicating organ and to transmit the case to the competent penitentiary court (art. 34).

113. No changes have been introduced to the provisions specifying the rights of the penitentiary judge to submit his opinions and requests in matters which do not fall within his competence. However, the Code has been supplemented with an additional provision which stipulates that the penitentiary judge may institute actions aimed at the suspension or liquidation of a penitentiary institution which does not respect the rights of persons remaining there. Pursuant to article 35, paragraph 3, in case of repeated blatant faults in the functioning of a penal institution, house of detention or another place in which persons deprived of liberty are being kept, or if the conditions there do not ensure respect for their rights, the penitentiary judge applies to a competent superior organ for the elimination, within a specified time-limit, of the existing shortcomings. If, within the designated period of time, the faults are not rectified, the penitentiary judge applies to the competent minister for the suspension of operation, in whole or in part, of the institution, house of detention or the facility in question.

114. Apart from the control exercised within the framework of penitentiary supervision, penal institutions and houses of detention are subordinate to the Central Administration of Prison Service, which in turn is subordinate to the Minister of Justice. The rules for such control are specified in the regulation by the Minister of Justice of 22 January 1992 (as amended in 1996) on the principles and procedure for exercising control over the organizational units of the prison system. Pursuant to the provisions of this law, comprehensive, summary and thematic inspections are carried out in penal institutions and houses of detention.

115. A comprehensive inspection is an all-embracing examination of all spheres in a penitentiary facility which is carried out in every penal institution at least once in three years. It is an overall survey of the whole premises of the penitentiary facility. Particular importance is attached to talks with the imprisoned persons. They have opportunity to maintain direct contact with the inspecting team, present their problems to the inspectors without the participation of the management of the facility, as well as to submit complaints, requests and petitions. All the reported complaints and critical remarks on the functioning of the institution and inadequate respect for the prisoners' rights are examined and clarified at a later stage of the inspection.

116. In the years 1996-1997 such inspections were carried out in 103 penitentiary institutions (29 in 1996, 74 in 1997).

117. In the period between consecutive comprehensive inspections penitentiary institutions undergo ad hoc inspections, as well as different thematic inspections aimed at examining selected issues related to the operation of the institution.

118. The observance of the rights of persons imprisoned in penitentiary institutions is monitored by the Commissioner for Citizens' Rights (his representatives) as well as non-governmental organizations and associations, such as the Helsinki Committee.

119. Pursuant to the act of 25 June 1997 on aliens, the public prosecutor supervises the execution of a judgement on arresting an alien for the purpose of his expulsion.

120. Pursuant to the regulation by the Minister of Justice of 19 May on the structure of houses of correction and the rules binding on minors staying there (Dz.U. No 58; item 361), as well as in accordance with the corresponding regulation of the same date on the rules binding on minors in homes for detained juveniles (Dz.U. No 58; item 362), the Minister of Justice supervises houses of correction and homes for detained juveniles. However, supervision over the lawfulness and correctness of the execution of judgements on the application of a correction measure is exercised by a family judge designated by the president of the competent provincial court. Presidents of provincial courts exercise direct supervision over the administration of houses of correction and homes for juveniles, as well as pedagogic supervision through pedagogic inspectors (until the entry into force of those regulations, i.e. until 11 July 1997, administrative and pedagogic supervision had been exercised by the Minister of Justice).

121. Since the Minister of Justice took over the supervision of houses of correction and homes for detained juveniles 11 comprehensive inspections have been carried out in those institutions and no violations of children's or minors' rights have been reported.

122. In the period 1-12 July 1996 the European Committee against Torture (CPT) carried out in Poland inspections in the organizational units of the prison system, institutions for juveniles, military houses of detention and sobering-up rooms in order to assess compliance with the European Convention against Torture. No immediate intervention was undertaken by CPT representatives during the inspection.

123. The Ministry of Justice, which is the competent organ to receive the Committee's notifications, transmitted in July 1997 a preliminary reply to the official report on the inspection and the recommendations included therein. The final report of the Polish authorities was drawn up in April 1998. At the beginning of July 1998, during a meeting of the CPT, the procedure for accepting the report on the Committee's visit to Poland in 1996 was concluded.

124. The Code of Execution of Penalties of 1969 gives convicted persons numerous rights related to the execution of their penalty. These were presented in the previous report; however, the most important ones are still worth mentioning. Above all these are:

- the right to submit applications;

- the right to submit, in the cases specified by the Code, complaints against judgements issued during preparatory

proceedings (e.g. against judgements refusing adjournment or interruption of the execution of the penalty of deprivation of liberty);

- persons deprived of liberty have the right to submit complaints against decisions of the management of the penal institution or house of detention if such a decision is unlawful;

- the right to avail oneself of the assistance of a counsel for the defence; the convicted person has to be obligatorily provided with a counsel for the defence if he is deaf, dumb or blind, or if there is justifiable doubt as to his soundness of mind;

- the right to communicate with a lawyer directly in the absence of other persons, or by correspondence.

Any limitation of the rights of convicted persons may not exceed the limits necessary for the proper execution of the adjudicated penalty or applied measure.

125. Persons in custody awaiting trial, as a matter of principle, enjoy the same rights as persons serving the penalty of deprivation of liberty. Some restrictions in this area, resulting from statutory regulations, concern the right to self-education and participation in cultural and educational activities, and are justified by the need to ensure the proper course of preparatory and court proceedings; for example, persons in custody may not go on furloughs or receive regular visits of an unlimited number of persons.

126. The new Code of Execution of Penalties has attached exceptional importance to the rights of convicted persons; it has introduced relevant legal guarantees in executory proceedings which consist, first of all, in the granting to the convicted persons of:

- the right to submit motions for the institution of proceedings before a court and complaints against judgements issued in the process of executory proceedings;

- the right to submit complaints and petitions to the organs which execute judgements;

- the right to appeal to a competent court against the decisions of non-court organs which execute the judgements, if the convicted person considers the decision to be unlawful;

- the right to submit complaints to international institutions which defend human rights;

- the right to avail oneself of the assistance of a counsel for the defence or a proxy; here the limits of obligatory defence have been extended by the addition of two new grounds, namely: the convicted person has not attained 18 years of age or does not know the Polish language;

- the right to communicate with a counsel for the defence or an attorney in an unrestricted way;

- the right of the convicted person to appoint, in the capacity of his proxy, a person of trust, especially from among representatives of associations, foundations and non-governmental organizations (the institution of a civic representative of a convicted person is a new element in the Polish legislation); such representative has been granted the right to submit, on behalf of the convicted person, motions and complaints, as well as to appear in proceedings before the court.

127. The rights enjoyed by persons in preliminary custody (which, at the minimum, are equal to those enjoyed by a convicted person) have been supplemented in the new Code with provisions which give the person in preliminary custody the right to prepare himself for his defence and to communicate in private with his counsel for the defence.

128. The rights of persons deprived of liberty are governed by the provisions of the regulations on the execution of the penalty. They stipulate that a person deprived of liberty has the right to:

- approach his superiors directly in matters related to the serving of the penalty of deprivation of liberty;

- submit petitions, complaints and motions;

- carry on correspondence; correspondence with the organs of State authority, governmental administration and administration of justice, the Commissioner for Citizens' Rights, as well as with international institutions for the protection of human rights (which operate under international agreements) is not censored; a convicted alien has the right to maintain correspondence with a competent consular office or diplomatic representation.

129. Similar regulations as regards submitting complaints and petitions are included in the rules that govern preliminary custody. However, the principles of maintaining correspondence are specified differently: they stipulate that letters sent by persons in preliminary custody are subject to censorship by the organ in charge.

130. The act on aliens and its executory provisions grant numerous rights to aliens in custody for the purpose of expulsion. The most important ones, from the point of view of this report, are the following:

- the right to have contact in personal and official matters with competent State or self-government organs, as well as with the diplomatic representation or consular office of a foreign State;

- the right to submit petitions, complaints and applications to the commanding officer of the Police or Border Guard unit in which they are being kept.

131. The regulation by the Minister of Justice on the rules binding on juveniles in houses of correction (mentioned above) has introduced a catalogue of minors' rights, which include, among other things, the right to:

- proper living conditions that provide safety, protection from all forms of violence and respect for human dignity;

- send and receive correspondence;

- submit complaints, petitions and applications to a competent organ (the management of the institution, the family judge exercising control over the institution);

- kind treatment;

- protection of family ties.

132. Similar provisions (a catalogue of rights) are included in the above-mentioned regulation by the Minister of Justice on the functioning of homes for detained juveniles. There is only one additional provision, which gives the right to have contact with a counsel for the defence on the premises of the facility in the absence of other persons.

Article 12

133. According to the principle of legalism expressed in article 5 of the Code of Criminal Procedure, a public prosecutor is obliged to institute proceedings in respect of an offence subject to prosecution ex officio; the same obligation rests with the Police. The proceedings are instituted if there is a well-founded suspicion that an offence has been committed. In the Polish criminal procedure a notice of an offence is of particular importance among the sources of information which might constitute a basis for the institution of proceedings. According to the Code of Criminal Procedure it is a civil duty to notify competent organs of an offence. Article 256, paragraph 1, stipulates that everyone who has taken cognizance of the commission of an offence subject to prosecution ex officio has a civil duty to notify the public prosecutor's office or the Police thereof.

134. If the circumstances specified in the notification (plus the actions undertaken to verify them) do not give grounds for the institution of proceedings, such proceedings are not instituted. The decision to refuse the institution of proceedings may be appealed only by the injured person (art. 260, para. 2 of the Code of Criminal Procedure).

135. If the proceedings that have been conducted (the information on the forms and duration of preparatory proceedings presented in the previous report is still valid) do not give grounds for indictment, a decision to discontinue the proceedings is made. Such decision may be appealed by the injured person and the suspect (art. 28, paras. 1 and 3 of the Code of Criminal Procedure), as well as by persons whose rights have been violated (art. 268 of the Code of Criminal Procedure).

136. Circumstances precluding criminal proceedings are specified in article 11 of the Code of Criminal Procedure, which stipulates that proceedings are not instituted, or are discontinued if there exist circumstances that exclude proceedings, and in particular if:

- the act has not been committed or it does not involve the statutory features of a prohibited act, or the statute stipulates that the perpetrator has not committed an offence (e.g. due to his insanity, acting in state of necessity, in self-defence, or - under certain conditions - when following his superiors' orders);

- the statute stipulates that the act does not constitute an offence due to its minimal social noxiousness, or the perpetrator is not subject to punishment (e.g. an inciter who voluntarily prevented a prohibited act);

- the perpetrator is not subject to the jurisdiction of a criminal court;

- there is no complaint by an authorized prosecutor, or no permission for prosecution, or a motion for prosecution has been made by an authorized person;

- the accused person has died;

- a statute of limitation has taken effect;

- the criminal proceedings with respect to the same act committed by the same person have been concluded with a final judgement or are under way.

137. The new Code of Criminal Procedure strongly emphasizes the principle of legalism, stipulating in article 10 that the organ assigned the task of prosecuting crimes is obliged to institute and conduct preparatory proceedings, and the public prosecutor is also obliged to lodge and support an indictment with respect to an act subject to prosecution ex officio (para. 1). With the exception of the cases specified by statute or by international law, no one may be absolved from responsibility for an offence he has committed (para. 2).

138. The new Code regulations, while maintaining the existing forms and basic time limits for preparatory proceedings, stipulate an important change: the proceedings are simplified and the procedural guarantees for the injured person are strengthened. The most important changes include:

(a) Introducing the institution of complaint against idleness of the prosecuting organ; if the person who has notified the prosecuting organ of the commission of an offence is not advised, within six weeks of the submission of his notice, of either the institution of proceedings or of refusal to do so, he may lodge a complaint with the superior prosecutor or to the prosecutor appointed to supervise the prosecuting organ in question;

(b) Broadening the possibility of lodging a complaint against a refusal to institute proceedings; it is not only the injured person who has the right to appeal such decision but also the State, self-government or social institution which has submitted a notice of the commission of an offence;

(c) Introducing the provision on the so-called motion for conviction without trial; this is possible in cases involving acts punishable with a penalty of deprivation of liberty not exceeding five years if the circumstances of the commission of the offence raise no doubts and the suspect's attitude indicates that the objectives of the proceedings will be attained despite the absence of a trial;

(d) Providing the injured person with special rights in case of refusal or discontinuance of proceedings; it is stipulated that such decisions may be appealed by the injured person to a superior public prosecutor who, in the event he rejects the appeal, has to transmit it to the court; if the court finds the complaint justified, it quashes the appealed decision and gives the case over to the public prosecutor; a possible repeated decision on discontinuance of or refusal to institute proceedings is subject to appeal only to a superior public prosecutor; if the judgement is still upheld, the injured person may lodge his own indictment in the capacity of an auxiliary prosecutor in a case involving an act subject to prosecution ex officio.

139. As regards circumstances precluding the admissibility of criminal proceedings, the new Code has not introduced any substantial changes.

Article 13

140. The right to lodge a notice of the commission of an offence or other behaviour which violates the legal order was presented in the discussion of articles 11 and 12 of the Convention.

141. In order to protect a witness against all forms of ill-treatment or intimidation in connection with his testimony, the institution of an incognito witness has been introduced into Polish law by virtue of the Act of 6 July 1995 on the change of the Code of Criminal Procedure. The additional article 164 (a) stipulates in paragraph 1: “If there is justifiable fear of danger to the life, health, freedom or property of significant value of the witness or a person close to him, the court - and in preparatory proceedings the public prosecutor - may decide to make confidential the data which would enable the establishment of the identity of the witness”. The solutions adopted in subsequent paragraphs make it possible for the data enabling the establishment of the witness's identity to be made known only to the court, the public prosecutor and, if need be, to the officer conducting the proceedings; they may not be disclosed either to the accused person or to his defence counsel. An incognito witness does not take part in the trial; however, he is heard by the court in a place which ensures the confidentiality of his personal details. The minutes of the hearing of the witness are read to the parties in such a way that the possibility of disclosing his identity is excluded. The accused person and his counsel for the defence may ask the witness questions and receive answers only through the court or public prosecutor.

142. The decision on keeping the identity of a witness confidential is subject to appeal to the court by the accused within three days. The appeal being upheld, there is a provision which provides for the possibility of confrontation involving an incognito witness (art. 157, para. 3, of the Code of Criminal Procedure).

143. On 15 November 1995 the Minister of Justice issued an executory regulation which specifies in detail the procedure for drawing up, keeping and making available the minutes of testimony, including information concerning an incognito witness, as well as invoking such testimony in judgements and written statements of accusation or defence in a court action.

144. The amendment to the Code of Criminal Procedure of 1995 has also given the witness the right not to disclose his place of residence. Pursuant to article 173, paragraph 3: "If there is justifiable fear of violence or unlawful threat against a witness or a person close to him in connection with his actions, the data concerning the place of residence may be made available only for the exclusive information of the public prosecutor or the court. In such a case written statements of accusation or defence in a court action shall be directed to the institution at which the witness is employed or to another address designated by the witness".

145. The Code of Criminal Procedure of 1997 repeats the provisions on the possibility of keeping the identity of the witness and his place of residence confidential, as well as the provisions which prohibit confrontation between the witness and the accused. It also introduces regulations concerning presentation of the witness for the purpose of identification. In order to provide adequate protection for the witness, the Code provides a basis for conducting such presentation in a manner which excludes the possibility of the accused recognizing the witness.

Article 14

146. The guarantees for the rights of injured persons to compensation and adequate indemnity are included both in the criminal (the Code of Criminal Procedure) as well as in the civil legislation (the Civil Code).

147. By virtue of the Act of 23 August 1996, article 24 of the Civil Code, stipulating that an injured person may demand compensation for material damage caused by infringement of his personal interests (that article was discussed in the previous report), has been supplemented in paragraph 1 with the following sentence: "Pursuant to the principles stipulated by the Code the injured person may also demand pecuniary redress or the payment of an appropriate amount of money for the designated social purpose". It is worth mentioning here that the injured person may demand the protection of his personal interests also with respect to a person who has infringed such interests acting not in his own name but in the capacity of a public official.

148. The Polish civil legislation regulates in a uniform manner (in articles 417-420 of the Civil Code) the liability of the State Treasury for damage caused by State officials both in the exercise of their official duties (acts of authority) as well as in the performance of economic activities. In the light of the provisions of the Polish Civil Code, the State Treasury does

not have its own tort liability, which means that it is liable for the acts of State officials in the same way as for those of somebody else (art. 417, para. 1, of the Civil Code). The prerequisites for the liability of the State Treasury are the following.

149. Damage caused by an official of State. It is not necessary to establish the identity of the perpetrator of the damage for the State Treasury to be liable; it is sufficient to indicate that one of the members of a specified team of officials is to blame. The State Treasury is liable for (art. 417, para. 2, of the Civil Code):

- employees of State authorities, organs of State administration and State economic organizations, i.e. persons in any kind of employment relationship, regardless of the nature of the functions performed and the origin of the employment relationship;

- persons appointed to the organs of State authority as a result of elections; this category of officials includes deputies to the Sejm, senators, councillors and lay judges;

- judges, public prosecutors and professional soldiers;

- persons acting upon a mandate of organs of State authority, administration and economy; however, acting upon a mandate takes place where the mandatary is an individually designated natural person and the action has to be performed in the name and to the benefit of the mandator;

- officials of the territorial self-government in the exercise of their duties within the scope of government administration.

150. Culpable action or omission by a State official. The Polish civil legislation stipulates an exception to the principle of liability of the State Treasury for culpable acts: article 419 of the Civil Code stipulates that if a State official cannot be considered guilty, the injured person may demand redress of the damage by the State Treasury if he has suffered bodily injury or deterioration of his health or has lost his breadwinner, and the circumstances warrant such redress in accordance with the principles of community life (which may be indicated, for example, by the fact that the injured person became unable to work or found himself in a difficult financial position as a result of the act).

151. The provisions of the Polish Civil Code, in article 418, stipulate the limitation of liability of the State Treasury if the damage was caused as a result of a decision or order. The State Treasury is then liable only if the issue of the decision or order was an infringement of law subject to criminal or disciplinary prosecution, and the fault of the perpetrator was confirmed by a criminal judgement or a disciplinary decision.

152. The provisions of article 487 of the Code of Criminal Procedure relating to compensation for wrongful conviction, arrest and detention that were presented in the previous report - after having been amended in May 1989 and June 1995 - have now the following reading:

"1. An accused person who, as a result of the institution of the trial de novo or cassation, has been acquitted or convicted under a more lenient provision, is entitled to obtain from the State Treasury compensation for the damage caused to him and redress for the injury he incurred as a consequence of the execution on him, in whole or in part, of the penalty which he should not have suffered.

"2. The provision of paragraph 1 shall also be applied if further proceedings, conducted as a result of the institution of the trial de novo or cassation, have been discontinued due to the circumstances which had not been taken into account in the earlier proceedings.

"3. The right to compensation or redress shall also be acquired in connection with the use of a preventive measure under the above-specified conditions.

"4. The above-specified provisions shall also be applied in case of an evidently wrongful preliminary custody or detention."

153. Judgements in cases involving compensation and redress are made by the provincial courts. The proceedings are free from court fees.

154. Aliens may claim compensation and redress for a wrongful conviction, preliminary custody or detention only on the principle of reciprocity (art. 491 of the Code of Criminal Procedure). Such principle is repeated in the Act of 25 June 1997 on aliens, granting (under the above conditions specified in the Code of Criminal Procedure) to persons who have been wrongfully detained or put in custody for the purpose of expulsion the right to claim from the State Treasury compensation for the damage caused to them or redress for the injury suffered.

155. The new Code of Criminal Procedure, while accepting in principle the provisions of the Code of 1969 on compensation for wrongful conviction, preliminary custody and detention, clearly states that such claims may not be brought by persons who caused the passing of a judgement unfavourable to them by giving false testimony (art. 553, para. 1). However, the provisions of that article stipulate exceptions to this rule in respect of:

- persons submitting statements under conditions which exclude freedom of expression (evidentiary prohibitions - see the discussion of article 15);

- a situation where the damage or injury resulted from a transgression of powers or non-fulfilment of duty by a State official.

156. As of 23 May 1991 the new Rehabilitation Act entered into force which quashes the judgements of the Polish organs of prosecution and administration of justice issued in the period from 1 January 1944 to 31 December 1956 in respect of persons who had been charged with acts connected with their activities for the independence of the Polish State (Dz.U. No. 34; item 145). The act provides grounds for claiming from the State Treasury compensation for the damage caused and redress for the injury suffered, pursuant to the

provisions specified in the Code of Criminal Procedure. The data on the number of compensation cases pursuant to the above-mentioned act examined by provincial courts in the period from 1994 to 1997 are illustrated in the table below:

Year	1994	1995	1996	1997
No. of settlements	5 586	9 363	9 809	5 448
No. of persons granted compensation by a final judgement	7 538	7 546	7 269	6 453

Article 15

157. Evidentiary prohibitions in Polish penal law were discussed in the previous report.

158. The new regulations on conducting interrogations add further details to article 157, paragraph 2, of the Code of Criminal Procedure of 1969 by declaring the following inadmissible:

- asking the interrogated person questions which imply the contents of the answer;

- influencing the answers of the interrogated person by means of violence or unlawful threat;

- using hypnosis, chemical substances or technical devices which influence the mental processes of the interrogated person or aim to control his subconscious reactions in connection with the interrogation (e.g. narcoanalysis, the use of polygraphs).

159. The new Code categorically states, in accordance with the recommendations of the Committee (see CAT/C/SR.279), that testimony or statements may not constitute evidence not only when they have been given under conditions that preclude freedom of expression (as stipulated by the Code of 1969), but also if they have been obtained contrary to the above-specified prohibitions.

Article 16

160. The guarantees for the observance of obligations resulting from article 16 of the Convention are presented above under articles 10, 11, 12 and 13. It is worth emphasizing once again, particularly with regard to persons deprived of liberty, that Poland observes the provision of article 5, paragraph 3, of the Code of Execution of Penalties, which stipulates that penalties should be executed in a humane manner and with due respect for the human dignity of the convicted person.

161. The Act of 26 April 1996 on the Prison Service, in article 1, paragraph 3, stipulates that the basic obligations of the Prison Service include respect for the rights of persons deprived of liberty or in preliminary custody, in particular by providing them with humane conditions that respect their dignity, health and religious beliefs and, as stipulated in paragraph 6, legal assistance as provided under international agreements. The act specifies not only the personal characteristics of prison service officers, who are subject to assessment every four years, but also the rules that the officers have to follow with regard to persons deprived of liberty. The act also explicitly specifies when and how prison service officers in the exercise of their duties may use the means of direct coercion (e.g. the use of physical force, placement in a security cell, handcuffing, the use of an overpowering net, truncheons) and firearms, stipulating at the same time disciplinary responsibility for a transgression of powers, independently from criminal responsibility.

162. Pursuant to the provisions of the act, the means of direct coercion may only be applied to repel: an attempt against one's own or somebody else's life or health, inciting to revolt, gross disobedience, dangerous breach of peace and order, destruction of property or escape of a person deprived of liberty. The act prohibits the use of means of direct coercion against women. It allows for the use of firearms only in a situation where the means of direct coercion are insufficient, and only in order to: repel a direct attempt against the life, health or freedom of an officer or another person, or a direct attempt against the facilities of the penal institution or the house of detention; to prevent escape of a person deprived of liberty from a closed penal institution or a house of detention; to repel a direct attempt against a convoy protecting persons, firearms, ammunition, documents with information which is a State secret, money or other valuable objects.

163. The use of means of direct coercion and the use of firearms should be commensurate with the degree of the danger. It should be preceded with an appropriate warning, and it should cause minimal damage to the person against whom such means have been used. It may not be aimed at depriving the person of his life or endanger other persons' life or health.

164. In the period covered by this report, some cases of breaching the procedure on using the means of direct coercion by Prison Service officers were reported. Those instances were of exceptional character. They include the following:

- while escorting a detained person from the prison for detention in custody pending inquiry in Warszawa Bia»o»“ka, a rubber truncheon was used to hit him; the officer guilty of this act was punished with a reprimand in disciplinary proceedings;

- a prisoner was unlawfully placed in a security cell at the penal institution in Tarnów-MoŇcice; the responsible officer was punished in disciplinary proceedings with a warning of inadequate suitability for the position held in the Service;

- a prisoner qualified as dangerous was unlawfully cufflinked during a walk in the penal institution in Goleniów;

- officers of the prison for detention in custody pending inquiry in Pozna½ used physical force to escort a detained person to the alcohol detoxification ward of a hospital (due to the presence of the symptoms of alcohol poisoning and a breach of the peace); during the use of means of direct coercion the person died; criminal proceedings were instituted against the perpetrator and have been concluded with a sentence (the judgement is not final yet).

165. Similar regulations on the use by State officials of means of direct coercion are included in the acts on the Police, State Security Office, Border Guard, as well as on the Customs Inspection (the administrative service established by virtue of the Act of 6 June 1997 - Dz.U. No.71; item 449 - to counteract and combat violations of law in the field of trade with foreign countries). The acts on the Police, State Security Office and Border Guard have been supplemented with executory provisions which specify in detail the cases and conditions of use by officers of those services of technical and chemical means of direct coercion.

166. By virtue of the amendment of 29 June 1995, which has been in force since 1 January 1996, the act on proceedings in cases involving minors was supplemented with provisions on the use of means of direct coercion in respect of minors in houses of correction and homes for detained juveniles (arts. 95 (a), 95 (c)). The provisions stipulate the possibility of using means of direct coercion (in the form of physical force, a disabling belt or a straightjacket) only to prevent an attempt by a minor against his own or somebody else's life, incitement to revolt, incitement to collective escape or destruction of property causing a dangerous breach of the peace - only upon a decision of the director of the institution or, in his absence, a member of the pedagogic staff. The provisions of the act stipulate also the maximum time limit for placing a minor in an isolation room, i.e. 48 hours, 12 hours in respect of a minor under 14 years of age. They also contain a prohibition on the use of a disabling belt in respect of a handicapped minor or a female minor, and in respect of a pregnant minor, there is an additional prohibition on putting her in an isolation room. The use of means of direct coercion as a form of punishment is considered to be inadmissible.

167. The Council of Ministers, on 11 December 1996, issued an executory Act to the above-presented provisions in which the question of using means of direct coercion against a minor has been regulated in detail. The act, above all, introduced the requirement to:

- control the use of means of coercion on a permanent basis;

- conduct a medical examination of the minor against whom coercive measures have been used;

- draw up a report and promptly notify (of the use of the means of coercion) the judge who exercises supervision over the institution and the family court which executes the corrective measure. The executory regulation entitles the minor to lodge a complaint to a family court against the use of means of coercion against him.

168. In the period since 1 January 1996 (the date on which the amendment to the act on proceedings in cases involving minors entered into force), only 100 instances of using coercive measures against minors have been reported, and it should be noted here that about 4,000 minors are in Polish houses of correction and homes for detained juveniles in a given year. Physical force has been used 11 times, 75 times minors have been put into an isolation room, and disabling belts have been used 14 times.

169. Coercive measures have been used in 10 institutions; in many cases they were used simultaneously. Most of them have been used in respect of minors in the house of correction in Trzemeszno, which accommodates minors of the greatest degree of demoralization. The following were the most frequent reasons for the use of means of coercion:

- an attempt by a minor against the health of another ward (e.g. setting pyjamas on fire, battery and intimidation, breaking the jaw, aggressive attack with a sharp implement);

- an attempt against one's own health or a suicide attempt (self-mutilation or blackmailing with self-mutilation, hitting on the wall with the head);

- destruction of property connected with aggressive behaviour towards the staff of the institution.

170. Since 1 January 1996 only one case of transgression of powers by a member of the staff in using means of direct coercion has been reported.

171. It should be once again emphasized that means of direct coercion are used in respect of minors exclusively as a reaction to emergency situations which pose a serious threat to the safety of persons or property on the premises of the institution. Such means are not in any way used as an element of the educational system. The Polish regulations in this regard are consistent with the Standard Minimum Rules for the Treatment of Prisoners (see the provisions of item 33 of the Rules) which are also used in the execution of educational means.

172. On 19 August 1994 the Act on the protection of mental health was adopted (Dz.U. No.11; item 535). According to this act a mentally ill person may be admitted to hospital without his consent only in the following cases:

- if the past behaviour of such person indicates that, due to his illness, the person poses a threat to his own life or to other people's life or health;

- if the past behaviour of such person indicates that failure to admit him to hospital will result in a substantial deterioration of his mental health;

- if such person is unable to provide, unaided, the necessaries of life, and it is a justifiable assumption that staying in a mental hospital will improve his health condition.

173. Besides, a person whose past behaviour indicates that, due to the person's mental disturbance, he poses a direct threat to his own life or the health of other people, and there are doubts whether or not he is mentally ill, such person may be admitted to hospital in order to clarify the doubts. In all the above-specified cases, the decision to admit a patient to a hospital is made by the guardianship court.

174. Independently of the foregoing, permanent court control pursuant to the above-mentioned act is exercised with respect to the lawfulness of the patient's admission to a mental hospital or a social assistance home and his remaining there together with mentally disturbed persons, the observance of the rights of those persons, the living conditions there, as well as the legitimacy of using means of direct coercion are also subject to control.

175. Pursuant to the act under discussion direct coercion (in the form of holding down, compulsory use of drugs, immobilizing and isolation) towards mentally disturbed persons may be applied only when such persons make an attempt against their own or other persons' health or life, against public safety, or if they destroy nearby objects in a violent way.

176. The mode of using means of direct coercion was regulated in detail in the executory regulation issued by the Minister of Health and Social Welfare on 23 August 1995 - Dz.U. No.103; item 514.
