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HUMAN RIGHTS COMMITTEE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Fifth periodic report

POLAND*

[13 January 2004]

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PART I

1. The previous – fourth – periodical report of the Republic of Poland on the implementation of the International Covenant on Civil and Political Rights (CCPR/C/95/Add8) covered the period from August 1991 until December 1994 and was supplemented during the presentation of the report before the Committee with information related to the period until July 1999 (CCPR/C/SR.1764-1765).

2. The present – fifth – report, which the Government of the Republic of Poland submits pursuant to article 40 paragraph 1, letter b) of *The International Covenant on Civil and Political Rights*, covers the period from January 1995 until September 2003, with special emphasis on the period from August 1999. The length of the report stems from the length of the period under consideration, from the introduction of a number of changes in the legislature, from the complexity of issues covered by particular articles, and from the willingness of the Polish Government to provide the most comprehensive information and data not only on the new legal regulations, but also on their practical implementation.

3. The implementation of *the International Covenant on Civil and Political Rights* in the period under consideration was characterised by a further development of legal and institutional guarantees of civil rights and freedoms. With a view to creating conditions conducive to an efficient functioning of the State, four key reforms were implemented: a reform of administration (a new administrative division of the country was introduced; tripartite structures of local government were introduced and strengthened through the decentralization of competences and public finances) and reforms of the system of education, health protection and social insurance (detailed information is included in the *Core Document*). A number of changes were introduced into the legislature with a view to bringing it in line with the requirements of the European Union.

New Constitution

4. On 2 April 1997 the Polish Parliament passed the *Constitution of the Republic of Poland*, which came into force on 17 October 1997.

The new Constitution guarantees rights and freedoms of all citizens and significantly strengthens mechanisms safeguarding their protection. The new Constitution regulates in a comprehensive manner the question of the sources of law and clearly specifies the status of international law – including the Covenant – within the framework of the legal system. Pursuant to article 87 paragraph 1, to the sources of universally binding law of the Republic of Poland belong, *inter alia*, ratified international agreements. Under article 91 paragraph 1, a ratified international agreement upon its publication in the Journal of Laws of the Republic of Poland becomes a part of the domestic legal order and is applied directly, unless its application is dependent on the enactment of a law. Within the constitutional legal order, international agreements are placed under the Constitution, with which they should comply, while their hierarchy vis-à-vis other acts depends on their mode of ratification. International agreements ratified by the President upon a prior consent of the Parliament (the Sejm and the Senate) expressed by a law have precedence over a law, provided this law cannot be reconciled with the provisions of the agreement. Pursuant to article 241 of the Constitution, international agreements ratified by the Republic of Poland pursuant to the constitutional provisions in force at the time of

their ratification and published in the Journal of Laws are considered as agreements ratified upon a prior consent expressed by a law and are subject to the provisions of article 91 of the Constitution if it follows from the content of the international agreements that they concern, *inter alia*, civil freedoms, rights or obligations. The Covenant is such an international agreement, which means that it may be applied directly and that it has precedence over laws.

Provisions of the Covenant in the light of constitutional principles

5. The Constitution guarantees the rights stipulated in the Covenant – there is full conformity between the provisions of the Covenant and the principles written into the Constitution. Chapter II of the Constitution delineates general principles to which civil rights and freedoms are subjected.

Article 5 of the Constitution imposes on the State (public authority) the duty to guarantee the freedoms of man and citizen and the security of citizens. Norms which co-define this duty are included in a number of other provisions of the Constitution, especially in article 2, which stipulates that the Republic of Poland is a democratic state of law which implements the principles of social justice. The provision imposes, e.g. a necessity of constitutional regulations of the fundamental rights, adoption of an adequate set of their institutional guarantees, respect for the internal integrity of the law, i.e. transparency, consistency and a prohibition of the retroactivity of the law. Another principle concerning the freedoms and rights of man and citizen is the principle of the civil society (articles 11-12), which should be understood as a recognition and guarantee by the State of the freedom and possibility of participation of the citizen in the formulation of the policy of the State, as well as his creative and unrestrained impact on all forms of social life, whose examples are enumerated in the Constitution: political parties, trade unions, foundations, and other voluntary associations of citizens. Very important provisions related to the sphere of economic principles are contained in articles 20-24. They lift limitations as to the disposal of one's property and make equal the rights of the state and the private sector. They strengthen the principle of the protection of private property, the right to inheritance and freedom of economic activity. Limitations in those spheres are of an exceptional character – they must be dictated by the good and valid interest of the society and must be introduced exclusively by means of a law. In article 24, the State takes upon itself the duty to protect work and to exercise supervision over the conditions of work. Article 32 stipulates that all people are equal before the law, that all have the right to equal treatment by public authorities, and that no one shall be discriminated against in political, social or economic life for any reason whatsoever.

6. The Constitution guarantees to everyone whose constitutional freedoms or rights have been infringed upon the right to lodge a complaint with the Constitutional Tribunal as to the compliance with the Constitution of a law or another normative act on whose basis a court or an organ of public administration made a final decision about their freedoms or rights or about their obligations as stipulated in the Constitution (so-called constitutional complaint).

7. The Constitution likewise grants the right to introduce legislation to a group of at least 100,000 citizens having the right to vote in elections to the Sejm; this right is granted also to Deputies, Senators, the President of the Republic, and the Council of Ministers.

8. On 1 September 1998 entered into force the Penal Code, the Code of Criminal Procedure and the Executive Penal Code, passed on 6 June 1997. The new Penal Code introduced penal liability for crimes against humanity and war crimes as well as abolished the death penalty. The new Code of Criminal Procedure significantly strengthened the guarantees of the defendant, while its amendment that entered into force as of 1 July 2003 introduced a number of solutions aiming at a significant streamlining and simplification of criminal proceedings (discussed in the detailed part of the report). The new Executive Penal Code strengthened procedures aiming at guaranteeing the rights of prisoners.

9. Work is currently under way on the implementation into the Penal Code and the Code of Criminal Procedure of the *Rome Statute of the International Criminal Court*, which entered into force with respect to Poland on 1 July 2002 (Journal of Laws of 2003 no. 78 items 708 and 709).

International obligations of the Republic of Poland in the area of human rights in the period under consideration

10. (a) Pursuant to the Resolution of the Council of Ministers of 29 September 1998, the Government of the Republic of Poland recognised the competence of the Committee for the Elimination of Racial Discrimination to receive and consider communications from individuals or groups of individuals subject to the jurisdiction of the Republic of Poland, claiming to be victims of an infringement by Poland of any of the rights set out in the Convention (Journal of Laws of 1999 no. 61 item 660). The above declaration has been in force as of 2 December 1998.

(b) On 1 November 1998 entered into force with respect to Poland *Protocol 11 to the Convention for the Protection of* Human *Rights and Fundamental Freedoms*, concerning the transformation of the control mechanism established by the Convention, drawn up in Strasbourg on 11 May 1994 (Journal of Laws of 1998 no. 147 item 962).

(c) On 25 July 1997 entered into force with respect to Poland the *European Social Charter* adopted in Turin on 18 October 1961.

(d) Pursuant to an Act of the President of the Republic of Poland of 30 April 1997, the Republic of Poland withdrew its reservations concerning the exclusion of the obligatory jurisdiction of the International Court of Justice and obligatory arbitration, which reservations were submitted by Poland upon the ratification of or accession to some international agreements (Journal of Laws of 1998 no. 33 item 178).

(e) Poland ratified an amendment to article 8 of the *International Convention on the Elimination of All Forms of Racial Discrimination* and on 23 August 2002 submitted ratification documents. The amendment is still not binding, as it has not been ratified by a sufficient number of states.

(f) On 1 November 2000 entered into force with respect to the Republic of Poland *Protocol no. 6 to the European Convention on Human Rights* ratified on 30 October 2000.

(g) On 4 November 2002 the President ratified *Protocol no. 7 to the European Convention on Human Rights*. The Protocol entered into force with respect to Poland on 1 March 2003.

(h) During the session of the Committee on Human Rights in 2001 Poland issued a standing invitation for all human rights mechanisms appointed by the Commission (including special rapporteurs and independent experts) to visit Poland.

(i) On 21 March 2000 Poland signed *II Optional Protocol to the International Covenant on Civil and Political Rights* on the abolition of the death penalty.

(j) On 13 February 2002 Poland signed two *Additional Protocols to the Convention on the Rights of the Child* on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography (the ratification process is under way).

(k) On 9 January 2003 the Sejm passed the law authorizing the President to ratify *The Optional Protocol to the Convention of the Elimination of All Forms of Discrimination Against Women*. Poland will submit ratification documents in the near future.

(l) On 1 July 2002 entered into force with respect to Poland the *Statute of the International Criminal Court* (Journal of Laws of 2003 no. 78 item 708 and 709).

(m) Proceedings are underway aiming at the signature and ratifying of the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.*

(n) On 10 November 2000 the President ratified the *Framework Convention for the Protection of National Minorities*. Poland became a party to the Convention on 1 April 2001 (Journal of Laws of 2002 no. 22 item 209).

(o) On 12 May 2003 the Republic of Poland signed *The European Charter of Regional or Minority Languages* drawn up in Strasbourg on 5 November 1992.

(p) On 21 July 2003 the Republic of Poland signed the *Additional Protocol to the Convention of the Council of Europe on Cyber–crime*, *concerning criminalization of acts of a racist and xenophobic nature committed through computer systems*.

(q) In the period 5-7 July 2000 Warsaw hosted a regional seminar of experts on combating racism, racial discrimination and related intolerance in the countries of Central and Eastern Europe. The seminar was one of the series of conferences and preparatory meetings before the World Conference on Racism (Durban, 31 August – 7 September 2001) and was organised in cooperation with the Office of the UN High Commissioner for Human Rights (OHCHR).

(r) The OSCE Office of Democratic Institutions and Human Rights (ODIHR) has its headquarters in Warsaw; as a result, Poland is visited annually by delegations of Member States of the Organisation for the Security and Cooperation in Europe, representatives of international organisations and non-governmental organisations. The meetings aim at a revision of obligations related to the observance of human rights, the rule of law and principles of democracy by all the OSCE member states.

(s) Poland participated in the World Conference on Racism, Racial Discrimination, Xenophobia and Related Intolerance held in Durban in the period 31 August – 7 September 2001. The Office of the Government Plenipotentiary for an Equal Status of Women and Men is responsible for the implementation of the resolutions of the above Conference (see information about article 26).

11. From among 12 principal international instruments for the protection of human rights (*Status of ratifications of the principal international human rights treaties as of December 2002*), Poland is not a State Party to three of them:

1. Second Additional Protocol to the Covenant on Civil and Political Rights on the abolition of the death penalty (signed by Poland on 21 March 2000; a decision about the initiation of ratification procedure is being considered);

2. Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women (ratification procedure in progress);

3. International Convention on the Protection of the Rights of Migrant Workers and Members of Their Families.

PART II

Article 1 - Peoples' right of self-determination

12. In accordance with the principle of sovereignty laid out in article 4 of the Constitution of the Republic of Poland, the supreme power in the Republic of Poland is vested in the Nation, who may exercise such power "directly or through their representatives". The Constitution grants the right to introduce legislation to a group of at least 100,000 citizens having the right to vote in elections to the Sejm (article 118 paragraph 2) as well as provides for a confirmatory referendum if a draft amendment to the Constitution (article 235) relates to the provisions of Chapters I (*The Republic* – regulating fundamental principles of the political system), II (*The Freedoms, Rights, and Obligations of Persons and Citizens*) or XII (*Amending the Constitution*).

The citizens may also influence the policy of the State by democratic means through political parties, whose freedom of creation and functioning is enshrined in article 11 of the Constitution.

13. In the period under consideration, Poland based its relations with other states and nations on the principle of peaceful coexistence and economic, cultural and scientific cooperation. In the numerous initiatives undertaken by Poland on the international arena, as well as in the proclaimed and implemented principles of foreign policy, Poland is led by the will to respect sovereignty, inviolability of borders, integrity, non-interference in internal affairs of other states, respect for human rights and fundamental freedoms, and the right of a nation to self-determination.

Poland bases its relations with the neighbouring countries on the spirit of friendship, good-neighbourly partnership, equality of rights, trust and respect.

Article 2 – Implementation in the domestic legal order. Prohibition of discrimination.

14. Being a democratic state of law, Poland guarantees to all persons resident within its territory and subject to its jurisdiction a full protection of rights and freedoms recognised in the International Covenant of Civil and Political Rights (ICCPR).

15. In the hierarchy of sources of law, the ICCPR, similarly to other legal instruments related to the protection of human rights ratified with a prior consent of the Sejm granted by a law or regarded as such under article 241 of the Constitution, is below the Constitution but is superior to laws. Provisions of article 91 of the Constitution apply to the Covenant, which means that it may be applied directly and takes precedence over laws in case of discrepancies.

Prohibition of discrimination

16. In accordance with the Constitution, all citizens are equal before the law and enjoy equal legal protection. All have the right to equal treatment by public authorities. No one may be discriminated against for any reason in political, social, or economic life. The Constitution as the *supreme law of the Republic of Poland* safeguards the entire legal system. Consequently, any lower legal acts which would provide for a different treatment of citizens for any reason would

be in breach of its provisions. They could be then appealed against to the Constitutional Tribunal, which pursuant to article 188 of the Constitution is entitled to adjudicate on the conformity of all legal acts with the Constitution.

Detailed information on the action taken by Poland with a view to safeguarding and respecting rights of all persons irrespective of any differences are included in the section of the report related to article 3 and article 26 of the Covenant.

Protection granted by courts

17. Independent courts play a significant role in the implementation of legal means by which the state guarantees human rights and freedoms.

Pursuant to article 176 of the Constitution, court proceedings in Poland have two stages. This means that any decision rendered in the proceedings of the first instance may be appealed against and may be subject to verification by a court organ of a higher instance as a result of an appeal. This is a so-called ordinary appeals procedure. In addition, there are extraordinary appeals measures, which allow for the monitoring of valid final judgements in court proceedings (resumption of proceedings in administrative proceedings, cassation and resumption of proceedings in a criminal trial, an appeal for a resumption of civil proceedings; in civil proceedings cassation constitutes an ordinary appeals measure).

18. As of 17 October 1997, the existing reasons for the resumption of civil proceedings were supplemented by an option of a demand for its resumption in a situation when the Constitutional Tribunal adjudicated on the non-compliance of a legal act with the Constitution, an international agreement or a law on whose basis was passed the judgement concluding such proceedings.

19. *The Law of 27 July 2001 on the System of Common Courts (Journal of Laws of 2001 n.o. 98 item 1070)* introduced a number of significant changes in the organisation of courts (see information about article 14).

20. The position and competences of the Supreme Court were redefined in 2002. The Supreme Court is an organ of the judiciary established to:

1. administer justice through:

   (a) ensuring, as part of its supervision, conformity with the law and uniform character of judgments passed by common and military courts by adjudicating on cassation and other appellate measures,

   (b) adoption of resolutions resolving legal issues,

   (c) resolution of other issues stipulated by laws;

2. adjudicate on complaints about the validity of elections and adjudicating upon the validity of the elections to the Sejm and the Senate and the election of the President of the Republic, as well as upon the validity of a nationwide referendum and a constitutional referendum;

3. provide opinions on draft laws and other normative acts on whose basis courts make judgements and function, as well as other laws to the extent it deems necessary;

4. perform other activities stipulated by laws.

21. On 11 May 1995 entered into force a new *Law on the Chief Administrative Court (Journal of Laws of 1995 no. 74 item 368)*, according to which the Court administers justice through a judiciary control of the execution of public administration. It is possible to appeal against administrative decisions to the Chief Administrative Court claiming their non-compliance with the law – it is the so-called judiciary control of legality of administrative decisions. Any disputes that arise between the citizen and the organ of administration which made a decision about not granting a given right to the citizen or about imposing a given legal duty upon the citizen are resolved by an organ situated organisationally outside of the administration system, equipped with an independence of making decisions and indispensable expertise, capable of objectively adjudicating on a case and passing a judgement in accordance with the rule of law.

On 1 January 2004 new regulations will enter into force which, in accordance with the provisions of article 176 and article 236 paragraph 2 of the Constitution, introduce two stages of proceedings before administrative courts. Under the new regulations, voivodeship administrative courts will be the administrative courts of the first instance, while the Chief Administrative Court will be the appellate court (see information about article 14).

22. The institution of the so-called constitutional complaint is discussed in article 14.

23. Work is in progress on the draft amendment to the Civil Code aiming at providing more efficient opportunities of claiming compensation for the damage incurred because of an unlawful execution of public authority. Amendments related to this issue so far comprise only the loss as of 18 December 2001 of the effective force of those provisions of the Civil Code which make the accountability of the State Treasury for the damage inflicted by a public servant dependent on his guilt proved during criminal or disciplinary proceedings. The amendment was introduced following a judgement passed by the Constitutional Tribunal stating that the citizen has the right to compensation for the damage incurred through an unlawful action of authority, irrespective of the statement of guilt of the immediate perpetrator of the damage and deeming the existing regulations incompatible with article 77 of the Constitution (Journal of Laws of 2001 no. 145 item 1638).

Projected regulations significantly extend the scope of responsibilities taking into consideration the Recommendations of the Committee of Ministers of the Council of Europe of 1984 as to the accountability of public authority. Introduction of regulations for exceptional situations is also envisaged. Firstly, in a situation when the damage was done by a normative act, a court judgement, an administrative decision, or another individual decision, but accountability for the damage would be dependent on a prior statement of the unlawful character of those acts. Secondly, in a situation when public authority acts in accordance with the law, however only when the damage was inflicted upon a person. The injured person might claim full or partial

redress and financial compensation for the inflicted damage, when circumstances, especially incapacity to work or a difficult material situation, indicate that this is required by principles of propriety.

The draft does not change the currently binding penal procedure compensation regulation for unjustified conviction and unjustified preliminary detention.

Ombudsman

24. In 2000 the scope of competences of the Ombudsman (Commissioner for Citizens' Rights) was extended with the duty of cooperating with associations, citizens' movements, other voluntary associations and foundations for the protection of freedoms and rights of man and citizen, as well as cooperating in issues related to children with the Ombudsman for Children and considering issues submitted to him by the Ombudsman for Children. In addition, the Ombudsman was granted the right to appeal for cassation in civil cases after the expiry of the deadline defined for the parties to the proceedings (6 months from the day of submission of the judgement instead of the generally provided one month); the right, however, on account of its incompatibility with article 45 paragraph 1 of the Constitution lost its effective force as of 10 March 2003 following a judgement of the Constitutional Tribunal. The draft amendment to the Code of Civil Procedure and some other laws currently discussed by the Sejm envisage a "removal" of the Ombudsman's right to appeal for cassation over such an extended period.

Direct application of the Covenant

25. Provisions of the Covenant may be applied directly by courts of all instances.

Since 1999, the Chief Administrative Court has issued 42 judgements touching upon human rights issues, in 6 of them evoking directly to the Covenants (Annex 1). The Constitutional Tribunal, since 17 October 1997 (i.e. since the entry into force of the new Constitution) till 18 February 2003, invoked the ICCPR, the Convention on the Protection of Human Rights and Fundamental Freedoms (ECHR), and the decisions of the European Court of Human Rights in 50 of its judgements, including 24 cases of a direct application of the ICCPR (Annex 2). Furthermore, the Supreme Court invoked international instruments of human rights protection in 64 cases, including the ICCPR or the Convention on the Elimination of All Forms of Discrimination Against Women. Courts of lower instances (in 16 civil and labour cases) invoked international instruments of human rights protection, primarily the ECHR, as well as judgements of the European Court of Human Rights in Strasbourg. It follows from the available information that courts have not invoked the decisions of the UN Human Rights Committee.

Possibility of the use of international mechanisms of legal protection

26. Everyone who believes that his rights have been infringed on by the State has the right to make use of international mechanisms of legal protection upon the exhaustion of all domestic measures.

Poles most often lodge applications with the European Court of Human Rights. In the period from 1994 until 7 February 2003, the total number of complaints lodged with the

European Court of Human Rights was 386. The main reason for lodging communications with the European Court of Human Rights in Strasbourg is the unreasonable length of civil and criminal proceedings (221 applications in total).

The total number of cases submitted to the Human Rights Committee in Geneva was 9. In 1996 – 1; in 2000 – 3; in 2001 – 3; and in 2002 – 2.

27. With a view to providing an ongoing monitoring of the conformity of internal regulations with international instruments of human rights protection, including the Covenant, an *Advisory Council for Human Rights* at the Minister of Foreign Affairs was appointed pursuant to *Directive no. 7 of the Minister of Foreign Affairs of 12 February 2000*. Its objective was to analyse the major issues related to the observance of human rights, followed by the presentation of relevant opinions and reports to the Minister. On 25 April 2002 the Council was replaced by the *Advisory Legal Committee* at the Minister of Foreign Affairs, which took over the competences of the Advisory Council for Human Rights. Currently is being considered an establishment of a *national human rights institution* whose tasks would include, among others, the coordination of the implementation of recommendations issued by the treaty bodies following a consideration of the Government's reports. At present, it is the ministry, which has prepared a given report that is in charge of coordinating the implementation of the recommendations.

Human rights training programmes for representatives of public authorities

28. The aforementioned increasing frequency of courts' evoking the existing international human rights instruments results from, i.a. the action taken with a view to raising the knowledge and awareness of judges and public prosecutors in this field. Since 2001 the Government, in cooperation with the Helsinki Foundation, has organised a series of trainings on human rights for about 120 judges and public prosecutors who will be "contact points" in their courts and who will themselves conduct trainings in the future.

29. Lectures on human rights and their protection are part of the programme of internship programme for legal advisors (they are also one of the areas of the examination for legal advisors) and advocates. The Human Rights Committee has operated for 10 years at the Polish Bar Council; in cooperation with the Council of Europe Information Centre in Warsaw, it organizes annual series of seminars for advocates and advocate-applicants on issues related to the *European Convention on the Protection of Human Rights*, coupled with the participation in a Study Visit in the Court in Strasbourg.

30. Detailed issues related to international human rights norms and standards are also included in training programmes of officers and employees of the Prison Service, officers of the Boarder Guard and officers of the State Protection Office. They include, among others:

- presentation of documents of international law concerning human rights, including the ICCPR,

- discussion of the rights of persons deprived of liberty in the context of the universal catalogue of freedoms and rights of man and citizen,

- information on legal mechanisms for the protection of rights and freedoms, including among others the so-called "Strasbourg complaint",

- UN standards concerning the treatment of prisoners and prevention of crimes (e.g. UN Minimum Rules, Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment),

- explanation of the relation between the right to adequate sanitary conditions and the principle of respect for human dignity in the light of international standards, including UN standards,

- basic principles of the use of force and firearms by law enforcement officers in the context of Resolution VIII of the UN Congress from 1990.

31. In addition, training programmes of penitentiary personnel comprise the issues of domestic and international human rights norms and standards, including the rights and freedoms of HIV/AIDS infected persons. In the period 2001-2002, 250 officers and employees of the Prison Service attended those trainings.

In addition, forty officers of the Prison Service participated in 17 courses conducted in the period 1991-2002 at the Human Rights School, organised by the Helsinki Foundation of Human Rights.

32. Human rights issues are also present at each level of police training in a degree proportional to the occupational needs of police officers - trainees (basic or specialised training, undergraduate vocational training or graduate vocational training).

33. The Plenipotentiary for Human Rights of the Commander-in-Chief of Polish National Police[1] was appointed by the Commander-in-Chief of Polish National Police at the end of 1998. His fundamental duty comprised initially the coordination of the participation of Polish Police in the Council of Europe's programme "*Police and Human Rights 1997 – 2000*". From among multiple significant projects, particularly noteworthy is the conference "*Human Rights and the Police. Towards European Standards in the Process of Education*", organised in November 1999 in the Police Academy in Szczytno; the conference marked the beginning of the national system of consultations in the field of human rights education in the Police.

The duties of the Plenipotentiary include the promotion of human rights in the Police, control of the observance of standards of human rights protection in the activities of the Police and representation of the Commander-in-Chief of Polish National Police in domestic and foreign human rights projects. The above tasks are carried out by the Plenipotentiary in close cooperation with the members of the National Working Group set up pursuant to decision 18/2000 of 25 January 2000 of the Commander-in-Chief of Polish National Police as a voluntary body assisting the Plenipotentiary in his work. Apart from permanent members of the Group

[1] Decision no. 237/98 of the Commander-in-Chief of Polish National Police of 4 December 1998 on the establishment of the Plenipotentiary for Human Rights of the Commander-in-Chief of Polish National Police.

indicated by the Plenipotentiary and appointed by the Commander-in-Chief of Polish National Police, when situations call for it the Group may include also other persons, such as representatives of non-governmental organisations or human rights experts.

The most important training programmes organised by the Plenipotentiary include:

1. *European Convention on Human Rights – European Human Rights Standards in the Activities of the Police* training (Legionowo 2001), addressed to people who lecture on human rights in Police schools and training centres and police officers leaving for a mission in Kosovo,

2. *Human Rights and Freedoms in the Practice of Police Activities* training (Legionowo 2001), attended by police officers from Poland, the Czech Republic and Lithuania,

3. *The Role of Human Rights and Freedoms in Police Management* training, which will start in 2003 and will have a periodical character. District and municipal Commanders of Police will participate in the training.

34. At the end of 2001 the Police home page on human rights was put into operation[2]. It contains information on the work of the Plenipotentiary for Human Rights of the Commander-in-Chief of Polish National Police and the National Working Group as well as basic legal acts and available literature on human rights issues.

In 2002 a guidebook "*Police in a Democratic Society – Do Your Police Defend Human Rights?"* was translated and published in the Polish version. As a result of the cooperation with the Jagiellonian University Human Rights Centre and the British Embassy in Poland, in 2002 the Police received free of charge a guidebook by A. Beckley "*Human Rights. Guidebook for Police Officers"*, whose 5,000 copies were distributed among all the Police units.

In 2002 members of the National Working Group, under the supervision of the Plenipotentiary for Human Rights, prepared an idea of and tools for an internal monitoring of human rights observance in the Police and by the Police and a programme of human rights training for Police authorities (320 district and municipal commanders).

35. Within the "Enhancement of Policies on Equal Treatment of Women and Men" project, financed from the pre-accession Phare fund and conducted in the period 2002-2004 by the Secretariat of the Government Plenipotentiary for an Equal Status of Women and Men, training sessions will be conducted for organs of public administration and other bodies with a potential impact on the implementation of the policy of equal treatment of women and men in Poland. Trainings sessions will concentrate on the legal regulations of the *acquis communautaire* in the area of equal treatment of women and men, methods of implementing *gender mainstreaming*, and ways of exercising the rights of women discriminated against in the EU Member States (court proceedings for the exercise of rights and the "best practices").

[2] Internet address: www.wspol.edu.pl/prawa_czlowieka/

Training sessions are planned for judges, police officers (40 persons each), as well as lawyers, including those working in women's non-governmental organisations specializing in legal issues. Trainings will also be directed to representatives of trade unions, employers' organisations and women's non-governmental organisations, as well as for activists of organisations for women from rural areas and representatives of regional and local authorities.

At the same time, representatives of selected ministries will participate in an information seminar on gender mainstreaming attended by EU representatives, in inter-ministerial meetings on the methods of implementing gender mainstreaming in Poland with the participation of foreign experts and in study visits in the EU member states (Denmark, Spain, Austria).

Dissemination of the knowledge on human rights and their implementation in the society

36. The State undertakes actions aiming at the dissemination of knowledge on human rights among the general public in order to make citizens aware of their inalienable rights. This purpose is served by, i.a. the information presented on the Internet home pages of the Ministry of Justice, the Ministry of Internal Affairs and Administration, and the Parliament. Apart from the texts of Covenants and human rights conventions, the websites also include current periodical Government's reports, information on the possibility of submitting communications to specific Committees, and specimens of communications. Likewise, the present report and the concluding observations of the Committee issued upon its consideration will be published on the website of the Ministry of Justice. Following the presentation of the last report on the implementation of the Covenant, the Ministry of Justice initiated the practice of issuing in print publications including the text of the report, summary protocols, concluding observations, and short information on the principles of consideration of reports by the Human Rights Committee. The Ministry of Justice intends to continue this practice, and additionally – with a view to taking further action aiming at the dissemination of the Covenant – considers supplementing the publication with the text of the Covenant and a specimen of the communication. The publication, as was the case with the previous one, will be sent to major state libraries, all university libraries, as well as to organs of government administration duty bound to implement the provisions of the Covenant and particular recommendations of the Committee.

37. Human rights standards are being included into the curricula of an ever-increasing number of Polish education institutions. Human rights issues are part of the curriculum minimum of general education and are a part of the teaching the "history and society" subject and the "Education for life in society" educational project in grades IV – VI of primary school, the "Civil education" subject and the "European education" educational project at the level of junior high school, as well as the "Civil education" subject at the level of schools above the junior high level.

In 1993, pursuant to the decision of the Minister of National Education, was commenced a Human Rights Knowledge Competition, organised under the motto "Democracy – Human Rights – Rule of Law". The 10th edition of the Competition for students from schools above the elementary level took place in 2002.

Furthermore, human rights are included in university curricula (in Warsaw, Gdańsk, Lublin, Toruń, Poznań) and are taught at higher schools of pedagogy (e.g. in Kraków). Intensive training in this area is also provided by the "Iustitia" Association of Adjudicating Judges.

38. Bookstores and libraries offer numerous monographs on human right issues, while decisions of the Commission and the Court of Human Rights in Strasbourg are published in daily press – "Rzeczpospolita" and in legal magazines – "Państwo i Prawo", "Palestra", or "Prokuratura i Prawo".

Article 3 – Equal status of women and men

39. The Constitution of the Republic of Poland, in article 33, guarantees equality of rights to women and men. This means that in family, social, political, and economic life women enjoy the same rights as men do. In addition, woman and man have constitutionally guaranteed equal rights to supplement their education, employment and promotion, equal remuneration for work of equal value, social security, as well as to hold offices, fulfil functions, and receive public honours and decorations.

40. Poland is a State Party to international agreements concerning universal human rights constituting the so-called *International Human Rights Charter*, of which women's rights are an inseparable and inalienable part, as well as to the 1979 *Convention on the Elimination of All Forms of Discrimination Against Women*. Ratification procedure of the Optional Protocol to the Convention is in its final stage (see paragraph 10 k).

With a view to meeting the requirements of the European Union, which in accordance with the Treaty of Amsterdam of 1997 recognises as one of its priorities efforts towards the elimination of discrimination against women and the promotion of equal treatment of women and men, EU equality directives on the labour market and employment and on social security have been transposed into Polish law, mainly into the *Labour Code* and the *Law on Employment and Counteracting Unemployment*.

41. The *National Action Plan for Women* was adopted in 1997. It is a result of Poland's international commitments arising from the recommendations and observations included in the final documents of the IV World United Nations Conference on Women – Beijing 1995, i.e. the *Platform of Action* and the *Beijing Declaration*, which were adopted by the Polish Government in September 1995 without reservations and exclusions. The aim of the National Action Plan is the implementation of the recommendations and observations included in those documents. The Plan promotes women's rights as stipulated in the documents of the United Nations Organisation, the Council of Europe, the European Union, and the Organisation for the Security and Cooperation in Europe.

The I stage of the National Action Plan for Women, i.e. the period until 2000, was not implemented in full since the policy of the Government focused on family issues.

42. *The Office of the Government Plenipotentiary for an Equal Status of Women and Men,* established pursuant to the Resolution of the Council of Ministers of 27 November 2001 within the Chancellery of the Prime Minister, replaced the earlier Office of the Government Plenipotentiary for the Family, whose tasks did not include the implementation of the policy of equal treatment of women and men and non-discrimination. The duties of the current Plenipotentiary comprise the implementation of the Government policy of an equal status of women and men (*gender mainstreaming*). Acting within its statutory competences, the Plenipotentiary set up a Consultative and Programme Council which groups representatives of

non-governmental organisations active in the field of an equal status of women and men and experts, as well as took on a further implementation of the National Action Plan for Women, preparing its second stage for the period 2003-2005.

43. A strategic premise of the II stage of the National Action Plan for Women is a comprehensive approach to solving women's problems. Catering to various fields of social life and activities of women, the project is primarily geared towards – as a task implemented by the Government – the authorities and offices of central and local government administration. At the same time it envisages cooperation with various actors, i.e. science and research centres, non-governmental organisations, local self-government, headquarters of trade unions, and the mass media.

The project implements standards included in the European Union directives which develop the principle of an equal treatment of women and men. In addition, the National Action Plan for Women aims at creating instruments of exercising women's rights in the public and private sphere and at an ongoing monitoring of the results of their implementation.

Political life

44. According to statistics, in 2002 women accounted for 51.6% of the population (19,713,700). The strategy of equal opportunities for women, i.e. the introduction of the practice of the so-called quota systems and efforts aiming at reaching a parity in the participation of women and men in political life, which has proved its efficacy in numerous countries and which was recommended in the Beijing Platform, is included in the draft legislation on an equal status of women and men. The Parliamentary Group of Women initiated work in this field. Currently, the Sejm is working on the draft law which has been approved by the Senate.

Public opinion polls indicate a rise in the social acceptance of solutions promoting an increase in the participation of women in social life, including access to important functions and political positions, and of an active policy of the State in this respect.

Participation of women in the Parliament

45. In the 2001 parliamentary elections, three political parties introduced a 30 % quota system during the creation of election lists. The problem of women's participation in democracy became evident during the election campaign; within political parties there appeared internal accords of women for the creation of election lists, while non-governmental organisations supporting the participation of all women in the elections, irrespective of their party membership, became active on a national scale.

As a result, mandates to the Lower Chamber of the Parliament (the Sejm) were won by 93 women, which account for 20% of the total number of deputies (in 1997 - 13%). Women obtained 23% of mandates in the Senate (in 1997 - 12%).

46. There is no data available on the number of women in political parties as parties do not gather such statistics. However, the available information on the participation of women in executive ranks of parties indicates that women constitute a marked minority. No woman is a party chairperson, however, four women are deputy chairpersons of parties.

Party	No. of board members	Including women
Sojusz Lewicy Demokratycznej (Democratic Left Alliance)	38	8 - including a deputy chairperson of the party
Unia Pracy (Labour Union)	20	6 - including 2 deputy chairpersons of the party
Polskie Stronnictwo Ludowe (Polish Peasants' Party)	15	0
Platforma Obywatelska (Citizens' Platform)	57	11
Prawo i Sprawiedliwość (Law and Justice)	35	3
Samoobrona (Self-defence)	4	0
Liga Polskich Rodzin (League of Polish Families)	12	0
Unia Wolności (Freedom Union)	15	6 - including a deputy chairperson of the party

Data from 8 May 2003

47. Over half of the respondents of the opinion poll conducted in February 2002 by the Centre for Public Opinion Research (CEBOS), was of the opinion that the Government Plenipotentiary for an Equal Status of Women and Men should take action aiming at the increase in the participation of women in public life (58%) and the increase in the number of women in executive positions (57%)[3]. Discrimination against women is acknowledged by 32% of men and 50% of women. Furthermore, 92% of the persons polled stated that the Government should take more efficient action towards safeguarding an equal status of women and men and should react to manifestations of discrimination with respect to sex.

Parliamentary Group of Women

48. A Parliamentary Group of Women (PGK) has functioned in the Polish Parliament since 1990. It is currently composed of 72 women (Deputies and Senate members) from among 116 women who are Members of Parliament. PGK aims at instituting and monitoring initiatives for an equal status of women and for equal treatment of women and men in Poland, promotion of women's participation in social and economic life, public education in the field of women's rights and equal treatment of women and men, and cooperation with organisations active in the area of women's issues and gender mainstreaming. Following up on their activities from previous years, the Group focused primarily on work for the adoption of a law on an equal status of women and men. It likewise initiated work on the amendment to the law on family planning, protection of the human foetus and conditions for the admissibility of abortion.

[3] Opinions about the policy of the Government towards women. Communiqué from a CBOS opinion poll, Warsaw, February 2002.

Participation of women in local self-government

49.

Local self-government level	1998 % women	2002 % women
Voivodeship assembly	10.88	14.26
District (poviat) council	14.88	15.89
Commune (gmina) council	15.87	17.74
Commune head, town and city mayors	(not elected directly)	6.67

From among candidates for commune heads and town and city mayors, women accounted for an average of 10.42% (i.e. 1,081 women). 165 women were elected, which constitutes 6.67% from among the total number of elected persons (Data: State Electoral Commission).

Participation of women in the Government and local organs of government administration

50. At present (as of 1 October 2003), within the 16-person Government two women hold positions of a minister: the Minister of National Education and Sport and Minister-Chief of the Office of the European Integration Committee. The position of the Government Plenipotentiary for an Equal Status of Women and Men in the rank of a Secretary of State at the Chancellery of the Prime Minister (KPRM) is also held by a woman. From among 90 persons employed in the highest offices of the State, in the Chancellery of the Prime Minister and in ministries, women constitute 22%. The Government is represented locally by 16 voivodes, including one woman. 6 women are deputy voivodes (from among 21 deputy voivodes), which accounts for 28%.

Participation of women in other major organs and decision making bodies

51. Women account for 33.3% of top positions in the Chancellery of the President of the Republic of Poland. The Chancellery is headed by a woman. Two out of 6 persons employed in the capacity of Secretaries and Undersecretaries of State are women. 10 women (55.5%) hold executive positions (as directors of offices and teams) in the Chancellery of the President of the Republic of Poland. In total, women account for 50% of executive personnel in the Chancellery of the President of the Republic of Poland. One woman is a member of the nine-person Monetary Policy Council. There is one woman in the National Council for Radio and Television Broadcasting, which has a total of 9 members. There is no woman in the executive personnel of the Supreme Chamber of Control.

Economic and social life

52. The Constitution of the Republic of Poland, the Labour Code, the Law on Employment and Counteracting Unemployment guarantee equal treatment to both women and men. A prohibition of discrimination, among others on account of sex, inscribed in the Labour Code has been in operation since 1996. On 1 January 2002 the Labour Code was supplemented with Chapter IIa (article 18^{3a} – 18^{3e} of the Labour Code) titled "*Equal Treatment of Women and Men*".

53. The Labour Code stipulates that women and men should be treated equally with respect to the entry into and the dissolution of the work contract, conditions of employment and promotion, as well as access to in-training in order to improve professional qualifications. In addition, the Code introduces a prohibition of direct and indirect discrimination as infringing on the principle of equal treatment of women and men and contains a definition of indirect discrimination. Employees irrespective of sex also have the right to equal remuneration for the same job or a job of equal value. The relevant remuneration comprises all the components of remuneration, irrespective of their name and character, as well as other benefits connected with work, granted to employees as money and in a form other than money. The Code contains a definition of a job of equal value. Jobs of equal value are jobs whose execution requires from the employees comparable professional qualifications, certified by means of documents envisaged in separate regulations or by practice and professional experience, as well as comparable responsibility and effort.

54. Methods of job evaluation used in Poland, including the constantly streamlined UMEWA method, consist in an analysis and evaluation of work according to separate criteria and in assigning a defined number of points for those criteria. The decision on the use of methods of job evaluation as tools for the improvement of the pay system rests with independent economic subjects. However, there is no uniform system of job evaluation that is binding for all employers. Because of the requirements of free market economy, the State cannot limit employers with respect to the principles of adopting the rules of remunerating employees. Still, the freedom of employers is limited to the extent indicated in the regulations on the prohibition of discrimination on account of e.g. sex and other criteria enumerated in the Labour Code.

Pursuant to article 18 § 3 of the Labour Code, provisions of labour contracts and other acts, from which arises a work relation infringing on the principle of equal treatment of women and men in employment are null and void. Instead of them, relevant regulations of the labour law are used, and for lack of such regulations, such provisions should be replaced with relevant provisions which do not have a discriminatory character.

55. The Code likewise defines what action on the part of the employer constitutes a breach of the principle of equal treatment of women and men. Considered as such a breach is the employer's differentiation of the employee's situation on account of sex, which especially results in:

- refusal to enter into or continue a work relation,

- adoption of unfavourable remuneration for work or other conditions of employment or omission during promotion or during assignment of other job-related benefits,

- omission during assigning for participation in trainings raising professional qualifications, unless the employer proves that he has been motivated by other reasons.

The term "*unless the employer proves that he has been motivated by reasons other*" than the sex of the employee specifies that in the event of a dispute before a labour court on an equal treatment of women and men in employment, the responsibility for providing evidence that the principle has not been violated rests with the employer.

56. The Labour Code defines also when the action taken by the employer does not show indications of infringement upon the principle of an equal treatment of women and men. The principle is not violated when the employer refuses to enter into a work contract and justifies it with a need for a specific job being carried out – on account of its kind or conditions of execution – exclusively by employees of one sex, as well as when measures are used which differentiate the legal situation of employees on account of the protection of maternity, and when measures are taken for a specified period of time aiming at equalising opportunities of employees of both sexes by the decrease, for the benefit of employees of one sex, of the scope of actual inequalities to the extent stipulated by article 18^{3a} § 1 of the Labour Code. This provision allows, then, for the use of positive discrimination in job relations, however, because it is a recent regulation, there is no data yet on its application in practice.

57. Provisions of the Labour Code envisage an opportunity of claiming compensation before a labour court by a person (employee or a person applying for being employed by a given employer), with respect to whom the employer violated the principle of equal treatment of women and men. The limits of the compensation are also defined – it cannot be lower than the minimum remuneration for work and higher than a six-fold value of this remuneration. The draft amendment to the Labour Code (see point 58 below) envisages a departure from the upper limit of compensation. Proceedings in cases of an employee pursuing compensation from the work relation are exempt from court fees.

An employee's exercise of the rights s/he is entitled to on account of an employer's violation of the principle of equal treatment of the sexes cannot constitute a reason justifying a dissolution of the work contract by the employer or termination of this contract without a prior notice in a situation when the employee pursues compensation before a labour court for a breach of this principle by the employer.

The employer is obliged to make accessible to the employee the text of provisions related to an equal treatment of women and men in employment in the form of information in writing disseminated on the premises of the workplace or to ensure access of the employees to these provisions in another way adopted by a given employer.

58. A Government draft of a *Law on the Amendment to the Law – the Labour Code and the Amendment to Selected Laws*, submitted to the Sejm of the Republic of Poland in November 2002, aims primarily at making Polish labour law compatible with the law of the European Communities in the scope related to establishing general frameworks for an equal treatment during employment and to the introduction of measures ensuring an improvement of the health and safety in the workplace of pregnant employees and employees who have recently given birth to or breast-fed.

The Government draft legislation envisages also the following regulations:

- extension of the existing regulations related to the prohibition of discrimination on account of sex – onto cases of discrimination in employment on account of age, disability, racial or ethnic origin, sexual orientation, religion or denomination,

- introduction of the definition of direct discrimination and a more precise definition of the term indirect discrimination,

- extension of the term discrimination on account of sex through the use of this term for sexual harassment, obliging the employer to create in the workplace an environment free from all forms of discrimination.

59. In 2002 the Ministry of Justice recorded 1 case of discrimination on account of sex. Since the majority of the provisions have been in force for a short time, their impact on the regulations of the labour market and the elimination of discriminatory practices can be evaluated in full only after some time.

Prohibition of discrimination at the stage of employment

60. Posing questions during a job interview concerning the family situation, marital or procreation plans of a prospective female employee is unlawful. Provisions of labour law do not contain a legal basis authorising the employer to demand from a female job applicant a certificate about her not being pregnant. An employer may demand from a job applicant exclusively a medical certificate stating an absence of contraindications for work at a given position. A certificate excluding a pregnancy of a job applicant may be required only by an employer who seeks a candidate for a job prohibited to pregnant women, according to a list of jobs especially taxing or harmful for women's health.

In the case of an employer's demanding such a certificate from a person applying for work at a position different from the one indicated above, the latter may apply to the State Labour Inspectorate for help and information on the legitimacy of the employer's action. The phenomenon of demanding a medical certificate stating that a job applicant is not pregnant (apart from cases of employment at positions prohibited to pregnant women) is of a marginal character.

61. At present, the principles of disclosing personal data of an employee and/or a job applicant and the scope of such information are regulated by a relevant directive of the Minister of Labour and Social Policy. A draft amendment to the Labour Code defines the scope of information which an employer might require from employees under the *Law on the Protection of Personal Data*, limiting it to information necessary for employment. Consequently, legal groundwork has been laid for the exercise of the prohibition of asking questions that might lead to suspicions of discriminatory action against a person applying for a job.

Protection of pregnant women

62. Labour law guarantees special protection of the durability of a work relation of pregnant women and women on a maternity leave. This protection does not apply only to a female worker employed for a probation period, not exceeding the duration of one month.

A work contract concluded for a definite period of time or for a time of execution of a specific job or for a probation period in excess of one month, which would be terminated after the third month of pregnancy, becomes extended until the day of the delivery. Because of its objective and legal character, only a job contract concluded for a definite period of time for the purpose of substituting an employee during his/her justified absence at work and a contract for a temporary work concluded with a pregnant employee, are not extended until the day of the delivery.

63. An employer's dissolution of a job contract at a prior notice during pregnancy may only occur in the event of the employer's declaration of bankruptcy or liquidation. In such a case, the employer is under an obligation to reach an agreement with the local trade union representing the pregnant employee as to the date of the dissolution of a job contract. In addition, an employer may terminate the existing conditions of work and pay if on account of reductions of employment at a given employer for economic reasons or in connection with organisational, production or technological changes, it is impossible to continue employment of pregnant women at their former workplaces. If this results in a decrease in pay, an employee is entitled to a compensation benefit until the end of the period when she is under a special protection of the job contract, calculated as remuneration for holiday leave.

64. An employer may not dissolve or terminate a job contract during pregnancy and also during the maternity leave of an employee unless circumstances occur which justify a termination of a contract without a prior notice because of her fault and the local trade union representing the pregnant employee agreed to the termination of a contract.

65. Provisions of the Labour Code impose additional obligations on the employer employing a pregnant woman or a woman breast-feeding a child during jobs prohibited to such a woman under special regulations or on the basis of a medical certificate. In such a situation, the employer is obliged to transfer the employee to a different job, and should this be impossible, relieve her of the duty to carry out work for a period of time deemed necessary. In addition, an employer employing a pregnant woman or a woman breast-feeding a child at jobs where there is exposure to factors harmful to health or hazardous, is obliged to adjust work conditions to the requirements specified in relevant regulations or limit the duration of work in such a way as to eliminate the hazard to health or safety of en employee. If adjusting work conditions at the previously occupied workplace or shortening the duration of work is impossible or purposeless, the employer is obliged to transfer the employee to a different job, and should this be impossible, relieve her of the duty to carry out work for a period of time deemed necessary. In the case when the adjustment of work conditions at the previously occupied workplace, shortening the duration of work or transfer of an employee to a different job result in a decrease of remuneration, the employee is entitled to a compensation benefit. In turn, in the case of relieving the employee from the duty to carry out work, during such a leave the employee retains the right to her previous remuneration.

Upon the termination of reasons justifying the transfer of an employee to a different job, shortening the duration of work or relieving her of the duty to carry out work, an employer is obliged to employ the employee at the work and for the duration specified in the work contract.

66. Provisions prohibiting specific kinds of work to all women have been repealed as discriminatory. Their scope has been limited only to the protection of pregnant women, women after delivery and breast-feeding a child.

67. The principle of equality of women and men in the exercise of rights of employees related to upbringing a child is included in Chapter VIII of the Labour Code, whose former title – "Protection of women's work" was changed as of 1 January 2002 into "Rights of employees related to parenthood".

Maternity leave

68. In spite of the fact that a maternity leave is a benefit to which on biological grounds is entitled primarily a female employee – the child's mother – in specified situations it is possible for both parents to share it. Pursuant to article 180 § 5 of the Labour Code:

> "A female employee, on having used after the delivery at least 14 weeks of the maternity leave, has the right to resign from the remaining part of this leave; in such a case, the unused part of the maternity leave is granted to the male employee – the father rearing the child, followed by his application in writing."

Consequently, the father may now take advantage of a part of the maternity leave, which still has not been given its specific name, but to which he is entitled when the mother of the child has not used a part of the maternity leave – for a period of up to 2 weeks in the event of the birth of the first child, up to 4 weeks with each subsequent delivery or up to 12 weeks if more than one child was born during one delivery. It follows, then, that the length of the maternity leave granted to the father of the child depends on a particular situation in a given family and on the general length of the maternity leave to which a female employee is entitled because of the birth of the child.

69. Provisions on the protection of the durability of the work relation of employees on maternity leave apply also to the male employee – the father rearing the child. Maternity leave is a period of employment, which with respect to the receipt of employee's benefits is treated as the period of carrying out obligations of the job contract.

During the maternity leave, the female employee is entitled to a maternity benefit to the amount of 100% of the contributions calculation basis for sickness insurance. For the same duration, the same benefit is granted to insured individuals who are not employees. Apart from employees, obligatory insurance relates also to members of agricultural cooperatives, and voluntary insurance applies to, e.g. persons performing out-work, persons performing work on the basis of some civil law contracts and persons who conduct an activity other than agricultural one.

70. The Labour Code envisages also a benefit in the form of *a leave under the conditions of a maternity leave*. A female employee who, while she has not given birth to a child, has accepted a child for upbringing and applied to a guardianship court with a motion for instituting proceedings for an adoption, or accepted a child for upbringing as a foster family, may exercise the right to a leave under the conditions of a maternity leave.

Provisions on a leave under the conditions of a maternity leave apply, respectively, also to the male employee.

Child rearing leave

71. An opportunity to take advantage of a child rearing leave, which is granted for up to 3 years, no longer than until the child attains 4 years of age, by both parents on the same principles, has existed since 1996. Formerly, the father of the child was able to take advantage of

the child rearing leave but only in situations strictly defined by regulations. Upon a motion of a female employee, the employer is obliged to grant her a child rearing leave. This right may also be exercised by a male employee. If both parents or guardians of the child are employed, the right to a child rearing leave may be used by only one of them. This limitation is not in force during the period of 3 months of taking advantage of the child rearing leave, since a child rearing leave to this extent may be used jointly by parents or guardians of the child fulfilling the premise of the duration of employment entitling them to the use of this leave. This is in practice the implementation of the principle of a parental leave envisaged in the regulations of EU law, even though the Polish law does not use the term "parental leave".

72. A child rearing leave may also be used by a female or male employee employed for a definite time, for a probation period or for the time of execution of a particular job, or even an employee who has been given notice of the dissolution of the job contract. The employer then grants a child rearing leave for a time not exceeding the period for which the contract was entered into, and in the case of an employee who has applied for a leave on having been given notice of the dissolution of the job contract – until the day of the termination of the job contract because of the expiry of the notice period.

Provisions envisage a special protection of a female or male employee using a child rearing leave against the dissolution of the job contract. In addition, the Labour Code introduces for a female (or male) employee entitled to a child rearing leave, who does not want to or cannot take advantage of a child rearing leave, an opportunity of applying to the employer with a motion for lowering the number of working hours to the number lower than half the full time employment in the period when s/he might take advantage of a child rearing leave. In such a case the employer is obliged to take into account the motion of the employee.

73. In 1996 a number of provisions were introduced into the Labour Code guaranteeing to employees, irrespective of their sex, a series of rights on account of rearing a child of up to 4 years of age, such as a prohibition of working longer than 8 hours a day, working overtime, at night, or a prohibition of delegation outside of the permanent place of work if the employee does not consent to it. These rights facilitate reconciling professional work with familial duties.

74. The Government draft amendment to the Labour Code envisages the introduction into the regulations related to parenthood, including those on a child rearing leave, the cover term "employee" (without specifying the gender) – to root out the conviction adopted by some employers and some employees that the rights related to parenthood are used only by the female employee – the mother or guardian of the child.

75. The draft II stage of the National Action Plan for Women includes a sentence aiming at the dissemination of knowledge about the rights of employees, especially the rights related to maternity and parenthood, and counteracting discrimination on account of sex.

76. The questions of gender equality attract small interest in the persons applying for legal counsel to *the State Labour Inspectorate*. Explanations provided by labour inspectors in this respect concern primarily the date of entry into force of new regulations and the way of their

dissemination among employees, the content of advertisement with job offers, as well as provision of evidence in discrimination cases. Consequently, the activity of labour inspectors mainly amounts to counselling because of the fact that only in a court of law can one execute evidence proceedings and establish whether an act of discrimination really did take place.

Aside from providing legal counselling as to regulations concerning equal treatment in employment, the Labour Inspectorate runs an information campaign with a view to extending the knowledge of manifestations of discrimination both among employees and among employing entities. The Internet website of *The State Labour Inspectorate* provides access to materials including an analysis of anti-discriminatory regulations. These subjects are also raised by representatives of the State Labour Inspectorate as part of their contacts with the media (radio broadcasts, legal duty hours in editorial offices of newspapers).

Equal treatment in job relations has been since 2003 subject to audit conducted by the State Labour Inspectorate.

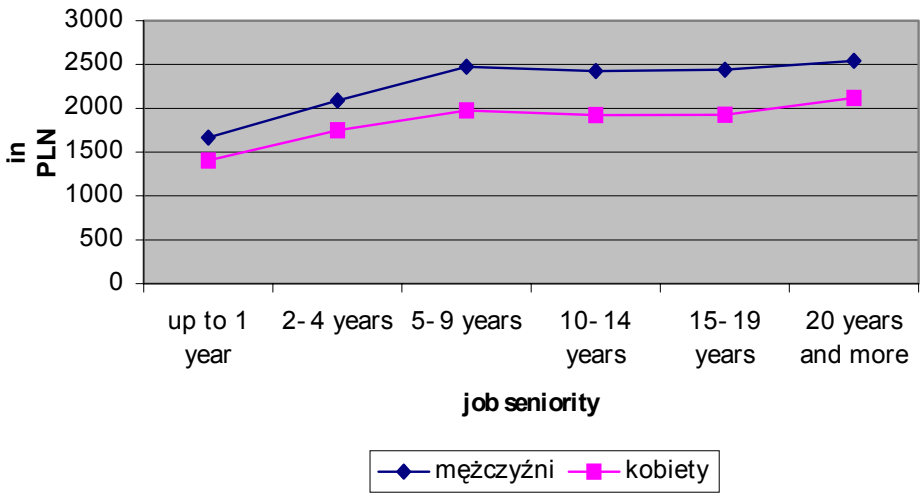
Remuneration

77. Women account for 46.33% of all employees (data from 2001). They have a dominant position in those sections of the economy where pay oscillates at the level of the national average, e.g. in the education sector, where they account for 73.8% of the employees, in health care and social security – 83%, hotels and restaurants – 67.5% (data for 2001).

78. Employed persons and an average gross remuneration broken down into professional groups:

	Full time employment in %		**Average gross remuneration in PLN**		
	Total	**Women**	**Total**	**Men**	**Women**
MPs, top executives and managers	5.1	4.2	4898	5441	4083
Specialists	18.5	24.2	2869	3444	2534
Intermediate personnel	15.9	21.9	2246	2728	2001
Persons employed in offices	11.6	17.4	1987	2010	1978
Persons employed in personal services and commerce	7.5	8.9	1476	1742	1280
Persons employed in agriculture and fishery	0.4	0.3	1446	1518	1301
Persons employed in industry and crafts	19.1	7.1	1895	2032	1272
Persons employed in the service and assembly of machines and installations	12.3	4.1	1982	2044	1660
Persons employed in simple jobs	9.6	11.9	1310	1443	1221+
Source: Chief Office of Statistics, data for October 2002					

Monthly renumeration according to job seniority



79. Women less frequently occupy high, better-paid positions. While at the intermediary level of management women account for approx. 30% executive positions, at the highest level it is only 2%. As a result, the II implementation stage of the National Action Plan for Women envisages activities aiming at the execution of the existing law with a view to eliminating discrimination against women at the moment of employment and in the conditions of work, as well as eliminating gender-related segregation and segmentation of the labour market as a manifestation of indirect discrimination against women.

80. According to the *Report on the Status of the Sector of Small and Medium Enterprises*[4] *in Poland in the Period 2000-2001*, in 1999 women accounted for 35.2% (533,000) from among 1,515,000 owners of small and medium enterprises.

After 1989 the number of enterprises founded or managed by women increased three-fold, while the number of enterprises run by men doubled. Polls that have been conducted since 1999 on a representative group of small and medium enterprises in order to describe the changes in the economic situation and problems impeding the development of the small and medium enterprises sector show that a significantly greater number of women conduct economic activity in urban areas (approx. 82% of the enterprises polled which are managed by women in 2002) than in rural ones (approx. 17%). The majority of the women polled who conduct economic activity are engaged in commerce or agency services (approx. 40% each in 2002) or either do not employ workers (approx. 51%) or employ from 1do 5 workers (approx. 30%). Also the number of self-employed women who were active in agriculture, forestry, and fisheries is high and in the 3rd quarter of 2001 reached 836,000.

[4] Analyses on the sector of small and medium-sized companies comprise all enterprises carrying out all kinds of activity apart from agriculture, forestry, fisheries and inland capture fisheries.

Women conducting economic activity in rural areas lead primarily agro-tourist farms, small bakeries or workshops making traditional goods.

In towns, in turn, they occupy executive positions mainly in the banking sector, advertisement, marketing, and personal counselling. Still, even in the typically male sectors, such as transportation or construction, companies run by women account for as many as 18 % of all entities.

Table. Employers and self-employed persons broken down according to sex

Year	Employers and self-employed persons	Self-employed			Employers		
		total	men	women	total	men	women
	in thousands						
IV quarter 1998	3375	2753	1691	1064	622	441	181
IV quarter 2000	3254	2669	1673	997	585	404	181
IV quarter 2001	3231	2703	1651	1053	528	376	151
IV quarter 2002	3083	2565	1576	990	518	368	150
dynamics of changes (4th quarter 1992=100)							
IV quarter 1998	94.7	87.7	91.6	82.2	146.4	142.7	156.0
IV quarter 2000	91.3	85.0	90.6	77.0	137.6	130.7	156.0
IV quarter 2001	90.6	86.1	89.4	81.4	124.2	121.7	130.2
IV quarter 2002	86.5	81.7	85.4	76.5	121.9	119.1	129.3

Source: Study of the Economic Activity of the Population (4th quarters 1992-2002)

81. The lower remuneration of women stems among others from estimates conducted by employers, according to which the employment of a woman is more expensive for them than the employment of a man, since it includes the costs of possible frequent leaves of absence during the employee's pregnancy, during which she is entitled in the first 33 days of being unable to work to a 100% remuneration, and subsequently to a sick benefit also amounting to 100% of the contribution calculation basis for sickness insurance. Employers include in the estimated costs of employment of women also the costs of substitutions at the time of the child-rearing leave of a female employee and the risk of the obligation to extend the contract concluded for a definite period until the day of the delivery in the case of the employee's pregnancy. Moreover, these differences result from stereotypes and women's consent to lower pay for fear of unemployment, especially in the face of persistent unemployment which has increasingly concerned women.

82. The imbalance in the remuneration of women and men is incompatible with the regulations of the Labour Code. In spite of the inclusion in the Labour Code of a provision imposing the observance of the principle of "equal pay for the same work or a work of the same value", there exists no system of evaluating the remuneration policy of companies. The draft National Action Plan for Women, in its section related to the economic activity of women, envisages the creation of such a system.

Old-age pensions

83. Unequal pension eligibility age is only one of the factors affecting differences in the old-age pensions of women and men. The amount of the old-age pension is dependent on the length of time of paying social insurance premiums and on the capital amassed on the personal account of the insured individual. These elements are significantly influenced by factors not related to social insurance, such as high unemployment (participation of women in the total number of the unemployed in 2001 and 1995 is, respectively, 52.71% and 55.10%) and the existing imbalance in the remuneration of women and men.

84. In Poland pension eligibility age for women is 60 years, and for men 65 years. Because of a lower pay and a shorter time of paying social insurance premiums resulting from an opportunity of taking an early retirement, retirement benefits of women are significantly lower. During the calculation of the retirement benefit, the entire time of being insured, i.e. the years of paying and not paying the premiums – e.g. during a child-rearing leave, is taken into account. Since women take care of children more frequently, as a consequence they receive lower retirement benefits. However, the very differentiation of the retirement age, without taking into consideration other factors contributing to the amount of the benefit, is important for the amount of the old-age pension. With so different a retirement age, with the assumption that a woman and a man commence working in 2000 being 20 years of age and their professional career develops similarly, on the day of her retirement the woman may count on 66% of the benefit to which the man is entitled upon his reaching the retirement eligibility age (according to the calculations of the Ministry of the Economy, Labour and Social Policy).

85. In 1998 when the currently binding legal regulations were adopted, there was no social acceptance for introducing an equal old-pension eligibility age. The proposal of the Government to introduce a flexible equal old-pension eligibility age at the level of 62 years was treated by the public opinion as depriving women of acquired rights and was not accepted. Currently, social awareness in this respect has changed and unequal old-pension eligibility age is perceived as discriminating against women. Preparation and submission to the Parliament of a relevant draft amendment to the Law on Social Insurance is planned for 2004.

Article 4 – Public emergency

86. In the period under consideration, no measures aiming at the derogation from the obligations under the Covenant were taken in Poland.

87. All infringements of human rights guaranteed by the Constitution constitute an infringement of the Constitution and are treated as an offence. Interference into the sphere of rights and freedoms on the part of the legislative or executive authority may occur only in cases enumerated by the Constitution and only when necessary for the protection of security or public order, the natural environment, health or public morals, or the freedoms and rights of other persons (article 31).

Chapter XI of the Constitution indicates which of the civil rights and freedoms may be subject to derogation or limitation in situations of extreme danger. Extraordinary measures may be introduced by a law or by regulation which shall be additionally publicised, in situations of particular danger, if ordinary constitutional measures are inadequate. Actions undertaken as a

result of the introduction of any extraordinary measure shall be proportionate to the exigency of threat and shall be intended to achieve the swiftest restoration of conditions allowing for the normal functioning of the State.

88. The Constitution provides for three kinds of extraordinary measures:

- *martial law*, which may be declared by the President of the Republic on request of the Council of Ministers, in a part of or upon the whole territory of the State in the case of external threats to the State, acts of armed aggression against the territory of the Republic of Poland or when an obligation of common defence against aggression arises by virtue of international agreement;

- *a state of emergency*, which may be introduced by the President of the Republic on request of the Council of Ministers for a definite period no longer than 90 days, in a part of or upon the whole territory of the State in the case of threats to the constitutional order of the State, to security of the citizenry or public order. Extension of a state of emergency may take place only once with the consent of the Sejm for a period no longer than 60 days.

The Sejm may annul the resolution of the President of the Republic of Poland on the introduction of martial law or a state of emergency by an absolute majority of votes taken in the presence of at least half of the statutory number of Deputies.

- *a state of natural disaster* may be introduced by the Council of Ministers for a definite period no longer than 30 days, in a part of or upon the whole territory of the State, in order to prevent or remove the consequences of a natural catastrophe or a technological accident exhibiting characteristics of a natural disaster. An extension of a state of natural disaster may be made with the consent of the Sejm.

89. During the period of introduction of public emergency measures, the following shall not be subject to change: the Constitution, the Acts on Elections to the Sejm, the Senate and organs of local self-governments, the Act on Elections to the Presidency, as well as statutes on extraordinary measures. Moreover, during the time of the state of public emergency, as well as within the period of 90 days following its termination, the term of office of the Sejm may not be shortened, nor may a nationwide referendum, nor elections to the Sejm, Senate, organs of local self-government nor elections for the Presidency be held, and the terms of office of such organs shall be appropriately prolonged. Elections to organs of local self-government shall be possible only in those places where the state of public emergency has not been introduced.

90. The catalogue of rights and freedoms which are not subject to limitation during the period of introduction of the state of public emergency is defined by the Constitution. The scope of limitation of the freedoms and rights of persons and citizens in times of martial law and the state of emergency shall not concern the freedoms and rights related to the dignity of the person, citizenship, protection of life, humane treatment, ascription of penal liability, access to a court, personal rights, conscience and religion, lodging petitions, as well as rights of the family and children. Also, it shall be prohibited to limit the freedoms and rights of persons and citizens solely on grounds of race, gender, language, religion or lack of it, social origin, ancestry or property.

91. In addition, the *Law on a State of Natural Disaster*, in order to minimize the scope of interference into human freedoms and rights enumerates which of the rights and freedoms may be limited. These are: freedom of economic activity, personal freedom, inviolability of the home, freedom of movement and sojourn in the territory of the Republic of Poland, the right to strike, the right of ownership, freedom to work, the right to safe and hygienic conditions of work, as well as the right to rest.

92. The issues concerning specific states of public emergency are regulated in detail by separate laws passed in 2002.

93 A separate law passed in 2002 stipulates also that each person who has incurred a material loss resulting from limitation of the freedoms and rights of persons and citizens during a period requiring the introduction of extraordinary measures may claim compensation from the State Treasury, which will comprise a recompense of the material loss, without profit, which the injured person may have gained had no loss occurred.

Article 5 – Principles of interpretation of the provisions of the Covenant

94. Interpretation rules envisaged under article 5 of the Covenant are fully observed in Poland. None of the human rights under Polish legal order has been excluded, derogated from, or suspended on the grounds that the Covenant does not recognise such rights or that it grants them in a narrower scope. The situation in this respect has not changed since the time of the previous periodical report.

Article 6 – Right to life

95. Pursuant to article 38 of the Constitution, the Republic of Poland shall ensure the legal protection of the life of every human being.

Abolition of the death penalty

96. The Penal Code of 1997 abolished the death penalty. Currently, the most severe penalty is the penalty of lifetime imprisonment. In each case when the death penalty was imposed and not executed, it was commuted to the penalty of the deprivation of liberty for life. The Polish Penal Code includes also a chapter devoted to offences *against peace and humanity, and war crimes* (Annex 3 (A)).

97. Extradition of a prosecuted person to a foreign State is inadmissible in the case when there are justified grounds to fear that in the State demanding the extradition, the extradited person may be sentenced to the death penalty or that the death penalty may be executed or that the extradited person may be subject to torture.

98. On 1 November 2000 entered into life with respect to Poland *6 Protocol to the Convention on the Protection of Human Rights and Fundamental Freedoms* on the abolition of the death penalty, and on 3 May 2002 Poland signed *Protocol 13 to the European Convention on the Protection of Human Rights and Fundamental Freedoms* concerning a prohibition of the death penalty in all circumstances, including crimes committed during wartime and in

circumstances of a threat of war. On account of their reference to similar issues, the II Optional Protocol to the ICCPR and the above Protocol 13 will be ratified at the same time. The Republic of Poland is also a State Party to the Rome Statute of the International Criminal Court.

Prohibition of killing

99. Pursuant to article 148 of the Penal Code, whoever kills a human being shall be subject to the penalty of the deprivation of liberty for a minimum term of 8 years, the penalty of deprivation of liberty for 25 years or the penalty of deprivation of liberty for life. A more severe penalty (the deprivation of liberty for a minimum term of 12 years) is imposed on the perpetrator of a murder executed with particular cruelty, in connection with hostage taking, rape or robbery, for motives deserving particular reprobation, or with the use of firearms or explosives.

Moreover, the Penal Code defines criminal liability for the crimes of infanticide, euthanasia, and inducing a person to take his or her own life.

In 2002 from among 10,864 prisoners, 42 were sentenced for homicide to the penalty of deprivation of liberty for life and 172 persons were sentenced to the penalty of deprivation of liberty for 25 years. In 2001 the respective numbers are as follows: for 11,014 convicted persons, 36 were sentenced for homicide to the penalty of deprivation of liberty for life and 204 to the penalty of deprivation of liberty for 25 years.

Creating conditions for a dignified life

100. Since the right to life comprises not solely a prohibition of the death penalty and the penalisation of crimes against life and health, Poland takes various actions, also internationally, which aim at the creation of conditions facilitating a dignified and healthy life. Annex 4 enumerates international agreements in the field of human rights protection, the right to peace, natural environment protection, as well as concerning the non-proliferation of weapons of mass destruction, which Poland has signed and/or ratified.

101. With a view to providing conditions for a dignified life, which includes also a proper state of health, two major reforms of the health care system were conducted in 1997 (information is provided in the updated *Core Document*).

Efforts are also taken to ensure a sufficient number of physicians. According to the data of the Supreme Chamber of Physicians, the number of registered physicians and dentists in Poland amounts to 152,188 (as of 4 August 2003); it has to be stressed, however, that this comprises also physicians who are not professionally active (old-age and disability pensioners).

	Physicians			**Dentists**			**TOTAL**
	Women	**Men**	**Total**	**Women**	**Men**	**Total**	
Number of people	66 409	53 872	120 281	25 114	6 793	31 907	152 188
%	55.2%	44.8%	100.0%	78.7%	21.3%	100.0%	

102. In the period 1995 – 2001, the infant mortality ratio decreased by almost 50 per cent, while the life expectancy expanded and in 2001 amounted to – in the case of women – 78.4 years in comparison with 76.4 years in 1995; in the case of men in 2001 it amounted to 70.2 years in comparison with 67.6 years in 1995.

Infant mortality ratio in the period 1995-2001:

Year	**Infant mortality ratio**	**Total number of births** (Number of still births):	**Number of live births**	**Number of women whose death was connected with pregnancy and delivery** – official data
1995	13.6	436 312 (3203)	433 109	43
1996	12.2	431 211 (3008)	428 203	21
1997	10.2	415 166 (2531)	412 635	24
1998	9.5	398 103 (2484)	395 619	19
1999	8.9	384 379 (2377)	382 002	21
2000	8.1	380 476 (2128)	378 348	30
2001	7.7	370 247 (2042)	368 205	13

With a view to a further reduction of infant mortality, other systemic action is taken, mainly within programmes of the health policy of the State. Of greatest significance are especially long-term programmes:

– "Programme of optimisation of perinatal care",

– screen tests of the entire population of infants towards phenyloketonuria and thyroid hypofunction,

– programme of pre-natal screen tests.

A number of other health policy programmes financed from the State budget contributes to a restriction of mortality in selected ailments or groups of ailments and in consequence contributes to the lengthening of the life expectancy of the population. The most important of them are:

– "National programme of heart protection",

– "Programme of eradication of malignant tumours", including the popularisation of screen tests,

– "Programme of preventive inoculations",

– "Programme of transplantations of marrow and vascularised organs",

– "Programme of providing haemophiliacs and persons with other haemorrhagic diastheses with blood coagulation factors".

103. Detailed information on the *right to health* was presented in the periodical report on the implementation of the provisions of the Covenant on Economic, Social and Cultural Rights, which was analysed by the relevant Committee in November 2002.

Abortion

104. As a consequence of recognising life as a fundamental human right which is subject to protection also in its prenatal stage, the *Law of 7 January 1993 on Family Planning, Protection of the Human Foetus and Conditions for the Admissibility of Abortion* (Journal of Laws no. 17 item 78, as amended), provides that abortion may be conducted exclusively by a physician, in cases when:

- the pregnancy poses a hazard to the health or life of the pregnant woman,
- prenatal tests or other medical indications show a high probability of a grave and irreversible impairment of the foetus or an incurable disease that threatens its life,
- there is a justified suspicion that the pregnancy was a result of a prohibited act[5].

Abortion conducted for the reasons enumerated above is financed from public resources. There is no obligation to report personal data of the woman who has undergone an abortion by the physician who has performed it.

Women do not always notify law enforcement organs about the offence committed and in such cases they do not have an official confirmation from law enforcement organs that the pregnancy was a result of an offence. Such a confirmation is indispensable for being granted permission for a legal abortion. Such situations may be one of the reasons for a low number of abortions conducted in the case when the pregnancy is a result of a rape.

Number of abortions when the pregnancy was the result of a prohibited act:

Year	**1995**	**1996**	**1997**	**1998**	**1999**	**2000**	**2001**
Number	7	8	7	12	1	2	5

Year	**Number of live births in thousands**	**Total number of abortions**	**Number of miscarriages**
1998	395.6	310	43.959
1999	382.0	151	41.875
2000	378.3	138	41.007
2001	368.2	123	40.559

[5] Not only rape, but also incest and a sexual intercourse with a minor under 15 years of age (articles 200 and 201 of the Penal Code) constitute prohibited acts.

105. In 1997, when a provision allowing abortion for social reasons was in force, the number of abortions conducted under it amounted to 2,524 (83%) of the total of 3,047 abortions.

106. In Poland data about abortions relates solely to abortions conducted in hospitals, i.e. those legally admissible under a law. The number of abortions contained in the present official statistics is low in comparison with previous years. Non-governmental organisations on the basis of their own research estimate that the number of abortions conducted illegally in Poland amounts from 80,000 to 200,000 annually.

107. It follows from the Government's annual *Reports on the Execution of the Law* and from reports of non-governmental organisations that the law's provisions are not fully implemented and that some women, in spite of meeting the criteria for an abortion, are not subject to it. There are refusals to conduct an abortion by physicians employed in public health care system units who invoke the so-called conscience clause, while at the same time women who are eligible for a legal abortion are not informed about where they should go. It happens that women are required to provide additional certificates, which lengthens the procedure until the time when an abortion becomes hazardous for the health and life of the woman. There is no official statistical data concerning complaints related to physicians' refusals to perform an abortion. The Government Plenipotentiary for an Equal Status of Women and Men has noted limited access to prenatal tests (2,035 tests for over 411,000 pregnant women – in 2001), to procedures of *in vitro* fertilisation and refunded contraceptives, as well as an inadequate level of sexual education in schools. In the opinion of the Government, there is a need to exercise already existing regulations with respect to access to prenatal tests and the performance of abortions.

108. The problem of abortion has for years provoked much controversy in Poland. Currently a debate is under way on a possible amendment to the *Law on Family Planning [...]* as well as on whether such an amendment should be subject to a nationwide referendum.

Family planning, sexual education and access to contraceptives

109. *The Law on Family Planning [...]* recognises the right of each person to make responsible decisions about having children and the right of access to information, education, counselling, and resources making it possible to exercise this right as well as imposes upon the State the obligation of "assuring free access to information and prenatal tests" and of granting "a leave to a pregnant school student and providing other assistance indispensable for her to complete her education". The law likewise stipulates that the State is under an obligation to "disseminate knowledge on human sexual life, on principles of conscious and responsible parenthood, on the value of the family, life in its pre-natal stage, and on methods and means of conscious procreation".

110. In accordance with the content of the conclusions of the **"***Report for 1997 from the Implementation of the Law on Family Planning [...]*", the *National Team for the Promotion of Natural Family Planning* was established on 18 March 1999 pursuant to the directive of the Minister of Health and Social Security. The National Team took initiatives towards the establishment of Voivodeship Teams for the Promotion of Natural Family Planning, cooperated in the creation and development of natural family planning centres at the existing outpatient

clinics for women, monitored as to content centres which provide education in the field of natural family planning, conducted training programmes, and issued publications, including the "Natural Family Planning" bulletin.

The *National Team for the Promotion of Family Planning* was established pursuant to the directive of 26 July 2002.

111. Individual counselling with respect to family planning is provided by gynaecologists. In addition, family planning counselling is conducted by non-governmental institutions, such as the Society for the Development of the Family, the Federation for Women and Family Planning, or numerous associations active primarily in the promotion of natural family planning.

112. Reproductive rights are included in the chapter devoted to health of the II stage of the National Action Plan for Women. Its strategic objective is the management of the State's policy in the field of reproductive health, in accordance with the standards of modern medical expertise and international legal norms, implemented through: an analysis of existing legal regulations related to reproductive health, monitoring the practice of their use in the light of the observance of human rights towards women, and the introduction of family planning standards in line with the modern medical knowledge, international norms and social expectations.

Detailed information on sexual education in schools is provided in article 24 of the present report.

113. *The Law on Family Planning [...]* furthermore imposes upon the State the obligation of "assuring citizens free access to methods and measures of conscious procreation". Contraceptives, including hormonal ones, are available by prescription in generally accessible pharmacies and are 100% paid for.

The Team for Medication Economy, during the preparation of a list of refunded medications, took into consideration only the preparations which have their counterparts in the currently binding lists. Modern contraceptive preparations do not have their counterparts in the list of refunded medications and did not meet this requirement.

Furthermore, the introduction of modern hormonal contraceptives into the above list is not possible in the light of the *Law on Common Insurance in the National Health Fund* and would require the adoption of legislative changes which would facilitate the refunding of contraceptives arising from the indications of pregnancy prevention.

114. In Poland no record is made of counselling concerning contraceptives or comprehensive tests on their use. It follows from the study *Pro-health and Sexual Behaviour in the Light of HIV/AIDS in Poland* by Zbigniew Izdebski (Warsaw 1997) that from among 1963 respondents (1001 women, 960 men, in 2 cases there is no data on the sex), 55% did not use any contraceptive method or used inefficient methods. The most frequent method used is the condom – close to 21% respondents. Contraceptive pills were used by 8.3 % respondents and the contraceptive coil by nearly 5% (the questionnaire question referred to the method used during the most recent sexual intercourse).

Article 7 – Prohibition of torture

115. Pursuant to article 40 of the Constitution, no one may be subject to torture or cruel, inhuman, or degrading treatment or punishment. The application of corporal punishment shall be prohibited. In addition, article 39 of the Constitution provides that no one shall be subject to scientific experimentation, including medical experimentation, without his voluntary consent.

116. The Polish Penal Code (articles 245-247) determines penal liability for manifestations of cruelty towards persons deprived of liberty and subjects to penal liability public officials who use or threaten to use violence or commit offences of tormenting either physically or psychologically for the purpose of obtaining a testimony or information. Through these provisions Poland introduced into its legislature the principle of international accountability for the prosecution of actions which constitute acts of torture. Depending on the result of a prohibited act, which may be regarded as torture or other cruel, inhuman or degrading treatment or punishment, the Code envisages adequate sanctions. The statute of limitation regarding offences committed by, or by order of, public officials and which have not been prosecuted for political reasons, shall be extended for the period during which such reasons existed (article 44 of the Constitution).

National Remembrance Institute (IPN)

117. A conviction that no unlawful action of the State against the citizens can be protected by secrecy nor may be consigned to oblivion was also the reason for the establishment, pursuant to the Law of 18 December 1998, of *the National Remembrance Institute – Commission for the Prosecution of Crimes Against the Polish Nation.*

The duties of the Institute include, *inter alia*, the prosecution of Nazi crimes, communist crimes and other crimes which constituted offences against peace and humanity or war crimes perpetrated on persons of Polish nationality or Polish citizens of other nationalities in the period from 1 September 1939 until 31 December 1989. By principle, the death of perpetrators of the above crimes is not an obstacle to conducting investigations, which aim at the determination of all circumstances of violations of human rights, and especially the definition and identification of the injured. In this way human dignity is restored to those injured by the totalitarian lawlessness.

118. The Commission for the Prosecution of Crimes Against the Polish Nation, which constitutes the investigation division of the National Remembrance Institute, until August 2003 brought to courts 32 indictments whose statements of reasons included charges of human rights violations by officers of public security offices and security service as well as by judges and public prosecutors in the period 1944-1989. In this category of investigations, charges were brought against a few dozen persons suspected of committing offences constituting violations of fundamental human rights, which consisted in unlawful arrests and the use of physical and psychological torture as well as unlawful convictions, including death sentences.

Up to now, courts have adjudicated on 14 cases brought by IPN prosecutors, in 9 cases passing convicting judgements. There has been no conviction of a judge or a public prosecutor who were charged in the indictment with participation in court crimes consisting in passing unlawful convicting judgements to the death penalty. Currently, around 300 investigations are

conducted concerning Nazi crimes committed in the period 1939 – 1945, around 900 investigations concerning communist crimes committed by the end of 1989 and 75 investigations related to war crimes and offences against humanity.

One of the indictments brought to court by IPN prosecutors against a former officer of the security service is based on the assumption according to which coercing a Polish citizen during martial law in Poland (1981-1983), by means of unlawful threats, to emigrate from the country (to accept a passport allowing only for departing from the country, without the right to return) constitutes a communist crime since it violates one of the fundamental human rights.

Elimination of the abuse of junior soldiers – the so-called wave phenomenon

119. In reference to the observations of the Committee related to the phenomenon of the abuse of junior soldiers – the so-called wave phenomenon – practices used in the army, consisting in exploiting and humiliating recruits, it must be observed that the Ministry of National Defence notices a necessity of eliminating this negative and reprehensible phenomenon. It is a subject of special concern of the authorities, in particular of the social and educational division of the Armed Forces of the Republic of Poland. The problems of irregularities in the field of interpersonal relations in the army, with special emphasis on the abuse of junior soldiers, was discussed on a regular basis during meetings of the authorities of the Ministry of National Defence and the College of Commanders-in-Chief of the Armed Forces of the Republic of Poland devoted to the evaluation of the state of military discipline in the Armed Forces of the Republic of Poland within a given year. This subject was likewise discussed during the meeting of the Sejm Commission of National Defence, where the phenomenon was subject to assessment and where reasons for its continuance were indicated – dependent on and independent of the army.

The phenomenon of the abuse of junior soldiers and the scope of its existence in military units are monitored on a regular basis by the authorities of the Ministry. In 2002 the qualitative state of interpersonal relations in the army was assessed twice. In addition, the existence of the phenomenon of the abuse of junior soldiers is a subject of regular surveys conducted by the Military Office for Sociological Research, e.g. a part of the examination of the atmosphere among soldiers of mandatory military service, conducted on a half-yearly basis. Surveys conducted show a significant limitation of the phenomenon of the abuse of junior soldiers in recent years (in 1998 the existence of this phenomenon was declared by approx. 74% of soldiers of mandatory military service, as compared to 36% at present).

One of the basic obstacles to the elimination of the phenomenon of the abuse of junior soldiers is the soldiers' own approval of the functioning of this informal tradition.

120. The Minister of National Defence has adopted a plan of action aiming at a marked limitation of pathological phenomena among soldiers. In particular were introduced:

- recommendations aimed at a decisive improvement of the quality of performing duty services in military units (violations of the law by soldiers, including the organisation of prohibited practices of abuse of junior soldiers, occur most often in the evening and at night time);

- monitoring the efficiency of promoting appropriate interpersonal relations, including the efficiency of eliminating abuse of junior soldiers, during every single audit of military units;

- systemic prevention activity conducted for the sake of the army by military prosecutors and military police. Each reception of new soldiers is connected with meetings with representatives of the above institutions; during the meetings are raised e.g. issues related to penal liability for the performance of practices of abuse of junior soldiers and are indicated ways of conduct when soldiers encounter such practices;

- implementation of tasks included in the National Programme for the Prevention and Solution of Alcohol-related Problems. Over 560 officers – commanders and educators – have been prepared for independent prevention work in this field during specially organised training courses. Gradually, a special programme of alcohol-related prevention known as "KOREKTA" is being introduced to all units. In 2002, a one-fourth drop in the number of offences and misdemeanours committed by soldiers under the influence of alcohol was observed;

- active participation of the army in the implementation of the National Programme for the Prevention of Drug Abuse. Educational activities are expanded – training workshops for commanders and educational personnel. Thanks to them, in 2002 the group of personnel professionally qualified to solve drug-related problems in military units doubled;

- supporting commanders with psychologists – consultants for psycho-prophylactics – who fulfil the function of psychologists of first contact, working directly with soldiers. In 2002 psychological assistance (in the form of individual counselling and psycho-educational classes) was taken advantage of by tens of thousands of soldiers. Psychologists teach soldiers how to counter practices of abuse of junior soldiers and how to cope with such situations;

- activities for the sake of a better and more attractive organisation of free time for soldiers in barracks, after training classes, with a view to e.g. limiting the phenomenon of abuse of junior soldiers. First of all, a bigger number of additional leisure activities are planned, used for promoting attitudes of friendship and good competition;

- with a view to better preparing professional personnel, especially of the lowest ranks, to deal with the problem of abuse of junior soldiers, a number of publications of a handbook character have been issued (e.g. a book "Koty, wicki i rezerwa" [Freshmen, Smart Alecks and the Reserve] which describes practices and customs as well as norms and symbols of the abuse of junior soldiers in the army).

121. A major project contributing to restraining the phenomenon of the abuse of junior soldiers was the inauguration as of 1 February 2002, on principles defined by the Minister of National Defence, of the *Military Telephone Helpline*. It is available to soldiers, their families and close friends, and makes it possible to report on problems connected with phenomenon of the abuse of junior soldiers. Each signal requiring an intervention and a possible legal reaction is

forwarded to a competent military organ. Reports pertaining to the abuse of junior soldiers are examined in the course of verification proceedings conducted by the Military Police, following which each time a prosecutor issues a decision as to the further course of action. On the basis of reports to the Military Telephone Helpline last year a few soldiers, perpetrators of offences of abuse of junior soldiers, were brought to military court.

122. As of 1 July 1999, mandatory military service in Poland was shortened ultimately to 12 months, which in a natural way limited a dependence between soldiers based on a longer period of service between soldiers of "the new and the old recruitment". In the course of work on another amendment to the *Law on the General Obligation of the Defence of the Country*, the Government put forward a proposal of shortening the mandatory military service to 9 months as of 2006.

123. In an unequivocal manner, *Offences Against the Rules of Behaviour to Subordinates* were defined in Chapter XLI of the military part of the Penal Code (text in Annex 3 (C)).

Article 353 of the Penal Code defines penal liability (provisions of articles 350 - 352 of the Penal Code apply respectively) of a soldier who degrades, insults, strikes, or in another manner violates the bodily inviolability, or who torments either psychologically or physically a soldier of a lower rank or of the same rank but junior in terms of the duration of military service. The addition of the feature "junior in terms of the duration of military service" allowed for rendering the full criminal content of the phenomenon of the abuse of junior soldiers in its typical and most frequent manifestation.

124. In 2000, military courts adjudicated on criminal cases against 203 indicted persons, 194 of whom were found guilty of breaching the rules of behaviour to subordinates or soldiers of a lower rank. In 2001, 347 persons were charged with such offences, and 341 of them were convicted. In 2002, out of the 386 persons charged, 375 were convicted. However, the scope of offences connected with irregularities in the sphere of interpersonal relations in the army is insignificant, since it concerns only around 5% of the total number of perpetrators of military offences. Nevertheless, these offences are not suppressed from the general public. Last year, at a special conference the Undersecretary of State for Social Affairs publicly informed about the scale of pathological phenomena in the military environment, including the phenomenon of the abuse of junior soldiers, as well as other forms and methods of preventing such phenomena.

125. Examples of criminal cases:

A. By a final judgement of the Military Garrison Court in Warsaw of 9 August 2000 (index no. Sg 216/00), reserve corporal Piotr Sz. and reserve corporal Artur Sz. were found guilty as follows: on 27 February 2000 around 9.30 on the premises of the JW. 4391 training company in Tomaszów Mazowiecki, in the bathroom, being superiors, jointly and in collusion they tormented physically subordinates: private Szymon L. and private Radosław S. in that they made them do 30 push-ups, put on gas masks, and after unscrewing cartridges, inserted into the inhalation tube no fewer than 10 cigarettes in each mask, then lit the cigarettes and made them inhale the smoke into the mask, which the soldiers did, and then after they put off the masks made them do another 10 push-ups, i.e. committed an offence under article 352 § 1 of the Penal Code.

For the above, the Court sentenced the accused to the penalty of the deprivation of liberty for a period of 6 months, and conditionally suspended the execution of the penalty for the probation period of 3 years in each case, using a penalty measure in the form of demotion, additionally assigning reserve corporal Artur Sz. to the custody of a curator during the probation period. The above judgement was issued following a consideration of the motion of the accused filed pursuant to article 387 § 1 of the Code of Criminal Procedure.

B. By a final judgement of the Military Garrison Court in Szczecin of 3 April 2000 (index no. Sg. 45/00), 7 reserve privates were found guilty as follows: in the period from 2 July until 18 August 1999 on the premises of a communications companies JW. 1755 and JW. 1756 in Stargard Szczeciński they tormented physically and psychologically junior privates, i.e. committed an offence under article 352 § 1 of the Penal Code in conjunction with article 353 of the Penal Code. Four of them were additionally found guilty of committing an offence under article 352 § 3 of the Penal Code in conjunction with article 352 § 1 of the Penal Code in conjunction with article 353 of the Penal Code, as their actions led one of the injured persons to take his life by cutting the veins of the left forearm on 30 August 1999.

For the above acts they were sentenced to penalties from the combined penalty of 6 months of deprivation of liberty with a conditional suspension of its execution for a probation period of 2 years, to a combined penalty of 2 years of deprivation of liberty with a conditional suspension of its execution for a probation period of 3 years and assigning at this time to the custody of a curator.

Activities conducted in the Ministry of National Defence were positively assessed in a report of the Commissioner of the Council of Europe for Human Rights, who visited Poland in November 2002.

Aliens detained at border checkpoints at airports

126. Aliens, whom a Border Checkpoint of the Border Guard did not allow to enter the territory of Poland at checkpoints located at airports, are – when possible – sent back to the port of origin by the same plane, since in the majority of border checkpoints located at airports there are no rooms for aliens refused entry into Poland, or the existing rooms do not meet adequate standards. The absence of adequate rooms has been repeatedly indicated to the authorities of airports by relevant commanding officers of border checkpoints of the Border Guard.

127. At present only Warsaw – Okęcie Airport is equipped with a waiting room approx. 50 m² in size for persons refused entry into the territory of Poland. The room is furnished with sanitation equipment (toilet, washbasin, shower). There are 13 beds in the waiting room. Permanent medical care is provided by the physician on duty of the Airport. If an alien has financial resources, he covers the costs of meals himself, if he does not – the costs are borne by the National Headquarters of Border Guard. The number of persons who were refused entry into the territory of Poland at the Warsaw – Okęcie Border Checkpoint of the Border Guard was in 2001 – 1,065 persons, and in 2002 – 915 persons. In 2002 the waiting room was used by 351 aliens. However, the situation is improving constantly. Warsaw Airport in agreement with the Commander of a Border Checkpoint of the Border Guard has taken action with a view to Poland's meeting its international obligations by:

- establishment of a room (49.2 m^2 in size) for persons refused entry under the *Law of Aliens*. It does not fulfil all the requirements (lack of natural light, no separation into rooms with respect to sex, one sanitation point). However, the already commenced work on the expansion of the terminals envisages a change of this situation in the future. Persons refused entry into the territory of Poland because of a lack of required documents, but who have their own financial resources (they are most often passengers of the EU countries) are suggested to stay in a transit hotel against payment.

- establishment of two detention rooms (9.7 m^2 and 7.0 m^2) on the premises of the Warsaw Airport passenger terminal for a short-term detention of persons in conflict with the law, for a period necessary for the preparation of documentation submitted to a court and transfer of them to police arrest facilities in Warsaw.

The number of persons taking advantage of the separate room has dropped significantly recently in comparison with the preceding years because of a limited number of flights from countries, from which many passengers usually did not meet the requirements of entry into the territory of Poland (Algeria, Dubai).

In addition, in an area adjacent to the airport the Border Guard is constructing a deportation arrest facility (it will be operational in the second half of 2003), intended for a stay for a period of up to 90 days for aliens subject to extradition from the territory of the Republic of Poland and placed there with the consent of Court. The Border Guard is also going to assign rooms in this building for a short (48-72 hours) stay for arrested persons, and rooms for persons applying for refugee status for a period necessary for the execution of professional activities. The aforementioned activities will also contribute to the improvement in the situation of some of the aliens who have so far used the rooms in the terminal.

128. The situation of persons refused entry into the territory of Poland at regional airports is as follows:

- in regional airports with the status of permanent airport border checkpoints, a passenger whom border services have not granted permission to enter Poland is sent back by the same plane to the country he has come from;

- when this is impossible, which on account of the structure of flight schedules of regional airports is an incidental phenomenon, the foreigner is directed by the first possible plane to Warsaw. Until the moment of take-off he remains in the airport under a permanent supervision of the Border Guard.

None of the regional airports has special rooms which fulfil the required criteria, although small rooms have been assigned at Kraków and Rzeszów airports. In the remaining cases aliens are placed in the transit or arrivals hall or in service rooms. However, taking into consideration the character and structure of international connections to regional airports, the question of aliens refused entry into the territory of Poland for certain reasons is not a significant phenomenon (in 2002, 171 aliens were refused entry into the territory of Poland in 8 regional airports). That is why, in the opinion of the Government, with the above rules of conduct in operation, agreed

upon with a Border Checkpoint of the Border Guard, there is no need for creating rooms geared exclusively to the needs of such persons. In particular individual cases, conditions and standards required by international regulations are fulfilled.

Article 8 – Prohibition of slavery

129. The Republic of Poland unconditionally observes the prohibition of slavery, the slave trade and servitude contained in article 8 of the Covenant. Polish legislature in this field implements the obligations arising from international law, especially from the *Convention of 7 November 1956 on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery,* ratified by Poland (Journal of Laws of 1963 no. 33 items 185 and 186).

Poland is also a state party to the *Convention no. 29 of the International Labour Organisation of 28 June 1930 on Forced or Compulsory Labour* (Journal of Laws of 1959 no. 20 item 122 and 123) and the *Convention no. 105 the International Labour Organisation of 25 June 1957 on the Abolition of Forced Labour* (Journal of Laws of 1959 no. 39 items 240 and 241).

Prohibition of forced or compulsory labour – exceptions

130. Entry into a work contract, irrespective of the legal basis, requires a unanimous declaration of will of the employer and the employee. Martial law and a state of natural disaster constitute exceptions when the State may interfere with the rights of an individual and impose on him the obligation of work. However, the regulations contained in relevant laws are in full compliance with article 8 of the ICCPR.

During martial law may be introduced a general obligation to perform work by persons who have attained the age of 16 years, and have not exceeded 65 years of age and are able to perform work because of their state of health and personal and family conditions. Furthermore, employers may be obligated to perform additional tasks whose implementation is indispensable for the security or defence of the State and providing supplies to the population; also, an obligation may be imposed on natural and legal persons running farms to perform services consisting in supplies of produce and groceries and in cultivation of specific kinds of plans and husbandry of animals for the sake of specific subjects.

In turn, *the Law on a State of Natural Disaster* grants to commune heads, town and city mayors, district heads and voivodes or plenipotentiaries the right to introduce material and personal benefits, such as the duty to perform specified work, if the powers and resources at their disposal are insufficient.

Labour of persons deprived of liberty

131. There is no problem, either, of forced labour of persons deprived of liberty, which might be regarded as a violation of the provisions under article 8 of the Covenant. Persons placed in penitentiary units are ensured, when possible, the possibility of work, and during the direction for work is taken into consideration, when possible, the profession, education, interests, and personal needs of the prisoner. The ability of the prisoner to work, as well as, when possible, the kind, conditions and the duration of work, are defined by a physician. Provisions of the Labour

Code are applicable with respect to prisoners performing work as to the duration of the work and occupational safety and hygiene. This work is paid for, and the remuneration to which the prisoner is entitled cannot be lower than the minimum remuneration for this work, defined under separate regulations.

132. Since under current economic circumstances, characterised by a marked surplus of work force, there is a problem of ensuring work to all prisoners who have expressed a wish of performing it, priority is guaranteed to prisoners obligated to pay alimony, as well as those in an especially difficult material, personal or family situation.

133. According to the regulations currently in force, remuneration is not paid only for tidying up and auxiliary works performed for the sake of the correctional facility or tidying up works for the sake of local self-government; the number of hours cannot exceed 60 per month. Furthermore, the prisoner, upon his consent in writing, may be allowed to work for free during public works for the sake of organs of local self-government and during works performed for charity purposes, as well as for the sake of the correctional facility and auxiliary works performed for the sake of the correctional facility (this does not apply, however, to the work performed on the basis of provisions of the Labour Code).

Trafficking in human beings

134. In Poland the problem of trafficking in human beings concerns mainly the phenomenon of trafficking in women for the purpose of forcing them to prostitution. According to estimates prepared on the basis of police statistics, since the beginning of the 1990s, the number of women engaging in prostitution in Poland oscillated at 10 000. In 1997 it increased to 13 500 women, 2 500 of whom were women with a foreign citizenship, mainly Bulgarians, Russians, Belarussians, Ukrainians, Romanians, and Moldovans. At present the number of women engaging in prostitution has dropped to around 7 300, among others as a result of extensive actions taken by the Police. Participation of citizens of foreign states is estimated at the level of 30% of this number. Transfer of women and forcing them to prostitution abroad has become a field of activity of transnational organised crime. Countries of destination are Germany, the Netherlands, Belgium, Austria, Switzerland, Spain, Italy, Greece, and even Israel and Japan. Despite the fact that Poland still fulfils a three-fold role when it comes to trafficking in human beings – i.e. is simultaneously the country of origin, the country of transit and the country of destination for the victims of this offence, certain trends may be observed. Poland, being initially primarily the country of origin of the victims, has recently become a transit country of trafficking in human beings. According to the report of the *U.N. Office on Drugs and Crime* of May 2003, Poland, along with Hungary and Serbia and Montenegro, is one of the main transit countries. The phenomenon concerns most often women who are recruited through employment or personal advertisements, and who are then taken away and sold to nightclubs and brothels (functioning both legally and illegally) in Western Europe.

135. The Police have also observed an increase in the transfer of women to work in brothels in Poland, functioning illegally or under the guise of escort agencies. This concerns Romanians, Bulgarians and citizens of countries of the former Soviet Union. Part of them engage in prostitution at expressways and at transit routes – mainly in border zones.

136. Under Polish law, pursuant to article 253 of the Penal Code, trafficking in human beings even with their consent constitutes a crime subject to the penalty of deprivation of liberty for a minimum term of 3 years. Furthermore, the Penal Code typifies actions constituting the so-called exploitation of prostitution, e.g. conducting trafficking in human beings with the aim of having them engage in prostitution abroad. Article 204 § 4 of the Penal Code subjects conducting trafficking in human beings with the aim of having them engage in prostitution abroad to the penalty of deprivation of liberty for a term of between 1 and 10 years. In the case of exploitation of prostitution with the consent of the injured person, the perpetrator is subject to the penalty of deprivation of liberty for a term of up to 3 years, and in the case of a minor, to the penalty of deprivation of liberty for a term of even up to 10 years. Because of the fact that the offence of trafficking in human beings is committed as a result of motives deserving special condemnation, in the event of a conviction of the perpetrator the court may consider the usefulness of deciding on a penal means in the form of deprivation of public rights. Whoever, in order to gain material benefits, organises the adoption of children in violation of the law, is subject to the penalty of deprivation of liberty for a term of between 3 months and 5 years.

137. Statistically, the problem of trafficking in human beings does not constitute a significant part of the total number of criminal offences committed annually in Poland. In 1997 the Police disclosed in Poland 56 offences of abducting and inducing to prostitution, 27 cases of trafficking in women, and 7 cases of trafficking in children. In 1997 the Police detained 57 persons, including 16 women, suspected of perpetrating offences of this type. In 1998 were disclosed, respectively, 52 offences of abducting and inducing to prostitution, 18 cases of trafficking in women, and 2 cases of trafficking in children. The Police detained 52 persons, including 12 women, suspected of perpetrating offences of this type.

Results of preparatory proceedings concerning trafficking in human beings:

Year	Number of concluded proceedings	Number of cases concluded with an indictment	Number of cases finished with a discontinuation		Number of convicted persons	Number of injured persons
			due to non-detection of the perpetrator	due to non-existence of an offence		
1995	20	18	-	2	43	205
1996	33	26	1	6	59	232
1997	37	31	1	5	58	163
1998	41	25	2	14	64	109
1999	17	14	-	3	24	109
2000	43	38	1	4	119	172
2001	49	35	6	8	71	93
2002	19	11	4	4	40	167
Total 1995 – 2002	259	198	15	46	478	1250

Data for the years 1999- 2002 looks as follows:

Legal qualification	Instituted proceedings				Concluded proceedings				Identified offences			
	1999	2000	2001	2002	1999	2000	2001	2002	1999	2000	2001	2002
Abduction with the aim of engaging in prostitution abroad (article 204 of the Penal Code)	5	3	10	5	12	7	6	9	3	6	10	2
Trafficking in human beings (article 253 § 1 of the Penal Code)	8	12	7	7	4	13	13	8	5	19	24	8
Illegal adoption in order to gain material benefits (article 253 § 2)									3	0	1	0

The Polish Government, taking into account the fact that reality differs from the statistical data which shows an insignificant scale of the phenomenon, lays special emphasis on the prevention of such practices and of all other new forms of slavery.

138. In cases concerning trafficking in women, the injured persons after providing a testimony during the investigation usually return to their home countries and there is no guarantee that they will appear at the trial for the purpose of testifying again before the court. That is why of major importance is the provision of article 316 § 3 of the Code of Criminal Procedure, according to which it is possible for the court to hear a witness at the stage of preparatory proceedings (this article was applied until the end of 2002 in 25 cases, including 8 cases in 2001, and 13 ones in 2002). Of major significance is also an amendment to the Code of Criminal Procedure, providing an opportunity of hearing a testimony of a witness at a distance with the use of technical equipment, which entered into force as of 1 July 2003.

139. The Code of Criminal Procedure envisages institutions whose application is meant to protect the victim and which might be especially useful in proceedings concerning trafficking in people, such as the possibility of the injured person's testimony in court in the absence of the accused or the institution of an *incognito witness* (suppressing the witness's personal data). In the period 1995 – 2001, the institution of an *incognito witness* was applied in 9 cases concerning trafficking in women. In addition, when a foreign female is the victim of an offence, there is a possibility of legalizing her stay in Poland (issuing a residence visa for a definite time) in order to let her provide a testimony with charges against persons inciting to prostitution, deriving material benefit from it or facilitating it, and persons engaged in trafficking in human beings (article 14 of the *Law of Aliens*).

140. In 2001 was signed the Programme of cooperation between the Governments of the Republic of Poland and the Czech Republic and the Office on Drugs and Crime of the UN Centre for International Crime Prevention known as "*Legal and Penal Reaction to Human Trafficking in the Czech Republic and in Poland*".

In order to implement the above Programme (whose realisation is planned within the period of 1.5 years) an inter-ministerial working group was established with the participation of representatives of the Ministry of Internal Affairs and Administration, the Police (prevention division and criminal division), the Border Guard, Office for Repatriation and Aliens, Ministry of Justice (representatives of the judiciary and prosecutors' offices), Ministry of Foreign Affairs, the Plenipotentiary for an Equal Status of Women and Men, non-governmental organisations – "La Strada", and academic communities conducting studies on trafficking in people and prostitution. Detailed objectives of the Programme are as follows:

- review and evaluation of currently existing legislation in the light of the *Additional Protocol to Prevent, Suppress and Punish Trafficking in Persons supplementing the UN Convention against Transnational Organised Crime*;

- collection of basic data, identification of the main tendencies connected with trafficking in human beings and an evaluation of the efficacy of the methods and means used so far;

- creation of a uniform database on trafficking in human beings in Poland;

- strengthening institutional means of reaction of the judiciary with a view to increasing the efficiency of prosecution by improving the protection of victims and witnesses;

- tightening international cooperation of professionals dealing with this issue.

In the course of the implementation of the Programme, work has already begun on a model of protecting the witness-victim. It stipulates strengthening the protection of the witness-victim during the investigation through the use of adequate procedures and technical means (reduction in the number of hearings, use of procedures of witness protection). Preparation of a list of centres and non-governmental organisations authorised to offer assistance to victims (witnesses) of trafficking in human beings is envisaged, as well as preparation and implementation of programmes which would ensure a monitoring of a return of victims of trafficking in human beings to a normal life.

The draft *National Programme for the Elimination and Prevention of Trafficking in Human Beings*, prepared as part of the activities of the group, was approved by the Council of Ministers on 16 September 2003.

141. In August 2002, the Polish Government adopted the "*Safe Poland" National Programme for the Prevention and Elimination of Crime*, which contains a strategy concerning the prevention of offences against women, including those connected with trafficking in human beings.

The Programme corresponds to strategies related to the prosecution and punishment of offences against women, as well as to the education of the general public and to programmes of social, medical, and legal assistance for women – victims of violence, as laid out in the draft of the II stage of the National Plan of Action for Women.

Police

142. Since 1998, organisational units dealing with issues of social pathologies have been created in the National Headquarters of the Police. Their tasks include e.g. coordination of activities connected with the prevention and elimination of the phenomenon of trafficking in human beings and related offences as well as an ongoing monitoring of the scale of this phenomenon nationwide. The monitoring is conducted on the basis of information forwarded from the local units of the Police, where these issues are dealt with by designated police officers.

143. Series of training courses are prepared for lecturers of police academies concerning the prevention and elimination of trafficking in human beings. Furthermore, work is under way on the preparation of a uniform brochure available to all police officers, which would be a summary of knowledge on these issues.

144. The criminal division of the Police undertakes a number of activities aiming at the limitation of the phenomenon of trafficking in human beings (especially in women for the purpose of forcing them to prostitution). Prevention and detection actions on a national and local scale are organised in cooperation with the Border Guard. Elimination in 2000 of the so-called women's market located in the vicinity of Warsaw may be an example of the effects of this cooperation. Women were sold for the purpose of transfer to brothels in Poland and countries of Western Europe on the premises of the estate where the "exchange" was located. Women who were the objects of those illegal transactions came primarily from Bulgaria.

145. In 2001 the National Headquarters of the Police prepared the "*Police Assistance Programme for Victims of Crimes*", which is implemented by means of:

- training programmes for police officers dealing with crime victims – related to treating victims in a reassuring, kind, and constructive way,

- taking into consideration in the police procedures the special needs of victims of crimes (women and children) and the situations which are most difficult for them,

- creation of model solutions allowing for providing crime victims with intelligible information on opportunities and sources of assistance, including practical and legal counselling, as well as forwarding information on the effects and the result of the preparatory proceedings conducted by the Police,

- cooperation with civil society organisations and State institutions offering assistance to victims of crimes,

- social education of victims and potential victims of crimes.

146. In the case of trafficking in human beings, children are a special category of injured persons, who require an action different from that taken towards adults during criminal proceedings. Police officers in charge of this category of victims must have specialist qualifications and support in the form of special examination rooms tailored to the needs of children (so-called "blue rooms").

147. Especially noteworthy is the cooperation of Polish Police with the "La Strada" Foundation.[6] Representatives of the Police have on numerous occasions participated in seminars and conferences organised by the Foundation, often as lecturers. Information about cases of making women engage in prostitution and places of their stay is exchanged on an ongoing basis. The Police have also joined information campaigns of "La Strada", of which the *Programme of Prevention of Trafficking in Women in Central and Eastern Europe* is a good example. Representatives of Polish Police have taken part (as lecturers) in international training sessions organised for police officers from this part of Europe.

148. In 2002, the Criminal Department of the Office of Criminal Service of the National Headquarters of the Police prepared for internal use *Methodical guidelines on the proceedings of prostitution detection, elimination of related crimes and dissemination of pornographic materials in the Internet computer network.*

149. An ongoing exchange of police information at an international level is led by the Office of International Police Cooperation of the National Headquarters of Police. The Office does not collect statistical data, however, which would make it possible to define the actual number of cases as to responding to questions connected with trafficking in people. A recent operation of Polish and Italian police officers known under a codeword *Sunflower-Girasole,* which led to the detention in Poland of an Italian citizen, one of the main organizers of trafficking in people is an example of efficient cooperation. The operation was being conducted simultaneously in a number of European countries.

In addition, a representative of the Office of International Police Cooperation of the General Headquarters of Police takes part in the activity of an international group whose objective is to prevent trafficking in women; the group was established in 2000 pursuant to a Resolution of the General Assembly of the Interpol (Resolution AGN/69/RES/3). The main objective of the group is to conduct trainings. The group is to prepare a handbook describing the scope of the problem and approaches to it in various parts of the world. The handbook is also to contain descriptions of efficient practices and methods used in investigations connected with trafficking in women. In addition, the group's tasks include assistance in establishing contacts between Police forces of individual countries involved in particular cases and assistance in conducting analyses of links between cases investigated in different countries.

150. On the initiative of Sweden, within the Operations Committee of the Working Group for Fighting Organised Crime of the Baltic Sea States (BALTKOM) a group of experts on the elimination of trafficking in women was set up. The group takes care of the coordination of activities taken by law enforcement agencies of the countries of the region in order to eliminate trafficking in women. A representative of Polish Police takes part in the activities of this group. Furthermore, cooperation within Europol comprises the elimination of human trafficking. The European Bureau of the Police prepared a strategy of eliminating this phenomenon in the member states. The General Headquarters of Police is committed to the implementation of this programme.

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[6] The Foundation provides assistance to victims of trafficking in women, cooperates with the Interpol and with similar organisations in Poland and in other countries, runs a telephone helpline in Polish and Russian, monitors individual cases, and assists the victims. In addition, in 1998 La Strada inaugurated an educational campaign.

Border Guard

151. In 2001, the Border Guard was granted the right to use such detection methods as operations audit, controlled purchase and a controlled delivery and the scope of its competence *rationae loci* was extended to comprise the territory of the entire country for the purpose of prosecuting organised crime, including trafficking in people. Officers of the Border Guard participate in international (twinning) trainings and domestic trainings devoted to combating organised crime. Since 2000, the Border Guard has collected statistical information on trafficking in people. Methods of action used by the perpetrators are subject to analysis.

152. Since 1998, the Border Guard has been cooperating with the "La Strada" Foundation. It has participated, e.g. in an information and prevention campaign organised by the Foundation consisting in the dissemination of prevention leaflets (for women leaving the country), information leaflets (for victims of trafficking in people), and propaganda posters. The materials were distributed at border checkpoints at the western, southern, and sea State borders and in the Border Checkpoint of the Border Guard at Warsaw-Okęcie Airport.

153. For a few years the Border Guard, in cooperation with the Police, has undertaken intensive action controlling the legality of the stay of aliens on the territory of Poland, including foreign females engaging in prostitution on the territory of Poland. The monitoring comprises also escort agencies as to the legality of stay and employment of aliens.

154. Despite the action taken, obstacles which limit the efficacy of prosecuting perpetrators of the offence of trafficking in people and the protection of victims' rights still exist in Poland. The level of social awareness in the area of trafficking in people is relatively low. Commonplace opinions and stereotypes persist which hold the injured person (woman) responsible for the entire situation. Victims of trafficking tend to be marginalized, not only by their own families, but also by local communities and the general public; the situation of foreign females – victims of trafficking – is especially difficult. From the information of the "La Strada" Foundation it follows that more than half of its female clients do not consent to notify law enforcement agencies about the crime. Such a situation is probably caused, as is noted by non-governmental organisations, by the existing loopholes in the execution of the law, insufficiencies in the system of the protection of victims-witnesses testifying in court, lack of institutional assistance to the victim in the process of regaining psychological balance, and a limited scope of victims' exercising their rights to legal satisfaction and reparation.

155. On 12 November 2001 the Republic of Poland ratified the *United Nations Convention against Transnational Organised Crime*. It should be noted that the Convention, regulating in a comprehensive way issues of prevention, prosecution and punishment of organised crime, is a Polish initiative.

On 26 September 2003 Poland ratified also the *Additional Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially in Women and Children,* and the *Protocol Against the Smuggling of Migrants by Land, Sea and Air* – supplementing the above Convention. Furthermore, on 12 December 2002 Poland signed the *Protocol Against the Illegal Manufacture and Trade in Firearms, their Parts and Components and Ammunitions*.

156. Poland is a State Party to numerous international agreements regulating cooperation between States in the area of elimination of organised crime and other serious offences (trafficking in people, drug peddling, terrorism). Such agreements have been entered into with Lithuania, Austria, Belgium, Bulgaria, Estonia, Finland, Spain, Ireland, India, Kazakhstan, Morocco, Mexico, Romania, Germany, France, Slovenia, Hungary, the Socialist Republic of Vietnam, Tajikistan, Turkey, Ukraine, Uzbekistan, and the European Office of the Police. Negotiations with 8 other countries of draft agreements on the elimination of crime, including organised crime, are in progress.

In September 2001 Poland was also an active participant of the Brussels Conference devoted to preventing and combating trafficking in persons. Moreover, a representative of Poland (an expert of the National Prosecutors' Office) was elected a member of a Group of Experts for Combating Trafficking in Persons, which functions at the European Commission.

Article 9 – Liberty and security of person

157. According to the Constitution as well as pursuant to articles 189 – 193 of the Penal Code, a person's liberty is legally protected. Each person is guaranteed personal inviolability and personal liberty. Deprivation or restriction of liberty may occur only according to principles and in a course of action defined in a law. Each person deprived of liberty on the grounds other than a court judgement (e.g. arrested by the Police) has the right to lodge an interlocutory appeal with the court for the purpose of an examination without delay of the legality of this deprivation of liberty. The next of kin of a person indicated by the person deprived of liberty should be promptly notified of the deprivation of liberty. Each arrested person shall be informed immediately and in an understandable manner about the reasons for his arrest. The arrested person should be handed over to the court within 48 hours of his arrest. The arrested person should be released, if, within twenty-four hours of handing him over to the court a copy of the order for his preliminary detention with the presentation of charges has not been served on him. At the same time persons unlawfully deprived of liberty have the right to claim compensation for an unjustified arrest or preliminary detention.

Preliminary detention

158. Preliminary detention is not the only protective measure available to the court and public prosecutor during criminal proceedings. It is used exclusively when the use of another protective measure is insufficient and the evidence collected indicates a high probability of the accused/suspect having committed the offence he is charged with. Preliminary detention is used for the purpose of securing the proper conduct of the proceedings when:

(a) there is good reason to fear that the accused may take flight or go into hiding, particularly if his identity cannot be established or when he has no permanent residence in this country,

(b) there is good reason to fear that the accused would induce other persons to give false testimony or attempt to obstruct the criminal proceedings in some other manner,

(c) the accused is liable to a severe penalty since he has been charged with a crime or with a misdemeanour carrying the statutory maximum penalty of deprivation of liberty of a minimum of 8 years, or if the court of the first instance sentenced him to a penalty of deprivation of liberty of no less than 3 years,

and in exceptional cases preliminary detention is applied also when:

(d) there is good reason to fear that the accused charged with a crime or an intentional misdemeanour would commit an offence against life, health or public safety, particularly if he threatened to commit such an offence.

159. Preliminary detention is used exclusively by the court (in the preparatory proceedings upon a motion from a public prosecutor) for the period of three months. During the preparatory proceedings, in exceptional cases, if in view of the special circumstances of the case the conclusion of the proceedings was impossible within the three-month period, a court of the first instance competent for the adjudication on the case, upon a motion from a public prosecutor, may prolong preliminary detention for a period which when combined cannot exceed 12 months. The combined period for applying preliminary detention (in preparatory proceedings and court proceedings of the first instance) preceding the first sentence by the court of the first instance may not exceed two years.

However, if exceptional circumstances such as:

- suspension of criminal proceedings,
- prolonged psychiatric observation of the accused,
- prolonged preparation of an opinion of an expert,
- conducting evidentiary action in a particularly intricate case or conducting them abroad,
- intentional protraction of proceedings by the accused,
- as well as other important obstacles whose removal has not been possible;

necessitate the extension of applying preliminary detention during preparatory proceedings for a period exceeding in total 12 months, and in court proceedings 2 years, then, in accordance with the most recent amendment to the Code of Criminal Procedure, only a court of appeals, in whose province the proceedings are pending, on the motion of the court of the first instance, and in preparatory proceedings upon a motion of a public prosecutor, may extend preliminary detention for a further definite time. A complaint may be lodged against such a decision of a court of appeals to an appeals court in a panel of three judges.

If there is a need for the use of preliminary detention after the first sentence by the court of the first instance, each extension of preliminary detention may occur for a period not exceeding 6 months.

160. Statistical information confirms that preliminary detention for a period exceeding 12 months is used in exceptional cases. In 2000, for 9 453 persons subjected to preliminary detention, 1 778 were detained from over 3 months up to 6 months, 536 persons were detained for a period from 6 to 12 months, 58 from over 12 to 24 months, and 1 person over 24 months. In 2002 the numbers were, respectively, 7 589, 1 399, 651, 69 and 1 (a detailed table with statistical data is presented in Annex 5).

161. With a view to restricting the need of the use of preliminary detention for the sake of other milder coercive measures, the Code of Criminal Procedure of 1997 extended the catalogue of preventive measures with the following:

- the accused may be suspended from his official function or performance of his profession or be ordered to refrain from a specific type of activity or from driving specific types of vehicles (article 276), which may prevent his obstruction of criminal proceedings, e.g. by obliterating evidence of the offence or by repeating the offence,

- the accused may be prohibited from leaving the country, which may be combined with seizing his passport or other documents enabling him to cross the border, or with a prohibition to issue such a document (article 277).

It is true, however, that preliminary detention is used almost as frequently as custody.

Preliminary detention in preparatory proceedings

162.

Years	Preliminary detentions			
	In absolute numbers	ratio[a)]	Growth ratio	
			preliminary detention	ratio
1993	29 513	10.0	100.0	100.0
1994	29 734	8.2	100.8	82.0
1995	32 419	8.1	109.9	81.0
1996	25 423	9.1	86.1	91.0
1997	23 113	7.8	78.3	78.0
1998	22 548	7.8	76.4	78.0
1999	24 071	8.5	81.6	85.0
2000	34 662	10.9	117.5	109.0
2001	38 236	8.3	129.6	83.0
2002	32 925	6.9	111.2	69.3

(a) Ratio of preliminary detention ordered by the court – in total – to concluded preparatory proceedings submitted to the court with an indictment – since 4 August 1996; by 3 August 1996 the ratio of preliminary detentions ordered by a public prosecutor.

A relation between various preventive means and indictments is presented in the following table.

Use of preventive measures towards persons charged with offences in concluded preparatory proceedings

Years	Persons Charged	Preliminary detainees	Bail	Police custody
In absolute numbers				
1993	221 290	26 469	4 730	17 832
1994	254 914	25 451	5 140	19 204
1995	293 719	29 415	6 603	21 606
1996	278 985	17 455	4 650	15 506
1997	296 285	18 076	5 262	21 601
1998	287 561	16 893	3 947	20 627
1999	282 548	16 953	3 637	18 723
2000	319 386	25 395	4 103	21 822
2001	461 546	32 585	4 563	23 951
2002	475 751	25 543	4 677	24 740

163. It has to be added that, with respect to communications about the prolongation of the period of preliminary detention, until today Poland has not received any information (communication) from the Human Rights Committee in Geneva. In turn, with respect to applications concerning the length of the preliminary detention lodged with the European Court of Human Rights in Strasbourg, until today 35 relevant cases have been looked into: in 6 cases violations of the Convention have been identified, in 2 cases no violations of the Convention have been identified, 7 cases have been struck off the list of communications, 4 cases have been regarded as admissible, 1 case has been regarded as inadmissible, and in 15 cases the Court has not taken a stand.

Sobering-up centres

164. Persons in a state of intoxication, causing scandal with their behaviour in a public place or a workplace, finding themselves in circumstances threatening their own life or health or threatening the life or health of other persons, may be brought in compulsorily to sobering-up centres (for lack of sobering-up centres such persons may be brought in compulsorily to a unit of the Police), a health care unit or another competent facility created or indicated by an organ of local self-government, or to the place of residence or stay. Persons appearing compulsorily in sobering-up centres or in a unit of the Police remain there until they become sober, no longer than for 24 hours. Persons under 18 years of age are placed in separate rooms, separately from adults. There are also separate rooms for women and men.

165. On 28 June 2001 amended provisions of the *Law on Education in Sobriety and Counteracting Alcoholism* entered into force, providing guarantees of monitoring by courts of a form of deprivation of liberty consisting in placement in sobering-up centres.

A person compulsorily appearing in sobering-up centres, in a unit of the Police, a health care unit or other relevant institution created or indicated by an organ of local self-government,

may appeal to a court. In the grievance, a person brought in compulsorily or arrested may require an examination of the justification and legitimacy of compulsory appearance and the decision of arrest, as well as of the correctness of their execution.

The grievance is forwarded to a district court competent *rationae loci* for the place of compulsory appearance or detaining within 7 days of the date of compulsory appearance or detention. Provisions of the Executive Penal Code apply in the adjudication of the grievance. Pursuant to the judgement of the Constitutional Tribunal of 11 June 2002, the above provision (article 40 paragraph 3b of the *Law on Education in Sobriety and Counteracting Alcoholism*) was declared as of 25 June 2002 as incompatible with article 45 paragraph 1 of the Constitution of the Republic of Poland in the scope in which it does not guarantee to a person detained in a sobering-up centre the right to take part in a sitting of the court adjudicating on the grievance as to the justification and legitimacy of compulsory appearance and the decision of arrest, as well as to the correctness of their execution. As a consequence, the court is obliged to notify this person about the date of the sitting and the person has the right to take part in the proceedings.

In the case of finding lack of justification or illegality of the compulsory appearance or arrest or serious irregularities in the conduct thereof, the court notifies the public prosecutor and the agency in control of the agency which made the arrest.

Compensation

166. Polish law contains norms compatible with the provisions under article 9 paragraph 5 of the Covenant. According to the provisions of Chapter 58 of the Code of Criminal Procedure, an accused who as a result of a re-opening of proceedings or of a cassation appeal has been acquitted or his sentence was reduced, shall be entitled to receive from the State Treasury compensation for the damages incurred by him as well as redress for the injury, resulting from his having served all or part of the sentence unjustifiably imposed. The provision is applicable also if, after reversing the sentencing judgement or declaring it null and void, the proceedings have been discontinued by reason of material circumstances not duly considered in prior proceedings, as well as in the event of the application of preventive measure other than preliminary detention.

167. The right to compensation and redress is granted also in the case of a manifestly unjustifiable preliminary detention or arrest. At the same time, with respect to preliminary detention in relation to the Code of Criminal Procedure of 1969, the scope of accountability of the State Treasury has been slightly increased.

168. In the event of the death of the accused, the right to compensation is granted to the person who as a result of the execution of the penalty imposed or of a manifestly unjustifiable preliminary detention has lost:

- maintenance which the accused has been obligated by law to furnish,
- maintenance theretofore regularly furnished to him by the deceased, if consideration of equity favours the granting of such compensation.

Independent system of monitoring

169. In reference to the concern expressed by the Committee in the Concluding Observations as to an absence of an adequate system of monitoring the observance of human rights by Police officers, it has to be said that, as in each democratic state, also in Poland one may indicate numerous institutions and organs which conduct a permanent or periodical monitoring of the state of observance of human rights in the Police. They are, especially, the Public Prosecutors' Office, the Ombudsman, the General Inspector for the Protection of Personal Data, widely understood press and non-governmental organisations active in the field of respect for human rights and freedoms (e.g. The Helsinki Foundation of Human Rights, Amnesty International).

170. Of special significance are here the visits of the Ombudsman in detention centres, police detention hostels, etc., during which he analyses and evaluates the level of observance of the rights of persons deprived of liberty as well as the activities of non-governmental organisations which monitor the work of the Police. An ongoing monitoring is based on an individual analysis of complaints from persons who believe that their rights have been infringed upon by the Police, while organised monitoring is conducted according to schedule with the use of standard research means. Especially the latter form of monitoring mentioned here facilitates an objective diagnosis of irregularities occurring in the work of the Police and an identification of their sources.

171. The Helsinki Foundation of Human Rights is a non-governmental organisation, which for many years has conducted a scheduled monitoring of the activity of the Police. Since May 1997, the Foundation has led a project of public control of the activities of the Police. The programme comprised countries of Central and Eastern Europe and was coordinated by the Hungarian Helsinki Committee. The programme led e.g. to the creation of the report *Between Militia and Reform, The Police In Poland 1989 – 1997,* which was updated in the period 1999 – 2000. It comprises e.g. questions of the legal mission of the Police, the monitoring and responsibility of the Police, coercive measures, and evaluation measures of the activity of the Police.

Another study of the activities of the Police conducted by the Polish Helsinki Committee at the end of 2000 concerned e.g. the observance of rights of the arrested persons. It is worthwhile to note at this point that the monitoring was conducted with the consent of the then Minister of Internal Affairs and Administration, Mr. Marek Biernacki. The monitoring comprised 53 district headquarters of the Police, 14 municipal headquarters and 101 police stations. Conclusions from the study were reported in the work titled *Police Officers and Their Clients. Law in Action. Report on Monitoring* (S. Cybulski, Warsaw 2001). The study showed that the most frequently recurring transgressions of competences by police officers during arrests are:

- lack of or inadequate information on the legal basis of and reasons for the arrest (15% records of arrests did not include the legal basis of the arrest, 16% of arrested individuals maintained that they had been informed about the legal basis of and reasons for the arrest in a manner incomprehensible to them),

– lack of information on the rights to which an arrested person is entitled (11% records of arrests did not include data about informing the arrested individual on his rights, while with respect to 30% records of arrests which contained such data, arrested individuals maintained that they had not obtained such information).

Reports from the monitoring conducted so far by the Helsinki Foundation of Human Rights have been submitted to the authorities of Polish Police. Their analysis in conjunction with an analysis conducted on the basis of statistical data concerning the abuse of authority by police officers, violations of the principles of using direct coercion measures and firearms, as well as disciplinary sanctions used (updated statistics on this subject along with a commentary are included in Annex 6), allows for an ongoing correction of irregularities occurring in police practice. One of the fundamental forms of such corrective measures is the modification of training programmes for professional police officers.

Civil security

172. By means of specialized services, Poland takes effort aiming at guaranteeing security to all citizens as well as other persons in its territory.

A comparison of statistics for 2002 with data for 2001 indicates a marked decrease in the crime rate. The number of criminal offences dropped by 2.1% (from 1 107 073 to 1 083 854). As a result, the crime rate has been on the decrease in Poland for over two years. The decrease, while small, has been noted for such a long time for the first time since the early 1990s.

The number of offences against life and health, including first of all as many as 10.3% fewer homicides (from 1 325 to 1 188), including homicides connected with robberies – by as much as 18.8%. There were also fewer cases of impairment to health, brawls and beatings, armed robberies, muggings and extortions, crimes committed with the use of firearms – a significant 14.3% drop, with an attendant increase of their detection – by 6.7% – to the level of 53.6%. Unfortunately, the number of rapes increased slightly – by 0.3 % (from 2 339 to 2 345).

The total number of all offences rose slightly – by 1.0% (from 1 390 089 to 1 404 229), primarily because road offences constitute as many as 11.6% of all offences committed in Poland. The Police has prosecuted 552 301 suspects – which is 3.4% more than in the preceding year.

Detection of all offences reached 54.9% and is 1.1% higher than in the preceding year. With respect to criminal offences, detection reached the level of 42.5% and was slightly – by 0.3% – lower than in the preceding year.

Statistical information on crime detection (%)

	1995	1996	1997	1998	1999	2000	2001	2002
All offences	54.2	54.4	53.5	50.5	45.0	47.8	53.8	54.9
Homicide	87.6	88.2	86.4	86.3	85.7	87.0	87.5	89.4
Bodily harm*	91.0	91.3	91.1	90.8	89.2	89.7	88.6	89.1
Participation in a brawl or beating	82.8	81.6	80.7	78.7	76.3	77.4	77.6	77.2
Rape	86.3	85.2	87.0	87.0	83.7	85.9	83.9	85.3
Armed robbery, mugging, extortion	62.1	61.4	61.0	59.6	52.6	53.7	52.7	50.6
Theft with burglary	30.9	31.1	29.7	27.6	23.5	23.3	22.3	21.5
Theft	39.5	31.5	28.6	25.7	20.7	21.5	21.7	21.2
Road offences	93.3	93.2	93.1	92.3	91.5	92.0	98.9	99.0
Economic offences	71.4	82.0	83.5	86.7	96.7	96.8	96.7	96.6

* - since September 1998 in the Penal Code of 1997: impairment to health

Sociological studies on the assessment of the activities of institutions of public life show the highest evaluation of the Police since 1990, i.e. since the moment of establishing this institution. The percentage of positive assessment of the work of the Police amounted to 56%. Trust in the Police increased and amounted to 72% (OBOP).

173. Furthermore, Poland is committed to actions aiming at the improvement of security undertaken by the international community – see paragraph 155.

Domestic violence

174. Domestic violence, both physical and psychological, is prohibited under Polish law. The Penal Code includes a separate offence of mistreatment of family members and is part of the chapter "*Offences Against the Family and Guardianship"*. It comprises both mental and physical mistreatment and belongs to offences prosecuted *ex officio*. The *Law on the Police* grants Police officers the right to arrest the perpetrator for 48 hours, if his conduct is considered as threatening the life, health or property of other persons. The Police may also notify the prosecutors' office to apply to a court for preliminary detention.

175. A draft law of the Penal Code was submitted to the Parliament on 11 July 2002. It extends as to object and subject the scope of penalisation of acts constituting an offence of mistreatment and raises statutory penal liability in comparison with the one in force up to now.

176. The "*Safe Poland" National Programme for the Prevention and Elimination of Crime* adopted in August 2002 defines the prosecution and elimination of violence against women and children as one of the major tasks of the State in the field of combating criminal offences. The Programme envisages the provision of adequate financial resources for the implementation of tasks included in it, which should contribute to a significant improvement of the situation in the area of preventing and eliminating violence against women and children.

The Programme corresponds to the II stage of the National Plan of Action for Women, which envisages in its strategic goals the prevention and elimination of violence against women through the following: improvement of the law and its exercise in the area of prevention of violence against women, social education in the area of issues related to violence against women, construction of an institutional system of support for victims of violence, undertaking social reintegration and educational activities towards perpetrators of violence, and preparation of a system of statistical data collection and qualitative analyses related to the phenomenon of violence against women.

Furthermore, discussion is in progress on a joint implementation by the Polish Government and the UNDP of a project *Prevention of Violence and Trafficking in Women*, which would take into account the issues presented above.

177. In 1998 the procedure of home intervention against domestic violence known as the "Blue Card" was implemented. Its basic objectives are as follows: prevention of domestic violence, assuring security to the injured persons (e.g. through the isolation of the perpetrator), instruction of the injured persons about their rights, and documentation of the event.

Unfortunately, practice has shown that the procedure, aiming at the simplification and uniformisation of proceedings in cases of intervention concerning domestic violence, is not uniformly used in the entire country; cards are not always used or are used only on the victim's demand, while the analysis system of the gathered material is insufficient. It has turned out that it is necessary to adapt the procedure to the changing legal regulations, social conditions, and the needs of the injured. In 2002 a modification of the "Blue Card" programme was introduced, which took into consideration observations submitted by Police units and governmental and non-governmental organisations cooperating with the Police. The number of cards to be filled out was limited.

The new construction of cards (card "A" – documentation, card "B" – information for the victim) facilitates documenting situations that might happen at the scene of the event and the action taken during the intervention. Card "A" also contains a part in which the victim of violence gives her consent to making available her personal data to governmental institutions and non-governmental organisations active in providing assistance to the injured.

If it follows from the circumstances occurring during the intervention that preparatory proceedings might be instituted, the officer on duty of the Police unit should take a decision if there is a necessity to conduct activities at the scene of the event in the scope necessary for the securing of traces and evidence of an offence for the purpose of preparatory proceedings.

Card "B" contains a catalogue of offences most frequently committed to the detriment of a next of kin, updated addresses and telephone numbers of assistance institutions and organisations and provides an opportunity of supplementing it with information on local assistance centres.

Constables gathering thematic portfolios on "Domestic Violence" were obligated to carry out actions connected with documenting the events exhibiting signs of violence in a given family and forwarding the documentation collected to the records of preparatory proceedings in the event of such proceedings being instituted in a given case.

178. The Government shares the concern of the Committee that in spite of the efforts of representatives of court institutions (judges, prosecutors, curators), of organs of the local self-government (local centres of assistance to the family), and of non-governmental organisations (Blue Line, "Nobody's Children Foundation" and others), a substantial number of cases of domestic violence is registered.

From the data of the National Headquarters of Police from the end of 2001, out of the 16 423 proceedings instituted pursuant to article 207 of the Penal Code (mistreatment of family members), over 10 000 cases were handed over to courts.

Statistical data of Voivodeship Headquarters of Police shows that in 2002 police officers conducted 96 449 interventions against domestic violence. From among 127 515 victims, women constituted a decisive majority, i.e. 74 366 persons. Children were the second most abused group - 46 028 persons, 30 073 of whom were children up to 13 years of age.

Number of police interventions

	2000	**2001**	**2002**
home interventions in total	479602	482007	559387
including those related to domestic violence	86146	86545	96449

Number of victims of domestic violence according to the "Blue Card"

	1999	**2000**	**2001**	**2002**
total number of victims of domestic violence	96955	116644	113793	127515
including women	55214	67678	66991	74366
including men	4239	5606	5589	7121
children up to 13 years	23929	27820	26305	30073
minors from 13 to 18 years of age	13546	15540	14908	15955

Number of all identified offences with the consideration of the number of offences registered in the "Blue Card" Programme (text of the articles in Annex 3 (B))

Legal qualification	**Number of offences identified in 2000**		**Number of offences identified in 2001**		**Number of offences identified in 2002**	
	Offences registered in the "Blue Card" Programme	All identified offences	Offences registered in the "Blue Card" Programme	All identified offences	Offences registered in the "Blue Card" Programme	All identified offences
article 207 of Penal Code	8502	23308	9132	24200	9170	23921
article 191 § 1 of Penal Code	435	2847	557	2842	612	2603
article 197 of Penal Code	176	2399	246	2339	330	2345
article 200 of Penal Code	144	1518	193	1460	281	1485
article 190 of Penal Code	3339	32685	4628	35180	6326	35948
article 208 of Penal Code	73	253	342	370	196	658
Total	12669	63010	15098	66391	16915	66960

Equally alarming is the data relating to homicides committed as a consequence of so-called family misunderstandings:

	Homicides	**Sexual motive**	**Motivated by family misunderstandings**	**Unidentified motive**
1999	1048	28	279	237
2000	1269	28	338	268
2001	1325	22	358	307

Data of the General Headquarters of Police, 2002

Police data indicates that annually around 300 women lose life as a consequence of so-called family misunderstandings, while around 50 women – victims of the violence of their husbands – commit suicide. Taking into consideration also data from the “Unidentified motive” column, it may be estimated that close to 1/3 of homicides in Poland are connected with conflicts in the family. The fact that the number of acts of violence against women, though insignificantly, is increasing by the year, is particularly alarming.

179. Statistical information indicates an increase in the number of home interventions related to domestic violence. This is primarily the result of nationwide campaigns conducted for the sake of violence victims. As a consequence, social awareness and the number of reported crimes of this kind are on the increase.

The Police take far-reaching action aiming at a comprehensive solution to the problem, e.g.: identification of the environment (through specialists for minors, constables, or patrol and intervention services), making children aware of their rights during meetings in schools, taking appropriate action towards perpetrators of acts of violence, ongoing cooperation with schools, health care services, family courts and courts for minors, curators, centres of social welfare, commissions for the solution of alcohol-related problems, centres of assistance to the family and organisations dealing with the problem of violence in a given area.

180. Within the framework of the fight with violence against women and children, special emphasis is laid on prevention measures: cooperation with schools in order to identify pathological phenomena existing among children and adolescents and in their families, "telephone helplines", or toll-free info-lines functioning at many units locally (through them police officers may receive anonymous information from residents *inter alia* about cases of home violence, offer various forms of counselling, react to signals of violations of the law), co-creation of local systems of assistance for victims of violence. Such support and assistance to victims of violence can be provided in cooperation with the following partners: the State Agency for the Solution of Alcohol-Related Problems, National Helpline for Victims of Domestic Violence "Blue Line", Centres of Assistance to the Family, Centres of Emergency Intervention, Commune and Municipal Commissions for the Solution of Alcohol-Related Problems, Centres of Psychological Assistance, Health Care Units, Commune and District Councils, Plenipotentiaries for Addictions functioning at Town and Commune Offices, Society for the Friends of Children, Committee for the Protection of the Rights of the Child, Family Courts and Courts for Minors, Prosecutors' Offices, Centres of Social Welfare, Consultation and Information Points for victims of domestic violence, and non-governmental organisations.

181. Comprehensive training courses for court custodians – family and for adults – are conducted under the auspices of the Ministry of Justice. Working locally, court custodians often become the first witnesses of this kind of violence. Of the total number of over 3,000 curators, 80% have already been trained by specialists from i.a. the State Agency for the Solution of Alcohol-Related Problems and Centres of Assistance to the Family. Having completed such a training programme, court custodians take action within e.g. the existing organisation for violence victims – *Blue Line* or *Telephone Helpline*.

182. The Government greatly appreciates the activities of non-governmental organisations, which have created a comprehensive system of assistance involving running centres for women and children – victims of violence and trafficking in people, providing legal, psychological, and social assistance, conducting educational and publishing activities, as well as trainings for volunteers and employees of services and institutions, and running social campaigns thanks to which information on domestic violence and opportunities of obtaining support has reached the general public. These campaigns are, among others: *Stop Violence Against Women, Stop Domestic violence, You Have the Right to Dream, You Have the Right to Know* (concerning trafficking in people), *Bad Touch – Hurts the Entire Life* (a nationwide campaign of preventing sexual abuse of children run also by the "Blue Line").

183. Nevertheless, in situations requiring intervention and assistance, there still exists great hopelessness among victims and witnesses faced with acts of violence and an insufficiently low knowledge of forms of assistance other than the Police. Surveys conducted by OBOP indicate that an average citizen when asked whom he would approach for help if he were a witness to

violence, indicates the Police and the 997 telephone number in 60% of cases, and in 10% of cases indicates a telephone helpline (not knowing the number). Knowledge of such forms of assistance as the *Blue Line* telephone, a centre for emergency intervention, or some non-governmental organisation does not exceed 3%.

184. Another problem concerning home violence is the necessity to provide shelter to victims of violence in order to isolate them from the perpetrators. Data for the end of 2001 indicates that in 134 hostels for victims of domestic violence in Poland, comprehensive assistance was granted in the form of providing a place of stay and psychological assistance (support) to those who have experienced domestic violence, both children and adults. There are around a dozen hostels earmarked exclusively for women–victims of violence in Poland. Part of them are independent centres run by non-governmental organisations (e.g. in Warsaw the Women's Rights Centre) runs two centres where around 40 women and children can be accommodated), others are apartments managed by Centres of Emergency Interventions.

Still, however, the number of operating hostels is too low, especially in big cities; for instance in Warsaw there are currently 3 shelters for victims of violence. This frequently leads to situations when victims of violence are offered assistance not in specialised centres but in hostels for the homeless and figure in statistics as homeless, rather than victims of violence. There are no statistical data in this respect, however.

Violence against children

185. When it comes to "small victims of domestic violence", there is no legal definition of child abuse. Still, pursuant to article 72 paragraph 1 of the Constitution, defending the child against violence, cruelty, exploitation and actions which undermine his moral sense is a constitutional value and everyone has the right to demand of organs of public authority to safeguard this protection of the child. In addition, article 95 of the Family and Guardianship Code stipulates that "parental authority should be exercised in a way which is required by the good of the child and social interest". What constitutes an abuse of parental authority has to be decided on each time by the court, but in the case of establishing a violation of the good of the child, the court institutes appropriate proceedings *ex officio*. The good of the child is of prime importance during these considerations. Specific provisions of the Penal Code, including article 200 of the Penal Code – sexual abuse of a minor, article 201 of the Penal Code – incest, and article 207 of the Penal Code – mistreatment, serve the protection of the child against abuse, not only by family members.

As of today, many of the provisions regulating the situation of the child in the family are obsolete and therefore courts should interpret them in accordance with the Constitution, which guarantees personal inviolability and prohibits cruel or degrading treatment and obligates the parents to respect during the upbringing of the child the freedom of conscience of the child and his beliefs.

Under the law, the child may – himself, if he has attained 13 years of age, or through a public prosecutor, an organisation defending the rights of the child or e.g. a family member – appeal to a court for the restriction of parental authority, if he believes that the parents' methods of upbringing do him harm. This does not happen in practice. Courts are handed over cases of shocking abuse of parental authority: battery, deprivation of food, sexual exploitation.

186. As a result of systemic transformations, including the reform of the local self-government, the local self-government has been entrusted with the tasks of providing support to the child and the family, with care of the child and protection of the child against violence. A special role in the construction of an integrated system of assistance at the level of the district is held by the District Centres of Assistance to the Family. Tasks of district authorities include: preparation of district strategies of solving social problems, managing a centre of emergency interventions, taking action in response to identified needs. However, districts, experiencing numerous difficulties of an organisational character, lacking in sufficient financial resources, qualified specialists, and programmes of action, have not created complete structures of district centres of assistance to the family as yet: centres of emergency interventions have so far been in operation in approx. 20% districts, while district strategies of solving social problems are in the majority of districts still at the stage of planning, with varying degrees of advancement.

187. The Ombudsman for Children has prepared a systemic plan of preventing violence against children, also of a sexual character, including suggestions of relevant changes legislative and organisational changes and assuming the implementation of a nationwide systemic solution based upon the self-government structures of the district. The draft has been approved in the course of social consultations; still, it has been noted that it is necessary to introduce changes in the legislation and to strengthen District Centres of Assistance to the Family financially and by creating new positions. At the beginning of 2002 the Ombudsman for Children submitted the draft to the President of the Republic of Poland and to the Sejm Commission of Social Policy and the Family.

188. In 2002 the Ombudsman for Children applied to the Sejm of the Republic of Poland for taking a legislative initiative consisting in introducing a more severe penal liability for an offence of abuse of a minor or a person vulnerable, and advanced work in this field is conducted in the Parliament. One of the changes would be the introduction of the principle that the liability for an offence against children is treated as the same liability for an offence against adults perpetrated with particular cruelty.

In the opinion of the Ombudsman for Children, an amendment to the Penal Code is also necessary in order to grant to minors between the ages of 15 and 18 full protection against sexual abuse. Currently the Penal Code (article 200 § 1) guarantees protection against sexual abuse only to minors under the age of 15 years.

189. In the early 2001, the Police Training Centre commenced cooperation with specialists from the “Nobody’s Children” Foundation. A 30-hour workshop programme titled “Violence Against the Child” was prepared for police officers dealing with issues of minors in Poland. The objective of the programme was to expand the skills and knowledge as to the diagnosis and intervention in cases of child abuse and work with children – victims of abuse, as well as development of skills of cooperating with institutions taking part in the process of assistance to abused children and their families.

Taking advantage of the experiences of specialists from the “Nobody’s Children” Foundation and of police officers, a project of adapting one of the lecture rooms of the Police Training Centre in Legionowo for the purpose of the training was prepared. It consists in the creation of a child-friendly examination room. Apart from special furnishings (pale-blue walls, furniture adjusted to the age of children, toys), the room was equipped with a two-way mirror

and equipment for recording the course of the examination. Along with the increase of knowledge among police officers on the subject of examinations of minor victims of offences, the idea of the so-called *blue rooms* became more widespread. At present there are around 90 of them in Poland. Not all of them are located on police premises. Some of the "*blue rooms*" made accessible to police officers for the purposes of examinations are located on the premises of occupational and educational counselling centres, centres of social welfare, or health care centres. The localisation of rooms and their furnishings are for the most part dependent on a good cooperation between local Police units, the self-government, and local organisations active in the field of elimination of domestic violence.

Sexually motivated crimes

190. In 2001 in the territory of Poland a total of 4 716 offences against decency were identified, committed by 2 719 perpetrators as compared to 4 234 injured persons, including 1 987 minors. In 2002 4 652 offences against sexual freedom and decency were identified to the detriment of 4 227 injured persons, including 2 070 minors. Offences against sexual freedom and decency upon their disclosure are characterised by a very high ratio of detection of the perpetrator (from 85% to 100%). This stems largely from the fact that the perpetrators of such offences are most frequently persons from the inner circle of the victim, especially a minor.

191. Taking into consideration the needs of rape victims, the recently implemented "*Police Programme of Support to Victims of Violence*" has been supplemented with a standard of behaviour towards victims of those crimes, which is obligatory for the Police. An order has been issued in writing to police officers to unconditionally respect the needs and postulates of rape victims as to: the sex of the examining officer and presenting the suspected person to the victim with the use of a two-way mirror.

In addition, programmes of police training courses comprise e.g. principles of conduct with rape victims. For this purpose, a book titled *"Respect for the Dignity of Crime Victims"* was published in cooperation with the Ministry of Justice and the National Forum for Crime Victims. It was put at the disposal of all Police units and academies.

Moreover, issues concerning rape victims were, upon a motion of the Polish party, one of the major elements of the Phare 99 twinning programme, component 5 – "*Support to Crime Victims*". Specialists from the General Headquarters of Police, all voivodeship headquarters and police academies participated in a specialist training programme during which they familiarised themselves with the Dutch model and practical solutions concerning support for the injured persons.

192. In 1999 the Ministry of Justice prepared the *Charter of Rights of the Victim*, which aims at the promotion of the rights of victims in court proceedings and put forward an initiative of establishing an organisation working for crime victims, *inter alia* creating a Compensation Fund for Victims of Crimes. This initiative was joined by selected non-governmental organisations invited by the Ministry, criminal law specialists, and representatives of law enforcement institutions.

Article 10 – Right of detainees to be treated with humanity and dignity

193. The previous report discussed changes that had taken place in the situation of persons deprived of liberty during the period of the transformation of the political system. The process of bringing the Polish penitentiary system in line with the provisions of the ICCPR and the requirements of the European Prison Rules was continued.

194. The new Penal Code stipulates that penalties and other measures provided for in it are applied with a view to humanitarian principles, particularly with the respect for human dignity.

195. The Penal Code envisages penalties for manifestations of cruelty towards persons deprived of liberty. Pursuant to article 247 of the Penal Code:

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

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

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

196. The Executive Penal Code stipulates that penalties, penal, security and preventive measures are executed in a humanitarian way, with respect for the human dignity of the convicted person and prohibits the use of torture or inhuman or degrading treatment and punishment of the convicted person.

The new Executive Penal Code changed the approach to the issue of social re-integration, which ceased to be a duty of the convicted person and became his right, unless he is a minor. The sentence is served obligatorily within the system of programmed affection comprising social re-integration by convicted minors as well as adults, who upon being presented with the draft version of the social re-integration programme express their consent to cooperate in its preparation and execution as well as convicted individuals transferred from a therapeutic system. Under an ordinary system, the convicted person may take advantage of employment, instruction, and cultural, educational, and sports activities available in a correctional facility. The right to social re-integration is implemented through the choice made by the convicted individual whether he wants to take active efforts aiming at social re-adaptation, or whether he prefers to represent a passive attitude.

197. The Executive Penal Code extended the competences of the convicted person in the area of:

- the right to communicate with an advocate, plenipotentiary, competent court custodian, and a representative chosen by himself,

- the right to communicate with associations, foundations, organisations, and institutions whose aims include the assistance in the social re-adaptation of convicted individuals, as well as with churches and other religious organisations and trustworthy persons,

- the right of access to opinions prepared by the administration authorities of the correctional facility, which constitute the basis of decisions taken with respect to him,

- the right guaranteeing the minimum living standards,

- the possibility of contacts with the family and their implementation in a more humane way,

- the use of cultural and educational activities and the possibility of the convicted individual's possessing appliances for the realisation of his interests (audio, radio and TV equipment),

- lodging petitions, complaints and requests with organs competent for adjudication on them and conducting correspondence without censorship with competent organs.

Penitentiary supervision and monitoring

198. Supervision of the legality and the course of the execution of the penalty of deprivation of liberty, the penalty of arrest, preliminary detention, as well as the execution of a security measure consisting in placement in a correctional facility, placement in a guarded psychiatric facility as well as substance abuse rehabilitation treatment, disciplinary penalties and coercive measures resulting in the deprivation of liberty is carried out by penitentiary judges of the provincial court, in whose district are executed the penalties or measures.

199. A penitentiary judge conducts penitentiary supervision by:

- conducting periodical visitations of audited units or emergency visitations concerning either the entirety of issues subject to audit and assessment or selected issues,

- issuing post-visitation recommendations, supervising their proper and timely implementation,

- issuing decisions and directives in cases stipulated in a law,

- taking all other necessary action.

In the event of establishing in the course of conducting penitentiary supervision of significant transgressions in the activity of the adjudicating organ or an organ executing the judgement, a penitentiary judge, within his competences, takes immediate necessary actions in order to remove these transgressions.

After the conclusion of the visitation, a penitentiary judge makes acquainted the director of the audited unit with the results of the visitation, making it possible for him to take a stance on the established facts and post-visitation recommendations, as well as – if a need arises, especially if during the course of the visitation serious transgressions were established in the functioning of the audited unit or there are reservations as to the implementation by the unit of the recommendations – notifies a competent superior organ of the supervised unit. In addition, a penitentiary judge prepares a report on the course of the visitation. It should contain especially: data concerning the scope of the visitation, assessment of the manner of implementation of post-

visitation recommendations connected with the previous visitation, establishment of the results of the visitation along with the post-visitation recommendations aiming at the removal of established transgressions and prevention of their occurrence. In case of need, a penitentiary judge may set a date for being informed about the scope and manner of implementing the post-visitation recommendations.

200. In the event of establishing an unlawful deprivation of liberty, a penitentiary judge without delay notifies about it an organ in charge of the person deprived of liberty, and in the case when the persons is serving a sentence or when a measure is taken with respect to him – an organ which directed the judgement for execution; as well as takes other action necessary for an immediate release. A penitentiary judge has the right to suspend or repeal a judgement and direct the case to a competent penitentiary court for adjudication. In such a situation, the resolution of a penitentiary court is final and is not subject to an appeal. In addition, within the supervision, penitentiary judges, apart from conversations with prisoners, systematically audit penitentiary units located within the area of competence of a given court. Such audits may be conducted without a prior notice at all times and in each place of a correctional facility or a detention centre.

201. Regulations do not define the frequency of conducting visitations, but the scope and weight of duties arising from the essence of penitentiary audit have resulted in most penitentiary courts adopting the practice of conducting those activities once a year.

In the period 1999-2002, Provincial Courts conducted a total of 471 visitations, i.e. 252 in Correctional Facilities and 219 in Detention Centres. Their results were positive. No violations of international legal acts concerning the protection of human rights or provisions of domestic law were identified. On the contrary, in general penitentiary units respected the rights of persons deprived of liberty, *inter alia* through creating adequate conditions for the exercise of various religious practices, or facilitating contacts of aliens with diplomatic posts.

Identified transgressions were discussed with directors of penitentiary units visited, and were additionally a part of post-visitation recommendations, which were subsequently implemented by those units.

In the period 1999-2002, in connection with the application of penitentiary courts to organisational units of the penitentiary system for explanations and information concerning allegations of improper treatment of prisoners by officers and personnel of the Prison Service, such information and explanations were provided in 1999 in 193 cases, in 2000 – in 205 cases, in 2001 - in 261 cases, and in 2002 - in 283.

202. District supervision over the activity of correctional facilities and pre-trial detention centres is conducted by directors of the Prison Service, while the implementation of tasks carried out by organisational units of the penitentiary system are supervised by the General Director of the Prison Service. Both the Central Board of the Prison Service and district inspectorates of the Prison Service carry out inspections of penitentiary units as part of comprehensive, thematic and emergency audits, in compliance with the recommendations contained in international documents concerning rules of conduct with prisoners.

203. Intensive monitoring of penitentiary units, especially with respect to the observance of rights of persons placed in them, is conducted by the Office of the Ombudsman. Employees of the Office have conducted visitations in nearly all penitentiary units, having the right to enter them at all times and to talk with all prisoners placed in them, without the participation of the officers and personnel employed there. Post-visitation recommendations arising from these visitations are always carefully considered and have frequently had a significant influence on the implementation of penitentiary practice.

204. Since the early 1990s systematic monitoring of penitentiary units is conducted by non-governmental organisations. The greatest activity in the sphere of human rights observance in isolation institutions is performed by The Helsinki Foundation of Human Rights. Employees and persons indicated by the Foundation may enter all correctional facilities and pre-trial detention centres on the strength of a permanent pass, authorisation issued in writing or in compliance with other requirements defined for persons who are not officers or personnel of the Prison Service and who apply for the right to enter the territory of organisational units of the Prison Service; they may hold talks with prisoners placed in them without the participation of third persons, as well as submit remarks and postulates referred to prison authorities. The right to examine prison reality in a substantial degree is also granted to representatives of other non-governmental organisations, including especially:

- charity ones, such as: “Patronat” Penitentiary Association, St. Brother Albert Assistance Society, Caritas, “Emaus” Association of Assistance to Persons Released to Liberty,

- educational ones, such as Polish Association of Legal Education, Association of the Centre for Social Information in charge of Offices of Civil Counselling,

- mutual aid organisations, especially related to abstinence, such as e.g.: members of the Communities of Alcoholics Anonymous, “Monar” Society for Elimination of Drug Addiction,

- representatives of the world of science and university students,

- representatives of local self-governments and communities,

- representatives of the press, radio, and television.

It has to be emphasised that these organisations, apart from the implementation of statutory duties, frequently take emergency steps in matters of individual prisoners.

205. Of great significance for the protection of the rights of prisoners are priests or lay persons, especially from the Roman Catholic Church, but also representing other churches and religious organisations. In addition to religious services, they provide assistance to prisoners and their families concerning the solution of problems arising from isolation in prison, sometimes playing the role of mediators between them and prison authorities.

206. The Polish penitentiary system has been and continues to be subject to monitoring and audit on the part of international institutions and organisations active in the field of human rights

protection, such as: Committee against Torture, International Red Cross, European Court of Human Rights, European Committee against Torture and Inhuman or Degrading Treatment or Punishment (CPT), etc.

207. In addition, within the last ten years Polish penitentiary institutions have been visited by: Holy Father John Paul II, Mother Teresa of Calcutta, Princess Anne, representatives of governments, diplomatic posts located in the territory of Poland, international non-governmental organisations, international institutions and scientific organisations, and officers and personnel of the prison service of other countries. While these visits have not served the purpose of conducting audits, their frequency (a few dozen visits of this type a year) testifies to the open character of the Polish penitentiary system, which has an impact on its assessment conducted by the international community.

Right to submit petitions, complaints and requests

208. The examination conducted by domestic and foreign organs, institutions and organisations of complaints of prisoners concerning the conditions or the manner of the execution of preliminary detention or the penalty of deprivation of liberty, constitutes an important element of this monitoring.

209. Persons preliminarily detained and sentenced to the penalty of the deprivation of liberty are entitled to lodge petitions, complaints and requests with an organ competent for their examination and to present them in the absence of third persons, administration authorities of the correctional facility, heads of organisational units of the Prison Service, a penitentiary judge, public prosecutor and the Ombudsman, and to conduct correspondence without censorship with state and local self-government organs and with the Ombudsman. Convicted persons, their advocates and plenipotentiaries and competent non-governmental organisations have the right to lodge complaints with organs established by international agreements concerning human rights protection, ratified by the Republic of Poland. Correspondence of persons deprived of liberty in those matters should be forwarded without delay to the addressee and is not subject to censorship.

By choosing the addressee of the complaint, the prisoner decides on the course of action and the subject who will examine it.

210. The institution of petitions, complaints and requests is very frequently taken advantage of by persons placed in correctional facilities and pre-trial detention centres and their families for signalling to heads of organisational units of the Prison Service, and other organs outside the penitentiary system the irregularities in the functioning of penitentiary facilities and their observance of the provisions of the law, regulating the execution of the penalty of the deprivation of liberty and preliminary detention and coercive penalties and measures with the effect of the deprivation of liberty. It is also a source of information on the respect of the rights of persons deprived of liberty by prison administration authorities as well as constitutes an available form of protection of individual rights of prisoners.

The question of violations of the law by officers of the Prison Service, the Police and other services

211. In the period 1999 – 2002, in all complaints concerning an unlawful treatment of persons deprived of liberty by officers and personnel of the Prison Service, including e.g. beatings, unlawful imposition of a disciplinary penalty, use of physical strength and placement in a security cell, provocative behaviour of officers, intimidation, denigration, theft, providing untrue information about the actual state of health by prison physicians, the persons lodging complaints put forth the following number of allegations:

- in 1999 a total of 1887 allegations were put forth concerning an inappropriate attitude to prisoners on the part of officers and personnel of the Prison Service. Out of the 1534 allegations examined by organisational units of the penitentiary system, 12 were considered as justifiable, including one allegation concerning a violation of a prisoner's bodily inviolability,

- in 2000 a total of 2140 allegations were put forth concerning an inappropriate attitude of officers and personnel of the Prison Service, including 94 allegations of beating and 48 concerning the use of direct coercion measures. The remainder concerned other forms of inappropriate, in the opinion of the authors of complaints, treatment. Out of the 1761 allegations examined by organisational units of the penitentiary system, 21 were considered as justifiable. Justifiable allegations did not relate to beating or the use of direct coercion measures,

- in 2001 a total of 2486 allegations were put forth, including 123 of beating and 114 concerning the use of direct coercion measures. Out of the 2034 allegations examined by organisational units of the penitentiary system, 10 were considered as justifiable. Within this group there were no allegations concerning beating or an unlawful use of direct coercion measures,

- in 2002 a total of 2671 allegations were put forth, including 131 of beating and 46 concerning the use of direct coercion measures. Out of the 2214 allegations examined by organisational units of the penitentiary system, 16 were considered as justifiable, including 1 case of an unlawful use of a direct coercion measure.

The above data includes cases subject to examination and competent decision by organisational units of the penitentiary system and submitted to the penitentiary system for providing explanations and information to other competent organs (penitentiary courts, public prosecutors, Office of the Ombudsman).

212. A significant increase in the number of prisoners occurred in the period 1999-2002. This was not reflected in an increase of complaints about an inappropriate attitude of officers towards prisoners. In 1999, 2 such cases were identified, in 2000 - 4, while in 2001 no such case was identified.

In 2002, 3 cases of an inappropriate attitude of officers towards prisoners were identified. The persons found guilty were subject to disciplinary penalties. These transgressions took place in the following units:

- Pre-trial Detention Centre in Krasnystaw: a shift commander on duty, took an unjustifiable decision of the use of a direct coercive measure in the form of placement of a prisoner in a security cell. The officer was penalised with the penalty of a reprimand;

- Correctional Facility in Warsaw-Białołęka: Ward head of the protection ward, on duty in the residential ward, took part in a beating of a prisoner. He was penalised with the penalty of a discharge from service;

- Correctional Facility in Rzeszów-Załęże: deputy shift commander used placement of a prisoner in a security cell. Measures of direct coercion were used in violation of regulations in force. The officer was penalised with the penalty of a caution.

Size of cells

213. In reference to the concern expressed by the Committee about the inadequate size of cells for 1 prisoner and the postulate of improving prison conditions so that they may be in conformity with the "*Standard Minimum Rules for the Treatment of Prisoners*", it has to be stressed that the *UN Standard Minimum Rules for the Treatment of Prisoners* of 1955 do not define the minimum size of a residential cell, which should be foreseen for one prisoner, being confined to the statement under point 10, that "All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation".

214. At the same time, the Rules in their point 9 (1) recommend that each prisoner shall occupy at night time a cell or room by himself. Furthermore, the *European Prison Rules* of 1987, underlining the above principle under point 14.1, do not define the minimum size of a residential cell. Under point 15 they recommend that "The accommodation provided for prisoners, and in particular all sleeping accommodation, shall meet the requirements of health and hygiene, due regard being paid to climatic conditions and especially the cubic content of air, a reasonable amount of space, lighting, heating and ventilation".

215. The Executive Penal Code currently in force stipulates that the area of a residential cell for a convicted person should amount to no less than 3 m^2. In especially justified cases, the director of a correctional facility or a pre-trial detention centre may place the persons deprived of their liberty, for a definite time, in conditions where the area in the cell per one person amounts to less than 3 m^2. A penitentiary judge must be notified without delay about such a placement.

216. In the first half of the 1990s, the average monthly number of prisoners oscillated from close to 46,000 in 1990 to over 65,000 in 1995. The change in the numbers at that time did not constitute a substantial problem with respect to the capacity of penitentiary units, which ran at the level of 63,000–65,000 places. In the course of the subsequent three years (1996–1998), the average monthly number of prisoners oscillated around 58,000 persons.

From January 1999 until 3 February 2003, the number of prisoners rose from 54 373 to 1 918. The number of places at the disposal of the penitentiary system for prisoners at the

same time rose merely from 64 747 to 69 376. The population of correctional facilities and pre-trial detention centres runs currently at 118.1%, and with the exclusion of prison hospitals at 118.9%.

217. On account of a marked increase in the population of prisoners in the period 1999-2002, which was a consequence of tightening the penal policy of the State and the increase in the efficiency of law enforcement, the penitentiary system took efforts to secure new places of accommodation. These efforts consisted in the change of the intended use of some rooms such as community centres, fitness-rooms, briefing halls, etc. for residential purposes or in investment and renovation actions. As a result of investment and renovation actions, in 1999 - 627 places were secured, in 2000 - 974, in 2001 – 1115, and in 2002 - 335. In addition, in 1999 was concluded the construction of the Pre-trial Detention Centre in Radom, which contributed to an additional 789 places. The 2003 will mark the conclusion of the construction of a new detention centre in Piotrków Trybunalski (600 places), an addition of one storey in the Pre-trial Detention Centre in Wejherowo (40 places), and the construction of 3 wards for dangerous prisoners in the Pre-trial Detention Centre in Białystok, the Correctional Facility in Rzeszów, and the Pre-trial Detention Centre in Warsaw-Mokotów, with a total capacity of 94 places.

218. At present there is a deficiency of around 13,000 places in penitentiary units. As a result, the penitentiary system prepared a programme of expanding the existing accommodation base with 20,000 places through the construction of new penitentiary pavilions on the premises of existing units and the reconstruction and renovation of penitentiary pavilions destroyed during the rebellions (from the 1980s and the turn of the 1990s), by floods or excluded from use on account of a very bad technical state. In 2003, in spite of limited resources in the budget of the penitentiary system, a construction of 2 penitentiary pavilions was commenced (in the Correctional Facility in Wojkowice, Detention Centre in Jelenia Góra); the conclusion of these projects is planned for 2005 (the target capacity of these pavilions will be around 550 places).

The cost of the implementation of the programme of constructing 20,000 places is estimated at 1 533.5 million PLN according to prices from the years 2001/2002, which is comparable to a yearly budget of the penitentiary system.

219. At present, in all penitentiary units there is a total of 16,501 cells, including 935 single, 4,416 double, and 2,592 treble cells. The remaining cells are earmarked for four and more persons, including e.g. 289 cells for more than eleven persons. The penitentiary system takes further action with a view to limiting the number of residential cells for larger groups of prisoners in the total number of residential cells.

220. In subsequent years, the Prison Service plans to commence, provided the financial standing of the penitentiary system allows for it, new investment projects, which will significantly contribute to an increase in the number of accommodation resources. They are, among others:

- construction of 3 penitentiary pavilions on the premises of existing units (in the Correctional Facility in Wojkowice, the Pre-trial Detention Centre in Lublin, and the Correctional Facility in Krzywaniec), with a total capacity of around 1000 places,

- construction of a new penitentiary unit for 600 places,

- extension of the Correctional Facility in Garbalin and expansion of the capacity by 366 places,

- continuation of the adaptation of a military unit, commenced in 2001, into a Correctional Facility in Czerwony Bór, with the target capacity of 600 places,

- reconstruction of a penitentiary pavilion in the Correctional Facility in Goleniów and Correctional Facility no. 1 in Wrocław, with a total capacity of around 300 places.

At present, only a radical reduction of the number of persons placed in penitentiary units, an extension of existing correctional facilities and detention centres or the construction of new ones would make it possible to increase the norm of the cell size for one person.

General conditions of stay of prisoners

221. In residential cells are ensured adequate furnishings, including a bed for every prisoner, proper conditions of hygiene, adequate supply of air and a temperature adequate to the season of the year according to the norms defined for residential quarters, as well as lighting adequate for reading and execution of work. Depending on the type of the correctional facility, prisoners use lavatories located in residential cells or in lobbies of individual wards. At present, in correctional facilities of a locked-down regimen, there are 14 182 cells equipped with lavatories of varying standards of enclosure; in 6172 cells this is a complete enclosure, and in 7 503 cells a temporary one. 507 cells do not require the enclosure of lavatories (e.g. single cells). Only in two penitentiary units there are 83 cells equipped with sanitation pails. Currently, renovation works are under way in order to install sanitary equipment in one of those units, whereas the other one will be closed down in connection with the start of the operation of a new facility in September 2003. The problem of cells equipped with sanitation pails will cease to exist by the end of 2003.

222. Basic daily nutritional norm contains no less than 2600 kcal, and for a prisoner who has not attained the age of 24 years, no less than 3200 kcal. The decision on assigning an appropriate medicinal norm to the prisoner is made by a physician, who determines the number and hours of dispensing meals during the day, the kind of products and the way of their preparation.

223. The prisoner is ensured free medical care and free provision of medications, dressings, and in especially justifiable cases – necessary artificial limbs and dentures. He may also be allowed treatment at his own expense, under a physician of his choice. In each penitentiary unit there is a health care unit appointed to provide a basic scope of health care services, which is an integral part of the penitentiary unit. The requirements to be met by these health care units and facilities which are a part of them are identical to those of all health care units in Poland.

Penitentiary medical service is in possession of 14 hospitals, which in 2002 had 10 690 patients. Legal regulations make it possible for prisoners to use medical services offered by health care units outside the penitentiary medical service system. In 2002 this possibility was used 16 526 times.

224. The penitentiary system runs 58 schools of different types. These schools, organised in 23 integrated groups, function in 28 penitentiary units. The existing network of schools ensures the possibility of learning both to prisoners under compulsory schooling attendance and those who want to continue their education on their own initiative. Compulsory schooling attendance in the area of primary and junior high school concerns prisoners and persons under preliminarily detention, who have not attained 18 years of age. Adult prisoners are offered learning in the scope of all types of schools functioning in the system of public education.

In the school year 2001/2002, from among the average annual number of 80,502 persons placed in penitentiary units, 4,011 (4.98%) attended schools at prisons. The most numerous group of school students – 1861 persons – were minor prisoners (46% of all school students). Furthermore, schools were attended by 1278 habitual offenders and 872 persons serving a penalty for the first time. In the scope of primary and junior high schools, instruction was offered to 500 convicted persons, who constituted 12.5% of all students, and in the scope of vocational schools and high schools – to 3504 persons (87.5%).

Education of prisoners in the above forms does not exhaust the educational offer directed to convicted persons. In addition, instruction in the form of courses is offered to persons in need of vocational retraining. 27 courses were organised in the school year 2002/2003. They were attended by 412 convicted persons requiring vocational retraining. Courses concluded with the receipt of full professional qualifications constituted 55% of all training courses. The remainder were organised for the purpose of preparing the convicted persons for the execution of specific works. The organisation of courses was entrusted to prison vocational schools and institutions specialising in in-service trainings of adults.

Actions taken in 1999 in order to adjust the prison education system to the assumptions of the reform of the educational system contributed to a significant improvement in educational conditions in all types of prison schools. Schools received additional teaching equipment, including:

- computer laboratories,
- teaching aids for subject classrooms,
- school handbooks and set books.

The implemented organisational changes contributed to the establishment of 4 well-equipped educational units, so-called *Continuous Education Centres*, which ensure a comprehensive educational offer to convicted persons.

Conditions in police rooms for arrested persons

225. Conditions of stay in police rooms for arrested persons are monitored on a regular basis by authorised audit units of the Police, representatives of the Ombudsman and of the Helsinki Foundation of Human Rights. Irregularities identified in the course of audits are removed according to the financial resources of the Police.

226. In 2002 inspectors of voivodeship commanders of the Police conducted audits of the technical and sanitary status and equipment of rooms for detainees in 188 municipal and district headquarters of the Police.

Remand houses and shelters for minors – Institutions for minors

227. Supervision over remand houses for minors is carried out by presidents of provincial courts and authorised persons. It comprises: supervision over the administration of remand houses and shelters, audit of the functioning of remand houses and shelters, audit of observance of the rights and duties of minors, analysis of the execution of legal regulations and of compiling documentation, visitations concerning the overall activity of a remand house or a shelter, and audits concerning selected areas of activity, initiating the institution of clarification and disciplinary proceedings and examination of complaints and petitions.

228. Pedagogical supervision in remand houses and shelters for minors is carried out by inspectors of the Minister of Justice, inspectors of district teams of pedagogical supervision and directors of remand houses or shelters. In 2000, work was commenced on creating a coherent system of work quality assessment in remand houses for minors. A "Book of the Quality of Remand Houses and Shelters for Minors" was prepared which determines areas of activity of these institutions, subject to audits of pedagogical supervision and quality assessment. They are as follows: organisation and management of a remand house of minors, personnel management system, security of a remand house for minors, the rights of the minor, the duties of the minor, social re-integration offer, organisational culture, cooperation with the outside environment. The following sub-areas were defined within the area "the rights of the minor": knowledge of the rights of minors, observance of the rights of minors, coherence of internal regulations with the rights of minors, prevention and detection of and reaction to non-observance of the rights of minors.

229. Visitations and audits in remand houses and shelters for minors, conducted in the period 1999 – 2002, concerned various fields of the functioning of these institutions. In some institutions all areas defined in the plans of work quality assessment were examined. Special attention was paid to the observance of the rights of minors. As a result, cases of violating the rights of wards placed in remand houses for minors could be immediately identified, which in consequence led to taking adequate corrective and preventive action without delay. When the circumstances so warranted, changes were made in the management of remand houses for minors.

230. Results of audits point to positive changes both in the content of the work and in the management of remand houses for minors. During the work with young persons, social re-integration methods were perfected which took into consideration cognitive personality studies of minors, forms of classes were extended with a view to a fuller realisation of individual interests of wards, care was taken about the conditions of stay of minors in a remand house and the provision of security, and individual programmes of social re-integration were implemented. The system of rewards and disciplinary measures functioned efficiently and properly. A positive tendency of an increase in the number of rewards granted to wards was continued. This stemmed

from the more and more common conviction among pedagogical personnel that the ward who is rewarded more often and in a proper way feels more secure and can become confident of his chances of becoming better in a shorter period of time. No reservations were levelled by the supervising persons as to the observance of the rights of wards e.g. to proper nutrition and health care. A significant improvement was noticed as to the implementation of tasks in the area of internal audit assessment of the work of teachers by the management of institutions. The organisation and the course of the teaching and educational process in schools were also improved. The activities of the management of schools and teachers were geared towards the creation of improved conditions of work and towards making the classes more attractive in order to eliminate a negative attitude of the wards towards school. The effects of these activities could be observed in the results of instruction and promotion of the wards. Observations concerning the organisation of instruction and work in school workshops indicated that vocational teachers took effort to ensure a good vocational preparation of the wards, however the instruction was based on old and obsolete machines and equipment. It was observed that there is a necessity of adjusting vocational training to the needs of the labour market by means of various forms of courses.

231. In the period under consideration, the activity of remand houses for minors was monitored by the Ombudsman. In 1999, as a result of an audit of work of up to twenty remand houses for minors as to living conditions of the wards placed in them, the Ombudsman noticed that the institutions ensure adequate living standards to minors as to social and living conditions. In turn, in 2001 the Ombudsman for Children visited 6 shelters and 6 remand houses. The visitations aimed at the evaluation of the state of observance of the rights of minors, with special emphasis on the level of the process of social re-integration being implemented and the use of educational measures which were part of it. The visitation concerned the knowledge of the rights of minors, observance of their rights, prevention and detection of and reacting to non-observance of the rights of minors by the personnel of the institutions and the educational programmes implemented with minors. Significant discrepancies were noticed between individual institutions as to the observance of the rights of minors and the level of the social re-integration process implemented. Remarks and conclusions formulated by the Ombudsman were analysed in detail and clarified in the course of audits. As a consequence, the Ministry of Justice took action aiming at the elimination of identified irregularities such as: employment of minors in violation of existing regulations, unregulated procedures of storing medications, including psychotropic ones, and their dispensing to wards, punitive use of a temporary detention room, disclosure of the secret of correspondence of wards, absence of action countering manifestations of the so-called underground life.

232. In 2002 the Supreme Chamber of Control examined the conditions of conducting supervision over and the educational, social re-integration and therapeutic work with minors placed in remand houses and shelters for minors, in a total of 16 institutions. The following issues were subject to examination: ensuring living and sanitary conditions to minors, provision of health care, opportunities of participation in cultural, educational and recreational classes and development of their social activity, organising condition for the continuation of education and exercise of religious practices, observance of a defined order and discipline, including granting rewards and using disciplinary measures, providing assistance to persons released from the

institution, correct management of documentation concerning minors and conducting periodical analyses and evaluations of progress in the social re-integration process. As a result of the audit, conclusions were formulated as to the improvement of the quality of supervision, lowering the operating costs of the institutions and an increase in their efficiency, monitoring of further steps and life situation of the wards, analysis of the legitimacy of assigning overtime, improvement of the efficacy of auxiliary farms. It was concluded, however, that minors placed in remand houses and shelters for minors were provided with good, and sometimes very good conditions of stay and social re-integration. All the questions under consideration were subject to a thorough analysis and a detailed examination, and the irregularities were removed without delay.

233. In addition, supervision over remand institutions for minors is carried out by family judges appointed by presidents of provincial courts, competent *rationae loci* for particular institutions. Execution of supervision consists, among others, in an audit and assessment of the legality of placement and stay of minors in an institution and their release from an institution, observance of the rights and duties of minors, especially in the scope in which a violation of these rights and duties may result in penal and disciplinary liability, correctness of methods and measures of work with minors used in an institution, especially in reference to their conformity with the law and efficacy, correctness of the documentation concerning a minor, conducting periodical analyses and evaluations of progress in the social re-integration process, ensuring living and sanitary conditions to minors, provision of health care, opportunities of participation in cultural, educational and recreational classes and development of their social activity, providing minors released from an institution with adequate assistance defined in separate regulations, correct and timely manner of executing requests, complaints and petitions of minors. Family judges prepare reports on the course of an audit of institutions located within the area of jurisdiction of a given court. The reports contain data concerning the scope of the audit along with post-visitation recommendations aiming at the removal of identified transgressions and the prevention of their occurrence. Within 14 days of the conclusion of an audit, the president of the provincial court sends a copy of the report to the head of the institution and to an organ competent for the institution, i.e. to the Ministry of Justice in the case of remand houses and shelters for minors, to the Ministry of Labour and Social Policy in the case of care and educational institutions, to the Ministry of National Education and Sport in the case of special learning and educational centres. In order to ensure a proper exercise of supervision and an adequate execution of post-visitation recommendations, presidents of provincial courts organise consultation meetings with the participation of family judges exercising supervision, heads of audited institutions, and representatives of organs competent for these institutions.

Article 11 – Prohibition of detention for debt

234. Polish legal system does not contain legal norms allowing for the deprivation of liberty exclusively on account of an inability to meet contractual obligations.

Article 12 – Freedom of movement

235. As of 1 September 2003, the principles and conditions of entry into the territory of Poland (including e.g. the principles and conditions of issuing visas to aliens entitling them to cross the border of the Polish Republic), transit through this territory, stay on it and departure of

aliens from the territory of the Republic of Poland, the course of action and organs competent in those matters have been defined in *The Law of 13 June 2003 on Aliens*, which replaced the existing *Law of Aliens of 25 June 1997*. As to the principles, conditions and procedure for granting protection to aliens within the territory of the Republic of Poland as well as the authorities competent in these matters, the above regulations are supplemented by *The Law of 13 June 2003 on Granting Protection to Aliens within the Territory of the Republic of Poland*, which also entered into force as of 1 September 2003. An idea was adopted to set apart regulations concerning those persons who require special treatment, defined primarily in norms of international law, from a law which concerns all aliens.

The Law of 13 June 2003 on Aliens

236. In accordance with the provisions of the new law, an alien, staying legally in the territory of Poland, enjoys the right to the free movement and the choice of the place of stay.

An alien who was granted the residence permit for a fixed period, the permit to settle, the refugee status, or the permit for tolerated stay shall be issued a *residence card*. Within the period of its validity the residence card shall confirm the identity of the alien during the period of his residence in the territory of the Republic of Poland as well as - accompanied with the travel document - shall authorise an alien to multiple border crossing without the need of obtaining a visa. Upon an application of an alien possessing a permit to settle, who has lost his travel document or whose travel document was destroyed or its validity time expired and obtaining a new travel document by that alien is not possible, a Polish travel document is issued, valid for a period of 2 years. In practice, these documents are to facilitate the right of aliens to enjoy the freedom of movement.

A restriction of the freedom of movement and liberty may take place only in cases stipulated by the law. Chapters 9 and 10 of the *Law on Aliens* regulate precisely the proceedings in the case of detention of an alien, placing an alien in the guarded centre or in the arrest for the purpose of expulsion, as well as detailed questions concerning the stay of an alien in those places.

237. An alien in relation to whom any circumstances that justify rendering of the decision on expulsion apply or an alien who evades carrying out obligations specified in the decision on expulsion, may be detained for a period not exceeding 48 hours. The detained alien shall have the rights guaranteed for a detainee by the provisions of the Code of Criminal Procedure. The Police or the Border Guard which carry out the detention are obliged to:

- without delay make a request to the court for:
    - placing an alien into the guarded centre (if it is necessary to ensure the effectiveness of the proceedings, or there is a well-founded fear that an alien will attempt to evade the execution of the decision on expulsion or on withdrawal of the permit to settle, or if he crossed or has attempted to cross the border contrary to the laws, or if he was not escorted to the border immediately); or

- arresting an alien for the purpose of expulsion (if any of the circumstances for placing an alien in the guarded centre have arisen, and there is a fear that an alien will not observe the rules in force in the guarded centre);

– or without delay make a request to the voivode for rendering the decision on withdrawing the permit to settle or the decision on expulsion,

– or to execute without delay the decision on expulsion, in particular escort an alien to the border of the Republic of Poland or to the border, an airport or a sea port of the country to which he is being expelled.

238. The decision to place an alien in the guarded centre or in an arrest, rendered at the request of the voivode, the agency of the Border Guard or the Police by the district court competent with respect to the seat of the authority which has made the request, may be appealed against to the provincial court. The decision to place an alien in the guarded centre or in the detention centre specifies the period of detention or arrest as not exceeding 90 days. This period may be prolonged for a specified period necessary to execute the decision on expulsion, if that decision was not executed due to the alien's fault. The total period of stay in the guarded centre or in the arrest may not exceed one year.

239. The law stipulates likewise that an alien undoubtedly wrongfully detained or placed in the guarded centre or in the detention centre for the purpose of expulsion shall be entitled to compensation for damage he has borne and to satisfaction for the injury harms. In such cases provisions of the Code of Criminal Procedure concerning compensation for unjustifiable sentencing, preliminary detention or arrest are applied.

240. The residence visa shall be issued as a short-term or a long-term visa. A short-term residence visa shall authorise to entry into and continuous residence in the territory of the Republic of Poland or to multiple consecutive periods of residence, not exceeding jointly 3 months within the period of 6 month, counting from the date of the first entry. In the case of a long-term residence visa this is a period of one year within the period of visa validity. This type of a residence visa is issued solely for the purpose of carrying out the economic activity; carrying out the cultural activity or participation in the international conferences; performance of the statutory functions by the representatives of the foreign state authority or the international organisation; taking part in asylum procedure; carrying out work; scientific, training or educational - with the exception of carrying out work; enjoyment of temporary protection; if the circumstances of this stay warrant that it should continue longer than 3 months.

The law likewise includes the institution of the airport visa, which shall entitle one to enter into and stay in the transit zone of an international airport for a period not exceeding 2 days. This visa may be issued to an alien who demonstrates that the stay in the transit zone of an international airport is necessary to complete his planned travel by air.

In addition, the residence visa may be issued for the period not exceeding 3 months to an alien, in spite of the circumstances that would justify the refusal of the visa, if:

- provisions of the Polish law require that he should appear in person before an agency of the Polish public authority,

- his entry into the territory of the Republic of Poland is indispensable because of the necessity to undergo medical treatment to rescue directly his life, which he cannot undergo in another country,

- an exceptional personal situation that requires the presence of an alien in the territory of the Republic of Poland has occurred,

- it is required by the interest of the Republic of Poland.

241. An alien who is a spouse of a Polish citizen must not be refused the residence permit for a fixed period only because it may constitute a burden on the social assistance system, or because of the fact that he does not perform fiscal obligations to the State Treasury, or on account of the necessity to protect public health or because of the existence of circumstances which demonstrate that the purpose of his entry into or residence in the territory of the Republic of Poland is or will be other than the declared one (article 57).

In the case of permits to settle, the period of time of continuous legal stay required for being granted the relevant permit was shortened considerably. Aliens may apply for this permit if directly before submitting the application they have resided continuously in the territory of the Republic of Poland for at least 2 years on the basis of the residence permit for a fixed period and if they have been married to a Polish citizen for at least 3 years.

242. At present, the permit to settle may be granted also to:

- a minor child of aliens, born in the territory of the Republic of Poland, if at least one of his legal representatives has possessed a permit to settle at the day of the minor's birth,

- aliens who directly before submitting an application have resided in the territory of the Republic of Poland continuously for at least 10 years on the basis of visas, residence permits for a fixed period or permits for tolerated stay or at least 8 years if they have been granted the refugee status, irrespective of a demonstration of the existence of permanent family or economic ties binding them to the territory of the Republic of Poland.

Apart from a shorter period of continuous stay, aliens who have been granted the refugee status in the Republic of Poland shall have included to the period of continuous residence also the period of residence on the basis of the temporary identity certificate, even if the alien within this period was placed in the guarded centre or in the detention centre for the purpose of expulsion.

243. The law contains also the institution of family reunification, introduced into the Polish legislation already in 2001, within which the residence permit for a fixed period shall be granted to an alien for the purpose of family reunification. The residence permit for a fixed period for the purpose of family reunification shall be granted to an alien who resides outside the territory of the Republic of Poland and is a member of the family of an alien, who resides on the territory of the Republic of Poland on the basis of the permit to settle or on the basis of a residence permit for a fixed period of at least 3 years, or on the basis of the refugee status.

Family reunification applies to the spouses and minor children (including adopted children) of the applicant or his/her spouse.

244. In addition, the law:

- includes a premise justifying the recognition, in the course of proceedings on granting a residence permit for a fixed period on the territory of the Republic of Poland, that the marriage has been concluded for the purpose of abuse of the provisions of these proceedings (one of the spouses has accepted material profit in return for expressing a consent to conclude the marriage, there is an absence of an appropriate contribution to the responsibilities arising from the marriage, the spouses do not maintain matrimonial cohabitation, the spouses have never met before their marriage, the spouses do not speak a language understood by both, the spouses are inconsistent about their respective personal data and other important personal information concerning them);

- makes precise the lengths of periods for which data of aliens whose stay in the territory of the Republic of Poland is undesirable must be entered into the register (from 1 year to 5 years, with a possible extension for further specified periods);

- regulates the possibility of controlling the legality of aliens' residence within the territory of the Republic of Poland.

The Law of 13 June 2003 on Granting Protection to Aliens within the Territory of Poland

245. In accordance with the law, an alien meeting proper criteria may be granted protection in the territory of the Republic of Poland in the form of being granted the refugee status, asylum, the permit for tolerated stay, or temporary protection. All proceedings in the matters regulated by this law are carried out according to the provisions of the Code of Administrative Procedure unless this law states otherwise.

Refugee status

246. The refugee status in the Republic of Poland is granted to an alien who fulfils the conditions for being recognized as the refugee, specified in the *Geneva Convention concerning the Refugee Status* (1951) and the *New York Protocol concerning the Refugee Status* (1967).

247. An alien may file an application for being granted the refugee status to the President of the Office for Repatriation and Aliens, through organs accepting the application, i.e. the commanding officer of the Border Guard division whose territorial scope of activity includes the city of Warsaw, or the commanding officer of the Border Guard checkpoint. If an alien is not granted the right of entry into the territory of the Republic of Poland, then he files the application through the commanding officer of the Border Guard checkpoint during the border control at the entry into the territory of Poland. Organs accepting the application are obligated to submit the application without delay to the President of the Office for Repatriation and Aliens. This submission must take place no later than within 48 hours of an alien's filing the application.

In this way the proceedings for granting the refugee status were simplified through a departure from the first stage of these proceedings, pending before organs entitled to accept the application, which was concluded with a decision on instituting or not instituting proceedings, which is a solution more advantageous for aliens, providing them at the same time with a possibility of a faster, and also more thorough examination of the matter.

248. Decisions about granting the refugee status are issued by the President of the Office for Repatriation and Aliens; appeals against the decisions are examined by the Board for Refugees, which is an organ of public administration adjudicating on appeals against and complaints about the decisions issued by the President of the Office for Repatriation and Aliens in matters of granting or withdrawing the refugee status. The decision of an organ of the second instance may be appealed against to the Chief Administrative Court.

249. Other important changes are as follows:

- the decision on granting or refusal to grant the refugee status should be rendered within the time limit of 6 months from the date of the submission of the application. A departure from this principle is the time limit of the decision on the refusal to grant the refugee status for the reason of manifestly unfounded application – which is 30 days from the date of submitting the application;

- introduction into the law of provisions concerning procedures with unaccompanied minors and procedures with the participation of aliens as to whom may be presumed that they have been victims of violence or of aliens with disabilities, granting in this way legal guarantees of exercise of the rights they are entitled to. These issues, while they concern the rights of aliens or supplement the principles of procedure as stipulated by the Code of Administrative Procedure, were so far a part of implementing acts. A certain *novum* here is the introduction into the law of the institution of a guardian appointed to represent the minor in the procedure for granting the refugee status, who takes care of the person and property of the minor in "everyday life". The institution of a guardian supplements the institution of a custodian, who is appointed to represent the minor in proceedings for being granted the refugee status;

- regulations determining the principles of granting and withholding assistance in the form of benefits in a centre for aliens applying for being granted the refugee status or in the form of a financial benefit, as well as principles of providing assistance in the organisation of voluntary repatriation of aliens who have resigned from applying for being granted the refugee status. These questions were up till not regulated by means of a resolution. Provisions introduced into the law in this respect underwent significant modifications. The law defines the time of providing assistance as the period of the proceedings and the period of 14 days from the date of delivery of the final decision on being granted the refugee status, while the decisions on granting those benefits are issued on the basis of existing regulations referred only to the

period of the proceedings, and this period may be in justified cases extended by 3 months. The catalogue of premises entitling to withholding benefits was also narrowed down. At present, an alien will receive, with small exceptions, benefits exclusively in one form, indicated in the law, which will limit the arbitrariness of an organ in this respect, ensuring a more efficient monitoring of public expenditure;

- a provision indicating the President of the Office for Repatriation and Aliens as an organ ensuring and organising the management of centres for aliens applying for being granted the refugee status and authorising him to transfer centres for management to social organisations, foundations, associations, or natural and legal persons on the basis of a concluded contract;

- resignation from acquiring the permit to settle for a fixed period of time to aliens who have been granted the refugee status. At present, the very decision of being granted the refugee status is the basis for conferring upon this category of aliens the rights connected with holding a permit to settle for a fixed period of time in the territory of the Republic of Poland. Such aliens are granted a residence card as a document confirming the fact that they are entitled to the rights of an alien who has been granted the permit to settle for a fixed period of time and the travel document provided for in the Geneva Convention;

- a possibility of a medical examination of an alien applying for being granted the refugee status with his consent, if an alien claims to be a minor and there are doubts as to his age. If this person does not express his consent to undergo such a medical examination, he is treated as an adult;

- introducing the possibility of placing illegal immigrants – who, as the practice shows, frequently take advantage of facility measures arising from instituting proceedings for being granted the refugee status for making their way into the territory of other countries – in a guarded centre or a detention centre for the purpose of expulsion or in a place of stay or town indicated in the decision of the President of the Office for Repatriation and Aliens.

250. In 2002, 5,153 aliens filed applications for being granted the refugee status (the number of applications – 3,189), including:

- 678 persons who filed applications after crossing the state border in violation of the laws,

- 232 persons who are in the territory of the Republic of Poland without the required permit,

- 461 persons detained for an attempt to cross, in violation of the laws, the state border with Germany and the Czech Republic, or handed over to the Polish party by the neighbouring party on the basis of readmission agreements.

In the period from 1 January until 31 December 2002, the refugee status was granted in the first instance to 282 aliens (250 – in the first instance, 32 – in proceedings instituted as a result of appeals), 4,677 aliens were refused the refugee status in the first instance, 2,267 aliens appealed against the negative decisions. It has to be stressed that the data concerning decisions issued with respect to granting or refusing to grant the refugee status and appeals filed, they apply also to proceedings instituted before 2002, therefore they should not be analysed in the context of a number of applications for being granted the refugee status in the year 2002.

The largest number of applications was filed by citizens of the Russian Federation (3048), Afghanistan (595), Armenia (223), India (196), Moldova (169), Mongolia (156), Iraq (137), and Ukraine (102).

Asylum

251. Upon his request, an alien may be granted asylum in the Republic of Poland if it is necessary for providing him with protection and if it is in a good interest of the Republic of Poland. At the same time, an alien who has been granted asylum shall be granted the permit to settle. An alien who has been granted asylum must not be obliged to leave the territory of the Republic of Poland, as well as cannot be expelled, unless he has been deprived of asylum.

Decisions on granting and withdrawing asylum are issued by the President of the Office for Repatriation and Aliens upon a prior consent of the minister competent for foreign affairs.

252. In 2002, applications for being granted asylum were filed by 25 aliens. No single positive decision was issued. The national composition of applicant for asylum in 2002 looks as follows: citizens of Kazakhstan – 5, Ukraine – 4, the Russian Federation – 3, Armenia – 3, Georgia – 2, Iraq – 2, Azerbaijan, Belarus, Germany, Nigeria, Tajikistan – 1 each, stateless persons – 1.

Tolerated stay

253. The institution of tolerated stay was regulated for the first time. Thanks to being granted permission for such a stay, an alien may legally stay in the territory of the Republic of Poland, if his extradition:

- may be effected only to a country where his right to life, to freedom and personal safety could be under threat, where he could be subjected to torture or inhumane or degrading treatment or punishment, or could be forced to work or deprived of the right to fair trial, or could be punished without any legal grounds – within the meaning of the Convention on Human Rights and Fundamental Freedoms;

- is unenforceable due to reasons beyond the authority executing the decision on expulsion or beyond this alien;

- may be effected only to a country to which the extradition is inadmissible on the basis of the court's judgment or on the basis of the decision of the Minister of Justice on refusing to extradite that alien;

– would be effected for the reasons other than a threat to the state security or defense as well as to the public security and policy while the alien has been married to the Polish citizen or to the alien who has been granted the permit to settle.

An alien who has been granted the permit for tolerated stay shall be vested in the same rights as an alien who has been granted the residence permit for a fixed period, unless the provisions of the *Law on Aliens* or of other laws state otherwise. An alien who has been granted the permit for tolerated stay must not be rendered the decision on obligation to leave the territory of the Republic of Poland or the decision on expulsion.

254. The permit for tolerated stay shall be withdrawn, if: the reason for granting the permit for tolerated stay has ceased to exist; an alien has voluntarily applied for protection to the authorities of the country of origin; an alien has left permanently the territory of the Republic of Poland; the continuation of its effective force may constitute a threat to the state security and defence as well as to the public security and policy.

Temporary protection

255. Regulations on temporary protection were greatly developed and made more precise, which allowed for bringing provisions of Polish law in line with the law of the European Union, which determines in detail the duties of the Member States in the case of a mass influx of aliens.

The law stipulates a possibility of granting temporary protection to aliens arriving in the Republic of Poland in great numbers, who have left their country of origin or specific geographical area for the reason of foreign invasion, war, civil war, ethnic conflicts or serious violations of human rights, regardless of whether their arrival was spontaneous or aided by Republic of Poland or by the international community. Temporary protection shall be provided up to the day on which aliens are able to return to their previous place of residence, however not longer than for one year. This period may be extended for a further 6 months (no more than twice) if the obstacles for a safe return of aliens to the previous place of residence do not cease to exist after one year.

256. Temporary protection, until Poland becomes a Member State of the European Union, is granted in each case by the Council of Ministers by means of an ordinance. When Poland joins the EU, then temporary protection will be granted on the basis and within the limits specified in the decision of the Council of the European Union, for the period specified every time in the decision; as well as – in the case of aliens who have not been included in the decision of the Council of the European Union – by means of an ordinance of the Council of Ministers.

Repatriation

257. On 1 January 2001 entered into force the *Law of 9 November 2000 on Repatriation*. The law lays out the principles of obtaining Polish citizenship through repatriation, the rights of the repatriate, as well as principles and the course of providing assistance to repatriates and members of their families. The law stipulates that a person arriving in Poland on the basis of a visa for the purpose of repatriation acquires Polish citizenship by virtue of the law as of the crossing the border of the Republic of Poland. The law is a token of recognising by Poland its duty to facilitate the repatriation of Poles who remained in the East, especially in the Asian part of the

former Union of Soviet Socialist Republics, and who due to deportation, exile and other persecution measures of a national or political character, were never in the position to settle down in Poland.

258. Currently, work is under way on an amendment to the *Law on Repatriation*. The most significant change will be the possibility of granting the permit to settle to spouses of repatriates, rather than – as has been the case – the residence permit for a fixed period, with the right to work. Other envisaged changes concern occupational activation of repatriates.

Statistical information

259. In the period 2000-2001, migration abroad of the population in Poland (change of the permanent residence) looked as follows:

(a) immigration in 2000 was 7 331persons, and in 2001 – 6 625;

(b) emigration in 2000 was 26 999 persons, and in 2001 – 23 368;

The overall balance of migration was, consequently: in 2000 – 19 668, and in 2001 – 16 743.

In 1995, the borders of the Republic of Poland were crossed by a total of 234 871 000 people, in 2000 – by 278 409 000 people, in 2001 – by 225 848 000 people, and in 2002 – by 189 064 000 people (approx. 16.23% less in relation to 2001). Arrivals of aliens amounted to, respectively: 82 244 000; 84 515 000, 61 431 000, and 50 734 623, while departures of Polish citizens: 36 387 000, 56 677 000, 53 122 000, and 45 042 684 persons.

In 1995, passports entitling the holder to cross the border were received by 1 737 920 persons, in 1999 - 1 459 440 persons, and in 2002 as many as 2 476 794 persons. Crossing borders was possible as of 31 December 2002 at 254 border checkpoints, including: 178 road, 33 railway, 19 sea, 5 river, and 19 airport ones.

Control services of the transnational movement did not allow entry to Poland to 51 814 aliens (a 5.4% decrease), including on the border with Russia – 8 103 (in 2001 – 5 259), with Lithuania - 578 (725), with Belarus – 17 499 (17 049), with Ukraine – 14 552 (18 149). In total, 40 732 aliens were not allowed entry into the Republic of Poland on the Eastern border (a 1.1% decrease).

As a result of a control of the legality of stay of aliens in the territory of Poland, the Border Guard (single-handedly and in cooperation with the Police, the Labour Office, the Customs Office, Office of Internal Revenue Audit, Municipal Guard, Fisheries Guard, Rail Protection Service, and other institutions) detained 5 116 aliens, 1 606 of whom were expelled, and 1 848 were obligated to leave the territory of the Republic of Poland.

Investigation services of the Border Guard instituted 10 379 investigations with respect to 5 625 suspects, including 2 289 aliens (in 2001 – 11 573 investigations were instituted with respect to 6 744 suspects, including 2 840 aliens). The biggest number of proceedings were instituted with respect to cases of crossing the state border in violation of laws – 2 892 (3 521), cases concerning goods marked with excise duty stamps – 2 533 (3 058), and with respect to diminishing the customs duty or evading the customs duty – 2 275 (1 796).

Article 13 – Protection of aliens and stateless persons against arbitrary expulsion

260. An alien who is in the territory of the Republic of Poland may be expelled only in situations enumerated in the *Law of Aliens*, namely if:

1. he resides in the territory of the Republic of Poland without the required visa, the residence permit for a fixed period or the permit to settle;

2. he carried out work contrary to the *Law on Employment and Combating Unemployment* or he took up another economic activity contrary to the laws in force in the Republic of Poland;

3. he does not possess the financial means necessary to cover the costs of residence on the territory of the Republic of Poland and is not able to indicate any credible sources of obtaining those means;

4. his data is recorded in the register of aliens whose residence in the territory of the Republic of Poland is undesirable, if an alien's entry into this territory takes place within the period of validity of the record;

5. the continuation of his residence would constitute a threat to the state security, defence and the public policy or would be in breach of the interests of the Republic of Poland;

6. he has crossed or has attempted to cross the border contrary to the laws;

7. he did not leave voluntarily the territory of the Republic of Poland within the time limit specified in the decision:

   – on obligation to leave this territory,

   – on refusal to be granted the residence permit for a fixed period,

   – on withdrawal of the residence permit for a fixed period;

8. he does not comply with fiscal obligations to the State Treasury;

9. he has completed to serve a sentence of imprisonment adjudicated in the Republic of Poland for committing an intentional crime or a financial crime.

261. In contrast to the regulations previously in force, a decision of expulsion is not issued with respect to an alien who has the permit to settle.

In addition, a decision of expulsion, as well as decision of obligating someone to leave the territory of the Republic of Poland may not be issued with respect to:

– an alien holding the permit for tolerated stay or if there are circumstances that warrant the issue of such a permit,

– an alien with the refugee status who has not been withdrawn this status before, (withdrawing the refugee status is possible when any of the circumstances under article 1C of the *Geneva Convention* applies), unless circumstances under articles 32 and 33 of the *Geneva Convention* apply.

Special protection is granted also to minors. In their case, a decision of expulsion is executed only when in the country he will be expelled to, the minor will be provided with the care of parents, other adults or by competent care institutions in accordance with the standards provided for in the *Convention on the Rights of the Child*. In addition, a minor alien may be expelled only under the care of the legal representative, unless the manner of executing of the decision on expulsion provides that the minor shall be handed over to the legal representative or to the representative of the competent agencies of the country to which the expulsion is carried out.

The decision on expulsion shall be issued *ex officio* or upon the request of the Minister of National Defence, the Chief of the Internal Security Agency, the Chief of the Intelligence Agency, the Commandant in Chief of the Border Guard, the Commander in Chief of the Police, the commanding officer of the Boarder Guard Division, the commanding officer of the Voivodeship Police headquarters, the commanding Officer of the Border Guard checkpoint or Customs Service agency, by the voivode competent with respect to an alien's place of residence or by the voivode competent with respect to the place of disclosure of the event which constitutes basis to make request for expulsion of the alien. The decision may be appealed against to the President of the Office for Repatriation and Aliens. The decision of an organ of the second instance may be appealed against to the Chief Administrative Court.

262. In addition, in cases stipulated by a law (lack of required documents, execution of work without a permit, lack of financial means) an alien may be obliged to leave the territory of the Republic of Poland within the time limit of 7 days, if the circumstances of the case indicate that he shall carry out that obligation voluntarily.[7] The decision on obligating an alien to leave the territory of the Republic of Poland may be rendered by the commanding officer of the Voivodeship Police headquarters, the commanding district or municipal officer of the Police, the commanding officer of the Border Guard division or the commanding officer of the Border Guard checkpoint. This decision may be appealed against to the voivode competent with respect to the seat of the authority which has issued the decision.

263. In 2002, the Border Guard detained 8 204 aliens. The most numerous group were citizens of Ukraine – 2 368 people, Bulgaria – 1 073, Afghanistan – 973, Russia – 588, Vietnam – 561, Belarus – 523, and Armenia – 385.

[7] The institution of obligating someone to leave the territory of the Republic of Poland, as separate from the institution of expulsion, was introduced into Polish legislation in 2001.

The most common reasons for the detention of aliens were:

– lack of required documents – 3,942 people,

– execution of work without a permit – 1,321 people,

– execution of trade activity without a permit – 1,424 people,

– other reasons – 1,517 people.

Extradition motions were filed with respect to 5 811 detained aliens. 5 796 decisions of expulsion were issued; in 15 cases such a decision was refused. Of the total number of 5 811 aliens, with respect to whom extradition motions were filed, 1 616 persons were expelled, 632 were placed in a guarded centre, 739 were placed in a detention centre for the purpose of expulsion, 2 735 persons were released, and 89 aliens were transferred to other organs for procedure. In addition, decisions obligating aliens to leave the territory of the Republic of Poland were taken with respect to 2 433[8] persons and 204 persons were released.

Article 14 – Right to a fair trial

264. Pursuant to article 45 paragraph 1 of the Constitution of the Republic of Poland "Everyone shall have the right to a fair and public hearing of his case, without undue delay, before a competent, impartial and independent court". This norm is supplemented with the provision under article 77 paragraph 2 of the Constitution, stipulating that laws shall not bar the recourse by any person to the courts in pursuit of claims alleging infringement of rights.

265. As to their principle, court proceedings are public. Exceptions to the public nature of hearings may be made exclusively for reasons of the breach of public order, morality, infringement of an important private interest or if the public hearing would result in a disclosure of circumstances which due to the important interest of the State should remain undisclosed. Judgments are always announced publicly.

266. Pursuant to article 176 of the Constitution, court proceedings shall have at least two stages, while articles 178, 179, 180, and 181 guarantee the impartiality of judges.

267. Pursuant to article 42 paragraph 2 of the Constitution, anyone against whom criminal proceedings have been brought shall have the right to defence at all stages of such proceedings. He may, in particular, choose counsel or avail himself - in accordance with principles specified by a law - of counsel appointed by the court. Everyone shall be presumed innocent of a charge until his guilt is determined by the final judgment of a court.

[8] The data refers also to persons with respect to whom a motion of extradition has been filed and a decision obligating them to leave the territory of the Republic of Poland has been issued, and who have not been detained.

268. The right to a fair trial was guaranteed also in particular constitutional provisions concerning individual types of cases. It applies to the supervision by the court of the deprivation of liberty (article 41 paragraph 2), the right to defence (article 42 paragraph 2), forfeiture of property (article 46), parental rights (article 48 paragraph 2), extradition (article 55 paragraph 3), deprivation of the right to participate in a referendum or the right to vote (article 62 paragraph 2), and constitutional complaint (article 79 paragraph 1). The rights of different subjects to protection granted by courts arise also from individual laws.

Constitutional complaint

269. Pursuant to article 79 paragraph 1 of the Constitution, everyone whose constitutional freedoms or rights have been infringed upon has the right to appeal to the Constitutional Tribunal for its judgement on the conformity with the Constitution of a law or another normative act upon which a court or an organ of public administration has made a final decision about their freedoms, rights or obligations specified in the Constitution. The right to such an appeal is granted upon an exhaustion of all other means of appellation.

In the period from entry into force of the Constitution of the Republic of Poland, i.e. from 2 April 1997 until 18 February 2003, the Constitutional Tribunal adjudicated on 57 cases resulting from filing a constitutional complaint (the number comprises judgements adjudicating constitutional complaints as to content; it does not refer to decisions about the discontinuance of proceedings) concerning freedoms, rights and duties of man and citizen, defined in Chapter II of the Constitution of the Republic of Poland.

Practical implementation of the right to a fair trial

270. The Republic of Poland encounters certain difficulties in connection with the actual implementation of the right to a fair trial. While it is guaranteed by adequate provisions at the level of international standards, the crisis experienced by the Polish judiciary makes the exercise of this right difficult in some situations, primarily on account of an unreasonable length of court proceedings, and furthermore because of the legislator's expanding the competences of common courts with ever new tasks and cases which so far have been adjudicated on by other organs, inefficiency of enforcement proceedings and an absence of adequately institutionalised legal assistance to the poorest, who cannot afford to incur the costs of an attorney representing them during judicial proceedings.

The reasons for such phenomena should be seen primarily in the difficult conditions of functioning of courts, an insufficient financing of their activities, and a lack of compliance with their organisational and material needs in the degree commensurate with the number of submitted complaints.

271. In 2002, 8 697 000 cases were registered in common courts, i.e. 305,000 (3.6%) more than those registered in 2001. The number of unresolved cases in 2001 amounted to 2 245 000, as a consequence of which in 2002 courts had to adjudicate on a total of 10 942 000 cases, i.e. 726,000 more than in 2001.

Extension of competences of common courts

272. Such a state of affairs is caused by e.g. the extension of the competences of courts. Pursuant to article 237 of the Constitution of the Republic of Poland, the former *Code of Proceedings in Cases concerning Misdemeanours* of 1971 and *the Law on the System of Misdemeanour Boards* of 1971 lost their effective force as of 17 October 2001. As a result, misdemeanour boards were liquidated. The competences of those organs under *the Law of 24 August 2001 Code of Proceedings in Cases concerning Misdemeanours (Journal of Laws of 29 September 2001 no. 106 item 1148)* were transferred to common courts. In the second instance the adjudication of grievances – with the exception of appeals and grievances as to decisions and resolutions barring the way for passing a judgement, which were reserved for district courts – were entrusted to provincial courts in a different equivalent panel.

Exceptions to the above are cases concerning misdemeanours committed by soldiers of active military service, soldiers of armed forces of foreign States who stay in the territory of the Republic of Poland and members of their civilian personnel, if they are in conjunction with the execution of professional obligations, unless a law or an international agreement to which the Republic of Poland is a State Party stipulate otherwise. Cases concerning misdemeanours committed by these persons are adjudicated upon by military garrison courts in the first instance, and by the military provincial court in the second instance. Moreover, provincial courts and military provincial courts adjudicate on cases transferred into their competences by a law.

A court of appeals adjudicates on appellation measures against decisions and resolutions issued in the first instance by a district court and on other cases assigned to it in the law, while cassation and other cases assigned to it in the law are adjudicated upon by the Supreme Court.

273. In addition, units of common courts were burdened with such duties as:

- keeping registers,
- supervision of preparatory proceedings,
- adjudicating on cases concerning fiscal offences and fiscal misdemeanours,
- adjudicating on cases against employers concerning the recognition of contractual obligations as unlawful,
- adjudicating on cases filed on the basis of provisions concerning the protection of competition, *Energy Law*, *Telecommunications Law*, and provisions concerning railway transportation.

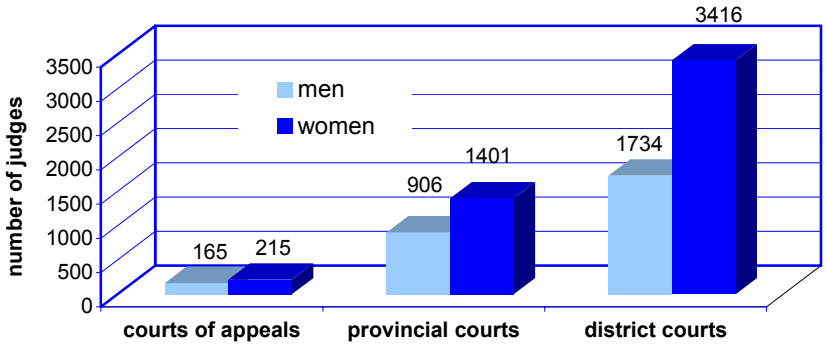
Extension of the cognition of the Chief Administrative Court

274. As part of the reform of the local self-government, cases concerning the supervision of state organs over communal activity were assigned to the judicial control of the Chief Administrative Court. The institution of a complaint was introduced. A complaint as to cases of communalisation of state property was introduced and the Chief Administrative Court was entrusted with the adjudication on competence disputes between organs of self-government administration and state government administration. Each administrative decision, which is not excluded *expressis verbis* in the law, may be appealed against to an administrative court on account of its non-compliance with the law. A complaint against a decision of an organ of state administration is granted to all who have a legal interest in it, upon an exhaustion of the measures of administrative proceedings. The Chief Administrative Court, while adjudicating on a case is not bound by its limits and in the case of a positive consideration repeals the decision appealed against in its entirety or in part, or adjudicates on the invalidity or non-compliance with the law of the decision. Proceedings before the Chief Administrative Court are of cassation character.

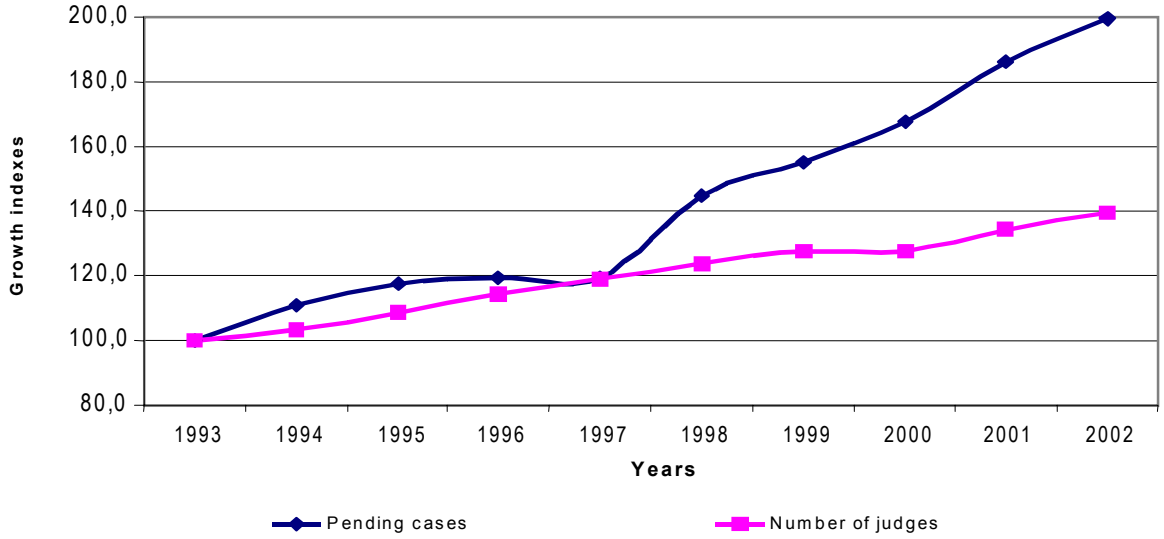
275. These changes, in themselves constituting a highly positive element with a great significance for the strengthening of mechanisms characteristic of a democratic state of law, contributed to a marked increase in the number of cases to be adjudicated on by courts.

The continuing rise in the number of cases submitted to courts, with a relatively small increase in the number of judges (in the last four years the number of judicial positions have been increased by 1,180, respectively in 2000 – by 100, in 2001 – by 400, in 2002 – by 230, and in 2003 – by 450), caused a rise in the number of unresolved cases as well as an unreasonable lengthening of proceedings.

Number of judges in common courts in 2002



Cases pending and the number of judges in common courts in (growth indicators 1993 = 100)



Reform of the judiciary

276. The Polish Government, aware of the weight of the problem, took a series of steps with a view to improving the situation, *inter alia* through the change of the structure of the judiciary, aiming at streamlining and advancing judicial proceedings.

277. On 1 October 2001 *the Law of 27 July 2001 – the Law on the System of Common Courts* entered into force, which is the fundamental legal act regulating the functioning of common courts and the execution of the profession of the judge in Poland. This is a legal act which regulates in a comprehensive manner the functioning of the judiciary in Poland, strengthens the impartiality of judges, and introduces a series of new solutions assuring improvement of the efficacy of adjudication of courts and their administration.

The law replaced an earlier, repeatedly amended, *Law on the System of Common Courts of 1985.*

278. The most significant changes in the Polish judiciary introduced by the new legal act:

- Creation of a self-government of judges. Organs of the judicial self-government are: a general assembly of the judges of the provincial courts and a general assembly of appellate courts' judges. They have been vested e.g. with the competences concerning the process of judicial nominations and with elections to organs of the judiciary and assessment of their work.

- Open character of disciplinary proceedings concerning judges. The judicial immunity is a guarantee of the impartiality of judges. This is expressed by the fact that judges can incur penal or administrative liability exclusively with the consent of the disciplinary court. Moreover, disciplinary courts adjudicate in cases of professional

negligence of judges. Exceptions to the public nature of disciplinary proceedings may be made exclusively for reasons of morality, State security, public order or protection of the private life of a party, or other important private interest. Judgments passed by disciplinary courts are always announced publicly.

- Changes in the procedure of nominations of judges. The most vital change concerns the enhancement of the transparency of the nomination procedure, especially through the introduction of an obligation to publish information on vacant judicial positions. This solution aims at extending the accessibility of the profession of the judge, increasing the competitiveness and ensuring the choice of the best candidates for the judicial profession. In addition, a possibility was introduced for clerks of the court[9] and assistants to the judge to apply for the position of a judge after, respectively, 5 or 6 years of work at those positions and passing an examination for a judge.

- Supervision over the activity of the judiciary. Solutions concerning supervision of the activity of courts are to ensure efficacy of work of the judiciary, both with respect to their administration and the efficiency of judicial proceedings. Supervision of the judiciary is entrusted primarily to presidents of courts and the Minister of Justice. Defining the measures of supervision, at the same time the law adopts regulations which are to protect the impartiality of judges. Activities connected with the supervision of the administrative work of courts may not concern an area as to which judges are impartial. The execution of activities connected with the supervision of the administrative work of courts was entrusted exclusively to judges. The Minister of Justice implements tasks concerning the supervision of the administrative work of courts directly tied with the execution of justice by judges delegated to the Ministry of Justice.

- Creation of new organs of the judiciary for administration matters. Financial and economic matters of individual courts were entrusted to directors of courts (in appellate and provincial courts) and to financial managers of courts (in district courts). Persons appointed to those positions are not judges, but specialists in management and administration. Apart from ensuring a better administration of courts, such a solution aims primarily at relieving judges from activities not connected with adjudication, which is to contribute to an advancement of judicial proceedings.

[9] The institution of a clerk of the court employed in a court for the performance of specified activities in the competence of the judiciary concerning cases of keeping land and mortgage books and court registers has been in existence since 1 January 1998. Its introduction was an implementation of Recommendation WR/86/12 of the Committee of Ministers of the Council of Europe of 16 September 1986 concerning selected means of counteracting an excessive burdening of the judiciary. The institution was improved in 2001, and the tasks entrusted to clerks of the court were defined as tasks in the area of legal protection carried out in provincial courts.

- Establishment of borough courts. The law did not change the basic, three-tiered organisational structure of common courts, divided into district and provincial courts and courts of appeals. Nevertheless, taking into consideration the efficiency of work of the judiciary and the need for accelerating judicial proceedings in the simplest and at the same time the most numerous cases, borough courts were established. They are divisions or affiliated divisions of district courts and adjudicate according to a simplified procedure on a certain group of civil and criminal cases and in cases concerning misdemeanours.

279. Other steps taken in order to improve the situation in the judiciary concern:

– improvement of the institution of mediation as an efficient form of mitigating conflicts between the injured party and the perpetrator of the crime, which may decrease the workload on the judiciary;

– increase in the number of judges (the number of judges employed in common courts as of 31 December 2002 amounts to: in courts of appeals – a total of 380, including 215 women; in provincial courts – 2 307, including 1 401 women; district courts – 5 150 persons, including 3 416 women. In addition, district courts employ 1 192 associate judges);

– increase of budgetary outlays;

– organisational changes consisting in dividing larger departments into smaller ones, which facilitates a more efficient handling of proceedings, improvement of services offered to interested parties, streamlining the system of document circulation, and intensification of supervision activities. Special steps were taken in Warsaw, where work conditions of judges were especially unfavourable. These steps aimed at the acquisition of an adequate number of buildings and at a subsequent division of the Provincial Court and some district courts in Warsaw;

– creation, as of 1 January 2001, of the National Court Register functioning within an electronic computer system, which led to the streamlining of registration proceedings and enhancement of the security of trade in property;

– simplification of land and mortgage proceedings, including a partial removal of the work load of courts as to the collection of court fees, which contributed to a marked improvement of proceedings and enhanced the security of the property trade (the current indicator for proceedings nationwide is 2.0 (1st half of 2003), while in 1995 it was 5.8 months), introducing the possibility of establishing and keeping electronic land and mortgage books within a computer system. The implementation of the programme of an Electronic Land and Mortgage Book will commence as of 1 October 2003 in 5 selected land and mortgage books divisions, and subsequently will be implemented in a further 25 divisions (since 1 January 2004).

280. Action was taken also in other areas with a negative impact on the implementation of the right to a fair trial. The Police took steps aiming at curtailing the duration of time of waiting for

opinions of experts, especially from the police forensic laboratories. The duration of this time has a direct impact on the length of proceedings. It is expected that by the end of 2003, the time of waiting for the preparation of an expert analysis should not exceed 3 months.

281. Furthermore, legislative action was taken with a view to amending the existing regulations in order to eliminate procedural measures excessively formalising and prolonging proceedings. Amendments to the Code of Criminal Procedure, which entered into force as of 1 July 2003, were introduced for that purpose. The most important of them are as follows:

- extension of the catalogue of cases adjudicated on according to a simplified procedure;

- introduction of the so-called transferable competence of courts consisting in a possibility of transferring the adjudication of cases concerning all offences because of their special importance or complexity to the provincial court as a court of the first instance;

- extension of the scope of cases where it is possible to institute mediation proceedings on the initiative or with the consent of the injured part and the defendant. A case may be directed to mediation proceedings by a court, and in preparatory proceedings by a public prosecutor;

- entrusting to the Police the conduct of the majority of investigations – so far they have been led by the prosecutor;

- extension of the catalogue of offences where an inquiry is conducted;

- extension of the duration of an inquiry to 2 months (so far 1 month);

- extension of the possibility of the defendant's voluntarily accepting the punishment: the co-called shortened trial, through the possibility of the defendant's filing a motion for a convicting sentence and an imposition of a specified penalty. In the place of the consent of the prosecutor and the injured party as preconditions for a shortened trial, a condition of a lack of objection of the prosecutor and the injured party for such a conclusion of the case was introduced;

- granting to courts the possibility of dismissing a petition for presenting evidence which aims at an "obvious prolonging of a trial";

- accepting the possibility of examining a witness at a distance with the use of appropriate technical equipment;

- accepting the possibility of delivering court documentation by means of facsimile or electronic mail;

- extension of the scope of execution of regulations concerning delivery of material objects , search and surveillance of conversations onto computer systems, electronic data carriers and messages sent by electronic mail.

282. Furthermore, changes were introduced in the principles of mail delivery in criminal proceedings. A letter sent by mail, which was not handed to the addressee or an adult member of the household, was stored in the post office only for 7 days, about which the addressee was notified once. At present, in the event of an ineffectual expiry of the period of collecting the mail as indicated in the postal receipt, the activity of notification must be repeated once more. The same procedure applies to the delivery of mail to the administration of a house, a house janitor, or a commune head.

The problem of mail delivery had been noticed earlier by the Constitutional Tribunal in connection with proceedings concerning the principles of mail delivery in civil cases (judgements SK 35/01 of 17 September 2002 and SK 6/02 of 15 October 2002).

283. In addition, on 1 July 2003 an amendment to the *Code of Procedure in Cases concerning Misdemeanours* entered into force. As in the case of the Code of Criminal Procedure, changes focus on questions connected with the simplification and acceleration of adjudication.

284. Available statistical information concerning unreasonable length of court proceedings indicates a slow but systematic improvement. The average duration of proceedings in the most serious criminal cases adjudicated in the first instance before district courts amounted to 5.8 months in 2002 and was shorter than in the year 2001 – 6.1 months, or in 2000 – 6.5 months. In reference to provincial courts, the analogous ratio in 2002 amounted to 6.0 and was slightly higher than in 2001 – 5.4 months, or even in 2000 – 5.8 months. Only the situation in Warsaw departs significantly from the average – the average duration of proceedings in the court of the first instance in criminal cases in the district court for Warsaw-Śródmieście was in 2001 as long as 28.6 months, and in 2002 – 29.1 months.

In civil judicial proceedings, the average duration of proceedings before district courts was in 2001 – 5.3 months, while in 2002 – 5.6 months. In provincial courts, in civil judicial proceedings after the exclusion of family cases (cases concerning divorce and separation), the average duration of the proceedings in 2002 was 9.0 months, and in 2001 – 8.9 months.

Complaint on the unreasonable length of proceedings

285. Polish law does not provide an efficient legal measures, applied in the course of judicial proceedings, which would guarantee to a party the possibility of pressing charges that in a particular case a violation of the right of the party to a fair trial took place due to an unreasonable length of pending proceedings. The only means that parties can avail themselves of at present is a complaint lodged under the provisions of Division VIII of the *Code of Administrative Procedure* with organs of administration within the structure of the judiciary, which may concern, *inter alia* an unreasonably long or bureaucratic processing of cases (article 227 of the Code of Administrative Procedure). The Code of Administrative Procedure stipulates also that an employee of a state organ, an employee of a local self-government or an organ of a social organisation, guilty of an improper and untimely processing of complaints and petitions is subject to disciplinary liability or to another kind of liability under the law.

286. Pursuant to the judgement of the European Court of Human Rights in the case *Kudła vs. Poland*, work is in progress with a view to introducing into the Polish legal system an efficient appellate measure in the case of unreasonable delays in the proceedings. The Ministry of Justice

prepared a draft legislation concerning a complaint on the violation of the law of a party to their case being adjudicated in a reasonable period during judicial proceedings. The draft defines the notion of unreasonable delays and regulates the principles and the course of action of adjudicating on the complaint of the party whose right to adjudicate on a case in a reasonable period was infringed upon as a result of an action or inaction of a court. Projected regulations apply also to unreasonable delays in executive proceedings. According to the draft law, the court, taking into consideration the complaint, states that a violation of the right of a party has occurred and upon the demand of the claimant recommends that the court adjudicating on the case should take appropriate action at a specified date. These recommendations may not infringe upon the area of the impartiality of judges. In addition, a court may, upon the demand of the claimant, award an adequate sum of money to the amount not exceeding 10,000 PLN. The draft was approved by the Council of Ministers in September 2003 and in the foreseeable time will be submitted to the Parliament.

Free legal assistance

287. In response to the question of the Committee regarding the number of advocates who may offer free legal assistance and the systems facilitating monitoring the quality of their work, it has to be indicated that each of the 5 429 professionally active advocates (including 1 658 women who – as of 30.04.2003 – account for 30.54% of the total number of advocates) may provide free legal assistance. There is no specified group of advocates entitled exclusively to provide such assistance. Sometimes they offer free legal assistance in cooperation with non-governmental organisations.

Court-appointed cases accepted by advocates:

Year	Criminal	Civil	Others	Total
1995	35584	4726	647	40957
1996	35190	5225	793	41208
1997	37449	5766	1000	44215
1998	40335	6188	937	47460
1999	46229	6946	1119	54294
2000	52053	6822	6108	64983
2001	75858	10870	1358	88086
2002	77174	9916	522	87612

288. Two-instance disciplinary proceedings instituted by disciplinary spokesmen of provincial bar councils constitute a system of monitoring the quality of the work offered by advocates. Both the courts which perceive irregularities in the work of an advocate, and parties using the assistance of advocates and are not satisfied with the level of the assistance provided, may lodge a complaint with a disciplinary court of a bar council, on whose territory the advocate practices his profession. Pursuant to the *Law on the Bar*, this court adjudicates on all cases as a court of the first instance, and its decisions may be appealed against to the Higher Disciplinary Court. However, the Ombudsman noted that a practice had spread in bar councils to treat the decision of a disciplinary spokesmen as a decision of the first instance, while the decision of the disciplinary court, which cannot be appealed against to the Higher Disciplinary Court, is treated as a decision

of the second instance. The Government admitted that regulations in this respect are not completely precise and took upon itself to unambiguously explain them in the nearest amendment to the relevant regulation.

289. In the first half of March 2003, Polish advocates participated in the Week of Legal Assistance for Victims of Crime, initiated by the Ministry of Justice in connection with the observance of the International Day of Victims of Crime. In the period 24 - 28 February 2003, courts and public prosecutors' offices conducted an information project concerning the rights of victims of crime, especially the judicial rights of the injured persons. Free of charge legal counselling was offered to victims of crime, related primarily to how to prepare a petition, where to file it, the rights to which an injured person is entitled during the trial, and when compensation is awarded. This project attracted a huge interest among the general public, which testifies to a substantial demand for free of charge legal assistance and to a need for a systematic increase of the legal awareness of the society e.g. through repeating similar projects and organising open lectures. In 2003 there was a special occasion for organising this project – the Sejm passed a law proclaiming the Day of Victims of Crime, whose observance is to help take various initiatives aiming at the improvement of the situation of persons injured as a result of crimes.

290. Free of charge legal assistance may be provided to organisational units by all practicing legal advisors, i.e. 18 500 persons (the general number of legal advisors entitled to appear before courts – as of April 2003 – is 20 580 persons, including 10 352 women), and to natural persons – by legal advisors practicing in offices of legal advisors or partnerships of legal advisors and partnerships of legal advisors and advocates, i.e. 9 033 persons. When a client needs to take advantage of free of charge legal assistance, a competent court applies to the Council of the Provincial Chamber of Legal Advisors competent as to the place of residence or the registered seat of the client.

Assessment of the work of legal advisors is conducted by Provincial and National Team of Inspectors, and in the event of serious irregularities being established, they are subject to disciplinary proceedings.

291. In addition, a natural person who makes a declaration that he is not able to bear judicial costs without detriment for himself and his/her family, may be made exempt from them. The declaration should include detailed data on the family status, property and income. If such a declaration is insufficient, the court may require additional explanations or certificates. In a situation when the court, on the basis of the circumstances of the case or declarations of the party, has doubts as to the real financial status of the party claiming a waiver of court fees, it may order a relevant inquiry.

Work is under way at present on the draft law on court fees in civil cases. The draft legislation is to contribute to the improvement and acceleration of civil proceedings. The most vital changes as to the scope of adjudicating on petitions for a waiver of court fees concern a more formal declaration about the family situation, property, income, and sources of livelihood, which will facilitate a unification of judicial practice as to granting waivers from court fees. The remaining changes concern, *inter alia* establishing the amount and the method of collection of court fees from the parties, collection of advance payments for envisaged expenditure, remission of charges due to the State Treasury. Entrusting clerks of the court with the activities related to court fees is supposed to reduce the work load of courts and judges as to some activities

concerning court fees, which should contribute to an improvement of proceedings. Furthermore, it is planned to reduce the amount of costs borne by the parties through a decrease of the proportional fee from 8% to 5% in cases concerning financial claims and to extensively introduce fixed fees, which in cases concerning property rights should be – *per saldo* – lower than proportional fees.

Scope of jurisdiction of military courts

292. In reference to the concern and recommendations of the Committee about too broad a scope of jurisdiction of military courts, suggesting an amendment to or a revocation of the provisions of the Code of Criminal Procedure, it must be stressed that the Committee did not indicate particular provisions of the Code of Criminal Procedure which should be amended or revoked. It was assumed, then, that the Committee questions the competence of military courts as to cases concerning civilians who are not employees of the army suspected of inciting to and being an accomplice in military offences and rendering criminal assistance and fencing in a situation when the act remains in connection with a military offence (e.g. acquisition of explosive materials appropriated by a soldier) i.e. article 648 points 1 and 2 the Code of Criminal Procedure.

293. The introduction of the competence of military courts for adjudicating on the above cases was justified solely by the practical character of such a solution which, as was stipulated in the statement of reasons for the Government draft of the Code of Criminal Procedure "had to resort to the competence of conjoining cases, which to the detriment of the good of the judiciary was frequently not possible". The regulation in force is not caused, then, by "the convenience of the military court" but is justified by the good of the judiciary, which is taken care of in each democratic system of law.

Retaining cases of civilian personnel for inciting to and being an accomplice in military offences in the scope of competences of military courts is moreover justified by their subject matter concerning the military. As a rule, cases concerning military offences are adjudicated on by a military court. Pursuant to article 21 § 2 of the Penal Code, penal liability for inciting to and being an accomplice in an individual military offence (each military offence is an individual one) is borne also by those who do not constitute a feature of this offence, if they knew that the person with whom they cooperated possessed such a feature.

294. It has to be emphasised that the *Code of Criminal Procedure* of 1997 significantly limited the scope of competences of military courts as to subject. As to their system, military courts were brought closer to common courts, retaining their autonomy only in a necessary degree justified by the specificity of the army, while the Minister of Justice exerts a comprehensive administrative and organisational supervision over their activity.

Article 15 – Prohibition of retroactive criminal laws

295. Principles of liability defined in this article have not changed with respect to the state presented in the previous report.

296. In the judgement of 26 July 1991 the Supreme Court indicated that standards of a democratic state of law require that the principle *nullum crimen sine lege,* arising from article 15

of the Covenant, should be used in all penal measures (not only in those of criminal law). At present it is one of the constitutional guarantees, according to which "Penal liability shall be incurred only by a person who commits an act prohibited under penalty, by a law in force at the time of its commission". This principle is likewise contained in article 1 § 1 of the Penal Code. The Constitution specifies that, analogously to article 15.2 of the ICCPR, the above principle does not preclude penalisation for an act which at the time of its commission constituted an offence under international law. It is also guaranteed that war crimes and crimes against humanity are non-prescriptible. A provision to this effect was furthermore contained in the *Law on the National Remembrance Institute – Commission for the Prosecution of Crimes Against the Polish Nation*. Prosecution of Communist crimes perpetrated in Poland in the period 1944-1989 on the strength of this law takes place with the observance of the principle *lex retro non agit* in the sense that currently prosecuted are only those acts of functionaries of the Communist state which constituted offences under the criminal law in force at the time of their commission.

Article 16 – Right to legal personality

297. Provisions guaranteeing the recognition of the legal personality of a human being were discussed in detail in the previous reports and have not undergone any changes.

Article 17 – Right to privacy

298. The Constitution guarantees to each person the right to the protection of private and family life, honour and good name as well as the right to make decisions about his personal life. It ensures the freedom and protection of the secrecy of communication, whose restriction may only occur in cases defined in a law and in a way specified by it, and lays out that no one may be obliged to disclose information related to his person other than under a law. Public authorities cannot obtain, collect and disseminate information on citizens other than that indispensable in a democratic state of law. Each person has the right to access official documents and databases related to him and to demand correction and deletion of untrue or incomplete information, or information collected in a way incompatible with a law.

299. Principles of conduct during the processing[10] of personal data and the rights of natural persons whose personal data are or may be processed in databases are defined under *the Law of 29 August 1997 on the Protection of Personal Data (Journal of Laws of 2002 no. 101 item 926, as amended)*. The law stipulates that each person has the right to the protection of personal data related to him, and the processing of personal data may occur only for the sake of public good, the good of the person to whom it relates, or the good of third parties in the scope and course of action defined in the law.

[10] Under the *Law on the Protection of Personal Data*, processing of personal data comprises any operations carried out on personal data, such as collection, recording, storage, compilation, change, dissemination, and deletion, and especially those that are conducted in computer systems. It is sufficient that any one operation on personal data takes place (as well as operations not enumerated in this provision) for data processing to occur.

The law is used for the processing of personal data in computer systems and in file directories, indexes, registers, specifications and in other data collections, and to a limited extent also with respect to collections of personal data drawn up for a specified period of time, exclusively for technical or training purposes or in connection with the teaching process at universities, and upon their use promptly deleted or rendered anonymous.

300. It is prohibited to process the so-called "*sensitive*" personal data, i.e. data disclosing racial or ethnic origin, political, religious or philosophical beliefs, denominational affiliation, party or union membership, as well as data on the state of health, genetic code, addictions or sexual life and data related to convictions, decisions about imposition of penalties and fines, and other decisions issued in the course of court or administrative proceedings. Infrequent exceptions to the above prohibition of processing sensitive data are defined precisely by the law.

301. According to the assumptions of the *Law on the National Remembrance Institute – Commission for the Prosecution of Crimes Against the Polish Nation*, the implementation of human rights comprises also providing access of injured citizens to relevant documents drawn up until 1989 by organs of state security *inter alia* in violation of the right to privacy. Until 18 July 2003, petitions for being granted the status of an injured party were filed by 13 537 persons.

Until 30 June 2003 – on the basis of documents in possession of the National Remembrance Institute – 1,241 persons were granted the status of an injured party and were provided access to the materials collected on them by security organs; 1,612 persons received information that the archives of the National Remembrance Institute contain no documents testifying to their being persecuted by security organs; 229 persons were not recognized as injured parties since the archives of the National Remembrance Institute contain documents testifying to their being officers of security organs or secret collaborators of these organs, which excludes the possibility of access to the documents gathered in the National Remembrance Institute.

In total, processing of 3,079 petitions for being granted the status of an injured party and given access to documents of security organs has been concluded.

302. On 1 September 2002 entered into force with respect to Poland the *Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data* (Strasbourg 28/01/1981), ratified in April 2002. On 21 November 2002 was signed also an Additional Protocol to this Convention.

Surveillance

Police

303. In reference to the remarks of the Committee concerning the fact that a public prosecutor may without the consent of the court allow for tapping a telephone as well as the necessity to introduce a system of independent monitoring, it should be indicated that in the light of the provisions contained in the *amendment to the Law on the Police of 19 March 2002 (Journal of Laws of 2001, no. 100, item 1084)* operations audit (including surveillance of telephones) is subject to a strict supervision conducted by independent courts. The final decision about the

ordering of operations audit rests with the provincial court competent *rationae loci* upon a motion of the Police, which is filed after obtaining permission of a district public prosecutor competent *rationae loci*. Only in emergency cases, if this might cause a loss of information or erasure or destruction of evidence of an offence, an organ of the Police may – upon obtaining permission of the relevant public prosecutor – order operations audit, applying at the same time to the provincial court competent *rationae loci* with a motion for a decision in this matter. If the court within 5 days of the date of filing the motion (which must happen within 3 days of ordering the audit by the public prosecutor) does not grant permission for the use of operations audit, the organ using the operations audit discontinues operations audit measures and executes – officially recorded and made in the presence of a committee – destruction of the materials collected during the operations audit until that time.

Prosecutor General – as part of independent monitoring of the use of all forms of surveillance of telephones – is obliged to provide the Sejm and Senate of the Republic of Poland with annual information on activities connected with operations audit.

Border Guard

304. Officers of the Border Guard carry out preliminary investigation and use measures of operations audit for the purpose of identification, prevention and detection of offences and misdemeanours to whose prosecution they are obliged. The Border Guard may use information about an individual, including personal data obtained by competent organs, services and state institutions in the course of preliminary investigation or operations audit and process it without the knowledge and consent of the person to whom it relates. Provision of information about an individual, obtained in the course of preliminary investigation, is admissible solely on demand of a court or a public prosecutor, and the Chief of the National Centre for Criminal Information; use of this information may occur only for the purpose of criminal prosecution. In exceptional cases, such information may be provided if a law imposes an obligation of providing information on a particular organ or if such an obligation arises out of international agreements or accords, and in cases when holding back such information would threaten the life or health of other persons.

305. In November 2001, the Border Guard was granted new prerogatives in the field of the use of operations audit, i.e. monitoring the contents of correspondence, contents of parcels and the use of technical means facilitating a surreptitious receipt of information and evidence and their recording in the form of picture, contents of telephone calls and other information transmitted through telecommunications networks. The use of operations audit is subject to a monitoring conducted by independent courts. Analogously as in the case of the Police – a decision on the ordering of the operations audit is issued by a provincial court, and in emergency cases the operations audit may be ordered by competent commissioners of the Border Guard, upon being granted permission in writing from a relevant public prosecutor. If the court does not grant permission within 5 days, the operations audit is discontinued and the materials collected are destroyed; the destruction is officially recorded and made in the presence of a commission.

Agency of Internal Security and Intelligence Agency

306. The Agency of Internal Security is a central office of government administration competent in matters of protecting the internal security of the State and its constitutional order. The Agency of Internal Security commenced its activity on 29 June 2002, replacing the State

Protection Office. Within the scope of their competences, officers of the Agency of Internal Security carry out e.g. preliminary instigations, including – with the consent of a court – an operations audit.

Solutions adopted in the *Law on the Agency of Internal Security and Intelligence Agency*, contrary to the regulations laying out analogous prerogatives of the former State Protection Office, do not allow for the monitoring of correspondence (including the monitoring of telephone calls) without the consent of a court. An operations audit is ordered by a court, upon a written motion of the Chief of the Agency, filed after the receipt of a written consent of the Prosecutor General.

Article 27 of the *Law on the Agency of Internal Security and Intelligence Agency* introduced a uniform notion of an operations audit, encompassing the monitoring of the contents of correspondence, contents of parcels and the use of technical means facilitating a secret receipt of information and its recording (especially the contents of telephone calls and other information transmitted through telecommunications networks), which did not occur in the norms related to the State Protection Office. The method of regulating the operations audit brought the prerogatives of the Agency of Internal Security in this respect closer to the prerogatives of the Police and the Border Guard. This contributed to a greater coherence of the legal system in the field of the protection of civil freedoms and human rights and admissible exceptions to their protection.

Internal revenue control

307. Under the *Law on Internal Revenue Control*, preliminary investigation facilitating the receipt of information and recording of traces and evidence in a surreptitious or confidential way may be conducted also during fiscal investigations. The use of adequate technical means for this purpose is decided upon by a court following a motion of the General Inspector of Internal Revenue Control, filed upon obtaining the consent of the Public Prosecutor General. In the period 2000-2002, the General Inspector of Internal Revenue Control filed such a motion six times.

Article 18 – Freedom of thought, conscience and religion

308. The Constitution guarantees to each person the freedom of conscience and religion, including the freedom to profess or accept religion by personal choice as well as to manifest such religion, either individually or collectively, publicly or privately, by worshipping, praying, participating in ceremonies, performing rites or teaching. Parents have the right to ensure their children a moral and religious upbringing and teaching in accordance with their convictions. The religion of a church or other legally recognized religious organisation may be taught in schools, but other peoples' freedom of religion and conscience cannot be infringed upon thereby. The freedom to publicly express religion may be limited only by means of a law and only when this is necessary for the defence of State security, public order, health, morals or the freedoms and rights of others. No one may be compelled to participate or not participate in religious practices, as well as no one may be compelled by organs of public authority to disclose his philosophy of life, religious convictions or denomination.

309. Also prisoners are ensured the opportunity to participate in services and meetings (including individual ones) of a religious character. They take place in a chapel or another room appropriately prepared for this purpose or a place on the premises of a correctional facility, according to the established internal order of the correctional facility. Religious practices and services of an individual character may also take place in residential or hospital cells and in infirmaries provided they do not disturb the principles of order and security in force at the correctional facility and provided privacy conditions of the execution of those practices and services are ensured.

310. Freedom of religion includes also the possession of sanctuaries and other places of worship for the satisfaction of the needs of believers as well as the right of individuals, wherever they may be, to benefit from religious services.

311. The law does not allow the State to favour any outlook on life, religion, or philosophy. The Constitution enshrines the principle of equal rights for churches and religious organisations, impartiality of State authorities in matters of religious and philosophical beliefs and beliefs concerning one's outlook on life, which is one of the fundamental guarantees and a condition of the freedom of the human being. Relations between the State and churches and other religious organisations are shaped in accordance with the principle of respect for their autonomy and mutual independence of each of them in its own scope, as well as cooperation for the good of the human being and common good. They are defined in international agreements (in the case of the Catholic Church – an agreement with the Holy See) and in laws passed on the basis of agreements concluded between the Council of Ministers and religious organisations.

312. In practice, the Catholic Church in Poland occupies a special position, arising from historical conditions. Because of the fact that over 90% of the society regard themselves as Catholics, this religion has the biggest impact on social life. However, this impact is not a legal prerogative, but only a proof of the social position of the Catholic Church.

Registration of churches and religious organisations

313. Registration of churches and other religious organisations in Poland takes place in accordance with the provisions of the *Law of 17 May 1989 on Guarantees of the Freedom of Conscience and Belief* (uniform text, Journal of Laws of 2000 no. 26 item 319). Religious communities obtain legal personality on the basis of an entry into the register of churches and other religious organisations. The entry is dependent on the decision of the Minister of Internal Affairs and Administration.

314. In Poland there are currently 159 churches and religious organisations deriving their status from various legal regulations, namely:

- the Catholic Church in the Republic of Poland, which functions on the basis of an international agreement, i.e. the *Concordat between the Holy See and the Republic of Poland signed in Warsaw on 28 July 1993 (Journal of Laws of 1998 no. 5 item 318)* and the *Law on the Relation of the State to the Catholic Church in the Republic of Poland of 17 May 1989 (Journal of Laws of 1989 no. 29 item 154, as amended),*

- 14 churches and *religious organisations, which function on the basis of separate laws defining their rela*tions with the State,

- 139 churches and other religious organisations entered into division A of the Register of churches and other religious organisations pursuant to the decision of the Minister of Internal Affairs and Administration (they attain legal personality as of the moment of entry into the register and may enter into relations with the State),

- 5 inter-denominational organisations entered into division B of the Register of churches and other *religious* organisations. The right to create such an organisation is granted to at least two churches or religious organisations with a legal personality.

315. Since 1999, 4 religious communities have been entered into the Register of churches and other religious organisations conducted by the Minister of Internal Affairs and Administration. At the same time, 2 churches and religious organisations have notified the registering body about the discontinuation of their activities. As a consequence, the Minister of Internal Affairs and Administration made a decision about striking them off the Register.

In the period under consideration, the Minister of Internal Affairs and Administration refused to enter into the Register of churches and other religious organisations 7 religious communities. In all the cases, the grounds for the refusal were non-compliance by applicants with the formal requirements laid out in the *Law on Guarantees of the Freedom of Conscience and Belief*. In addition, two of those associations did not define their doctrine and did not present religious rituals, thereby proving that they did not demonstrate features which would point to their religious character. In the case of two decisions about the refusal of entry into the Register, the organisations filed motions for a re-consideration of the cases. Since the registering organ sustained its objection, the movers brought appellation to the Chief Administrative Court. In both cases the Court shared the stand of the Minister of Internal Affairs and Administration, dismissing the appeals. The movers for the other 5 religious communities which had been refused entry into the Register did not exercise their rights and did not appeal against the decisions.

Monitoring new religious movements

316. The mechanism of monitoring new religious movements, which caused concern of the UN Human Rights Committee considering the IV periodical report of Poland in 1999, was connected with the functioning of the *Inter-ministerial Team for New Religious Movements*. The *Team* was set up pursuant to Directive no. 78 of the Prime Minister of 25 August 1997 (M.P. no. 54 item 513) as an opinion-making and advisory body of the Prime Minister. The *Team* was composed of representatives of the following Ministers: of Internal Affairs and Administration, Justice, Health, National Education, National Defence, and Foreign Affairs. The objective of the *Team* was the diagnosis and analysis of hazards posed by some new religious movements and their impact on the individual, the family and society, as well as the adoption of methods of an efficient prevention of those hazards and ways of eliminating effects of the activities of destructive sects. The *Team* cooperated with non-governmental organisations providing support to victims of sects and to their families as well as with specialised scientific centres. The *Team* also established working contacts with the Secretariat of the Polish Episcopate and the Polish Ecumenical Council. The activity of the *Team* as to the observation of

new religious movements did not pose any threat to the freedom of religion. On the contrary, the mechanism safeguarded religious freedoms, serving the exposure of cases of abuse and violation of these freedoms by groups and individuals taking advantage of the facade of religion for purposes totally different from the declared ones.

The methods used by the *Team* (collection and analysis of information, cooperation with specialised scientific units, making information accessible to interested institutions) were in full compliance with the law existing in Poland, as well as with the international human rights standards. State services observing the activity of new religious movements were not interested in any of the cases in the religious beliefs of those groups' members, but only in irregularities and punishable acts committed in the name of religious freedoms. In 2000 the *Team* published a "Report on Selected Phenomena Connected with the Activity of Sects in Poland".

317. The action taken by the Polish authorities towards new religious movements was fully consistent with the recommendation of the Council of Europe of 22 June 1999 concerning illegal activities of sects.

318. By means of Directive no. 15 of 16 March 2001 the Prime Minister set up an *Inter-ministerial Team for Groups of Psychological Manipulation* as his opinion-making and advisory body. The Team was established in place of the *Interdepartmental Team for New Religious Movements*, which was liquidated. The change resulted from analytical work whose conclusions indicated that threats and pathologies caused by the activity of some new religious movements had a much wider character and exceeded the question of new religious movements. The objectives of the activity of the new *Team* were to be the preparation of analyses, formulation of assessments and opinions on phenomena connected with groups of psychological manipulation in Poland, hazards posed by those groups and their influence on the individual, the family, society, and the State, preparation of methods of efficient prevention of those hazards, as well as ways of eliminating reasons for and negative effects of the activity of groups of psychological manipulation. Despite a formal appointment, the Team was not personally established and did not conduct any activity. The Directive establishing it was repealed and lost its effective force as of 1 January 2002. At present there is no special procedure for the monitoring of new religious movements in Poland.

319. Neither do the Police take any action which might be termed as "mechanisms" of monitoring new religious movements. The *Law on Guarantees of the Freedom of Conscience and Belief* stipulates that the activity of religious organisations cannot infringe upon regulations safeguarding public security, order, health or public morality, parental authority, or fundamental rights and freedoms of other persons. Only in the event of an infringement on these norms do the Police – in accordance with general principles – take appropriate action. Proceedings are instituted according to the same procedures and neither favour nor discriminate against anyone on account of his faith. Information on such proceedings is forwarded to the Department of Public Order of the Ministry of Internal Affairs and Administration. Moreover, preventive action taken by specialists for minors with respect to new religious movements does not pose any threat to the freedom of faith. Such action is limited exclusively to cooperation with various governmental and non-governmental subjects which deal with those problems as part of their statutory activity.

320. The following table presents data on religiously motivated acts of violence perpetrated in the period 1999-2002.

Legal qualification	Instituted proceedings				Concluded proceedings				Identified offences			
	1999	2000	2001	2002	1999	2000	2001	2002	1999	2000	2001	2002
Restriction of rights because of one's faith (art. 194, Penal Code)	3	1	1		2	1	2	1	1		1	1
Malicious interference with a public performance of a religious ceremony (art. 195 §1 Pen. Code)	11	10	13	14	31	13	12	16	20	15	9	13
Malicious interference with mourning ceremonies (art. 195 §2 Pen. Code)	3	4	3	3	7	2	3	4	3	2	3	2
Offence of religious feelings (art. 196 Penal Code)	61	68	54	47	62	63	60	49	59	145	56	44
Destruction of national, ethnic, or religious groups (art. 118 Penal Code)	5		11	3	4	1	3	4	3		1	1
Use of violence or an unlawful threat towards a group or an individual because of their national, ethnic, religious, racial affiliation (art. 119 Penal Code)	3	7	8	3	10	7	7	8	9	9	5	8
Promotion of fascism and totalitarianism. Racism, intolerance (art. 256 Penal Code)	10	25	17	13	12	28	24	9	12	28	11	8
Public insult of groups with a different outlook on life and a different national and racial affiliation (art. 257 Penal Code)	25	25	21	14	25	24	23	21	20	16	17	17

The information forwarded by local Police units to the Office of Preventive Service of the National Headquarters of Police indicates that incidents of desecration of places of worship (in a vast majority of cases bearing indications of hooligan excesses) are primarily vandalising of cemeteries, which are qualified as hooliganism. These are incidental cases of a marginal character, which do not allow for conclusions that they are triggered by religiously motivated violence.

Financing publications related to sects

321. One of the counter-reports of non-governmental organisations of 2002 included an allegation that the State finances publications which refer to churches and religious organisations legally existing in Poland as to sects. However, the publications subsidised by the Ministry of National Education and Sport in the period 1999-2000 had a preventive and educational character and were not aimed against religious minorities in Poland. The need for issuing those

publications arose out of the necessity to counteract a concrete social threat. In the 1990s in European countries, including Poland, an intensification of the destructive activity of worship movements was observed. The phenomenon was noted by the European Parliament, which in the "*Resolution on Cult Movements in Europe*" of 28 February 1996 called for the introduction of monitoring and elimination of illegal worship activity in the Member States of the European Community (e.g. through the development of a strategy for raising social awareness of existing threats in individual countries), as well as for international cooperation and exchange of experiences on the organisation, methods of work, and principles of functioning of groups defined in the *Resolution* as sects.

322. The necessity to take action of a preventive and emergency character resulted also from the postulates addressed to the Ministry of National Education and Sport and education boards by parents concerned about phenomena which pose a threat to their children (such as psycho-manipulation, disappearances or abductions of children to so-called sects).

323. The *Movement for the Protection of the Family and the Individual* Association, set up by parents whose children had disappeared or joined the aforementioned para-religious groups of a destructive character, joined the implementation of prevention programmes in school environments where a special intensification of activities of those groups was noted. During meetings with teachers, school educators, parents and young people, as well as in special publications, members of the Association, being persons directly affected, referred to painful personal experiences or experiences of their next of kin, incurred from some worship groups. In those addresses, they applied the principle expressed also in paragraph 1 of the *Resolution of the European Parliament*, stipulating that the freedom to manifest one's faith or religious beliefs is subject to limitations if this is indispensable for the protection of public security, order, health or public morality, or the fundamental rights or freedoms of other persons. The above principle is likewise enshrined in article 18 paragraph 3 of *The International Covenant on Civil and Political Rights,* in article 14 paragraph 3 of the *Convention on the Rights of the Child*, as well as in article 52 paragraph 5 of *the Constitution of the Republic of Poland.* Referral to particular facts of life hazard or threat to the safety of the child posed by some worship groups should not be treated – in the light of the above principle – as action discriminating against religious minorities.

324. It is not true, as was stated in the aforementioned counter-report of a non-governmental organisation, that one of the persons co-authoring the publication mentioned in the counter-report and involved in conducting prevention programmes, lost a case in a court of law of libel of a religious group. It follows from the decision of the Provincial court in Lublin of April 2002 issued in this case that the action filed by a religious group was withdrawn, as a result of which the court proceedings were discontinued. The defendant in this case was a mother trying to regain her son who had joined the group as a result of its psycho-manipulative action. The presentation of this person in the counter-report as charged with libel of a religious group and convicted by a court judgement testifies to a lack of understanding of the essence of the issue presented in the *Resolution of the European Parliament*. Moreover, the above allegation of the counter-report's author was extrapolated on a wider group of people ("experts") who were committed to the implementation of school programmes of social prevention, which seems unjustified and unjust.

Religious education in the school

325. According to the Constitution, the religion of a church or other legally recognised religious organisation may be taught in schools, but other peoples' freedom of religion and conscience shall not be infringed upon thereby.

Pursuant to *the Law of 7 September 1991 on the System of Education* (Journal of Laws of 1996 no. 67, item 329 as amended) and the relevant resolution of the Minister of National Education, religious education in the system of public education is conducted by a number of churches whose relations with the State are defined by means of separate agreements.

326. Religious education of a particular denomination is organised at the request of students' parents (or in the case of older youth – at the request of the students themselves). In the case of a small number of interested students, instruction may be conducted within an inter-school group or in a catechetic point (which is part of the system of public education) located outside school premises. Similar principles obtain during the organisation of ethics classes.

327. In the period 1999-2002, the Ministry of National Education and Sport did not register any complaints relating to the refusal by the school to organise – in accordance with the binding regulations – religious education of a church or other religious organisation legally recognised in Poland or classes of ethics. Inspections conducted by educational supervisors did not identify complaints about cases of actual favouring of certain denominations.

The only cases known to the Ministry of National Education and Sport which might be qualified as bearing certain characteristics of discrimination against denominations are the following cases, which did not have the character of complaints and whose resolution was possible on the basis of a detailed interpretation of existing regulations:

- in 1999 the Ombudsman forwarded a letter of members of the Seventh-Day Adventist Church related to the organisation of school contests and competitions at periods coinciding with holy days for this group of believers (from each Friday from sunset until Saturday's sunset). The Ministry of National Education and Sport suggested that individual organisation committees of school contests and competitions should indicate – if a need arises – additional dates for conducting such contests.

- in 2000 through the agency of the Ministry of Internal Affairs and Administration, the Ministry of National Education and Sport received an address of representatives of the Orthodox community in Poland concerning e.g. the introduction of days free from school classes on holy days according to the Julian calendar (with a possibility of making up for them at a later time). The Ministry of National Education and Sport suggested the possibility of introducing – if a need arises – into school statutes relevant provisions regulating the question of days free from instruction on Orthodox holidays.

Substitute military service

328. Because of the fact that some citizens cannot perform military service due to their religious convictions or professed moral principles (conscientious objectors), the Constitution

guarantees a possibility of performing substitute service. Detailed principles of being granted and performing substitute service are defined in *the Law of 21 November 1967 on the General Duty of the Defence of the Republic of Poland (Journal of Laws of 2002 no. 21, item 205 as amended)*. Decisions on directing a conscript to substitute service falls into the scope of action of a district draft board. Proceedings of granting substitute service are subject to court inspection – decisions of draft boards may be appealed against to the Chief Administrative Court. Conscripts whose motions have been approved are assigned substitute service by the relevant Voivodeship Labour Office.

329. At the time of peace, performance of substitute service consists in carrying out work for the sake of the environment, health service, social care, maritime economy, fire protection, house construction, communications, and other public facilities. On their own request, conscripts may also carry out work for the sake of churches and other religious organisations with a defined legal status, of local self-government and foundations. Substitute service may be conducted under employers indicated by the minister for labour with whom relevant agreements have been signed,. On the motion of employers, the minister issues administrative decisions on the performance under the movers' supervision of substitute service of conscripts, considers appeals against the decisions of the Voivodeship Draft Boards concerning lifting substitute service and issues administrative decisions on the suspension of substitute service.

The minister for labour carries out supervision over substitute service. The supervision is conducted by means of inspections of the activities of the Voivodeship Labour Offices in the scope of assigning substitute service and supervising its course. Inspection results are discussed during annual training courses of Voivodeship Labour Offices personnel responsible for issues connected with substitute service. On the initiative of the Minister of the Economy, Labour and Social Policy a draft law on substitute service was prepared, adopted by the Council of Ministers and on 21 March 2003 submitted to the Sejm. Currently, the Ministry is preparing draft implementing regulations.

330. According to the data obtained from local organs of military administration, the number of motions for substitute service filed by conscripts was: in 2000 – 6 327; in 2001 – 4 410; in 2002 – 4 851.

The number of approved motions:

- in 2000 – 3 991 motions, including 90 justified by religious beliefs and 3 901 in connection with professed moral beliefs;
- - in 2001 – 2 848 motions, including 55 justified by religious beliefs and 2 793 in connection with professed moral beliefs;
- - in 2002 – 2 851 motions, including 27 justified by religious beliefs and 2 824 in connection with professed moral beliefs.

From among approved motions, including those from previous years, substitute service was assigned to: in 2000 – 1420 conscripts; in 2001 – 1803 conscripts; in 2002 – 1 780 conscripts. The remaining persons who were granted the right to perform substitute service and thus relieved from the duty of performing military service, are awaiting assignment to perform this service or transfer to the reserve.

As of 31 December 2002 – the total number of conscripts granted the right to perform substitute service and awaiting assignment to perform it was 9 181 persons, while 3 161 conscripts were already performing this service in workplaces (1895), church institutions (417) and in other institutions (849).

331. Also for professional soldiers a possibility is envisaged to dissolve the employment contract of professional military service without specifying the reason (therefore, also as a result of a change of the philosophy of life or the denomination which does not allow the performance of military service) at an appropriate notice. During the performance of mandatory service, the efficacy of dissolution depends on the vacation of the separate permanent quarters assigned to the soldier and on the repayment of an equivalent of the costs of accommodation, board and uniforms obtained during the period of studies or instruction, unless a soldier has been relieved from the duty of repaying those costs.

332. In 1999 the Constitutional Tribunal (judgement of the Constitutional Tribunal of 16 February 1999, Journal of Laws of 1998 no. 20 item 182) took into consideration the constitutional communication of a citizen who invoked the non-compliance with article 32 of the Constitution of a provision of a resolution with a discriminatory character and decided that provision 132 paragraph 4 of the *resolution of the Minister of National Defence of 19 December 1996 on Military Service of Professional Soldiers* (Journal of Laws of 1997 no. 7 item 38, as amended) is incompatible with article 32 of the Constitution of the Republic of Poland in that it violates the principle of equal treatment, making it impossible for professional soldiers being in the same situation to dissolve their employment contract. However, the Constitutional Tribunal did not establish the alleged non-compliance of provision § 132 paragraph 4 of the resolution with article 53 paragraph 2 of the Constitution, regulating among others the freedom of professing or accepting religion in accordance with one's own choice and the manifestation of one's religion through worship, prayer and practices. In the opinion of the plaintiff, provision § 132 paragraph 4 of the resolution makes it impossible for a professional soldier, a graduate of a military academy, to depart from duty sooner than 12 years after graduation, since it makes the efficacy of dissolution of the employment contract dependent on a prior repayment of an equivalent of the costs of accommodation, board and uniforms obtained during the period of studies or instruction. The plaintiff does not question the very obligation of the repayment of costs connected with military studies, but the lack of possibility of repaying the above costs in instalments in the period after the dissolution of the employment contract (while such a possibility exists e.g. in the case of a soldier relieved from professional military service on account of a loss or deprivation of a military rank or being punished by the penalty of dismissal from service). The plaintiff also maintained that §132 paragraph 4 of the resolution infringes on the right to the freedom of conscience and belief through making it impossible to leave the military ranks for a person whose professed religious beliefs are at variance with military service. Hence a professional soldier cannot exercise the constitutionally guaranteed right to choose, manifest and practice religion.

The Constitutional Tribunal when deciding on an absence of non-compliance with article 53 paragraph 2 of the Constitution justified its stand as follows: "There is no doubt that departures from the army of professional soldiers, also those motivated by significant religious considerations, must be subject – as in all other cases – to rigours, since this is required by the public interest connected with the functioning of the armed forces of each state. Consequently, even in the situation of the plaintiff, when the character of the professed religion excludes the performance of military service since the values of this religion stand in stark contradiction to the very essence of the duties of a professional soldier – it cannot be expected that the regulations at work will contribute to an automatic and free departure from military service. Such a solution would, in turn, remain in contradistinction to the important public interest connected with the security of the State. The problem of the clash of interests existing here should be, however, as has been indicated before, resolved on a different plane than the protection of the freedom of religion. What is in the foreground here is the principle of equal treatment of all soldiers being in the same legal position, which means irrespective of particular motives for the intention to leave the army. Therefore, only within such a context, rather than in connection with the question about the limits of religious freedom, can be properly evaluated the public interest that comes into play here, as a justification of possible limitations and differentiation of the situation of individual categories of soldiers."

Article 19 – Freedom to possess and express opinions

333. The Constitution of the Republic of Poland guarantees everyone the freedom of expressing their opinions and of obtaining and disseminating information. Furthermore, the Constitution guarantees the freedom of the press and other mass media, prohibiting at the same time all forms of preventive censorship of mass media and licensing of the press.

A law imposes an obligation of a prior receipt of a licence for the running of a radio or television station. However, it does not guarantee impunity of the press if the materials disseminated by it violate the law. A registering organ of a given press title, or a provincial court competent *rationae loci* for the registered office of the publisher, may suspend the issuing of a daily or a magazine for a definite period of time, not exceeding however the duration of one year, if within a year an offence has been committed in the daily or the magazine at least three times.

Access to public information

334. On 1 January 2002 entered into force *the Law of 6 September 2001 on Access to Public Information* (Journal of Laws of 2001 no. 112 item 1198), which is one of the foundations of the proper functioning of a civil society. It ensures openness and transparency of decisions taken in public life, which is to facilitate the monitoring and prevention of the abuse of power. The exercise of the right to information was served also by the introduction of the principle of transparency of action of organs of self-government into self-government laws.

The Law on Access to Public Information is a substantiation of the citizen's right guaranteed by the Constitution to obtain information on the activity of organs of public authority as well as of persons discharging public functions. This right includes also access to information

on the activities of self-governing economic or professional organs and other persons or organisational units relating to the field in which they perform the duties of public authorities and manage communal assets or property of the State Treasury, as well as access to documents and entry to sittings of collective organs of public authority formed by universal elections, with the opportunity to make sound and visual recordings. The Law requires that stenographic records or minutes from the sittings should be carried out and made public. Secret information is an exception. A person applying for public information must not be required to justify the application.

335. The procedure for the provision of information is specified in individual laws (*Banking Law, Law on Environmental Protection*; *District Self-Government; Commune Self-Government*; *Voivodeship Self-Government*; *Protection of Secret Information*; *Taxation Law*; *Public Statistics*) and with regard to the Sejm and the Senate – by their rules of procedure. Limitations upon this right may be imposed solely to protect freedoms and rights of other persons and economic subjects, public order, security or important economic interests of the State, as defined by laws.

336. By law, dissemination of public information takes place through its publication in the Internet Bulletin of Public Information, making available on a motion of the interested party, placement in a generally accessible place or through information terminals (infomats).

The public information which has not been made available in the Bulletin of Public Information is made available following a motion of the interested party "without undue delay", not later than within 14 days of filing a motion. If this is impossible, the mover must be informed within this period about the reasons for the delay in the provision of information and about a new date, not exceeding however 2 months.

If information may be provided immediately, orally or in writing, the person moving for the information does not apply for it in writing. An institution providing information is obliged to facilitate its copying, printing out, transmission, or downloading into a commonly used data carrier. Refusal to provide information may take place only because of its secret character (protection of personal data, the right to privacy, state, professional, fiscal, statistical secret). The refusal takes place in the form of an administrative decision. An appeal against the decision is considered within 14 days. The law envisages a fine, the penalty of restriction or deprivation of liberty for up to one year for those who in spite of the obligation imposed on them do not make public information available.

337. The implementation of the law is supervised by the Ombudsman within a separate programme. On the basis of communications concerning the right to information filed since 2000, the Ombudsman noted an increase in the interest in the right to information, especially in the aspect of exercising civil control over organs of state and self-government administration.

338. Examples of decisions of the Chief Administrative Court:

- Judgement of 19 April 1999, II SA 304/99

Freedom of the press and other mass media, the right of citizens to obtain information on the activities of organs of public authority along with access to documents, and the guarantees

included in article 10 paragraph 2 of the Convention on the Protection of Human Rights and Fundamental Freedoms ratified by Poland (Journal of Laws of 1993 no. 61, item 284) jointly call for qualifying as especially exceptional cases of refusal to provide such information through mass media and to make the attendant documents available for inspection. This refers especially to the activities of organs of local self-government representing the interest of residents (composing a self-governing community), with the openness of financial economy guaranteed by a law.

- Judgement of 10 April 2002, II SA 3126/01

Pursuant to article 61 of the Constitution of the Republic of Poland, the citizen has the right to obtain information on the activity of organs of public authority as well as persons discharging public functions. This right includes also the receipt of information on the activities of self-governing economic or professional organs and other persons or organisational units relating to the field in which they perform the duties of public authorities and manage communal assets or property of the State Treasury.

- Judgement of 8 November 2000, II SA 1077/00

In the statement of reasons for the decision on making available a protocol in the part concerning the evaluation of the activity of a foundation, the Court invoked article 10 of the European Convention of Human Rights and the directive of the Council of European Communities of 7 June 1990 on free access to information on environmental protection.

Access to medical documentation

339. In May 2003, a precedence judgement of seven judges of the General Administrative Chamber of the Chief Administrative Court extended access of patients to medical documentation. Article 18 of the *Law on Health Care Units* stipulates, *inter alia*, that a Health Care Unit (ZOZ) is obliged to conduct medical documentation of persons obtaining its health care, and the patient, his legal representative, or a person validly authorised, have the right to inspect it. Pursuant to the *regulation of the Minister of Health*, medical documentation is divided into individual – concerning individual patients obtaining health care – and collective – related to patients in general or their particular groups and contained in the form of books, registers, forms, or files. In practice, patients were only given access to individual documentation. The Chief Administrative Court ruled that the patient obtains by virtue of the law the right to information about his person from collective medical documentation. This documentation should be made available in the form of discharge notices, certified copies and duplicates to the patient, his legal representative, or a person validly authorised. A refusal to make documentation available is ineffectual. In the opinion of the Chief Administrative Court, article 18 paragraph 3 point 1 of the *Law on Health Care Units* does not contain any limitations as to the scope of documents accessible to the patient. Their presentation cannot only lead to the violation of rights of other patients.

Article 20 – Prohibition of propaganda for war and advocacy of national, racial or religious hatred

340. In the Polish law, there are a number of provisions ensuring the implementation of article 20 of the ICCPR. The Penal Code (article 117 § 3) prohibits both incitement to war and incitement to national, racial and religious hatred. Whoever publicly incites to initiate a war of aggression is subject to the penalty of the deprivation of liberty for a term of between 3 months and 5 years. The same penalty is envisaged for publicly inciting to use violence or unlawful threat towards a group of persons or a particular individual because of their national, ethnic, racial, political, or religious affiliation or because of their lack of religious beliefs (article 119 § 2 of the Penal Code). It is also an offence to publicly promote a fascist or other totalitarian system of the state or to incite to hatred because of differences in national, ethnic, racial, political, or religious affiliation or because of a lack of religious beliefs (article 256 of the Penal Code). The commission of the offence is subject to a fine, the penalty of restriction or liberty or deprivation of liberty for up to 2 years. The Code also introduces penalisation for publicly insulting a group of persons or a particular individual because of their national, ethnic, racial, political, or religious affiliation or because of their lack of religious beliefs or breaching the personal inviolability of other persons for these reasons (article 257 of the Penal Code). The commission of the offence is subject to the penalty of deprivation of liberty for up to three years.

The most frequently identified violations of the above regulations concern as follows:

- writing inscriptions of nationalist and racist character on facades of buildings, monuments, obelisks, road signs,
- posting nationalist and racist leaflets in public places,
- promoting fascist slogans and symbols through their chanting, unfurling flags, etc.,
- disseminating publications of anti-Semitic and fascist character.

The description of the act contained in the aforementioned articles of the Penal Code allows the prosecution of perpetrators also when the offence was committed by means of the Internet.

341. On the basis of the provisions of the Penal Code currently in force may be ruled a confiscation of objects which have been used or were meant to be used during the commission of an offence, especially - but not only - in the case when the perpetrator has benefited materially from the commission of the offence. The planned amendment of article 256 of the Penal Code will introduce a possibility of deciding on the confiscation of materials inciting to discrimination because of differences in national, ethnic, racial, political, or religious affiliation or because of a lack of religious beliefs, as well as of objects used for their manufacture or dissemination – even if they are not the property of the perpetrator – and will make it possible to prosecute preparatory action aimed at the dissemination of such materials.

342. Criminal liability for the publication of unlawful contents is borne also by the publisher. Articles 256 and 257 of the Penal Code apply here – namely the offence of publicly inciting to hatred and publicly insulting because of a particular affiliation.

An example of proceedings instituted against publishers may be the case pending before a Warsaw court against the owner of the "Goldpol" company for the publication and circulation of the book "Polish-Jewish War About Crosses", in which he included statements insulting persons of Jewish nationality. The justification of the indictment stated that "the book is a compilation of quotations and only a small part of it was written by the defendant. However, the defendant is the publisher of the book and thus a person who publicly disseminates contents included in it". Another case is pending before a District Court for Wrocław Śródmieście against the owner of the "*WorldMedia"* publishing company, who is charged with – acting for the purpose of acquiring a material benefit – introducing into commercial circulation no fewer than 5,000 copies of a book by Władysław Bocquet "Through the Red Sea Towards the Ghettos of Europe", insulting the Jewish nation through the dissemination of anti-Semitic beliefs. On 3 February 2003 was issued an injunction and imposed a fine on the defendant of 2,500 PLN *to the amount of 50 daily fines 50 PLN each*. The decision is non-final.

In Olsztyn two persons were sentenced by a valid judgement of the Provincial court to the penalty of deprivation of liberty for 10 months each with a conditional suspension of its execution for the probation period of 3 years and to a fine of 50 daily fines to the amount of 20 PLN each, for – acting jointly and in collusion with other persons in the period from April 1992 until 1995 in Olsztyn and other towns, in the edited, published and circulated "Warmiak" periodical – they publicly insulted groups of persons because of their national, ethnic and racial affiliation and promoted a fascist and other totalitarian systems of the state, in addition inciting to hatred because of national, ethnic and racial differences.

343. In November 2003 a law envisaging penal liability of groups will enter into force. Currently the Penal Code envisages the possibility of obliging the subject who has acquired a material benefit as a result of an offence to its return in whole or in part to the benefit of the State Treasury, in the event of sentencing for an offence committed by a perpetrator acting on behalf of or in the interest of this entity. This does not affect situations when the acquired material benefit is subject to return to another entity.

344. The Constitution in its article 13 introduces a prohibition of the existence of political parties and other organisations whose programmes invoke totalitarian methods and the modes of activity of nazism, fascism and communism, as well as those whose programmes or activities sanction racial or national hatred (Principles of monitoring the activities of political parties are described in remarks to article 22).

345. In addition, the Penal Code penalises participation in an organised group or in an association whose purpose is to commit offences (therefore also in connection with offences motivated by racial or other kinds of hatred), envisaging the penalty of the deprivation of liberty for up to 3 years for such participation. The penalty is more severe for the founder or leader of a group or an association if the group or the association has a military character.

346. See also information about article 26.

Article 21 – Freedom of assembly

347. The Constitution ensures to each person the freedom of organising peaceful assemblies and of participation therein. Limitations of this right may be imposed only by means of a law. The freedom of assembly may be suspended during the introduction of the state of public emergency. According to the *Law on Assemblies*, an organ of a commune prohibits a public assembly if its goal or holding is incompatible with this law or violates provisions of penal laws or if the holding of an assembly may pose a substantial threat to the life or health of people or to property. The decision about the prohibition of a public assembly issued by a commune organ may be appealed against to the voivode competent *rationae loci*. Complaints about decisions on assemblies, in turn, are filed directly to the Chief Administrative Court (since the moment of Poland's joining the EU, complaints will be filed directly to administrative courts). The appeals system allows for an efficient exercise of one's rights.

As an example may be cited a judgement of the Chief Administrative Court, which revoked the decision of the mayor of the city of Słupsk and the Pomorski Voivode about a prohibition of manifestations and assemblies in front of the city hall in 1999 and 2000 for members of the Polish Party of the Poor. Following up on this judgement, the Provincial Court in Koszalin imposed an obligation on the Office of the Pomorski Voivode and the mayor of the city of Słupsk to pay 4,000 PLN to members of the Polish Party of the Poor by way of compensation. In the opinion of the court, former city mayor and the Pomorski Voivode violated the constitutional right to the organisation of assemblies. According to the legal status as of 20 May 2003, the judgement is non-final.

348. Statistical information

Year	Assemblies, pickets, rallies	Road blocks, other forms of protest
Until 03.2003	79	2200
2002	600	116
2001	315	51
2000	527	121

Data from the Press Department of the National Headquarters of Police: Manifestations

Article 22 – Freedom of association and trade unions

349. The Constitution guarantees to all citizens the freedom of association, including the right to create and join trade unions for the purpose of protecting workers' interests.

Freedom of association

350. Pursuant to *the Law of 7 April 1989 on Associations* (Journal of Laws of 2001 no. 79 item 855) – Polish citizens enjoy full freedom of association irrespective of beliefs as part of an active participation in public life and expression of diverse beliefs and realisation of individual interests. The right to membership in associations may be subject to limitations only by laws, to the extent necessary for ensuring the security of the state or public order, protection of health or public morality or for the protection of rights and freedoms of other persons.

351. The first stage of the control of the legal character of an association is the receipt of an entry into a register – the National Court Register. A court may refuse an entry, and after the registration of an association – may strike it off the register in a situation when a supervising organ or a public prosecutor establishes that the activity of the association is unlawful or violates the provisions of the statute. A supervising organ may, depending on the kind and degree of identified irregularities, appeal to the association for their removal, issue a warning or appeal to court for issuing a caution, revoking a resolution of the association which violates the law or the statute, or for dissolving the association, if its activity exhibits a flagrant or persistent violation of the law or the provisions of the statute and there are no conditions for the resumption of an activity in keeping with the law or the statute.

352. From the beginning of the functioning of the National Court Register, among the 129 strikes off the register recorded from 1 January 2001 until 3 March 2003, none of the associations was struck off on the grounds of a violation of the law.

Political parties

353. The freedom of the creation and functioning of political parties is guaranteed in the Constitution, which stipulates that political parties are founded on the principle of voluntariness and upon the equality of Polish citizens, and their purpose is to influence the formulation of the policy of the State by democratic means. At the same time, the Constitution prohibits the creation and functioning of political parties and other organisations whose programmes are based upon totalitarian methods and the modes of activity of nazism, fascism and communism, as well as those whose programmes or activities sanction racial or national hatred, the application of violence for the purpose of obtaining power or to influence the State policy, or provide for the secrecy of their own structure or membership.

Principles of the creation and functioning of political parties are regulated in the *Law of 27 June 1997 on Political Parties (Journal of Laws of 2001 no. 79 item 857).*

354. There are two independent sources of monitoring the activities of a political party as to their compliance with the law.

Firstly – monitoring by the court at the level of registration of a given party by the Provincial Court in Warsaw. This Court examines the documents presented by the party which applies for an entry into the register of political parties as to their compliance with the Constitution and laws. As of the moment of entry into the register, the party acquires legal

personality and can commence legal activity. In the event of doubts as to the compliance with the Constitution of the aims or principles of action of a given party, defined in the statute or the party's programme, the court adjourns the proceedings and makes an application to the Constitutional Tribunal for the examination of the compliance with the Constitution of the aims of the political party (this decision may not be appealed against). In the event of the Constitutional Tribunal establishing such non-compliance, the court refuses to enter the party into the register. The decision may not be appealed against. Similar principles obtain in the case of an application by a party to enter into the register changes in its statute; it has to be added, though, that political parties are under an obligation to notify the court of all the changes in their statutes under threat of being struck off the register.

The other course of monitoring consists in proceedings before the Constitutional Tribunal (article 188 point 4 of the Constitution) instituted by subjects defined in article 191 of the Constitution, including e.g. the President of the Republic of Poland, Prime Minister or the Ombudsman. If as a consequence of such proceedings the Constitutional Tribunal issues a judgement on the non-compliance with the Constitution of the aims or principles of action of a party, the court issues a summary decision to strike the party off the register. The decision may not be appealed against.

The Provincial Court in Warsaw has so far made two applications to the Constitutional Tribunal for the examination of the compliance with the Constitution of the aims of a political party:

- in 1999 regarding an entry into the register of political parties of changes in the statute of the party Chrześcijańska Demokracja III RP (Christian Democracy of the Third Republic) – the Constitutional Tribunal adjudicated on the compliance of the statute with the Constitution;

- in 2002 regarding an entry into the register of political parties of changes in the statute of Samoobrona RP (Self-Defence of the Republic of Poland) – so far the date for the sitting has not been settled.

The former case concerned the compliance with the Constitution of the right of the chairman included in the statute to appoint and dismiss the deputy chairman and presidents of the national board, chairmen of regional boards and the press spokesperson. In the latter case – the doubt concerns changes which in principle guarantee unlimited power to the chairman of the party and introduce open elections.

Trade unions

355. Under the Polish legal system, the right to association in trade unions, as well as in socio-occupational organisations of farmers and in employers' organisations, is protected by the Constitution. Trade unions and employers and their organisations have the right to bargain, particularly for the purpose of resolving collective disputes, and to conclude collective labour

agreements and other arrangements, as well as the right to a strike and other forms of protest, though this right may be limited or forbidden for specified categories of employees or in specific fields of the economy[11]. 44 strikes were held in 2000, and 11 strikes in 2001.

Trade unions are independent of employers, state government and local self-government administration, and of other organisations.

356. The scope of the freedom of association in trade unions may only be subject to limitations by a law, only when this is necessary in a democratic state for the protection of its security or public order, the natural environment, health or public morals, or the freedoms and rights of other persons and when they are permitted under international agreements binding for Poland, including the International Covenant on Economic, Social and Cultural Rights, Convention no. 87 of the ILO on the Freedom of Association and Protection of the Right to Organise, Convention no. 98 of the ILO concerning the Application of the Principles of the Right to Organise and to Bargain Collectively, Convention no. 151 of the ILO concerning Protection of the Right to Organise and Procedures of Determining Conditions of Employment in the Public Service, the European Convention of Human Rights, and the European Social Charter.

The freedom of trade unions is limited by the duty to observe the law.

357. The Labour Code, in its article 11^3, prohibits any discrimination, direct or indirect one, in employment because of one's membership in a trade union.

Also *The Law on Trade Unions of 23 May 1991* (Journal of Laws of 2001 no. 79, item 854 as amended) stipulates that no one may bear negative consequences because of his membership in a trade union or remaining outside of it or because of performing a function within a trade union. In particular this cannot be a condition of entering into a work contract, remaining employed or being promoted. The law envisages penal liability for the violation of the right to establish and become a member of a trade union. Pursuant to article 35 paragraph 1, who in connection with the occupied position or the function performed:

- obstructs the establishment in accordance with the law of a trade union organisation,
- hampers the execution of trade union activity conducted in accordance with the provisions of the law,
- discriminates against an employee on account of trade union membership, remaining outside of a trade union or performing a function within a trade union,

[11] It is inadmissible to discontinue work as a result of a strike action at workplaces, equipment and installations where an abandonment of work would jeopardize human life or health or the security of the State. It is also inadmissible to organise a strike in units of the Police and the Armed Forces of the Republic of Poland, of the Prison Service, the Border Guard and in organisational units of fire protection. The right to a strike is not granted to workers employed in organs of State authority, government and self-government administration, courts and public prosecutors' offices.

– does not fulfil the obligations defined in articles 26^1, 33^1 and 34^1 (e.g. information about the transfer of the factory to a new employer, deduction from the employee's remuneration of trade union membership dues on the motion of an employee),

is subject to a fine or the penalty of restriction of liberty.

Statistical information for the year 2001 – number of offences committed under article 35 paragraph 1 of the Law on Trade Unions

	Total no. of indictments	Total no. of convictions	Self-effecting fine	Conditional discontinuance
Total	3	1	1	2
art. 35 para. 1 point 2	2	1	1	1
art. 35 para. 1 point 3	1	-	-	1

In 2002 labour inspectors submitted 14 notifications to the public prosecutors' office about the commission of an offence under article 35 paragraph 1 of the *Law on Trade Unions*. In 2 cases public prosecutors brought an indictment to court, in 5 cases the prosecutors' office refused to institute proceedings, in 5 cases the proceedings were discontinued, in 2 cases there is no response to the notification submitted.

The Labour Inspectorate does not collect separate statistical data on complaints of employees about employers' hampering the establishment of trade unions or about difficulties resulting from membership in trade unions. The subject matter of complaints lodged with the Labour Inspectorate by trade unions (in 2002 5.2% of the total number of 32,000 complaints) are primarily irregularities in the field of labour law.

358. Membership in trade unions in the period under consideration was not subject to official statistics. It is estimated that currently the number of trade union members in Poland amounts to 3 – 3.5 million people. In July 2002 membership in trade unions accounted in general for 6% of adult population.

The status of a representative trade union organisation – pursuant to the *Law of 6 July 2001 on the Tripartite Commission for Socio-Economic Issues and Voivodeship Committees of Social Dialogue (Journal of Laws of 2001 no. 100 item 1080)*, was granted to: NSZZ "Solidarity", National Alliance of Trade Unions (OPZZ), and the Trade Unions Forum, which means that each of these organisations groups at least 300,000 members.

NSZZ "Solidarity" estimates the number of its members as 1.2 million, and membership in OPZZ oscillates at the same level.

359. Detailed information on trade unions was included in the *Report of the Republic of Poland on the Implementation of the Provisions of the International Covenant on Economic, Social and Cultural Rights* and its updated version, presented in November 2002 before the relevant UN Committee.

Article 23 – Protection of marriage and the family

360. In accordance with the Constitution, marriage, being a union of a man and a woman, as well as the family, motherhood and parenthood, shall be placed under the protection and care of the Republic of Poland. The Constitution also protects the right of succession and holds that the family farm is the basis of the agricultural system of the State.

Contracting a marriage

361. Marriage may be entered into by persons who have attained the age of 18 years. The amendment of 24 July 1998 of the *Family and Guardianship Code Law* established an equal marriage eligibility age for women and men. Regulations in force until then defined it as 18 years for women and 21 for men. For important reasons a guardianship court may allow a woman who has attained the age of 16 years to contract a marriage when circumstances indicate that the contraction of marriage will be in agreement with the good of the family thus started.

362. Marriage becomes contracted when a man and a woman present at the same time unanimously declare before the head of a registrar's office that they enter into a marriage relationship with each other. The law envisages also the possibility of contracting the so-called *concordat marriage*. Contracting marriage in this form is possible if a ratified international agreement or a law regulating relations between the State and the church /religious organisation envisages a possibility of affecting such results of contracting a marriage relation under the internal law of this church/religious organisation as are affected by contracting marriage before the head of a registrar's office. In such a case, marriage becomes contracted when a man and a woman, contracting a marriage relationship subject to the internal law of this church or another religious organisation, in the presence of a clergyman unanimously declare the will of a simultaneous contraction of marriage under Polish law and the head of a registrar's office next prepares a marriage certificate. Marriage is regarded as contracted at the moment of making a declaration of will in the presence of a clergyman, provided:

- the clergyman accepting the marital declaration has been presented with testimonials, made by the head of a registrar's office, stating an absence of circumstances excluding the contraction of marriage,

- the clergyman immediately on the declarations being made, prepares a testimonial stating that the declarations were made in his presence during the contraction of a marriage subject to the internal law of this church or another religious organisation,

- the clergyman forwards his testimonial along with the testimonial made by the head of a registrar's office to the registrar's office within five days of marriage being contracted.

363. The remaining regulations concerning the institution of marriage have not undergone significant changes since the time of the previous report.

Divorce and separation

364. If a complete and permanent disintegration of matrimonial life has occurred between the spouses, then each of the spouses may demand that a court dissolve marriage through divorce. However, a divorce is inadmissible in spite of a complete and permanent disintegration of matrimonial life, if as a result of it might suffer the good of the minor children shared by the spouses or if for other reasons the declaration of divorce would be incompatible with principles of social coexistence, as well as when it is requested by the spouse exclusively guilty of the disintegration of matrimonial life, unless the other spouse has agreed to the divorce or if the refusal of consent to the divorce is under the circumstances incompatible with principles of social coexistence.

365. If a complete and permanent disintegration of matrimonial life has occurred between the spouses, and for religious or other reasons they do not want to or cannot decide on a divorce, and at the same time wish to regulate their relations under law, each of the spouses may demand that a court decide on separation. The decision of separation has the same effects as a dissolution of marriage through divorce, unless a law stipulates otherwise. The decision of separation is inadmissible, if as a result of it might suffer the good of the minor children shared by the spouses or if for other reasons the declaration of separation would be incompatible with principles of social coexistence.

366. Statistical information on recognised divorce and separation proceedings

	1995	1996	1997	1998	1999	2000	2001	2002	1st half 2003
Divorces	41 044	42 995	45 216	47 151	46 908	46 426	49647	49 695	27 197
Separations	-	-	-	-	5	1 969	3 100	3 301	1 809

Ministry of Justice – Statistics Department, August 2003

Equality of rights

367. The spouses have equal rights and obligations in marriage. They are obliged to coexistence, mutual help and fidelity and cooperation for the good of the family, which they have started by virtue of their relation. The spouses jointly decide on important matters of the family, and in the event of a lack of agreement, each may apply to a court for a resolution.

Article 24 – Rights of the child

368. The rights of the child are guaranteed in the Constitution. Everyone has the right to demand of organs of public authority that they defend children against violence, cruelty, exploitation and actions which undermine their moral sense. A child deprived of parental care

shall have the right to care and assistance provided by public authorities. Organs of public authority and persons responsible for children, in the course of establishing the rights of a child, shall consider and, insofar as possible, take into account the views of the child.

In addition, the Constitution holds that education up to 18 years of age is compulsory; it prohibits permanent employment of children under 16 years of age; it guarantees to parents the right to rear their children in accordance with their own convictions and to assure them upbringing and moral and religious education in accordance with their own convictions, while such upbringing should respect the degree of maturity of a child as well as his freedom of conscience and belief and also his convictions.

369. Furthermore, the protection of the rights of the child, especially his property rights, is ensured by civil law norms granting him legal subjectivity and a certain limited capability of legal action (articles 12-22 of the Civil Code). Penal law regulations on the protection of children are discussed in article 9.

370. The Republic of Poland is a State Party to *The Convention on the Rights of the Child*. Currently, ratification procedure is under way of two optional protocols to this *Convention – on the Sale of Children, Child Prostitution and Child Pornography* and *on the Involvement of Children in Armed Conflicts*. The *Convention* is frequently invoked in court decisions, including the judgements of the Supreme Court.

Poland ratified the following conventions of the International Labour Organisation: *Convention no. 138 on the Minimum Age for Admission to Employment; Convention no. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, Convention no. 79 concerning the Restriction of Night Work of Children and Young Persons in Non-industrial Occupations* and *Convention no. 90 on the Night Work of Young Persons in Industry.*

Poland is a State Party to all the major conventions on the rights of the child of the *Hague Conference*. In particular, mention must be made of: the *Convention of 1961 concerning the Powers of Authorities and the Law Applicable in respect of the Protection of Minors*, two *conventions of 1973 on the Law Applicable to Maintenance Obligations*, *Convention of 1980 on Civil Aspects of International Child Abduction* and a *Convention of 1993 on the Protection of Children and Cooperation in respect of Intercountry Adoption*.

The Republic of Poland is also a State Party to *Convention of the Council of Europe of 1980 on Recognition and Enforcement of Decisions concerning Custody of Children* and the *European Convention on the Exercise of Children's Rights of 1996.*

Poland, as the only State from among the candidates to the European Union, is a State Party to the *Lugano Convention* of 1988, whose provisions create exceptional assistance measures and simplifications for pursuing maintenance claims. Furthermore, in many cases the New York Convention of 1956 is an efficient instrument.

At the moment of accession into the European Union, the regulation of the Council of the European Union concerning jurisdiction and the recognition and enforcement of judgements in matters of parental responsibilities will enter into effect with respect to Poland.

Issues related to the protection of children's rights are also taken into account to a broad extent in many bilateral agreements related to legal assistance. Provisions of these agreements define the jurisdiction of courts in matters related to the family and the law on which a resolution should be based.

Ombudsman for Children

371. *The Law of 6 January 2000 (Journal of Laws of 2000 no. 6 item 69)* appoints the Ombudsman for Children. He safeguards the rights of the child, especially: the right to life and protection of health, the right to being reared in the family, the right to decent social conditions and the right to education, as well as takes action aiming at the protection of the child against violence, cruelty, exploitation, and actions which undermine his moral sense, neglect and other inappropriate treatment. During the execution of his duties, he has in view the good of the child and takes into consideration the fact that the family is the child's natural environment of development. He takes action on his own initiative, taking into account especially information on violations of the rights or the good of the child. These actions aim at ensuring to the child a full and harmonious development, respecting the child's dignity and subjectivity. The Ombudsman for Children takes special care of and provides special support to disabled children.

In his activities the Ombudsman for Children is independent from other State organs and is answerable only to the Sejm. He may also apply to organs of public authority, organisations or institutions for providing explanations and indispensable information, as well as for making available files and documents, including those containing personal data. He may apply to relevant organs, including the Ombudsman, organisations or institutions for taking action for the sake of the child which is within their competences. He may also apply to relevant organs with motions for taking legislative initiative or for their issue or amendment to other legal acts. Doing so, he does not substitute for specialised services, institutions and associations active in the protection of the rights of the child, but intervenes in a situation when the already existing procedures have proved inefficient or have been neglected.

372. In the period 23 - 24 May 2003 a *National Summit for Children's Issues* was held in Warsaw on the initiative of the Ombudsman for Children and under the honorary patronage of the President of the Republic of Poland. Poland is a signatory of the declaration "*World for Children*" contained in the final document of a Special Session of the United Nations General Assembly which took place in New York in the period 8-10 May 2002. All the States – signatories of the declaration accepted the obligation to prepare by the end of 2003 National Action Plans for Children, containing also legal aspects of the protection of the rights of the child. The National Summit for Children's Issues and a forum of non-governmental organisations adopted a document "*Poland for Children*", containing a Declaration, a Review of achievements, experiences, current challenges, and Proposals for the Action Plan.

Right to life in the family – foster care

373. Each child has the right to live in a family. However, since not all families decide on retaining the child and bringing it up, the State undertakes action creating adequate conditions for the development of children.

374. In the period 1993 – 2002, the number of infants abandoned by their mothers in hospitals for reasons other than health ones increased four-fold.

Infants abandoned in hospitals in the period 1993-2002

Year	***Number***
1993	252
1994	no data
1995	738
1996	803
1997	685
1998	594
1999	737
2000	861
2001	899
2002	1018

The decreasing tendency was noticeable only in the period when abortion for social reasons was admissible (see information on article 6).

375. Taking action so that no child should be abandoned in random places was entrusted to adoption and care centres (OAO). One of the most efficient forms of their activity is a telephone help-line. Information about such a telephone help line is disseminated in hospitals in neonatal wards, in outpatient clinics for women, and in parishes. Mass media present information on the ways of assisting the mother and the child. Radio and television broadcasts appear in local radio and television stations. Information on the centres is published in the local press. The assistance of adoption and care centres may be used in any district in the country. Women in a difficult life situation may take advantage of social homes for mothers with minor children and pregnant women. In small communities, where it is difficult to remain anonymous, personnel of social homes identify persons in need of assistance and offer them help. Each woman who decides that she does not want to, is not able to or cannot take care of the child may already in hospital apply to a nurse who cooperates with an adoption and care centre. The child may then be placed in a pre-adoption ward or in a foster family – a family in emergency cases and there await the regulation of the legal situation. If after 6 weeks since the delivery the mother declares the will to renounce the child, a court issues a decision and the child may be adopted. In a situation when the woman declares the will to ensure a foster family for her child, adoption and care centres personnel take action so that the child might be adopted as soon as possible.

376. It should be emphasised that in each situation when the mother abandons the child, even if she leaves it in the so-called safe place, the public prosecutors' office institutes *ex officio* the search for the mother and the efficacy of this search amounts to nearly 90%.

377. *The Law on Social Welfare (Journal of Laws of 1998 no. 64 item 414 as amended)* provides that the family experiencing difficulties in fulfilling its duties is offered assistance in the form of social work, family counselling or family therapy, and the child deprived of parental care is ensured by the district care and upbringing in the family or foster family care or in a care and educational institution.

378. One of the forms of family foster care is provided by foster families that fulfil the function of families in emergency cases, where the child is directed for a temporary stay until his life situation returns to normal. The foster family that fulfils the function of a family in emergency cases cannot refuse to accept a child brought to it by the Police, especially in a situation of a threat to the health of life of the child, the child being abandoned, and when it is impossible to establish the identity of the parents or their whereabouts. If a district does not provide such foster families, the child may be placed in an institution.

An increase in trained foster families, families that fulfil the function of families in emergency cases is limited by the financial resources of districts. Many of the trained families are not entrusted with children for lack of financial resources.

379. A court decision, a motion by the parents, legal guardians or the minor constitute the basis for placing the child in a care and educational institution.

Emergency, social, and social reintegration institutions are under an obligation to accept, without a referral and without the consent of statutory representatives or without a decision of a court, each child over 13 years of age and ensure him care until the clarification of the situation, in cases requiring an immediate provision of assistance to the child. This applies to a recommendation of a judge, compulsory Police assistance of the child, the school or persons stating an abandonment of the child and a threat to the life or health of the child.

380. The Ombudsman for Children has observed that in recent years the number of children in care and educational institutions has been on the increase. Of special concern is the increase in the number of placements under the *Law on the Procedure in Matters concerning Minors* (close to 3,000 minors await a vacancy in institutions). The most recent data of the Ministry of the Economy, Labour and Social Policy indicates a steady rise in the number of children in children's homes, from 18 196 in 2001 to 21 021 in 2002. Given the decrease in the child population, this means a significant increase in the rate of children in institutional care. The number of children returning to their natural families continues to remain too small. There is a shortage of resources and a sufficient number of specialists for work with families.

Prohibition of the use of corporal punishment

381. The Constitution contains a prohibition of the use of corporal punishment. Poland is also a State Party to the *Convention on the Rights of the Child* which stipulates that "States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention". The Penal Code stipulates that everyone who beats a person or in another way breaches his personal inviolability, is subject to a fine, the penalty of restriction of liberty or of deprivation of liberty for up to one year (see information about article 9 – violence against children).

382. The Government is not in possession of information which would point to the existence of the problem of the use of corporal punishment in schools. In the event of a violation of the prohibition of the use of corporal punishment or a violation of other rights of the school student, then statutes of schools, which clearly precise the rights of the school student, taking into consideration especially the rights contained in the Convention on the Rights of the Child, define the course of action of filing complaints.

An efficient execution of provisions prohibiting the use of corporal punishment in schools will be additionally strengthened by the role of pedagogical supervision, envisaged in the *draft legislation on the Amendment to the Law on the Education System and on the Amendment to Some Other Laws*, work on which is currently under way in the Senate.

Draft amendment to the *Law on the Education System*

383. The draft law mentioned in the previous paragraph implements many significant postulates of education and self-government circles as well as includes a number of changes which contribute to a greater precision and order in the current legal state. The most important of them are:

- giving prominence to issues related to the observance of the rights of the school student and the child with the attendant expansion of the scope of pedagogical supervision onto the dissemination of the rights of the school student and the child; knowledge of these rights is obligatory not only for adults – parents and teachers – but also for students.

- extending pedagogical supervision onto safe and hygienic conditions of instruction, education, and care,

- obliging head teachers of schools and directors of institutions to prepare – in the event when an organ responsible for pedagogical supervision establishes inadequate effects of instruction or education and in agreement with the competent organ – a programme and an agenda for the improvement of the efficacy of instruction or education and to implement this programme in the periods specified in the agenda,

- introducing consequences on account of non-removal of transgressions by the head teacher or director, especially when they fail to prepare a programme for the improvement of the efficacy of instruction or education or fail to implement this programme in the periods specified in the agenda; in such a situation the organ of pedagogical supervision will apply to the competent organ with a binding motion for the dismissal of the head teacher/director,

- supplementing the existing competences of the minister for learning and education with the right to issue in writing binding guidelines and orders to superintendents for schools; this will facilitate a direct influence of the minister on the quality and efficacy of the pedagogical supervision conducted by the superintendent for schools.

- imposing on all 6-year-old children an obligatory yearly pre-school preparation as of 1 September 2004, with a view to equalising children's educational opportunities,

- a possibility of co-financing school textbooks and auxiliary books for blind children, children with poor eyesight, hard of hearing, and mentally impaired – because of a high price, such books are most often inaccessible to parents of such children – and of educating students in the scope indispensable for the maintenance of the sense of national, ethnic, or language identity.

Supplementary meals for children

384. The difficult economic situation and the crisis on the job market affect the situation of children. Data of the Chief Office of Statistics (GUS) indicates that in 2000 the estimated number of persons between the ages of 7 – 19 years living in families with incomes below:

- the so-called statutory poverty threshold – amounted to approx. 1.6 million,
- relative poverty threshold – amounted to approx. 2 million,
- existence minimum – amounted to approx. 1.0 million.

A bad financial situation of the family may lead to undernourishment of children, negatively influencing their psychological and physical development and resulting in a decrease of their educational opportunities. Hence the project of dispensing supplementary meals to school students, implemented by schools with a view to ensuring students proper conditions for life and development, is an important task of the social policy of the State. Since 1996 an earmarked reserve has existed in the State budget, used for providing financial assistance to communes in the area of supplementary meals for students. The resources are at the disposal of the Minister of the Economy, Labour and Social Policy. According to data of the Chief Office of Statistics, over 6 million 800 thousand students were taught in 33 757 schools of all types in the school year 2000/2001. 8 854 schools (26.23% of all schools) possess school cafeterias, while different forms of supplementary meals (dinners, other forms) were used by the total of 1 708 339 students (24.98% of all school students). In addition, in 1 142 cafeterias in dormitories and hostels, meals were eaten by the total of 120 013 students.

The "Government Programme of Assisting Communes in Providing Supplementary Meals for Students" was implemented in the period 2002 – 2003. Its aim is to limit the undernourishment of children and young persons – students of primary and junior high schools – from low income families or families in a difficult situation, with a special emphasis on students from areas of high unemployment and from rural communities. Resources planned for this purpose in the earmarked reserve of the State budget amounted in 2002 to 160 million PLN. The programme envisages that resources for the supplementary meals should additionally come from the budgets of communes, the Agency of the Agricultural Market, payments by parents or guardians, and from other sources.

Assistance in the form of a meal, especially a warm one, is granted upon a motion of parents, guardians of the student, foster parents, a social worker, school head teacher, or another person who possesses information on the student in need of such assistance. If such assistance is granted from public resources, it must be granted on the basis of an administrative decision. The commune may not refuse assistance to the student in the form of one meal. The realisation of this task may be commissioned to another subject or a point of dispensing meals may be set up in a school or in another place in the territory of the commune.

The programme also provides an opportunity for granting subsidies to communes for the creation of additional points of dispensing meals in schools, with the assumption that the subsidy for the creation of one point does not exceed 10 000 PLN. The number of newly created points of dispensing meals in individual Voivodeships varies from 17 to 193. According to the data of

the Ministry of the Economy, Labour and Social Policy, in 2002 were created 1 308 new point of dispensing meals for students. It is the task for the following years to maintain and increase this number. In total within the programme there are 18 434 points of dispensing meals, including 11 732 cafeterias and 6 702 rooms for the preparation of meals. Supplementary meals were dispensed to students of primary and junior high schools from low-income families. In 2002 supplementary meals were offered to 1 002 493 students, including 628 699 ones in rural areas. According to the preliminary data of the Ministry of the Economy, Labour and Social Policy, in the first quarter of 2003 supplementary meals were offered to 920 817 students.

Health care

385. With a view to implementing the right to life, the *Law of 23 January 2003 on Common Insurance in the National Health Fund* creates an opportunity for all children to take advantage of health care benefits financed from public resources irrespective of the children's personal situation. Children until the attainment of 18 years of age are provided health care benefits free of charge irrespective of the eligibility to health insurance. By health care benefits granted to children are understood also medications dispensed in accordance with principles stipulated in a law.

386. According to the Ombudsman for Children, there are still negative phenomena in the field of implementing the child's right to health care, such as: abandonment of the implementation of the programme of school medicine, lack of access to some medications used in the treatment of chronic diseases caused by changes in the method of refunding, or limitations in the field of additional care over a child taken by the family in health care units.

In connection with the above allegations of the Ombudsman for Children, it must be explained that the implementation of the "programme of school medicine" contained in the Government Document "*Premises of the System 'Preventive Health Care for Children and Young Persons in the Learning and Educational Environment'"* was not abandoned but delayed. As a result of numerous comments submitted, the document was sent for re-preparation. Following amendments made to it, it will be adopted by the Council of Ministers by the end of 2003. The general objective for the years 2002 – 2005 is the creation of conditions and tools for the improvement of the quality of preventive health care for school students.

As to the lack of access to some medicines used in the treatment of chronic illnesses, it has to be stated that in fact in the period 1995 – 2003 the system of refunds of medicines was amended a few times. To the list of refunded medications were introduced new generic medicines and thus the accessibility of such medicines increased. At present the list of basic and supplementary medications and the list of medications used in chronic diseases is determined by the Minister of Health by means of a regulation. Medications enumerated in these lists are dispensed to patients by physician's prescriptions on payment of a lump sum, for free or for 30% or 50% of the price of the medication – to the amount of the defined price limit. Lists of refunded medications are updated at least twice yearly, within the financial capabilities of the National Health Fund. The list of chronic illnesses was established in 1998 and so far has undergone slight modifications. It also comprises childhood diseases, such as congenital metabolic syndromes, asthma and chronic bronchial and pulmonary syndromes, etc. Medications

used in the treatment of these diseases are subject to refunds within the financial capabilities of the National Health Fund. An extension of the list of medications through an introduction of new products and an extension of the list of chronic illnesses is dependent on financial resources available.

Poland endeavours to implement the right of the child to additional parental care during hospital treatment, contained in the Charter of the Rights of the Child. The *Law of 30 August 1991 on Health Care Units (Journal of Laws of 1991 no. 91 item 408 as amended)* defines the rights of the patient, which provide that in around-the-clock or day-care health care units offering health care services, the patient has the right to additional nursing care conducted by a close person and to personal, telephone or correspondence contact with persons outside. A provision to this effect has been in force since 1997. The majority of hospitals observe the provisions of the law. In the event of identifying violations as to additional care over a child, the Minister of Health takes decisive action with a view to verifying the allegations put forward and eliminating identified irregularities.

Sexual education

387. The introduction of sexual education into schools and educational facilities is an implementation of the right to information, contained e.g. in the *Convention on the Rights of the Child.* Its introduction into school curricula is mandatory also under *the Law on Family Planning [...]*.

Sexual education is an element of educational classes "Education for life in the Family", which take place in grades 5 and 6 of primary school, in junior high schools, and in schools over the junior high level to the extent of 14 hours (including 5 hours divided into groups of girls and boys) and to the extent of 10 hours for students from schools formerly above the primary school level.

Participation of students in the classes is not mandatory, classes are not subject to a grade. Decisions on the participation in classes of minor students are made by parents upon obtaining prior knowledge of the curriculum; students who have attained the age of majority make decisions on their own. The school transcript does not record participation in the classes, and qualifications of teachers to conduct the classes are identified on the basis of generally binding regulations.

It is the duty of the school to disseminate full and honest information, in accordance with the state of knowledge, free from prejudices and stereotypes. It is the duty of the teacher to adjust the contents and methods of work with the class to the age and psychosocial and emotional development of students.

388. Sexual education aims e.g. at providing young people with the opportunity to get to know the human body and the changes taking place in it, as well as to accept their own sexuality, contradict stereotypes and myths about sex, affect changes in the attitude towards "otherness", including sexual minorities, teach tolerance and openness. Moreover, it shapes the capability of defending one's intimacy and respect for the body of another person, it protects against the

destructive impact of others and indicates possibilities of using the system of care and counselling for children and young persons. At the same time, it teaches responsibility for decision-making and shapes health-conscious, pro-social and pro-family attitudes.

The school is likewise obliged to implement preventive tasks related to:

- sexual initiation, its conditions and consequences and the risk of an early initiation,
- family planning, prevention of unwanted pregnancy and a possibility of obtaining support and assistance,
- methods of fertility recognition,
- contraceptives and their health, psychological and ethical aspects (teaching about contraceptives within the "education for life in the family" subject is carried out with the use of full scientific knowledge on methods of preventing pregnancy – so far teaching of conscious procreation was confined to natural methods of fertility recognition),
- prevention of sexual violence,
- sexually transmitted diseases, including HIV/AIDS.

389. The prevention of domestic violence, sexual violence towards children and issues of commercial sexual exploitation of children – child pornography is an extremely important field of prevention activities of the school taken within the field of sexual education.

A teacher's duties include disseminating information about these problems and teaching children assertive behaviour, drawing a line, refusing, and indicating where they can find help. The school has become obliged to inform students about the possibilities of obtaining psychological, pedagogical and therapeutic assistance. This knowledge and skills prevent children from being sexually exploited and make them aware of their rights.

390. Each school is obliged to prepare school programmes of education on and prevention of problems of children and young persons. Both programmes must be compatible with the content of educational classes "Education for life in the family" and must be a result of the diagnosis of the educational environment. These programmes are adopted by the teachers' council, following consultations from the parents' council and students' self-government. Teachers of the "Education for life in the family" subject have the right to choose the curricula and textbooks.

Registration of children

391. No changes have occurred in this respect as compared with the period under consideration in the previous report – it is still obligatory to notify the Registrar's Office about the birth of a child within 14 days of its birthday, or within 3 days if the child was stillborn. A birth certificate is prepared on the basis of a testimonial issued by a physician or a health care unit. A birth certificate of a child of unknown parents is prepared on the basis of a decision of a guardianship court.

Citizenship

392. A child acquires Polish citizenship:

- by birth to parents being Polish citizens or if one of them is a Polish citizen, and the other is unknown, or his or her citizenship is undefined or has no citizenship.

- when the child was born or was found in Poland, and the parents are unknown, their citizenship is undefined or have no citizenship.

If one of the parents is a Polish citizen, and the other is a citizen of another state, the child acquires Polish citizenship by birth, and the parents in a testimonial issued in agreement before the relevant organ within 3 months of the child's birthday may choose for him a citizenship of the foreign state of whose one of the parents is a citizen if under the law of this state the child acquired its citizenship. The child who acquired foreign citizenship in this way, acquires Polish citizenship if upon attaining the age of 16 years, and within 6 months of the day of attaining maturity, he makes a relevant declaration before a relevant organ and the organ will issue a decision on accepting the declaration.

393. Some questions on the implementation of the rights of the child were discussed in the information on articles 6, 9 and 18. It has to be indicated also that in September 2002 Poland presented an updated and very detailed report on the implementation of the rights of the child in Poland to the Committee of the Rights of the Child.

Article 25 – Civil rights

394. The Republic of Poland ensures the implementation of the rights defined under article 25 of the International Covenant on Civil and Political Rights to all Polish citizens. Polish citizenship shall be acquired by birth to parents being Polish citizens and in other cases specified by a law. A Polish citizen cannot lose Polish citizenship except by renunciation thereof.

At present, in connection with bringing Polish election law in line with the requirements of the European Union legislation, a possibility of granting some electoral rights to citizens of the European Union permanently residing in Poland is being considered.

395. According to the Constitution, a Polish citizen has the right to participate in a referendum and the right to elect the President of the Republic of Poland, deputies, senators, and representatives for organs of local self-government if, no later than on the day of the vote, he has attained 18 years of age, and has not been subject to legal incapacitation or deprived of public or electoral rights by a final judgment of a court. In accordance with the amendment to the Executive Penal Code, which entered into effect on 1 September 2003, restriction of the civil rights and freedoms of convicted persons can only arise from a law and from a valid ruling issued on its basis (article 4 § 1 of the Executive Penal Code), rather than – as happened until then – also by virtue of regulations issued on the basis of a law.

396. In the period from the previous report, changes have been made in legal acts regulating elections to representative organs and principles according to which a nationwide and a local referendum is conducted. Apart from the basic regulations contained in the Constitution, detailed norms in this field are included in the following laws:

- *The Law of 27 September 1990 (Journal of Laws of 2000 no. 47 item 544) on the Election of the President of the Republic of Poland* – the election is equal, direct, conducted by secret ballot, and universal. Each Polish citizen who no later than on the day of the vote has attained 18 years of age, unless deprived of public rights by a final judgment of a court, the Tribunal of the State or is legally incapacitated, has the right to vote in the election.

- *The Law of 12 April 2001 on the Election to the Sejm of the Republic of Poland and to the Senate of the Republic of Poland* (Journal of Laws of 2001 no. 46 item 499) – elections to the Sejm numbering 460 deputies elected in multi-mandate constituencies are universal, equal, direct, proportional and conducted by secret ballot, while elections to the Senate with 100 senators are conducted according to the majority principle, and are universal, direct and conducted by secret ballot.

- *The Law of 16 July 1998 on the Election to Commune and District Councils and Voivodeship Assemblies* (Journal of Laws of 1998 no. 95 item 602) – elections are conducted by secret ballot, universal (the right to elect for the given council is granted to each Polish citizen, who no later than on the day of the vote has attained 18 years of age and permanently resides in the area of this council), direct and equal.

- *The Law of 20 June 2002 on the Direct Election of Commune Heads, Town and City Mayors* (Journal of Laws of 2002 no. 113 item 984) – elections are equal, universal (the right to elect is granted to everyone who has the right to elect for the commune council – article 3 paragraph 1 of the *Law on the Direct Election of Commune Heads, Town and City Mayors*), direct and conducted by secret ballot.

- *The Law of 15 September 2000 on a Local Referendum* (Journal of Laws of 2000 no. 88 item 985) – persons permanently residing in the area of a given unit of the local self-government with the right to elect to the legislative organ of this unit, express through the vote their will as to the method of resolving an issue related to this community, which is within the scope of tasks and competences of organs of a given unit or in dismissing a legislative organ of this unit, and in the case of a commune also of dismissing a commune head (town or city mayor); and

- *The Law of 14 March 2003 on a Nationwide Referendum* (Journal of Laws of 2003 no. 57 item 507).

397. The highest electoral organ competent in matters of holding elections is the State Electoral Commission appointed under the *Law on the Election to the Sejm of the Republic of Poland and to the Senate of the Republic of Poland.*

398. Since the time of the consideration of the previous report in 1999, in Poland have been held elections for the President (8 October 2000), elections to the Sejm and Senate (23 September 2001), elections to organs of local self-government units (27 October 2002), and first

direct elections for the positions of the commune head, town and city mayor (27 October and 10 November 2002). These last elections increased the influence of the electorate on the composition of organs of self-government, which was the final element of a comprehensive reform of the electoral system, commenced still in 1989 (Annex 7 presents data on election results).

399. The elections for the President of the Republic of Poland with the result of 53.9% of valid votes were won once more by Aleksander Kwaśniewski, who thereby took presidential office for the second and final term.

As a result of parliamentary elections, a significant change in the composition of the Sejm and Senate took place. 460 deputies were being elected from among 7 508 deputy candidates entered on 403 district lists in 41 constituencies, while 100 senators were elected from 429 candidates to the Senate. At present (as of 30 July 2003), the 3 major groups in the Sejm are the Democratic Left Alliance – Labour Union (208 mandates in 460), Citizens' Platform (56 mandates in 460), and Law and Justice (43 mandates in 460).

Attendance during the parliamentary elections of 1997 was an average of 47.93% to the Sejm and 47.92% to the Senate, in 2001 it was, respectively, 46.29% and 46.28 %. Attendance during elections for self-governments in 1998 was at the level of 44.18%, and in 2002 – 44.23%. Attendance during the direct elections for commune heads, town and city mayors was only 40.9 %. More interest among the general public was paid to the presidential elections, where attendance in 2000 was 61.08 % of citizens with electoral rights.

Assistance measures for the disabled and other persons in a specific life situation

400. Action is taken with a view to providing an opportunity of exercising electoral rights to all interested parties, including especially the disabled. Before every election, the State Electoral Commission takes effort to facilitate the participation of disabled voters in the vote, among others through providing them with transportation means to reach voting stations, situating voting stations in easily accessible buildings, constructing driveways facilitating access to a voting station on a wheelchair, etc. Such action, although not very common, is taken in many communes on a large scale and brings visible results, being of real help to those persons.

401. New solutions assuring assistance measures for the disabled were introduced in 2001. In accordance with them, rooms earmarked for seats of regional and district polling committees should be easily accessible to the disabled, and the duty of providing voting stations of district polling committees adjusted to the needs of disabled voters rests with the commune head, or town (city) mayor. For each 15,000 inhabitants there should be at least 1 station which fulfils technical requirements and is furnished in a way which takes into account the needs of disabled voters, while in each commune there should be at least one such station. Technical conditions to be met by such a station have been defined to make the vote convenient for voters on wheelchairs: the height of the ballot box (not exceeding 1 meter), the height of posting additional official election announcements (0.9 m), and dimensions of the room or screens guaranteeing the secrecy of the vote. Each disabled voter permanently residing in a different polling district may submit a petition to the office of the commune to be entered on the list of voters in a district where the voting station has been specially adjusted to the needs of the disabled, not later than on the 10th day before the vote.

402. Another new legal solution is a possibility of using an auxiliary ballot box in hospitals and social care institutions where polling districts were created. This facilitated participation in the elections of voters who because of their health condition cannot take part in the elections in a voting station created in the hospital or a social care institution; this is an exception to the rule that a vote can be cast personally only in a voting station. The use of an auxiliary ballot box looks as follows: at a specified time, a district polling committee discontinues the vote in the voting station and at least two of its members – along with the auxiliary ballot box, a list of votes and ballot cards – leave for the patients or inmates who have expressed willingness to vote outside the polling station.

403. The regulations described above concerning assistance measures for disabled persons or persons in hospitals and social care institutions apply also during nationwide referendums. In spite of the petition filed during legislative work on behalf of the State Electoral Commission, analogous legal solutions were not introduced into the *Law on the Election to Commune and District Councils and Voivodeship Assemblies* during its amendment in 2002. Nor are they included in *the Law on the Election of the President of the Republic of Poland.* If this law were to be amended before the next election for the President of the Republic of Poland, the State Electoral Commission will announce the problem of supplementing it with analogous legal regulations. During legislative work on the *Law on the Nationwide Referendum*, the State Electoral Commission suggested allowing votes by proxy, which would be of significant importance for the disabled. These suggestions, however, were not supported by organisations and circles of the disabled and were not accepted during the work on the legislation.

404. In turn, a solution which takes into account needs of persons with impaired eyesight, hard of hearing and other disabled persons is the possibility of a disabled voter's using the assistance of another person, which is a departure from the rule of a secret ballot. Regulations allowing for this possibility are included in all electoral laws.

405. "Pictorial" ballot cards are not used in Poland since the problem of illiteracy among voters or the problem of voters not knowing the Polish language, in which are printed ballot cards and other official election materials does not exist. For the same reason, there is no need, either, to print ballot cards in languages of national minorities, since voters who belong to those minorities know the Polish language.

406. Polish citizens who belong to national minorities participate under general principles in the election of the President of the Republic of Poland, in the election to the Sejm and to the Senate of the Republic of Poland and in elections to commune and district councils and Voivodeship assemblies, as well as in direct elections of commune heads, town and city mayors. This applies also to the participation in a nationwide referendum and in local referendums. During the election to the Sejm, upon a motion by the electoral committee established by voters associated in registered organisations of national minorities, the electoral committee reporting to the State Electoral Commission is granted a preferential waiver of the requirement to reach at least a 5% threshold of valid votes cast in the country in order for its lists of candidates in districts to participate in the division of mandates. Taking advantage of this preference, the German minority obtained 2 deputy mandates in the election of 2001. Registered organisations of national minorities in the procedure of elections to legislative and executive organs of units of local self-government, similarly to all associations of another character, may submit lists of

candidates for councillors and candidates for commune heads, town and city mayors. Statutory organs authorised to represent those organisations outside may fulfil the function of electoral committees if they notify about this intention the State Electoral Commission or the relevant electoral commissioner (if the participation in elections is to comprise a territory of at least two Voivodeships).

407. Similarly, organisations of national minorities of a nationwide scope may constitute a subject authorised to participate in a campaign in a nationwide referendum, if they fulfil the requirements set for associations and social organisations defined in the *Law on the Nationwide Referendum*.

Access to the public service

408. Under the Constitution, Polish citizens enjoying full public rights shall have a right of access to the public service based on the principle of equality. Under *the Law of 18 December 1998 on the Civil Service* (Journal of Laws of 1999 no. 49 item 483) everyone who fulfils necessary requirements, i.e. is a Polish citizen, enjoys full public rights, has not been penalised for an intentionally committed offence, possesses qualifications required in the civil service, enjoys a spotless reputation and has qualifications necessary for work at a given position, may be employed in the civil service.

Article 26 – Equality before the law and equal legal protection

409. Of fundamental importance for the guarantee of equality before the law and equal legal protection are the provisions of article 32 of the Constitution, according to which all persons are equal before the law, all persons have the right to equal treatment by public authorities, and no one may be discriminated against in political, social or economic life for any reason whatsoever.

In connection with the above open formula prohibiting discrimination for "any reason whatsoever", it seems that the concern of the Committee caused by the elimination from the text of the draft Constitution of a reference to sexual orientation, is unfounded.

410. For the purpose of equalising opportunities of persons belonging to groups especially exposed to discrimination, including the disabled, children, pregnant women, and elderly persons, the Constitution defines certain special rights (e.g. articles 67, 68, 69), reflected in relevant legislative regulations, which take into account the special needs of those groups.

411. The prohibition of discrimination was also included in individual laws.

The Labour Code

412. The Labour Code deems as inadmissible "any discrimination, direct or indirect, in employment, especially on account of sex, age, disability, race, nationality, beliefs, especially political or religious ones, and membership in a trade union".

On 25 November 2002 was submitted to the Sejm a government draft amendment to the Labour Code. The draft envisages an extension of already binding regulations on the prohibition of discrimination on account of sex (including the right to compensation in the event of the employer's violation of the principle of equal treatment in employment) – onto cases of

discrimination in employment on account of age, disability, racial or ethnic origin, religion, sexual orientation, as well as an introduction of a definition of direct discrimination; it also makes more precise the notion of indirect discrimination. In addition, the draft envisages imposing on the employer the obligation to create in the workplace an environment free from all forms of discrimination. On 9 January 2003 took place the first reading of the draft legislation in the Sejm and work is under way in the Sejm commissions.

Sexual harassment

413. The draft legislation includes e.g. a definition of sexual harassment. Article 18^{3a}§ 4 of the draft legislation lays out that discrimination on account of sex is constituted by every unacceptable behaviour of a sexual character or other behaviour referring to the sex of an employee, whose purpose or result was the violation of the employee's dignity or denigration or humiliation; such behaviour can include physical, verbal or non-verbal elements (sexual harassment).

414. Currently under the law an employee who encounters discriminatory action consisting in sexual harassment on the part of the employer, superiors or co-workers, may exercise his rights on the basis of the provisions of the Penal Code. Pursuant to article 199 of the Penal Code, whoever, abusing a relationship of dependence or by taking advantage of a critical situation, subjects such a person to sexual intercourse or makes him/her submit to another sexual act or to perform such an act shall be subject to the penalty of deprivation of liberty for up to 3 years. The perpetrator is held liable even if the employee consented to his behaviour, if the employee was in a relationship of dependence from the employer or was in a critical situation. An expression of consent in such circumstances is not regarded as voluntary.

415. An example of taking advantage of such regulations is the trial begun on 18 February 2003 before the Warsaw labour court for compensation for sexual harassment at the workplace. The woman who maintains that she has been harassed in the workplace by her boss, informed the president of the company about the fact. Since there were witnesses to the event, an in-house investigation confirmed her allegations. As a result, both the director and the harassed woman were dismissed. The injured woman resolved, however, to exercise her rights in court, invoking article 11 of the Labour Code which obligates the employer to respect the dignity of the employee. Apart from an apology, she also demands a sum of 7 million PLN by way of compensation. At the motion of the attorney of the defendant company, the trial will proceed without the participation of the public.

Employment

416. As part of the amendment to the *Law of 14 December 1994 on Employment and Counteracting Unemployment (Journal of Laws of 2001 no. 89 item 973)* article 12 paragraph 3a was introduced into it, which stipulates that "information of the employer on a vacant job position or a position of vocational training cannot include requirements discriminating against candidates on account of sex, age, disability, race, nationality, beliefs, especially political or religious ones, and membership in a trade union".

417. Article 66 introduces sanctions for a refusal to employ a candidate at a vacant job position or a position of vocational training – on account of sex, age, disability, race, nationality, beliefs, especially political or religious ones, and membership in a trade union.

From 6 February 2003 new provisions of the *Law on Employment and Counteracting Unemployment* have been in force, introducing e.g. a more severe liability for non-observance of prohibitions of discrimination, envisaging financial sanctions for their non-observance (from 3,000 PLN), and prohibiting discriminatory practices in employment agencies.

418. The provisions of the Labour Code currently in force prohibit the use of discrimination on account of sex during the selection of candidates for trainings. The amendment to the Labour Code, in turn, envisages an extension of the prohibition of discrimination during the selection of candidates for trainings also on account of other criteria, such as e.g. age, disability, racial or ethnic origin, religion, denomination, and sexual orientation.

Criminal law regulations

419. Apart from criminal law regulations applicable in the case of acts violating the prohibition of supporting national, racial or religious hatred discussed at article 20, the Penal Code includes a provision penalising the use of violence or making unlawful threat towards a group of person or a particular individual because or their national, ethnic, political or religious affiliation, or because of their lack of religious beliefs. This offence is subject to the penalty of the deprivation of liberty for a term of between 3 months and 5 years.

420. Statistical data related to proceedings in cases connected with the dissemination of racial or racially-motivated violence indicates that 43 proceedings were instituted in 1999, out of which 35 persons were convicted. In 2000 the data was, respectively, 57 and 29, and in 2001 - 57 and 25.

Statistical information for the year 2002

Legal qualification	Offences identified	Result of proceedings – including		
		Motion for an indictment	Motion for discontinuance for lack of detection of the perpetrator	Referral to a family court
art. 119 § 1 and 2	8	6	2	-
art. 256	8	6	1	1
art. 257	17	11	5	1

The discrepancy between the number of instituted proceedings and the number of convicting judgements stems e.g. from the fact that part of these proceedings were discontinued because the perpetrator had not been identified – this most often relates to putting up posters and disseminating handbills. Fewer and fewer cases are discontinued on account of a negligible social harm of the act, conditional discontinuance of the proceedings with assigning a probation period for the perpetrator – mostly from one to two years – is used more frequently.

421. The Police, whose duties include among others reaction to cases of manifestations of racial intolerance and discrimination, cooperate (especially the Office of the Criminal Service of the National Headquarters of Police) with the Team for National Minorities, conducting e.g. a monitoring of offences committed to the detriment of the Roma. This monitoring was extended from 2003 onto offences committed also to the detriment of other minorities.

422. The monitoring of groups disseminating extremely nationalistic and racist slogans was conducted by the State Protection Office (UOP). Its competences included an identification and prevention of actions of domestic organisations and persons allowing the use of violence or terror as means of political struggle with the constitutional order in force in Poland or with the public order. This monitoring included publications and Internet websites, rock concerts, dissemination of propagandistic materials, etc. In the event of an arrest of a person suspected of disseminating materials propagating racially motivated hatred, a court expert made assessment about whether the dissemination of those materials was a promotion of a neo-fascist ideology. In the case of a positive opinion of a court expert, the State Protection Office instituted criminal proceedings. In the period from 1996, on the basis of proceedings conducted by the State Protection Office, there were a few convicting judgements for the promotion of fascism. In 1996, 50 neo-Nazi, radical nationalist, and anti-Semite publications issued were identified in Poland. As a result of the action taken by the State Protection Office, their number dropped to 10 titles identified in 2000.

The above duties of the State Protection Office were taken over by the Agency of Internal Security established in its place.

Combating corruption

423. On 17 September 2002 the Council of Ministers adopted the "Corruption Prevention Strategy", containing a number of multi-directional and long-term projects aimed against the phenomenon of corruption, whose implementation is to facilitate the achievement of three main objectives: efficient detection of corruption offences, implementation of effective mechanisms of combating corruption in public administration as well as raising public awareness and promote ethical models of action.

On 1 July 2003 more efficient legal solutions for fighting corruption were introduced into the Penal Code, aiming primarily at tearing apart the criminal solidarity between the persons offering and accepting the benefit and assuring a more efficient recovery of property obtained in the course of an offence.

In 2002 Poland ratified conventions of the Council of Europe – the Civil Law and the Criminal Law Convention on Corruption.

Disabled persons

424. The process of the systemic transformation, commenced in Poland in the late 1980s, brought about a positive change in the approach to the issue of disabilities. Legal foundations were created for actions that consistently lead to equalising opportunities of disabled persons and to facilitating their active participation in the life of the society. For this purpose the experiences of international organisations, such as the United Nations Organisation, the International Labour

Organisation, the Council of Europe, or the European Union, were taken advantage of. Polish legislation related to the disabled is based on the principle of non-discrimination, integration and equalising opportunities. The principle of social dialogue is adhered to in the process of creating legislation and adopting priorities of action.

425. A significant role in preventing discrimination and equalising opportunities of disabled persons is played by the "*Charter of Rights of the Disabled"*, passed in 1997 by the Sejm of the Republic of Poland. The Charter, evoking a number of UN Conventions and resolutions and other acts of international and domestic law, recognises the right of the disabled to an independent, individual and active life, free from manifestations of discrimination, and by enumerating at the same time ten rights, indicates the major directions of activities. The Charter imposes an obligation on the Government to provide annual information on activities conducted with a view to implementing those rights.

426. On 27 August 1997 the *Law on Occupational and Social Rehabilitation and Employment of the Disabled* (Journal of Laws of 1997 no. 123 item 776; as amended) was passed; it defined the tasks, the system of their financing and the subjects implementing them. The Government Plenipotentiary for the Disabled functions at the Ministry of the Economy, Labour and Social Policy. The State Fund for the Rehabilitation of the Disabled (PFRON) was also created, which functions on the basis of a quota – levy system.

The new most important elements of the law are as follows:

- a new definition of a disabled person in line with world standards,
- a system of legal adjudication on the degree of disability (for purposes other than connected with disability benefits),
- a possibility of setting up specialist training and rehabilitation centres for persons who on account of their disability have a more difficult or no access to trainings in other centres,
- a new form of protected employment in the so-called vocational activity plants, apart from the existing sheltered employment facilities,
- the possibility of ordering by the State Fund for the Rehabilitation of the Disabled of tasks related to occupational and social rehabilitation to non-governmental organisations,
- establishment of the National Consultative Council for the Disabled – an advisory organ of the Government Plenipotentiary for the Disabled, constituting a forum of cooperation for the disabled for organs of government administration, local self-government and non-governmental organisations. The Council comprises representatives of 15 non-governmental organisations,
- a change in the system of support to the disabled through a stronger connection between the assistance granted to employers with the fact of incurring additional costs of employment of a particular disabled person, also in the open labour market.

The law entrusts the local self-government with lots of the tasks in the field of occupational and social rehabilitation and employment of the disabled and authorises local governments to cooperation in this respect with non-governmental organisations. It also assures the functioning of a protected labour market, regarding this form of employment as appropriate primarily for persons with a significant disability level, and at the same time includes mechanisms ensuring wider access of all disabled persons to an open labour market, which offers the most opportunities for their integration and inclusion into the life of the society.

427. A more comprehensive integration of the disabled in the society was made significantly easier by the liquidation of urban planning and architectural barriers, co-financed from the resources of the State Fund for the Rehabilitation of the Disabled. Of substantial importance in the process of social integration of the disabled was also the government "Plan of Action for the Disabled and their Integration in the Society", adopted by the Council of Ministers in October 1993 and implemented until 1999. The discontinuance of the implementation of the programme was connected with the transfer of many of the competences from the level of state government to local self-government as a result of the reform of the country's administrative system.

428. In accordance with the provisions of the Labour Law, the employer should ensure the adaptation of workplaces and access to them to the needs and possibilities of disabled employees, which stem from their impaired ability.

Extending the competences of the Plenipotentiary for an Equal Status of Women and Men

429. In June 2002, the Council of Ministers made a decision about the extension of competences of the Government Plenipotentiary for an Equal Status of Women and Men onto issues connected e.g. with the prevention of discrimination on account of race, ethnic origin, religion, beliefs, age, and sexual orientation. One of the duties imposed on the Plenipotentiary is the preparation of a draft legislation concerning the creation of an office for the prevention of discrimination on account of race, ethnic origin, religion, beliefs, age, and sexual orientation. The draft is currently subject to consultations.

430. The duties of the Plenipotentiary include the implementation of the resolutions of the *World Conference on Racism, Racial Discrimination, Xenophobia and Related Intolerance* held in Durban in the period 31 August – 7 September 2001. The Plenipotentiary has commenced the implementation of relevant procedures and has taken over the coordination of activities aiming at the execution of resolutions contained in the documents of the above Conference, including the preparation of the National Action Plan and its subsequent implementation, and submitting periodical reports to the UNO and the Council of Europe on the progress of the implementation of the Plan. The text of the Durban Declaration has been translated into the Polish language. It is available on the official website of the Plenipotentiary.

Currently, preliminary work is in progress with a view to preparing the National Action Plan until December 2003.

431. Within the "Enhancement of Policies of Anti-discrimination" Phare project for the years 2003–2004 extensive action has been planned with a view to recognising reasons for and

the scope of manifestations of discrimination in Poland and to raising awareness of employees of public administration. Poland also acceded to the EU Plan of Action for the Elimination of Discrimination for the years 2001-2006.

432. Detailed information on eliminating discrimination was provided during the presentation of the "*XV and XVI Report of the Republic of Poland on the Implementation of the Provisions of the Convention of the Elimination of All Forms of Racial Discrimination*", which took place in the period 14-17 March 2003 before the UN Committee for the Elimination of Racial Discrimination.

Article 27 – Protection of minorities

433. The Republic of Poland ensures to citizens belonging to national and ethnic minorities the freedom of preservation and development of their own language, preservation of customs and tradition and the development of their own culture. National and ethnic minorities have the right to establish their own educational and cultural institutions and institutions serving the purpose of protecting religious identity as well as to participate in the resolution of issues concerning their cultural identity. The following national minorities are regarded as national minorities in Poland: Belarussian, Czech, Lithuanian, German, Armenian, Russian, Slovak, Ukrainian, and Jewish. The following minorities: Karaims, Lemka, the Roma, and Tartars are regarded as ethnic minorities. The Kashubian language is regarded as a regional language.

National Population and Housing Census

434. The *National Population and Housing Census* was conducted in the period 21 May - 8 June 2002. The census form included e.g. two questions related to nationality: what nationality a given person felt he belongs to and what language/languages are used most frequently at home.

435. Nationality was surveyed in the census as a declarative individual feature of each person, based on a subjective feeling, expressive of the person's emotional, cultural or genealogical (on account of the parents' origin) affiliation to a particular nation. Census-takers took down in the census form what the respondent declared, and in the case of respondents filling out the form by themselves – it was an answer written down personally by the respondent. In each case only one definition of nationality was required.

Statistical information

436. Prior to the census, the size of national minorities was estimated at approx. 2-3% of the general population.

437. Results of the General National Census of the Population and Homes indicate that 96.74% of the total number of the population of Poland declared their nationality as Polish, and 1.23% (i.e. 471,500) as belonging to a nationality different than Polish. It was impossible to define nationality with regard to 2.03%, mainly because of a lack of responses. From among persons declaring a nationality other than Polish, 444,600 have Polish citizenship, which accounts for 94.30% of this group, while 25,700 persons, i.e. 5.45%, provided no answers.

438. During the census, the following number of citizens of the Republic of Poland declared their belonging to a nationality other than Polish (only national and ethnic minorities were taken into account):

- 147 094 citizens of the Republic of Poland declared German nationality (Opolskie Voivodeship - 104 399, Śląskie - 30 531, Warmińsko-Mazurskie - 4 311, Pomorskie - 2 016, Dolnośląskie - 1 792, and Zachodnio-Pomorskie - 1 014),

- 47 640 citizens of the Republic of Poland declared Belarussian nationality (Podlaskie Voivodeship - 46041),

- 27 172 citizens of the Republic of Poland declared Ukrainian nationality (Warmińsko-Mazurskie Voivodeship - 11 881, Zachodnio-Pomorskie - 3 703, Pomorskie - 2 831, Dolnośląskie - l 422, and Podlaskie - l 366),

- 12 731 citizens of the Republic of Poland declared their belonging to the Roma ethnic minority (Małopolskie Voivodeship - l 678, Dolnośląskie - l 319, Mazowieckie - l 291, Śląskie - l 189, Wielkopolskie - l 086, Łódzkie - l 018),

- 5 850 citizens of the Republic of Poland declared their belonging to the Lemka ethnic minority (Dolnośląskie Voivodeship - 3 082, Małopolskie - l 580, and Lubuskie - 784),

- 5 639 persons declared Lithuanian nationality (Podlaskie Voivodeship - 5 097),

- 3 244 citizens of the Republic of Poland declared Russian nationality (Mazowieckie Voivodeship - 614 and Podlaskie - 511),

- l 710 citizens of the Republic of Poland declared Slovak nationality (Małopolskie Voivodeship - l 572),

- l 055 citizens of the Republic of Poland declared Jewish nationality (Mazowieckie Voivodeship - 397 and Dolnośląskie - 204),

- 447 citizens of the Republic of Poland declared their belonging to the Tartar ethnic minority (Podlaskie Voivodeship - 319),

- 386 citizens of the Republic of Poland declared Czech nationality (Łódzkie Voivodeship - 111),

- 262 citizens of the Republic of Poland declared Armenian nationality (Mazowieckie Voivodeship - 73),

- 43 citizens of the Republic of Poland declared their belonging to the Karaims ethnic minority (dispersed)

- 52 490 citizens of the Republic of Poland declared that in contacts at home they use Kashubian language (Pomorskie Voivodeship).

439. Aside from the question about a nationality, the form included a question on the language used in contacts at home. The use of the Polish language was declared by 97.8% of the total population, and as the only one by 96.5 %. The number of persons declaring the use of non-Polish languages in family contacts amounts in general to 1.47% of the total population, and it was most often stated that those languages are used interchangeably with Polish – 1.34%. Only 0.14% of the total population declared that they use at home exclusively one or two non-Polish languages. In the case of 2.02% of the total population it was impossible to define any data on the language used in conversations at home.

At the stage of studying the census results, 87 non-Polish languages (including local and regional dialects) were identified. The German language was mentioned by far the most often - 204,600 responses, followed by the English language - 89,900 responses.

Constitutional and under-constitutional guarantees for minorities

440. The Constitution contains two provisions important from the point of view of the protection of the identity of national minorities. In article 35 it ensures to Polish citizens belonging to national and ethnic minorities the freedom to maintain and develop their own language, maintain customs and traditions, and to advance their own culture. Furthermore, national and ethnic minorities have the right to establish their own educational and cultural institutions, and institutions serving the protection of religious identity; they have the right to participate in the resolution of matters concerning their cultural identity.

Moreover, the most important rights of persons belonging to national and ethnic minorities such as: freedom of thought, conscience and religion; the right to establish their own educational and cultural institutions and institutions whose aim is to protect religious identity; the right to the development of culture, religion, language, tradition and heritage; the right to a free exercise of religious practices; the right to learn the language of the minority and to ensure conditions for the organisation of education of both the language and in the language of the minority within the public education system; the right to access to public mass media; the right to a peaceful assembly; the right to association; a prohibition of discrimination and of the existence of organisations whose programme or activity assumes or allows racial and national hatred; the right to write first names and surnames as they sound in the language of the minority; the right to a free contact with compatriots in the country of residence and abroad and election prerogatives for election committees of minority organisations – are guaranteed by laws *on Guarantees of the Freedom of Conscience and Faith; on the System of Education; on Radio and Television Broadcasting; the Law on Assembly; the Law on Associations; the Penal Code*; *on the Change of First Names and Surnames; Law on Election to the Sejm and the Senate of the Republic of Poland*, and treaties on friendship and good-neighbourly relations with the Federal Republic of Germany, Ukraine, the Republic of Belarus, and the Republic of Lithuania.

The right to a free use of the language of the minority in private life and in public is confirmed in article 27 of the Constitution which stipulates that in the Republic of Poland the official language is the Polish language, but “this regulation does not violate the rights of national minorities arising from ratified international agreements”.

441. The questions of language are regulated in the law of 17 October 1999 *on the Polish Language*, which contains a declaration that its provisions do not infringe upon the rights of national and ethnic minorities as well as in the regulation issued upon the basis of this law by the Minister of Internal Affairs and Administration of 18 March 2002 *concerning cases when names and texts in the Polish language may be accompanied by versions translated into a foreign language*. The regulation stipulates, among others, that in localities where there are sizeable communities of national or ethnic minorities, names and texts in the Polish language may be accompanied by versions translated into the minority language.

442. From the moment of entry into force of the *Law on Associations*, i.e. from 10 April 1989 until the end of 1999, 143 associations of minorities were registered. This data has not changed significantly since then. Such associations were created by most of the national and ethnic minorities.

443. Work is in progress in the Sejm on a draft legislation concerning national and ethnic minorities in the Republic of Poland. The Council of Ministers in the *Stand for a Draft Legislation*, adopted on 30 April 2002, indicated the legitimacy and advisability of entry into force of this law. Currently, work is in progress in the extraordinary sub-committee composed of representatives of the following Sejm commissions: of National and Ethnic Minorities, Administration, Culture and Education.

444. The observance of the rights of minorities and their generally good situation is witnessed by the fact that the number of communications about violations of those rights filed to the Ombudsman has for some years amounted to around 30 annually. Furthermore, from among the 274 applications filed until the end of 2001 to the Government of the Republic of Poland by the European Court of Human Rights, only one was connected with the question of minorities. The case concerned an alleged violation by Poland of the right to free association, laid out in article 11 of the *Convention on the Protection of Human Rights and Fundamental Freedoms*. The plaintiff alleged that Polish courts, by refusing to register an association under the name "Union of People of Silesian Nationality", had violated the right to free associations. A hearing in this case took place on 17 May 2001. On 20 December 2001 the Court issued a judgement[12], in which, consenting with the position taken by the Government, it unanimously declared a lack of violation by Poland of the *Convention.* The plaintiff appealed against this decision, however, and in July 2003 there was a trial before the Great Chamber of the Court of Human Rights. The judgement should be known by the end of 2003.

445. Representatives of national and ethnic minorities are rarely objects of attacks or offences on the basis of their affiliation to any of those groups. Identified offences, e.g. to the detriment of the Roma, resulted in the majority from misunderstandings and disputes within local communities. The complexity of the problem lies also in the fact that cases have been noted of involvement of members of those communities in criminal activity, begging, etc. This assumption is confirmed by events carefully investigated by the Police on request of non-governmental organisations active in the field of human rights protection. Furthermore, signals

[12] Case of Gorzelik & Others vs. Poland *(Application no. 44158/98),* European Court of Human Rights, Judgment of 20 December 2001.

of minority rights violations or alleged racially and ethnically motivated offences contained in reports by non-governmental organisations (e.g. reports of Amnesty International, reports of the Helsinki Foundation of Human Rights) are analysed and verified on a regular basis.

Supporting the development of minority culture

446. Since 1989 the Minister of Culture has on a continuous basis provided assistance to social organisations with respect to fostering traditions and culture of national minorities. Through systematic earmarked subsidies from the state budget, he supports the organisation of cultural events by minority unions and associations and the issuing of small-circulation publications of minority press. Thanks to the support of the State, national minorities issue 35 periodicals, the most important of which are: German "Schlesisches Wochenblatt", Belarussian "Niwa", Ukrainian "Nasze słowo", Lithuanian "Aušra", Jewish "Dos Jidisze Wort – Słowo Żydowskie", Slovak "Život", Roma "Rrom p-o Drom", Lemka "Besida", Tartar "Rocznik Tatarski", and Armenian "Biuletyn OTK". They are important not only for their natural direct recipients from among minorities, but they also continue to play a more and more significant role for various, also opinion-making, and majority circles.

The duties of the Minister of Culture include attention to the preservation of the existing cultural potential, as well as the development of broadly construed cultural activity, including artistic activities of national minorities. As part of these basic cultural activities, organisations of national minorities maintain a few dozen artistic ensembles, including: amateur choirs, dancing ensembles, amateur theatres, and music bands; they run cultural education of the youth by organising seminars, courses, or artistic workshops, as well as disseminate knowledge on national minorities in Poland and their cultural tradition.

Apart from the aforementioned projects organised by associations of national minorities, the Minister of Culture finances also such important events for the promotion of the culture of national minorities as the Festival of Jewish Culture in Kraków or Festivals of Orthodox Music in Hajnówka. He also co-finances the scientific and educational projects of the Jewish Historical Institute – the Science and Research Institute in Warsaw and the "Pogranicze – sztuk, kultur i narodów" [Frontier – of Arts, Cultures and Nations] Centre in Sejny.

In the period under consideration, the Minister of Culture granted subsidies to organisations of national minorities in Poland to the total amount of approx. 38 million PLN.

Team for National Minorities

447. Attention should be paid to the functioning of the Team for National Minorities, an opinion-making and advisory organ of the Prime Minister. The Team provides a forum of dialogue between government administration and representatives of national and ethnic minorities. Representatives of government administration are permanent members of the Team, while representatives of organisations of national and ethnic minorities are invited to all meetings of the Team, and the composition is dependent on the subject matter of the meeting. The meetings devoted to problems of particular minorities are attended by representatives of organisations of those minorities, while meetings of interest for all minorities – by at least one representative of each minority.

448. Within the Team there is a Sub-Team for Education of National Minorities and, since October 2002, a Sub-Team for the Roma, set up with a view to improving mechanisms of consultations with representatives of the Roma minority. Within the Sub-Team for Education of National Minorities was e.g. prepared the *Strategy for the Development of Education of the Lithuanian Minority in Poland.* Currently, the implementation of tasks included in the document is being monitored. The implementation of the Strategy is conducted jointly by: government administration, units of local self-government of the Podlaskie Voivodeship, and organisations of the Lithuanian minority.

Meetings of the Team offer an opportunity of consulting all major decisions concerning national and ethnic minorities with organisations representing them. This concerns especially normative acts and government programmes.

Pilot government programme for the Roma community in the Voivodeship of Małopolska

449. The difficult situation of the Roma in Poland, especially in the Voivodeship of Małopolska, was the reason for the preparation of the *Pilot Government Programme for the Roma Community in the Voivodeship of Małopolska in the years 2001-2003.* The necessity to take action aiming at the improvement of the position of the Roma community had been signalled for a few years by non-governmental organisations, units of local self-government of the Voivodeship of Małopolska, international organisations, and organisations of the Roma. The Programme was prepared by the Ministry of Internal Affairs and Administration in cooperation with other ministries. In its creation were also involved plenipotentiaries for the Roma functioning within structures of the local self-government, as well as plenipotentiaries elected by local Roma communities. The work was conducted with the extensive cooperation of units of the local self-government and non-governmental organisations, including organisations of the Roma. The programme was established pursuant to the Resolution of the Council of Ministers of 13 February 2001, which at the same time entrusted the minister for internal affairs with the coordination of its implementation.

450. The activities approved by the Council of Ministers, included in the Agenda of the implementation and financing of the tasks of the Programme in the years 2001 - 2003, have a comprehensive character. They comprise tasks in the field of improving living and social standards, health, and counteracting unemployment, and security, culture; still, special emphasis was placed on educational tasks. The Programme meets the criteria of the European Commission and other European institutions (e.g. the Organisation for the Security and Cooperation in Europe), related to assistance to the Roma community. Periodical Reports of the European Commission as to the progress made by Poland in the accession process in 2001 and in 2002 offer a positive evaluation of the action taken by the government administration for the improvement of the situation of the Roma.

451. According to the assumptions of the *Pilot Government Programme for the Roma Community in the Voivodeship of Małopolska in the years 2001-2003*, the solutions which will have proved efficient in Małopolska will be used in a long-term national *Programme for the Roma Community in Poland.* On 19 August 2003, the Council of Ministers adopted the Programme for the Roma Community in Poland. Similarly to the case of the Programme implemented in Małopolska, the action taken by the government administration, units of local self-government, and non-governmental organisations will have a comprehensive character and

will comprise steps concerning the improvement of the social and living standards, health, counteracting unemployment, security and prevention of ethnically-motivated crimes, culture and maintenance of the Roma ethnic identity, as well as the promotion of knowledge about the history, culture and tradition of the Roma in the non-Roma majority. As in the case of the Pilot Programme, educational projects have received priority status. The Ministry of Internal Affairs and Administration is the Programme coordinator.

452. In addition, questions related to the education of the Roma youth are a part of the project *State Strategy for the Youth for the Years 2003 – 2013.*

453. In response to the postulate put forward by representatives of the Roma community to set up a consultative body dealing with issues of the Roma community in Poland, during the meeting of the Team for National Minorities on 30 September 2002, a resolution was passed to establish a Sub-Team for the Roma.

International cooperation

454. The Polish Government participates intensively in the activities of the Organisation for the Security and Cooperation in Europe (OSCE) in the field of the protection of the rights of minorities. Under the auspices of OSCE, Poland signed the following documents regulating issues of the protection of the rights of national minorities: *Final Act of the Conference on Security and Cooperation in Europe, Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, Challenges of the Time of Transformations — the Helsinki Document.* The OSCE Office of Democratic Institutions and Human Rights (ODIHR) has its headquarters in Warsaw; as a result, Poland is visited annually by delegations of member States of the Organisation for the Security and Cooperation in Europe, representatives of international organisations and non-governmental organisations. The meetings aim at a revision of obligations related to the observance of human rights, the rule of law and principles of democracy by all the OSCE member states. Much attention is devoted during the debates to the adoption of a model of an efficient assistance to the Roma. The experience gained in the OSCE forum sets a good example for countries which are at the stage of preparing assumptions of a strategy for the improvement of the situation of this minority.

Issues related to national minorities are one of the standing subjects discussed during meetings of the Vyshehrad Group. Until today, there have been four meetings devoted to such issues: in Bratislava on 10 December 1999, in Budapest in the period 27 - 28 April 2000, in Prague on 27 October 2000, and in Warsaw on 20 April 2001. During the last meeting in Warsaw, participants concentrated on the analysis of legal solutions safeguarding the rights of minorities. Extensive attention was devoted to the issues related to the Roma minority and to the exchange of experiences from the implementation of programmes for national and ethnic minorities in individual countries.

The Republic of Poland is a member of the Central-European Initiative (ISE), which is another forum of the exchange of experience on national and ethnic minorities. In the early 1990s, Poland and other Member States of the Central-European Initiative, presented joint drafts of programmes for the protection of minorities' rights. A special conference was organised within the Initiative on issues related to minorities, and the Working Group for Minorities

created within the ISE was obliged to prepare a project *ISE Instrument of Protection of Minorities' Rights*. Poland signed this document in April 1995. Currently, the tasks of the Working Group include the implementation of the provisions of the *Instrument,* the exchange of information and experiences, and cooperation and promotion of domestic and international institutions established for the promotion of rights of national minorities.

455. Accession to the European Union has been a strategic goal of the Polish foreign policy since 1989. According to the conclusions of the European Council from Copenhagen of June 1993, candidate Member States, before their accession to the European Union, are obliged to meet specific requirements, including political criteria. Among those criteria, the observance of rights of national minorities plays a major role. In the process of adjustment measures, for the last four years Poland and the other candidate countries have been assessed by the European Commission as to their readiness for accession. It has to be emphasised that only two countries, i.e. Cyprus and Poland, were recognised as countries leading a proper policy towards national and ethnic minorities (mainly towards the Roma). At the same time, Polish legislative authority and public administration were indicated as functioning adequately from the point of view of the protection of national minorities.

Poland also nominated its expert to the Management Council of the European Centre for the Monitoring of Racism and Xenophobia in Vienna, which functions within the European Union.

456. In addition, Poland ratified on 20 December 2000 the *Framework Convention of the Council of Europe on the Protection of National Minorities* (Journal of Laws of 2002 no. 22 item 209; it entered into effect on 1 April 2001). Poland submitted its preliminary report from its implementation to the Advisory Committee on 10 July 2002.

457. Detailed information on the implementation of rights of national minorities was provided also in the XV and XVI periodical report of the Republic of Poland on the implementation of the provisions of the *Convention on the Elimination of Racial Discrimination* and during its presentation before the relevant Committee.

458. Furthermore it has to be noticed that on 12 May 2003 the Republic of Poland signed the *European Charter of Regional or Minority Languages*, drawn up in Strasbourg on 5 November 1992.

On 16-17 June 2003 the Ministry of Internal Affairs and Administration along with the Commission of National and Ethnic Minorities of the Sejm of the Republic of Poland and the Council of Europe organised a conference entitled *The European Charter of Regional or Minority Languages – from Theory to Practice,* devoted to practical methods of implementing the principles enshrined in the Charter.

Annex 1

Judicial decisions of the Chief Administrative Court:

1. Judgement of the Chief Administrative Court of 24 August 2000, index no.: V SA 1781/99.

1. Human rights are universal rights. An assessment whether a violation of human rights has occurred does not depend upon what is considered as such a violation by a given State.

2. Both an arbitrary deprivation of liberty and coercion to publicly profess a religion or to maintain an appearance or behaviour resulting from the principles of a religion are violations of human rights.

2. Judgement of 5 December 2001, index no. II SA 155/01, concerning access to documentation of administrative proceedings. In the *ratio decidendi*, the court invoked article 17 of the *International Covenant on Civil and Political Rights* of 19 December 1966 (Journal of Laws of 1997, no. 38, item 167) and article 8 of the *Convention for the Protection of Human Rights and Fundamental Freedoms*, which touch upon the respect for private and family life. Moreover, the court cited the thesis of the judgement of the Supreme Court of 1 June 2000 III ARN 64/00- "The Constitution of the Republic of Poland sets higher standards of protection of the freedom of expression than those stipulated under article 10 of the *Convention for the Protection of Human Rights and Fundamental Freedoms* of 4 November 1950.

3. Judgement of 12 October 1999, index no. II SA 950/99, concerning a refusal to grant press information. In the complaint, the claimant editorial staff alleged that a refusal to grant information infringed on article 10 point 1 of the *Convention for the Protection of Human Rights and Fundamental Freedoms* and article 19 point 2 of the *International Covenant on Civil and Political Rights*.

4. Judgement of 19 December 2000, index no. II SA/Gd 1376/00, concerning a prohibition of a public assembly. The claimant alleged that the organ of administration had infringed upon the rights guaranteed in the *UN Universal Declaration of Human Rights* and the *European Convention of Human Rights*.

5. Judgement with the index no. SA/Rz 235/97 of 5 August 1997 concerning an issuance of a prescription for additional medical examination for the purpose of establishing a capability to drive motor vehicles.

The claimant, obtaining a driver's licence in 1990, received specific rights, which have been and continue to be subject to protection, and the very intention of obtaining specific qualifications (a driving instructor) should not have, and even could not have subjected the claimant to the risk of losing validly acquired rights. In the *ratio decidendi*, the Chief Administrative Court, revoking the decisions of the organs of the first and the second instance, pointed out that the organs conducting the proceedings in the case had violated the legal standards for a fair trial binding upon organs of public administration (in this case an

administrative one), which arise from acts of international law ratified by Poland, specifically from article 14 of the *International Covenant on Civil and Political Rights* and from article 6 of the *Convention for the Protection of Human Rights and Fundamental Freedoms*.

6. Judgement of 23 March 1999, index no. II SA 202/99 concerning a refusal to enter into a list of legal advisor applicants.

The Chief Administrative Court, revoking the decisions of the organs of the first and the second instance, invoked in the *ratio decidendi* of the judicial decision the right of citizens to choose and pursue an occupation guaranteed under article 65 point 1 of the *Constitution of the Republic of Poland* and article 6 of the *Covenant on Economic, Social and Cultural Rights* of 16 December 1966, ratified by Poland on 3 March 1977.

7. Judgement of 22 May 2000, index no. II SA 2725/99 concerning entry into a list of legal advisor applicants. The subject matter related also to article 65 point 1 of the *Constitution of the Republic of Poland* and article 6 of the *Covenant on Economic, Social and Cultural Rights*.

Annex 2

Cases in which the Constitutional Tribunal invoked the *International Covenant on Civil and Political Rights* in the sentences and *ratios decidendi* of judgements passed from 17 October 1997 until 18 February 2003.

1998

1. Judgement of 19 May 1998, U 5/97 [placing a statistical number of a sickness on a medical certificate], OTK ZU no. 4/1998, item 46

Sentence: incompatibility with article 17 of ICCPR and with article 8 of ECHR
Ratio decidendi: article 17 of ICCPR; article 8 of ECHR

2. Judgement of 9 June 1998, K 28/97 [exclusion from the cognition of the Chief Administrative Court of selected decisions of military organs concerning contractual obligations of professional soldiers], OTK ZU no. 4/1998, item 50

Ratio decidendi: article 14 of ICCPR; article 6 of ECHR

3. Judgement of 10 November 1998, K 39/97 [vetting law], OTK ZU no. 6/1998, item 99

Ratio decidendi: article 14 item 3 letter g and article 14 item 7 of ICCPR
Votum separatum of a judge of the Constitutional Tribunal, Zdzisław Czeszejko-Sochacki: [in reference to the prohibition of self-accusation] article 14 item 3 letter g of ICCPR and article 6 of ECHR along with judicial decisions of ECHR

4. Judgement of 17 November 1998, K 42/97 [regulations depriving some employees of the Supreme Chamber of Control of the right to a free association in trade unions], OTK ZU no. 7/1998, item 113

Ratio decidendi: ICCPR and ECHR (in general)

1999

1. Judgement of 12 January 1999, P 2/98 [unauthorised construction], OTK ZU no. 1/1999, item 2

Ratio decidendi: ICCPR and ECHR in the context of the proportionality principle; article 1 of Protocol no. 1 to ECHR

2. Judgement of 27 January 1999, K 1/98 [non-conjunction of the position of a judge with the performance by a spouse, relative or next of kin of the professions of an advocate and a legal advisor] OTK ZU no. 1/1999, item 3

Sentence: Incompatibility with article 8 of ECHR; lack of incompatibility with article 17 item 1, article 23 item 2, article 25 letter c, article 26 of ICCPR and with article 12, article 14, article of 18 ECHR
Ratio decidendi: article 17 item 1, article 23 item 2, article 25 letter c, article 26 of ICCPR; article 8, article 12, article 14, article 18 of ECHR

3. Judgement of 16 March 1999, SK 19/98 [depriving officers of the Prison Service of the possibility to appeal against a decision of a disciplinary court], OTK ZU no. 3/1999, item 36

Ratio decidendi: article 14 of ICCPR; article 6 item 1 of ECHR

4. Judgement of 14 June 1999, K 11/98 [principles concerning an entry into and striking off a register of entrepreneurs engaged in international special trade], OTK ZU no. 5/1999, item 97

Ratio decidendi: article 14 item 1 of ICCPR; article 6 item 1 of ECHR

5. Judgement of 6 July 1999, P 2/99 [exclusion of the statue of limitation in reference to offences committed by public officials in the period 1949-1989], OTK ZU no. 3/1999, item 103

Ratio decidendi: article 15 of ICCPR; article 7 of ECHR

2000

1. Judgement of 16 May 2000, P 1/99 [conditional discontinuance of criminal proceedings], OTK ZU no. 4/2000, item 111

Ratio decidendi: article 14 item 2 of ICCPR; article 6 item 2 of ECHR

2. Judgement of 28 June 2000, K 34/99 [ensuring security and public order for the duration of public events on the roads], OTK ZU no. 5/2000, item 142

Sentence: lack of incompatibility with article 2 and article 21 of ICCPR and with article 1 and article 11 of ECHR

Ratio decidendi: article 2 and article 21 of ICCPR; article 1 and article 11 of ECHR along with the judicial decisions of ECHR

3. Judgement of 10 July 2000, SK 21/99 [conditional release from serving the remainder of the sentence of deprivation of liberty], OTK ZU no. 5/2000, item 144

Ratio decidendi: article 15 of ICCPR; article 7 of ECHR

4. Judgement of 10 July 2000, SK 12/99 [an absence of judicial proceedings in cases concerning compensation for the interest rate on a scholarship and an award of a university president paid behind schedule], OTK ZU no. 5/2000, item 143

Ratio decidendi: article 14 item 1 of ICCPR; article 6 item 1 of ECHR along with the judicial decisions of ECHR

5. Judgement of 15 November 2000, P 12/99 [principles of monitoring by a court of the decision of expulsion of an alien], OTK ZU no. 7/2000, item 260

Ratio decidendi: article 14 item 1 of ICCPR; article 6 item 1 of ECHR along with the judicial decisions of ECHR

2001

1. Judgement of 2 April 2001, SK 10/00 [principles of being granted the status of a subsidiary prosecutor in proceedings concerning cases instituted under public prosecution], OTK ZU no. 3/2001, item 52

Ratio decidendi: article 14 of ICCPR; article 6 item 1 of ECHR along with the judicial decisions of the European Commission of Human Rights and of ECHR

2. Judgement of 6 September 2001, P 3/01 [exclusion of a possibility of a decision about a reimbursement of costs of proceedings for the claimant in the event of a discontinuance of judicial proceedings by the Chief Administrative Court], OTK ZU no. 6/2001, item 163

Ratio decidendi: article 14 item 1 of ICCPR

3. Judgement of 8 November 2001, P 6/01 [exclusion of the right of a person directed to compulsory substance abuse rehabilitation treatment to apply for a change of the substance abuse rehabilitation treatment institution], OTK ZU no. 8/2001, item 248
Ratio decidendi: article 14 of ICCPR; article 6 item 1 of ECHR

2002

1. Judgement of 29 January 2002, K 19/01 [suspicion of committing an offence as an obstacle in being appointed on the board of *directors* of a bank], OTK ZU no. 1/A/2002, item 1
Ratio decidendi: ICCPR and ECHR [the principle of the presumption of innocence]

2. Judgement of 10 April 2002, K 26/00 [prohibition of membership in political parties of public officials and persons holding specific public positions], OTK ZU no. 2/A/2002, item 18
Sentence: compatibility with article 22 of ICCPR and with article 11 and article 17 of ECHR
Raio decidendi: article 2 of ICCPR; article 11 and article 17 of ECHR along with the judicial decisions of ECHR

3. Judgement of 16 April 2002, SK 23/01 [dependency of the disposition of the inherited property right on the fulfilment of the tax duty], OTK ZU no. 3/A/2002, item 26
Ratio decidendi: ICCPR and ECHR (in general)

4. Judgement of 13 May 2002, SK 32/01 [the problem of a resumption of proceedings in cases adjudicated on in the course of an election campaign during elections to the local self-government], OTK ZU no. 3/A/2002, item 31
Ratio decidendi: article 14 of ICCPR; article 6 item 1 of ECHR

5. Judgement of 9 July 2002, P 4/01 [proceedings against absentees in the fiscal penal code], OTK ZU no. 4/A/2002, item 52
Sentence: compatibility with *article 14 item 1 and item 3 letters a, b, d, e of ICCPR and with article 6 item 1 and item 3 letters a-d of ECHR*
Ratio decidendi: article 14 item 1 and item 3 letters a, b, d, e of ICCPR; article 6 item 1 and item 3 letters a-d of ECHR along with the judicial decisions of ECHR

6. Judgement of 8 October 2002, K 36/00 [professional status of a police officer], OTK ZU no. 5/A/2002, item 63
Sentence: compatibility with article 14 item 7 of ICCPR; incompatibility with article 2 item 2 of ECHR
Ratio decidendi: article 14 of ICCPR; article 2 of ECHR along with the judicial decisions of ECHR

7. Judgement of 20 November 2002, K 41/02 [tax abolition and property declarations], OTK ZU no. 6/A/2002, item 83 *Ratio decidendi: article 14 item 3 letter g of ICCPR*

Annex 3

(A) Right to life

PENAL CODE OF 1997

Chapter XVI

Offences against peace, and humanity, and war crimes

Article 117. § 1. Whoever initiates or wages a war of aggression shall be subject to the penalty of the deprivation of liberty for a minimum term of 12 years, the penalty of deprivation of liberty for 25 years or the penalty of deprivation of liberty for life.

§ 2. Whoever makes preparation to commit the offence specified under § 1, shall be subject to the penalty of the deprivation of liberty for a minimum term of 3 years.

§ 3. Whoever publicly incites to initiate a war of aggression shall be subject to the penalty of the deprivation of liberty for a term of between 3 months and 5 years.

Article 118. § 1. Whoever, acting with an intent to destroy in full or in part, any ethnic, racial, political or religious group, or a group with a different perspective on life, commits homicide or causes a serious detriment to the health of a person belonging to such a group, shall be subject to the penalty of the deprivation of liberty for a minimum term of 12 years, the penalty of deprivation of liberty for 25 years or the penalty of deprivation of liberty for life.

§ 2. Whoever, with the intent specified under § 1, creates, for persons belonging to such a group, living conditions threatening its biological destruction, applies means aimed at preventing births within this group, or forcibly removes children from the persons constituting it, shall be subject to the penalty of the deprivation of liberty for a minimum term of 5 years or the penalty of deprivation of liberty for 25 years.

§ 3. Whoever makes preparation to commit the offence specified under § 1 or 2, shall be subject to the penalty of the deprivation of liberty for a minimum term of 3 years.

Article 119. § 1. Whoever uses violence or makes unlawful threat towards a group of person or a particular individual because or their national, ethnic, political or religious affiliation, or because of their lack of religious beliefs, shall be subject to the penalty of the deprivation of liberty for a term of between 3 months and 5 years.

§ 2. The same punishment shall be imposed on anyone, who incites commission of the offence specified under § 1.

Article 120. Whoever uses a means of mass extermination prohibited by international law, shall be subject to the penalty of the deprivation of liberty for a minimum term of 10 years, the penalty of deprivation of liberty for 25 years or the penalty of deprivation of liberty for life.

Article 121. § 1. Whoever, violating the prohibition contained in international law or in internal law, manufactures, amasses, purchases, trades, stores, carries or dispatches the means of

mass extermination or means of warfare, or undertakes research aimed at the manufacture or usage of such means, shall be subject to the penalty of the deprivation of liberty for a term of between 1 and 10 years.

§ 2. The same punishment shall be imposed on anyone, who allows the commission of the act specified under § 1.

Article 122. § 1. Whoever, in the course of warfare, attacks an undefended locality or a facility, hospital zone or uses any other means of warfare prohibited by international law, shall be subject to the penalty of the deprivation of liberty for a minimum term of 5 years, or the penalty of deprivation of liberty for 25 years.

§ 2. The same punishment shall be imposed on anyone, who, in the course of warfare, uses a means of warfare prohibited by international law.

Article 123. § 1. Whoever, in violation of international law, commits the homicide of

(1) persons who surrendered, laid down their arms or lacked any means of defence,

(2) the wounded, sick, shipwrecked persons, medical personnel or clergy,

(3) prisoners of war,

(4) civilians in an occupied area, annexed or under warfare, or other persons who are protected by international law during warfare,

shall be subject to the penalty of the deprivation of liberty for a minimum term of 12 years, the penalty of deprivation of liberty for 25 years or the penalty of deprivation of liberty for life.

§ 2. Whoever, in violation of international law, causes the persons specified under § 1 to suffer serious detriment to health, subjects such persons to torture, cruel or inhumane treatment, makes them even with their consent the objects of cognitive experiments, uses their presence to protect a certain area or facility, or armed units from warfare, or keeps such persons as hostages shall be subject to the penalty of the deprivation of liberty for a minimum term of 5 years or the penalty of deprivation of liberty for 25 years

Article 124. Whoever, in violation of international law, forces the persons specified under Article 123 § 1 to serve in enemy armed forces, resettles them, uses corporal punishment, deprives them of liberty or of the right to independent and impartial judicial proceedings, or restricts their right to defence in criminal proceedings, shall be subject to the penalty of the deprivation of liberty for a minimum term of 3 years.

Article 125. § 1. Whoever, in an area occupied, taken over or under warfare, in violation of international law, destroys, damages or removes items of cultural heritage shall be subject to the penalty of the deprivation of liberty for a term of between 1 and 10 years.

§ 2. If the act pertains to an item of particular importance to cultural heritage, the perpetrator shall be subject to the penalty of the deprivation of liberty for a minimum term of 3 years.

Article 126. § 1. Whoever, in the course of warfare, illegally uses the emblem of the Red Cross or Red Crescent, shall be subject to the penalty of the deprivation of liberty for a minimum term of 3 years.

§ 2. The same punishment shall be imposed on anyone, who, in the course of warfare, illegally uses protective emblems for items of cultural heritage or other emblems protected under international law, or uses a national flag or the military markings of the enemy, neutral country or an international organisation or commission.

CHAPTER XIX

Offences against life and health

Article 148. § 1. Whoever kills a human being shall be subject to the penalty of the deprivation of liberty for a minimum term of 8 years, the penalty of deprivation of liberty for 25 years or the penalty of deprivation of liberty for life.

§ 2. Whoever kills a human being:

(1) with particular cruelty,

(2) in connection with hostage taking, rape or robbery,

(3) for motives deserving particular reprobation,

(4) with the use of firearms or explosives

shall be subject to the penalty of the deprivation of liberty for a minimum term of 12 years, the penalty of deprivation of liberty for 25 years or the penalty of deprivation of liberty for life .

§ 3. Whoever kills more than one person in one act or has earlier been validly and finally convicted for homicide shall be also subject to the penalty specified in § 2.

§ 4. Whoever kills a person due to the influence of an intense emotion justified by the circumstances shall be subject to the penalty of the deprivation of liberty for a term of between 1 and 10 years.

Article 149. A mother who kills her infant due to the intense emotional circumstances connected with the course of the delivery shall be subject to the penalty of the deprivation of liberty for a term of between 3 months and 5 years.

Article 150. § 1. Whoever kills a human being on his demand and under the influence of compassion for him shall be subject to the penalty of the deprivation of liberty for a term of between 3 months and 5 years.

§ 2. In some extraordinary circumstances the court may apply an extraordinary mitigation of the penalty or even renounce its imposition.

Article 151. Whoever by persuasion or by rendering assistance induces a human being to make an attempt on his own life shall be subject to the penalty of the deprivation of liberty for a term of between 3 months and 5 years.

Article 152. § 1. Whoever, with consent of the woman, terminates her pregnancy in violation of the law shall be subject to the penalty of deprivation of liberty for up to 3 years.

§ 2. The same punishment shall be imposed on anyone, who renders assistance to a pregnant women in terminating her pregnancy in violation of the law or persuades her to do so.

§ 3. Whoever commits the act specified in § 1 or 2, after the foetus has became capable of living outside the pregnant woman's body shall be subject to the penalty of the deprivation of liberty for a term of between 6 months and 8 years.

Article 153. § 1. Whoever, through the use of force against a pregnant woman or by other means, without her consent, terminates the pregnancy or induces her by force, an illegal threat, or deceit to terminate the pregnancy shall be subject to the penalty of the deprivation of liberty for a term of between 6 months and 8 years.

§ 2. Whoever commits the act specified in § 1, after the foetus has become capable of living outside the pregnant woman's body shall be subject to the penalty of the deprivation of liberty for a term of between 1 and 10 years.

Article 154. § 1. If the consequence of an act specified in Articles 152 § 1 or 2 is the death of the pregnant woman, the perpetrator shall be subject to the penalty of the deprivation of liberty for a term of between 1 and 10 years.

§ 2. If the consequence of an act specified in Articles 152 § 3 or in Article 153 is the death of the pregnant woman, the perpetrator shall be subject to the penalty of the deprivation of liberty for a term of between 2 and 12 years.

Article 155. Whoever unintentionally causes the death of a human being shall be subject to the penalty of the deprivation of liberty for a term of between 3 months and 5 years.

Article 156. § 1. Whoever causes grievous bodily harm in a form which:

(1) deprives a human being of sight, hearing, speech or the ability to procreate, or

(2) inflicts on another a serious crippling injury, an incurable or prolonged illness, an illness actually dangerous to life, a permanent mental illness, a permanent total or substantial incapacity to work in an occupation, or a permanent serious bodily disfigurement or deformation shall be subject to the penalty of the deprivation of liberty for a term of between 1 and 10 years.

§ 2. If the perpetrator acts unintentionally he shall be subject to the penalty of deprivation of liberty for up to 3 years.

§ 3. If the consequence of an act specified in § 1 is the death of a human being, the perpetrator shall be subject to the penalty of the deprivation of liberty for a term of between 2 and 12 years.

Article 157. § 1. Whoever causes a bodily injury or an impairment to health other than specified in Article 156 § 1, shall be subject to the penalty of the deprivation of liberty for a term of between 3 months and 5 years.

§ 2. Whoever causes a bodily injury or an impairment to health lasting not longer than 7 days, shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to 2 years.

§ 3. If the perpetrator of the act specified in § 1 or 2 acts unintentionally he shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to one year.

§ 4. The prosecution of the offence specified in § 2 or 3 shall, if the bodily injury or an impairment of health did not exceed 7 days, occur upon a private charge.

§ 5. If the bodily injury or an impairment of health exceeded 7 days, and the injured person is the person closest to the accused, the prosecution of the offence specified in § 3 shall occur upon the motion of the latter.

Article 157a. § 1. Whoever causes a bodily injury to the foetus or such impairment to its health which constitutes threat to the life of the foetus, shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to 2 years.

§ 2. A medical doctor shall be deemed to have not committed an offence, if a bodily injury or impairment to health of the foetus is a consequence of curative actions, which were necessary to avert the danger threatening health or life of the pregnant woman or the foetus.

§ 3. A mother of the foetus who commits the act specified in § 1 shall not be subject to the penalty.

Article 158. § 1. Whoever participates in a brawl or a beating in which a human being is exposed to the immediate danger of the loss of life or to a consequence referred to in Article 156 § 1 or in Article 157 § 1, shall be subject to the penalty of deprivation of liberty for up to 3 years.

§ 2. If the consequence of the brawl or beating is a serious bodily injury or a serious impairment of health, the perpetrator shall be subject to the penalty of the deprivation of liberty for a term of between 6 months and 8 years.

§ 3. If the consequence of the brawl or beating is the death of a human being, the perpetrator shall be subject to the penalty of the deprivation of liberty for a term of between 1 and 10 years.

Article 159. Whoever, taking part in a brawl or beating, uses a firearm, knife or other similarly dangerous instrument shall be subject to the penalty of the deprivation of liberty for a term of between 6 months and 8 years.

Article 160. § 1. Whoever exposes a human being to an immediate danger of loss of life, a serious bodily injury, or a serious impairment of health shall be subject to the penalty of deprivation of liberty for up to 3 years.

§ 2. If the perpetrator has a duty to take care of the person exposed to danger he shall be subject to the penalty of the deprivation of liberty for a term of between 3 months and 5 years.

§ 3. If the perpetrator of an act specified in § 1 or 2 acts unintentionally he shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to one year.

§ 4. A perpetrator who voluntarily averted the impeding danger shall not be subject to the penalty for the offence specified in § 1-3.

§ 5. The prosecution of the offence specified in § 3 shall occur on a motion of the injured person.

Article 161. § 1. Whoever, knowing that he or she is infected by the HIV virus, directly exposes another person to infection by that disease shall be subject to the penalty of deprivation of liberty for up to 3 years.

§ 2. Whoever, knowing that he or she is afflicted with a venereal or contagious disease, a serious incurable disease or a disease which actually threatens life, directly exposes another person to infection from that disease shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to one year.

§ 3. The prosecution of the offence specified in § 1 or 2 shall occur on a motion of the injured person.

Article 162. § 1. Whoever does not render assistance to a person who is in a situation threatening an immediate danger of loss of life, serious bodily injury, or a serious impairment thereof, when he so do without exposing himself or another person to the danger of loss of life or serious harm to health shall be subject to the penalty of deprivation of liberty for up to 3 years.

§ 2. Whoever does not render assistance necessitating the submission to a medical operation, or under conditions in which the prompt assistance of a responsible authority or person is possible, shall be deemed to have not committed an offence.

(B) Domestic violence

Article 190. § 1. Whoever makes a threat to another person to commit an offence detrimental to that person or detrimental to his next of kin, and if the threat causes in the threatened person a justified fear that it will be carried out shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to 2 years.

§ 2. The prosecution shall occur on a motion of the injured person.

Article 191. § 1. Whoever uses force or an illegal threat with the purpose of compelling another person to conduct himself in a specified manner, or to resist from or to submit to a certain conduct shall be subject to the penalty of deprivation of liberty for up to 3 years.

§ 2. If the perpetrator acts in the manner specified in § 1 in order to extort a debt shall be subject to the penalty of the deprivation of liberty for a term of between 3 months and 5 years.

Article l97. § 1. Whoever, by force, illegal threat or deceit subjects another person to sexual intercourse shall be subject to the penalty of the deprivation of liberty for a term of between 1 and 10 years.

§ 2. If the perpetrator, in the manner specified in § 1, makes another person submit to other sexual act or to perform such an act, he shall be subject to the penalty of the deprivation of liberty for a term of between 3 months and 5 years.

§ 3. If the perpetrator commits the rape specified in § 1 or 2, acting with particular cruelty, or commits it in common with other person, he shall be subject to the penalty of the deprivation of liberty for a term of between 2 and 12 years.

Article 200. § 1. Whoever subjects a minor under 15 years of age to sexual intercourse or makes him/her submit to another sexual act or to perform such an act shall be subject to the penalty of the deprivation of liberty for a term of between 1 and 10 years.

§ 2. The same punishment shall be imposed on anyone, who records pornographic material with the participation of such a person.

Article 207. § 1. Whoever physically or mentally mistreats a person close to him, or another person being in a permanent or temporary state of dependence to the perpetrator, a minor or a person who is vulnerable because or his mental or physical condition shall be subject to the penalty of deprivation of liberty for a term of between 3 months and 5 years.

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

§ 3. If the consequence of the act specified in § 1 or 2 is a suicide attempt by the injured person on his or her life, the perpetrator shall be subject to the penalty of deprivation of liberty for a term of between 2 and 12 years.

Article 208. Whoever induces a minor to become an inveterate drinker by supplying him with alcoholic beverages, or by facilitating or by urging him to drink such beverages shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to 2 years.

(C) Offences against the Rules of Behaviour to Subordinates

Article 350. § 1. A soldier who degrade or insult a subordinate, shall be subject to the penalty of restriction of liberty, military custody or the penalty of deprivation of liberty for up to 2 years.

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

Article 351. A soldier who strikes a subordinate or in another manner violates his bodily inviolability shall be subject to the penalty of military custody or deprivation of liberty for up to 2 years.

Article 352. § 1. A soldier who torments either physically or psychologically his subordinate shall be subject to the penalty of deprivation of liberty for a term of between 3 months and 5 years.

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

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

Article 353. The provisions of Articles 350 - 352 shall be applied accordingly to the soldier who perpetrates the act specified in these provisions, with respect to a soldier of a lower rank or of the same rank but junior in terms of the duration of military service.

Annex 4

List of international human rights protection, law of the peace and protection of the natural environment treaties, as well as treaties concerning the restriction of the weapons of mass destruction proliferation, which have been signed and/or ratified by Poland since July 1, 1995

Human rights treaties signed and/or ratified since July 1, 1995.

No.	Title of the agreement	Place and date of the adoption of the Convention	Signature by Poland	Date of the ratification by the President of Poland	Publication in the Journal of Laws (year/number/ item)
1.	International Convention against the Taking of Hostages /ONZ XVIII. 5/	New York 17/12/1979	-	13/03/2000	2000/106/1123
2.	European Agreement relating to Persons participating in Procedures of the European Commission and Court of Human Rights /67/	London 06/05/1969	21/04/1995	27/02/1996	1996/112/535
3.	Convention for the protection of Individuals with regard to Automatic Processing of Personal Data /108/	Strasbourg 28/01/1981	21/04/1999	24/04/2002	2003/03/25
4.	Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the application of biology and medicine: Convention on Human rights and Biomedicine /164/ /Biomedicine/	Ovideo 04/04/1997	07/05/1999	-	-

No.	Title of the agreement	Place and date of the adoption of the Convention	Signature by Poland	Date of the ratification by the President of Poland	Publication in the Journal of Laws (year/number/ item)
5.	Additional Protocol to the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine, on the Prohibition of Cloning Human Being /168/	Paris 12/01/1998	07/05/1999	-	-
6.	Protocol No. 6 to the Convention for the Protection of Human rights and Fundamental Freedoms concerning the Abolition of the Death Penalty /Nr 114/	Strasbourg 28/04/1983	18/11/1999	18/10/2000	2001/23/266
7.	Protocol No. 7 to the Convention for the Protection of Human rights and Fundamental Freedoms /117/	Strasbourg 22/11/1984	14/09/1992	04/11/2002	2003/42/364
8.	Protocol No. 11 to the Convention for the Protection of Human rights and Fundamental Freedoms, restructuring the control machinery established therby/155/	Strasbourg 11/05/1994	11/05/1994	10/04/1997	1998/147/962
9.	Protocol No. 13 to the Convention for the Protection of Human rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances/187/	Vilnius 03/05/2002	03/05/2002	-	-
10.	Second Optional Protocol to the international Covenant on Civil and Political Rights aiming at the abolition of the death penalty	New York 15/12/1989	21/03/2000	-	-

No.	Title of the agreement	Place and date of the adoption of the Convention	Signature by Poland	Date of the ratification by the President of Poland	Publication in the Journal of Laws (year/number/ item)
11.	Amendments to article 43 para. 2 of the Convention on the Rights of the Child	New York 12/12/1995	-	15/07/1999	2000/2/11
12.	Optional Protocol to the Convention on the Right of the Child on the involvement of children in armed conflicts /IV 11b/	New York 25/05/2000	13/02/2002	-	-
13.	Optional Protocol to the Convention on the Right of the Child on the sale of children, child prostitution and child pornography/IV 11c/	New York 25/05/2000	13/02/2002	-	-
14.	Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental matters	Aarhus 25/06/1998	25/06/1998	31/12/2001	-
15.	European Social Charter	Turin 18/10/1961	-	10/06/1997	1999/8/67; entered into force with respect to Poland 25/07/1997

Poland has also signed and/or ratified numerous treaties concerning the protection of the natural environment.

Most significant international treaties concerning restrictions on the proliferation of weapons.

No.	Title of the agreement	Place and date of the adoption of the Convention	Signature by Poland	Date of the ratification by the President of Poland	Publication in the Journal of Laws (year/number/ item)
1	Treaty on the Non-Proliferation of Nuclear Weapons	Moscow, Washington, London 1/7/1968	1968	3/5/1969	1970/8/60 In the units subordinated to the Ministry of Defense there are no installations or other nuclear facilities which would require control by the International Nuclear Energy Agency, which controls the use by the State-Parties to the Treaty of the nuclear energy for peaceful goals.
2	Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction	Paris 13/1/1993	1993	27/7/1995	1999/63/703
3	Convention on the Prohibition of the Development, Production, Stockpiling of Bacteriological (biological) and Toxin Weapons and on their Destruction	Moscow, Washington, London 10/4/1972	1972	11/12/1972	1976/1/1
4	Comprehensive Nuclear Test-ban Treaty	New York 10/9/1996	1996	1999	

No.	Title of the agreement	Place and date of the adoption of the Convention	Signature by Poland	Date of the ratification by the President of Poland	Publication in the Journal of Laws (year/number/ item)
5	Convention on Prohibition or Restriction on the Use of Certain Conventional Weapons which may be deemed to be excessively injurious or to have indiscriminate effects	Geneva 10/10/1980	1981	24/2/1983	1984/84/23 Convention is of an open character and consists of four protocols, each of which requires a separate ratification procedure. The ratification procedures with respect to Protocol II as amended on 3 May 1996 (concerning prohibition and restriction on the use of mines, booby-traps and other devices) and to the new Protocol IV (on Blinding Laser Weapons) are currently underway in the Ministry of Foreign Affairs.
6	Convention on the Prohibition of the Use, Stockpiling. Production and Transfer of Anti-Personnel Mines and on their Destruction	Ottawa 18/09/1997	1997	-	Not ratified, because at the present moment it is not possible to resign from stockpiling of anti-personnel mines, which constitute an important element of the Polish State defense system. However, Poland to a high extent respects the convention's provisions as it does not produce anti-personnel mines and has introduced the prohibition of transfer from and through the Polish customs area, according to the Council of Ministers regulation of 20 August 2002.

The procedures aiming at the withdrawal of the reservations of the Republic of Poland to the Geneva Conventions of 1949 are currently underway at the Ministry of Foreign Affairs.

Annex 5

TABLE II

USE OF PRELIMINARY DETENTION (DATA FROM DISTRICT AND PROVINCIAL PROSECUTORS' OFFICES - TOTAL)

No.	DETAILED LIST	2000	2001	2002	Growth index, comparison of data from the year 2002 with the year 2001	2001	2002	
		in absolute numbers				2000 = 100		2001 - 100
1.	Persons subject to preliminary detention from the previous periods considered in reports	5 978	9 482	7 756	-1 726	158.6	129.7	81.8
2.	Indictments submitted to a court upon the conclusion of preparatory proceedings (regarding persons)	319 386	461 546	475 751	14 205	144.5	149.0	103.1
3.	Preliminary detention used	34 662	38 236	32 925	-5 311	110.3	95.0	86.1
	including aliens	2 306	2 158	1 586	-572	93.6	68.8	73.5
4.	Indicted persons subject to preliminary detention in concluded preparatory proceedings (submitted to a court)	25 395	32 585	25 543	-7 042	128.3	100.6	78.4
	including aliens	1 585	1 553	941	-612	98.0	59.4	60.6
5.	Examined complaints by persons subject to preliminary detention	12 775	14 763	12 353	-2 410	115.6	96.7	83.7
6.	Discontinued preliminary detention	6 555	7 537	7 497	-40	115.0	114.4	99.5
	including: by a public prosecutor under: article 253 § 1 of the Code of Criminal Procedure	4 692	4 932	5 420	488	105.1	115.5	109.9
	article 254 of the Code of Criminal Procedure	615	639	563	-76	103.9	91.5	88.1
	by a court: as a result of the recognition of a complaint under article 252 § 1 of the Code of Criminal Procedure	1 248	1 966	1 514	-452	157.5	121.3	77.0

No.	DETAILED LIST	2000	2001	2002	Growth index, comparison of data from the year 2002 with the year 2001	2001	2002	
		in absolute numbers				2000 = 100		2001 - 100
7.	Percentage of complaints recognised by a court against the total number of examined complaints	9.8	13.3	12.3	-1.1	136.3	125.5	92.0
8.	Number of persons subject to preliminary detention as of 31 December	9 453	7 904	7 589	-315	83.6	80.3	96.0
	Including persons in detention centres over 3 to 6 months	1 778	1 680	1 399	-281	94.5	78.7	83.3
	over 6 to 12 months	536	795	651	-144	148.3	121.5	81.9
	over 12 to 24 months	58	105	69	-36	181.0	119.0	65.7
	over 24 months	1	3	1	-2	300.0	100.0	33.3
9.	Ratio of preliminary detention used - in total - to concluded preparatory proceedings submitted to a court with an indictment	10.9	8.3	6.9	-1.4	76.3	63.8	83.5
10.	Ratio of indicted persons subject to preliminary detention - in reference to conluded preparatory proceedings submitted to a court with an indictment	8.0	7.1	5.4	-1.7	88.8	67.5	76.0

Annex 6

I. Data concerning cases of the abuse of competences and violations of the principles of the use of direct coercion measures and firearms by officers

Police

Enumeration of extraordinary events for the years 1999 - 2001														
No.	**Kind of an extraordinary event**		**Number of events**			**Number of police officers taking part in the event**			**Instituted criminal proceedings**			**Number of police officers subject to criminal proceedings**		
			1999	**2000**	**2001**	**1999**	**2000**	**2001**	**1999**	**2000**	**2001**	**1999**	**2000**	**2001**
1.	Unjustified use of firearms		4	9	9	4	11	9	2	3	6	2	4	5
2.	Offences committed in order to gain a material profit	Acceptance of a benefit	74	87	118	96	139	181	72	82	114	98	135	162
		Theft, appropriation	22	34	44	24	38	44	20	31	33	22	35	33
		Extortion, abuse of the occupied position	29	40	27	34	45	27	28	38	26	32	45	35
		Robbery Assaults	1	3	4	1	3	4	1	3	4	1	3	5
3.	Beating of citizens and a violation of other personal goods	While coercing testimonies	6	10	12	10	12	12	6	8	7	10	12	11
		During an intervention	35	34	53	54	49	53	34	34	38	53	45	61
		During a brawl	19	13	20	19	20	20	19	14	17	19	20	18
4.	Rapes and lewd conduct		6	10	7	8	10	7	5	10	7	6	10	8

Concluded criminal proceedings against police officers																																							
No.	Categories of offences		Number of concluded criminal proceedings				Number of police officers subject to proceedings				Ways of conclusion of the case																													
											Acquittal				Conditional discontinuance				Discontinuance under another procedure				Sentenced to the penalty of																	
																							Self-effecting fine				Restriction of liberty				Deprivation of liberty				Total							
			1999	2000	2001	2002	1999	2000	2001	2002	1999	2000	2001	2002	1999	2000	2001	2002	1999	2000	2001	2002	1999	2000	2001	2002	1999	2000	2001	2002	1999	2000	2001	2002	1999	2000	2001	2002	1999	2000	2001	2002
1.	Use of firearms		7	1	2	2	11	1	2	3	2	-	-	-	2	-	2	-	3	1	-	3	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
2.	Offences committed in order to gain a material profit	Acceptance of a benefit	25	36	26	34	39	48	32	51	3	16	9	11	3	-	-	1	9	11	8	13	-	-	-	-	-	-	-	-	12	21	15	26	12	21	15	26				
		Theft, appropriation	12	6	13	12	14	6	18	12	-	-	5	4	-	2	1	3	1	1	5	1	-	1	-	-	1	-	-	-	4	2	7	4	5	3	7	4				
		Extortion, abuse of the occupied position	12	14	7	10	16	15	7	10	3	3	-	1	3	3	-	3	5	4	6	2	-	-	-	-	-	-	-	-	2	5	1	4	2	5	1	4				
		Robberies/ Assaults	-	-	-	3	-	-	-	3	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2	-	-	-	3				
3.	Beating a citizen and a violation of other personal goods		55	50	45	36	64	60	66	49	9	21	19	9	9	7	22	12	22	24	20	17	1	1	-	-	-	-	-	-	4	7	5	11	5	8	5	11				
4.	Rapes and lewd conduct		3	4	4	2	3	4	7	2	-	-	1	-	-	-	-	1	1	3	6	-	-	-	-	-	-	-	-	-	1	1	-	1	1	1	-	1				

State Protection Office

In 1995 and in the period 1999-2002:

- no violations of the principles of the use of direct coercion measures and firearms were recorded,

- no cases of the abuse of competence were established.

Border Guard

In each case of the use of firearms by an officer of the Border Guard, Commanders of Divisions set up a commission whose aim is to examine all aspects of their use. In all the cases recorded in the years 1999-2002, commissions established that the use of firearms by officers of the Border Guard had been justifiable and in accordance with the binding regulations.

No.	Year	Number of cases of the use of firearms
1.	1995	no data
2.	1999	13
3.	2000	8
4.	2001	3
5.	2002	5
6.	Total	29

Consequences of the abuse of competence or professional negligence by officers of the Border Guard in 1995 and in the period 1999-2002:

	Years					Total
	1995	1999	2000	2001	2002	
Number of criminal proceedings instituted against officers	7	29	50	53	33	172
Number of offences proved by courts	4	12	4	14	12	46
Number of indictments submitted to courts	5	14	19	33	13	84
Number of convicting sentenced passed by courts	4	8	3	4	8	27
Conditional discontinuance of proceedings	0	0	4	6	0	10

State Fire Department Service

In 1995 and in the period 1999-2002:

– no violations of the principles of the use of direct coercion measures were recorded,

– 1 case of the abuse of competence by officers of the State Fire Department Service was recorded – an indictment was submitted to court, in connection with a violation by the above of article 231 § 1 of the Penal Code in conjunction with article 91 § 1.

II. Data concerning disciplinary sanctions used with respect to officers of services subordinate to the Ministry of Internal Affairs and Administration

Police

Disciplinary penalties imposed on police officers in the period 1999 - 2002					
No.	**Kind of penalty**	**Number of penalised officers**			
		1999	**2000**	**2001**	**2002**
1.	Caution, reprimand, strict reprimand, reprimand with an admonition	1 649	2 031	2 276	1 925
2.	Admonition about an incomplete suitability for service at the occupied position	105	131	99	108
3.	Assignment for a subordinate position	104	147	76	67
4.	Demotion	2	1	2	1
5.	Deprivation of an officer's rank	-	-	-	-
6.	Admonition about an incomplete suitability for service	128	170	130	147
7.	Prohibition of driving motor vehicles	59	63	17	-
8.	Expulsion from service	197	295	284	308
9.	Penalised police officers in total	2 206	2 765	2 855	2 518

State Protection Office

A total of 109 disciplinary proceedings were instituted in the State Protection Office in 1995 and in the period 1999-2002 in connection with violations of professional discipline.

A total of 74 statutory disciplinary penalties were imposed.

Years	**Number of instituted disciplinary proceedings**	**Number of imposed disciplinary penalties**
1995	16	16
1999	11	11
2000	11	11
2001	25	18
2002	46	18

The increase in the number of disciplinary proceedings and imposed disciplinary penalties in 2001 and in 2002 is connected with violations of professional discipline by officers of the candidate service.

Border Guard

No.	Kind of a disciplinary penalty	Years					Total
		1995	1999	2000	2001	2002	
1.	Establishing guilt and retracting from an imposition of a penalty	7	19	11	7	10	54
2.	Caution	87	174	225	231	159	876
3.	Reprimand	103	165	189	160	72	689
4.	Strict reprimand	2	43	61	38	23	167
5.	Reprimand with an admonition	66	102	71	67	33	339
6.	Admonition about an incomplete suitability for service at the occupied position	0	36	17	28	15	96
7.	Assignment of a subordinate position	13	15	21	13	5	67
8.	Demotion	6	2	3	0	0	11
9.	Admonition about an incomplete suitability for service	1	47	19	19	25	111
10.	Expulsion from service	17	44	32	24	7	124
11.	Total	302	647	649	587	349	2 534

State Fire Department Service

One penalty of a caution was imposed with respect to officers of the State Fire Department Service during disciplinary proceedings conducted in 1995. Data concerning sanctions imposed in the period 1999 – 2002 are presented in the following table.

No.	Kind of penalty	Years				Total in the years 1999-2002
		1999	2000	2001	2002	
1.	Caution	56	128	129	41	354
2.	Reprimand	25	12	20	10	67
3.	Assignment of a subordinate position	2	7	5	5	19
4.	Demotion	13	19	23	16	71
5.	Expulsion from service	3	11	4	5	23
6.	Total	99	177	181	77	534

Annex 7

Results of elections to the local self-government, the Parliament and elections for president

Level	Candidates in total	Women		Elected in total	Women		Attendance (%)
		Number	%		number	%	
Council of Warsaw capital city	1 343	537	39.99%	60	20	33.33%	41.32
Councils of districts of Warsaw	5 308	1 949	36.72%	399	135	33.83%	41.33
Municipal councils in towns with district rights	25 704	7 199	28.01%	1 685	339	20.12%	33.24
Councils of communes over 20,000 residents	57 938	15 633	26.98%	5 629	959	17.04%	43.85
Councils of communes up to 20,000 residents	142 452	34 751	24.39%	32 205	5 766	17.90%	52.58
District councils	57 357	13 696	23.88%	6 294	1 000	15.89%	49.48
Voivodeship assemblies	9 920	2 791	28.14%	561	80	14.26%	44.23
Total	300 022	76 556	25.52%	46 833	8 299	17.72%	X
Commune head (town or city mayor)	10 371	1 081	10.42%	2 475	165	6.67%	44.24 (35.02 in the 2nd round)
Sejm IV term of office	7 508	1 739	23.16%	460	93	20.22%	46.29
Senate V term of office	429	56	13.05%	100	23	23.00%	46.28
Elections for the President of Poland							
in 2000	13	0	0.00%	1	0	0.00%	61.12
in 1995	17	1	5.88%	1	0	0.00%	64.7 (68.2 in the 2nd round)

German Minority	Candidates in total	Elected in total
Municipal councils in towns with district rights	31	1
Councils of communes over 20,000 residents	84	24
Councils of communes up to 20,000 residents	470	275
District councils	173	61
Voivodeship assemblies	31	7
Total	789	368
Commune head (town or city mayor)	33	25
Sejm IV term of office	51	2
Senate V term of office	3	0