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## I. LAND AND PEOPLE

1. The Republic of Poland is a State in Central Europe on the Baltic Sea. It borders the Russian Federation, Lithuania, Belarus, Ukraine, Slovakia, the Czech Republic and Germany. The length of its frontier is 3,582 km, including a 528 km maritime border and 1,285 km of borders along rivers. In area it is 312,685 km<sup>2</sup>, the ninth largest country in Europe.
2. The population is 38.1 million. The official language is Polish. The monetary unit is the zloty (PLN).
3. The national holidays are 3 May - Constitution Day (commemorating the promulgation of the Constitution of 1791) and 11 November - Independence Day (commemorating the regaining of independence in 1918).
4. The country is divided administratively into 16 *voivodships* (regions).
5. The State emblem is the image of a white eagle wearing a crown with its head turned to the right with gold beak and talons, set against a red rectangular shield tapering to a point at the bottom. The national colours are white and red in two horizontal parallel bands, of which the top is white and the bottom is red.
6. Poland is a lowland country: areas not exceeding 300 meters above sea level account for 91.3 per cent of its area (depressions constitute 0.2 per cent); the average altitude is 173 m (Europe - 330 m). The highest point is Mount Rysy in the High Tatras (2,499 m), the lowest 1.8 meters below sea level. Poland's surface is inclined from the south to the north-east.
7. Poland is rich in natural resources. More than 70 different minerals are mined, 40 of them of key importance to the economy (hard coal accounts for 40 per cent, sand and gravel 35 per cent, and lignite and limestone eight per cent each). Hard coal is the most important fuel, and lignite is also important. Of the chemicals, raw sulphur and rock salt play a basic role, and of the metals, copper, zinc and lead are the most abundant deposits in Poland.
8. Poland's climate is marked by rapid weather changes and great variability of the seasons in successive years. Through Poland runs the border separating the warm and rainy temperate climate from the boreal, snow and forest climate (according to the Koppen-Geiger classification). Owing to Poland's physical traits and geographic location, various air masses interact above it, influencing its weather and, as a result, its climate.
9. According to the results of the National Population and Housing Census as of 2002 the total population of Poland is 38 230 100 people, where 19 713 700 (i.e. 51,6 per cent) constitute women and 18 516 400 (i.e. 48,4 per cent) men. At present 37 529 700 inhabitants hold Polish citizenship, which for 37 084 800 constitutes the only one. Only 40 200 inhabitants hold exclusively citizenship other than Polish but for 659 600 citizenship is unknown.
10. According to the results of the National Population and Housing Census as of 2002 Poland is ethnically rather a homogenous country. The most numerous minorities among Polish citizens are Germans (147 094), Belarussians (47 640) and Ukrainians (27 172). Other minorities are

Roma (12 731), Russians (3 244), Lemks (5 850), Lithuanians (5 693), Slovaks (1 710), Jews (1 055), Armenians (262), Czechs (386), Tatars (447) and Karaims (43). Additionally 52 665 respondents (Pomorskie-Voivodship) declared using Kashubian language (regional language in Poland).

11. The greatest concentration of individuals belonging to national and ethnic minorities is found in the following *voivodships*: Opolskie, Podlaskie, Śląskie.

12. The results of the census have also showed that approximately 97,8 per cent of the Polish population speaks Polish, whereas for 96,5 per cent it is the only language spoken at home. Only 1,47 per cent of the respondents declared using languages other than Polish in family contacts. Most of them (i.e. 1,34 per cent) admitted using other language in parallel with Polish and only 0,14 per cent declared exclusive usage of the non-Polish language at home. In general 87 languages and dialects were singled out, however only 20 of them are used by more than one thousand people.

13. The natural population increase (per 1,000 population) has been systematically declining. It dropped from 4.1 in 1990 to 0.9 in 1997 and to -0,2 in 2004. Since 1992 the average life expectancy of men and women in Poland has been systematically, albeit very slowly, increasing. In 1997 it was 77 years for women and 68.5 for men, whereas in 2004 already 79,2 for women and 70,7 for men.

14. Considerable progress has been made in combating infant mortality. The number of infant deaths per 1,000 live births dropped from 19.3 in 1990 to 10.2 in 1997 and to 6,8 in 2004.

## II. THE ECONOMY

15. The Polish economy, as a result of the ongoing integration and globalization processes, is an integral part of the global economy. Its development in the forthcoming years shall be determined by both the internal choices made in Polish politics, and by independent external factors. It appears that currently we can assume that the global economy would undergo further integration and the reach of markets of goods, services, information and labour will constantly increase. The globalization processes would increase the role of turnover inside the various economic systems much stronger, than between them. In consequence, the Polish commercial and capital relations will focus primarily on the area of the European Union, which does not mean however that other markets would become unimportant for the Polish economy.

16. The competitiveness of the Polish economy is ranked rather low. According to international assessments of competitive position, Polish economy is placed somewhere in the middle of over 100 countries subject to evaluation. The evaluation is similarly low in terms of the basic macroeconomic and structural indices. The Gross Domestic Product (GDP), which is an approximate measure of the country's wealth amounts only to 46,6 per cent of the average of the EU-15 in the year 2007, and about 53,6 per cent of the average of the EU-27. This is accompanied by internal discrepancies, however the differences among the individual provinces do not vary significantly from the differences between the individual regions in other countries of the EU.

17. Poland's economic transition began with the introduction of radical reforms in the beginning of 1990s. The past years witnessed fundamental changes in the Polish economy. The country moved from the centrally planned economy, managed through top-down directives, to a system based on market rules. The goal of the transition of the Polish economy was to build a socio-economic system similar to the system existing in countries with modern market economy. At present there are no significant threats for the implementation of the economic policy. Good economic performance can be observed: GDP growth is relatively high, the situation in the labour market is improving, the Polish currency is stable and relatively strong, although there are also some problems like: rise of inflationary pressure as a result of global trends and increase of the current account deficit.

18. One of the priorities of macroeconomic policy in Poland during the past years was to lower inflation. 1999 saw the first-ever single-digit average annual inflation - amounting to 7.3 per cent; and in the years 2001-2002 the increase of prices was further reduced. After two years of very low inflation (in 2002 average increase in prices of consumer goods and services amounted to 1.9 per cent, and in 2003 - 0.8 per cent), in 2004 price increases accelerated to 3.5 per cent. This was related mostly to previous depreciation of zloty and the impact of accession to the European Union, as well as to temporary supply-related factors, such as: the significant increase in oil prices and prices of other resources on global markets and limited supply of agricultural products. In 2005 the annual inflation acceleration has visibly decreased, which was supported by the restrictive monetary policy, appreciation of zloty, weaker domestic demand dynamics and low prices of food products. The increase of prices in 2006 amounted to 1 per cent. In the year 2007 inflation increased to 2,5 per cent mostly as a result of unstable economic situation in the United States and its negative influence on development of global economy.

19. After the period of intense growth, which commenced in 1992, in the years 2001-2002 the Polish economy suffered from stagnation. Since the 4th quarter of 2001, when the lowest growth of the GDP was registered, the economy has gradually returned to the rapid growth path. Considering the growth of the GDP in the longer perspective, the average annual GDP growth rate reached 3.5 per cent in the years 2002-2005 and was similar to the average rate in the period 1998-2001, but significantly lower than in the years 1994-1997 (6.4 per cent).

20. The gradual economic recovery visible in Poland since the second half of 2002 accelerated rapidly in 2004, when the real GDP growth increased by 5.3 per cent. Intensified economic activity concentrated in the period directly preceding the Polish accession to the EU (GDP growth in the first half of 2004 amounted to 6.4 per cent as opposed to 4.4 per cent growth in the second half of the year). The main factors responsible for the boost of economic growth were: relaxing of monetary policy, changes in legal and institutional conditions (in particular tax regulations), as well as the effect of Polish accession to the European Union (so-called accession effect).

21. The economic growth in 2006 reached the level of 6.2 per cent. It was driven mainly by an increase in total consumption. Simultaneously, stronger growth in exports of goods and services than in imports was the main factor behind the contribution of net exports to the GDP growth (about 1.1 percentage point). Economic recovery continued in 2007, the GDP grew by 6.6 per cent.

22. Among the most important processes in the mid-1990s that had a positive impact on Poland's economy was the high growth of investment spending (averaging 20 per cent in the period 1995-1997) - three times greater than GDP. After a dynamic increase of investments in the mid 1990s, the period of 2001-2003 was one of regression. The real decline of investment outlays was still visible in the period when economic growth accelerated again. The year 2004 was a year of changing trends - investment outlays rose again by 6.5 per cent, which was an important factor determining the growth of GDP. In 2005 the increase amounted to 7.7 per cent. In 2006 investment spending rose by 19.7 per cent and in 2007 - by 21.7 per cent and is still an important factor in GDP growth.

23. Foreign Direct Investment (FDI) was an important factor influencing the rate of economic growth and exports. According to the Polish Information and Foreign Investment Agency (PAIiZ), the cumulative value of foreign investment in Poland in 2006 reached the level of € 15171 billion and at the end of 2007 amounted to about € 13466 billion.

24. Starting from 2000 Poland's exports grew faster than imports, which led to a positive influence of net exports on the growth of GDP. In 2004 and 2005 exports were one of the basic factors determining economic growth. In 2006 and 2007 imports grew faster than exports, which deepened the trade deficit. According to the Central Statistical Office data, in 2007 the value of exports denominated in euro (in current prices) was higher by 15.8 per cent as compared to the similar period of 2006 and reached the level of € 101.8 bn., while the value of imports increased by 19.5 per cent and reached the level of € 120.5 bn. The trade deficit amounted to € 18.6 bn. As regards the commodity structure of foreign trade - in exports, the share of highly processed goods increased (products of the electromechanical industry), despite a simultaneous increase in exports of the metallurgy and mineral industries. In imports, changes in the commodity structure had a similar direction as in exports (increased share of electromechanical, metallurgy, mineral, agriculture and food products).

25. After five years of a difficult situation on the labour market (average paid employment in national economy in 1999-2003 decreased by over 1.2 million persons, i.e. by more than 12 per cent, while the number of unemployed persons increased by more than 1.3 million, i.e. by more than 73 per cent), in 2004 first signs of improvement was observed, and labour demand stabilised. In 2005 the first and significant increase in paid employment was observed. The unemployment rate decreased in 2005 to the level of 17.6 per cent, in 2006 - to the level of 14.8 per cent and in 2007 to the level of 11.4 per cent. In June 2008 it amounted to 9.6 per cent. Although the situation on the labour market in Poland improved significantly in the last three years, a relatively high unemployment rate and skill mismatch in the labour market are still one of most serious problems in the Polish economy.

26. In the years 1990-2007, ownership transition process covered 7,364 of the state - owned enterprises. The key industrial sectors have been included in restructuring programmes for several years. This applies to such sectors as hard coal mining, manufacture of iron and steel, the power sector and the gas sector. The purpose of these actions is to make the sectors economically stable, by improving their profitability. This should enable them to generate profits, achieve creditworthy status and to cope with the competition in the EU market. Organizational restructuring, including the consolidation of entities in order to increase their strength, is also underway.

27. The largest group of enterprises are the smallest ones, those with up to nine employees. These firms constitute as much as 96.4 per cent of the total number of firms. The share of small firms (10 to 49 employees) amounts to 2.6 per cent, medium-sized ones (with 50 to 249 workers) 0.9 per cent; while large companies (with more than 250 employees) constitute about 0.2 per cent of all enterprises.

28. The country's economic growth has brought about the desired qualitative and structural changes in the economy. Productivity is increasing and energy-consuming and material-consuming production are declining, thus competitiveness has improved. Despite these significant changes, there are still many tasks that must be executed. The subsequent initiatives are meant to effect the fastest possible convergence of the Polish economy with the countries of the EU-15. Membership in the European Union offers Poland a huge opportunity to bridge the gap separating it from the most developed societies. The experience of the European Union, its financial support and the possibilities for the economic, scientific and cultural integration, offer Poland a new perspective for development.

29. Poland, as the member of the European Union, became one of the countries implementing the goals of the Lisbon Strategy - the multi-annual programme of reforms and structural changes, which are meant to turn the EU into the leading economy of the world. On 27 December 2005 the Council of Ministers accepted The National Reform Programme for the years 2005-2008 for the implementation of Lisbon Strategy - a document presenting the actions that the Polish Government intends to undertake in the period of 2005-2008, acknowledges the key challenges. The main objectives indicated in the Programme are retaining the high pace of economic growth and stimulating the creation of new jobs while respecting the principles of sustainable development. The factors enabling such economic growth will be: dynamic export and domestic investment projects (supported by structural funds and the Cohesion Fund) and foreign investment for which Poland is to open up fully. The National Reform Programme includes six priorities (a) consolidating public finance and improving public finance management (in the macroeconomic and budgetary policy area); (b) developing entrepreneurship; (c) increased innovation of companies; (d) infrastructure development and upgrading and ensuring competitive conditions in network sectors (in the microeconomic and structural policy area), (e) job creation and retention and reducing unemployment; (f) improving adaptability of employees and companies through investment in human capital (in the labour market policy area).

30. In 2008 the Polish Government started to work on the "National Reform Programme for the years 2008-2011". One of the priorities of the new NRP is the creation of an entrepreneurial friendly environment. It requires creation of entrepreneur-friendly law and institutions as well as development of innovation.

31. Structural reforms will be implemented in three areas: active society, innovative economy and efficient institutions.

### **III. THE REFORMS**

32. In order to overcome the legacy of the communist past, prepare Poland for joining the EU as well as to enable the fully effective usage of economic, social and political potential of Poland, systemic reforms were and are being implemented.

### A. Administrative reform

33. Over the years 1990-2002 the reform of the system of public administration was implemented in Poland. This reform introduced a system of self-governing territorial administration, in accordance with Constitution of the Polish Republic, and also with the rules of European Charter of Local Self-Government adopted by Council of Europe in 1985 and ratified through Poland in 1994. It is concerned with the range and forms of self-government and also its Constitutional guarantee and legal protection. Three tiers of territorial self-government were created:

(a) *Gmina* (commune), the basic level of territorial self-government, responsible for realization of all public matters of local significance that have not been reserved by law for other entities and authorities;

(b) *Powiat* (district), responsible for all matters of local character, which communes cannot execute;

(c) *Voivodship* (region), responsible for the execution of regional policies and carrying out those assignments which possess supra-local character, do not have a State character and do not cover the whole country; the design and execution of these assignments will be one of the main challenges of the beginning of century.

34. As a result of the reform, many tasks and competences were transferred from the centre to *voivodships* as well as from *voivodships* to *poviats* or *gminas*, thus making it possible for the central authorities to concentrate on strategic matters.. Adaptation of territorial organization of the country and structures of territorial self-government to the standards of the European Union - will make it possible to use the legal and economic instruments developed by the EU, particularly in regional and local development, as well as in regional cooperation.

35. The creation of territorial self-government consisting of *gminas*, *poviats* and *voivodeships* has seriously raised the efficiency of public administration. It needs to be emphasized that the transfer to the territorial self-government of a considerable part of public matters, which previously remained in the competence of State administration, makes the increase in the efficiency of the financial resources management possible.

36. Reforms of central government administration were also executed. One of the effects of these reforms is to unify and to subordinate to the *voivode* government's special administration, matters which previously distracted the work of different ministries. This contributes to increased efficiency of the central government administration.

37. In 2002 the structure of organs of central government administration, offices of central government administration, government agencies and different organizational units was essentially modified. The most important changes included: annulment or liquidation, consolidation, implementation of new rules inciting efficiency of work, as well as the reduction of the costs of functioning of the administration; this resulted in a decrease of the number of offices of central government administration, and in the introduction of a more rational arrangement of competencies and responsibilities in central government and in the whole government administration.



38. The results of the analysis of the functioning of territorial self-government demonstrated that the undertaking of a series of actions leading to the improvement of structures of public administration and the continual increase of the level of quality of services performed is necessary. Direct elections of *wojt*, mayors, presidents of cities were introduced, as a factor activating communities in local public matters, improving of the functioning of local self-government as well as strengthening the executive body allow for a strong social mandate. The above-mentioned change is aimed at the enlargement of social interests and electoral frequency, “personification of competence and responsibilities”, and is intended to counteract excessive subordination of local authorities to political parties.
39. The changes of Polish territorial administration launched in 2005 involved:
- (a) Increasing the efficiency of public administration, inter alia, by improving management systems;
  - (b) Preparing a policy for the creation in self-government of a modern and professional civil service as one of the guarantors of the effective carrying out of responsibilities;
  - (c) Elaborating a model for the optimum funding of self-government in connection with a clear and rational division of responsibilities;
  - (d) Preparing changes in the system of public finances to enable the full use of the funds of the European Union in the realization of infrastructure projects.
40. The above changes will be continued in 2006.

## **B. Social reform**

41. From 1 January 1999, Poland has begun implementing two major social reforms: the reform of the health-care system and social security reform.

### **Health-care reform**

42. The Polish health-care system is regulated by the Act of 27 August 2004 on Healthcare Services Financed from the Public Resources (Journal of Laws of 2004, No. 210, item 2135, as amended). The Law regulates the principles of provision and the scope of health-care benefits in kind financed by public means. According to article 2 the insured persons are entitled to receive benefits in kind guaranteed by the law. Besides the entitlement of the insured, the law also provides for the right to receive benefits in kind for the persons who are not insured, but who are Polish citizens, residing in Poland and fulfilling the criteria specified in the Act of 12 March 2004 on Social Assistance (the beneficiaries). Both categories of entitled persons enjoy the right to receive publicly financed benefits in kind. However, the insured are entitled to have benefits financed by the National Health Fund (non-profit health insurer, governing the public means from health insurance premiums), while the above-mentioned benefits for the beneficiaries are financed from the State budget.
43. At present, there is one institution in Poland financing health care for the insured persons - the National Health Fund. The Polish health-care system is mostly based upon the health insurance scheme and the National Health Fund functions as the only “third-party payer”

within the Polish health insurance scheme. The Fund and its regional branches organize the system of provision of benefits in kind through the contracts with health services providers. The persons who are voluntarily insured in the National Health Fund pay the flat-rate contribution which results in their entitlement to receive benefits in kind, guaranteed by the Act, financed by the Fund's means. The people under compulsory coverage (i.e. the employed and self-employed persons, persons receiving social assistance, pensioners, soldiers, civil servants, etc.) pay the contribution, as a percentage of their income.

44. The Polish health insurance scheme is based upon the principle of equal treatment, social solidarity and equal access to health-care benefits in kind and free choice of health-care provider.

45. The entitled persons have the right to receive benefits in kind, which are aimed at protecting their health, illness screening, nursing and preventing disabilities. The entitled persons have the right to receive the following benefits in kind free of charge: diagnostic examination, primary health care, out-patient specialist care, some dental services, hospital care, highly-specialized benefits, sanitary transport and medical life-saving services. There are co-payments for spa treatment, as well as for supply with medicines, medical products and devices. The Act is also includes an attachment which contains the list of benefits that are not financed by public means (i.e. negative basket). The above-mentioned include, inter alia, some protective vaccination and plastic surgery.

### **Social-security reform**

46. On 13 October 1998 and 17 December 1998 the Parliament of the Republic of Poland adopted the Law on social security system and the Law on pension and disability pension from the Social Security Fund respectively. On 27 August 1997 the Parliament adopted the Law on organization and operation of pension funds. These Laws have thoroughly restructured the existing social-security system. It encompasses the following forms of social insurance: old age pensions, disability pensions, family pensions, sick benefits and benefits connected with maternity as well as on-the-job accidents and occupational diseases.

## **IV. THE POLITICAL SYSTEM**

47. In the Republic of Poland, the Constitution is the supreme law of the country. Its provisions are applied directly unless the Constitution stipulates otherwise (art. 8). The fundamental principle governing the State is expressed in article 10, which states that "the political system of the Republic of Poland is based on a separation and balance of legislative authority, executive authority and judicial authority. Legislative authority is exercised by the *Sejm* and the Senate (the Parliament), executive authority - by the President and the Council of Ministers (Government), and judicial authority - by courts and tribunals."

### **A. Legislative authority**

48. The competence of the *Sejm*, as stipulated by the Constitution, may be divided into:

- (a) Legislative;

(b) Elective (it elects members of the State Tribunal and the Constitutional Tribunal and passes a vote of confidence in the Government designated by the President);

(c) Supervisory (the *Sejm* oversees the Council of Ministers' activities to the extent specified by the Constitution and statutes; that includes reviewing government reports on the implementation of the State budget and designating investigative commissions);

(d) Political and Constitutional (passing a vote of non-confidence in the Government or its individual ministers, passing resolutions to bring members of the Council of Ministers before the State Tribunal, and voting together with the Senate as the National Assembly to bring the President before the State Tribunal).

49. Other prerogatives of the *Sejm* include deciding on a state of war or concluding peace. The competences of the Senate mainly consist in enacting laws and adopting resolutions. The Constitution has not delegated any supervisory powers to the Senate.

### **B. Executive authority**

50. The President and the Council of Ministers exercise executive authority. Article 126 of the Constitution states: "The President of the Republic of Poland is the supreme representative of the Republic and the guarantor of the continuity of State authority. He watches over adherence to the Constitution and guards the sovereignty and security of the State as well as the integrity of its territory."

51. The Constitution of the Republic of Poland highlights the following presidential powers:

(a) Powers delimiting the tasks of the Head of State in internal and external affairs, in his command of the armed forces and in the defence and security of the State in times of peace and war;

(b) The authority to balance powers with regard to the *Sejm* and Senate, the Government and the judiciary;

(c) Creative and organizational authority in the area of State leadership.

52. The President first and foremost: ratifies and renounces international agreements (before their ratification he has the right to consult the Constitutional Tribunal over their conformity with the Constitution); appoints and recalls plenipotentiary representatives of Poland to other States and international organizations, receives the credentials and letters of recall of accredited diplomatic representatives of other States; cooperates with the Prime Minister and the appropriate minister in formulating foreign policy; serves as the supreme commander of the armed forces; grants pardons; grants Polish citizenship and consents to the renunciation of that citizenship; issues official acts (decrees and orders which - unless otherwise stipulated by the Constitution - require the signature of the Prime Minister to be valid); upon a motion by the Prime Minister effects personal changes in the Government; announces elections to the *Sejm* and Senate; enjoys legislative initiative; signs bills into law; submits motions to the Constitutional Tribunal and - for the purpose of carrying out audits - to the Supreme Auditing Chamber; designates and appoints the Prime Minister and accepts his resignation; accepts the resignation of

the Cabinet; recalls ministers on whom the *Sejm* has passed a no-confidence vote; upon a motion by the National Council of the Judiciary appoints the First President and other judges of the Supreme Court, the President of the Supreme Administrative Court and other judges of the Court, and appoints the President of the Constitutional Tribunal.

53. The President is elected to a five-year term (and may be re-elected only once) in universal, equal and direct elections conducted by secret ballot.

54. The President may be held accountable by the State Tribunal for a violation of the Constitution or the law or the commission of a crime.

55. The Council of Ministers (Government) is the supreme executive and managing organ of State authority. It is accountable for its activities before the *Sejm*. The Council of Ministers conducts the internal affairs and foreign policy of the Republic of Poland and manages the Government administration. It adopts a draft State Budget. On the basis of statutes and for the purpose of their implementation the Government issues regulations. It concludes international treaties requiring ratification, ensures external and internal security and exercises general leadership in the field of national defence.

56. Institutions supervising the activities of the chief organs of authority are: the Constitutional Tribunal (which rules on the conformity with the Constitution of statutes and other legal acts), the State Tribunal (which rules on the culpability of high-ranking State officials for violations of the Constitution and the law), the Supreme Auditing Chamber (which oversees the economic, financial and organizational-administrative activities of State administrative organs and enterprises subordinate thereto with regard to their legality, proper management, usefulness and reliability) and the Ombudsman, the guardian of civil rights and liberties.

### **C. Judicial authority**

57. The structure and organization of the judiciary in Poland is regulated in the Constitution and in the Act of 27 July 2001 on the Structure of Common Courts (Journal of Laws of 2001, No. 98, item 1070, as amended). As laid down in the Constitution, and in conformity with the tripartite nature of the power system, courts of law and tribunals, forming a separate component of the power system, are independent of the two remaining powers. The courts and tribunals render judgments in the name of the Republic of Poland.

58. The administration of justice in Poland is implemented by the Supreme Court, common courts, administrative courts, and military courts. Common courts administer justice in all matters not reserved for other courts, and as such play a significant role in the realization of the measures of the protection of human rights and freedoms guaranteed by the State.

59. According to article 176 of the Constitution, court proceedings have at least two stages, which means that each decision rendered in the proceedings of first instance may be appealed against, and may be subject to verification by an organ of a higher level as a result of appeal. This is the so-called ordinary appeal procedure. Apart from that, there are also extraordinary appeal procedures, which allow for the control of final judgements in court proceedings (cassation and reopening of proceedings in criminal procedure and instituting proceedings *de novo* in civil procedure; cassation in civil procedure belongs to ordinary appeal procedures).

60. A judge is appointed for an indefinite period by the President of the Republic on the motion of the National Council of the Judiciary. Prerequisites of appointment are: Polish citizenship and enjoyment of all civil and citizen's rights, an unimpeachable reputation, a degree in Law, a passed examination for judge or public prosecutor, working in the capacity of an assistant judge or a prosecutor for at least three years, or in the capacity of a clerk of the court for the period of five years, and a minimum age of 29. Within the exercise of their office, judges are independent, being solely subject to the Constitution and statutes. At the same time, a judge may not belong to a political party or trade union, nor engage in public activities incompatible with the principles of independent courts and judges. In accordance with the Constitution and the Act on the Structure of Common Courts, a judge may not be removed from office. Recall of a judge from office, suspension from office, transferring to another position against his/her will may only occur by virtue of a court judgment and only in cases prescribed by statute. A judge retires at the age of 65 (unless he/she informs the Minister of Justice about his/her will to continue in office, but only until the age of 70). A judge may be retired due to illness or infirmity of a kind that prevents him/her from discharging his/her duties. A judge may neither be held criminally responsible nor deprived of liberty without prior consent of a disciplinary court. Likewise, he/she may not be either detained or arrested except when apprehended in the commission of an offence and when detention is necessary to ensure the proper course of proceedings. The President of the relevant local court must be notified forthwith of any such detention, and she/he may order an immediate release of the judge. The exact procedures applying to those situations are laid down in the Act on the Structure of Common Courts.

61. The independence of courts of law and judges is guaranteed by the Constitution (chapter VIII) and safeguarded by the National Council of the Judiciary, a collective body vested with the right to submit to the Constitutional Tribunal questions of the Constitutionality of normative acts that bear on the independence of courts and judges.

62. Article 182 of the Constitution spells out a further fundamental principle: the participation of the citizenry in the administration of justice. Accordingly, cases in the common courts are heard in the presence of lay judges; exceptions to this rule are specified by statute.

### **Common courts**

63. Cases not reserved to the competence of courts are heard before district common courts. Appeals against judgments rendered by the district courts are examined by regional courts, which also hear in the first instance cases reserved for them by statute. Courts of appeal examine appeals against sentences rendered by regional courts of first instance. The Act of 6 June 1997 - the Code of Criminal Procedure (Journal of Law of 1997, No. 89, item 555, as amended) and the Act of 17 November 1964 - the Code of Civil Procedure (Journal of Laws of 1964, No. 43, item 296, as amended) provide also for extra-ordinary measures of appeal.

### **Military courts**

64. Military courts administer justice in penal cases against members of the armed forces of the Republic of Poland, as well as against certain civilian persons who either work for the army or have cooperated in commission of military offences enumerated in the statutes. Modes of action of military courts are laid down in the Act of 21 August 1997 on the Structure of Military Courts (Journal of Laws of 2007, No. 226, item 1676, as amended).

## **The Supreme Court**

65. As provided by article 183 of the Constitution, the Supreme Court is the highest judicial organ, and also supervises the common courts and the military courts in their adjudication. According to the Act of 23 November 2002 on the Supreme Court (Journal of Laws of 2002, No. 240, item 2052), the competencies of the Supreme Court encompass exercising the administration of justice through:

- (a) Ensuring, within the framework of supervisory functions, the conformity with law and unanimity of judicial decisions of common courts and military courts through adjudication on cassations and other appeal measures;
- (b) Adopting rulings designed to resolve specific legal issues;
- (c) Resolving other issues in cases provided for in law;
- (d) Examining objections filed in the course of election proceedings and ascertaining the validity of general elections, elections of the President, elections to the European Parliament and general referendums;
- (e) Expressing opinions on the drafts of laws and other normative acts, on the basis of which courts adjudicate and function, as well as other laws in the scope, it considers suitable;
- (f) Carrying out other tasks provided for in law.

## **Administrative courts**

66. On 4 January 2004 the two-instance procedure before administrative courts was introduced by the Act of 25 July 2002 on the Structure of Administrative Courts (Journal of Laws of 2002, No. 153, item 1269, as amended) and the Act of 30 August 2002 on the Proceedings Before Administrative Courts (Journal of Laws of 2002, No. 153, item 1270, as amended). According to the new regulations the regional administrative courts serve as the courts of first instance while the Chief Administrative Court assumes the role of the court of second instance (court of appeal).

67. The administrative courts administer justice by the control of activities of public administration and resolving competence disputes between the organs of public administration. The control is exercised according to the principle of legality of such activities unless otherwise specified by law.

68. The administrative courts can examine complaints on: administrative decisions in individual cases and other rulings of organs of public authorities, regulations (normative acts) adopted by local self-government bodies and resolutions of such bodies bearing on public issues; resolutions and normative acts adopted by territorial organs of government administration; the inaction of administrative organs.

69. The essence of the judicial review of administrative decisions in individual cases consists in the fact that contentious matters between a citizen and an administrative organ which made a decision refusing the citizen a certain right or imposing on him a specific legal obligation - are

settled by an organ which - within the organizational structure of the State - is situated outside the administration apparatus, and which is independent in rendering decisions as well as able to objectively consider the case and render a judgment in compliance with the requirements of the rule of law.

### **The Constitutional Tribunal**

70. The Constitutional Tribunal is an organ of the judiciary empowered to examine: the Constitutionality of normative acts and of international agreements; the conformity of statutes to those international agreements ratification of which required prior consent granted by statute; the conformity of normative acts issued by central State organs with the Constitution, ratified international agreements, and statutes; complaints of individual persons concerning the Constitutionality of normative acts; the Constitutionality of the objectives and activities of political parties; questions submitted by courts of law concerning the Constitutionality of normative acts if a verdict in specific proceedings in a court would depend on the Tribunal's decision; other issues as specified in the Act of 1 August 1997 on the Constitutional Tribunal (Journal of Laws of 1997, No. 102, item 643, as amended).

### **The Tribunal of State**

71. The Tribunal of State issues judgments on the responsibility of persons holding the highest posts in the State for infringements of the Constitution or a statute, committed within their office or within its scope (arts. 198-201 of the Constitution). The Tribunal's modes of operation are detailed in the Act of 26 March 1982 on the Tribunal of State (Journal of Laws of 2002, No. 101, item 925, as amended).

### **Prosecutors**

72. The relevant provisions on prosecutors are contained in the Act of 20 June 1985 on Prosecution Authority (Journal of Laws of 2008, No. 7, item 39, as amended).

73. The Prosecution Authority comprises the Office of the Prosecutor General as the supreme organ, lower-level public and military prosecution authorities, as well as the Institute of National Remembrance - Commission for Prosecution of Crimes against Polish Nation (Nazi crimes, communist crimes and war crimes and crimes against humanity). The post of Prosecutor General is held by the Minister of Justice. The organizational units of the Prosecution Authority are: the State Prosecution Office, which forms a component part of the Ministry of Justice, the appellate, regional and district prosecution authorities.

74. The position of a prosecutor in judicial proceedings follows from the principle of independence of other State organs and from his/her subordination to no one else but his/her superiors. The prosecutor is independent in performing professional duties on the conditions specified in the Act on Prosecution Authority.

75. Prosecutors of common prosecutor's office are appointed (and recalled) by the Prosecutor General, while those of military prosecutor's office - by the Prosecutor General on recommendation of the Minister of National Defence. To be appointed a prosecutor, the

candidate must: hold Polish citizenship and enjoy all civil and citizen's rights; have: an unblemished reputation, a degree in Law, passed an examination for judge or prosecutor, been employed as associate prosecutor or judge for at least one year; be at least 26.

## **V. FRAMEWORK WITHIN WHICH HUMAN RIGHTS ARE PROTECTED**

76. In 1989 reforms began aimed at transforming Poland into a democratic state ruled by law started, and basic institutions of democratic order were introduced. The democratic opposition rooted in the 'Solidarity' trade union won the elections and participated in the creation of the Government. The operation of political parties, free trade unions and non-governmental organizations was legalized. This boosted social confidence in the system of government, increased social participation in governance, and consequently facilitated indispensable transformation of the economy. The major regulators of social life were changed. This meant a qualitative change in people's everyday experience in their roles as citizens, employees and consumers. For ordinary people, these changes were often difficult, as economic transformation was followed by a recession and mass unemployment.

77. The important political institutions were established at the beginning of the past decade (free elections and media, independent political parties and non-governmental organizations, free trade unions). The new political system also included legal and political mechanisms that regulate social participation, shaping the level and forms of social activity. A shift also took place from the emphasis on the promotion of human rights to their actual protection.

78. At present the Republic of Poland is a democratic state ruled by law and implementing the principles of social justice, where the supreme power is vested in the Nation, which exercises such power directly or through its representatives.

### **A. The Constitution and status of international agreements in Polish law**

79. The Polish Constitution of 2 April 1997 (Journal of Laws of 1997, No. 78, item 483) protects fundamental human and civil rights. Chapter II, entitled "The Freedoms, Rights and Obligations of Persons and Citizens", enumerates the individual, political, economic, social and cultural freedoms and rights, and specifies measures needed for their protection. The Constitution guarantees human rights such as freedom to hold and participate in peaceful assemblies, freedom of association and right of involvement in public affairs and to submit petitions and complains as well as suggestions to organs of public authority. The Constitution also provides for economic, social and cultural rights and freedoms, namely: right of ownership, freedom to pursue an occupation of one's choice, freedom to choose one's workplace, right to safe and sanitary working conditions, to social security, health care, education, the right of families to have their interests taken into account in the State's social and economic policies, protection of the rights of the child, freedom of artistic creativity, environmental security, policies conducive to the satisfaction of the citizens' housing needs, protection of consumers, users and tenants.

80. Article 37 of the Constitution proclaims that any person living under the authority of the Polish State enjoys the freedoms and rights enshrined in the Constitution and any exceptions to this rule must be specified by statute. Some of such exemptions are spelled out in the Act of 13 June 2003 on Aliens (Journal of Laws of 2006, No. 234, item 1694, as amended) which



lays down the principles and conditions governing the entry into, transit through, residence on, and departure from the territory of the Republic of Poland and in the Act of 14 July 2006 on the entry into, residence in and exit from the Republic of Poland of nationals of the European Union Member States and their family members (Journal of Laws No. 144, item 1043 as amended) which lays down the rules and conditions governing the entry to, residence in and exit from the territory of the Republic of Poland of nationals of the European Union Member States, nationals of the non-EU European Economic Area States, and nationals of the Swiss Confederation as well as their family members, who join or associate them, as well as in the Act of 13 June 2003 on Granting Protection to Aliens on the Territory of the Republic of Poland (Journal of Laws of 2006, No 234, item 1695, as amended) which refers to the principles, conditions and procedure for granting protection to aliens within the territory of the Republic of Poland and content of this protection. Moreover, the Act of 24 March 1920 on Purchase of Real Estate by Aliens (Journal of Laws of 2004, No. 167, item 1758, as amended) requires foreigners to obtain permission from the Minister of Interior and the Act of 20 April 2004 on Promotion of Employment and the Institutions of the Labour Market (Journal of Laws of 2008, No. 69, item 415, as amended) requires in certain cases a foreigner to obtain the consent of the head of the government administration at the level of region to be employed.

81. Chapter III of the Constitution specifies the following sources of law: the Constitution, statutes, ratified international agreements, and regulations (ordinances). The provisions of the Constitution apply directly, unless the Constitution provides otherwise. Any normative act must conform to the Constitution.

82. According to article 91 of the Constitution, international treaties ratified by the Republic of Poland, upon their publication in the Journal of Laws, form part of the domestic legal order and may be applied directly, unless their application depends on the enactment of a statute. In addition, an international treaty ratified upon prior consent granted by statute takes precedence over statutes if such a treaty cannot be reconciled with statutes. Ratification of an international agreement/treaty - as well as renunciation thereof - requires prior consent granted by statute if such agreement/treaty concerns: freedoms, rights or obligations of citizens; peace, alliances, political or military treaties; 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.

83. Further compensation guarantees predicts the Act of 7 July 2005 on State compensation for victims of certain intentional offences.

### **B. Means for the protection of rights and freedoms**

84. The Polish system of law has developed a variety of instruments that serve to protect human rights and freedoms. The foundations are provided in the Constitution. These include:

(a) Compensation to anyone harmed by an action of an organ of public authority in breach of law;

(b) The principle that laws may not bar the recourse to court by any person in pursuit of claims alleging infringement of freedoms or rights;

(c) Right to appeal against judgements and decisions issued by courts of first instance by means laid down by law (the *Codes* of penal, civil, or administrative proceedings);

(d) The right of those whose Constitutional freedoms or rights have been infringed to lodge a complaint with the Constitutional Tribunal to rule on the conformity with the Constitution of normative acts upon which a court or organ of public administration has made a final decision on their freedoms, rights or obligations specified in the Constitution;

(e) The right to apply to the Commissioner for Civil Rights Protection (Ombudsman) for assistance in the protection of freedoms or rights infringed by organs of public authority;

(f) Specifying matters regulated by statute or those in respect of which the Constitution requires the form of a statute.

85. Under the European Convention on Human Rights, to which Poland is a party, any person whose rights have been violated may appeal to the European Court of Human Rights in Strasbourg. As a contracting party to the Optional Protocol to the International Covenant on Civil and Political Rights, Poland has likewise acknowledged the competence of the Human Rights Committee to receive and examine individual complaints; the same applies to the Committee against Torture, the Committee on the Elimination of Racial Discrimination and the Committee on the Elimination of all Forms of Discrimination Against Women.

**(a) Means of protection under civil law**

86. The guarantees of protection of personal interests (personal rights) are provided for in the Act of 23 April 1964 - Civil Code (Journal of Laws of 1964, No 16, item 93, as amended). In case of infringement of a personal interest the victim is granted the right to claim the removal of its consequences, in particular through appropriate public statement, as well as financial satisfaction. If a material loss has been inflicted, such person may also claim damages in accordance with general principles of civil law.

87. Article 77 of the Constitution gives everyone the right to compensation for any damage done by an organ of public authority in contravention of the law. The State Treasury is responsible for damages inflicted by actions of public officials (whether civil servants or managers of State enterprises) or of persons acting under their orders, and also actions of elected officials, judges, public prosecutors and members of the armed forces.

88. Following a judgement passed by the Constitutional Tribunal (Journal of Laws of 2001, No. 145, item 1638) the accountability of the State Treasury for the damage inflicted by a public official no longer is conditional on proving guilt of that official in criminal or disciplinary proceedings. The Tribunal stated that a citizen has the right to compensation for the damage incurred through an unlawful action of authority, irrespective of the statement of guilt of the immediate perpetrator of the damage and considered the previous regulations incompatible with article 77 of the Constitution.

89. In 2004 further amendments to the Civil Code entered into force that provide for more efficient opportunities of claiming compensation for the damage incurred because of an unlawful execution of public authority. These refer to damages inflicted through enactment of a normative

act, through issuance of a decision or a court verdict or through inaction of public authorities as regards issuance of a decision, a verdict or a normative act (accountability for the damage would be dependent on a prior statement of the unlawful character of those acts or inaction).

90. Moreover, in a situation when public authority acts in accordance with the law and nevertheless a damage was inflicted upon a person, the injured person might still claim full or partial redress and financial satisfaction for the inflicted damage, when circumstances, especially incapacity to work or a difficult material situation, indicate that this is required by principles of rightness.

91. Further compensation guarantees are provided by the Act of 7 July 2005 on State compensation for victims of certain intentional offences.

**(b) Protection by penal law**

92. The Act of 6 June 1997 - the Penal Code, which came into effect in 1998 (Journal of Laws of 1997, No. 88, item 553, as amended) allows for the prosecution of a number of offences consisting in violation of fundamental rights and freedoms, such as, inter alia, genocide, murder, rape, causing injury to a person, torture, using threats or violence against a person (including those due to national, ethnic, racial, political or religious differences), unlawful deprivation of liberty, limiting a person's freedom of religion and others.

93. The Penal Code explicitly defines the requirements necessary for the prosecution of criminals and the related penalties to be imposed, with due consideration for humanitarian principles and respect for human dignity. The Code abolished the death penalty, following a legal moratorium to execute this penalty binding since 1995 (de facto this penalty was not executed since 1988). Life imprisonment is the most severe punishment for perpetrators of the gravest offences. According to the Code of Criminal Procedure, it is also prohibited to extradite a person to a foreign country, if reasonable grounds exist to expect that in the country requesting extradition the person could be sentenced to the death penalty or the death penalty can be carried out on him/her, or the person can be subjected to torture.

94. The Penal Code penalizes to a greater extent various forms of abuse of persons deprived of their liberty. For instance, it provides that a public officer who resorts to violence, illegal threats, or otherwise physically or mentally abuses a person in order to obtain testimony will be subject to prosecution. The adoption of this provision is in fulfillment of an obligation derived from a convention concerning the penalization of acts of torture.

95. The Code of Criminal Procedure encompasses all the guarantees to which suspects (defendants) have the right to according to international standards, including:

(a) The right of the detainees to immediately contact their counsel and to file a complaint with a court concerning any form of detention;

(b) Determination of the maximum period of pre - trial detention and the reaffirmation of the sole competence of the court to order this preventive measure;

(c) The right to apply for review by the court of the ordering of other preventive measures;

(d) The principle that testimonies or statements are not acceptable as evidence in cases where they have been obtained in contravention of a ban to influence an interrogated person by coercion or illegal threat or otherwise given in circumstances excluding freedom of speech.

96. The Act of 6 June 1997 - the Penalty Execution Code (Journal of Laws of 1997, No. 90, item 557, as amended) emphasizes in particular a convict's rights and obligations, providing appropriate legal guarantees. These guarantees consist, inter alia, in granting the convict the right to:

(a) File complaints to the competent court against decisions regarding the execution of penalty on the grounds of legality;

(b) Send complaints to appropriate domestic and international institutions responsible for the protection of human rights;

(c) Avail himself of the advice of the counsel for the defence throughout the execution of penalty.

### **C. The Commissioner for Civil Rights Protection**

97. The institution of the Commissioner for Civil Rights Protection (Ombudsman) was created in 1987. According to the *Constitution and the Act of 15 July 1987 on the Commissioner for Civil Rights Protection* (Journal of Laws of 2001, No. 14, item 147) the Commissioner is independent of any other State body and is appointed by the *Sejm* with the Senate's approval for a five-year term. The Commissioner safeguards the human and civil rights and liberties as set forth in the Constitution and other normative acts. Anyone under the authority of the Polish State - Polish citizens as well as foreigners, including stateless persons - is entitled to apply to the Commissioner for assistance in protecting his/her liberties or rights infringed by public administration bodies.

98. Petitions submitted to the Commissioner are free of any charges and need not comply with any specific form. The Commissioner may also take action on his own initiative.

99. The Commissioner for Civil Rights Protection may, inter alia:

(a) Approach an agency, organization or institution whose activity has been found to have caused infringement of human or civil rights or liberties, with a motion presenting his opinions and conclusions as to how the case could be settled, as well as to demand that disciplinary proceedings be instituted or official sanctions applied;

(b) Approach relevant agencies with proposals concerning legislative initiatives or the issuance or amendment of any legal acts concerning civil rights and liberties;

(c) Apply to the Constitutional Tribunal to examine the Constitutionality of normative acts;

(d) Request the prosecutor to institute preparatory proceedings in cases involving offences prosecuted ex officio; demand that civil or administrative proceedings be instituted and take part in such proceedings;

(e) File a cassation appeal with the Supreme Court against the legally valid judgement which terminates legal proceedings;

(f) Take up the matters referred to him by the Commissioner for Children Rights Protection;

(g) Cooperate with NGO's and civil society for the promotion of human rights and freedoms.

100. The Commissioner for Civil Rights Protection provides the *Sejm* and the Senate with information annually about his/her activities and the status of observance of human and civil rights and liberties; such information is published.

101. In the period between 1 July 1999 and 31 January 2003 the Commissioner received 112 741 new petitions. Complaints concerning social security and welfare, tax and housing issues prevailed. In the period between 1 January 2004 and 31 March 2006 the Commissioner received 124 714 petitions while in 2007 - 57 507 petitions. The total number of letters addressed to the Commissioner was 916 971 (from 1988 to the end of 2007).

#### **D. International conventions on human rights**

102. The Republic of Poland is a party to major international human rights agreements, those originating in the United Nations framework as well as those created in the European framework. Poland has ratified, among others, the following agreements:

<b>Conventions on human rights, date of signature</b>	<b>Date of entry into force</b>	<b>Date of entry into force for Poland</b>
<b>A. Main international human rights conventions and protocols</b>		
1. International Covenant on Economic, Social and Cultural Rights, 16 Dec. 1966	3 Jan. 1976	18 June 1977
2. International Covenant on Civil and Political Rights, 16 Dec. 1966	23 March 1976	18 June 1977
3. International Convention on the Elimination of All Forms of Racial Discrimination, 7 March 1966	4 Jan. 1969	4 Jan. 1969
4. Convention on the Elimination of All Forms of Discrimination against Women, 18 Dec. 1979	3 Sept. 1981	3 Sept. 1981
5. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 Dec. 1984	26 June 1987	25 August 1989

<b>Conventions on human rights, date of signature</b>	<b>Date of entry into force</b>	<b>Date of entry into force for Poland</b>
6. Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 18 Dec. 2002	22 June 2006	22 June 2006
7. Convention on the Rights of the Child, 20 Nov. 1989	2 Sept. 1990	7 July 1991
8. Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, 25 May 2000	12 Feb. 2002	7 May 2005
9. Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution, and child pornography, 25 May 2000	18 Jan. 2002	4 March 2005
10. Optional Protocol to the International Covenant on Civil and Political Rights, concerning individual petition, 16 Dec. 1966	23 March 1976	7 Feb. 1992
11. Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, concerning individual complaints and inquiry procedures, 6 Oct. 1999	22 Dec. 2000	22 March 2004
12. Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 18 Dec. 2002	22 June 2006	22 June 2006

#### **B. Other United Nations human rights and related conventions**

1. Convention on the Prevention and Punishment of the Crime of Genocide, 9 Dec. 1948	12 Jan. 1951	12 Jan. 1951
2. Convention on the Political Rights of Women, 31 March 1953	7 July 1954	11 Nov. 1954
3. Slavery Convention 1926 as amended 7 Sept. 1956	30 May 1957	10 Jan. 1963
4. Convention relating to the Status of Refugees, 28 July 1951	22 May 1954	26 Dec. 1991
5. Protocol relating to the Status of Refugees, 31 Jan. 1967	4 Oct. 1967	27 Sept. 1991

<b>Conventions on human rights, date of signature</b>	<b>Date of entry into force</b>	<b>Date of entry into force for Poland</b>
6. Convention on Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, 26 Nov. 1968	11 Nov. 1970	11 Nov. 1970
7. International Convention on the Suppression and Punishment of the Crime of Apartheid, 30 Nov. 1973	18 July 1976	18 July 1976
8. International Convention against Apartheid in Sports, 10 Dec. 1985	3 April 1988	3 April 1988
9. Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, 6 Oct. 1999	22 Dec. 2000	22 March 2004
10. Rome Statute of the International Criminal Court, 17 July 1998	1 July 2002	1 July 2002
11. United Nations Convention against Transnational Organized Crime, 15 Nov. 2000	29 Sept. 2003	29 Sept. 2003
12. Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, 15 Nov. 2000	28 Jan. 2004	28 Jan. 2004
13. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 15 Nov. 2000	25 Dec. 2003	25 Dec. 2003

**C. Conventions of the International Labour Organization (abstract)**

1. Forced Labour Convention, (No. 29), 28 June 1930	1 May 1932	30 July 1959
2. Labour Inspection Convention, (No. 81), 11 July 1947	7 Nov. 1950	2 June 1996
3. Freedom of Association and Protection of the Right to Organize Convention, (No. 87), 9 July 1948	4 July 1950	25 Feb. 1958

<b>Conventions on human rights, date of signature</b>	<b>Date of entry into force</b>	<b>Date of entry into force for Poland</b>
4. Right to Organize and Collective Bargaining Convention, (No. 98), 1 July 1949	18 July 1951	25 Feb. 1958
5. Equal Remuneration Convention, (No. 100), 29 June 1951	23 May 1953	25 Oct. 1955
6. Abolition of Forced Labour Convention, (No. 105), 25 June 1957	17 Jan. 1959	30 July 1959
7. Discrimination (Employment and Occupation) Convention, (No. 111), 25 June 1958	15 June 1960	30 May 1962
8. Employment Policy Convention, (No. 122), 9 July 1964	15 July 1966	24 Nov. 1967
9. Labour Inspection (Agriculture) Convention, (No. 129), 25 June 1969	19 Jan. 1972	2 June 1996
10. Minimum Age Convention, (No. 138), 26 June 1973	19 June 1976	22 March 1979
11. Labour Relations (Public Service) Convention, (No. 151), 27 June 1978	25 Feb. 1981	26 July 1983
12. Worst Forms of Child Labour Convention, (No. 182), 17 June 1999	19 Nov. 2000	9 Aug. 2003

**D. Conventions of the United Nations Educational, Scientific and Cultural Organization**

1. Convention against Discrimination in Education, 14 Dec. 1960	22 May 1962	15 Dec. 1964
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**E. Conventions of the Hague Conference on Private International Law**

1. Convention concerning the powers of authorities and the law applicable in respect of the protection of minors, 5 Oct. 1961	4 Feb. 1969	25 July 1993
2. Convention on the Law Applicable to Maintenance Obligations, 2 Oct. 1973	1 Oct. 1977	1 May 1996
3. Convention on the Recognition of Divorces and Legal Separations, 1 June 1970	24 Aug. 1975	24 June 1996



<b>Conventions on human rights, date of signature</b>	<b>Date of entry into force</b>	<b>Date of entry into force for Poland</b>
4. Convention on the Recognition and Enforcement of Decisions relating to Maintenance Obligations, 2 Oct. 1973	1 Aug. 1976	1 July 1996
5. Convention on the Civil Aspects of International Child Abduction, 25 Oct. 1980	1 Dec. 1983	1 Nov. 1992
6. Convention on International Access to Justice, 25 Oct. 1980	1 May 1988	1 Nov. 1992
7. Convention on Protection of Children and Co-operation in respect of Intercountry Adoption, 29 May 1993	1 May 1993	1 Oct. 1995
<b>F. Geneva Conventions and other treaties on international humanitarian law</b>		
1. Convention relative to the Opening of Hostilities, 18 Oct. 1907	26 Jan. 1910	8 July 1925
2. Convention Respecting the Laws and Customs of War on Land, 18 Oct. 1907	26 Jan. 1910	9 July 1925
3. Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 12 Aug. 1949	21 Oct. 1950	26 May 1955
4. Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 12 Aug. 1949	21 Oct. 1950	26 May 1955
5. Geneva Convention (III) relative to the Treatment of Prisoners of War, 12 Aug. 1949	21 Oct. 1950	26 May 1955
6. Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, 12 Aug. 1949	21 Oct. 1950	26 May 1955
7. Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water, 5 Aug. 1963	10 Oct. 1963	14 Oct. 1963
8. Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, 10 April 1972	26 March 1975	26 March 1975

<b>Conventions on human rights, date of signature</b>	<b>Date of entry into force</b>	<b>Date of entry into force for Poland</b>
9. Convention on the prohibition of military or any other hostile use of environmental modification techniques, 10 Dec. 1976	5 Oct. 1978	5 Oct. 1978
10. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977	7 Dec. 1978	23 April 1992
11. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977	7 Dec. 1978	23 April 1992
12. Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects, 10 Oct. 1980	2 Dec. 1983	2 Dec. 1983
13. Additional Protocol to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects (Protocol IV, entitled Protocol on Blinding Laser Weapons), 10 Oct. 1980	30 July 1998	23 May 2005
14. Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended on 3 May 1996 (Protocol II as amended on 3 May 1996) annexed to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects, 10 Oct. 1980	3 Dec. 1998	14 April 2004
15. Amendment to the Convention on prohibitions or restrictions on the use of certain conventional weapons which may be deemed to be excessively injurious or to have indiscriminate effects, 10 Oct. 1980	18 May 2004	15 March 2007

Conventions on human rights, date of signature	Date of entry into force	Date of entry into force for Poland
16. Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, 13 Jan. 1993	29 April 1997	29 April 1997
17. Additional Protocol to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which may be Deemed to be Excessively Injurious or to have Indiscriminate Effects and Protocols, 13 Oct. 1995	30 July 1998	23 March 2005

### G. Council of Europe agreements

1. Convention for the Protection of Human Rights and Fundamental Freedoms /005/, 4 Nov. 1950	3 Sept. 1953	19 Jan. 1993
2. Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms /009/, 20 March 1952	18 May 1954	10 Oct. 1994
3. Protocol No. 2 to the Convention for the Protection of Human Rights and Fundamental Freedoms /44/, 6 May 1963	21 Sept. 1970	19 Jan. 1993
4. Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms /46/, 16 Sept. 1963	2 May 1968	10 Oct. 1994
5. Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty (No. 114), 28 April 1983	1 March 1985	1 Nov. 2000
6. Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms /117/, 22 Nov. 1984	1 Nov. 1988	1 March 2003
7. Protocol No. 9 to the Convention for the Protection of Human Rights and Fundamental Freedoms /140/, 6 Nov. 1990	1 Oct. 1994	1 Feb. 1995
8. Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms /155/, 11 May 1994	1 Nov. 1998	1 Nov. 1998

Conventions on human rights, date of signature	Date of entry into force	Date of entry into force for Poland
9. Protocol No. 3 to the Convention for the Protection of Human Rights and Fundamental Freedoms /045/, 6 May 1963	21 Sept. 1970	19 Jan. 1993
10. Protocol No. 5 to the Convention for the Protection of Human Rights and Fundamental Freedoms /055/, 20 Jan. 1966	20 Dec. 1971	19 Jan. 1993
11. Protocol No. 8 to the Convention for the Protection of Human Rights and Fundamental Freedoms /118/, 19 March 1985	1 Jan. 1990	19 Jan. 1993
12. European Social Charter /35/, 18 Oct. 1961	26 Feb. 1965	25 July 1997
13. European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment /126/, 26 Nov. 1987	1 Feb. 1989	1 Feb. 1995
14. Protocol No. 1 to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment /151/, 4 Nov. 1993	1 March 2002	1 March 2002
15. Protocol No. 2 to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment /152/, 4 Nov. 1993	1 March 2002	1 March 2002
16. European Agreement relating to Persons participating in Proceedings of the European Commission and Court of Human Rights /67/, 6 May 1969	17 April 1971	13 May 1996
17. Framework Convention for the Protection of National Minorities /157/, 1 Feb. 1995	1 Feb. 1998	1 April 2001

## VI. HUMAN RIGHTS UNDER THE POLISH CONSTITUTION

103. The personal freedoms and rights are specified mainly in the Chapter II of the Constitution and follow closely regulations adopted in the European Convention on Human Rights and in the International Covenant on Civil and Political Rights. Furthermore, Poland has eagerly supported the creation, within the institutional framework of the European Union, of a body responsible for monitoring observance of the human rights during the incorporation of the *acquis communautaire* by States. Since the formation of the Agency for Fundamental Rights of the EU, Poland has been actively participating in its work.

## **A. General principles**

### **(a) Human dignity**

104. Article 30 of the Constitution defines human dignity as the source of the entire catalogue of rights and freedoms. Human dignity is considered inviolable and public authorities are obliged to respect and protect it. The obligation of respect for human dignity and observance of human rights are further included in specific normative acts, for example in the statutes on the Police and the Border Guard.

### **(b) Obligation to respect personal freedoms**

105. Article 31 of the Constitution ensures that personal freedoms are duly respected: since personal freedoms are under the protection of the law, they must be respected by everyone and no one may be coerced to do anything not required by law. Any limitation on the exercise of Constitutional freedoms and rights may be imposed only by statute and only when it is necessary in a democratic state to protect its security or public order, or to protect the natural environment, health or public morals, or the freedoms or rights of others, provided that such limitations do not violate the essence of freedoms and rights.

### **(c) Equality before the law**

106. The principle of equality before the law, the right to equal treatment by public authorities, and the prohibition of discrimination in political, social or economic life are spelled out in article 32 of the Constitution. The subsequent provisions ensure men and women equal rights in family, political, social and economic life, as well as equal rights to education, employment, promotion, equal remuneration for work of similar value, social security, holding public posts and receiving public honours and decorations.

### **(d) The right to citizenship**

107. According to article 34 of the Constitution Polish citizenship is acquired by birth to parents being Polish citizens. Alternative ways of acquiring Polish citizenship (by repatriates, foreigners and stateless individuals) are specified in the Act of 15 February 1962 on Polish Citizenship (Journal of Laws of 2000, No. 28, item 353, as amended). A Polish citizen shall not lose his/her citizenship except by renunciation thereof.

### **(e) The rights and freedoms of national and ethnic minorities**

108. Article 35 of the Constitution ensures Polish citizens belonging to national or ethnic minorities the freedom to maintain and develop their own language, to maintain their customs and traditions, and to develop their own culture. National and ethnic minorities have the right to establish their own educational and cultural institutions or institutions designed to protect their religious identity and to participate in the resolution of matters bearing on their cultural identity. Poland is a party to the International Convention on the Elimination of All Forms of Racial Discrimination and the Framework Convention of the Council of Europe for the Protection of National Minorities. Poland has also signed bilateral treaties of friendship and good

neighbourly relations with Lithuania, Belarus, Ukraine, Germany, the Czech Republic, Russian Federation and Slovakia, which oblige the signatories to protect the rights of ethnic minorities.

109. In 2005 the Act of 6 January 2005 on National and Ethnic Minorities and on Regional Language (Journal of Laws of 2005, No. 17, item 141, as amended) entered into force. One of the most important issues which the Statute deals with is the enjoyment of language rights by national minorities, in particular the question of minority languages as supplementary languages in contacts with public administration.

110. To strengthen political rights of national minorities the Act of 12 April 2001 on Elections to the *Sejm* and the Senate (Journal of Laws of 2007, No. 190, item 1360, as amended Journal) stipulates that the five or eight per cent vote threshold (i.e. the minimum required threshold of support in a country for an election committee is five per cent, while for a coalition election committee - eight per cent) does not apply to candidates listed on lists put forward by registered national minorities, providing that those interested submit statements to that effect.

**(f) The rights of churches and religious organizations**

111. Equal rights are ensured to all churches and other religious organizations and so is the State's impartiality in matters of personal conviction, whether religious or philosophic, thus ensuring freedom of their expression in public life (art. 25 of the Constitution). Relations between the State and churches as well as religious organizations and communities are governed by statutes that respect the autonomy and mutual independence of each in its own sphere. The relations of the State with the Roman Catholic Church are regulated in the *Concordate*, i.e. the international agreement between Republic of Poland and the Holy See and in the Statute on Relation of the State to the Catholic Church in the Republic of Poland. Relations with other Churches and religious organizations are regulated by statutes resulting from agreements signed between a church or a religious organization and the Council of Ministers, but so far no statute resulting from such agreements has entered into force. Nonetheless there are several separate statutes governing relations of the State with churches and other religious organizations which have entered into the force earlier than the Constitution, for example with the Jewish Religious Communities, the Lutheran Church and the Muslim Religious Union.

**B. Personal freedoms and rights**

**(a) Protection of human life**

112. The catalogue of personal freedoms and rights guaranteed by the Polish Constitution includes the fundamental human right to the protection of life. The penal law does not provide for the death penalty.

113. Homicide belongs to most serious crimes and as such is severely penalized. Also euthanasia is prohibited and punishable by up to five years of imprisonment (although in extraordinary cases, court may renounce imposing a penalty).

114. A further consequence of the view that life is a supreme human value are the provisions of the Act of 7 January 1993 on Family Planning, the Protection of the Human Foetus, and

Conditions on the Admissibility of Abortion (Journal of Laws of 1993, No. 17, item 78, as amended), which penalizes actions designed to put a conceived child (i.e. foetus) to death (while listing situations which justify abortion), as well as actions designed to make a pregnant woman put her conceived child to death. Under the penal law, termination of pregnancy in violation of the law is punishable by up to three years of imprisonment.

**(b) Prohibition of scientific experiments on humans**

115. Article 39 of the Constitution prohibits submitting human beings to scientific experiments without their express consent. The required consent must be granted voluntarily. The conditions under which medical experiments may be conducted are specified in the Act of 5 December 1996 on the Medical Profession (Journal of Laws, 2005, No. 226, item 1943). The Penal Code prohibits cognitive experiments on persons protected by international humanitarian law even with their consent. The Penal Code reiterates the Constitution's obligation of obtaining the consent of a participant in a research experiment after suitably informing him/her of the anticipated benefits as well as the negative consequences and the probability of their occurrence and instructing him/her of the option of withdrawing from the experiment at any stage. Sanctions have been introduced against subjecting individuals under the protection of international humanitarian law to research experiments even with their consent.

**(c) Prohibition of torture**

116. Article 40 of the Constitution prohibits torture or cruel, inhuman or degrading treatment or punishment as well as corporal punishment. The Polish system of penal law contains regulations guaranteeing the prosecution of acts of torture. Further, it is legally punishable to use unlawful threat or violence in order to exert pressure on a suspect or witness to obtain evidence or testimony. A catalogue of legal measures designed to prevent acts of inhuman treatment has also been created including supervision of incarceration by, inter alia, penitentiary judges or the Commissioner for Civil Rights Protection.

117. On 13 June 2003 the Act on Granting Protection to Aliens on the Territory of the Republic of Poland was adopted. This Act introduced a new form of protection, namely a permit for a tolerated stay. The permit refers to the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The permit for a tolerated stay shall be, inter alia, granted to an alien whose expulsion may be effected only to a country where his or her right to life, freedom and personal safety could be under threat, where he or she could be subject to torture or inhuman or degrading treatment or punishment, or could be forced to work or deprived of the right to a fair trial, or could be punished without any legal grounds.

**(d) The right to inviolability of the person**

118. The Constitution affirms the right to inviolability of the person and personal freedom. Article 41, paragraph 1 states that deprivation or restriction of freedom is permissible only in accordance with the principles and in the manner stipulated by law. The respective regulations are contained, inter alia, in the Code of Criminal Procedure, the Act on Aliens or the Act of 6 September 2001 on Contagious Diseases (Journal of Laws of 2001, No. 126, item 1384, as amended).

119. Paragraph 2 of the same article ensures a person deprived of liberty (detained) the right to judicial examination of the legality of detention. Any detention must be made immediately known to the family of, or to a person indicated by, the detained person. Among other personal freedoms and rights, the Constitution also lists the right of the detained person to be informed immediately, in a comprehensible manner, about the reasons of detention. The detained person must be given over to a court within 48 hours from the moment of being detained. The detainee is to be set free unless a warrant of pre-trial detention issued by a court, along with specification of the charges laid, has been served on him/her within 24 hours of being put at the court's disposal. In other words, the Constitution allows the court 24 hours for issuing the warrant. Only the court may rule on a pre-trial detention. Additionally the Constitution grants the right to compensation for anyone deprived of liberty in violation of the law. According to The Code of Criminal Procedure complaints over detention may not only question the validity and legality of the detention and demand immediate release, but may also be targeted at the improper application of this measure.

120. Important for the protection of personal freedoms is a provision that ensures the right of the detainee to immediately contact and meet a lawyer. In the case of a foreign citizen, the detainee must be allowed to contact the relevant consular office or diplomatic mission.

**(e) The right to a fair trial**

121. Article 42 of the Constitution lists the principles *nullum crimen sine lege*, the presumption of innocence and the right to defense. According to the Constitution and the Penal Code only a person who has committed an act prohibited by a law in force at the moment of its commission, and which is subject to a penalty, shall be held responsible before the law. The principle of the presumption of innocence, under which the defendant is considered innocent as long as his/her guilt has not been established by a legally valid verdict, was reflected in the Code of Criminal Procedure, which states that any irresolvable doubt must be interpreted in favour of the defendant. Anyone against whom criminal proceedings have been brought has the right to defence at all stages of such proceedings. In particular, the defendant may hire counsel for the defence or take advantage of such a counsel appointed by the court, if there is evidence that hiring a counsel would be beyond his/her means. The court appoints a counsel *ex officio* in the case of a deaf, mute, or blind defendant, or when the defendant shows signs of insanity. Additionally representation by counsel is obligatory in a criminal case against a minor and anyone who does not speak the official language (Polish), or if the court finds it necessary because of the circumstances which jeopardize effective defense.

122. The Constitution and the Penal Code proclaim the non-applicability of the statute of limitation to crimes against peace, war crimes and crimes against humanity. In addition the Act of 18 December 1998 on The Institute of National Remembrance - Commission for the Prosecution of Crimes against the Polish Nation (Journal of Laws of 2007, No. 63, item 424, as amended) states that Nazi and communist crimes against peace, humanity or war crimes, as well as other crimes against peace, humanity or war crimes, shall not be barred by the statute of limitations. Further, article 44 of the Constitution states that the flow of the statute of limitation regarding offences committed by, or by order of, public officials and which have not been prosecuted for political reasons, shall be suspended for the period during which such reasons existed.



123. Article 45 of the Constitution proclaims the right to a fair and public hearing of a case, without undue delay, before a competent, impartial and independent court. The principle of independence of the judiciary is further safeguarded by the Constitution: article 173 affirms that courts and tribunals constitute an independent separate authority, and that judges, within the exercise of their office, are independent and subject only to the Constitution and statutes. A fair and public trial is guaranteed by the principle of two-instance court proceedings (art. 176 of the Constitution) and by the right to lodge Constitutional complaints with the Constitutional Tribunal concerning conformity with the Constitution of laws and other normative acts that have served a court or other organ to issue a final judgment on the freedoms, rights and duties stipulated in the Constitution. The public nature of a court hearing may be restricted or wholly suspended only on the basis of a statute, in cases specified in the Constitution (art. 45, para. 2), for reasons of morality, State security, public order, or protection of privacy of a party or other important private interests. Nevertheless, judgments must be announced publicly in any case.

124. When it comes to the principle that court proceedings must be held without undue delay, the Code of Criminal Procedure states that issuing judgments within a reasonable time is one of the objectives of criminal proceedings. The Code of Civil Procedure states that the court ought to counteract any protraction of proceedings and should seek to judge the case during the first sitting as long as it is with no prejudice to the examining of the case. Similar provisions are applicable to the proceedings before administrative courts. In 2004 the Act of 17 June 2004 on Complaint Against Violation of a Party's Right to Have Its Case Heard Within a Reasonable Period of Time in Court Proceedings (Journal of Laws of 2004, No. 179, item 1843) entered into force which introduces important legal remedies the parties can resort to in case of court delays. The Law regulates the rules and procedures for hearing a complaint filed by a party whose right to have its case heard within a reasonable time has been violated as a result of the court's actions or inactivity.

**(f) The right to privacy**

125. Further Constitutional norms are the right to personal privacy, the privacy of family life, the privacy of communication, the rights to the inviolability of the home, person's honour and good reputation and of the freedom of decisions concerning one's private life (arts. 47, 49, 50 and 51 of the Constitution). The provisions of the Civil Code guarantee protection of such personal interests as health, freedom, honour, freedom of conviction, name or pseudonym, one's likeness, privacy of communication, inviolability of the home, scientific, artistic, inventive and innovative activities. A person concerned is entitled to demand that any unlawful infringement of a personal interest be discontinued, that the consequences of such action be made good for, as well as demand financial satisfaction and compensation for any damages in property. The freedom and privacy of communication (art. 49 of the Constitution) are additionally safeguarded by penal provisions that prescribe sanctions for unlawful infringement, concealment and damage of correspondence, for tapping a communication line and for passing on the information obtained in that way. Those rights can be curtailed only by law, as specified in the Penal Code, in the Acts on the Police, the Internal Security Agency, the Intelligence Agency, the Border Guard, and in the Penalty Execution Code.

126. The inviolability of the home is guaranteed by article 50 of the Constitution. Any search of the home, premises or vehicles may be imposed only in cases and in a manner specified by statute. The inviolability of the home is further protected by the Penal Code, which penalizes infringements of domestic peace.

127. The citizen's right to withhold personal data, and the resultant ban on obtaining, collecting, and accessing information other than that indispensable in a democratic country, as well as the right to restrict access to information about oneself, and the right to demand that false, incomplete, or unlawfully obtained information be corrected or deleted (art. 51 of the Constitution) are laid down in considerable detail in the Act of 29 August 1997 on the Protection of Personal Data (Journal of Laws of 2002, No. 101, item 926, as amended). Organs of the State are entitled to collect and store certain types of data on citizens on the grounds of the Acts on the Border Guard, the Internal Security Agency and the Police.

**(g) Freedom of speech**

128. Article 54 of the Constitution grants everyone the right to express opinions and to acquire and disseminate information, while banning preventive censorship in the mass media and any licensing of the press. The licensing of radio and television stations is regulated in the Act of 29 December 1992 on Radio and Television Broadcasters (Journal of Laws of 2004, No. 253, item 2531). The latter statute as well as the Act of 26 January 1984 - Press Law (Journal of Laws of 1984, No. 5, item 24, as amended) adhere to the principle of freedom of the mass media.

**(h) The right to rear children in the family**

129. The right of parents to rear their children in accordance with their convictions, with due respect for the degree of maturity of the child and his/her freedom of conscience, religion and conviction, is guaranteed in article 48 of the Constitution. Under article 53, paragraph 3, parents have the right to ensure their children a moral and religious upbringing and teaching, in accordance with their convictions. The issue is further developed in the Act of 25 February 1964 - the Family and Guardianship Code (Journal of Laws of 1964, No. 9, item 59, as amended), which states that parents must exercise their authority over a child in the best interest of the child as well as in the social interest. Parental rights may be restricted or suspended only in instances specified by statute: parental rights can be suspended when their exercise is infringed by temporary obstacles; complete withdrawal of parental rights may ensue when parents abuse their authority over the child or flagrantly neglect their duties to the child. The Penal Code states that in the event of an offence committed to the detriment of a minor or in cooperation with a minor, the court shall notify the competent family court, whenever it considers that deprivation or restriction of parental or guardianship rights is necessary.

**(i) Freedom of movement**

130. The principle of freedom of movement within the territory of Poland as well as freedom to take up residence anywhere in Poland, or leave the country, is spelled out in article 52 of the Constitution. Limitations on those freedoms, provided for by statutes, are elaborated in: (i) the

Code of Criminal Procedure, where, apart from the pre-trial detention, two kinds of limitations are envisaged: police surveillance and preventing the person from leaving the country (possibly coupled with confiscation of a passport); (ii) the Act on Contagious Diseases; and (iii) the Act on Aliens according which an alien may cross the border or stay on the territory of the Republic of Poland if he or she is in possession of a valid travel document and a visa, unless this act states otherwise (this refers to the requirement to obtain relevant residence permit) and which lays down grounds for refusal of entry of aliens into the territory of the Republic of Poland; and (iii) Act of 14 July 2006 on the entry into, residence in and exit from the Republic of Poland of nationals of the European Union Member States and their family members according to which family member of Union citizen who is not a Union citizen may enter the territory of the Republic of Poland on the grounds of a valid travel document and visa if it is required and which lays down grounds for refusal of entry of Union citizens and their family members into the territory of the Republic of Poland. As stipulated in the Act of 29 November 1990 on Passports (Journal of Laws of 1991, No. 2, item 5, as amended), a Polish citizen cannot be refused a document that would allow him/her to leave the country and to stay abroad. At the same time, the Constitution states that a Polish citizen may not be expelled from the country, nor forbidden to return to it (art. 52, para. 4).

131. Similar rules apply to the extradition of Polish citizens. Article 55 of the Constitution states: “The extradition of a Polish citizen is forbidden.”

**(j) Freedom of conscience and religion**

132. Another fundamental right ensured by the Constitution (art. 53) is the freedom of conscience and religion, which comprises freedom of religion and freedom to accept a religion by personal choice and to manifest such religion, either individually or collectively, publicly or privately, by worshipping, praying, participating in ceremonies, performing of rites or teaching. The religion of a Church or any other legally recognized religious organization may be taught in schools, with the condition that the freedom of religion of third persons may not be infringed. At the same time, it is affirmed that no one may be compelled to participate, or not participate, in religious practices, or to disclose his/her philosophy of life, religious convictions or faith. The principles expounded in the quoted article are reflected in the Act of 17 May 1989 on Safeguarding the Freedom of Faith and Religion (Journal of Laws of 2005, No. 231, item 1965, as amended) and in the Act of 7 September 1991 on the System of Education (Journal of Laws of 2004, No. 256, item 2572, as amended) and in the ordinance of the Minister of Education concerning the conditions and manner in which religion shall be taught in public schools.

**C. Political rights and freedoms**

**(a) Freedom of assembly**

133. Freedom of assembly, consisting in the freedom to organize peaceful assemblies and participating in such assemblies, is spelled out in article 57 of the Constitution. The detailed provisions on how such assemblies may be organized are contained in the Act of

5 July 1990 - Law on Assemblies (Journal of Laws of 1990, No. 51, item 297, as amended), which also specifies, in accordance with the Constitution, the exceptional restrictions that may be imposed - in the interest of State security, public order, and the protection of health, public morals, or other people's rights and freedoms.

**(b) Freedom of association**

134. A further basic principle expounded in the Constitution is the freedom of association. The relevant norms are contained in articles 58 and 59, but they ought to be considered in the framework created by articles 11 and 12. Those regulations safeguard the free formation and functioning of political parties, trade unions, socio-occupational organizations of farmers, societies, citizens' movements, and other voluntary associations and foundations. At the same time, the Constitution states that political parties shall be founded on the principles of voluntariness and the equality of Polish citizens, and their purpose shall be to influence the formulation of State policy by democratic means. Article 13 of the Constitution bans political parties and other organizations whose programmes are based upon totalitarian methods and the modes of activity of Nazism, Fascism and Communism, as well as those whose programmes or activities sanction racial or national hatred, the application of violence for the purpose of obtaining power or to influence State policy, or provide for the secrecy of their own structure or membership.

135. Whereas freedom of association is guaranteed to everyone, associations whose purposes or activities are contrary to the Constitution or statutes are prohibited. Any further restrictions may only be imposed by statutes in the interest of State security, public order, and the protection of health, public morals, or other people's rights and freedoms. A court may refuse to register or may ban an association. The freedom of association in trade unions, in socio-occupational organizations of farmers, and in employers' organizations is further elaborated in statutes regulating: trade unions, trade unions of farmers, and employers' organizations.

136. In parallel, the Constitution ensures the right to bargain and the employees' right to stage strikes and other forms of protest.

**(c) The right to involvement in public affairs and to submit petitions, complains and suggestions to organs of public authority**

137. The right to get involved in public affairs makes up the next group of freedoms comprising: the right to vote in elections and referenda, the right to stand for election, the right to become a civil servant (which applies to all Polish citizens on the principle of equality) and the right to obtain information on the activities of public authorities and institutions. In article 61 the Constitution ensures every citizen the right to obtain information, among others, on the work of organs of public authority and of persons performing public functions, on the activities of self-governing economic and professional organs, and of other elected persons and organs. The right to obtain information ensures access to documents and to sittings of elected organs of public authority, including the right to make sound and video recordings at such sittings. Under the Act - Press Law the aforementioned organs are obliged to inform the media of their activities.

138. At the same time, Polish citizens have the right to submit petitions, proposals and complaints, in the public interest and their own, to organs of public authority as well as to organizations and civic institutions. The procedures for considering petitions, proposals and complaints are specified in the Act of 14 June 1960 - the Code of Administrative Proceedings (Journal of Laws of 2000, No. 98, item 1071, as amended).

#### **D. Economic, social and cultural rights and freedoms**

##### **(a) The right to ownership**

139. A further fundamental right inscribed in the Constitution is the right to ownership, as well as other property rights, and the right of succession. Everyone's ownership, other property rights and the right of succession are equally protected by law. Restrictions thereupon may be imposed only by statute.

##### **(b) Freedom to choose and pursue one's occupation**

140. The principle of free choice of one's occupation and place of employment, next to the free pursuit of one's chosen occupation, are spelled out in article 65, where it is also stated that an obligation to work may be imposed only by statute. Such obligations are provided for e.g. by the Penal Code which states that a person sentenced to the penalty of restriction of liberty may be obliged by the court to take up a specific job for a specified period and the Act of 18 April 2002 on the State of Natural Disasters (Journal of Laws of 2002, No 62, item 558, as amended). In the same article, the Constitution bans permanent employment of children under the age of 16. The specific conditions under which minors may be employed are spelled out in the Act of 26 June 1974 - the Labour Code (Journal of Laws of 1998, No. 21, item 94, as amended) and in the relevant ordinances of the Minister of Labour. In order to facilitate the implementation of citizens' rights in the realm of employment, the Constitution spells out the ways and means of curbing unemployment. The detailed measures to this end are laid out in the Act on Promotion of Employment and the Institutions of the Labour Market.

##### **(c) The right to decent working conditions**

141. The rights to safe and healthy working conditions, to legally defined days free from work, to paid holidays, and to maximum permissible working hours are spelled out in article 66 of the Constitution. Rules governing work safety and hygiene are laid down in chapter 10 of the Labour Code, where the employer is held responsible for observing the prescribed standards and where the relevant rights of employees are specified. The Penal Code envisages penal responsibility for glaring violations of work safety and health standards. The regulations on working time and paid holidays are laid down in chapters VI and VII of the Labour Code.

##### **(d) The right to social security**

142. Article 67 of the Constitution guarantees the right to social security whenever an employee is incapacitated for work. The detailed regulations are contained in the following statutes, inter alia, the Act of 13 October 1998 on the System of Social Insurance (Journal of Law of 2007, No. 11, item 74, as amended), the Act on Promotion of Employment and the Institutions of the Labour Market.

143. The Penal Code penalizes as violations of the social security law the failure to submit the required data, even with the consent of the interested party, or submitting untrue data influencing the right to social security benefits.

**(e) The right to health care**

144. The right to health care (health protection) is guaranteed in article 68 of the Constitution, which also spells out the principle of equal access to health-care services financed from public funds. Under the same article, the authorities are obliged to ensure that children, pregnant women, the disabled, and persons of advanced age receive special health care. Further provisions on health care for the disabled are contained in article 69, which obliges the public authorities to provide them with subsistence and opportunities for adaptation to work and social communication. Those provisions are further elaborated in the Act of 27 August 1997 on the Occupational and Social Rehabilitation and Employment of the Disabled (Journal of Laws of 2008, No. 14, item 92, as amended), in the Act of 12 March 2004 on Social Assistance (Journal of Laws of 2004, No. 64, item 593, as amended), and in the Act of 15 November 1984 on Transport (Journal of Laws of 2000, No. 50, item 601, as amended), which specifies the relevant obligations of a carrier.

**(f) The right to education**

145. Another right guaranteed by the Constitution (art. 70) is the right to education. Under this article, education is offered in public schools without payment, access to education is universal and equal, there is a choice between public and non-public schools, and public funding is provided for educational institutions. Detailed regulations on education are laid out in the Act on the System of Education and in the Act of 27 July 2005 on Schools of Higher Education (Journal of Laws of 2005, No. 164, item 1365), which guarantees such schools autonomy.

**(g) The protection of the family**

146. Under articles 71 and 72 of the Constitution, the State is obliged to extend legal protection to the family and the child, and to assist a mother before and after childbirth. The Act on Family Planning, the Protection of the Human Foetus, and Conditions on the Admissibility of Abortion, as well as the Act on Social Assistance, along with relevant executive regulations, prescribe the modes and forms of assisting women during pregnancy.

147. With regard to the rights of the child, under Polish law, the good of the child is the decisive factor in all decisions (court judgements) concerning the child.

## **VII. PROMOTION AND TEACHING OF HUMAN RIGHTS IN POLAND**

148. Human rights receive a lot of attention in Poland, in terms of promotion as much as in terms of teaching. Several schools of higher education offer regular courses in human rights. Human rights issues are also included in the programmes for primary and secondary schools. Also training and education programmes for Police and Border Guard comprise the human rights issues relevant to their work. A number of books on human rights are published regularly.

149. The rulings of the Human Rights Committee and the European Court of Human Rights are publicized by specialized journals as well as general newspapers.

150. The Ministry of Justice organizes training sessions for judges and prosecutors and the Supreme Court holds seminars on human rights. Intensive schooling is provided by the Organization of Defence Counsels and also by "Iustitia" - an association of judges. Human rights issues are also included in the training programmes for advocates and legal advisors. There is also a number of non-governmental organizations active in the field of human rights, among them the Helsinki Human Rights Foundation, the Center on Women Rights, La Strada and the Amnesty International Association.

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