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REPORT

OF THE COMMISSIONER FOR HUMAN RIGHTS , MR ALVARO GIL-ROBLES,

ON HIS VISIT TO POLAND

18 – 22 NOVEMBER 2002

for the Committee of Ministers and the Parliamentary Assembly

INTRODUCTION

In accordance with Article 3(e) of Committee of Ministers Resolution (99) 50 on the Council of Europe Commissioner for Human Rights, I was pleased to accept the invitation extended by Mr Włodzimierz Cimoszewicz, Polish Minister of Foreign Affairs, to pay an official visit to Poland on 18-22 November 2002. I would like to thank the Minister for his invitation and for the resources he placed at my disposal throughout the visit, as well as Mr Jakub Wołąsiewicz and Ms Renata Kowalska for the arrangements they made during my visit. I visited Warsaw, Katowice and Krakow, and was accompanied by Mr Christos Giakoumopoulos, Director of my Office and Ms Satu Suikkari, member of the Office. Ms Anja Snellman assisted in the preparations of the visit. I would also like to thank the Permanent Representative of Poland to the Council of Europe and members of the Representation for their co-operation and assistance. I am grateful for the support of Dr. Hanna Machinska, Director of the Council of Europe Information and Communication Centre in Warsaw and members of the Centre, who provided valuable assistance in organising the visit, in particular the meeting with non-governmental organisations.

During the visit I met with the Minister for Foreign Affairs, Minister of Justice, vice-Minister of Justice, vice-Minister of Defence, vice-Minister of Internal Affairs and Administration, the Government Plenipotentiary for Equality between Women and Men, representatives of the Prime Minister's office, the Commissioner for Civil Rights, the Ombudsman for Children, the President's advisor on human rights, the President of the Constitutional Tribunal, members of the Parliamentary Commission on human rights and justice, the voivode of Silesia, the voivode of Małopolska and the plenipotentiary of Nowy Targ on minorities. Due to the fact that the NATO summit in Prague coincided to a certain extent with my visit, I was unfortunately not able to discuss certain concerns directly with the relevant interlocutors such as the Prime Minister and the Minister of Internal Affairs and Administration. I also met with representatives of the Polish Bar Association, NGOs and trade unions. I visited the Warszawa-Białołęka Detention Centre, the Women's Rights Centre in Warsaw, the centre for refugees Dębak-Podkowa Leśna, a remand centre for children in Katowice and Auschwitz-Birkenau. My team visited a Roma community in Nowy Targ.

GENERAL OBSERVATIONS

1. Poland joined the Council of Europe on 26 November 1991 and ratified the European Convention on Human Rights on 19 January 1993. Poland has also ratified Protocols 1, 4, 6 and 7 to the Convention and signed Protocol 13, which prohibits death penalty in all circumstances, but has not yet signed Protocol 12, which provides for a general prohibition of discrimination. Poland has ratified the Framework Convention for the Protection of National Minorities and the European Social Charter. However, the European Charter for Regional or Minority Languages and the Revised European Social Charter have not yet been signed by Poland.

2. Several reforms have taken place in the context of Poland's adhesion to the European Union, which is scheduled to take place in 2004. Poland has had a successful transition from communism to a society based on democracy, rule of law and the respect for human rights. However, a number of concerns still remain, that would need to be addressed in a prompt manner. In the past decade, new challenges have emerged in relation to issues such as women's rights, xenophobia and trafficking in human beings.

3. This report will address some of the issues that were raised during the discussions I had with national and local authorities, non-governmental organisations, institutions for human rights protection, parliamentarians and representatives of labour unions. These issues are related to (I) The judicial system, the police and the army; (II) Non-discrimination and the situation of minorities; (III) Women and children; (IV) Trafficking in human beings; (V) Refugees and asylum-seekers, (VI) Labour and social rights and (VII) Freedom of expression and freedom of media.

I. JUDICIAL SYSTEM, THE POLICE AND THE ARMY

Excessive length of judicial proceedings

4. Excessively lengthy judicial proceedings significantly undermine the rule of law. The denial of the prompt enforcement of rights may in addition lead to negative knock-on effects in a wide range of cases, including a number covered in this report. Lengthy proceedings in domestic violence cases can, for instance, result in victims of abuse having to continue to live with their abusive partners while awaiting trial. Children are kept in remand homes longer than intended awaiting a decision to place them elsewhere.[1] Persons in pre-trial detention might be deprived of their liberty for excessively long periods of time while awaiting their trial, which is an attaint to the fundamental right of liberty of person. Litigation is also negatively affected in labour and social cases, such as cases concerning the non-payment of salaries, contesting dismissals, withdrawals of social benefits and evictions, such as to consistently favour the well-off and the well-placed over the more vulnerable, who are denied the necessary judicial protection. Slow justice is, in short, often tantamount to no justice.

5. The Polish judicial system is suffering from a significant backlog of cases, most notably in the Warsaw area. According to information provided by the government, the average length of proceedings at first instance in criminal cases has been as high as 28,6 months in district court for Warsaw-Srodmiescie, while in other parts of the country the average length is approximately 5,4 months in district courts and 6 months in regional courts. In civil matters, the average length for district courts is 5,4 months and 6,8 months for regional courts. However, in Warsaw there is a significant caseload of civil proceedings, which have lasted more than 5 years.

6. The Polish government fully acknowledges the extent of this problem and I discussed it at length with the vice-Minister of Justice, Mr Sylweriusz Królak. The problems with lengthy proceedings are most often attributed to insufficient resources but also to poor administration, the cumbersome structure of the judicial system and the insufficient number of judges and prosecutors.

7. The problem is also reflected in the Polish cases before the European Court of Human Rights, where most judgments declaring a violation of the Convention by Poland relate to the right to a fair trial within a reasonable time (length of proceeding cases) (article 6). A significant number of cases also deal with the right to liberty and security, more specifically excessive length of pre-trial detentions (article 5). As a response to the multiple violations found by the European Court of Human Rights, the Government has embarked on several steps to remedy the situation by restructuring the court system in order to streamline and accelerate the legal process. These measures include

[1] See below the chapter on Women and Children and "Human Rights in the OSCE Region: the Balkans, the Caucasus, Europe, Central Asia and North America" by the *International Helsinki Federation for Human Rights*, 2002, p. 251.

- a simplification of court procedures through draft amendments of relevant laws such as the Code of Misdemeanour Procedure, the Code of Criminal Procedure and the Code of Civil Procedure;
- structural changes of the organisation of common courts of justice such as the creation of borough courts handling petty civil and criminal cases and adjusting territorial jurisdictions of courts;
- an increase of judicial staff ;
- increased budget allocations;
- strengthening of the administrative supervision over the courts through regular inspections of common courts to control inter alia the process of planning the court sessions;
- changes to the judicial enforcement procedure; creation of separate administrative sections within the courts to relieve the judges of administrative tasks;
- computerisation of the justice system;
- special measures are being taken to improve the situation in Warsaw, particularly by addressing the poor working conditions in the current courthouse. New buildings are being acquired and once there is sufficient space, the district court of Warsaw-Praga as well as the Regional court in Warsaw will be divided into separate units.

8. The comprehensive nature of these reforms can be expected to reduce the length of proceedings in the coming years. They will, however, have to be implemented effectively and with the necessary budgetary allocations. At the same time, the wide scope of the measures has led to some confusion among persons involved in judicial proceedings, and I would like to encourage the Government to ensure that sufficient information and training is provided on the reform measures.

9. As regards the creation of effective domestic remedies in cases of excessively long judicial proceedings, following the Kudla v Poland judgement[2], a working group was established with a view to preparing legislation to remedy the situation. In the meantime, the Polish Constitutional Court in a judgment of 4 December 2001[3] interpreted article 417 of the Civil Code as allowing domestic courts to find a violation of this article, concerning the responsibility of a public officials (including courts) for damages caused by them in the course of performing their professional duties, and award compensation without the need to establish the fault of the public official. According to the Polish government, this landmark decision ought to allow individuals and legal persons to claim damages in respect of excessive length of judicial proceedings and length of detention. However, according to the case-law of the Court and the practice of the Committee of Ministers when supervising the execution of judgments, the possibility of obtaining damages represents a sufficient remedy primarily in cases where the domestic proceedings have ended. Where the proceedings are still pending, the most appropriate remedy is, in addition to the awarding of damages, the acceleration of the proceedings in question. This possibility, which today exists in many of the member States, should also be part of the new remedy, which is being envisaged by the Polish authorities.

10. I would also like to suggest that serious consideration be given to finding a friendly settlement at the national level in cases where there is an evident violation of article 6 of the Convention. The Commissioner for Civil Rights of Poland could play an important role in such a process. For cases already before the European Court of Human Rights, I encourage the Government

[2] Judgment No. 30210/96 by the Grand Chamber of the European Court for Human Rights of 26/10/2000.
[3] Case no. SK 18/2000, published in the Official Journal on 18 December 2001 (no. 145, Item 1638)

and the applicants, together with the Court, to make effective use of the friendly settlement procedure provided for by articles 38 and 39 of the European Convention on Human Rights.

11. Finally, in this respect, it must be emphasised that lengthy proceedings lead to legal uncertainty, thereby denying an essential aspect of rule of law. In view of these concerns and the time which has passed since these problems were first established by the Court, the Polish authorities should urgently address the inefficiencies of the justice system in a committed and focussed way.

The prison system

12. In the past few years, there has been a steady increase in the number of prisoners. Since the year 2000, the number of prisoners has exceeded the capacity of the prisons.[4] I discussed this issue with representatives of the Ministry of Justice who informed me that certain improvements had taken place with regard to the financing of and legislation concerning the prison service.[5] A program has been developed to increase the number of places in prisons and remand prisons that is mainly focussing on reconstructing and expanding already existing facilities. There is an urgent need for more prisons, but they will take several years to construct. The emergence of organised crime had caused demands for stricter penalties for serious crimes but I would like to stress the importance of not letting this demand influence the overall approach to penalties. Instead, alternative penalties to imprisonment ought to be used more often, especially for young people and perpetrators of minor crimes, both as a measure to decrease the prison population and to reduce recidivism through their positive reintegration in society.

13. I visited the Warszawa-Białołęka remand prison, which currently hosts approximately 1700 prisoners, while the official capacity is 1200. In most standard cells there were still six beds, whilst the Committee for the Prevention of Torture (CPT) had recommended that there be maximum four beds in each cell. Several measures have been taken at the prison to implement the recommendations made by the CPT in its reports on Poland in 2000 and 1996, particularly in relation to the refurbishment of the prison and developing a programme of activities for the prisoners. Plans are under way to implement the remaining recommendations in the near future.

14. A number of detainees complained to me about inadequate access to lawyers. They informed me that private lawyers come when requested but that that most prisoners cannot afford to hire them. The officially appointed lawyers were said rarely to visit their clients. This is a serious issue. Moreover, similar concerns were brought to my attention in the child remand centre I visited in Katowice. Though it was suggested to me in my meetings with the representatives of bar associations that such failures were not systematic, I would encourage the bar associations and the Ministry of Justice to examine this issue in greater detail, and, depending on the results, to take the appropriate action. The expertise of the Council of Europe in this area may be of help.

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[4] On 31 May 2002 the number of places in prisons were 69.067 whilst the number of prisoners was 81.050. The problem with overcrowding of the prisons was also raised in the report on the visit to Poland by the European Committee for the Prevention of Torture (CPT) in 2000, doc. CPT/Inf(2002)9.

[5] The budget of the prison service is increased every year. In 1999 the budget was of 1.086.156 thousand PLN, in the draft budget of 2003 it was 1.449.570 thousand PLN. Compared to the previous year, the budget for 2000 increased by 3.9%, that of 2001 by 7.5%, that of 2002 by 12.9% and that of the draft budget by 5.6%.

The police and the army

15. Cases of ill-treatment, even deaths of persons in police custody, have been reported.[6] It would appear that those most frequently suffering from indifference or ill-treatment by the police are prostitutes, Roma and victims of trafficking.[7] There is some suggestion that police violence frequently goes unreported as victims are said to fear that they themselves will be prosecuted. There is a further concern that incidents of police violence are not always impartially investigated and rarely reach the courts. In this context, I noted with some satisfaction that the project "Strengthening anti-discrimination policy", financed by the European Union-run Phare programme, to be implemented in 2003-2004, includes a training component for representatives of the judiciary and the police.

16. Whilst they were aware of isolated incidents, both the Civil Rights Commissioner, Mr Andrzej Zoll, and the vice-Minister of Internal Affairs and Administration, Mr Zenon Kosiniak-Kamysz, denied the existence of systematic police brutality, but given the frequency of such allegations, it is imperative that the Government ensures that these cases are promptly and correctly investigated.

17. With the vice-Minister of Defence, Mr Piotr Urbankowski I raised the issue of the practice of hazing, or *fala*, in the army.[8] Hazing is a practice whereby new recruits are subjected to abuse and humiliation by older recruits.[9] The Polish Penal Code criminalises the act of humiliating or insulting a subordinate recruit with imprisonment.[10] Nonetheless, every year several hundreds of cases are reported[11] and many more can be assumed to remain unreported.

18. Ministry of Defence officials acknowledged that hazing was a well-known problem and informed of several concrete measures that had been introduced to address the problem. Training, psychological counselling and increased surveillance were among the measures introduced by the Ministry of Defence. A confidential military telephone has been established where victims can talk about their situation or that of others. If an urgent case is revealed the information is passed to the gendarmerie for immediate intervention. These measures have already contributed to a slight decrease in the number of cases.

19. However, it is difficult to combat the problem because the practice is largely accepted among recruits and a sense of solidarity among the recruits makes prosecutions difficult. I strongly support the actions taken by the Ministry of Defence in this matter and I urge the Government to continue its efforts. Hazing represents a particularly pernicious abuse of authority and the Government bears the ultimate responsibility for addressing this problem. At the same time, the

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[6] See 'Human Rights in the OSCE Region: the Balkans, the Caucasus, Europe, Central Asia and North America' 2002 (events 2001) by the International Helsinki Federation for Human Rights, chapter on Poland, p. 250.

[7] See *e.g.* 'European Roma Rights Centre Statement to the 2002 Organization for Security and Co-operation in Europe (OSCE) implementation meeting on human dimension issues,' September 11, 2002.

[8] This practice was also a concern with the United Nations Committee Against Torture in its Concluding Observations and Recommendations on Poland, May 2000, doc. A/55/44, paras 82-95. For examples of hazing in the Polish army see 'Human Rights in the OSCE Region: the Balkans, the Caucasus, Europe, Central Asia and North America' by International Helsinki Federation for Human Rights 2002 (events 2001) p. 251.

[9] Amnesty International has for instance reported incidents where older recruits have set fire on a younger recruit, pressured new recruits to try to hang themselves and forced them to jump of a speeding truck. There have also been cases of economic extortion. As a result of hazing some cases of suicide have been recorded in Poland.

[10] Physical or psychological ill-treatment can result in up to five years imprisonment, or up to 10 years if the perpetrator had acted with particular cruelty. If the ill-treatment prompted the victim to attempt to take his life the sentence could be extended to 12 years imprisonment.

[11] 300 cases of hazing were reported in 2000 and 255 in 2001.

media could also play an important role in eradicating the acceptance of *fala* among the general public, present and future recruits and all levels of defence staff.

II. NON-DISCRIMINATION AND THE SITUATION OF MINORITIES

Non-discrimination

20. The Constitution of Poland includes a general equality clause and prohibits discrimination in political, social or economic life 'for any reason whatsoever'.[12] The Constitution guarantees equal rights for men and women, and the Polish Labour Code contains a prohibition of discrimination in employment. Poland has not yet signed Protocol N° 12 to the European Convention on Human Rights relating to the general prohibition of discrimination, and though it is currently being considered, no indication was given to me as to when a decision on ratification might be taken.[13] Representatives of the Ministry of Justice noted that the Government might wish to wait for some jurisprudence from the European Court on Human Rights in order to fully assess the implications of the Protocol. However, I would like to encourage the Government to consider signing and ratifying the Protocol in a timely manner particularly as the Constitution of Poland prohibits all forms of discrimination.

21. Despite the wide anti-discrimination clause in the Constitution, Poland has very little specific anti-discrimination legislation, in such areas as housing, contractual relations between individuals and access to public places. The need for more specific legislative provisions in such areas has already been identified by the European Commission against Racism and Intolerance. [14] I welcome the fact that the Parliament is considering a draft law amending the Labour Code, which would introduce a ban of any direct and indirect discrimination not only on the grounds of gender (which has been in force since 2001), but also on the grounds of race and ethnic origin, religion and belief, disability, age and sexual orientation, as well as provide specific regulations against sexual harassment at work. I encourage the Parliament to adopt this draft law in a timely manner.

22. Representatives of the civil society called my attention to specific instances of discrimination, both on the part of public authorities and private actors, on such grounds as gender, sexual orientation, disability or HIV/AIDS. I was informed about the occurrence of hate crimes against homosexuals, who do not always receive adequate protection from the police. There have also been cases where homosexuals have been denied medical care because of fear that they might have HIV/AIDS. It would appear that the treatment of HIV-positive patients is not always appropriate; it is, for instance, sometimes difficult to get treatment because of fear of transmitting the virus. It was noted that issues such as access to education, employment, retirement benefits and housing for persons with disabilities are still insufficiently addressed.

23. I was pleased to note that the Government has recently taken steps to strengthen the fight against discrimination, such as the establishment of a Plenipotentiary for Equal Status of Women and Men in November 2001, and the recent decision by the Parliament to ratify the Optional Protocol to the Convention on the Elimination of all forms of discrimination against women, which allows individual women, or groups of women, to submit claims of violations of

[12] Article 32 of the Constitution of Poland.
[13] As of 24 February 2003, 27 member states have signed the Protocol and three have ratified it.
[14] See 'Second report on Poland' by ECRI, doc. CRI(2000)34. See also the '2002 Regular Report on Poland's accession to the European Union', which noted that the transposition of the principle of non-discrimination into legislation, including the anti-discrimination *acquis* has been limited.

rights protected under the Convention to the Committee monitoring its implementation. Plans are under way to draft a law on the Equal Status of Women and Men. By a Government Ordinance of June 2002, the mandate of the Plenipotentiary was expanded to cover issues of non-discrimination generally, pending the establishment of a new anti-discrimination body. The Plenipotentiary has already initiated important measures within her extended mandate, and I would like to urge the government and the parliament to seriously consider these initiatives. The Plenipotentiary, who was assigned as a body responsible for making arrangements for the establishment of the new anti-discrimination institution, submitted a draft law on the establishment of a General Inspector for the Prevention of Discrimination that is currently being considered.

The situation of minorities

24. Poland ratified the Framework Convention for the Protection of National Minorities on 20 December 2000 and it entered into force on 1 April 2001. Poland submitted its initial report on the implementation of the Convention to the Advisory Committee on 10 July 2002. The monitoring of the implementation of the Framework Convention by Poland has therefore started and I encourage the Polish authorities to continue a dialogue with the Advisory Committee on the Framework Convention. Poland has not signed nor ratified the European Charter on Regional and Minority Languages.

25. According to this initial report, Poland hosts 13 national and ethnic minorities, whose population is estimated to be approximately 1 million people.[15] During my visit, representatives of minorities stated that xenophobia, anti-Semitism and negatives stereo-types of minorities were common, and stressed the need to promote tolerance, starting with programs at schools. Other concerns identified by some minorities included difficulties in preserving their own culture and language, access to the media and disadvantaged social situations in areas such as housing and employment.

26. While the Constitution of Poland and other laws contain provisions for the protection of minorities, the absence of more detailed legislative provisions in certain questions was confirmed to be a major concern by representatives of minorities. For instance, the right to use minority languages in relations with administrative authorities is not provided for by the law. At present, the status of minorities is mainly regulated by bilateral agreements on good neighbourliness and friendly co-operation with other countries, which do not cover all minorities. As a result, the legal foundation for the protection of minorities lacks coherence.

27. The establishment of a new government agency for the protection of minorities is foreseen in a draft Law on National and Ethnic Minorities in the Republic of Poland, which is currently under discussion by the Parliament. The Polish authorities have asked me to provide an opinion on the functions and structures of the proposed new institutions in the field on non-discrimination and protection of minorities. I welcome the efforts to strengthen the institutional framework, and would like to encourage the Parliament to carefully consider the relations between the proposed institutions as the issues are closely interlinked. I shall be glad to engage in dialogue with the Government on these important initiatives in the near future and will reserve further comments until this time.

[15]The report submitted by Poland pursuant to Article 25, paragraph 1 of the Framework Convention for the Protection of National Minorities of 10 July 2002 (ACFC/SR (2002) 2) lists the following minorities: Belarussians, Czechs, Karaites, Lithuanians, Lemks, Germans, Armenians, Gypsies, Russians, Slovaks, Tatars, Ukrainians and Jews.

The particular situation of Roma/Gypsies

28. According to Poland's report to the Framework Convention, the Roma/Gypsy population in Poland is estimated to be between 20.000 and 30.000. Thousands of Roma/Gypsies in the territory of pre-war Poland were killed during the holocaust by the Nazis, according to some estimations up to ¾ of the Roma/Gypsy population.

29. It is widely acknowledged that discrimination against Roma/Gypsies occurs in many areas, especially with regard to education and employment.[16] In respect of the former, the practice of so-called 'Roma classes' is of concern since they tend to further isolate Roma children from others and education provided in these classes was reportedly often of lower quality. I support the views of the Ombudsman for Children who noted that efforts should be strengthened to ensure that all Roma children could attend integrated classes, instead of special Roma classes. Contacts with the police, prosecutors and judges were reportedly often problematic and the authorities did not always react seriously towards acts of violence against the Roma. I was informed about a case in 2001 where a police officer had shot and killed a Roma man who was suspected for stealing. I would like to urge the authorities to conclude the investigations into this case.

30. A pilot project was launched in 2000 in Malopolska province in southern Poland with the aim of achieving full participation of the Roma and equal levels of development in areas such as education, employment, health, hygiene, and accommodation. The pilot project had indeed been functioning well, and the authorities were evidently committed to implementing it.[17] This project, however, only benefits a relatively small number of Roma, and I would encourage the government to urgently address the problems of the Roma population throughout the country and to allocate sufficient resources to this end, and consider duplicating the Malopolska project elsewhere in the country. The Government is working on a national programme for the Roma, in cooperation with provincial governors, Roma activists and NGOs, which is scheduled to be finalized in 2004.[18] Developing the national programme for the Roma is a matter of priority and I would like to urge the Government to take all measures to ensure its timely finalisation.

[16] See ECRI's 2000 report on Poland, which states that 'disadvantage on the labour market is also frequently attributable to direct discrimination and prejudice as well as to previous discrimination in access to education and social equality'.

[17] Members of my office visited the Bialka Tatrzanska village in Nowy Targ where this pilot project had been implemented. Houses had been repaired and new houses had been built. Infrastructure improvements had taken place, such as construction of a canalisation and a waste management system, and improvement of the heating system. A few houses in the village, as well as in another nearby village were still in a dangerous condition especially in the winter, as the weight to snow might make the roofs to collapse. The Plenipotentiary of the *voivodshp,* informed that these houses were going to be demolished next spring and replaced by new houses. A small nursery school had been established for children of 4-5 years of age to prepare them for regular school. Language problems have been cited to be among the major causes for Roma children to attend special classes in the past, and in order to overcome such problems, classes in the nursery school were given in Polish. School assistants had been appointed for Roma children to smooth the transition from Roma classes to regular classes.

[18] Also, a Consultative Commission for the Roma comprising government representatives and representatives of 20 Roma NGOs has been established, and it held its first meeting on 12 November 2002.

III. WOMEN AND CHILDREN

Ombudsman for children

31. A law on the institution of an Ombudsman for Children was adopted in 2000[19]. During my meeting with Mr. Pawel Jaros, the Ombudsman for Children, he noted that the fight against violence, ill-treatment and the commercial and sexual exploitation of children were among his priorities. Measures had been taken to stop violence, such as the appointment of specialists in different regions and the opening of a telephone hotline for the victims. The Ombudsman had submitted to the President of Poland a motion to take legislative initiatives aimed at creating a comprehensive system for counteracting violence. In addition, the Ombudsman had drawn the attention of the authorities to issues such as limited access to education of children in rural areas and problems in realising the right of each child to have his/her views taken into account. Many of the priority areas set up by the Ombudsman coincide with the matters, which the UN Committee on the Rights of the Child raised in its recent report on Poland.[20] All these matters are of significant concern and I call upon the Government and the Parliament to give their support to the initiatives aimed at tackling these problems.

Visit to a children's remand centre

32. I visited a children's remand centre in Katowice, which hosts about 400 children each year, between the age of 13 and 18 (in exceptional cases up to 21 years). Approximately 90 percent of the children were boys, but there was also a section for girls. This centre hosts children only temporarily, pending a possible decision by a court to transfer them to another institution, such as a correction centre or a juvenile prison. Recreational and some educational activities were organised, but the children did not have a chance to attend school classes since they were meant to stay in the centre only for a few days. However, the centre authorities informed that in exceptional cases children stayed for a few weeks due to the length of court proceedings.

33. Despite the fact that the material conditions were quite good and the personnel managed to create a caring atmosphere, there were, however, issues that I found concerning. I was informed that lawyers could only meet with the children when accompanied by a police, and in practice they rarely visited the children (see above 'prison system'). Bearing in mind that some of the children stay in the centre for several weeks, it would undoubtedly be important to introduce more educational activities for them, as part of the reintegration efforts.

Reproductive rights

34. In its recent Concluding Observations on Poland[21], the UN Committee on Economic, Social and Cultural Rights expressed its concern at inadequate family planning services and sexual and reproductive health education, lack of access to affordable contraception, as well as the restrictive abortion legislation, which has resulted in a large number of women risking their health when they resort to clandestine abortionists. Under the current Polish legislation, termination of pregnancy is allowed if the pregnancy causes a threat to the life or health of the

[19] In the same year, Poland ratified the European Convention on the Exercise of the Rights of the Child.

[20] See 'Concluding Comments of the Committee on the Rights of the Child: Poland', United Nations, doc. CRC/C/5/Add.194, 30.10.2002.

[21] See doc. E/C.12/1/Add.82 of 29 November 2002. Also the UN Human Rights Committee noted in its 1999 Concluding Observations on Poland with concern the strict laws on abortion, which led to high numbers of clandestine abortions with attendant risks to life and health of women, doc. CCPR/C/79/Add.110 of 29.7.1999.

mother; if there is a high probability of severe and irreversible damage to the fetus or of an incurable disease, life-threatening of a child; and if there is a confirmed suspicion that the pregnancy is a result of a criminal act. [22]

35. I was informed about cases where women or girls had, however, been refused abortion even on the grounds stipulated under this law. Women had also been denied pre-natal examinations, as it had been seen as an attempt to get an abortion. The difficulties in obtaining legal abortion in public hospitals[23] has led some women to undergo risky illegal abortions or attempt to induce abortions themselves, which sometimes lead to fatal consequences.[24] My attention was drawn to a case where a 16-year old girl had died after taking an overdose of laxatives in an attempt to self-induce an abortion. I would like to express my concern at the manner in which the current Act has been implemented, leading to severe obstacles of the enjoyment of the right to health and right to life of pregnant women and girls.

36. Compulsory education on sexual health was removed from the school curricula in 1999 and replaced in secondary schools by programmes on preparation for family life. These programmes should promote an adequate knowledge of reproductive health.[25] Such education is essential for the realisation of the right to health, since it decreases the vulnerability to HIV/AIDS and sexually transmitted diseases.

Domestic violence

37. According to information based on national surveys, an estimated 18 percent of married Polish women are victims of domestic violence[26], and 41 percent of divorced women reported that they had been often beaten up by their spouse The Plenipotentiary for Equality between Women and Men and the Women's Rights Centre noted that domestic violence had long been an issue surrounded by taboo and silence, but that it has recently become more publicly discussed and condemned. Domestic violence, both physical and psychological is criminalized in Polish legislation.[27]

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[22] A decision by the Constitutional Court in 1997 declared that the liberalisation of abortion was unconstitutional.

[23] The Medical Profession Act of 1996 provides for a doctor the right to use a clause of conscience to refuse terminating a pregnancy. The doctor is, however, obliged to refer the patient to another doctor or to a hospital where the abortion can be performed. According to information given to me, neither hospitals nor doctors do this in practice. See 'The Anti-Abortion Law in Poland – The functioning, social effects, attitudes and behaviours', by *the Federation for Women and Family Planning*, September 2000.

[24] See 'Women in Poland: Sexual and reproductive health and rights', independent report submitted to the UN Committee on Economic, Social and Cultural Rights by the *Polish Federation for Women and Family Planning, Women's Rights Center and La Strada Foundation*, October 2002.

[25] In its Concluding Observations of 30.10.2002 on Poland, the UN Committee on the rights of the child recommended that Poland institute health education and awareness programmes specifically for adolescents on, for instance, sexual and reproductive health, doc. CRC/C/15/Add.194.

[26] This information is based on surveys conducted in 1993 and 1996 by the Public Opinion Research Centre with 1087 adult women. The number of all women who are victims of domestic violence is likely to be even higher – according to some estimates 25 to 30 percent – since these numbers did not cover unmarried women living with a partner.

[27] Article 207 of the Penal Code.

38. The authorities have taken some measures to address domestic violence.[28] In 1999, a Victim's Rights Charter was developed by the Ministry of Justice, which aims at promoting the rights of victims and perpetrators in judicial proceedings. A "blue cards" system was introduced in 1998 by the national police authorities with the aim of simplifying and standardising the procedure when intervening in situations of domestic violence. It provides for guidelines on the gathering and documenting of evidence as well as information on the victims' rights and contact details for institutions that provide assistance. This "blue cards" system is an interesting initiative to tackle domestic violence. Nonetheless, some weak points have also been identified which should be addressed swiftly to improve the implementation of the system. Apparently it is not applied conformably in the whole country, the cards are not always used, or used only at the request of the victim, and the follow-up of the information gathered is inadequate.[29]

39. The dire economic situation of the victims and their families is an obstacle for women who want to leave an abusive relationships. According to the Plenipotentiary for Equality between Women and Men, the family itself has to pay for the emergency treatment of its alcoholic member at the emergency sobering centres, which creates a significant financial burden. The long term treatment at specialised centres is free of charge. In addition to financial obstacles, the NGOs dealing with women's rights strongly stressed the need for more shelters that can accommodate the women and children who have to flee their homes. In Warsaw there are only two shelters (40 places). In some regions of Poland there are no shelters at all. It has been reported that the quality of the existing shelters is undermined by the inadequate training and competence.[30]

40. It seems that police and prosecutors often still see domestic violence as a private matter and that cases of domestic violence are sometimes dismissed with the argument that the injuries inflicted upon the women were not serious enough. It must be stressed that stronger actions are needed by the Polish authorities to ensure that domestic violence is not treated as a private affair. Introducing compulsory training, with the participation of the NGOs, would be an effective way to raise the awareness of the police force, prosecutors and judges in these matters.

41. There is a need to remedy certain gaps in the existing legislation. The lack of the possibility of imposing restraining orders is particularly evident in this respect. Other protection and assistance related issues might also be more comprehensively addressed in new legislation. Useful guidance on this issue can be found in the recent Council of Europe recommendations.[31]

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[28] Government response to domestic violence is coordinated by the State Agency for Prevention of Alcohol Related Problems. This is criticised by NGOs who state that alcoholism may contribute to but does not cause domestic violence. See 'Women in Poland: Sexual and reproductive health and rights', independent report submitted to the UN Committee on Economic, Social and Cultural Rights by the *Polish Federation for Women and Family Planning, Women's Rights Center and La Strada Foundation*, October 2002, and 'A report on domestic violence in Poland', by *Minnesota Advocates for Human Rights, Women's Rights Centre and International Women's Human Rights Clinic at Georgetown University Law Centre*, July 2002.

[29] A fear has been expressed that, as one of the cards is entitled 'request for help', police are reluctant to investigate and prosecute potential abuses unless the card has been signed by the victim. However, as domestic violence is a publicly prosecutable offence, a request from the victim ought not to be needed to commence proceedings.

[30] See reports cited ibid, in footnote 28.

[31] Recommendation (2002) 5 of the Committee of Ministers of the Council of Europe on the Protection of women against violence and Recommendation 1582 (2002) on Domestic violence against women adopted by the Parliamentary Assembly.

IV. TRAFFICKING IN HUMAN BEINGS

42. In recent years, Poland has become a country of origin, transit, and destination with regard to trafficking in human beings. Victims are primarily women and girls, but to some extent also boys. Polish women and children are trafficked to several western European countries mainly for sexual exploitation. Women and children are trafficked into Poland from countries such as Ukraine, Bulgaria, Romania, Belarus and Russia. Several reports describe the dire circumstances under which the victims of trafficking are living. With no identity documents, the victims are kept under the control of the traffickers through intimidation and violence.[32]

43. The Polish Criminal Code of 1997 criminalizes trafficking in persons[33], and Poland has recently ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime. However, there is an evident need to introduce further legislative and other measures to strengthen assistance to the victims. I understood that at present, victim assistance is left largely to non-governmental organisations, with some financial assistance from the Government. I encourage the government to establish more shelters and to ensure that the victims are provided with social assistance, health care, counselling and legal advice. Recent improvements in witness protection are to be welcomed and further developments encouraged.

44. Victims of trafficking were often deported from Poland on the basis of the law on foreigners, with little regard given to their vulnerable situation. I was informed of several cases where the expelled victims were met by traffickers at the border who provided them with new travel documents and returned them back to the country. Measures must be taken to ensure that victims of trafficking are not expelled in a manner which renders them vulnerable to further abuses. The establishment of appropriate repatriation processes is of utmost importance, with due regard given to the safety and reintegration of the victims upon return. Moreover, I would encourage the authorities to grant temporary residence permits to the victims so as to allow them to stabilize their situation, to better prepare for an eventual return and to assist in legal proceedings against the traffickers.

45. Training to the border guards, the police, prosecutors, the judiciary and other authorities is essential to ensure effective action against the traffickers and protection of the victims. At present such training is provided by non-governmental organisations, such as La Strada and Helsinki Foundation. I urge the government to assume its responsibilities in this respect, in cooperation with the NGOs.

46. The problem of trafficking in human beings must be tackled in comprehensive manner, and I was pleased to learn that a national action plan against trafficking is under preparation. Regional cooperation is crucial, both with the countries of origin and the countries of destination to tackle the root-causes of this problem.

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[32] *La Strada*, an organisation actively involved in fight against trafficking, reported of several cases where victims of trafficking were provided with practically no protection from the authorities, exposing them to additional risks.

[33] Trafficking in human beings, as well as inciting a person to prostitution or facilitating prostitution is penalised with imprisonment of up to three years, with stricter penalties if the victim is a minor, or the perpetrator has enticed or abducted a person into prostitution abroad.

V. REFUGEES AND ASYLUM-SEEKERS

47. According to information given by the Ministry of Interior, a total of 4.513 persons applied for refugee status in Poland in 2001. In the same year, 282 persons were granted refugee status, of whom 206 were from Chechnya. Since 1999, there has been a significant increase of Russian asylum seekers, originating from the Republic of Chechnya.

48. I visited the Debak-Podkowa Lesna refugee reception centre outside Warsaw. The centre was for temporary stay,[34] pending the relocation of the refugees to a more permanent refugee centre. Majority of the refugees were Chechens, but also many came from Afghanistan, Iraq, African countries and countries of the former Soviet Union. Some of the Chechen refugees I had actually met previously in a camp in Ingushetia, but they had left because of the dire circumstances at the camp. They had faced no problems from the Russian authorities when leaving the country. The Commissioner for Civil Rights noted that there had recently been cases of refoulement of Chechen asylum-seekers at the border, which the UNHCR also confirmed. Women and children had been among those who were denied entry into the country on grounds of national security. I raised the issue with the representatives of the Prime Minister's office who informed me that they were aware of these problems and were currently examining the issue. I urge the authorities to ensure that the principle of *non-refoulement* is respected in all circumstances.

49. There was a separate section for unaccompanied refugee children in the centre which hosted 23 minors at that moment. There was a school in the area, and Polish language classes were organised at the centre. Medical personnel were present at the centre. The centre authorities said that each of them had been appointed a legal guardian.

50. Concerns have, however, been raised by the Office of the United Nations High Commissioner for Refugees and the Ombudsman for Children about the situation of separated refugee children in Poland.[35] Authorities of the Ministry of the Interior informed that measures have been taken to address these concerns. In June 2002, the Minister of Interior issued an ordinance on measures to be taken in relation to unaccompanied minors during the asylum procedures, which covers issues such as accommodation of unaccompanied minors, professional qualifications of the administrative staff, and measures to be taken in cases of expulsion of a minor to ensure that his rights are safeguarded in the recipient country.[36]

51. The issue of legal guardianship was a particular concern. I was informed that a new article 46 concerning the *de facto* protection of unaccompanied minors has been introduced to the draft Act on the assistance granted to non-nationals within the territory of the Republic of Poland.[37] Under this article, a *de facto* guardian would be appointed for an unaccompanied minor after the procedures for granting him refugee status have been established. The entry into force of the Act has been planned for 1 May 2003. I would strongly suggest that a legal guardian be appointed to all separated children, irrespective of whether he or she is seeking asylum. Every separated child needs a guardian who will act in the best interest of the child, and take the

[34] Some refugees had, however, been in the centre for more than a year.

[35] Also the UN Committee on the Rights of Child recommended in October 2002 that a legal guardian be appointed for every unaccompanied refugee child in Poland., doc. CRC/C/15/Add. 194.

[36] Journal of Laws of 2002, No. 91, item 813.

[37] The Ministry of the Interior noted that in many cases it is not possible to appoint a *de jure* guardian for such children, in particular if their parents are not known, but it cannot be established whether they are alive or entitled to exercise their parental rights. The authorities have therefore introduced the notion of a *de facto* guardian who would assume the same responsibilities.

views of the child into account. In this regard, I would like to draw the attention of the Polish authorities to a report recently adopted by the Parliamentary Assembly of the Council of Europe on the situation of young migrants in Europe which includes recommendations on the appointment of a legal guardian.[38] Important guidance is also provided by *A Statement of Good Practice* of the Separated Children in Europe Programme of the UNHCR and Save the Children.

52. The Civil Rights Commissioner drew my attention to the problematic situation of those who had not been granted refugee status, but who couldn't return to their home countries since they had no travel documents and their embassies refused to issue new ones. These persons have no access to any social services, including health care. The Ombudsman is currently discussing with the Ministry of the Interior possible ways of finding a solution to the problems of these persons. I encourage the government to issue identity documents to these people that would entitle them to access to basic social services pending a permanent solution to their situation.

VI. LABOUR AND SOCIAL RIGHTS

53. I visited Katowice in the province of Silesia at a time when a considerable number of workers had been threatened with unemployment due to the restructuring of the local mine industry. As many as 35.000 persons risk loosing their jobs in the near future and the mine industry in the region had already diminished considerably in the past years from 400.000 to current 140.000. It has been reported that many unemployed former mine workers continued to mine illegally under extremely risky conditions and with no access to social security.

54. The representatives of trade unions with whom I met in Katowice raised a number of problems relating to workers' rights. The number of complaints by employees to the National Inspectorate of Labour was growing each year. A considerable number of complaints related to non-payment of salaries, working time and dissolving of labour contracts. There are employers who repeatedly start new businesses, let them go bankrupt and leave no salaries for the employees. It seems clear that the systems currently in place do not provide for sufficient protection of the rights of employees. A more effective system of sanctions for non-payment of salaries should be established, and its implementation should be monitored. As noted above, the length of employment litigations discourages individuals from enforcing their rights through judicial mechanisms, thereby considerably weakening their hands before the malpractices of their employers.

55. Trade union representatives informed me that in the private sector, activities of trade unions had sometimes been limited or even prevented, and there were cases where the employers intervened in the internal matters of trade unions despite the fact that the Constitution of Poland ensures the freedom of association in trade unions. Such limitations had taken place for instance in multinational super market chains. This is a very serious matter, and I would urge the government to effectively monitor the respect for trade union rights. I would also urge the multinational companies to assume their responsibilities in ensuring that labour rights are respected in their affiliates.

[38] Report doc. 9645 and Recommendation 1596(2003) of the Parliamentary Assembly of the Council of Europe.

56. More efforts must be directed towards ensuring the full respect for economic and social rights, which often tend to be undermined when a country is going through a difficult transitional economic period. I encourage Poland to sign and ratify the Revised European Social Charter and the Additional Protocol relating to the collective complaints procedure.

VII . FREEDOM OF EXPRESSION AND FREEDOM OF MEDIA

57. The 1997 Constitution of Poland includes extensive regulations on the freedom of expression and on the right to information, as well as on the freedom of press and mass-media. There are, however, concerns relating to the law and practice.

58. Whereas the European Court for Human Rights holds that the limits of acceptable criticism are wider for a politician than for a private individual, the Polish Penal Code of 1997 punishes the offence of insult more severely in respect of officials than when it concerns private individuals. [39] The Supreme Court of Justice has recognised that a person discharging public functions is exposed to public opinion and must take into account the criticism of his or her behaviour, which is a positive development. However, I would recommend a reform of the provisions of the Penal Code, in light of the jurisprudence by the European Court of Human Rights and the Supreme Court. Moreover, the fact that the Penal Code provides for the penalty of imprisonment for insult is a concern, and I strongly encourage the abolishment of the possibility of a prison sentence for such crimes.[40]

59. Concerns about the independence and impartiality of the Polish media have been brought to my attention,[41] particularly relating to the National Council of Radio Broadcasting and Television (KRRTV). I would like to take this opportunity to draw the attention of the Polish authorities to the recent recommendation by the Parliamentary Assembly[42], which provides guidelines for member States on how to ensure the freedom of expression in the media.

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[39] According to article 216.1 of the Penal Code 'whoever insults another person in his presence, or in his absence but in public, or with the intention that the insult shall reach such a person, shall be subject to a fine, restriction of liberty, or deprivation of liberty of up to one year.' However, a person who publicly insults the President of the Republic of Poland shall be subject to the penalty of deprivation of liberty of for up to three years (art. 135.2) and a person who insulting a constitutional authority of the Republic of Poland is penalised by a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to 2 years (art. 226.3). Insult of a public official or a person called upon to assist him, in the course of and in connection with the performance of official duties is penalised with the penalty of a fine, penalty of restriction of liberty or the penalty of deprivation of liberty for up to one year (art. 226.1). See also 2002 Regular Report on Poland's Progress towards Accession, Commission of the European Communities, COM (2002), p. 30.

[40] In the year 2000, four persons were sentenced to deprivation of liberty for insulting a constitutional authority (in two cases with the suspended execution thereof) and 441 persons were sentenced to deprivation of liberty for insulting a public official.

[41] See for instance '2001 World Press Freedom Review' by *International Press Institute* (Austria); 'Report on Freedom of Expression in the Media in Europe' by the *Committee on Culture, Science and Education of the Parliamentary Assembly* (Doc 9640) and 'Country Report on Human Rights Practices 2001 – Poland', by *US State Department*, March 2002.

[42] Rec1589(2003) by the Parliamentary Assembly of the Council of Europe of 31 January 2003.

FINAL REMARKS AND RECOMMENDATIONS

60. The stability of the Polish democracy is evidenced by the commitment of successive governments to upholding human rights and the rule of law. The authorities display a general and genuine willingness to combat many of the problems raised in this report. In order to assist the authorities in addressing these concerns**,** and in accordance with Article 8 of Resolution (99) 50, the Commissioner makes the following recommendations:

    1. Implement in a timely manner the reforms aimed at reducing the length of court proceedings and ensure adequate funding to this effect; explore the possibility of introducing at the national level a process to settle disputes relating to lengthy proceedings, and make effective use of the friendly settlement procedure provided for by the European Convention on Human Rights in relation to cases already brought before the Court.

    2. Intensify efforts to eradicate cases of police brutality through training, effective investigation and prosecution of such cases; develop training programmes for the purpose of sensitising the police officers towards problems relating to trafficking in human beings and domestic violence;

    3. Further develop the system of alternative penalties and ensure sufficient funding for construction of prisons in order to tackle the overpopulation of prisons;

    4. Examine, in cooperation with bar associations, the frequency of contacts of state appointed lawyers with their clients, and take appropriate action in respect of any shortcomings identified.

    5. Intensify measures to combat xenophobia, anti-Semitism and discrimination, through inter alia promoting tolerance and strengthening anti-discrimination legislation; ratify the European Charter for Regional or Minority Languages, and examine the possibility of ratifying Protocol n° 12 to the European Convention on Human Rights prohibiting all forms of discrimination;

    6. Ensure adequate funding for the Malopolska pilot project for the Roma/Gypsy community and expand similar activities to other parts of the country, particularly in the field of education, employment, health and housing, and ensure a timely finalisation of the national action plan for the Roma/Gypsies;

    7. Ensure that children in rural areas have access to quality education.

    8. Ensure greater protection and assistance to victims of domestic violence and victims of trafficking through legislative and other measures;

    9. Promote an adequate knowledge of reproductive health through school curricula; and ensure that the provisions under which termination of pregnancy is allowed under the current law, are respected by medical professionals, the police and prosecutors;

    10. Continue the measures aimed at protecting separated refugee children and ensure full respect for the principle of non-refoulement for all asylum-seekers.

11. Strengthen the protection of labour rights, including by ensuring timely payment of salaries through introducing a more effective system for legal sanctions for non-payment and the execution of such sanctions; ensure that the right to association is fully respected for the activities of trade unions by all sectors, including the private sector.

12. Sign and ratify the Revised European Social Charter and the Additional Protocol relating to the collective complaints procedure;

13. Carry on a legislative reform concerning the offence of insult, by notably abolishing the provisions that make this offence punishable by a prison sentence.

In accordance with Article 3(f) of Resolution (99) 50, this report is addressed to the Committee of Ministers and the Parliamentary Assembly.

ADDITIONAL COMMENTS

This report was presented to the Committee of Ministers of the Council of Europe on 19 March 2003. In light of the comments made by the Permanent Representative of Poland following the Commissioner's presentation, the Commissioner decided to annex to his report, the written comments presented by the Government of Poland.

Alvaro Gil-Robles
Commissioner for Human Rights

ANNEX

Comments by the Government of Poland
(Warsaw, 4 April 2003)

The invitation to Poland of Mr. Alvaro Gil-Robles, Commissioner for Human Rights, (November 18-22, 2002), reflects the appreciation of the Government of Poland of the role played by the Council of Europe in further promotion of human rights in Europe. The visit was hosted by Mr. Włodzimierz Cimoszewicz, Minister of Foreign Affairs of the Republic of Poland.

The Government of Poland takes note of the assessment included in the Report with great appreciation and thanks the Commissioner for Human Rights for his objective and unbiased approach. The Government also declares its will to continue co-operation with the Commissioner for Human Rights, in particular in implementing the recommendations included in the Report.

In reply to the Commissioner's observations, the Government of Poland has a pleasure to provide below some comments in regard to a number of selected issues examined by the Report.

JUDICIAL SYSTEM, PRISONS AND THE POLICE

Judicial system (Re: sections 4-11)

1. Excessive length of procedures

Appreciating the importance of the effectiveness and efficiency of the judicial system for the respect for human rights (in particular, in view of excessive length of court proceedings and formal guarantees associated with the institution of pre-trial detention), the Government of Poland declares firm will to take steps to improve the present situation. The explanation below concerning Sections 4-11 illustrates the scale of the problem in Poland and the directions taken to seek ways to solve the problem.

The reform of the Polish administration of justice has a complex character and embraces a number of legislative, organisational and financial measures. Nevertheless it is worth to mention that the existing system of the staff training for the administration of justice be changed towards its centralisation, what should result in unification as well as augmentation of the professional level of judges and other court employees in the all-country dimension. A decision determining the directions of changes in the existing training system, which especially foresees establishment of a central unit responsible for training of staff of the administration of justice was taken in August 2002 and is in the course of implementation (in November a separate unit within the Ministry of Justice – named Centre for Staff Training - was established).

It should be considered that the undertaken measures aiming at improvement of functioning the administration of justice might only produce measurable effects after a longer period of time.

A. Facts and figures:

In 2001 further growth in the number of cases submitted to all common courts of law was noted. The total of 8,273,227 cases was submitted to courts in 2001, i.e. by 11.7% more than in 2000. In absolute figures the said growth amounted to 869,637 cases.

To compare, in 1991 the total of 2,588,300 cases was submitted to the common courts of law, which means that over ten years their number grew by almost 320%.

In 2001 the average length of proceedings in the most serious penal cases considered in the first instance before the district courts was 6.1 months, i.e. shorter than in 2000 when it was 6.5 months. As regards cases considered by the regional courts the same ratio was 5.4 months and it improved as well compared to 2000 when it was 5.8 months. In case of district courts the worst proceeding length ratios were in the District Court in Lublin (11.2) and the District Court in Warsaw (10.2), whereas in case of local courts – in the Regional Court for the Capital City of Warsaw (24.3) and the Regional Court for Warszawa Śródmieście (28.6).

As at the end of 2001 the number of the so-called "old" cases i.e. the ones pending for over 5 years amounted to 4.456 in the whole country, including 4.117 cases in regional courts and 339 cases in the district ones. The worst situation was in the regional courts for Warsaw district (it refers mainly to the Regional Court for the Capital City of Warsaw and the Regional Court for Warszawa Śródmieście) with 2,999 cases pending over 5 years i.e. 74.5% of the total number of "old" cases. As regards district courts the worst situation in the aforementioned scope was in the District Court in Warsaw where the number of cases pending over 5 years amounted to 126 i.e. 37.2% of the total number of "old" cases in the country.

In regard to civil suits heard at the district courts, the average length of proceedings was 6.8 months in 2001, i.e. the same as in 2000. In the local courts the said ratio was 5.3 months and it deteriorated compared to 2000 when it amounted to 4.3. As at 30th June 2001 the number of civil suits pending over five years amounted to 1,373 in the district courts and 1.483 in the regional courts.

As far as commercial cases are concerned, in 2001 the average length of proceedings in the said cases was 6.7 months in the district courts, i.e. it deteriorated compared to 2000 when it was 5.6 months. In the regional courts the said ratio was 5.7 months and also in this case it deteriorated compared to 2000 when it was 4.5 months.

Family matters considered by the district courts under lawsuits lasted 2.6 months on the average, i.e. as long as in the previous year. The family and juvenile divisions received 129.414 cases referring to juveniles who committed punishable acts, and there were no reservations as to the average length of the said proceedings. The measure of the house of correction without stay of execution was adjudicated by the said courts towards 564 juveniles (compared to 571 in 2000), whereas the said measure with conditional stay of execution was adjudicated towards 934 juveniles (compared to 938 in 2000).

The cases concerning land and mortgage register, related to openings of and entries into the said register, lasted on the average 3.4 months in 2001, which was by 0.1 months longer than in 2000.

As at the end of 2001 the number of all persons kept in pre-trial detention (i.e. remaining both at the disposal of the courts and public prosecutor's offices) amounted to 22,730. Out of this number there were 15,507 persons remaining at the disposal of the courts, i.e. at the stage after bringing the accusation (including 4,447 persons arrested for the period of up to 3 months, 4,247 persons arrested for the period from 3 up to 6 months, 4,776 persons arrested for the period from 6 up to 12 months, 1,869 persons arrested for the period from 12 months up to 2 years and 168 persons arrested for over 2 years).

In regard to convictions the total of 240,290 persons were convicted under criminal and fiscal offence proceedings by the district courts in 2001. Out of the said number 182,529 persons were sentenced to imprisonment, including 149,216 with the stay of penalty execution. The penalty of sole fine for offences, including fiscal ones, was adjudicated in 37,295 cases, i.e. in 15.52% of the total convictions.

In the common courts of law the total of 11,014 persons were convicted, including 36 persons for life imprisonment and 10,869 for imprisonment. Out of the latter, 6,943 persons were convicted for

unconditional imprisonment, whereas in case of 3,926 the execution of the penalty was conditionally suspended.

The decisions on ruling the execution of conditionally suspended penalties of imprisonment were passed in district courts towards 128 persons and in the regional courts – towards 17,993 persons.

In 1996-2002 the European Court of Human Rights delivered a total of 153 decisions on the "Polish" cases. In 57 cases the Court found the violation of the Convention (37% of the judgements) and in 62 cases – no violation (41% of the judgements), whereas 34 cases were struck out of the list. Approximately 90% of the judgements on the violation of the Convention referred to the complaint against the length of the proceedings (mainly the civil ones).

B. Activities taken to enhance the effectiveness of the judiciary:

Intensification of the administrative supervision over the courts:

The courts are visited and inspected on an ongoing basis for the purpose of verifying the correctness of session planning and effectiveness of judges at trials. The *pensum* (standards for numbers of cases that should be "handled") was developed for judges adjudicating in particular divisions of courts of each rank. The draft of a new regulation on administrative supervision over the courts is being prepared, which will strengthen the authority of the Minister of Justice and the presidents of the courts in the said scope.

Gradual simplification of court procedures:

The new Code of Misdemeanour Proceedings (Act dated 23rd August 2001, Journal of Laws no. 106 item 1148) has been in force since October 2001. The Government submitted a draft revision to the said Act, aimed at further simplification and acceleration of the procedure applied in case of misdemeanours, to the Parliament. The first reading of the said revision was held at the Parliament on 23rd November 2002.

Legislative activities referring to amendments to the Code of Criminal Proceedings are carried out as well. Changes to the penal procedure were adopted in January 2003. A relevant Act on amending the Act – Code of Criminal Proceedings, the Act – Introductory provisions to the Code of Criminal Proceedings, the Act on the crown witness and the Act on classified information protection was adopted by the Parliament on 10th January 2003 and signed by the President on 21st January 2003. The said Act will become effective on 1st July 2003.

The Government also developed and submitted to the Parliament, at the beginning of October 2002, the draft revision to the Code of Civil Proceedings, aimed mainly at improving the enforcement proceedings.

Changes in the organisational structure of the common courts of law system:

The expansion of the network of magistrate courts – judicial units of the lowest rank, considering petty civil and penal cases under simplified procedure (target number: approx. 400 units). As at the end of 2001 there were 314 operational magistrate courts. Presently their number has grown up to 329.

The process of further adaptation of areas of territorial jurisdiction is being continued in order to make the courts closer to the citizens.

Change in the model of court judgement execution:

For several years the work has been carried out aimed at changing the hitherto model of execution of court judgements, which would result in enhancing the effectiveness of the enforcement proceedings.

The first and the most important effect of the said works was the Act dated 29th August 1997 on law enforcement officers and execution (Journal of Laws no. 133 item 662 as amended) which, among others:

- substantially changed the status of the law enforcement officers by making them public officials and not court officers, as it has been so far;
- related the remuneration of the law enforcement officers to the effectiveness of execution carried out by them;

- permitted creditors to choose a law enforcement officer (a creditor may always submit a motion on instituting and performing the execution to the law enforcement officer of territorial jurisdiction and the said officer may not refuse the same; however, the creditor may also move to another law enforcement officer selected by him/her).

The next stage was the revision of the said Act on law enforcement officers and execution made with the Act dated 18th September 2001, which became effective on 1st January 2002. Pursuant to the said revision, the law enforcement officer acts on his own account and is no longer – even to a minimum extend – financed by the State. His income is composed solely of enforcement fees, which depend fully on the effectiveness of the execution performed by him.

The said revision resulted also in the reduction of enforcement proceeding costs. Pursuant to it the relative fee amounts to 15% of the value of the executed claim (prior 20%) and is charged to the debtor. It is not obligatory to charge a part of the relative fee to the creditor before launching the execution and the relevant decision was left at the discretion of the law enforcement officer.

Presently the aforementioned works are being carried out aimed at complex revision of the regulations on enforcement proceedings included in the Code of Civil Procedures.

Change in the organisational model of the court

In the appeal and district courts independent administration branches were separated and are managed by the court directors. They release court presidents and division heads from administrative, organisational and financial matters.

In 2002 all positions of the directors of courts of appeal were filled in as well as 37 out of 41 positions of the directors of district courts.

Computerisation of the judiciary

IT projects, aimed at providing support to the courts and public prosecutor's offices through the application of modern technologies, are being consequently implemented by:

- providing the courts with the access to electronic law databases containing the European legislation: all courts hold licences for LEX Omega database, which includes the key European law provisions;
- providing all the courts and public prosecutor's offices of the district, regional and appeal instance with the access to the CORS-NET (VPN) IT telecommunication system. This way the courts and public prosecutor's offices will get access to the data contained in the central data bases being at the disposal of the Ministry of Justice. This year another 49 units have been connected to the system, so the process is almost completed (there are only 3 local public prosecutor's office left for connection);
- implementing the IT recording system. Last year the system (*Tabula* for criminal cases) has been implemented in the indicated courtrooms of 8 district courts. In 2003 the implementation will cover another 11 district and local courts. Therefore, at the end of this year the system will be operational in all district courts;
- gradual computerisation of the land and mortgage registers. The project provides for the pilot implementation of the system in 6 units (the system is already operational there) and then for gradual implementation in other locations – first in 24 selected land and mortgage register divisions under PHARE 2000 and then in another 34 divisions under PHARE 2001.

Additional human resources for the judicial units

Work is carried out over developing a regulation, which will enable to employ assistants to the judge. The above-mentioned draft is to be signed till the end of November 2002.

The number of full-time adjudicative and administrative officers in the courts is growing systematically. In 2002 the courts were granted additional full-time posts for 230 judges, 50 junior judges, 80 division officials and almost 350 administrative officers. The budget of the common courts of law for 2003, approved on 23rd November 2002, provides for even bigger increase in the number of full-time posts over this year (368 judges, 82 junior judges and 700 officers).

Increase in the financial expenditure for the judiciary

The volume of the budgetary funds allocated to the judiciary is increasing year by year.

The budgetary Act for 2002 allocated the amount of PLN 2,560,317,000 for the expenditure of the common courts of law system, which was by 15.41% more than the actual execution of the budget of the judiciary in 2001. The investment expenditure contained in the said amount totalled PLN 71,336,000, i.e. by 20.55% more than the actual execution of the budget in 2001.

The budgetary Act for 2003 provides for further growth in the expenditure for the common courts of law system (up to the amount of PLN 3,408,365,000).

C. Situation in Warsaw courts and activities taken to improve the said situation:

Approximately 10% of all cases registered in the Polish courts are submitted to the District Court in Warsaw and four Warsaw district courts. The said courts have the worst efficiency results (length of the proceedings) in Poland as regards all categories of cases. The worst situation is noted in regard to criminal cases considered in the local courts where the average proceeding duration is several times longer than in other local courts.

The Warsaw courts operate in exceptionally difficult conditions. The main courthouse at Aleja Solidarności, built in 1939, does not fulfil basic office conditions for the premises of the state office. Each small room hosts over ten judges and officers. Part of the house is at risk of collapse. The Ministry of Justice carries out numerous activities aimed at improving the said situation. Therefore a new building was acquired, which would house the Local Court for Warszawa-Praga, presently located at Aleja Solidarności Upon moving to the new seat the said court would be divided into two smaller units.

The premises in Warsaw that could be used as the seat of other local courts are also searched for.

It should be noted that a difficult situation of the Warsaw courts has a negative impact on the image of the Polish judiciary as a whole. Based on the difficulties faced by the said courts the general opinion of the Polish judiciary is formed. This is an unfair opinion as the majority of the district and regional courts are not in arrears with considering cases and the problem of proceeding prescription is practically not known there.

D. Substantive penal law:

The works of the Parliament over the revision of the Penal Code (presently carried out in the parliamentary Extraordinary Commission for changes in codification) are not connected with the implementation of the judgement by the European Court of Human Rights on the case of *Kudła v. Poland*. The acceleration and improvement of court proceedings as well as introduction of efficient appellate procedures cannot be obtained by way of amendments to the substantive penal law as the said law regulates only the principles of penal liability and not the procedures, which enforce the same.

E. Procedural penal law:

The acceleration and simplification of the criminal proceedings, significant in the context of the aforementioned judgement on the case of *Kudła*, is facilitated by the changes in the penal procedure, effected in January 2003. A relevant Act on amending the Act – Code of Criminal Proceedings, the Act – Introductory provisions to the Code of Criminal Proceedings, the Act on the key witness and the Act on classified information protection was adopted by the Parliament on 10th January 2003 and signed by the President on 21st January 2003. The said Act will become effective on 1st July 2003. The key solutions facilitating improvement of the penal proceedings are as follows:

1) new solutions referring to the procedures and jurisdiction of the courts

- expanding the catalogue of cases considered under a simplified procedure by covering all cases in which the investigation has been carried out (Art. 469) and cancelling the ban on considering cases under a simplified procedure with regard to the defendant who is imprisoned or who is a juvenile, deaf, dumb or blind, with regard to whom there is a justified doubt as to his/her accountability, or who does not have a command of the Polish language;
- introducing the so-called transferable jurisdiction of the courts, consisting in the possibility of handing over the case on each and every crime – due to its extraordinary weight or complexity (Art. 25 § 2) – for the consideration of the district court as the court of first instance;

new solutions referring to the preparatory proceedings:

- entrusting with the police of most of the inquiries (Art. 311 § 1) – presently the inquiries are carried out by the public prosecutor;
- expanding the catalogue of crimes in which an investigation, and not a more formalised inquiry (Art. 325 b), is carried out, e.g. including – into the said catalogue – the crimes penalised with up to 5 years of imprisonment and in case of crimes against property – the crimes with the subject-matter of the crime or the damage caused or liable of the value up to PLN 50,000;
- introducing the possibility of quick discontinuance of the investigation and entering the case into the register of crimes when the activities under the investigation carried out for at least 5 days do not give sufficient grounds for finding the perpetrator in the course of further activities under the legal proceeding (Art. 325 f) – the discontinued proceeding may be each time reopened if the existence of new circumstances is revealed;
- introducing a common Report from oral information about the crime, from the hearing of the informant acting as a witness and from accepting a motion on prosecution (Art. 304 a) – presently each of the said activities should be included in a separate Report;
- withdrawing from the necessity to develop a decision on bringing forward a charge and issuing a decision on closing the investigation (Art. 325 g);
- limiting the investigation scope to establishing whether there are grounds for bringing an accusation or for any other closing of the proceeding, hearing the suspect and the injured person as well as performing the activities, which could not be repeated, in the Reports. Introduction of the possibility to record other evidencing activities in the form of a Report limited to the key statements of the persons participating in the said activity (Art. 325 h);

new solutions referring to the committal proceedings:

- expanding the possibility of voluntary submittal to penalty (Art. 387) by the defendant, the so-called summary trial, by allowing for submitting the motion on bringing in a verdict of guilt and inflicting a relevant penalty to the defendant accused of a petty offence – presently such trial may be applied only towards the defendant accused of a petty offence penalised with up to 8 years of imprisonment. The consent by the public prosecutor and the injured person, being the necessary condition for the summary trial, was replaced with the lack of objection for such way of closing the proceeding;
- expanding the possibility of the conviction without a trial (Art. 335) over all cases of crimes penalised with up to 10 years of imprisonment – presently up to 8 years;
- leaving the decision on continuance of the trial after 35 days of adjournment at the court's discretion (Art. 404 § 2) – presently the court is obliged to carry out the adjourned case from the very beginning, i.e. after 35-day break;

new solution referring to the evidence proceedings:

- expanding the possibility of the court's using of the evidence collected under a preparatory proceeding or in any other proceeding provided for by the Act, by allowing to read the Reports or other documents or to deem the same as having been read (Arts. 389 and 391-394);
- enabling the courts to dismiss the motions on evidence aimed at "obvious prolongation of the trials" (Art. 170 § 1 item 4), allowing for the distance hearing of the witness with the use of relevant technical means (Art. 177 § 1 a);
- allowing for serving letters through fax or electronic mail (Art. 132 § 3);
- expanding the scope of using regulations referring to the delivery of the subject-matter, search and control of conversations over IT systems, IT data carriers and e-mail messages (Art. 236 a and 241);
- possibility to take blood or secretion samples from a suspect without his/her consent (Art. 74 § 3) – presently such a consent is required;

other:

- expanding the possibility of carrying out mediation proceedings on initiative or upon consent of the injured person and the defendant by enabling the submittal of the case by the court, and under the preparatory proceedings – by the public prosecutor, to a trustworthy institution or person (Art. 23 a).

F. Possibility of introducing of an effective appellate measure against the length of the court proceedings (Re: Section 9)

One should share the observation that the excessive length of proceedings is also a problem in Poland. However it has to be stressed that this phenomenon does not exceed the dimension known in

other countries of the so-called „old democracies". A good proof for it is a number of violations of Article 6 of the Convention by Poland, which were adjudicated by the Court in Strasbourg. Globally, by the half of February 2003 the Court issued 39 judgements against Poland relating to violations of Article 6 of the Convention. In 35 cases the Court found a violation.

The work over the possibility to introduce an effective appellate measure (effective remedy) against length of the court proceedings into the Polish legislation, which would fulfil the requirements of the Convention, pursuant to the interpretation of the European Court of Human Rights in its judgement of 26th October 2000 on the case of *Kudła v. Poland*, were launched immediately upon the announcement of the said judgement.

A special working group composed of the representatives of the ministries of justice and foreign affairs, developed a draft of a separate act on legal measures against violating the right to have the case considered without unjustified delay and on amending the Act – the Code of Civil Proceedings.

The draft provided for the possibility to submit a separate complaint to the court by every person who deems that the proceeding on his/her case lasts longer that it is necessary to clarify all circumstances substantial for the settlement of the said case. The authorised person would be able to claim relevant compensation under the complaint.

The complaint was to be considered by the court of appeal which, in case of finding an unjustified delay in the proceedings, could commission taking up relevant actions in the assigned terms to the competent court and, moreover, could adjudicate relevant compensation in case of finding that the complainant was harmed due to the violation of his/her right to have the case considered in a reasonable time.

In the course of the intra- and interdepartmental consultations the draft faced severe criticism. Apart from the fact that some solutions contradicted the Constitution, the draft was criticised mainly for imposing additional burden on the courts and disorganising the activities of the same, instead of shortening the length of the proceedings. The work over the said draft is continued.

At the turn of the last and this year the work over the new draft of the act, which would introduce a legal measure against the length of the court proceedings, have been reopened, but this time by the Civil Law Codification Commission at the Ministry of Justice. At the preliminary stage of the work the Commission reviewed three concepts:

- introduction of a complaint against the length of the proceeding, which would be considered by the common court of law of higher instance under the penal, civil or administrative proceedings. While allowing the complaint the court would state only that the proceeding was too lengthy and could adjudicate relevant compensation;
- acceptance of a model based on the so-called *Pinto* Act. The party complaining about the length of the proceeding could claim compensation for the lengthy (or prolonged) examination of his/her case before the court of higher instance and the proof of the length would constitute a premise for the recognition of a claim;
- use of the constitutional complaint for finding the excessive length of the court proceedings. In case of passing such a judgement by the Constitutional Tribunal, the party could claim compensation before the common court of law.

The latest discussions of the Commission show that it evolves towards the second concept. It is possible that in 2003 the Commission will present a preliminary version of new solutions. The draft was included in the plan of the Ministerial Committee for 2003.

With reference to the suggestion that measures other than a remedy of a compensatory character should be introduced, it should be stressed that creating a purely preventive measure, not affecting simultaneously the sphere of judicial independence, seems to be extremely difficult. Furthermore, it needs to be noted that even the adjudication of the compensation (indemnity) might also have a certain preventive result. Therefore, it may not be prejudged that a compensatory remedy could not – by its nature – be effective also for pending judicial proceedings (for instance, compensation for excessive length of proceedings, may redress, at least partly, a damage resulting from the excessive length).

G. Friendly settlement (Re: Sections 10 and 59.1)

Friendly settlement of a case concerning excessive length of proceedings should certainly be taken into consideration even if it is only within the limits of judicial compensation proceedings. According to general principles, such a practice may be pursued, e.g., in the proceedings carried on basis of the provisions, which are now a subject of the Codification Commission's work. It is difficult to imagine a situation in which a friendly settlement of a case related to excessive length of proceedings is negotiated in non-judicial proceedings and with the participation of third parties, such as the Ombudsman. For system's sake and due to the fact that in such cases an independent court would be *de facto* one of the parties to a dispute, such a solution seems impossible. However, a suggestion that in cases under examination by the Court in Strasbourg a friendly settlement should be sought is pertinent.

2. Other issues

Pre-trial detention (Re: Section 7)

A general observation that persons in pre-trial detention might be deprived of liberty for excessively long periods of time while awaiting trial is not justified. It is to note that according to Article 250 § 1 of the Code of Criminal Proceedings the pre-trial detention may only be imposed on the basis of an order of the court. Ordering this kind of preventive measure is also limited in time. According to Article 263 § 1 of the Code of Criminal Proceedings in the course of proceedings, the court applying pre-trial detention shall fix a period not exceeding three months. If in view of the special circumstances of the case, the preparatory proceedings cannot be completed within the time-limit specified in § 1, pre-trial detention while the investigation is pending may be extended on a motion from the public prosecutor by the court having jurisdiction over the case for up to six months or by a court of a higher level than that having jurisdiction over the case for an additional prescribed period, necessary for the completion of the preparatory proceedings, which may not, however, exceed twelve months (Art. 263 § 2 Code of Criminal Proceedings). The total period for applying pre-trial detention preceding the first sentence by the court of the first instance may not exceed two years. The extension of applying pre-trial detention over the periods of respectively 12 months or 2 years specified above, may be made only by the Court of Appeal, in which circuit the proceedings is pending, and in the preparatory proceedings on a motion from the Appellate Public Prosecutor – but only in extraordinary circumstances exhaustively listed in this provision (Art. 263 § 4 Code of Criminal Proceedings). If there is a need to apply pre-trial detention after issuing the sentence by the first instance court each prolongation may not be longer than 3 months (Art. 263 § 7 Code of Criminal Proceedings).

Access to justice

One may not share the general suggestion that access to justice is possible for the well-off and well-placed people. In particular, in the mentioned labour and social security cases such a situation does not exist at all since these two categories of cases are always free of court fees by virtue of the law. In other categories of cases there are also possibilities to obtain exemption from court fees for poor people as well as to get *pro-bono* lawyers. It should be stressed that the relevant provisions of the Code of Criminal Proceedings and Code of Civil Proceedings, which regulates the issue of legal aid, are not "on paper" only but are implemented with success in practice. A reflection of the scale of resort to the *pro-bono* lawyers may be the amount of the expenditures of the State budget for this purpose, namely: expenditures for *pro-bono* lawyers (for impoverished and handicapped people) reached in 2001 the level of 54,577,000 PLN.

Prison system (Re: Sections 12-14 and 59.3)

A general statement in the Report on the programme of improvement of the situation in the Polish prison service needs to be specified in more details. It should be noted that the programme elaborated by the Prison Service Central Administration provides for the increase in the capacity of penal establishments and remand prisons by 20.000 within five years. It provides for the establishment of new divisions in already existing penal establishments or re-establishment of divisions, which are not used at present for various reasons. The implementation of this programme is underway.

There is no doubt that apart from the imprisonment other penalties should also exist and be applied. There is already a number of alternative penalties of this kind in the Polish criminal law system. This refers both to the Penal Code and the Act on Proceedings in juvenile cases. In particular, the latter one, in Article 6 provides for as many as 11 measures, yet only 2 of them involve deprivation of liberty. It is worth mentioning that courts, depending on circumstances of a given case, apply frequently

alternative penalties. Yet, it is not the prisons' overpopulation that should determine or even exert influence upon the choice of penalty in a given case.

Remand prison in Białołęka (Re: Section 13)

It is true that in the Remand Prison in Białołęka there are instances of placing 6 prisoners in cells for 4 persons, although the CPT recommended that this number should not exceed 4. As it has been explained in the Reply by the Government of Poland to the CPT's Report, such a situation is a result of the fact of overcrowding the prison since November 1999, which is difficult to reduce even though the capacity of the unit have been doubled, some premises have been adapted, and some changes in the allocation of prisoners introduced.

Access to lawyers (Re: Section 14 and 59.4)

Complaints addressed to the Minister of Justice by detainees do not reveal any problems with contacting *pro-bono* lawyers. Complaints of this kind constitute a marginal number of all the complaints received from remand prisons. Regardless of this fact, it should be added that bodies of the bar self-government regularly supervise whether their members comply with the provisions and principles of professional conduct, and are obliged to apply the appropriate disciplinary measures in cases of infringements.

Police violence (Re: Section 15)

With respect to the information on cases of ill-treatment and killing of members of the Roma ethnic minority in prisons, the Government of Poland would like to declare that no such cases have been recorded to date. The Commissioner for Human Rights refers to the Report by the European Roma Rights Centre. However, representatives of the Roma community in Poland (with whom the Ministry of Internal Affairs and Administration maintains permanent contacts) have never reported a single case of this kind. Moreover, any information on a criminal act against members of the Roma community is subject to scrutiny. The National Police Headquarters reports to the Ministry of Internal Affairs and Administration on any such acts on a monthly basis, and, if justified, additional investigations are conducted. Police officers working in the Roma community also receive appropriate training.

The Government of Poland cannot agree with the opinion on the police treatment of individuals under temporary police custody. The submission about police violence against detainees is not corroborated by statistics or explanatory proceedings. The Government wishes to emphasise that the police attach special importance to procedures of proper treatment of both offenders and victims, thus implementing all the rules referring to human rights.

NON-DISCRIMINATION AND THE SITUATION OF MINORITIES

Non-discrimination in labour legislation (Re: Section 21)

Article 11 of the Labour Code, in force since June 26, 1974 (as amended) contains an anti-discrimination clause providing that *"any direct or indirect discrimination in employment, in particular based on sex, age, disability, race, nationality, beliefs, especially political or religious, or union membership shall be prohibited"*. However, the Code lacks provisions that would impose an obligation of equal treatment regardless of sexual orientation and provisions banning sexual harassment. These questions are addressed in yet another draft amendment to the Labour Code. Article 18, Section 1 of the draft provides that *"Employees, in particular regardless of sex, age, disability, racial or ethnic origin, religion, denomination, or sexual orientation, shall be treated equally in connection with the establishment and termination of employment, terms of employment, promotion, and access to training to improve professional qualifications"*. Article 18, Section 4 of the draft includes the following definition of sexual harassment: *"discrimination based on sex shall also include any unacceptable behaviour of sexual nature or behaviour with reference to the employee's sex aimed at or resulting in the violation of the employee's dignity, or denigration, or humiliation of the employee. Such behaviour may include elements of physical, verbal, or non-verbal nature."*

After the first reading in the Lower Chamber of the Polish Parliament (*Sejm*) on January 9, 2003, the draft was sent to the Sejm Extraordinary Committee for Legislative Amendments. At the meeting on January 22, 2003, the Committee established a subcommittee (chaired by Ms. M. Winiarczyk-Kossakowska) to examine the proposed amendments. The first sitting of the committee was held on February 25, 2003.

Legislative work on non-discrimination (Re: Section 23)

The *Sejm* has not yet examined the draft Law on the General Inspector for the Prevention of Discrimination. So far, the draft Law has been subject to consultations between ministries, as a result of which the need of establishing a separate anti-discrimination office was questioned. At present the draft Law awaits a decision by the Cabinet to determine the nature and status of the institution responsible for implementing the state anti-discrimination policy.

At present the draft law is examined by the Parliament. Consultations between the ministries have not been completed, and, based on the discussions held to date, it seems that the majority of ministers are against the establishment of the institution of the General Inspector for the Prevention of Discrimination.

Minorities rights (Re: Sections 24-30)

A. National legislation and international instruments

With reference to the comments on ratification by Poland of the Council of Europe Framework Convention for the Protection of National Minorities, it must be noted that sending to the Secretary General of a report on Poland's implementation of the provisions of the Convention did not close a debate on the document with representatives of minorities. Organisations of national and ethnic minorities were also involved in the preparation of the Report itself.

The Polish side invoked the provisions of bilateral treaties only in cases where they substantially supplemented domestic legislation. The principles enshrined in the Convention, which are not reflected in domestic Polish legislation, can be promoted on the basis of bilateral treaties. In this case, bilateral treaties suffice for enjoyment of the rights mentioned in the question. This is connected with Article 87 of the Constitution of the Republic of Poland, according to which the sources of laws that apply to all citizens of the Republic of Poland include ratified international agreements.

However, not all the principles set forth in the Convention are reflected in bilateral treaties. Moreover, the provisions of these treaties may differ from each other. For example, the "minority clauses" in the *Treaty between the Republic of Poland and the Federal Republic of Germany on Good Neighbourliness and Friendly Co-operation* dated 17 June 1991 and in the *Treaty between the Republic of Poland and the Republic of Lithuania on Friendly Relations and Neighbourly Co-operation* dated 26 April 1994 are longer and more detailed than similar clauses in the *Treaty between the Republic of Poland and the Czech and Slovakian Federation Republic on Good Neighbourliness, Solidarity and Friendly Co-operation* dated 6 October 1991 and the *Treaty between the Republic of Poland and the Russian Federation on Neighbourly and Friendly Co-operation* dated 22 May 1992.

As mentioned above, Article 87 of the Constitution of the Republic of Poland states that bilateral treaties are a source of law in Poland and, if self-executing, may be directly applicable. Every natural or legal person (including associations of national minorities and individuals belonging to national minorities) may thus adduce the provisions included therein before a domestic authority. In practice, organisations of national minorities or their representatives, when presenting demands upon the Polish government authorities sometimes refer to the provisions of bilateral treaties. The number of such cases, however, is relatively small, which attests to the fact that bilateral treaties are respected.

The draft *Act on National and Ethnic Minorities in the Republic of Poland* is currently in a Special Sub-Committee of the Sejm established to review the bill. The sub-committee consists of members of three regular parliamentary committees: National and Ethnic Minorities, Administration and Internal Affairs and Education, Science and Youth Committee. Due to the fact that the sub-committee has not yet completed its work on the bill, it is premature to furnish the latest version at this time. However, it appears that the text of the Act will differ substantially from the version first read by the Speaker of Parliament on 11 January 2002. According to its schedule, the Committee on National and Ethnic Minorities plans to review the Report in April 2003. It is worth mentioning that the Council of Ministers has adopted the *Government's Position on the draft National and Ethnic Minorities in the Republic of Poland Act*, in which it has underlined the need to enact this legislation.

Polish law does not provide for the procedures concerning the recognition of a given group as a national or ethnic minority. Nor has the concept of "national minority" been defined in international law (e.g. there is no such definition in the *Framework Convention of the Council of Europe for the*

Protection of National Minorities). The interpretative declaration submitted together with the instrument of ratification, defines this term as follows: "Taking into account the fact that the *Framework Convention of the Council of Europe for the Protection of National Minorities* does not contain a definition of national minority, the Republic of Poland declares that it understands this term to mean national minorities who inhabit Poland whose members are Polish citizens." In the explanation to the draft *National and Ethnic Minorities in the Republic of Poland Act*, national minorities are defined as minorities who identify themselves with nations organised in their own states, and ethnic minorities as stateless minorities. The national minorities mentioned are: Belarussian, Czech, Lithuanian, German, Armenian, Russian, Slovak, Ukrainian and Jewish; the ethnic minorities are: Karaites, Lemks, Romany (Gypsies) and Tatars. (It should be pointed out that in general this list does not generate objections among historians, sociologists, cultural anthropologists or linguists). To recapitulate, the parliament of Poland should list the country's minorities in the *National and Ethnic Minorities in the Republic of Poland Act* or the explanation to it. However, in the absence of this law, the courts can settle the matter in the event a dispute arises.

In the *Interpretative Declaration to the Framework Convention of the Council of Europe for the Protection of National Minorities*, the Republic of Poland has declared that the term "national minority" means only those minorities whose members are Polish citizens. Thus, foreigners and immigrants cannot be considered as persons belonging to national minorities, which means they do not enjoy the protection provided by the *Framework Convention of the Council of Europe for the Protection of National Minorities*. Nevertheless, their rights are safeguarded by the provisions of the Constitution, and in particular its Article 37 § 1 which states that "whoever is under the authority of the Republic of Poland shall enjoy rights and freedoms ensured in the Constitution". The specific regulations that apply to foreigners in Poland are included in the *Act on Foreigners* dated 25 June 1997.

According to the statistics on foreigners, 29,377 foreigners are registered as permanently domiciled in Poland, while 924 are entitled to the temporary stay. This refers only to foreigners who live in Poland lawfully.

The number of complaints received by the Commissioner for Civil Rights Protection from organisations and individuals who belong to national and ethnic minorities is relatively small. These complaints constitute a tiny percentage of all the complaints examined by the Commissioner's office. However, owing to the high importance accorded to respect for minority rights as one of the basic standards of democracy and the rule of law, the Commissioner devotes special attention to complaints filed by minorities, treating them as a leading priority.

B. Monitoring of the status of Roma minority

In 2002, the Commissioner for Civil Right Protection examined 33 cases concerning national minorities. Seventeen of these cases were initiated by the Commissioner *ex officio* on the basis of findings made by himself at meetings with representatives of minority organisations and groups. The other 16 cases were initiated on the basis of formal complaints filed by minority organisations or natural persons.

Five of the cases concerned complaints of discrimination based on nationality. A resident of Nowy Sącz stated that as a Roma (Gypsy) he had been accosted and verbally abused by certain residents of his city and had seen anti-Romany graffiti on walls, which caused him to feel threatened. As a result of the Commissioner's intercession, the local government authorities of Nowy Sącz declared that the Police and city administration would henceforth be more sensitive to the aforementioned problems. In Cracow, a woman of Romany origin claimed that her family had suffered discriminatory treatment in relation to granting her social security benefits. However, two separate investigations found those complaints groundless. A Romany social organisation complained that persons of Romany origin had been discriminated against when they had been refused entry to a free public event held at a sports stadium. The investigation carried out by the Commissioner's did not confirm the charge of discrimination – instead, it found that the entry had been refused to an internal stadium parking lot provided only for authorised persons with special permits. A Cracow resident of Romany origin approached the Office of the Commissioner for Civil Right Protection claiming that he had been discriminated against and harassed on account of his origin, but he is yet to provide more details concerning the alleged incidents.

The social-economic conditions of Poland's Romany minority are particularly difficult in the mountainous regions of Małopolskie Voivodship. The situation of this minority in Podkarpackie Voivodship is not substantially different from that in other regions of Poland. Accordingly, the Council of Ministers decided to extend government assistance first of all to the Carpathian Romany community of Małopolskie Voivodship. The necessity of government action to relieve the plight of the Romany community had been stressed for years by NGO's, local government bodies in Małopolskie Voivodship, international organisations and Romany organisations. Responding to these calls for action, the government administration developed the *Pilot government programme in support of the Romany community in Małopolskie Voivodship for 2001-2003*. Romany representatives from local government structures as well as representatives elected by Romany communities were involved in developing these plans. Thus, the project was drawn up with the broad co-operation of local government bodies and NGO's, including Romany organisations. The *Programme* was adopted by the Council of Ministers on 13 February 2001. It provides for measures to improve living standards, social conditions, health, security and culture of the Romany minority and to combat unemployment among them. The *Programme's* main emphasis, however, is on education.

It should be emphasised that the *Programme* meets the criteria of the European Commission and other European institutions (such as the Organisation for Security and Co-operation in Europe) concerning assistance for the Romany community. Periodic Reports issued by the European Commission on Poland's progress in the accession process in 2001 and 2002 evaluated positively the actions undertaken by the government administration to improve the situation of the Romany.

Solutions that prove successful will be used in the longer-term, nation-wide *Government programme in support of the Romany community in Poland*, which will also be extended to the Podkarpackie Voivodship.

C. Dissemination of non-discrimination values

As part of the effort to disseminate knowledge about discrimination, its manifestations and methods of combating it, the Government Plenipotentiary for the Equal Status of Men and Women held a conference entitled *Equality and Tolerance in School Curricula and Textbooks* on 8 October 2002. The plenipotentiary is also involved in the *Strengthening Anti-Discriminatory Policies* project (as part of a PHARE programme) designed, *inter alia*, to raise the public's consciousness in these matters.

It should also be noted that the Government of Poland has launched the *Community Action Programme to Combat Discrimination for 2001-2006*, which provides for measures to fight xenophobic and intolerant attitudes.

D. Freedom of using minorities languages

With respect to the question concerning use of minority languages before administrative organs, the Government of Poland informs that bilateral treaties make a number of references to these matters. These treaties, however, do not give members of minority groups the right to use their language in government administration. They make this right dependent either on the given country's laws (the treaties with the Czech and Slovak Republics) or simply state that the parties "shall consider permitting the use of national minority languages in their government organs" (the treaty with the Republic of Lithuania). The Government informs that there are no legal grounds on the national level for using minority languages in contacts with administrative organs (although the draft *National and Ethnic Minorities in the Republic of Poland Act* provides for such a possibility). Due to the fact that this right is not guaranteed by bilateral treaties, the position of national and ethnic minorities, not covered by bilateral treaties is no different from that of those who are. It should also be noted that, owing to the absence of the *National and Ethnic Minorities in the Republic of Poland Act*, there are no legal grounds for using minority languages in the situations described in Article 4 of the *Polish Language Act* dated 7 October 1999.

It follows that there are no voivodships, counties or municipalities in which members of minority groups may use their languages in contacts with administrative organs.

As far as the right to education in national or ethnic languages is concerned, the Government wishes to state the following:

In high schools in which a minority language is taught, this language is a compulsory subject. In high schools with a minority language and bilingual high schools, students can be examined in other subjects in their native language.

The possibility of holding examinations at the end of primary school and secondary school in minority languages in schools with those languages was introduced by the Minister of National Education and Sport in the Order dated 11 September 2002 amending *the Order concerning the conditions and manner of evaluating, classifying and promoting students and conducting examinations in public schools*. Examinations shall be held in minority languages in these schools as of 2005. This apparently late date stems from the requirement to prepare the necessary materials for the examinations. According to regulations, students must receive their examination *Information booklet* one-year prior to an examination. Currently, work is under way on preparing *Information booklets* in the country's various national and ethnic minorities languages.

With reference to the problem of Romany classes the Government of Poland informs that such classes exist solely at the level of primary school. After completion of these classes, Romany children have a possibility to attend integrated classes, but there are no "Romany classes" at the secondary school or at higher levels. There have been no complaints concerning the quality of education in these classes. The choice between these two forms of education belongs solely to the parents. Romany classes constitute an additional and optional form of education in relation to integrated teaching. In practice, there are situations that in the same school some Romany children attend "Romany classes" while others attend integrated classes. The decision whether to send children to an integrated or "Romany" class is made by their parents. No tests are held in this matter. The Government does not currently consider the possibility of abolishing these classes; in any case, the school system in Poland is decentralised and the founding organ of each public school is a local self-government body. If "Romany classes" were eliminated by decree, their students would simply stop attending school (a large number of these children are several years behind their natural grade level). Addressing this problem, the *Pilot government programme in support of the Romany community in Małopolskie Voivodship for 2001-2003* proposes a new model for teaching Romany children, based on supporting Romany children in integrated classes. This model has already yielded its first results. In Małopolskie Voidvodship, where the idea of "Romany classes" arose and where they were the most numerous, such classes currently exist in only four schools. We hope that after the *Pilot programme* is extended to the entire country (which should occur in 2004), "Romany classes" will begin to disappear in other voivodships and that the problem will cease to exist within several years.

WOMEN AND CHILDREN

Juvenile remand centres (Re: Section 33)

Polish law does not require a court’s permission to maintain a contact with children placed in a juvenile centre. Such permission is required only in cases when minor’s parents are deprived of custody, or parents (or other persons) are explicitly prohibited by a court to contact a child. Cases, yet isolated, of prohibiting parents by the staff to contact a child placed in a centre do not result from the provisions of the law in force but from its incorrect application. A special attention will be paid to this.

The Government of Poland cannot share the opinion that defence counsels do not have a possibility to contact children placed in juvenile centres or reformatories. In criminal proceeding as well as in proceedings concerning juvenile cases, a free access of a defence counsel to his clients is guaranteed.

Certain restriction of free contact with the defence counsel may result from the possibility (provided for in Art. 73 § 2 of the Code of Criminal Proceedings) for prosecutor to be present during such a contact, if especially justified circumstances call for it.

Reproductive rights (Re: Section 34)

It is worth noting that, in accordance with Schedule 3 to the draft Order of the Minister of Health dated December 21, 2002 amending the Order of the Minister of Health dated March 26, 2002 on the List of Primary and Supplementary Drugs and Reimbursement for Supplementary Drugs (Official Journal No 28, Item 272, as amended), the list of supplementary drugs covered by 50% reimbursement

includes four types of new-generation hormonal contraceptive drugs: Harmonet, Minulet, Tri-Minulet, and Cilest. The reduced prices of the drugs will improve their accessibility.

The problem of abortion has long been the source of controversy in Poland. Many of the leading politicians have expressed views that the amendment, if any, to the Law on Family Planning, Protection of the Human Foetus, and Admissibility Conditions of Abortion (Official Journal of 1993, No 17, Item 78, as amended) – the so-called abortion law – should be subject to a national referendum. The Government Plenipotentiary for Equal Treatment of Men and Women shares the opinion. The Government holds the view that no conditions exist to conduct such a referendum at the present moment, but they recognise the need to enforce existing provisions concerning the access to prenatal examinations and performance of abortions.

Sexual education (Re: Sections 35 and 36)

Under the Regulation of the Minister of Education and Sport dated February 26, 2002 on the Curriculum Foundations of pre-school Education and Comprehensive Education in Different Types of Schools (Official Journal of 2002, No 51, Item 458), it has become necessary to review textbooks, including family education textbooks. Experts are now reviewing the textbooks. Based on their opinion, it will be decided whether the textbooks are to be withdrawn, maintained unchanged or maintained on condition that suitable changes are made to the content.

On July 19, 2002, amendments were introduced to the Order of the Minister of National Education on School Education and the Content of Education on Human Sexual Life, Principles of Conscious and Responsible Parenthood, Value of Family and Life at the Prenatal Stage, as well as Methods and Means of Conscious Procreation Included in the Curriculum Foundations of Comprehensive Education dated August 12, 1999 (Official Journal of 2002, No 121, Item 1037, as amended). The amended provisions introduce a principle that education on contraception, will be taught based on full scientific knowledge on contraceptive methods. So far, education on conscious procreation has been limited to natural methods of determining fertility. The amended provisions also address extensively the problem of sexually transmitted diseases, with special emphasis on the transmission, infection, prevention, and social aspects of HIV/AIDS.

Domestic violence (Re: Sections 37-41)

According to surveys conducted by the Centre for Public Opinion Studies (CBOS) in 1993 and 1996, 18% of married women admitted that they were subjected to physical violence by their spouse. Some 41% of divorced women reported that they had been often beaten by their spouse, and 21% that they had been sporadically subjected to violence by their spouse. About 32% of divorced women indicated that physical violence had been the main cause of their demand for divorce.

In August 2002, Poland adopted the National Program for Preventing and Combating Crime *Safe Poland*. The Program recognises the prosecution and combating domestic violence against women and children as one of the major objectives of the state in combating criminal offences which are regarded as most painful by the Polish people. The Program ensures guarantees for suitable financing to meet its objectives. One of the responsibilities of the police is to intervene in domestic violence incidents. The implementation of the system to prevent domestic violence began in 1998. Police, as the institution of the first contact, play an important role. Police officers are under obligation to maintain contacts with families in which domestic violence has been recorded.

Joint efforts of the National Police Headquarters, the Warsaw Police Headquarters and PARPA (State Agency for Solving Alcohol-Related Problems) led to the drafting of Regulation No. 25/98 of the National Police Chief on conducting domestic interventions by policemen in connection with domestic violence according to the so-called blue cards system. The Regulation determines, among other things, the conduct and the procedures of documenting domestic interventions.

In the course of few years when the procedure was applied, police field units signalled a need for changes, which were introduced in 2002 under Regulation No. 21/2002 of the National Police Chief. The amended Regulation also allows for comments by non-governmental organisations co-operating with the police in this respect. area.

All police officers across the country are responsible for implementation of the procedure. Actions taken by police units in this respect are supervised and co-ordinated by the Social Pathology

Department at the Office of Prevention Services of the National Police Headquarters. IT system was launched for the purposes of implementing a procedure to record data for the preparation of periodical reports.

Acting by themselves solely, the police are not able to eradicate domestic violence. It is necessary to ensure greater and more active support of all national and local governmental institutions that are competent in this area.

The institutions involved in providing assistance in pathological situations are as follows:

- State Agency for Solving Alcohol-Related Problems (PARPA);
- National Alliance of Individuals, Organisations, and Institutions "Blue Line";
- Family Assistance Centres;
- Crisis Intervention Centres;
- Municipality and City Committees for Solving Alcohol-Related Problems;
- Psychological Assistance Centres;
- Health Care Units;
- Municipality and County Councils;
- Plenipotentiaries for Addictions affiliated with City and Municipality Authorities;
- Society of Children's Friends;
- Committee for the Protection of Children's Rights;
- Family and Juvenile Courts;
- Public Prosecutor's Offices;
- Welfare Centres; and
- Consultation and Information Units for Victims of Domestic Violence.

The police are convinced that closer co-operation and co-ordination of actions taken by different bodies based on information available to the police may contribute to improving the effectiveness of measures taken by the police.

The Government see recognises a need to take measures aimed at effective prevention of domestic violence, including educational measures directed at police officers. It must be noted, however, that under the provisions of the Penal Code (e.g. Art. 157 § 5, frequently referred to as a ground for police interventions), damage to the body of closest relatives is an offence prosecuted at the request of the victim, a requirement which affects criminal prosecution of the offender. Only a clear request to prosecute and punish the offender may bring about optimal results to the police interventions. With respect to incidents meeting the description of the offence described in Article 207 of the Penal Code, there is a need to improve and promote measures taken by police officers.

The Government rejects a submission that the police regard such incidents of domestic violence as a private affair between of the family members. Despite the fact that there are a number of inefficiencies in discharging the responsibilities by the police, it seems that the above general statement is not warranted. At the same time, it is worth noting that domestic violence issues have been introduced to training programs for police officers.

A statement that in the Polish legislation there are no provisions which would make it possible to impose restrictions on persons who are a threat to their families and which would protect and assist victims of family offences is not correct. Such an arrangement is stipulated in Article 275 § 2 of the Code of Criminal Proceedings, which says that "a person under supervision is obliged to comply with the requirements contained in a court's or a prosecutor's decision. This restriction may extend to a prohibition of leaving a determined place of residence, obligation to report regularly before the supervisory authority, or to notification of intended departures and dates of return, and other limitation of his/her freedom necessary for the purpose of supervision." In practice, pursuant to this provision, prohibition to "approach" victims is imposed on perpetrators of family offences. Certainly, it is justified to draw the attention of courts and prosecuting authorities to the possibility and need to impose this kind of restrictions.

At the end of 2002, as part of measures aimed at improving the protection of victims of domestic violence through suitable legislative measures, the National Police Headquarters prepared and

submitted to the Ministry of Internal Affairs and Administration a draft law amending the *Penal Code and Code of Criminal Proceedings* to introduce a new institution - a prohibition for individuals to approach persons or places at a certain distance as determined by the court. This initiative is implemented as part of the government program *Safe Poland.*

TRAFFICKING IN HUMAN BEINGS

It is true that there is no definition of trafficking in human beings in the Polish Penal Code. However, such a definition exists in the legal doctrine and in court's jurisprudence, what seems to be sufficient in practice. Nevertheless, it should be noted that legislative work aiming at modifying Article 253 of the Criminal Code is currently carried out and entered a parliamentary phase.

The Government informs that the final version of the *National Program for Preventing and Combating Trafficking in Humans* was elaborated at the end of 2002 and submitted to the Minister of Internal Affairs and Administration for final approval.

REFUGEES AND ASYLUM-SEEKERS

Legal guardians to separated refugee children (Re: Section 51)

The proposal to extend the provisions of the draft law on granting protection to non-nationals in the territory of the Republic of Poland so as to cover practically all foreign unaccompanied minors is not feasible in the light of the provisions of the draft. Under Article 47, Section 4 of the draft law, "The *de facto* guardian is appointed by the President of the Office for the Repatriation and Refugees from amongst the staff of the Office for a period until the end of proceedings on granting refugee status". The staff of the Office is not able to act as *de facto* guardians of all foreign unaccompanied minors that may stay in the territory of Poland.

At the same time, the Government of Poland would like to draw attention to the fact that in any administrative proceedings a legal representative (guardian or curator) must represent minors. The provisions of the Family and Guardianship Code regulate the establishment of guardianship or curatorship. The guardian (or, accordingly, the curator) protects both the person and the property of the minor, and in performing this task he/she is subject to supervision by the family and guardianship court (Art. 155 of the Family and Guardianship Code).

In the case of unaccompanied minors seeking refugee status, the rationale for establishing the institution of *de facto* guardian followed from the particular situation of this category of foreign minors. Accommodation in centres for foreigners, frequent cases of traumatic experiences in the country of origin, inability to contact the families are the reasons why it is extremely important to ensure a special form of guardianship conducive to preserving the child's personality and its proper development in extraordinary conditions during the proceedings on granting a refugee status.

Institution of "tolerated stay" (Re: Section 52)

The situation of the individuals described by the Commissioner is regulated in the draft Law on Granting Protection to Non-Nationals in the Territory of the Republic of Poland, which is now in the *Sejm*. The draft Law introduces the new legal institution of "tolerated stay", which meets the expectations indicated in the Report.

LABOUR AND SOCIAL RIGHTS

Situation of miners (Re: Section 53)

In line with the adjustment to the program to restructure the coal-mining industry, it is expected that 27,200 people (and not 35,000 as in the previous version of the program) will loose their employment in the industry.

Cases of redundant workers who continue to mine illegally, as noted in the Report, are in fact exceptional.

Labour law problems (Re: Section 54)

The Polish law guarantees timely payment of salaries (Art. 282 of the Labour Code) and protects employees against the effects of the employer's insolvency (Law of December 29, 1993 on the Protection of Employee Claims in Case of Employer's Insolvency).

The Government is aware that, in practice, there are incidents of non-payment of salary to employees. The Cabinet examined this problem at a meeting on September 20, 2002 and requested the Minister of Justice to:

- appeal to labour court presidents to accelerate all labour law cases and to consider as priority cases of non-payment of overdue salaries;
- appeal to commercial courts to obligate insolvency judges to inform receivers in bankruptcy about their statutory obligations toward employees;
- create a database with schedules of labour cases under examination by district labour courts, including cases of overdue salaries.

The State Labour Inspection receives approximately 35,000 employee complaints per year concerning irregularities in the application of labour law, of which over 80% are allowed. Half of the complaints concern payments of salary and other employee benefits.

Under the Law on the State Labour Inspection dated March 6, 1981 (as amended), inspectors can order the employer to pay salary for work and other employee benefits if they establish irregularities in payments to employees. If the employer evades compliance with the order, inspection bodies may conduct administrative execution.

As a result of the use of legal means at their disposal, including orders to pay, labour inspectors enforced PLN 75.2m in 2002 (42.7% of total due payments), that is 40% more than in 2001. They enforced due payments for the benefit of 55.4% of affected employees.

The constitutional freedom of association for trade unions purposes is developed in the Law on Trade Unions dated May 23, 1991. Article 1, Section 2 of the Law provides that a trade union is independent from employers in its statutory activities. Article 35, Section 1 of the Law provides for a fine or a imprisonment to be imposed on those who by virtue of their position or function interfere with the lawful establishment of a trade union organisation, obstruct lawful trade union activities, or discriminate employees on the grounds of their trade union membership, non-involvement in the trade union, or performing of a trade union function.

Possibility of ratification of the Revised European Social Charter (Re: Section 55)

A study on prospects for ratification by Poland of the Revised European Social Chart (of 1996) was initiated at the Ministry of Economy, Labour and Social Policy in February 2003. The work is scheduled to completed in 2005.

FREEDOM OF EXPRESSION (Re: Sections 57 and 59.13)

A decision of the Supreme Court, mentioned in the Report, concerning the limits of permitted criticism of public officials is an interpretation of the law in force. Since the regulations in force served as grounds for interpretation by the Supreme Court, there is no need to intervene as far as legislation is concerned.

It is true that the provisions of the Polish Penal Code concerning a defamation of a public official provide for the imprisonment as one of alternative penalties that could be applied for offences of this kind (it is worth mentioning that an offence of illegal "resistance" to public authority exists practically in all legal systems). The Government cannot agree, however, with the Report's comment that the existence of this kind of penalty for cases of such defamation, as well as its application explicitly contradicts the Convention and the Court's jurisprudence. For instance, in its judgment concerning the *Janowski vs. Poland* case (Application No. 25716/94) the Court found no violation of the Convention by the Polish court which had imposed a suspended imprisonment on a Polish national, for insulting municipal guards. In addition, it should be noted that in cases of defamation of public officials, the possibility of resort to the imprisonment is not frequently used. For example, in 2000 imprisonment was

adjudicated for 441 offenders while the total number of offenders was 1074, and in only 72 of those cases imprisonment was imposed without a conditional suspension of its execution.

On this occasion, it should be stressed that the number mentioned in the Report (footnote 40) of 441 persons sentenced to deprivation of liberty for insulting public official concerns only the convictions for insulting public official while or in relation with his performing of professional duties (Art. 226 § 1 of the Code of Criminal Proceedings). In addition, 4 persons were sentenced to imprisonment for insulting or humiliating a constitutional body of the Republic of Poland (Art. 226 § 1 of the Penal Code), including 2 cases of conditional suspension of the execution of this penalty.

These two offences cannot however be linked, as they refer to totally different categories of persons, although they are regulated in the same Article of the Penal Code. In the first case (Art. 226 § 3 of the Penal Code) these are the constitutional authorities of the Republic of Poland that are referred to. Only in such instances it may be analysed whether the sentences were or were not politically biased and whether they were aimed at protecting these officials from criticism. The other category of cases (Art. 226 § 1 of the Penal Code) refer to common offences almost always involving active aggression against officers of the police or of other services protecting legal order.