OHCHR REGISTRY

03 APR 2012

Recipients: [Signatures]

The Permanent Mission of the Republic of Poland to the United Nations Office and other International Organizations at Geneva presents its compliments to the Office of the UN High Commissioner for Human Rights and has the honour to submit to the Secretariat of the Human Rights Committee the replies – within the follow-up procedure – to the concluding observations number 10, 12 and 18 transmitted by the Human Rights Committee after consideration of the VI periodic report of the Republic of Poland on the implementation of the provisions on the International Covenant on Civil and Political Rights.

The Permanent Mission of the Republic of Poland avails itself of this opportunity to renew to the Office of the UN High Commissioner for Human Rights the assurances of its highest consideration.

Enclosure – 17 pages

Geneva, 2 April 2012

Office of the UN High Commissioner for Human Rights
Secretariat of the Human Rights Committee
Geneva
REPLIES TO THE CONCLUDING OBSERVATIONS NUMBER 10, 12 AND 18 OF THE HUMAN RIGHTS COMMITTEE


REPLY TO RECOMMENDATION 10

The authorities of the Republic of Poland are aware of the problem of domestic violence in the country. Over the last few years we have seen a change in the perception of the problem by the Police and other entities involved (social workers, probation officers, education or health care professionals). The level of sensitivity and approach to victims of this type of violence has duly changed, too. This change has been observed also in the general public and consists in a dramatically lower level of social approval of such acts. Furthermore, a number of legislative and organisational measures have recently been taken with a view to preventing this pathology. These steps are aimed at efficiently protecting victims of violence, include inter alia their isolation and exerting an adequate impact on perpetrators of domestic violence.

The legislative action consisted in the passage and entry into life on August 1, 2010 of the Law of June 10, 2010 on the amendment of the law on preventing domestic violence and selected other laws (Journal of Laws No. 125, item 842). This law introduced new legal measures aimed at efficiently limiting domestic violence. The amendments introduced under the above act were already notified to the Committee on the occasion of the consideration of the 6th Report. Since then, all the relevant by-laws have been passed and have come into effect (the last one, on the launch of a special procedure of so-called “Blue Cards”, was promulgated on October 3, 2011). These by-laws provide for a complete usage of all the tools provided for by the law. The “Blue Card” procedure introduced into the operating practice of five services allows a standardized approach of the Police, social welfare, municipality commissions for the solution of alcohol-related problems, representatives of educational and health care institutions with respect to domestic violence, which will have a favourable impact on the quality of contacts with the family affected by violence.

During this time, operational measures were taken with a view to disseminating knowledge about the new legal regulations among the services involved in the prevention of domestic violence and in the general public:

- a new module was launched of a national help-line for victims of domestic violence. Among others, “The Blue Line” (801-12-00-02) offers a chance to launch immediate action against the perpetrator previously sentenced and remaining at liberty on probation, with respect to whom, thanks to the cooperation of probation officers and the Police, fast judicial proceedings may be instituted for the purpose of placing the perpetrator in a prison (a new institution introduced by the above amendment to the law) because of his perpetrating an offence of using violence with respect to family members. The launch of the immediate intervention takes place the moment the “Blue Line” operator has received information on the offence of the perpetrator,
- a template of a form of applications of probation officers filed to courts for the launch of the above procedure was prepared and introduced; these forms are supposed to encourage probation officers to use this procedure and to facilitate its application whenever necessary,

- a template of a guidebook for a victim of domestic violence was prepared and introduced; it is handed to such a person by the probation officer monitoring the perpetrator of domestic violence. The template contains information such as inter alia contact details of the probation officer, the Police, address details of the nearest assistance centres, information about action to be taken in the event of a repeated use of violence by a family member, etc.,

- the Charter of Rights of Victims of Domestic Violence was prepared. The Charter itemises fundamental entitlements of such persons, contains addresses of the major assistance centres in Poland, information about important emergency telephone numbers, etc. The Charter was forwarded to the services active in the field of domestic violence prevention (to all courts, including probation officers, the Police, social welfare centres, including specialised support centres for victims of domestic violence) to be further forwarded to victims of domestic violence (a copy of the Charter is attached for the Distinguished Committee),

- data bases were prepared with names of people monitoring or coordinating work of all services active in the field of domestic violence prevention in individual voivodships, with a view to encouraging cooperation between these individuals in the area of domestic violence prevention in their area of operation; the data bases were forwarded to all the persons included there and also made available on the websites of the Ministry of Justice, Ministry of Labour and Social Policy, National Headquarters of the Police, the General Prosecution Authority, and voivodship offices,

- court statistics forms were adjusted to the new legal instruments with a view to obtaining a comprehensive picture of operations of common courts related to the prevention of domestic violence. This will facilitate the monitoring and evaluation of the newly introduced institutions and their modification, if necessary.

In response to the concern of the Distinguished Committee about the high number of dismissals of domestic violence cases at the prosecution level compared to the number of offence notifications, it follows from the information obtained from the General Prosecution Authority, an entity independent of the government, that in the period from October 1, 2010 until August 31, 2011 a total of 48,871 cases concerning domestic violence were recorded. Decisions of refusal to institute proceedings were taken in 17,431 cases, which accounts for 35.6% of the total number. The number of refusals to institute proceedings is connected with a lack of possibility to establish a fact of committing an offence with evidence other than a victim’s testimony.

The General Prosecution Authority scheduled a survey of files of cases concerning domestic violence that were concluded with a dismissal of inquiries in district prosecution authorities. The survey will make it possible to get to know the reasons for such conclusions of relevant cases.

In response to the concern of the Distinguished Committee about the length of prosecution procedures in this category of offences, it should be made clear that a decisive majority of procedures takes no longer than 3 months.

Undoubtedly, the length of procedures is affected by the following:

- waiting for the court to interview underage victims in a special mode, assuring only one hearing under friendly conditions,

- waiting for the court to appoint officers representing underage victims in initial proceedings,

- the need to appoint expert psychologists to verify the credibility of victims’ testimonies and waiting for the submission of the relevant expert opinion of psychologists,
the need to appoint expert psychiatrists in case of doubts concerning the sanity of suspects, to carry out tests and to wait for submission of the relevant expert opinion of psychiatrists,
- the need to hear a large number of witnesses, in particular when the victims initiate the gathering of evidence,
- non-appearance of witnesses and suspects, which necessitates their arrest and being brought in by the Police.

In direct reference to the recommendation of the Distinguished Committee concerning granting officers of the Police the right to issue immediate restraining orders at the scene of an alleged crime, note should be taken of the status of the Police in Poland’s law enforcement system, the role the Police fulfil, the scope of their responsibilities and, consequently, entitlements.

The entitlements of the Police are defined in the Law of April 6, 1990 on the Police (Journal of Laws of 2007 No. 43, item 277, as amended). As a result of the aforementioned legislative action, a new Art. 15a was introduced here, under which an officer of the Police has the right to arrest perpetrators of domestic violence that pose a direct threat to human life or health.

In turn, pursuant to Art. 244 § 1a of the Code of Criminal Procedure, a provision also introduced by means of the above Law on the amendment of the law on preventing domestic violence and selected other laws, the Police have the right to arrest a suspect provided there are justified reasons to believe he or she has committed an offence with the use of violence to the detriment of a person sharing a place of residence with a victim and there is a risk of a repetition of an offence with the use of violence to the detriment of this person, especially if the suspect threatens to perpetrate such a crime. Furthermore, pursuant to Art. 244 § 1b of the Code of Criminal Procedure, the Police are obliged to arrest a suspect if an offence with the use of violence to the detriment of a person sharing a place of residence was committed with the use of firearms, knife or another dangerous object, and there is a risk of him or her repeating the offence with the use of violence to the detriment of a person sharing a place of residence, especially if the suspect threatens to perpetrate such a crime.

Upon arresting such a person, the Police secure all the evidence gathered in a particular case, issue a decision on the presentation of charges and, depending on the results of the proceedings, forwards the case file to a public prosecutor in order to take a decision whether preventive measures should or should not be applied.

Under Polish law, preventive measures such as particular orders or conjunctions, may be applied exclusively by a public prosecutor or a court of law. Preventive measures are coercive measures used in order to safeguard an adequate course of proceedings, and in exceptional cases applied with a view to preventing the accused (suspect) from committing another serious offence.

The aforementioned Law on the amendment of the law on preventing domestic violence and selected other laws furthermore introduced a new preventive measure with respect to the perpetrator of domestic violence. Namely, such a person may be ordered by means of an injunction to leave living premises if there are reasons to believe that the accused will again resort to an offence with the use of violence to the detriment of this person, especially if he or she has threatened to perpetrate such a crime (Art. 275a § 1 of the Code of Criminal Procedure). The injunction can be used upon a motion filed by the Police or by law, for a period not exceeding three months. If reasons for the use of this measure continue to occur, a court of first instance competent for the recognition of the case may extend the use of this measure for another period not exceeding three months.

In light of the above, it should be noted that the Police can arrest a perpetrator of domestic violence at the scene and isolate him from the victim, and when there are circumstances justifying the use of a preventive measure, the Police are obliged to apply to the public prosecutor for the application of such a measure. When making a relevant decision, a prosecutor
acts on the basis of the evidence gathered, including witness testimonies and often preliminary expert evidence.

It should be noted as well that the Police at the scene do not possess that evidence that will be accumulated during the proceedings and which would justify the use of preventive measures and as a result if the Police were entrusted with a bigger range of competences, a decision on the application of such measure might prove premature.

Furthermore, if officers of the Police made decisions at the scene on the restriction of civil rights and liberties, without adequate knowledge of the course of the event, such a decision might be found faulty, groundless and in contravention of the law, inter alia with Art. 41 section 1 of the Constitution, according to which “Personal inviolability and security shall be ensured to everyone. Any deprivation or limitation of liberty may be imposed only in accordance with principles and under procedures specified by statute”.

It should be stressed once again that the Police may arrest a suspect pursuant to Art. 244 of the Code of Criminal Procedure for a period of 48 hours. This time allows a proper collection of evidence and its verification. This allows an authority which institutes proceedings (a public prosecutor or a court of law) to make a reliable and objective decision as to a preventive measure, whose improper application, as indicated above, may infringe on the constitutional rights and freedoms of the citizen.

The aforementioned possibilities of using a new rationale for arresting perpetrators of domestic violence and new preventive measures have been part of Polish law for little more than 13 months. During this time, public prosecutors have issued as many as 631 injunctions to perpetrators of domestic violence, making them vacate premises occupied jointly with the victim. This period seems too short to fully assess the efficacy of the new solutions, even if the number of measures used is growing and competent authorities are using these new legal measures more and more willingly (2nd half of 2010 – 209 injunctions, 1st half of 2011 – 422 injunctions, a total of 631 injunctions of vacating premises occupied jointly with the victim).

It seems that the introduction of a completely new entitlement for officers of the Police, one suggested by the Distinguished Committee, a major breach in the more and more efficient system of law enforcement and operation of the judiciary, would be premature. The introduction of such measures should be deferred until a final assessment of the operation of new legal solutions, in place for a year, concerning the protection of victims of domestic violence. Such assessment is possible only after the above regulations have been in place for a longer period.

With respect to the recommendation of the Distinguished Committee on the inclusion of questions of preventing domestic violence in the training standards for law enforcement officers and judicial professionals, it should be noted that relevant issues have become part of the training programs for all professional groups and types of services involved in domestic violence prevention. In particular, relevant trainings, especially since the entry into effect of the Law on preventing domestic violence and an amendment to this law, have been offered to officers of the Police, prosecutors, probation officers, and judges. Since an increased demand for such trainings has been identified, they are planned to be held also in the future.

**Trainings for officers of the Police.**

Questions of preventing domestic violence are discussed in training programs of all levels for officers of the Police, in basic and specialised training courses, including those dedicated exclusively to these issues. For example:

- All Police officers take part in the mandatory *basic occupational training*. The curriculum of the training includes prevention of domestic violence (79 teaching hours) and in this respect covers the tasks carried out by an officer taking part in patrols. In 2011 the basic occupational training is scheduled for 4,758 Police officers.

- The program of the *Specialist course on the prevention of domestic violence* takes 54 teaching hours, i.e. 7 days. In 2011 the course was attended by 199 Police officers.
– The Specialist course for Police officers on the prevention of demoralisation of juveniles and juvenile delinquency and actions for the sake of underage persons, includes classes on principles of conduct with the victim, especially an underage victim, and a perpetrator of domestic violence. The classes take 36 teaching hours. In 2011 the course was attended by approx. 97 Police officers.

– The issue of domestic violence is discussed within the Specialised course for precinct Police officers (i.e. officers of the Police in charge of a particular residential area). This course relates to the tasks entrusted to precinct Police officers in the aforementioned Blue Card procedure. In 2011 the course was attended by approx. 215 Police officers.

Trainings for judges, public prosecutors and probation officers (held by the Polish National School of Judiciary and Public Prosecution).

In 2011 four editions of a training called: “The methodology of criminal proceedings in cases concerning offences against the family, care, sexual freedom and morality”. The following subjects were analysed in depth during the training:

– treatment of underage witnesses – victim in cases related to sexual offences and offences against the family,
– application of provisions concerning a single interview with an underage person in friendly conditions,
– notification of the victim by law enforcement about his or her rights,
– psychology of perpetrators and victims of domestic violence,
– impact of domestic violence on children’s mental health,
– assistance to victims of offences – needs of the victims, cooperation of law enforcement with organisations set up to assist victims,
– role of friendly interview rooms (i.e. rooms for interviewing children), participation of a psychologist,
– participation of a parent, guardian and probation officer in activities carried out by the Police.

The following editions of trainings have taken place until today:

– 1st edition: between 21–23 March 2011 in Krakow; the training was attended by 20 judges and 29 public prosecutors;
– 2nd edition: between 27–30 June 2011 in Karpacz; the training was attended by 18 judges and 17 public prosecutors;
– 3rd edition: between 6–9 September 2011 in Jastrzębia Góra; the training was attended by 24 judges and 37 public prosecutors;

Furthermore, a training was held dedicated to probation officers “Selected issues of importance in the work of professional family probation officers”. The training had two editions: between 27-30 June 2011 in Świnoujście and 3-6 October 2011 in Karpacz, with a total number of 100 attendees.

The above training discussed in detail the following issues:

– the most up-to-date provisions of the family and guardianship code, first of all related to parents’ contacts with the child;
– mediation in family issues – in particular contacts with children, limitation of parental rights, divorce;
– the child as a victim of domestic violence – role of a probation officer;
– issues of children’s rights protection in domestic and international law. Domestic and international institutions and organisations active in the field of children’s rights;
– methodologies of work with the family.

Trainings for lawyers and probation officers (held by the State Agency for the Solution of Alcohol Related Problems, PL: PARPA).
Between October 2010 and October 2011, as in preceding years, PARPA took action aimed at preventing domestic violence, including training programs for representatives of services and institutions. Each year such training programs are attended by around 50 probation officers and 40 layers employed in assistance institutions such as counselling centres, or support centres offering free of charge legal counselling to persons affected by violence.

With respect to the recommendation of the Distinguished Committee on assuring to victims of domestic violence access to assistance, including legal and psychological counselling, medical care and shelter, arising from the concern that the number of specialists might be insufficient, it should be noted as follows.

Pursuant to an amended law on the prevention of domestic violence, according to the Regulation of the Minister of Health of 22 October 2010, persons affected by domestic violence have the right to obtain, free of charge, a doctor’s certificate about the causes and kind of bodily injuries resulting from the use of domestic violence.

The following facilities offer assistance to victims of domestic violence:
- counselling centres,
- assistance centres, including those offering round-the-clock care,
- specialised assistance centres, including those offering round-the-clock care,
- homes for mothers with underage children and pregnant women,
- emergency centres, including those offering round-the-clock care.

The above facilities, with the exception of specialised assistance centres, are run by municipalities and counties and are financed from their budgets. Such facilities are set up with due consideration for the scope and kind of local needs.

<table>
<thead>
<tr>
<th>Centres providing assistance to victims of domestic violence</th>
<th>Entity responsible - municipality</th>
<th>Entity responsible - county</th>
</tr>
</thead>
<tbody>
<tr>
<td>Counselling centres</td>
<td>2009</td>
<td>2010</td>
</tr>
<tr>
<td>Assistance centres with round-the-clock care</td>
<td>56,191</td>
<td>56,557</td>
</tr>
<tr>
<td>Homes for mothers with underage children and pregnant women</td>
<td>x</td>
<td>x</td>
</tr>
<tr>
<td>Emergency centres with round-the-clock care</td>
<td>816</td>
<td>1,386</td>
</tr>
<tr>
<td>Homes for mothers with underage children and pregnant women</td>
<td>636</td>
<td>347</td>
</tr>
<tr>
<td>Emergency centres with round-the-clock care</td>
<td>521</td>
<td>319</td>
</tr>
</tbody>
</table>

Analysis of the above data indicates that in 2010, relative to 2009, the number of victims making use of round-the-clock centres in emergency centres run by municipalities has dropped. At the same time, the number of victims of domestic violence staying in county assistance centres and in county emergency centres has increased. This shows that victims of domestic violence do not stay in facilities in their place of domicile but some distance away, because of the need to offer them protection. Furthermore, during their all-day stay in facilities, victims of domestic violence should be provided not only with shelter but also with the assistance of specialists. Therefore provision of specialised assistance is increasingly important. Such assistance can be provided more easily in county facilities and municipalities and counties develop cooperation in this respect.

Specialised assistance centres for victims of domestic violence are run by county authorities and are financed by the state budget.

In 2010 these facilities offered assistance to 14,238 victims of domestic violence, including 10,869 women, 1,491 men, and 1,878 children. This number includes 199 seniors (166 women, 33 men), 316 people with disabilities (239 women, 34 men, 43 children). In 2009 assistance was provided to 14,097 victims of domestic violence, including 10,156 women, 1,337 men, 2,604 children. This number includes 344 seniors (247 women, 97 men), 738 people with
disabilities (424 women, 126 men, 188 children).

Specialised assistance centres for victims of domestic violence operate under the standards defined in the Regulation of the Minister of Labour and Social Policy of 22 February 2011 on the standard of basic services offered by specialised assistance centres for victims of domestic violence, qualifications of their staff, detailed modes of correctional and educational activities carried out with perpetrators of domestic violence and the qualifications of those in charge of such correctional and educational activities.

Apart from the satisfaction of the fundamental needs of victims of domestic violence, specialised assistance centres offer medical, social, psychological, and legal assistance.

In 2010, employees of departments of social policy in voivodship offices compiled reports on the operation of specialised assistance centres for victims of domestic violence. These reports mainly related to the fulfilment of standards for the operation of these facilities and the types of assistance provided to victims of domestic violence. It can be concluded that the centres do the following:

1. assure:
   - shelter to victims of domestic violence, for three months, which can be extended in especially justified cases,
   - protection against perpetrators of domestic violence,
   - immediate assistance and medical counselling, psychological care and comprehensive support,

2. provide therapy and support to victims of domestic violence:
   - diagnose the family and prepare tailor-made assistance plans for victims,
   - carry out medical, psychological, legal, and social counselling,
   - run support groups or therapy groups,
   - provide individual therapy and counselling,
   - provide therapy and educational counselling for parents and children,

3. as to living standards:
   - provide shelter (quarters for sleeping for a maximum number of 5 people, a common room of day stay, a place for children to learn and play, generally accessible bathrooms and kitchen, laundry and drying rooms),
   - provide food, clothing, footwear, personal hygiene and cleaning items as needed.

   All facilities perform activities that go beyond the binding standards, for instance:
   - co-organise social campaigns,
   - co-operate with academic centres,
   - run occupation activation projects dedicated to persons exposed to domestic violence,
   - implement actions arising from agreements between services and entities,
   - organise preventive projects.

All specialised assistance centres for victims of domestic violence cooperate with institutions preventing domestic violence, mainly with social welfare centres, county family assistance centres, Police, courts, prosecutors, municipal guards, health care facilities, psychological and pedagogical counselling centres, schools, nurseries, churches, non-governmental organisations, municipality commissions for alcohol-related issues, housing departments, family counselling and diagnostic centres, county labour offices, and local media.

In Poland, actions aimed at preventing domestic violence are based not only on the law on the prevention of domestic violence, but also according to the provisions of the law on education in sobriety and prevention of alcohol abuse and are financed from licences on alcohol sale. This is in compliance with Art. 4 of the law on education in sobriety and prevention of alcohol abuse, which lists among the obligations of a municipality connected with the prevention and solution of alcohol-related problems the provision of assistance to families with alcohol-related problems, of psychological, social and legal assistance, and in particular protection...
against domestic violence.

Annual reports submitted by municipality governments to the State Agency for the Solution of Alcohol Related Problems, subordinated to the Ministry of Health, and related to the prevention and solution of alcohol-related problems indicate that in 2010 there were 2,459 municipality facilities for victims of domestic violence, including:

- 1,576 counselling and intervention centres for victims of domestic violence,
- 438 telephone helplines for victims of domestic violence,
- 146 shelters and hostels for victims of domestic violence,
- 195 emergency intervention facilities,
- 104 support centres for victims of domestic violence (new category of facilities).

Moreover, municipalities ran 345 support groups for victims of domestic violence, 202 therapy groups and 285 social therapy groups for children victims of domestic violence. Analysis of the data submitted by municipalities shows also that in 2010 the number of municipalities holding or financing training programs about the prevention of domestic violence grew significantly. In the period under consideration, 614 municipalities notified about the organisation of such trainings. Moreover, the number of municipalities holding or financing training programs about the “Blue Card” intervention procedure of services in incidents of domestic violence also grew to 222 municipalities.

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REPLY TO RECOMMENDATION 12

The issues of permissibility of abortion are regulated by the Law of January 7, 1993 on Family Planning, the Protection of the Human Foetus and Conditions of Permissibility of Termination of Pregnancy (Journal of Laws No. 17 item 78 as amended), whose wording remained unchanged in 2010.

Reviewing the effects of provisions related to abortions on women.

The implementation of the provisions of the above law is monitored on a regular basis. The Council of Ministers compiles annual reports on the implementation of this law, submits them to the Sejm and makes available to the general public; the reports are available on the website of the Ministry of Health.

The observance of the criteria that allow an abortion is likewise monitored on an annual basis. Information on the observance of the law in this respect comes from law enforcement authorities and the Office of the Ombudsman for the Rights of the Patient.

The use of the “conscience clause” by the medical profession.

Within the past year the Director of the Department of Mother and Child at the Ministry of Health has held meetings with the National Consultant, Regional Consultants and heads of obstetrics wards. The meetings were used to discuss the legal framework of the application of the “conscience clause” and the mode of action in the case of an abortion.

The provision allowing a physician to refuse to perform medical services imposes at the same time a number of obligations on the medical professional. The physician is obliged to:

- indicate to the patient the actual possibilities of obtaining this health care service from another physician or in another health care facility;
• justify the fact and make note of it in the medical file.

The conscience clause applies exclusively to a particular physician in a particular case and must not be applied by the entire health care facility as a principle of collective conscience, supported by general declarations of the management of the facility. Conscience is a category inherent in an individual human being and therefore the conscience clause may only be invoked by individuals.

**Shortening the period necessary for a decision of a medical commission on abortion-related issues.**

Pursuant to Art. 31 section 5 of the Law of November 6, 2008 on the rights of the patient and on the Ombudsman for the Rights of the Patient (Journal of Laws of 2009 No. 52 item 417 as amended), the Medical Commission at the Ombudsman for the Rights of the Patient is obliged to issue a decision promptly, no later than within 30 days of a complaint being filed. The obligation of issuing a decision promptly should be seen as an obligation to act without unnecessary delay, which might prejudice the exercise of the patient’s rights (inter alia the right to a legal abortion). The indicated period of 30 days for the decision is the maximum period and the Commission is obliged to take into consideration the fact that the decision must be issued within a period that would not jeopardise the ability to exercise her rights.

Furthermore, we can observe that 3 objections were submitted to the Medical Commission in 2010, and since January until October 2011 there have been 10 objections, none concerning the issue of a legal abortion.

**Strengthening measures aimed at the prevention of unwanted pregnancies.**

As to the question of accessibility of contraceptives, modern contraceptives are registered and available in Poland at present. These are medicinal products or medical products as well as medicines and medical products used during a pregnancy and necessary for the care of the foetus, medical care of a pregnant woman and used for conscious procreation. As a matter of principle, contraceptives in Poland are not subsidised by public funds. Still, in 2010 the following medicinal preparations from the anatomical, therapeutic and chemical group G03AA07 were included in the list of publicly funded medications: contraceptives – gestagens with estrogens: Microgynon 21 (Schering AG), Rigevidon (Jenapharm), Steridil 30 (Wyeth). These products were entered on the list of refunded medications because of their use in the treatment of functional menstrual disorders and painful periods, but can also be used as contraceptives.

Furthermore, average prices of contraceptives are not high and are as follows for the most popular methods of pregnancy prevention (with the average national salary in the 2nd quarter of 2011 in the amount of 3,366.11):

- condom: from 3 to 10 PLN for a package with an average of 3 pieces;
- intrauterine device, IUD from 70 to 120 PLN to be used for a period from 3 to 5 years;
- hormonal pills from 14 to 46 PLN for a monthly treatment.

The Ombudsman for the Rights of the Patient has since October 2010 until today been taking action with a view to disseminating information on the work of the Medical Commission and the possibility of filing objections to an opinion or decision of a physician. These actions have included, in particular:
• a national awareness raising campaign “Patient, do you know your rights?” was launched in October 2010. Special fliers were prepared and dispatched to all municipalities in Poland (approx. 2,500) to be distributed among the residents and the information to be uploaded on websites;

• trainings for non-governmental organisations (Federation for Woman and Family Planning) about the rights of the patient were held in October 2010;

• a free helpline providing information to patients about their rights continued to operate in the Office of the Ombudsman for the Rights of the Patient;

• detailed information on filing a complaint concerning an opinion or decision of a physician was made available in July 2011 on the website of the Ombudsman for the Rights of the Patient.

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REPLY TO RECOMMENDATION 18

Protection of the rights of detained foreigners and foreigners in refugee centres, guarded centres and arrests for the purpose of expulsion

Detention of foreigners after the deadline for their deportation.

In Recommendation 18, the Distinguished Committee expresses its concern with an absence of specific laws concerning the detention of foreigners after the deadline for their deportation. The Committee’s concern is groundless. No foreigner, under any circumstances, can be detained in Poland without a legal basis.

The question raised by the Committee concerns a hypothesis that upon a decision of deportation (which invariably sets out the deadline for the foreigner’s departure from the territory of Poland), a foreigner remains in Poland and is deprived of liberty. All questions related to the detention of a person under such circumstances, and in particular reasons for detention, authorised entities, admissible period of detention, mode of action, and the foreigner’s rights are set out in detail under Chapter 9 of the Law of 13 June 2003 on foreigners (hereinafter: “law”; Journal of Laws of 2011, No. 264, item 1573 as amended) concerning the procedure of detaining a foreigner, placement in a guarded centre or an arrest for the purpose of expulsion.

Art. 101 section 1 of the law allows the detention of a foreigner in two situations: when there are reasons for issuing a decision of deportation and in a situation addressed by the question of the Committee, i.e. when a foreigner fails to perform the obligations set out in the decision of deportation (only under such circumstances can we speak about detention after the deportation deadline).

The reasons for deportation, and thus indirectly for detention itself, are unequivocally enumerated under the law (Art. 88 section 1). These are as follows:

- a foreigner’s stay on Polish territory without a valid visa or another valid document which allows for entry and stay in the territory in Poland,
- a foreigner did not leave the territory of the Republic of Poland after exhausting the allowed time of stay in the territory of the Schengen states,
- a foreigner’s performed work without the permit required by the Law of April 20, 2004 on employment promotion and labour market institutions, or undertook business activities in violation of the laws in force in this field in the Republic of Poland,
- a foreigner does not have the financial means necessary to cover the stay in Polish territory and cannot identify reliable sources of their acquisition,
- a foreigner’s data are included in the list of foreigners whose residence in the territory of Poland is undesirable, if the foreigner arrived in Poland when such an entry was in place,
- a foreigner’s data are in the Schengen Information System for the purposes of refusing entry, if the foreigner stays in Polish territory under a visa-free traffic or a Schengen visa, with the exclusion of a Schengen visa allowing exclusively an entry to and stay in Poland,
- a foreigner’s further stay would pose a threat to national defence or national security or the protection of public safety and order, or would infringe the interests of the Republic of Poland,
- a foreigner’s entry or attempted entry into Poland is in contravention of the law,
- a foreigner did not voluntarily leave Poland by the deadline stipulated in a decision obliging him or her to leave Poland, a decision refusing to permit him or her to stay on Polish territory for a specified time, or a decision revoking a permit for staying in Poland for a specified time,
- a foreigner does not comply with the fiscal obligations to the State Treasury,
- a foreigner has completed serving a sentence of deprivation of liberty issued in Poland for a deliberate offence or fiscal offence,
- a foreigner has been sentenced in Poland by a valid and final verdict to deprivation of liberty and there are reasons to transfer him abroad for enforcement of this penalty.

The list is inclusive. It follows, then, that detention is possible exclusively with respect to a foreigner who has violated the obligations that condition the legality of his entry into or stay in the territory of the Republic of Poland RP or has not complied with a decision of deportation.

A person subject to detention under the aforementioned law does not need to have any relation to any criminal proceedings. Detention is not related to any proceedings and belongs to a category of administrative detentions. Nevertheless, in matters not provided for in the law and related to a detention of a foreigner provisions of the Code of Criminal Procedure (Art. 101 section 3b of the law) apply directly. As a result, a detained foreigner can fully enjoy all the trial guarantees of a person under criminal proceedings.

The Border Guards and the Police have the exclusive authority to detain a foreigner (Art. 101 section 2 of the law).

Detention of a foreigner may not exceed 48 hours (Art. 101 section 1 of the law). The duration of lawful detention of a foreigner is, then, identical to the duration of lawful detention in criminal proceedings (Art. 244 in conjunction with Art. 248 of Code of Criminal Procedure). The duration of detention starts at the actual moment of deprivation of liberty rather than at the moment the detained foreigner is placed in a designated room on the premises of the competent authority.

The detaining authority is obliged to apply to a court promptly for the placement of a foreigner in a guarded centre or for his or her arrest for the purpose of expulsion (Art. 101 section 3 item 1 of the law).

Because of the need to apply provisions of Code of Criminal Procedure in matters not provided for in the relevant law, the detaining authority is obliged to notify the detained foreigner promptly about the reasons for detention and his or her rights, including the right to an attorney, and to hear the detained foreigner (Art. 244 § 2 of Code of Criminal Procedure). Both activities should be conducted in a language that the detained foreigner can understand. Therefore, if the detained foreigner does not have a working knowledge of the Polish language, he or she has the right to use, free of charge, an interpreter (Art. 72 § 1 in conjunction with Art. 71 § 3 of Code of Criminal Procedure). A detention report is prepared, specifying the
given name, surname and capacity of the person carrying out the detention, the given name and surname of the detainee, and when the latter's identity cannot be determined – the detainee's description and the day, hour, place and reason for detention. The report should also include representations made by the detained foreigner and make a note of notifying him or her about the rights. A copy of the report is served on the detainee (Art. 244 § 3 of Code of Criminal Procedure). A detained foreigner, at his demand, should be immediately allowed to contact an attorney (Art. 245 § 1 of Code of Criminal Procedure). Furthermore, the Border Guards and the Police are obliged to notify promptly a person close to the detained foreigner, the employer, school or university, provided the detainee asks for this (Art. 261§ 1 and 3 of Code of Criminal Procedure in conjunction with Art. 245 § 2 of Code of Criminal Procedure).

A detained foreigner can lodge a complaint to a court. The complaint of the detained foreigner may request an analysis of the legitimacy, legality and correctness of the detention (Art. 246 § 1 of Code of Criminal Procedure); the scope of the complaint is at the detainee's discretion. The complaint is immediately forwarded to a court, which also immediately examines it (Art. 246 § 2 of Code of Criminal Procedure). The court examines whether the aforementioned reasons for detention occur and whether the detainee has failed to perform any of the obligations imposed on him or her in a decision of deportation. (Art. 88 section 1 of the law). If the court acknowledges the detention as illegitimate or in violation of the law, the court orders an immediate release of the foreigner (Art. 246 § 3 of Code of Criminal Procedure).

A foreigner is released immediately also when:
- within 48 hours of detention he or she has not been put at the disposal of a court with a request of his or her placement in a guarded centre or of his or her arrest for the purpose of expulsion,
- within 24 hours of placement at the disposal of a court he or she has not been served with a decision to be placed in a guarded centre or arrested for the purpose of expulsion,
- a reason for detention no longer occurs (Art. 101 section 3a in conjunction with Art. 248 § 1 and 2 of Code of Criminal Procedure).

Supervision of a detention of a foreigner by an independent authority not only ensures legal equality of foreigners and Polish citizens but also fulfils the constitutional requirement of assuring each citizen deprived of liberty other than by means of a court decision to appeal to a court of law for an immediate examination whether such detention is lawful (Art. 41 of the Constitution).

A placement of a foreigner in a guarded centre or in an arrest for the purpose of expulsion is a decision of a court (Art. 104 section 1 of the law). It should be noted that a court does not take such a decision if this might pose a risk to the foreigner's life or health (Art. 103 of the law). The procedure of placement in a guarded centre or arrest for the purpose of expulsion follows the provisions of the Code of Criminal Procedure (Art. 104 section 4 of the law), and therefore, during the proceedings a foreigner can enjoy all the trial guarantees available to an accused in criminal proceedings.

A foreigner is placed in a guarded centre if this indispensable for securing efficient proceedings in a case of deportation or a revocation of a permit for settlement or a permit for a long-stay EU residency or if there are justified reasons to believe that the foreigner will fail to execute the decision on deportation or a decision revoking a permit for settlement or a permit for a long-stay EU residency; or finally if the foreigner has crossed or attempted to cross the national border in contravention of the law, if he or she has not been immediately transferred to the border (Art. 102 section 1 of the law).
In turn, arrest for the purpose of expulsion is used with a respect to a foreigner, if apart from the above reasons there is a risk of the foreigner not complying with the principles of stay in a guarded centre (Art. 102 section 2 of the law).

According to Art. 104 section 5 of the law, supervision of the execution of a decision to place a foreigner in a guarded centre or a decision of arrest for the purpose of expulsion is carried out by a district court having jurisdiction over the guarded centre or arrest for the purpose of expulsion. This is not, however, penitentiary supervision, apart from the situations under §1 section 3 of the Regulation of the Minister of Justice of 26 August 2003 on the manner, scope and mode of penitentiary supervision (Journal of Laws No. 152, item 1496 as amended). Legislative work is underway on a new law on foreigners, according to which a penitentiary judge will supervise the legitimacy and correctness of the stay of foreigners in guarded centres and arrests for the purpose of expulsion. He will have the right to enter guarded centres and arrests for the purpose of expulsion at all times and the right to move freely on their premises, review documentation and demand explanations from the administration of guarded centres or arrests for the purpose of expulsion.

When issuing a decision on the placement of a foreigner in a guarded centre or of his or her arrest for the purpose of deportation, the court defines the duration of stay in a guarded centre or detention centre for the purpose of deportation, which cannot exceed 90 days (Art. 106 section 1 of the law). The period may be extended for a definite period of time necessary for the enforcement of a decision on deportation, which has not been enforced for reasons resting with the foreigner. Such an extension of stay is possible solely under a relevant court decision, issued upon request by an authority obliged to transfer the foreigner to the Polish border or the border of a state to which he or she is deported, or to an airport or seaport of this state. The decision of the court can be appealed to a court of higher instance, who is obliged to examine the case promptly (Art. 106 section 4 of the law). All in all, a stay in a guarded centre and a period of arrest for the purpose of expulsion cannot exceed one year (Art. 106 section 2 of the law).

In the case of manifestly unjustifiable placement of a foreigner in a guarded centre or manifestly unjustifiable arrest for the purpose of expulsion, a foreigner can claim compensation from the State Treasury and retribution for the damage incurred. Compensation proceedings follow the provisions of the Code of Criminal Procedure concerning compensation for unjustifiable sentencing, temporary arrest or detention (Art. 108 of the law).

Long-term detention of foreigners in transit zones after the deadline of their deportation without a valid court decision.

The hypothesis put forward by the Committee concerning long-term detention of foreigners in transit zones after the deadline of their deportation without a valid court decision is groundless in light of the law in force in the Republic of Poland. As indicated above, detention of foreigners after the deadline of their deportation is possible upon a decision of a court, and detained foreigners are placed either in guarded centres or in arrests for the purpose of expulsion rather than in an airport transit zone. Deportation only applies to foreigners already staying in Polish territory.

Only another category of foreigners can be placed in a transit zone; these are foreigners who have been refused entry into Polish territory or who travel via Polish territory and who have been refused entry by the authorities of the state bordering on Polish territory, or whose operator, who was supposed to transfer them to that state, refused to do so (Art. 136 section 1 items 1 and 2 of the law).

This, then, relates to foreigners unauthorised to cross the Polish national border. Such foreigners wait in the transit zone to be returned to the country by the first possible
connection of the operator who brought them to the Polish border. Under the law, the operator who brought persons who belong to this category of foreigners to the Polish national border by air, sea or land, is obliged to return them to the country they were brought from promptly and, should this be impossible, to the country that issued their travel documents allowing them to travel or to any other country that has confirmed it would admit them (Art. 136 section 1, first sentence of the law). If, however, none of the above is feasible, the operator is obliged to assure foreigners under such circumstances other means of transport allowing their immediate departure from Polish territory (Art. 136 section 2 of the law). Importantly, pursuant to Art. 33 of the Convention Relating to the Status of Refugees, drawn up in Geneva on 28 July 1951, such people are not returned to the borders of territories where their life or liberty would be at risk on grounds of their race, religion, citizenship, membership in a particular social group or political beliefs.

Persons awaiting a return to the country they departed from to the Polish border, stay in the transit zone. In justified cases they may be obliged by an administrative decision to stay on premises dedicated to persons whose entry into Polish territory has not been refused and who are supervised by Border Guards (Art. 137 section 1 of the law). Such decisions are issued exclusively in the case of justified suspicions that a foreigner refused entry into Polish territory may attempt to cross the border in contravention of the law (from an airport transit zone). These decisions are issued by a competent commander of a Border Guards facility and is enforceable with immediate effect (Art. 139 section 1 of the law). These decisions can be appealed to the Commander in Chief of the Border Guards (Art. 139 section 2 of the law). The decision of the Commander in Chief of the Border Guards (administrative decision of 2nd instance) can be appealed to the voivodship administrative court under general provisions (Art. 50 § 1 in conjunction with Art. 3 § 2 item 1 of the law of August 30, 2002 on proceedings in administrative courts, Journal of Laws No. 153, item 1270 as amended).

The concerns of the Committee about the conditions in airport transit zones are groundless, too. In justified cases (e.g. aggressive behaviour or prevention of an illegal crossing of the border, which depending on the circumstances is a misdemeanour or an offence), separated premises of transit zones are used by persons unauthorised to enter the territory of the Republic of Poland. These premises are furnished for the purpose of short stays of such persons. They are fitted with single beds, tables, chairs, clean towels and bed sheets. Foreigners can also freely use sanitation facilities (washrooms and toilets). They can also freely dispose of their own means of communication, money (make purchases in an airport transit zone) and luggage. Medical care is guaranteed by the management of an airport and follows the general principles offered to all passengers.

To sum up: under Polish law, an airport transit zone can be used exclusively by foreigners who are not authorised to enter Polish territory. The duration of their stay in the zone does not exceed the time of waiting for the next possible return flight of the operator on whose board they arrived at a Polish airport. During their waiting in the transit zone, if there is a risk that they will attempt to cross the Polish border illegally, such persons may be issued an administrative injunction of stay in designated rooms. They can appeal this injunction to an administrative authority of higher instance, and ultimately the decision of the latter authority may be appealed to an administrative court.

Medicine care in centres for refugee status seekers.

Information in possession of the Committee of alleged improper care in some centres for persons seeking refugee status is groundless.

Under Polish law, centres for foreigners seeking refugee status are administered by the Head of the Office for Foreigners, who is obliged to provide medical care to foreigners entitled to social care. This care, pursuant to Art. 73 section 1 of the law of June 13, 2003 on providing
protection to foreigners in the territory of the Republic of Poland (Journal of Laws of 2009 No. 189, item 1472 as amended) includes medical services to the extent they are provided to persons under obligatory or voluntary medical insurance pursuant to the law of 27 August 2004 on health care services provided from public funds (Journal of Laws of 2008 No. 164, item 1027 as amended), with the exclusion of spa therapy or rehabilitation. This means that with the exclusion of spa therapy or rehabilitation, foreigners admitted to centres for foreigners seeking refugee status exercise the right to medical services identically to all those individuals in Poland who are entitled to public health insurance. These are health care services aimed at retaining one’s health status, prevention of diseases and traumas, early detection of diseases, treatment, care and prevention of disabilities and their limitation. Foreigners placed in centres for foreigners seeking refugee status are entitled to guaranteed services of basic medical care, outpatient specialist care, hospital treatment, psychiatric help and addiction therapy, medicinal rehabilitation, long-term care and assistance services, dental treatment, provision of orthopaedic medical equipment and supplementary materials, emergency medical care, palliative and hospice care, specialised services, health care programs and medications (Art. 15 of the law on health care services).

In principle, medical care for foreigners seeking refugee status (placed in centres or provided with an allowance to cover on their own the costs of stay in the territory of the Republic of Poland) is provided as follows:

1. Basic care of a physician (a GP and paediatrician) and of a nurse is carried out in outpatient wards of stay centres.

An exception to this principle: basic medical care is carried out in doctor’s studies in the case of the few foreigners not staying in centres and using social assistance in the form of an allowance to cover on their own the costs of stay in the territory of the Republic of Poland, in a situation when centres for foreigners are not available in a particular location.

2. Specialist care, diagnoses, inoculations and hospitalisation is possible in public and non-public health care facilities (including those set up by the Minister for the Interior), and should this prove impossible in doctor’s studies, individual specialist studies and group physicians’ studies.

Furthermore, all foreigners admitted to centres for foreigners seeking refugee status undergo basic medical examinations. These examinations are conducted in reception centres (in Biała Podlaska or Podkowa Leśna-Dębek), and if they have not been examined there, then these examinations are carried out in outpatient wards of stay centres (§ 3 section 1 of the Regulation of the Minister of Health of 1 March 2011 on medical examinations and sanitary measures related to the body and clothing of foreigners seeking refugee status (Journal of Laws No. 61, item 313).

In principle, medical care to the extent defined above is assured not only throughout the procedure of granting refugee status, but also for a period of 2 months of serving of the final decision in this case, and in the event of such proceedings being discontinued for an additional period of 14 days of delivery of the final decision of discontinuance. Furthermore, provisions of the law address special situations:

– in the case of a foreigner who intends to voluntarily leave Polish territory and who notifies the Head of the Office for Foreigners about this intention, the period of provision of medical care is extended until the day when the foreigner should leave Poland in a manner organised by the Head of the Office for Foreigners,

– when separate proceedings on refugee status are in progress with respect to spouses staying in the centre, periods of assistance provided to the spouses and their underage children are concluded at the same time, with the expiry of the longest period of care provision.
To sum up: foreigners seeking refugee status are entitled to medical care to the extent offered to Polish nationals, with the exclusion of sanatorium treatment and rehabilitation. The limitation of this right is, then, negligible and arises from the law and is justified by the status of this category of foreigners. When it comes to possible single cases of limited accessibility of medical services, they are exclusively due to the general organisation of the health care system and affect the general public rather than a particular group and are similar in the case of all insured individuals in Poland.

**Conformity of regime, services and material conditions in deportation centres with minimum international standards.**

Information about inadequate conditions in deportation centres is groundless, either. Living conditions in arrests for the purpose of expulsion and in guarded centres are strictly defined by law. The facilities themselves and the conditions in guarded centres and arrests for the purpose of expulsion meet international standards. Detailed relevant information was presented in the 5th and 6th Periodic Report of the Republic of Poland on the implementation of the provisions of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment covering the period 1 October 2004 until 15 October 2011 (with special consideration for the period from 1 May 2007 until 15 October 2011) in reply to Question 18.

Furthermore, it should be noted that the living conditions in deportation centres are monitored on a regular basis. The Board for Foreigners of the National Headquarters of the Border Guards monitors all guarded centres and arrests for the purpose of expulsion. The audits carried out led to conclusions that the standards in guarded centres and arrests for the purpose of expulsion as well as the level of medical care provided there meet the criteria set out in the Regulation of the Minister of the Interior and Administration of 26 August 2004 on standards in guarded centres and arrests for the purpose of expulsion on organisational and procedural rules of stay of foreigners in guarded centres and arrests for the purpose of expulsion (Journal of Laws No. 190, item 1953).

Furthermore, the standards in the centres and their living conditions are monitored also by other institutions of the state (e.g. the Ombudsman as part of his constitutional obligations and in his capacity as the National Preventive Mechanism) and independent institutions, including non-governmental organisations such as Association of Legal Intervention and the Helsinki Foundation of Human Rights.

**Access of detained foreigners to information on their rights in a language they can understand, even if it requires the provision of a qualified interpreter.**

Allegations about insufficient information provided to foreigners in deportation centres about their rights are groundless, either. Adequate information is provided to foreigners at individual stages of relevant procedures.

**Authorities conducting proceedings in cases concerning deportation notify a foreigner in a language he or she can understand about the principles and mode of proceedings and about their rights and obligations (Art. 10 of the law).**

Similarly, when issuing a decision on the placement of a foreigner in a guarded centre or his or her arrest for the purpose of expulsion, the court notifies the foreigner in a language he or she can understand about the rights in proceedings in a court of law and about the actions taken with respect to him or her and the orders issued (Art. 105 of the law).
Furthermore, during admission of a foreigner to a guarded centre or an arrest for the purpose of expulsion, a foreigner is notified in a language he or she can understand about the rights and obligations and familiarised with the rules of his or her stay in the centre or an arrest they have been placed in (Art. 112 of the law). Detailed principles of stay in a deportation centre are enumerated in the rules of the facility, which are part of the rules of organisation and operation of foreigners' stay in a guarded centre and an arrest for the purpose of expulsion. The text of the rules is placed in an accessible manner in each room and residential cell for the foreigner in Polish and, to the extent this is possible, in a language that the foreigners staying there can understand (§ 12 section 3 of the Rules of organisation and operation of foreigners' stay in a guarded centre and an arrest for the purpose of expulsion, constituting an appendix to the Regulation of the Minister of the Interior and Administration of 26 August 2004 on standards in guarded centres and arrests for the purpose of expulsion on organisational and procedural rules of foreigners' stay in guarded centres and arrests for the purpose of expulsion (Journal of Laws No. 190, item 1953).

In practice, each foreigner admitted to a guarded centre or an arrest for the purpose of expulsion is notified about his or her rights and obligations and about the principles of stay in a deportation centre. This information is translated into foreign languages, which allows the foreigner to get familiar with the document in a language he or she can understand.

Information is likewise posted in generally accessible places, most often on bulletin boards (e.g. on individual floors or at entrances). In addition, because of the right of a foreigner to contact non-governmental or international organisations active in the field of providing foreigners with legal aid, information about non-governmental organisations and their address details are available in all centres at entrances to residential quarters or on bulletin boards.

To sum up: the right of foreigners to get familiar with their rights is assured in all guarded centres and arrests for the purpose of expulsion. Possible difficulties may appear in isolated cases, when admitting a foreigner who comes from a country with which Poland has limited contacts and with whom communication is possible exclusively in his or her mother tongue. In such single cases, information is not provided at the moment of admission but only after an arrival of a qualified interpreter, which takes place at the earliest possible time.