**Information on enforced and involuntary disappearances**

Initially, it should be noted that the Declaration on protection of all people against enforced disappearance from 20 December 2006 was signed by Poland on 25 June 2013, however, it has not been ratified up to now.

The definition of the enforced and involuntary disappearance proves that this trend goes beyond the boundaries of a traditional definition of a criminal offence and could also fall into the political affair category.

Any form of restricting or depriving someone of his freedom, within the scope of Police authority, is based on statutory laws and remains in compliance with the laws of the Constitution of Poland. Therefore we have to assume that the national law, even before the adoption of the Declaration, was in compliance with its provisions, above all in terms of criminal law such as:

1. The right to information about the reason of arrest and to the right to be heard (art. 244 (2) of the Polish Code of Criminal Procedure);
2. The right to immediately contact a lawyer or a legal counselor and the right to a speak with him directly (art. 245 (1) of the Polish Code of Criminal Procedure);
3. The right to inform a close relative or another person about being arrested, the right to inform the employer, the school, the university, the commander and the person which is in charge of the arrestee’s business or in charge of a business that the arrestee is responsible for (art. 245 (2) of the Polish Code of Criminal Procedure, art. art. 261 (1, 2, 3) of the Polish Code of Criminal Procedure). The police will pass on the information about the arrest to a government body which is conducting, at that very same moment, proceedings against the person charged in a different case, as long as they are aware of such proceedings being conducted (art. 261 (2a) of the Polish Code of Criminal Procedure);
4. If the arrested person does not hold the Polish citizenship – the right to contact a consular office or a diplomatic representative of a country which he is a citizen of. If the arrested person holds no citizenship – the right to contact a representative of a country in which he permanently resides (art. 612 (2) of the Polish Code of Criminal Procedure). If a consular agreement between Poland and a country which the arrested person is a citizen of provides it, an appropriate consular office or a diplomatic representative shall be informed about the arrest regardless of whether he requested it or not;
5. The right to file an arrest complaint at a court within a 7 day period after the arrest was made. The complaint may include a request for the verification of legitimacy, legality and validity of the arrest (art. 246 (1) of the Polish Code of Criminal Procedure);
6. The right to be immediately released from Police custody if the reason for the arrest has ceased to exist or after 48 hours have passed from the moment the arrest was made, unless the arrestee is taken to a court within that period of time and an official request is filed to apply pretrial detention. Should the arrestee be transferred to a court, he is to be discharged within a 24-hour period unless he is presented a court decision stating that pretrial detention is in effect (art. 248 (1, 2) of the Polish Code of Criminal Procedure).

In all disappearance cases, the Police shall operate according to Regulation 48 of the Commander-in-Chief of Police from 26 June 2018 on Police search operations for a missing person and the code of conduct in cases involving a person with undisclosed identity or in cases involving an anonymous cadaver or unidentified human remains.

According to paragraph 11 of the abovementioned Regulation “A Police officer conducting the search must maintain the necessary contact with the eligible person and provide access to non-confidential information that this person is entitled to related to the current state and progress of the search efforts.”

The Polish law does not directly define the crime of an enforced and involuntary disappearance, however, each violation of the detained persons’ rights may result in criminal liability or disciplinary action on the basis of other law regulations, for example:

1. Abuse of authority or failure to fulfill the duty imposed by the law by a public officer (art. 231 of the Police Criminal Code);
2. Unlawful seizure (art. 189 of the Police Criminal Code);
3. Taking a hostage (art. 252 KK).

Potential violation of the abovementioned laws do not automatically meet the criteria of the “enforced and involuntary disappearance” which, judging by the definition, bears more resemblance to a form of harassment similar to political oppression.

As for the issue of international prosecution of „enforced and involuntary disappearance” it should be noted that extradition agreements with third countries usually contain a catalogue of criminal offences which they apply to. In the Polish criminal law, only unlawful seizure or kidnapping/hostage related charges could potentially be pressed.

The Polish police’s activities in the field of applying the provisions of the Declaration are carried out ad hoc in the form of various educational projects, including the prevention of torture or other forms of inhuman treatment.

According to the Commander-in-Chief’s Plenipotentiary for the Protection of Human Rights, in democratic Poland there were no reported cases of seizures, arrests, kidnappings/hostage or any other form or freedom deprivation that could be attributed to a Police officer or to persons or groups of persons acting with the aid of the state or under a tacit approval from the state, where
the authorities would subsequently deny the fact that certain persons were taken or would not disclose the whereabouts of these persons to the public, which, in turn, would put these persons at a disadvantage of not being protected by the law.