**Additional information about torture prevention in Poland within the competences of the National Public Prosecutor’s Office and Police**

In the context of the common Polish legal regulations concerning acts of torture it is worth noting that the legal ban on torture is written down in the Polish Constitution in art. 40 which states that no person shall be subject to torture or cruel, inhuman or degrading treatment and punishment. It is illegal to apply corporal punishment.

Even though the Polish Criminal Code does not include any express definition of torture, it qualifies as criminal offences any acts covered by the definitions of torture included in international instruments, including: (1) violation of bodily integrity; (2) punishable threat; (3) abuse of a dependent person; (4) causing a bodily injury; (5) forcing another person with violence or unlawful threat into specific conduct. The Criminal Code provides for sanctions for a public officer whose conduct satisfied the criteria of torture. Article 246 of the Criminal Code refers to a crime that consists in the extortion of statements by a public officer with the use of violence, unlawful threat or physical or psychological harassment, which is subject to the penalty of imprisonment from 1 to 10 years. Article 247 of the Criminal Code penalises psychological or physical harassment of a detained person, which is subject to the penalty of imprisonment from 3 months to 5 years, and in the event of acting with particular cruelty – from 1 year to 10 years. The same penalty applies to a public officer who allowed such acts.

1. **Information about torture prevention in Poland within the competences of the National Public Prosecutor’s Office:**

On 23 June 2014, the Public Prosecutor General published guidelines on how public prosecutors should conduct proceedings related to deprivation of life and inhuman or degrading treatment or punishment in which police officers or other public officers are offenders. The guidelines were published to ensure the effective and swift examination of reports and complaints filed on the ground of torture and inhuman treatment of detainees. The guidelines pointed out that it was necessary to immediately take actions aimed at establishing whether or not a criminal offence had been committed by a police officer. It was noted that a notification of a crime must be received by a public prosecutor and that specific activities of the investigation may be entrusted to the police only in exceptional circumstances. If there are reasonable doubts concerning impartiality with respect to all public prosecutors of a public prosecution organisational unit, the case should be forwarded to another unit, irrespective of the principle of territorial jurisdiction. The guidelines also emphasised that it was necessary to collect exhaustive evidence material. Public prosecutors who initiate proceedings in this specific category of crimes are required to notify their supervising public prosecutor. Having regard to points 12 and 13 of the aforementioned guidelines, regular examination of case files is carried out twice a year to analyse whether proceedings are conducted properly and whether substantive decisions issued are legitimate. Supra-regional public prosecutor’s offices are required to send official memos from the examination of case files, together with conclusions, by 15 February and 15 August each year.

The Investigation Department of the National Public Prosecutor’s Office monitors cases in the matter of crimes contrary to Article 246 of the Criminal Code and Article 247 of the Criminal Code, as well as crimes related to the deprivation of life, committed by public officers in the course of performing official duties or in relation to such duties. Each supra-regional and regional public prosecutor’s office has a coordinator appointed for proceedings related to crimes committed by police officers and the role of the coordinator is to supervise and monitor such proceedings. To ensure impartiality and objectivity, it is a continued practice to forward this type of cases to another public prosecution organisational unit, with the principle of territorial jurisdiction being excluded. The National Public Prosecutor’s Office took a series of actions aimed at promoting judgments and standards of the European Court of Human Rights in this domain. The judgment in the case *Kanciał v. Poland* may serve as an example. To this end, it disseminates the judgments delivered by the ECtHR by sending letters to relevant supra-regional public prosecutor’s offices and pointing to shortcomings that constituted underlying causes of the determinations made by the ECtHR. Similar dissemination activities are taken in respect of the ECtHR decisions approving settlements and unilateral declarations. Moreover, the website of the National Public Prosecutor’s Office includes a section on the standards of the ECtHR, where judgments of the ECtHR delivered in Polish cases concerning public prosecutor’s offices are published, and so is the analysis of the outcomes of cases from the *Dzwonkowski v. Poland* group carried out in terms of identifying erroneous practices. The National Public Prosecutor’s Office also appointed a consultant (coordinator) for human rights protection, namely a public prosecutor from the Investigation Department. The coordinator completed training provided by the National School of Judiciary and Public Prosecution that covered the standards and case-law of the ECtHR.

The basic instrument for safeguarding the rights of victims at the stage of investigation are regulations of the Act of 6 June 1997, Code of Criminal Proceedings (Journal of Laws 2022, item 1375, consolidated text, as amended), which are applicable at any stage from the moment of law enforcement authority being notified of a reasonable suspicion of a criminal offence to the ending of criminal proceedings with a non-appealable ruling and the ending of penal enforcement proceedings, if applicable.

In each case, when a party (including a victim at the stage of investigation, and an auxiliary prosecutor at the stage of court proceedings) finds that criminal investigation or criminal court proceedings that are to lead to a decision ending the proceedings is excessively long and lasts longer than necessary for the purpose of establishing relevant factual and legal circumstances, it may lodge a complaint and it may apply for a determination that in relevant proceedings their right to have the case examined without unreasonable delay has been breached on the ground of the Act of 17 June 2004 on the Complaint for Breach of the Right to Have a Case Examined in an Investigation Conducted or Supervised by a Prosecutor and in Judicial Proceedings without Undue Delay (Journal of Laws 2018, item 75, consolidated text, as amended).

If there is a reasonable fear that life, health, freedom or property of significant size of a witness or their closest persons may be at risk, the court, and a public prosecutor in the event of investigation, may issue a decision under Article 184 of the Code of Criminal Proceedings on keeping the information revealing the identity of a witness, including their personal data, secret as long as such information is not important for the determination of the case. A procedure in this regard is carried out without the presence of parties and is secret, being classified as information belonging to the category of “secret” or “top secret”. Additionally, when a case concerns criminal offences contrary to Article 197, Article 198 and Article 199 of the Criminal Code, a victim who is at least 15 years old at the moment of being interviewed may be interviewed as a witness only if their statements may be of significant importance for the determination of the case, and only once, unless new significant circumstances are disclosed, justifying a re-examination of the witness (Article 185c the of the Code of Criminal Proceedings). The victim is interviewed as a witness by the court during a hearing in the presence of an expert in psychology immediately and no later than within 14 days after a request in this regard is lodged. The interview may be attended by the public prosecutor, the defence counsel and the representative of the victim. The recorded video and sound of the witness interview is played and a witness interview report is read during the main hearing. It should also be noted that interviews are carried out in appropriately adjusted rooms.

1. **Information about torture prevention in Poland within the competences of the Police:**

In 2019 the Control Bureau of the National Police HQ in Poland introduced additional procedures which utilize the mechanism of monitoring and supervising how chiefs of Police units respond to information about a potential cases of unjustified use of violence and similar acts committed by Police officers.

To research such cases, strictly after obtaining information about the possibility of these acts having taken place, internal procedures are initiated as well as disciplinary action. Should they not be employed, the Control Bureau of the National Police HQ will take action in order to find out why this has not happened. At the same time action will be taken in order to explain why the incident took place, to outline the consequences and establish new methods that will help prevent similar situations in the future. The introduction of the abovementioned intervention mechanisms is related to a procedure that is effective in the Police, the purpose of which is to facilitate supervision and coordination of efforts concerning the implementation of provision of Decision 95 of the Minister of Internal Affairs from 10 July 2014.

In the Police the Control Bureau of the National HQ is the body responsible for supervision over the system of development and distribution of complaint and non-complaint information since it is responsible for all control and supervision matters. The procedure in question relies on periodic verification of cases which have been recorded into the non-complaint information file (description can be found below) to see if they are being monitored by the Control Bureau or otherwise supervised/controlled in each case where there had been critical misconduct present. This is done in order to ensure that supervising officers can investigate all circumstances in which there are doubts as to the officers’ actions and whether their actions may have involved torture or other form of cruel, inhuman or other degrading treatment.

*Characteristics of non-complaint information and the method of handing that information to the Commissioner of Civil Rights Protection:*

Non-compliant information which need to be passed on to the Bureau of the Commissioner of Civil Rights Protection and the Internal Audit Bureau of the Ministry of Internal Affairs and Administration include information about events which may have implications that due to a Police officer’s actions or lack thereof on duty there was a:

* death, suicide attempt, bodily harm or minor bodily harm of another individual – type I event,
* violation of a person’s sexual freedom (rape, other sexual activity) – type II events,
* unjustified use of coercive measures, physical abuse or psychological abuse against another person – type III event (those are considered non-complaint information - § 20 of Guidelines included in the annex to decision no 3).

The Bureau of Commissioner of Civil Rights Protection and the Ministry of Internal Affairs and Administration also receive complaints re-submitted from category I Inhuman or degrading treatment as category II Violation of the right to freedom (those are considered complaint information § 8 (1) of Guidelines which are included in the annex to decision no 3).

The justification for the introduction of the mechanism of qualifying events as non-complaint information in order to further pass them on to the Commissioner of Civil Rights Protection was that there was a need for an investigation to be carried out by an independent institution in order to detect potential misconduct of Police officers committed against third parties, which was completed as part of the implementation of the recommendations of The Council of Europe Commissioner for Human Rights, formulated in the 2007 Memorandum to the Polish Government.

The basic requirement of the mechanism’s effectiveness is the non-complaint information flow, regardless of other procedures (for example the verifying proceedings art. 307 of the Polish Criminal Procedure Code, verifying proceedings as defined in the Police Act, informing a prosecutor’s office) the goal of which is to investigate the complaint, which means that the non-complaint information flow happens regardless of the initial assessment, whether there was some misconduct involved (for example unjustified use of coercive measures) or whether the outcome of the situation was caused by the officer’s actions or failure to act accordingly if at all.

The information in question is specific in that the Control Bureau of the National Police HQ does not interfere with its content, as a result the responsible entity will pass the obtained non-complaint information in a non-altered form in an electronic format to the Bureau of the Commissioner of Civil Rights Protection and Internal Audit Bureau of the Ministry of Internal Affairs and Administration, which is supposed to prevent delivery delay. The goal is to immediately inform the Commissioner of Civil Rights Protection about the events that occurred and assess the material and potentially take action, which increases the transparency of the Police force. Moreover, any delay in information exchange with the Commissioner of Civil Rights Protection may result in loss of evidence, such as material recorded and stored on bodycams, vehicle dash-cams, the SAP system (cameras installed on Taser devices), or CCTV, where new material may be automatically recorder over old material since it is recorded in a loop due to memory constraints on these devices.

The non-complaint coordinators according to the newly adopted algorithm are required to immediately, but not later than within 5 working days, pass the non-complaint information to the Bureau Control of the National Police HQ. The Control Bureau has 2 working days starting from the day they received the non-complaint information to pass the information to the Bureau of the Commissioner of Civil Rights Protection and to the Internal Audit Bureau of the Ministry of Internal Affairs and Administration, the Commander-in-Chief’s Plenipotentiary for Protection of Human Rights and the Police Internal Affairs Bureau.

*Using non-complaint information as auxiliary tool in the citizens’ assessment of Police officers’ conduct:*

In May 2018 an additional mechanism was introduced in order to analyse the spectrum and assess the content of the non-complaint information.

A big percentage of events qualified as non-complaint information are already monitored by the Control Bureau of the National Police HQ because the involve some themes which may influence the image of the Police.

The National Police HQ carries out periodic analyses – risk assessments of events presented in the abovementioned registers of non-complaint information, especially the ones that involve a suspicion of Police misconduct. The analysis takes into consideration the adequacy of measures applied by the chief of the Police unit in question in order to objectively resolve the situation as well as the manner in which the situation was monitored by the control departments of the Police in each case where they were treated as extraordinary events.

If a certain event is of high priority and the adequacy of measures and procedures applied in order to resolve the situation is insufficient or it was not monitored at all by the extraordinary event monitoring system, the chiefs of these specific Police units will receive additional instructions to provide explanation or make a statement in a particular case as well as provide copies of the selected source documentation which allows the verification of the proper execution of activities. In those scenarios regardless of the activities carried out by a prosecutor’s office, regardless of whether the information was handed over via non-complaint procedure path to the National Police HQ and the Commissioner of Civil Rights Protection, it is mandatory to initiate explanatory or disciplinary proceedings pursuant to Chapter 10 of Police Act.

*Complaint information:*

According to Police Act, Police officers must respect human dignity and observe human rights. Moreover, the Commander-in-Chief in his Order No 805 from 31 December 2003 on Police code of conduct states that:

*§ 4. A police officer in all his actions shall respect human dignity and respect and protect human rights, especially those reflected in:*

*1. respecting each person’s right to live;*

*2. ban on initiating, using and tolerating torture or inhuman or degrading treatment or punishment.*

*§ 6. A police officer’s conduct involving interactions with people should be kind, impartial which would exclude racial, national, religious, political and worldview-related bias or stereotypes or other.*

The abovementioned information is taught during basic Police course, special courses and training sessions as part of in-service training.

In each case where a person feels he or she has been mistreated by a Police officer as a result of official Police tasks being carried out (violence, offensive language, slurs, degrading treatment, procedure misconduct) he may file a complaint against a Police officer and if the accusations prove to be true, the officer may face disciplinary action. If the accusation turn out to be of criminal nature, that crime can be reported pursuant to art. 309 (2) of the Polish Penal Procedure Code, in those cases the whole investigation is carried out by a prosecutor.

Moreover, part of the complaints submitted to the Police is related to the inappropriate treatment and use of unlawful methods during a Police encounter with a citizen that files the complaint. The person who filed the complaint usually wants the Police officer involved to be prosecuted for his actions. The complaints involving this type of accusations cannot be resolved or investigated as ordinary misconduct cases according to the provisions of Chapter VIII of the Polish Administration Code. These cases have to be handed over to the Prosecutor’s office or to the Police Internal Affairs Bureau so they can carry out procedural acts in investigations against a Police officer since an investigation in such cases is carried out according to the provisions of the Penal Procedure Code.