



COMMISSIONER FOR HUMAN RIGHTS  
COMMISSAIRE AUX DROITS DE L'HOMME



Strasbourg, 20 April 2009

CommDH(2009)18  
English only

## **INTERIM REPORT OF THE POLISH GOVERNMENT**

### **on the implementation of the Council of Europe Commissioner for Human Rights' Recommendations**

[see memorandum of the Commissioner for Human Rights  
to the Polish Government, CommDH(2007)13]





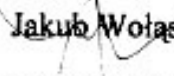
REPUBLIC OF POLAND  
MINISTRY OF FOREIGN AFFAIRS  
*Plenipotentiary of the Minister of Foreign Affairs  
for cases and procedures  
before the European Court of Human Rights  
Agent for the Polish Government*

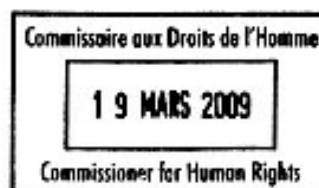
Warsaw, 11 March 2009

BPOM/243-09/09

**Mr. Thomas Hammarberg**  
**Council of Europe Commissioner**  
**for Human Rights**

*Acting on behalf of the Working Group for the Implementation of the Recommendations of the Council of Europe Commissioner for Human Rights, I hereby kindly would like to present the interim report on the progress to date in the implementation by Polish Government of the recommendations formulated in Your "Memorandum to the Polish Government" of 29 May 2007. The document presents and describes in detail activities undertaken by the broad scope of Government authorities, often in cooperation with non-governmental actors in order to improve the functioning of numerous public institutions and system of justice in Poland. The report's structure corresponds to nineteenth final conclusions of the Memorandum.*

  
Jakub Wołosiewicz  
Government Agent



## **Introduction**

Responding to the “Memorandum to the Polish Government” of 29 May 2007, in which Council of Europe Commissioner Thomas Hammarberg formulated a number of recommendations for Poland on issues relating to the judicial system, the rights of minorities, aliens and women, education, trafficking of human beings, the Polish Government adopted on 8 April 2008 the “Plan for the Implementation of the Recommendations Formulated by the Council of Europe Commissioner for Human Rights in the 2007 Memorandum”, pursuant to which the implementation of the respective recommendations was assigned to the respective ministries. In accordance with the Plan, the ministers submit to the Minister of Foreign Affairs bi-annual reports on the state of work on the fulfillment of the recommendations, up until their complete implementation.

The Agent for Proceedings before International Human Rights Protection Bodies, acting on behalf of the Working Group for the Implementation of the Recommendations of the Council of Europe Commissioner for Human Rights, hereby submits the following conclusions regarding the progress to date in the implementation of the recommendations.

## **Implementation of the recommendations**

### **Recommendation 1:**

#### **a) Continue efforts to accelerate judicial proceedings by:**

- increasing the number of assisting legal employees of the court,**
- increasing court budgets,**
- improving the system of recording court proceedings.**

Financial outlays for the judicial system are being regularly increased. The allocation in 2008 was almost 7.5% up on the plan for 2007 and 8.3% over the actual expenditure in 2007. The budget adopted by the Polish Sejm for 2009 envisages an increase of 6.73% over 2008.

The 2007 budget provided for the additional employment in general courts of 150 judges, 820 judicial assistants (*asystentów sędziego*), 1520 office workers, 350 probation officers, and 130 court referendaries (*referendarzy*) – for a total of 2970 staff members.

The 2008 budget provided for the additional employment in general courts of 100 judicial assistants, 245 office workers, 150 probation officers, 200 court referendaries and 20 pedagogues - for a total of 670 staff members.

The budget for 2009 provides for the additional employment of 650 judicial assistants, 400 office workers and 100 court referendaries.

On 25 November 2008 the Council of Ministers adopted amendments to the *Law on the system of general courts and amendment of the law on the prosecutor's office*, which provide for changes in the system of remuneration of judges and prosecutors, including salary increases, in line with the postulates of these professional groups. The adopted formula introduced a mechanism linking their salary levels with average salaries, effective January 2009, and annulled the much-criticized method of calculating salaries on the basis of the so-called base amount<sup>1</sup>.

**b) Review the law and practice by which apprentice judges (*asesorzy*) are being asked to take on cases beyond their experience.**

On 5 August 2008 the Council of Ministers adopted a draft law on the National School of the Judiciary and Prosecutors. The draft law regulates the situation of persons appointed as **apprentice judges** before the publication of the judgment of the Constitutional Court of 24 October 2007, file no. SK 7/06 (Journal of Laws No.204, item 1482), *i.e.* before 5 November 2007. It introduces new rules of promotion to the posts of judges and a new model of verification of the practical skills and predispositions of candidates to these posts, including internships as judicial assistants and court referendaries and broader possibilities of appointment as judges of members of other legal professions (lawyers, legal advisers, public notaries, prosecutors).

## **Recommendation 2**

### **2. Settle outstanding matters related to the domestic remedy for excessive length of judicial proceedings**

On October 2008 the Council of Ministers adopted the draft *Law amending the law on a complaint against violation of the party's right to have a case examined without undue delay in judicial proceedings*; the draft is now the subject legislative works at the Polish Sejm.

---

<sup>1</sup> Based on data posted on November 25 2008 on the [www.ms.gov.pl](http://www.ms.gov.pl) website.

The proposed changes are designed to enhance the effectiveness of the *Law of 17 June 2004 on a complaint against violation of the party's right to have a case examined without undue delay in judicial proceedings* called "2004 Act" (Journal of Laws No.179, item 1843) as a measure meant to effectively prevent excessive prolongation of preparatory, adjudicative and executive proceedings.

The draft provides for the possibility of lodging complaints against excessive duration of preparatory proceedings if actions or inaction by a prosecutor conducting or supervising proceedings violated a party's right to have his/her case heard without undue delay. If the complaint is well-founded and the applicant demands that the court hearing the substance of the case, or the prosecutor conducting or supervising the proceedings should be issued binding instructions, then the competent court recommends that appropriate action be taken within a specified deadline. The proposed obligatory issuance of recommendations is aimed at improving the effectiveness of the complaint of a party to have his/her case heard in preparatory and court proceedings without undue delay.

In order to increase the effectiveness of the complaint against excessive length of proceeding, as a domestic remedy in the understanding of article 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, the draft envisages the possibility of a court awarding a just-satisfaction of between 2000 PLN and 20000 PLN to the applicant, if he/she makes such a demand and the complaint is well-founded. At present, the law provides for a sum of up to 10000PLN.

### **Recommendation 3**

#### **Improve dissemination of the European Court of Human Rights' case law and ensure that legal training for judges reaches a wide audience.**

The presidents of all courts of appeals received the texts of the judgments of the European Court of Human Rights in Strasbourg in the cases of *Laskowska, Kania, W.S., Sanocki against Poland*, for the purpose of acquainting with their content all the judges adjudicating in areas of jurisdiction of the respective courts of appeal. The judges were also instructed to eliminate all the shortcomings enumerated in the above judgments in all the proceedings currently under way.

The presidents of all the courts of appeal also received the decision of the European Court of Human Rights in Strasbourg concerning the admissibility of the complaint of *Tomasz Bata against the Czech Republic* (complaint No. 43775/05), for the purpose of acquainting with its content all the judges

adjudicating in civil cases in the areas of jurisdiction of the respective courts of appeal.

The following undertakings should be highlighted within the training activity of the National Center for the Training of General Court and Prosecutor's Office Staff (NCTGCPOS).

The standards of application and extension of pre-trial detention, envisaged in the European Convention for the Protection of Human Rights and Fundamental Freedom, were the subject of training within Post Graduate Penal Law Studies for Judges and Prosecutors, co-organized by the National Center for the Training of General Court and Prosecutor's Office Staff and the Law and Administration Department of Warsaw University in the academic year 2007/2008.

The case law of the European Court of Human Rights in Strasbourg and proceedings before the ECHR are included in the program of the Post Graduate Penal Law Studies for Judges and Prosecutors conducted by the NCTGCPOS jointly with the Jagiellonian University in Krakow. Much attention is devoted during the Studies to issues connected with the standards of the application and extension of pre-trial detention, developed in ECHR case law.

Post-graduate studies for judges adjudicating in penal cases, devoted exclusively to the *System of protection of human rights in Poland*, have been prepared for the academic year 2008/2009. The program of these studies will incorporate issues pertaining to articles 5.3, 6.1. and 87.1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

The Program Council of the NCTGCPOS is the body responsible for determining the shape and content of training projects. A training cycle under the theme *Pre-trial detention as the harshest preventive measure. Principles of correct application in the light of the case law of the Supreme Court and the Court of Human Rights in Strasbourg* has been submitted for the Council approval for 2009.

The following training courses focused on the case law of the European Court of Human Rights in civil, economic, labor and social security cases:

1) three-day course on *Prohibition of discrimination and obligation to counteract mobbing in domestic and Community court practice. Protection of personal rights in employment relations*; the first edition of the course took place at Będlewo on 7-9 April 2008, for judges adjudicating in Krakow, Poznan, Warsaw, Rzeszów, Warsaw and Wrocław appeal courts; the second edition was held at Jastrzębia Góra on 9-11 June 2008 for judges adjudicating in Białystok, Gdansk, Katowice, Lublin. Łódź and Szczecin courts of appeal;

2) three-day course devoted to *Work time in the Labor Code and Community law*; the first edition of the course was held in Będlewo on 16-18 January 2008 for judges adjudicating in Białystok, Gdansk, Katowice, Poznan, Szczecin and Wroclaw appeal courts; the second edition took place at Popowo on 2-4 April, for judges adjudicating in Krakow, Lublin, Łódź, Rzeszów and Warsaw appeals courts;

3) three-day course on the *Impact of Community regulations on Polish labor and social security law*; the first edition of the course took place in Zakopane on 10-12 March 2008 for judges adjudicating in Katowice, Krakow, Lublin, Rzeszów and Wroclaw appeals courts; the second edition of the course took place at Popowo on 23-25 June, for judges adjudicating in Białystok, Gdansk, Łódź, Poznan, Szczecin and Warsaw courts of appeal.

The issue of protracted duration of court proceedings is taken up in all central training courses for judges adjudicating in civil, economic, labor and social security cases, which focus on the fundamental principles of civil proceedings.

The above subject matter was taken up during the following training courses for judges adjudicating in civil, economic, labor and social security cases:

1) three-day course titled *The new image of civil proceedings after the amendment of the Code of Civil Proceedings*; the first edition of the course took place at Będlewo on April 9-11 2008, for judges adjudicating in Poznan, Warsaw and Wroclaw appeal courts, the second edition of the course was held in Zakopane on May 14-16, for judges adjudicating in Katowice, Krakow, Lublin, and Rzeszów appeals courts, the third edition was conducted in Jastrzębia Góra on October 1-3, for judges adjudicating in Białystok, Gdansk, Łódź and Szczecin appeal courts;

2) three-day course on *Direction of changes in tort liability – in the framework of The liability of public authorities for damages perpetrated by state officials in comparative law and Polish law*; the first edition of the course was held in Jastrzębia Góra on 8-10 September 2008 for judges adjudicating in Białystok, Gdansk, Katowice, Łódź, Poznan and Szczecin appeal courts; the second edition took place in Zakopane on 26-28 November for judges adjudicating in Krakow, Lublin, Rzeszów, Warsaw and Wroclaw appeal courts,

3) three-day course on *The methodology of judicial work in civil cases – as part of Practical application of the institution streamlining trial proceedings*; the first edition took place at Popowo on 26-28 May for apprentice judges (asesorzy) adjudicating in Katowice, Krakow and Poznan appeal courts; the second edition was held in Jastrzębia Góra on September 10-12 for apprentice judges and judges adjudicating in Białystok, Gdansk and Łódź courts of appeal; the third edition took place in Zakopane on October 27-29 2008, for judges adjudicating in Lublin, Rzeszów and Warsaw appeals courts; the fourth edition

was conducted at Będlewo on December 3-5 2008, for apprentice judges and judges adjudicating in Szczecin and Wrocław courts of appeal;

4) three-day course on *Selected issues pertaining to civil procedural and substantive law in economic cases*, in the framework of *Economic proceedings in the light of the amendment of the Code of Civil Proceedings of March 20 2007*; the first edition of the course was held at Popowo on 31 March- 2 April 2008, for judges adjudicating in Białystok, Gdansk, Katowice, Lublin, Łódź and Rzeszów courts of appeal, the second edition of the course was held at Będlewo on 5-7 May 2008, for judges adjudicating in Krakow, Poznan, Szczecin, Warsaw and Wrocław courts of appeal.

The right to a fair public hearing within a reasonable period of time before an independent and impartial court is also a subject of discussions in the framework of Post-Graduate Studies in Civil law organized in the school year 2008/2009, in collaboration with the Institute of legal Sciences of the Polish Academy of Sciences.

The case law of the European Court of Human Rights and issues pertaining to the right to a public hearing are also being analyzed in the framework of the program of the Post-Graduate Studies in Labor Law for judges adjudicating in labor law cases, organized in the 2008/2009 school year, in collaboration with the Institute of Legal Sciences of the Polish Academy of Sciences.

The above topics will be continued in 2009 in the framework of further editions of the above Post-Graduate Studies and at central training courses for general court civil case judges, during the presentation of issues pertaining to fundamental civil procedures in the light of judicial practice.

In June 2008 the NCTGCPOS started publishing a quarterly journal, which devotes prominent attention to the latest case law of the European Court of Human Rights, with particular reference to cases against Poland and the newest legislation of the Council of Europe. The quarterly is being distributed in Polish courts and prosecutor's offices and other organizational units of the system of justice.

## **Recommendation 4**

### **a) Establish an independent body to investigate Police misbehavior**

An independent working group was created at the Ministry of Interior and Administration (MIA) in December 2007 to prepare the concept of an independent body to examine human rights complaints against the Police.

The group included representatives of the Ministry of Interior and Administration, the Central Police Headquarters, the Ministry of Foreign Affairs, the Commissioner for Civil Rights Protection (Ombudsman), the Spokesman for Children's Rights and the Ministry of Justice. The group requested Commissioner Hammarberg's assistance and he invited its members to a meeting of experts in Strasbourg. The participants reviewed good practices of independent and effective mechanisms for examining complaints against police misbehavior. Those attending included representatives of the MIA, the Central Police Headquarters and the Office of the Commissioner for Civil Rights Protection. On 29 May 2008, during Commissioner Hammarberg's visit to Poland, the Commissioner for Civil Rights Protection, Janusz Kochanowski, took the decision to establish - within the framework of his Office - a special group of experts to deal with Police misbehavior. The positioning of the complaints body within the constitutionally empowered Office of the Commissioner for Civil Rights protection guarantees independence of the new institution. Work is in progress on the preparation of its staffing and legal infrastructure. The MIA has submitted to the Commissioner's Office information of the scale of complaints against the Police.

**b) Provide specific training on trafficking in human beings and domestic violence on a larger scale and involve a greater number of Police officers in cooperation with NGOs.**

In the framework of the *National Program on Combating and Preventing Trafficking in Human Beings for the years 2007-2008*, the following training courses were conducted for Police officers responsible for the coordination of the fight against trafficking in human beings, and for Police training staff:

- On 18-22 June 2007 the MIA, in collaboration with the Higher Police School in Szczytno and the *La Strada Foundation*, organized specialist training for coordinators and members of teams against human trafficking at Voivodship (Regional) Police Headquarters and in Border Guard units. The training included theoretical classes on regulation against human trafficking, elements of practical work with trafficking victims and principles of cooperation between domestic and international institutions;
- On 25-26 October 2007 Gdańsk hosted training for officers from town and county Police headquarters in the Pomorskie Voivodship, organized by the Voivodship Police Headquarters in Gdansk, in collaboration with the Higher Police School in Szczytno. The training covered legal and psychological issues as well as principles of cooperation between institutions and international cooperation.
- The Warsaw Police Headquarters was the initiator of training for senior officers from prevention, criminal and investigative departments, devoted to the

recognition of trafficking victims; the training was conducted from June till November 2007;

- On 15-16 April 2008 the MIA organized at the Police Training Center in Legionowo training for human rights plenipotentiaries of voivodship Police commanders, the Human Rights Plenipotentiary of the Chief Commander of Police, lecturers of Police academies and the Border Guard; the training was held in the framework of a project co-organized by the European Commission (TAIEX) and with the collaboration of the Human Trafficking Studies Center of Warsaw University,
- On June 23-27 2008 the Border Guard Training Center in Koszalin hosted training workshops for coordinators against human trafficking from voivodship police headquarters and the Border Guard. Also taking part were prosecutors involved in proceedings against traffickers in human beings;
- In early 2007, a manual titled “How to teach about trafficking in human beings” was issued at the initiative of the *La Strada Foundation*; the publication was supported by the *Ebert Foundation* and the MIA. The manual was designed for trainers and lecturers (primarily – of police schools), who are conducting classes on human trafficking.

The sum of 878,626 PLN was allocated in 2008 to NGOs and territorial self-government units (jednostki samorządu terytorialnego) for the implementation of tasks in the “Domestic Violence” area, in the framework of the *Government Program of Reducing Crime and Anti-Social Behavior “Safer Together” (for the years 2007-2015)*.

The following measures were taken in connection with the implementation in Poland of the European Union’s *Daphne III Program on preventing and combating violence against children, youth and women and the protection of victims and members of risk groups, for the years 2007-2013*:

- an information service about Daphne III was launched on the MIA website ([www.mswia.gov.pl](http://www.mswia.gov.pl)), with a mailbox ([daphne@mswia.gov.pl](mailto:daphne@mswia.gov.pl)) where questions about Daphne III can be submitted;
- information about Daphne III is provided in a book publication entitled “Actions of the Ministry of Interior and Administration and other collaborating institutions to ensure public order and security and counteract social pathology”;
- on 10-11 September 2007 Warsaw hosted an international seminar titled *Together against violence: combating violence against children, youth and women from the Polish and European point of view*, a post-conference publication was also prepared;
- the Higher Police School in Szczytno hosted in 2008 a cycle of training sessions for members of county public order and security commissions about the procedures of applying for Daphne II funding;

- on November 20-21 2008 an international seminar was held on *Counteracting violence – the practice in Poland and Europe*;
- the tenets of Daphne III were presented during numerous conferences and meetings with members of NGOs, local authorities and Police representatives.

In connection with the recommendations of the Council of Europe Commissioner for Human Rights addressed to the Polish Government concerning specialist training on human trafficking for Police officers, on 7 December 2007 the Chief Commander of Police established a team to prepare a plan of Police measures to implement the recommendation.

The Chief Commander of Police approved the conclusions of the Team; accordingly, the following undertakings are planned in the near future:

- preparation of a specialist training course on domestic violence for officers fulfilling community, patrol, duty officer and investigative tasks, in collaboration with non-police entities, including NGOs, concerned with domestic violence issues. The implementation of the course is expected to begin in training units of the Police in 2009 and will be continued in subsequent years. The course is primarily conceived for officers who have not had any training in domestic violence, organized by or in collaboration with non-police entities;
- arrangement of a greater number of on-the-job training courses on domestic violence, designed to help officers be more effective in assisting victims of domestic violence (preference will be given to practical training, based on authentic incidents, conducted in small groups). The training will be primarily addressed to officers fulfilling patrol, community duty-officer and investigative duties, with the use of didactical materials, which will be prepared by specialist-course programmers, with the participation of police psychologists and non-police entities, including NGOs.

## **Recommendation 5**

**Take urgent measures to combat over-crowding in prisons and improve the application of alternative penalties which do not involve incarceration.**

On 7 September 2007, the Polish Sejm adopted the *law on the performance of the penalty of deprivation of liberty outside penitentiaries under the system of electronic surveillance* (Journal of Laws No.191, item 1366). The *law of 30 May 2008 on the amendment of the law on the performance of the penalty of deprivation of liberty outside penitentiaries under the system of electronic surveillance* (Journal of Laws No.113, item 719) changed the date of the entry into force of the amended law to 1 September 2009, in view of the need to create technical possibilities of implementation of the law, including the introduction of the latest generation of equipment for the monitoring of convicts. Adaptation

works are in progress. On 28 October 2008, the Ministry of Justice selected the best offer in an unlimited public tender for the establishment, introduction and operation of the System of Electronic Surveillance. The law will make it possible for convicts to serve short-term sentences of deprivation of freedom outside penitentiaries, under the system of electronic surveillance. It is estimated that the introduction of the system will reduce the number of inmates in penitentiaries by between 3,000-15,000.

Legislative works are also under way on a draft law amending the Penal Code, Code of Penal Proceedings, Executive Penal Code, Fiscal Penal Code and certain other laws. The draft envisages changing the principles of performance of the penalty of restriction of freedom, so that it becomes a viable alternative to the penalty of imprisonment. The planned changes would involve the following:

- 1) elaboration of the broadest possible catalog of entities in which convicts can perform unpaid, controlled labor for social purposes or socially useful work (state and self-government organizational units, commercial companies with full shareholding of the State Treasury, commune, county or voivodship will have the obligation to enable convicts to perform unpaid, controlled work for social purposes),
- 2) maximum reduction of the administrative formalities which encumber the employing entities, connected with the organization and documentation of the performance of penalties,
- 3) exemption of the employing entities from most of the costs of employing convicts.

The above draft was endorsed by the Committee of the Council of Ministers on 28 August 2008.

Furthermore, other practical measures are being undertaken to deal with the problem of overcrowding. The Central Board of the Prison Service has continued the implementation of the *Program of acquisition of 17000 places in organizational units of the prison system in the years 2006-2009*.

The program envisages the construction of new wards on the territory of existent penitentiaries, the adaptation of buildings used on the territory of penitentiaries for other purposes - for accommodation, the construction of new penitentiaries, adaptation of buildings taken over from the military and renovation of pavilions that had been withdrawn from use due to their poor technical condition. In 2008 325 million PLN was allocated to the Program, which resulted in the acquisition of 3894 new places of accommodation. In 2006 4142 new places were obtained and in 2007 – 4402.

On 10 July 2008 the Committee of the Council of Ministers adopted and recommended to the Council of Ministers a draft resolution of the Council of Ministers on the introduction of the long-term program *Modernization of the prison service for the years 2009-2012*. The draft is currently being considered by the Council of Ministers.

### **Recommendation 6**

#### **Review the application and functioning of pre-trial detention in Polish law. Improve training of judges and prosecutors as regards European standards and case law of the European Court of Human Rights in this area.**

In 2007 district courts received 36408 motions from prosecutors for the application of pre-trial detention, i.e. 4.8% less than in 2006 (38272). The courts approved 31271 motions, i.e. 0.2% less than in 2006 (31338).

Also in 2007, 33109 persons were kept in pre-trial detention, of whom

- 6557 were detained up to 1 month,
- 6398 – between 1 and 2 months,
- 9154 – between 2 and 3 months,
- 2475 – between 3 and 4 months
- 2304 – between 4 and 5 months,
- 2093 – between 5 and 6 months,
- 2316 – between 6 and 9 months,
- 1159 – between 9 and 12 months,
- 459 – between 12 and 18 months,
- 165 – between 18 and 24 months,
- 29 – over 24 months.

The above data indicate a gradual reduction in the number of persons detained the longest, as compared with 2005 and 2006. The data for the first half of 2008 show that the trend has continued, as reflected by 14500 requests for the application of pre-trial detention. There has been a clear fall in the number of motions by prosecutors, which is a consequence of a new penal policy and rules for the application of pre-trial detention, combined with falling crime and planned legislative restrictions<sup>2</sup>. Pursuant to the new penal policy pre-trial detention may be applied in complicated cases, involving several persons, or with international involvement. When evaluating the application of pre-trial detention in Poland, note should be made of the amendment of the law of 2004 on excessive length of proceedings, under which prosecutors will be obligated to reduce the duration of preparatory proceedings, which will also be covered

---

<sup>2</sup> A draft amendment of the Code of Penal Proceedings includes change of article 263 of the CPP through removal of § 4a and removal from § 4 of prolongation of psychiatric observation of the accused or prolongation of the preparation of an expert opinion as a basis for the application of pre-trial detention.

by the law. Summing up, the number of motions by prosecutors for the application of pre-trial detention decreased by 28.7% as compared to the first half of 2007, with a 31.2.% reduction in the number of such motions approved by courts.

Within the framework of supervision of general courts, the Minister of Justice indicated that priority should be assigned in the *Directions of supervision of the activity of general courts in 2008* to the systematic and consistent monitoring of the efficiency of proceedings, taking into account the standards of the duration of proceedings deriving from the European Convention for the Protection of Human Rights and Fundamental Freedoms and the case law of the European Court of Human Rights in Strasbourg. It is also underlined in the document that the supervision plans of the presidents of appellate courts should incorporate assessment of the progress and efficiency of protracted proceedings involving the use of pre-trial detention, particularly detention lasting over 24 months, and also of due care and precision in substantiating decisions on the prolongation of pre-trial detention with reference to specific circumstances, in the context of upholding the case law of the European Court of Human Rights.

On 22 February 2008 the Ministry of Justice addressed a letter to the presidents of all appellate courts asking them to ensure that meetings chaired by the heads of penal departments devote particular attention to the strict observance of the rules of substantiating motions for the application and extension of pre-trial detention. It was further underlined that special interest during the meetings should be devoted to the observance of the prerequisites of application of pre-trial detention and to consideration of other preventive measures that do not involve incarceration. The letter was annexed with the Interim Resolution CM/ResDH (2007) 75 concerning the judgments of the European Court of Human Rights in 44 cases against Poland, relating to the excessive length of pre-trial detention, with a request that all the judges adjudicating in penal cases be familiarized with it.

On 17 October 2008 the Ministry of Justice sent a letter to the presidents of all the appellate courts with the request that they extend their administrative supervision to all penal cases in courts within their jurisdiction, in which there have been indictments, with the period of pre-trial detention exceeding 2 years and to submit quarterly reports on the related supervision. Court presidents (heads of departments) were also asked to set session dates in such trials and pass decisions in a way ensuring efficient proceedings. It was also underlined that the cases of persons in pre-trial detention or incarceration should be heard ahead of the normal order as elaborated in § 48.1 of the regulation of the Minister of Justice of 23 February 2007 – Rules of work of general courts (Journal of Laws No.38, item 249).

Continuation of the tasks elaborated in the *Directions of supervision of the activity of general courts in 2008* is laid down in the *Directions of supervision of the activity of general courts in 2009*. The primary measures envisaged include systematic and consistent monitoring of the efficiency of proceedings, with due provision for the standards of duration of court proceedings stemming from the European Convention for the Protection of Human Rights and Fundamental Freedoms and the case law of the European Court of Human Rights in Strasbourg. It is further emphasized in the *Directions* that the supervision plans of the presidents of appellate and district courts in 2009 should also include examination of the effectiveness of supervision concerning protracted penal proceedings, involving the application of pre-trial detention, particularly pre-trial detention exceeding 2 years, and examination if care and precision were displayed in substantiating decisions on the extension of pre-trial detention, with reference to specific circumstances.

## **Recommendation 7**

### **Ensure that detainees have direct contact with a lawyer.**

The *Law of 9 May 2007 on amendment of the Code of Penal Procedure and certain other laws* (Journal of Laws No.99, item 664) amended, among others, article 20 § 1 of the Code of Penal Proceedings. At present, the regulation stipulates that in the event of blatant violation by a counsellor or party's legal adviser of their trial obligations, the court or - in the case of preparatory proceedings - the prosecutor, notify of the fact the relevant district bar association or the district council of legal advisers, demanding that the head of the relevant council provide information within a stipulated period of time, not longer than 30 days, of the measures taken in response to the notification. A copy of the notification is forwarded to the Minister of Justice.

The Ministry of Justice regularly monitors unjustified absences of counselors from court sessions and meetings at which the presence of a lawyer is necessary, and from civil proceedings. In the framework of the monitoring, court presidents notify the Justice Ministry of instances of unjustified absences of lawyers.

## **Recommendation 8**

### **a) Enact a comprehensive body of anti-discrimination legislation.**

The Ministry of Labor and Social Policy has prepared a *draft law on equal treatment*, which has been endorsed by the European Committee of the Council of Ministers and in July 2008 was submitted to the Committee of the Council of Ministers.

In October 2008 the draft law was reviewed by the Committee of the Council of Ministers and recommended for adoption by the Council of Ministers, with a separate opinion by the Government Plenipotentiary for Equal Treatment concerning the organizational positioning of the Main Inspector for Equal Treatment.

A new version of the instrument, incorporating observations made by the Ministry of Science and Higher Education, the Committee of the Council of Ministers, the Ministry of Justice and the Office of the Committee for European Integration will be submitted for assessment to the Legislative Council attached to the Prime Minister, after consultations with the Government Plenipotentiary for Equal Treatment.

The law has the purpose of specifying the implementation of the right to equal treatment. The law prohibits discrimination, particularly for reason of sex, race, ethnic origin, nationality, religion or outlook, political views, disability or sexual orientation, and marital or family status, with regard to:

- opportunity to take part in vocational education, including higher education, education enhancement, on-the-job training or retraining and vocational practice,
- opportunity to undertake and conduct business or agricultural activity and to perform work on the basis of civil contracts,
- access to instruments and services offered by labor market institutions and other entities working for the promotion of employment, development of human resources and counteracting unemployment,
- accession to and activity in trade unions, organizations of employers, professional self-governments and NGOs, and to enjoy the rights of members of those organizations.

The catalog of the prerequisites of discrimination is open. The law also prohibits discrimination for reason of sex in the sphere of social security, and for reasons of race or ethnic origin in the sphere of health care, education and higher education. The law bans discrimination for reason of sex, race and ethnic origin with regard to the purchase of services, goods, rights and energy – if offered publicly.

On the basis of the law, a person whose right to equal treatment has been infringed may demand that the discrimination be stopped, its consequences be eradicated and that compensation be paid for the non-pecuniary damage. The burden of proof has been transferred from the plaintiff to the defendant.

The law envisages a fine for the violation of the principle of equal treatment.

**b) Set up a single specialized body to combat discrimination in all areas of life and on all grounds.**

A regulation of the Council of Ministers of 22 April 2008 established the post of Government Plenipotentiary for Equal Treatment, with the rank of secretary of state at the Chancellery of the Prime Minister. The Plenipotentiary is tasked with the implementation of the government's equal treatment policy, including counteracting discrimination on the grounds of sex, race, ethnic origin, nationality, religion or denomination, political views, age, sexual orientation, marital or family status. The Plenipotentiary fulfills his/her duties by assessing legal solutions, analyzing and monitoring the situation and promoting and disseminating issues relating to equal treatment. The Office of the Plenipotentiary has functioned, in the framework of the Chancellery of the Prime Minister, since August 2008.

**c) Launch visible, large scale campaigns, in cooperation with NGOs, to inform the public about the notion of equal treatment.**

Poland was involved in the implementation of the European Union initiative 2007 European Year of Equal Opportunities for All, designed to support the campaign against all manifestations of discrimination. The Ministry of Labor and Social Policy was the authority responsible in Poland for implementing the related events and, together with NGOs, it elaborated the national strategy and priorities of the project. The relevant tasks were primarily realized by NGOs, social partners, schools, and universities. They included training sessions, exhibitions, billboard campaigns and conferences. Scientific research was conducted into the situation of sexual minorities in Poland, stereotypes concerning age, religion and sex. CDs were recorded, concerts were organized and the radio station radio Voice of Africa was launched. Some of the events were organized directly by the Ministry of Labor and Social Policy (they included a mobile photo exhibition, displayed at train stations in major Polish cities; a TV spot was also broadcast).

The MLSP applied for funds to the European Commission for the implementation of the PROGRESS Program, involving projects, jointly realized with NGOs, promoting diversity, tolerance and opposing discrimination.

Furthermore, the MLSP organizes annual calls for proposals for NGOs implementing anti-discrimination and pro-equal-treatment projects. In 2008 the NGOs received financing for initiatives to counter discrimination on the grounds of sex, race, ethnic origin, sexual orientation, religion, disability, building on actions realized in the framework of the European Year of Equal Opportunities for All 2007.

## **Recommendation 9**

**Put in place adequate legal measures to combat hate speech and discrimination of those with different sexual orientation or gender identity. Take appropriate measures to raise awareness of diversity in cooperation with civil society.**

Within the framework of the *European Year of Equal Opportunities for All*, the MLSP initiated the work of an Advisory Committee, within which a working group was established to counter discrimination for reason of sexual orientation. March 2008 saw the publication of a report on the situation of sexual minorities, titled “*Report on survey results: the situation of sexual minorities in Poland in the light of empirical research*”. The research was conducted in the largest Polish cities (Warsaw, Wrocław, Kraków, Gdańsk-Sopot-Gdynia), among the frequenters of LGBT clubs. The researchers obtained sociological information about the respondents and statistical data about their education levels, age, vocational situation, values and aspirations. The report provided information on the respondents’ personal experience with discrimination and about how that differed from common perceptions of discrimination against the LGBT community. The report also contained data on physical violence against gays and lesbians, problems with the disclosure of one’s sexual orientation (coming out) and postulates of the LGBT community addressed to the society at large. (The text of the report is available at [http://www.rodzina.gov.pl/zal/f370\\_8.pdf](http://www.rodzina.gov.pl/zal/f370_8.pdf)).

Intensive legislative works have continued on the above-mentioned *Law on equal treatment*, which is designed to provide comprehensive protection for persons subjected to discrimination, including discrimination for reason of sexual orientation.

## **Recommendation 10**

**Ban racist and anti-Semitic publications and broadcasting.**

Organs of central administration and central offices are implementing the *National Program of Counteracting Racial Discrimination, Xenophobia and Related Intolerance 2004-2009*. The program is coordinated by the Government Plenipotentiary for Equal Treatment. The Ministry of Interior and Administration implements the main tasks in the framework of the Program on combating racist and anti-Semitic content in publications and broadcasting.

In order to assess the scale and nature of the phenomenon of hate speech, the Minister of Interior and Administration in 2007 ordered that monitoring of Polish press be conducted to determine any racist, xenophobic or anti-Semitic

content. The monitoring served as the basis for a report containing preliminary conclusions and recommendations. Furthermore, the MIA regularly collaborates with NGOs devoted to fighting racist, xenophobic and anti-Semitic content, including the *Hotline Dyżurnet.pl*, the Association Against Anti-Semitism and Xenophobia *Open Republic* and the Association *Nevermore*.

*The Team for Monitoring Racism and Xenophobia* has continued its activity in the framework of the MIA. Its tasks include:

- processing of individual complaints,
- responding to all reports of anti-Semitic, racist and xenophobic incidents,
- implementation of the *Law Enforcement Officer Program on Combating Hate Crime*, initiated by the OSCE-ODIHR, which Poland joined in October 2006. A seminar titled *Police Forum Against Discrimination* was jointly organized by the MIA, the Police and the OSCE-ODIHR at the Słupsk Police School in September 2008, in the framework of implementation of the *Program*. Its goals included sensitizing the participants to diversity issues, promoting tolerance and instilling skills needed to identify and respond to hate crime,
- implementation of MIA tasks ensuing from the *National Program of Counteracting Racial Discrimination, Xenophobia and Related Intolerance 2004-2009*,
- organization of open calls for proposals to assign tasks to NGOs, consisting in civic counseling for victims of ethnic discrimination and conducting of anti-discriminatory educational projects,
- cooperation with NGOs in countering racism, anti-Semitism and xenophobia.

Furthermore, the National Center for the Training of General Court and Prosecutor's Office Staff (NCTGCPOS) has included these issues in its human rights training courses.

## **Recommendation 11**

### **a) Promote intercultural dialog and understanding of different minorities, their culture and history within the media and the school curricula.**

The Ministry of National Education has initiated and supports moves designed to ensure that schools and other educational institutions take up problems relating to discrimination, instill tolerant attitudes and counter aggression and intolerance stemming from a negative perception of persons who are weaker, requiring help and espousing other views etc. Training in the Eradication of Aggression is one of the socio-therapeutic programs addressed to school pupils; other undertakings include broader psychological-pedagogical assistance and improvement of security in schools.

The Commissioner's recommendation is being implemented through the provisions on cultural diversity and history of national and ethnic minorities, introduced into the *Core curriculum of general education in school of different types* (attachment to Journal of Laws No. 210, item 2041 of 11 December 2003). The promotion of intercultural dialog and understanding for the culture and history of different minorities is contained in the school curricula of various subjects and inter-subject educational paths. The Ministry of National Education backs initiatives implemented by NGOs (including the *Shalom Foundation and the Integration Association*, which enhance intercultural dialog.

On 19 August 2008, the Council of Ministers adopted the *Government Program for 2008-2013: Safe and Friendly School*.

The primary task of the program consists in improvement of security in schools and other educational institutions. That goal is being attained through greater influence of parents on school life and the building of a positive social climate in schools based on good inter-personal relations. School security is also enhanced through regular improvement of the educational skills of parents, school principals, teachers and other school staff, improvement of the pupils' social and emotional competencies, development of their interests, instilment of civic responsibility and self-management skills, as well as visual monitoring, initiated last year.

**b) Preserve minority monuments and cemeteries out of respect to minority groups and to preserve the common heritage.**

The protection of places connected with minority culture and monuments is financed out of grants allocated by the Minister of Interior and Administration for tasks in support of the cultural identity of national and ethnic minorities.

The Church Fund of the MIA Department of Religious Denominations and National and Ethnic Minorities awards grants for the renovation and conservation of valuable church buildings belonging to the Catholic Church as well as other churches and religious organizations that operate on the basis of separate regulations governing the relations of the State with churches and religious organizations. Funds for the protection of monuments were allocated out of the Church Fund to, among others, the Eastern Orthodox Church of the Old Rite (e.g. Suwałki), the Muslim Religious Union in the Republic of Poland (e.g. Białystok, Bohoniki), and the Lutheran Church of the Augsburg Confession in the Republic of Poland (e.g. Szczytno).

The implementation by NGOs and territorial self-government units of tasks in the area of “Protection of national heritage” was financed in 2007 and 2008 in the framework of the *Government Program of Restricting Crime and Anti-Social Behavior “Safer Together” (for the years 2007-2015)*, implemented by the MIA.

Local plans of action for the years 2008-2009, designed to ensure special protection of minority monuments and cemeteries, out of respect to minority groups and to preserve the common heritage, were promulgated at the level of Voivodship Police Headquarters. The related tasks are coordinated by the Human Rights Plenipotentiaries of Voivodship Police Commanders.

The regulations in force entitle the Border Guard to identify, prevent and detect crimes and misdemeanors and prosecute their perpetrators. This applies to crimes and misdemeanors connected with the crossing of the state border and the trans-frontier transport of goods, including objects referred to in the regulations on the protection of monuments. In connection with the above, the Border Guard has competencies connected with monuments, but only relating to their illegal exportation.

The Border Guard participates in programs that have been selected as relating to the protection of minority monuments, including the *Government Program of Restricting Crime and Anti-Social Behavior “Safer Together” (for the years 2007-2015)* – involving the protection of wooden historical church buildings and art objects inside them from destruction, theft and illegal exportation abroad. The participation of Border Guard officers in the above undertakings is restricted by their statutory competencies and has cognitive character, aimed at boosting their knowledge and preventive skills concerning the antiques market, architecture etc. Officers also receive information on the protection of monuments in the course of specialist training.

Implementing the provisions of *the law on the protection of and care for monuments* – and thus protecting monuments from illegal trafficking - the Border Guard does not distinguish between cultural goods belonging to minorities and other owners. A historical object being exported from the country without the fulfillment of the formal requirements will be intercepted and subjected to verification, which may lead to legal steps against the person involved.

## **Recommendation 12**

### **a) Take further steps in respect of Roma education, housing, health and employment.**

The ongoing implementation of the *Program for the benefit of the Roma community in Poland* includes comprehensive educational undertakings (granted priority status), efforts to improve living conditions (including housing), measures in the security and cultural spheres, promotion of knowledge about the Roma community and civic education projects for the Roma. Furthermore, a call for proposals was announced on 9 October 2008 for financing of projects benefiting the Roma community, with financing out of the European Social Fund for the years 2007-2013, covered by the “Roma component” of the Human Capital Operational Program (Action Item 1.3.1). The implementation of the first projects financed under “the Roma component” began in December 2008. It is envisioned that these activities will supplement and diversify undertakings conducted in the framework of the Program.

### **b) Consult Roma in the planning and implementation of the activities of the National Program. Allocate adequate funds for its implementation.**

Consultations and a broad exchange of information concerning undertakings by the Government administration (prominently including activities in the framework of the *Program for the benefit of the Roma community*) are conducted in the framework of routine contacts of the MIA Department for Religious Denominations and National and Ethnic Minorities with representatives of the Roma community in Poland, and within the framework of the Joint Commission of the Government and National and Ethnic Minorities. The Commission was launched in September 2005 and has continued the work of the Team for National Minority Affairs. Moreover, a Team for Roma Affairs has been established in the framework of the Joint Commission (it includes two Commission members representing the Roma minority and 20 persons representing Roma organizations, selected by the Commission members). The first meeting of the Team for Roma Affairs in the framework of the Joint Commission took place in June 2008.

The financing of the Program was maintained in 2008, as planned, at the level of 10 million PLN. An additional allocation of funds in 2008 under “the Roma component” of the Human Capital Operational amounted to some 7 million PLN.

**c) The remaining separate classes for Roma pupils must be replaced with integrated classes. Development and adequate funding of pre-school education, equipped with language training facilities and school assistants.**

In line with the tenets of the *Program for the benefit of the Roma community in Poland*, educational tasks were assigned priority status. The broad measures undertaken in this sphere include the employment of some 100 Roma assistants and 100 auxiliary teachers, financing of the participation of Roma children in pre-school education and their attendance to day-care rooms, summer and winter rest, organization of compensatory and supplementary classes, purchase of teaching aids and textbooks, implementation of a scholarship program for gifted Roma pupils and students. The first primer in the Roma language was prepared and published in 2007, with *Program* financing.

Moreover, the Minister of the Interior and Administration instructed the relevant voivodes (province heads) to induce the authorities operating schools with “Roma classes” to dissolve such classes and ensure the children’s full integration. In the school year 2008/2009 three schools<sup>3</sup> (primary schools in Elk, Maszkowice and Nowy Sącz) had 6 separate classes for Roma pupils. The classes provide education for Roma children and youth who – due to their age – should be in more advanced forms, and those whose educational requirements have been lowered, as well as educationally neglected children, who are repeating forms due to a lack of progress and low school attendance.

Guidelines concerning the gradual phasing out of Roma classes were formulated on 17 November 2008 during a conference in Krakow, organized by the Ministry of Interior and Administration. Since the reasons for the functioning of Roma classes vary widely, it is planned that individual strategies will be elaborated for each school to facilitate the transfer of Roma pupils into the integrated schooling system. It is envisaged that in the 2010/2011 school year all Roma children will attend integrated classes, thanks to the work of Roma education assistants and auxiliary teachers, as well as other undertakings implemented in the framework of the *Program for the benefit of the Roma community* (activity of community day-care centers, provision of pre-school education and participation of Roma pupils in compensatory classes). Furthermore, Roma organizations are encouraged to be more active in explaining to Roma families the need for regular school attendance, particularly in localities where Roma pupils, due to truancy, are ungraded or do not get promotion to the next form.

---

<sup>3</sup> In 2007 there were 10 such schools – data indicated in the program of implementation of the recommendations formulated by the Council of Europe Commissioner for Human Rights, point 22.

*Program* funds are also used to support projects designed to boost the participation of Roma children in pre-school education.

In order to systematize the spelling and grammar of the Roma language dialects used in Poland, in May 2008 a language working group was established, in collaboration with the Ministry of National Education. The group has the task of conducting preparation for the introduction in the near future of a core curriculum for teaching the Roma language in schools.

### **Recommendation 13**

#### **a) Evaluate the functioning of the restraining order regime under the new Act on countering domestic violence.**

The Act of 29 July 2005 *on countering domestic violence* (Journal of Laws No.180, item 1493) specifies tasks in the sphere of countering domestic violence and the principles of procedure relating to the victims and perpetrators of violence. As concerns the problem of isolating perpetrators from victims, particular attention should be paid on the provisions of article 13 and 14 of the Act.

Under article 13 of the Act, the court - when it conditionally discontinues penal proceedings against the perpetrator of a crime with the use of violence or punishable threat against a family member, or suspends the performance of the penalty for such a crime - may impose the obligation specified in article 72 § 1 point 7a and 7b of the Penal Code 8 (refraining from contact with the victim, vacation of premises occupied jointly with the victim), elaborating the permitted mode of contact of the perpetrator with the victim or restraining the perpetrator from approaching the victim in specific circumstances.

Statistics for 2007 show that courts imposed restraining orders in 66 cases when conditionally discontinuing penal proceedings, in 437 cases – when conditionally suspending the performance of penalties, and in 181 cases ordered perpetrators to vacate premises jointly occupied with victims. However, no statistics are available on the above measures in cases against the perpetrators of domestic violence.

These measures may also be imposed against paroled convicts. Statistics for 2007 show that penitentiary courts imposed restraining orders on such 1141 convicts.

Thus, when passing judgment, courts apply provisions of the Act. It should be also noted that during their period of parole, convicts are supervised by court probation officers.

Under statutory delegation contained in article 176 of the Penal Executive Code, the Minister of Justice issued on 7 June 2002 a regulation on the rights and duties of supervising entities and supervision procedures (Journal of Laws No.91, item 812). Pursuant to its § 3, a court probation officer, upon assuming supervision duties, should instruct the convict about his/her rights and obligations during the period of parole and supervision, and discuss their implementation.

In §12 of the Regulation of June 12 2003 on *the detailed performance of the rights and duties of court probation officers* (Journal of Laws No.112, item 1064), the Minister of Justice detailed the mode of supervising convicts during parole, which should ensure effective exacting of their duties.

Another important instrument that has a role in countering domestic violence is a preventive measure called “conditional police supervision”, elaborated in article 14 of the Act on countering domestic violence.

Under its paragraph 1, if existent grounds justify the application of pre-trial detention against a person accused of a crime under article 13 (i.e. crime perpetrated with the use of violence or punishable threat against a family member), the court – instead of pre-trial detention – may apply police supervision, on condition that the accused vacates premises jointly occupied with the victim, within a deadline specified by the court. Under paragraph 2, in the event of vacating the premises, as referred to in paragraph 1, the restrictions envisioned under article 275 § 2 Code of Penal Proceedings may involve a ban on contacting the victim in a specified manner.

Thus, police supervision is a facultative measure that may be applied by the court against an accused person exclusively when the grounds for the application of pre-trial detention occurred.

At the same time, under article 257 § 1 of the Code of Penal Proceedings, pre-trial detention is not applied when another preventive measure is deemed sufficient.

The institution of conditional police supervision, elaborated in article 14 of the Act on countering domestic violence, is applied sporadically by courts. No statistics are available on its application.

In 2007, courts, when sentencing perpetrators of crimes under article 207 of the Penal Code (physical or mental mistreatment of a person close to the perpetrator or dependent on him/her) to conditionally suspended sentences of deprivation of freedom, frequently imposed against the convicts various probational obligations specified in article 71 § 1 of the Penal Code, resulting in the isolation of the perpetrators from the victims:

- article 71 § 1 point 7 of the PC – refraining from staying in specified places – 92 cases;
- article 72 § 1 point 7a of the PC – refraining from contacting the victims or other persons in a specified way – 253 cases;
- article 72 § 1 point 7b of the PC – obligation of the perpetrator to vacate premises jointly occupied with the victim – 181 cases;
- article 72 § 1 8 of the PC – obligation of the perpetrator to other specified conduct during parole, if this might prevent returning to a crime – 2320 cases.

The application of the above provisions of the Act of July 29 2005 on countering domestic violence is not yet frequent in court practice, similarly to the imposition by courts of the obligations specified in article 72 § 1 points 7a and 7b of the Penal Code, since the regulations in question came into force relatively recently (on 21 November 2005). The rare application of article 14 of the Act of 29 July 2005 is also connected with the dispersal of the various regulations allowing the use of specific measures designed to protect victims. The situation would be solved by transferring the institution of conditional police supervision to the catalog of preventive measures contained in the Code of Penal Proceedings.

Also, during the stage of preparatory proceedings, prosecutors – under article 275 § 2 of the Code of Penal Proceedings – may supplement imposed police supervision with other restrictions on the suspect, essential for the execution of the supervision, including a ban on contacting the victim. Supervision is applied upon the occurrence of the general grounds (article 249 of the CPP) and at least one specific ground (article 258 of the CPP) for the application of the preventive measure, with simultaneous absence of the need for pre-trial detention (article 257 § 1 of the PC *a contrario*).

Prosecution data of 2007 indicate that police supervision, conditional on the vacation of premises jointly occupied with the victim, was applied against 120 persons suspected on crimes with the use of violence or punishable threat against family members. Police supervision combined with a ban on contacting victims in a specified way was imposed against 281 persons suspected of such crimes.

Prosecution statistics of 2007 also indicate that:

- 1) 2097 motions for pre-trial detention of persons suspected of the above crimes were submitted to courts and 1924 were approved,
- 2) 17217 persons were accused of crimes against family members with the use of violence or punishable threat;
- 3) Prosecutors applied for bans specified in article 41a § 1 and 2 of the PC against 62 persons accused of the above crimes;
- 4) prosecutors applied for the imposition of the obligations specified in article 72 § 1 points 5,6,7, 7a, 7b of the PC (including under the procedures of article 335 § 1 of the CPP) against 7437 persons accused of the above crimes;
- 5) prosecutors, when applying for conditional suspension of penal proceedings simultaneously requested for the imposition of the obligation specified in article 67 § 3 of the PC against 147 persons accused of the above crimes;
- 6) 30 motions were submitted for the isolation of perpetrators of domestic violence from their victims, pursuant to article 74 § 2 of the PC, in connection with article 72 § 1 points 7, 7a, /b and 8 of the PC.

The infrequent application of article 14 of the *Act on countering domestic violence* may be linked to the absence of the regulation in the Code of Penal Proceedings, which should contain all preventive measures used by law enforcement and judicial organs.

If conditional police supervision is to become an effective instrument protecting persons close to the perpetrator, the Code of Penal Proceedings needs to be amended so that the catalog of preventive measures includes conditional police supervision. Its application should not be in the exclusive competency of courts; prosecutors should also be empowered to use conditional supervision against suspects in the course of preparatory proceedings.

At present, only courts are authorized to apply pre-trial detention, while other, non-isolative preventive measures, including ordinary police supervision, may be applied both by courts and prosecutors. Thus, consideration should be given to a formula under which a prosecutor could also impose conditional supervision, combined with obligating the perpetrator to vacate jointly used premises. It is the prosecutor, responsible for the first phase of penal proceedings, who has earlier contact with the victim and the perpetrator, than the court. In conjunction with the prerogative of the Police to detain the perpetrator of domestic violence for 48 hours, the prosecutor would be able to take earlier measures to separate the suspect from the victim.

A restraining order may involve, in addition to a ban on personal contacts, also a ban on correspondence addressed to the victim, a ban on sending e-mails, phoning the victim etc.

In connection with the above, the Ministry of Justice has prepared a draft law amending the Penal Code, the Code of Penal Proceedings, the Penal Executive Code, the Penal Fiscal Code and certain other laws. The draft is currently undergoing legislative works in the Sejm of the Republic of Poland (Sejm document no.1394), which amends article 275 of the Code of Penal Proceedings (Journal of Laws No.89, item 555, as amended), introducing the following changes:

a) § 2 is given the following wording:

*“§ 2. A person subjected to supervision is obligated to submit to the requirements contained in the decision of the court or the prosecutor. This obligation may consist in a ban on leaving a specified place of stay, reporting to the supervising organ at predetermined intervals, notification of that organ about intended departure and time of return, ban on contacting the victim or other persons, ban on staying in specified places and other restrictions on freedom, necessary for performing the supervision”.*

b) § 3-5 are added after § 2, with the following wording:

*“§ 3. If premises exist for the pre-trial detention of a person accused of a crime committed with the use of violence or punishable threat against a close person or another person residing together with the perpetrator, supervision may be applied instead of pre-trial detention, on condition that the accused vacates the premises occupied jointly with the victim within a stipulated period of time and specifies his place of stay.*

*§ 4. A person subjected to police supervision is obligated to report at a stipulated organizational unit of the Police with an identity document, to carry out instructions aimed at documenting the course of the supervision, and to provide information necessary to determine whether he/she fulfills the requirements imposed by the decision of the court or prosecutor.*

*§ 5. If a person subjected to supervision fails to fulfill the requirements stipulated in the decision, the supervising organ immediately notifies the court or prosecutor which had issued the decision.”*

The amended § 2 stipulates that the requirements contained in the decision on the use of supervision may include a ban on the perpetrator contacting the victim or other persons (e.g. witnesses who are not victims).

§ 3 supplements the Code of Penal Procedure with the institution of conditional supervision elaborated in article 14 of the Act of 29 July 2005 on countering domestic violence. It introduces the possibility – in instances where grounds exist for the application of pre-trial detention – of replacing pre-trial detention with conditional supervision, dependant on the accused vacating premises jointly occupied with the victim and specifying his place of stay.

This institution will find application exclusively in the case of crimes committed with the use of violence or punishable threat against person close to the perpetrator or another person residing together with the perpetrator, in instances when the specific reason for the application of pre-trial detention is the threat of chicanery (article 258 § 1 points 2 of the CPP) and also in certain instances of the premise elaborated in article 258 § 3 of the CPP (threat of the perpetrator committing another crime against the life or health of the victim). Conditional supervision is meant to serve as a *sui generis* isolation measure, functionally resembling pre-trial detention, the difference being that it does not have the role of separating the suspect from other persons *in gremio*, but only from a specific person – the victim.

### Implementation of the National Program on Countering Domestic Violence

On 25 September 2006 the Council of Ministers adopted a resolution introducing the *National Program on Countering Domestic Violence* (pursuant to article 10 of the Act of July 29 2005 on countering domestic violence (Journal of Laws No. 180 item 1493), implemented in the years 2006-2016.

The countering of domestic violence, as an important task, had been implemented in the past both at the central level and by county and commune self-governments and NGOs. The implementation of the National Program is meant to coordinate the different undertakings and ensure an inter-disciplinary approach to countering domestic violence.

The monitoring of the implementation of the National Program, designed to ensure proper fulfillment of the respective tasks, has been assigned to the Inter-Ministry Team for Monitoring the Implementation of the National Program on Countering Domestic Violence, appointed in 2007 by the Prime Minister.

The sum of 12,367,158 PLN was spent in 2007 on the implementation of the Program. The funds were used for:

- maintaining 33 specialist support centers for victims of domestic violence,
- correctional-educational programs for perpetrators,
- subsidizing of training projects,
- public campaign against domestic violence,
- diagnosing of domestic violence (TNS OBOP poll) and training for first-contact personnel.

The expenditure of 16,400,000 PLN on the Program was approved in 2008. The money was used to:

- maintain specialist victim-support centers
- establish and maintain 4 new victim-support centers

- correctional-educational programs for perpetrators
- training of first-contact personnel,
- diagnosis of mistreatment of children in Poland.

Specialist centers in Poland provide support to victims of domestic violence (women, children, men, seniors, disabled persons) and ensure their security. Monitoring of the facilities indicates that most of them operate in accordance with established standards. The centers assign priority to cooperation with the services and organizations tasked with countering domestic violence in a given district.

Each year, a higher number of perpetrators participates in correctional-educational programs (in 2007 the participants numbered 2922 perpetrators of domestic violence, including 2515 men and 407 women, which is double the number in 2006).

The dissemination of knowledge in local communities about the correctional-educational programs has stimulated greater engagement of persons and institutions in cooperation against domestic violence. In 2007 training was provided to 4543 first-contact workers, who included staff members of social assistance centers, county family support centers, volunteer and professional probation officers, school pedagogues, nurses, midwives, members of commune alcohol abuse commissions, workers of socio-therapeutic community centers, staff of tutelary-educational facilities, staff of adoption centers, NGO workers, psychologists, members of the clergy, workers of town, county and commune offices tasked with coordinating efforts against domestic violence, radio journalists, coordinators of voivodship prevention programs, therapists from addiction-treatment centers. Most of the training had inter-disciplinary format.

A national campaign against domestic violence was conducted in 2007. Posters and leaflets provided the phone number and e-mail address of the Blue Line emergency service for victims of domestic violence. During the first half of 2008 the Ministry of Labor and Social Policy organized a national conference on “Domestic violence: react, don’t be indifferent”, with a nation-wide campaign against the mistreatment of children conducted in the latter part of the year.

A Monitoring Team was established in 2007. Its tasks include:

- introduction of uniform standards of assistance for victims, witnesses and perpetrators, collection of data on the extent of domestic violence and diagnosis of local needs,
- initiating and supporting efforts to counter domestic violence,

- assessment of the implementation of the Act of 29 July 2005 on countering of domestic violence and initiation of amendments to the relevant regulations,
- preparation of expert studies on selected aspects of domestic violence.

In connection with the implementation of the National Program on Countering Domestic Violence, on 2 June 2008 the National Prosecutor sent a letter to all Appellate Prosecutors, obligating the subordinated prosecutors to conduct deeper analyses of cases involving crimes with the use of violence or punishable threats against family members and to move for the application of the preventive measures envisaged in article 14 of the Act of 29 July 2005 on countering domestic violence and make broader use of the possibility of imposing the obligations specified in article 72 of the Penal Code.

In 2008 legislative works began on amendments to the Act on countering domestic violence and the National Program on Countering Domestic Violence. The amendments are designed to:

- develop prophylactic measures as a way of preventing domestic violence,
- stimulate changes in public awareness,
- ensure effective protection of the victims, particularly children,
- change the attitudes of perpetrators through participation in correctional-educational programs.

Late 2008 saw the conclusion of inter-ministry and social consultations. The draft act also regulates ways of isolating perpetrators of domestic violence from their victims.

#### **b) Make available shelters with adequate services for victims across the country.**

Across Poland, 1444 institutions operated by commune authorities and 329 institutions operated by county authorities provide assistance to victims of domestic violence.

The infrastructure of institutions helping victims of violence is reviewed once a year by voivodes (province heads).

#### Institutions assisting victims of domestic violence, operated by commune authorities

The overwhelming majority of the institutions operated by communes are consultation points (81%), followed by support centers (10%) and crisis intervention centers.

### Institutions assisting victims of domestic violence operated by district authorities (władze powiatowe)

The majority of the institutions operated by districts are crisis intervention centers (72%), followed by support centers (12%) and specialist support centers (10%).

Almost 40 thousand people received assistance from the district-operated institutions, including 35 thousand (88% of the total) who were helped by the crisis intervention centers. 3029 persons (8% of the total) received help at support centers.

Furthermore, 20 shelters for mothers with small children and for pregnant women, operated by, with a total of 605 beds, provided assistance to 701 persons, which meant that, on the average, each shelter helped 35 persons. The highest number, 251 persons (i.e. 36% of all persons using the shelters) were helped in Mazowieckie Voivodship, followed by Śląskie Voivodship, with 112 persons (16% of the total).

It is planned that during the implementation of tasks ensuing from the *National Program on Countering Domestic Violence in the years 2006-2016* the network of facilities providing multifaceted assistance to victims of domestic violence will be further developed. In 2006, 33 specialist centers providing aid to victims of domestic violence were established in Poland and another four were added in 2008. These facilities are financed out of the state budget and run by district self-governments. In 200, 7991 victims of domestic violence received help at specialist support centers.

### **Recommendation 14**

**a) Ensure that the provisions within the 2005 amendments to the Law on foreigners, which provides for victim protection, are fully implemented.**

A draft law of 16 February 2007 amending the law on social assistance was prepared in the framework of implementation of the National Program for Combating and Preventing Trafficking in Human Beings. The amended law came into force on 1 April 2007. It extended the system of social assistance to the victims of trafficking in human beings who are foreigners (pursuant to article 5.2 and 5.3 of the law on social assistance, and to aliens who have received residence visas under article 33.1.5 of the amended Law on foreigners or permission for limited stay, under article 53.1.15 of the same law.

In connection with the amended law which created a legal basis for granting help to victims in human trafficking by social assistance institutions, training was organized in the framework of the Program for social workers on the identification of the victims of human trafficking, crisis intervention and the principles of collaboration with other institutions. The training program included the following undertakings:

- on 19-21 November 2007 and 12-14 May 2008 employees of Voivodship Offices and Regional Social Assistance Centers attended training in Warsaw. Representatives of every voivodship took part in the courses, which had the primary objective of establishing a national network of voivodship consultants on support for victims of human trafficking. The trainees will be responsible for contacts and cooperation with social assistance units in their respective voivodship, and also with the Department for Social Assistance and Integration at the Ministry of Labor and Social Policy and other partners helping the victims of human trafficking, and for the exchange of information on the subject.
- on 16 June 2008 a training session on trafficking in children was organized in Warsaw for inspectors supervising tutorial-educational facilities; a lecture on trafficking in children was supplemented with workshops on the identification of victims and intervention. The undertaking was co-sponsored by the Family Benefits Department of the Ministry of Labor and Social Policy and Nobody's Children Foundation (Fundacja Dzieci Niczyje).

Furthermore, with reference to § 91 of the Memorandum, the Polish Government affirms that Government authorities have continued their cooperation with NGOs to ensure support for the victims of human trafficking.

Both the Central Team for Combating Trafficking in Human Beings, established at the level of the Central Police Headquarters, and voivodship coordinators on human trafficking regularly collaborate with NGOs to help the victims of human trafficking.

The Border Guard is also actively involved in the implementation of the National Program for Combating and Preventing Trafficking in Human Beings. Representatives of the Border Guard participate in the work of the working group created in the framework of the Team for Combating and Preventing Trafficking in Human Beings, established on the basis of the Regulation of the Prime Minister of 5 March 2004. The working group is a forum for ongoing cooperation and coordination of all undertakings ensuing from the National Program.

As concerns the recommendation on providing specialist training on human trafficking, Border Guard officers (coordinators for combating human

trafficking from Border Guard Units and the Central Border Guard Headquarters as well as lecturers from Border Guard training centers) took part in specialist workshops.

Furthermore, in the framework of the National Program, Border Guard officers took part in a number of undertakings concerning the exchange of knowledge, experience, best practices – both at the national level (annual National Conference on Trafficking in Human Beings, discussion organized by Warsaw University on the legal and ethical aspects of transplants in the context of trafficking in organs, as one element of human trafficking) and the international level (seminars, conferences, meetings of experts).

Border Guard officers also took part in meetings initiated by the Polish representative of the UNHRC, as part of a program designed to elaborate procedures and mechanisms for preventing and combating sexual violence and in a meeting of experts cooperating on the implementation in Poland of the *Specific EU Program for the Years 2007-2013 to prevent and combat violence against children, young people and women and to protect victims and groups at risk*.

In 2008 three experts from the Central Border Guard Headquarters and the Central Border Guard Training Center in Koszalin were appointed to coordinate cooperation with the Police and prepare joint training programs on human trafficking – in connection with the implementation by the Police of the *Police plan of action for the years 2008-2009 to combat trafficking in human beings*.

On 18 June 2008 a *Team for permanent monitoring and coordination of actions of the Border Guard to prevent and combat the crime of trafficking in human beings* was established at the Central Headquarters of the Border Guard, by decision of the Chief Commander of the Border Guard,. It is tasked, among others, with initiating training projects on preventing and combating human trafficking.

As part of works on the draft of the National Program for Combating and Preventing Trafficking in Human Beings for the Years 2009-2010, the Border Guard signaled the need for a number of training projects:

- didactical workshops on human trafficking for lecturers from Police schools and Border Guard training centers,
- workshops for Police and Border coordinators on human trafficking,
- international workshops for specialists concerned with preventing and combating human trafficking,
- creation of a system of training courses for Border Guard coordinators and officers from departments dealing with investigation, border protection and

foreigners affairs, with special reference to trafficking in children and forced labor: training of multipliers – to conduct training on human trafficking in Border Guard units.

The MIA's cooperation with NGOs aimed at providing support to victims of human trafficking is conducted in the framework of the *National Program for Combating and Preventing Trafficking in Human Beings*. The Ministry of the Interior and Administration signed an agreement with the *La Strada Foundation* for the implementation of the *Program of support of and protection for victims of trafficking in human beings*. The Border Guard, when it identifies victim of human trafficking who is a foreigner, gets assistance from the *La Strada Foundation* under the *Program*.

The Working Group in the framework of the Team for Combating and Preventing Trafficking in Human Beings includes the *La Strada Foundation*, *Caritas of the Warsaw Archdiocese*, the *Nobody's Children Foundation* and the *Itaka Center for Missing People*.

**b) Ratify the Council of Europe's Convention on Activities to Prevent Human Trafficking.**

The President of the Republic of Poland signed the Law of 25 April 2008 (Journal of Laws of 2008 No. 97, item 626) on the ratification of the Council of Europe's Convention on Activities to Prevent Human Trafficking, done at Warsaw on 16 May 2005; the Law, pursuant to article 1, authorizes the President to ratify the Convention. When the President ratifies the Convention, the Ministry of Foreign Affairs will convey the appropriate notification to the Council of Europe.

**Recommendation 15**

**a) Ensure that women falling within the categories foreseen by the Polish abortion law are allowed, in practice, to terminate their pregnancy without additional hindrance or reproach.**

**Create an appeal or review procedure whereby the decision of a doctor not to issue a certificate permitting an abortion be subject to review.**

The implementation of the provisions of the *Law 7 of January 1993 on family planning, protection of the human fetus and conditions of permissible termination of pregnancy* (Journal of Laws No. 17, item 78, as amended) touches on diverse and complex issues, including aspects of planned parenthood, guaranteeing by the State of conditions for responsible decisions concerning

procreation and the provision of comprehensive assistance to women who decide to have children, to women during pregnancy, birth and puerperium, and to the fetus during the stage of its development.

Particular emphasis in the implementation of the provisions of the law is placed on:

- 1) the right to respect for one's intimacy and personal dignity, when receiving medical services (particularly during hospital treatment);
- 2) the right to reliable information on the state of the patient's health, information on possible complications in instances of high-risk pregnancies;
- 3) the right to health benefits corresponding to current medical knowledge;
- 4) the right to express conscious consent to medical procedures;
- 5) the right of access to medical records (complaints addressed to the Bureau of Patients' Rights indicate that access to medical records is most frequently hindered in two cases: infant death and birth trauma).

As far as the question of termination of pregnancy without hindrance under Polish law and the women's right to lawful abortion is concerned, the legal regulation has been changed. In the past, a health care center in which all doctors had invoked the conscience clause with respect to carrying out abortions, had to conclude a contract with another clinic prepared to conduct such procedures, before it could conclude a contract with the National Health Fund for the provision of obstetrics and gynecological services. Thus, the invocation of the conscience clause obligated a doctor practicing his profession on the basis of an employment contract or service to indicate a realistic possibility of having the procedure performed in another clinic. The matter was regulated by the *regulation of the Minister of Health of 6 October 2005 concerning the general conditions of contracts for the provision of medical services* (Journal of Laws No. 81, item 484). It was issued on the basis of article 137.9 of the *law of 27 August 2004 on health care benefits financed out of public funds* (Journal of Laws No. 120, item 2135, as amended). The regulation currently in force does not contain provisions corresponding to paragraph 8.3 of the previous regulation, because that provision exceeded the statutory regulations in force. That was so, because pursuant to article 39 of the law of 5 December 1996 on the professions of physician and dentist, a physician may refrain from performing medical services incompatible with his/her conscience, subject to article 30, on condition that he/she indicates a realistic possibility of obtaining that service from another physician or other health care center and notes and justifies that fact in medical records. Moreover, a physician practicing his/her profession on the basis of an employment contract or service is obligated to notify his/her superior in advance of the fact. Article 39 of the law is thus addressed to physicians and not their employers, so it is in the interest of an employer to organize the provision of medical services in a way

that will guarantee the implementation of article 39. The conclusion of a contract with a sub-contractor is one way of implementing the provisions of article 39.

It should be further emphasized that the provisions of article 39 of the *law on the professions of physician and dentist* are absolute provisions and their implementation requires that the physician in question has to indicate another physician or clinic prepared to provide the service. Otherwise, the clinic may be charged with violation of patients' rights (under paragraph 5.3. of the above regulation). In consequence, such violation may lead to the clinic being fined (paragraph 29.1 of the above regulation) and even to the termination of the contract with the clinic (paragraph 39.1.5 of the above regulation). Full information on clinics providing specific services is also available from the National Health Fund. It is noteworthy that the text of the new regulation was subjected to broad social consultations, during which no observations were submitted on the issue in question.

After the rejection by the European Court of Human Rights of the Polish Government's appeal in the case of *Alicja Tysiąc against Poland*, the Ministry of Health, while executing the judgment, began works on a review procedure of doctors' decisions. The detailed, relevant provisions are contained in the *law on patients' rights and the Patients' Rights Spokesman* of 6 November 2008, adopted by Parliament and signed by the President of the Republic of Poland.

The law ensures the right to demand that a physician providing a medical service obtain the opinion of another physician or convene a meeting of physicians, and that a nurse (midwife) obtain the opinion of another nurse (midwife). The fact is noted in the patient's medical records.

Article 31 of the law ensures the right to submit an objection against the opinion or certificate issued by a physician, as elaborated in article 2.1 of *the law of December 5 1996 on the professions of physician and dentist* (Journal of laws of 2008 No. 136, item 857) if the opinion or certificate affects the rights or obligations of the patient under the law.

The change of the regulations is designed to give women or their legal representatives the right to submit objections against opinions or certificates in which a physician refuses to issue a certificate permitting abortion, in the instances elaborated in the currently binding law of 7 January 1993 *on family planning, protection of the human fetus and conditions of permissible abortion* (Journal of laws No. 17, item 78, as amended).

The objection, along with its state of reasons, is submitted to the Medical Commission attached to the Spokesman for Patients' Rights, through the Spokesman for Patients' Rights, within 30 days of the date of issuance of the physician's opinion or certificate. The Medical Commission, on the basis of medical records and, if needed, after examining the patient, issues its decision not later than within 30 days of the submission of the objection.

Furthermore, pursuant to the law, in the event of an infringement of the patient's rights, a court may grant the patient financial compensation under article 448 of the Civil Code.

**b) Undertake further activities aimed at providing effective sexual education in schools.**

Pursuant to the provisions of article 4.1 of the law of 7 January 1993 on *family planning, protection of the human fetus and the conditions of permissible abortion* (Journal of Laws No. 17, item 78, as amended), the minister competent in matters of education has ensured conditions in schools for the implementation of teaching programs concerning the sexual life of man, principles of informed and responsible parenthood, on the value of the family, on prenatal life and informed procreation. Classes in "education for life in the family" are conducted in all types of schools.

The program content of classes in "education for life in the family" has been elaborated in the core curriculum of general education (regulation of the Minister of National Education and Sport of 26 February 2002 *concerning the core curriculum of pre-school and general education in the different types of schools* (Journal of Laws No. 51, item 458, as amended). The program content of these classes includes family planning and modern means and methods of contraception, sexually transmitted diseases and methods of protection against them. The program content takes into account the provisions of the Program of Mental Health protection, the National Program for Preventing and Resolving Alcohol Problems, the National Program for Counteracting Drug Addiction, the National Program for Preventing HIV and Care for People Living with HIV and AIDS Patients, the Convention on the Rights of the Child.

Classes in *education for life in the family* are mandatory in all types of schools. The particulars of teaching this subject are elaborated in the regulation of the Minister of National Education and Sport of August 12 1999 *on the teaching in schools and the content of classes on the sexual life of man, the principles of informed and responsible parenthood, on the value of the family, life in the prenatal stage and informed procreation* (Journal of Laws No. 67, item 756, as amended).

Classes in “education for life in the family” are held in forms 5 and 6 of elementary schools, in middle schools and post-middle schools and consist of 14 hours (including 5 hours of separate classes for boys and girls). The classes in form 5 and 6 of elementary schools and in post-middle schools are conducted in the framework of classes at the disposal of the school principals, while in middle schools they constitute one of three separate modules of the subject social studies. Attendance is not mandatory and pupils are not graded. Decisions concerning the attendance of minor pupils are taken by their parents after acquainting themselves with the teaching program; pupils who are of age take the decision on their own. Attendance of these classes is not indicated on school diplomas, and the qualifications of the teachers conducting the classes are determined in line with general rules.

It is the school’s duty to convey full and accurate information, corresponding to the state of knowledge, free of prejudice and stereotypes. It is the teacher’s duty to adjust the content and methods of work to the age, psycho-social and emotional development of the pupils.

In 2007 changes were made in the Regulation of the Minister of National Education and Sport on 16 December 2004 concerning the data content of educational data bases, the scope of data identifying the entities keeping data bases, exchange of data between educational data bases and specimens of print-outs of collective compilations (Journal of Laws No. 277, item 2746, as amended) in order to ensure that the system of educational information included data on the number of pupils attending “education for life in the family” classes and the numbers of teachers qualified to conduct such classes. Annual compilation of data will facilitate the monitoring of the implementation of these classes.

The following table presents the situation as of 31 March 2008:

Type of school	Number of pupils attending classes	Total number of pupils	Percentage of those attending
Primary school	643461	844072	76.2%
Middle school	1115375	1444900	77.2%
Basic vocational school	104727	226092	46.3%
General secondary school	328743	704180	46.7%
Profiled secondary school	55809	107307	52.0%
Technical secondary school	236577	415537	56.9%

The qualifications of teachers conducting classes in “education for life in the family” are determined by the regulation of the Minister of National Education and Sport of 10 September 2002 concerning the required qualifications of teachers and instances of permitted employment of teachers who do not have a higher education or teacher training college diplomas (Journal of Laws No. 155, item 1288).

Classes in “education for life in the family” may be conducted by persons qualified to teach in the given type of school, who have university diplomas in family studies, or diplomas of post-graduate studies, or have taken qualifying courses compatible with the program content of the classes. Teachers who have completed qualifying courses in “education for life in the family” possess the qualifications to conduct the relevant classes in primary schools, middle schools and basic vocational schools. In the remaining types of schools, the classes may be conducted by teachers who have obtained their qualifications in the course of university family studies, or in the course of post-graduate studies compatible with the program content of the classes.

## **Recommendation 16**

### **a) Improve access to information, legal assistance and education for those asylum seekers residing in reception centers.**

Work is in progress at the Ministry of Justice on a draft *law on access to free legal assistance*. The provisions of the law will also cover foreigners applying for international protection in Poland, since the law has the aim of implementing, among others, article 15 of Council Directive 2005/85/EC of 1 December 2005 on minimum standards in member States for granting and withdrawing refugee status.

Independently of the above, the Office for Foreigners pursues, in collaboration with NGOs, regular activity to ensure that foreigners in reception centers for persons applying for refugee status in Poland have access to legal information and assistance. They are informed of their rights in their native language or another language they understand.

In order to provide assistance (including legal assistance) to foreigners in reception centers for persons applying for refugee status who are victims of sexual violence or gender-related violence, the Office for Foreigners, the Central Police Headquarters and the Office of the UN High Commissioner for Refugee Affairs in Poland signed on 25 March 2008 the “Agreement on the standard

operating procedures with regard to recognition, counteracting and responding to cases of sexual-based violence or gender-related violence against foreigners staying in reception centers for asylum seekers”.

In order to monitor and evaluate the implementation of the Agreement, an Evaluation Group was established which, in addition to the signatories, also includes representatives of the Ministry of Interior and Administration, the *La Strada Foundation* and the *Halina Nieć Legal Assistance Center* (which also grants free legal assistance to other foreigners applying for international protection in Poland).

Every person applying for refugee status has the possibility of learning Polish at special courses. Minor foreigners staying in the reception centers are subject to mandatory schooling, on the same principles as their Polish counterparts.

**b) Ensure that those granted a permit to tolerated stay benefit from measures leading to a proper and effective integration into Polish society.**

The law of March 18 2008 on *the amendment of the law on granting protection to foreigners on the territory of the Republic of Poland and of certain other laws* (Journal of Laws No. 70, item 416) amended *the law of March 12 2004 on social assistance* (Journal of laws No. 64, item 593, as amended). Pursuant to the amended regulations, a foreigner granted refugee status or supplementary protection in the Republic of Poland, is granted assistance to support his/her process of integration.

Thus, under Polish law, the system of integration covers only recognized refugees or persons granted supplementary protection, though other aliens are covered by annual programs and the multi-year program of the European Fund for Third-Country Nationals.

Those who have residence in Poland or permits for tolerated stay are entitled to basic social benefits: shelter, food, essential clothing and financial support.

Furthermore, with reference to the recommendations in § 110 of the Memorandum, in which the Commissioner raises the need for care and protection of unaccompanied minors who fall outside the system of applying for refugee status, the Government wishes to advise that:

- the Border Guard devotes special attention to minors, regardless of whether they are traveling accompanied or alone. Minors crossing the external border are subject to the same clearance procedures when entering or leaving the country as adults, in line with Regulation Nr 562/2006 of the European Parliament and

Council of 15 March 2006, which laid down the Community code on rules governing the movement of persons across borders (Schengen border code);

- in the case of minors traveling unaccompanied, the Border Guards makes certain, by means of a minute control of travel documents and supplementary documents, that the minors in question are not leaving the territory of the country against the will of their parents or guardians;
- an unaccompanied minor foreigner at the border, if he/she does not meet the requirements for entry into the Republic of Poland, or inside the country, during a check of the legality of an foreigner's stay in the country, if it is determined that he/she is staying in the country illegally, will be detained by officers of the Border Guard. Every minor, after detention, is instructed in a language he/she can understand about his/her rights;
- the Border Guard unit that detains a minor on the territory of Poland who does not have a legal representative immediately petitions the territorially appropriate court to place the minor in a tutorial-educational facility and to appoint a legal guardian to represent the minor in the course of expulsion proceedings;
- a decision to expel a minor foreigner to his/her country of origin is implemented only when the minor is ensured the care of his/her parents, or other adults or tutorial institutions in that country, in accordance with the standards specified in the Convention on the Rights of the Child. A minor is expelled only under the care of a statutory representative or is conveyed to a representative of the competent authorities of the state to which the expulsion is taking place. Minor foreigners placed in guarded centers have access to information in the form of leaflets in several languages with the addresses and telephone numbers of foundations and NGOs that provide legal assistance to aliens. The Border Guard cooperates with NGOs, mainly the *Halina Nieć Legal Assistance Center* in the organization of training courses that focus on the situation of unaccompanied minor aliens in the context of migration and refugee movements;
- minor foreigners who apply for refugee status (regardless of where their presence is determined) are placed Children's Home No. 9 in Warsaw. The appropriate organs of the Border Guard escort the minor to the Home and petition the Warsaw District Court, Department for Family and Minor Affairs, to appoint a legal guardian to represent the minor in the proceedings for granting refugee status and to place the minor in a tutorial-educational facility. Unaccompanied minors, applying for refugee status, who crossed the Polish border together with a relative (who is not a legal guardian), are directed to a reception center for aliens or to their declared place of stay/residence in the Republic of Poland.

Furthermore, in 2008, the Chief Commander of the Border Guard established a network of human rights plenipotentiaries (Plenipotentiary of the Chief Commander of the BG and Plenipotentiaries of BG unit commanders), whose tasks include the monitoring of the above issues.

### **Recommendation 17**

#### **a) Ratify the revised European Social Charter and the Collective Complaints Protocol.**

Poland does not plan to ratify the European Social Charter or the Collective Complaints Protocol in the nearest future. The potential effects of ratification are the subject of ongoing analyses.

#### **b) Sign and ratify Protocol No. 12 to the European Convention on Human Rights.**

Poland is still analyzing the possibility of signing and ratifying Protocol No. 12.

### **Recommendation 18**

#### **Refrain from resorting to criminal law measures for the offence of insult.**

The Penal Law Codification Commission has included in its agenda the issue of deleting article 212 of the Penal Code, pursuant to the Commissioner's suggestion on refraining from the application of criminal law measures for the offence of insult. The Commission prepared a *draft law on amendment of the Penal Code, the Code of Penal procedure, the Penal Executive Code, the Fiscal Penal Code and certain other laws*, which eradicates the penalty of deprivation of freedom for the offence under article 212 of the PC. In accordance with the draft, insult will remain an offence that carries the penalty of a fine or restriction of freedom. Moreover, the depenalization of a qualified type of this offence, consisting in the use of the mass media by the perpetrator, is envisaged,

## **Recommendation 19**

**Ensure that the lustration procedures comply with all the guarantees of a state based on the rule of law and respect for human rights. For this purpose, the Commissioner referred the Polish authorities to**

- the relevant case law of the European Court of Human Rights,**
- the Council of Europe's "Guidelines to ensure lustration laws and similar administrative measures comply with the requirements of a state based on the rule of law";**

The Government realizes the need to adapt existent law used in lustration proceedings to the requirements defined in the judgments of the European Court of Human Rights against Poland. The matter of implementation by Poland of the said judgments of the Court (also with regard to general measures) has not yet been discussed by the Council of Europe Meeting of the Ministers' Deputies and the Government hopes that cooperation with that body will make it possible to elaborate the best way of ensuring that persons taking part in lustration proceedings enjoy full due process protection, essential in the light of the principle of the rule of law.