

TREATY BODY MONITOR

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Information submitted to the Committee	2
The State report.....	2
The list of issues	2
NGO Parallel reports.....	2
Themes and Issues.....	2
Status of the Convention under domestic Law	3
Independence of judiciary	3
Prompt and impartial investigation	4
Pre-trial detention	4
Detention facilities for asylum-seekers	Error! Bookmark not defined.
Legal aid, defence council.....	4
Rights of detained aliens to legal aid.....	5
Overcrowding in prisons	5
Excessive use of force by police	5
Trainings for law-enforcement personnel	6
Racism and xenophobia	6
Tolerated stay for aliens.....	6
Expulsion, non-refoulement	7
Trafficking	7
Renditions and secret detentions	7
Gender-based breaches of the Convention.....	8
Mental and psychological torture.....	8
Juveniles.....	8
Abuse of junior soldiers.....	9

Other issues	9
Conclusions and next steps.....	9

Information submitted to the Committee

The State report

On 19 July 2005, Poland submitted its fourth periodic report¹ to the Committee against Torture (the Committee) on the implementation of the *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (the Convention).² The fourth periodic report provided detailed information about the implementation of the Convention from 1 August 1998 to 30 September 2004. The State party report, totalling some 120 pages, addressed a wide range of legislative, institutional and administrative measures against acts of torture.³ Significant emphasis was placed on the legal regulations for the penalization of acts of torture, execution of orders, excessive use of force and the use of direct coercion measures, extradition and the quality of prison services. There was no substantive information in the State report on Poland's alleged involvement in renditions and secret detention, a subject that was given considerable attention by the Committee. Likewise, statistical data provided in the report was not disaggregated and the Committee took note of this during the dialogue with the State party.

The list of issues

The main area of concern in the list of issues⁴ was the failure to adopt a definition of torture into the Polish Penal Code.⁵ The Committee also remained concerned about the rights of persons in police custody; juveniles; rights of non-citizens and persons seeking refugee status; and specific safeguards against *non-refoulement*. The State's replies comprehensively addressed most of the issues raised in the list of issues.⁶

NGO Parallel reports

Two NGO parallel reports were submitted to the Committee by the Helsinki Foundation for Human Rights and the International Commission of Jurists (ICJ). The Helsinki Federation⁷ suggested a list of additional questions that the Committee may have wished to address to the delegation. These included the regulations guaranteeing control of the use of arms; effective protection of children against corporal punishment; protective measures against expulsion; criteria for the application of preliminary detention. The ICJ raised concern about Poland's involvement in renditions and secret detentions,⁸ stating that the issue was not satisfactorily addressed in the list of issues. The ICJ welcomed the Committee's timely consideration of this matter.

Themes and Issues

¹ CAT/C/67/Add.5, 19 July 2005, available at <http://www.ohchr.org/english/bodies/cat/cats38.htm>.

² Entered into force on 26 June 1987, available at <http://www.ohchr.org/english/law/cat.htm>.

³ Article 40 of Polish Constitution provides that no one may be subjected to torture or cruel, inhuman, or degrading treatment or punishment. See CAT/C/67/Add.5, para. 9, 19 July 2005, available at <http://www.ohchr.org/english/bodies/cat/cats38.htm>.

⁴ CAT/C/POL/Q/4/Rev.1/Add.1, 30 March 2007, available at <http://www.ohchr.org/english/bodies/cat/cats38.htm>.

⁵ In this respect the Committee wondered what prevent Poland to stipulate Article 1 into the Polish Penal Code as they did it for the Rome Statute of the International Criminal Court through substantive criminal law and procedural criminal law.

CAT/C/POL/Q/4/Rev.1/Add.1, para.12, 30 March 2007, available at <http://www.ohchr.org/english/bodies/cat/cats38.htm>.

⁶ CAT/C/POL/Q/4/Rev.1/Add.1, 30 March 2007, available at <http://www.ohchr.org/english/bodies/cat/cats38.htm>.

⁷ Helsinki Federation for Human Rights, "List of additional questions that the CAT may ask the Polish delegation during the review of Poland's fourth report (CAT/C/67/ADD.5)". 8 May 2007, available at <http://www.ohchr.org/english/bodies/cat/cats38.htm>.

⁸ International Commission of Jurists. Document dated on 7 May 2007, available at <http://www.ohchr.org/english/bodies/cat/cats38.htm>.

The Polish delegation was represented by Mr. Zdzisaw Rapacki, Permanent Representative of Poland to the UN. He was accompanied by high-ranking officials from the Ministry of Justice, the Prison Service, the National Police, Police Headquarters, the Office of Repatriation and Aliens, and the Ministry of Foreign Affairs.

Delegation member Mr. Duda talked about intensive legal, social and economic developments and transformation processes that have taken place in Poland since its membership in the European Union (EU). One of the major changes in the Polish legislation with respect to the Convention was the constitutional amendment to prohibit extradition where there was a threat of subjection to torture. Another important development was the introduction of the institution of State permits on 1 September 2003 for the protection of aliens from expulsion.⁹ Other ongoing amendments included the implementation of the Rome Statute of the International Criminal Court into the Polish Penal Code and the creation of a draft law on free legal access.

Mr. Duda, also informed the Committee that Poland was one of the first States to ratify the Optional Protocol to the Convention¹⁰ on 14 September 2005. Poland has also made regular contributions to the UN Voluntary Fund for Victims of Torture.

Status of the Convention under domestic Law

The Country Rapporteur Mr. Claudio Grossman opened by warmly welcoming the high-level delegation. He then reminded the delegation that the Committee's philosophy is to have one definition of torture under Article 1. Committee member Mr. Alexander Kovalov also emphasised the importance and continuous concern of the Committee over the definition of torture. He referred to the information submitted by the State, according to which it is not necessary to implement the stipulation of the Convention in the criminal law since the Convention is the part of the legal system and it has priority in the national criminal law.

The representative of the Ministry of Justice responded that the lack of definition of torture in the Polish Penal Code is due to the fact that all ratified international agreements are part of the domestic law, and they are prevailing if there is incompatibility with domestic laws. The delegation maintained their intention not to amend the Penal Code, arguing that it would have been repetition in already existing legislation. The Committee reiterated in its concluding observations¹¹ that the State party should enact a specific offence of torture in the Criminal Code.¹²

Independence of judiciary

The Committee was concerned about the independence of the judiciary and justice system and asked the delegation to comment about the nomination of judges, their salary and the means of promotion. Regarding immunity, Mr. Grossman asked about the availability of mechanisms for an independent assessment and corrective measures.

The representative of the Central Board of the Prison Service answered that according to the Article 188 of the Polish Constitution, judges are impartial. There is a specific system of judicial appointment, which includes judicial promotion, the introduction of the principle of non-transferability of judges, the supervision and liability of judges, and judicial immunity. The delegation also stated that the level of remuneration of

⁹ 4,400 aliens have since been granted stay permits on this basis, which Mr. Duda underlined as a core example of Poland's compliance to the principle of *non-refoulement*.

¹⁰ Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Adopted on 18 December 2002 at the 57th session of the General Assembly of the United Nations by resolution A/RES/57/199, available at <http://www.ohchr.org/english/law/cat-one.htm>.

¹¹ CAT/C/POL/CO/4, *Fundamental safeguards*, 16 May 2007, available at <http://www.ohchr.org/english/bodies/cat/cats38.htm>.

¹² The Committee recalled its previous recommendations with regard to the absence of a specific offence of torture. (A/55/44, paras. 85-95). Ibid, para.5, available at <http://www.ohchr.org/english/bodies/cat/cats38.htm>.

judges in Poland is still lower than that in wealthy western European countries. The delegation talked about two groups of immunity in Poland, namely the immunity to judges and Prosecutors and that of Parliamentarians. There was no binding criminal procedure regarding the execution of penalties for public officials, and the decision of the court was the only directory. However, there were more suspended sentences than decisions for the deprivation of liberty for public officials who were in breach of their duties in Poland.

Prompt and impartial investigation

Regarding the prompt and impartial examination of cases, Committee member Ms. Belmir asked for more clarification on the 'fast track'¹³ process and how the State ensures that the presumption of innocence is maintained in the extradited trial procedures. The representative from the Ministry of Justice informed that there is no clash between voluntary submission and the principle of the presumption of innocence. The testimony and other evidences are used by the Court to file indictment.

Pre-trial detention

The Committee's Country Co-Rapporteur on Poland, Mr. Chiriboga, noted that there was contradictory information about the time limits for pre-trial detention.¹⁴ The delegation informed that in Poland the first instance court uses preliminary detention not exceeding three a period of months, which could also be extended up to twelve months. The maximum duration for preliminary detention is two years, excluding exceptions provided by the law.¹⁵ In its concluding observations, the Committee urged the State party to adopt appropriate measures to ensure that the extension is only used as an exceptional measure for a limited period of time.¹⁶

Legal aid, defence council

Mr Grossmann asked for more clarification about the right of detainees to speak to a lawyer in private, about the status of cost-free legal assistance and statistics on legal aid. He also asked whether there was mandatory legal assistance for indigent defendants for a crime with a lower sentence. Mr. Grossman also said that the Committee had been informed about non-professional conduct of *ex-officio* counsel.

The delegation distinguished between two notions: obligatory defence and *ex officio* legal aid. Regarding the defence counsel, the delegation said that the provisions of the Police Headquarter Law are very precise. The Criminal Code also has provisions about the rights of a suspect to contact a lawyer.¹⁷ Regarding cost free legal aid, the delegation informed that a draft law was submitted to the Parliament in October 2005. The representative from the National Prosecutors office informed that in criminal proceedings the idea of compulsory defence is envisaged under specific circumstances, and this applies to minors, juveniles, disabled persons and defendants with mental health problems. Regarding the access to counsel in preliminary detention, the Polish delegation confirmed that there is full freedom of conduct at all stages of proceedings. Limitation can be applied only in justifiable cases.

The Committee recommended in its concluding observations that the State party should take effective measures to ensure that all fundamental safeguards for persons detained by the police are respected.¹⁸

¹³ CAT/C/67/Add.5, para 313, 19 July 2005, available at <http://www.ohchr.org/english/bodies/cat/cats38.htm>.

¹⁴ The Polish law stated that it can be 12 months, but also that Polish law does not have provision for the upper time limit on pre-trial detention. CAT/C/POL/Q/4/Rev.1/Add.1, para.122, 30 March 2007, available at <http://www.ohchr.org/english/bodies/cat/cats38.htm>.

¹⁵ There should be exceptional circumstances making the conclusion of proceedings impossible within a short period of time. The extension could be appealed. (*Delegation*).

¹⁶ CAT/C/POL/CO/4, *Pre-trial detention*, 16 May 2007, available at <http://www.ohchr.org/english/bodies/cat/cats38.htm>.

¹⁷ Usually it takes place without the police officer. Exceptions are only when the conversation might lead to making proceedings more difficult, or transferring some information to relatives, or making the defence counsel insecure. (*Delegation*).

¹⁸ CAT/C/POL/CO/4, *Fundamental Safeguards*, 16 May 2007, available at <http://www.ohchr.org/english/bodies/cat/cats38.htm>.

Rights of detained aliens to legal aid

Committee member Mr. Marino, asked for more clarification regarding the practice of informing detained aliens of their right to contact their consulates in foreign countries. The Procurator from the Ministry of Justice informed that the Polish Criminal Code obliges courts and prosecution authorities to inform foreign representative about the temporary detention of the person within maximum of 3 days. The Committee recommended the State party to take effective steps to expedite the adoption of the Law on access to free legal aid.¹⁹

Overcrowding in prisons

The Committee requested more information about the measures taken to address overcrowding and deteriorating conditions in prisons²⁰ And referred to the report of the Council of Europe Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT, 2006) concerning the small size of prison cells.²¹

The representative from the Central Board of Prison Services informed the Committee that Poland compiled a number of measures to eliminate overcrowding in prisons. In February 2006 an important measure was adopted to construct new facilities within already existing buildings, to open new correctional and penitentiary facilities, and to repair and adapt selected cells.²² It was explained that because of the dynamic increase of detainees since 1999, Poland began an immediate extension and remodelling of detention facilities.²³

Acknowledging the efforts made by the State to deal with the problem of overcrowding, in its concluding observations the Committee asked the State to ensure that the conditions of detention meet international standards.²⁴ The Committee also called upon the State party to bring the regime and material conditions of deportation jails in conformity with minimum international standards.²⁵

Excessive use of force by police

The Committee was concerned about the legal framework for the excessive use of force by police. Mr. Grossman noticed that the State's reply to the list of issues did not provide appropriate analyses regarding the 'results and risk of using non-penetrating ammunition or its introduction into Police armament'.²⁶ He asked for further comment on the progress of investigations into incidents that took place in 2004 during a students' holiday, where penetrating ammunition by the police forces was used, and whether the State had put enough efforts into preventing the reoccurrence of such events in the future. Mr. Grossman also asked about the possibility for prison officers to use 'shackles' and the rationale behind this method of restraining detainees.

The delegation responded that there was misinterpretation of the issue of 'shackles' and that only hand and leg cuffs, which allow the person to walk but not to run, are used for direct coercion. In addition, the chief of

¹⁹ CAT/C/POL/CO/4, *Fundamental safeguards*, 16 May 2007, available at <http://www.ohchr.org/english/bodies/cat/cats38.htm>.

²⁰ CAT/C/POL/Q/4/Rev.1/Add.1, 30 March 2007, para 126-130, available at <http://www.ohchr.org/english/bodies/cat/cats38.htm>.

²¹ CPT/Inf (2006) 1, Conditions of detention, para. 32. "Report to the Polish Government on the visit to Poland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 4 to 15". October 2004. 2 March 2006, Strasbourg, available at <http://www.cpt.coe.int/documents/pol/2006-11-inf-eng.htm>.

²² Regarding the reparation of facilities the delegation informed that facilities used to be under the disposal of military army.

²³ From 1999 to 2005, correctional facilities and detention centres had increased their capacity by 5,591 places. Between 2006 and 2009, further actions would extend the accommodation base for detainees by another 26,000 places.

²⁴ CAT/C/POL/CO/4, *Prison conditions*, 16 May 2007, available at <http://www.ohchr.org/english/bodies/cat/cats38.htm>.

²⁵ CAT/C/POL/CO/4, *Detention of Asylum-seekers and other non-citizens*, 16 May 2007, available at <http://www.ohchr.org/english/bodies/cat/cats38.htm>.

²⁶ CAT/C/POL/Q/4/Rev.1/Add.1, 30 March 2007, para 83, available at <http://www.ohchr.org/english/bodies/cat/cats38.htm>.

the Police said that the Police launched a very comprehensive preventive program for the executive officers and following the evaluation of the pilot program it has been decided that it will be used throughout the country. The delegation informed that proceedings on the incidents have not been concluded yet, and much expert evidence and witnesses are needed. In its concluding observations the Committee asked the State to ensure effective investigation into complaints of misconduct in cases where law-enforcement officials are involved and to strengthen its education and training programmes relating to the use of force by law enforcement officials.²⁷

Trainings for law-enforcement personnel

Mr. Chiriboga requested more information about existing evaluation mechanisms and training programs for law enforcement personnel. The Commander-in-Chief of Police answered that the Police Coordinator for human rights was appointed to monitor police activities, identify training needs, initiate training programmes, and collect and disseminate good practices on human rights issues. In 2004 the Polish police also established the Commanders' Plenipotentiary Network for the observance of human rights.²⁸ Particular activities include holding meetings with superior police officers to familiarize them with the Convention and with the periodic report. The dissemination of human rights information will be conducted through the websites of various ministries and through publishing books on treaty bodies' complaint mechanisms. In its concluding observations, the Committee asked the State to develop and implement a methodology to assess the effectiveness and impact of such training programmes.²⁹

Racism and xenophobia

The Committee was interested in the incidences of racially motivated violence, and statistics on violence against homosexuals and lesbians given the low number of investigations into such complaints.³⁰ The awareness-raising procedure, according to the delegation, was one of the main measures applied. In 2005 a new programme on international law was introduced at all levels of the prison services. The Prosecutor's office is monitoring cases every 3 months to see whether they are racially motivated. The delegation explained also that neither sexual orientation nor hate crime is covered by the Polish law and that the violation is prosecuted irrespective of characteristics of such crimes. The Committee's concluding observation recommended that "the State should incorporate in its Penal Code an offence to punish hate crimes as acts of intolerance based on sexual orientation."³¹ The State party was also asked to provide detailed information and statistics on the number and type of hate crimes.³²

Tolerated stay for aliens

Mr. Grossman asked about the reasons behind the decrease in the number of applications lodged by aliens requiring refugee status.³³ Mr. Grossman also asked for clarification about existing differences in access to social services for aliens and that for other asylum seekers.

²⁷ CAT/C/POL/CO/4, *Ill-treatment and excessive use of force, including killings, by law-enforcement officials, paras. a, c*, 16 May 2007, available at <http://www.ohchr.org/english/bodies/cat/cats38.htm>.

²⁸ The Plenipotentiaries were appointed at the central and regional levels to facilitate awareness raising activities, training and education among officers with a focus on professional ethics and human rights issues. The later was included in the curricula with special focus on the prevention of torture and degrading treatment of detainee. (*Delegation*).

²⁹ CAT/C/POL/CO/4, *Training*, 16 May 2007, available at <http://www.ohchr.org/english/bodies/cat/cats38.htm>.

³⁰ It further referred to the State's reply declaring that offences committed on grounds of racism or xenophobia constitute a very small fraction of all crimes. See CAT/C/POL/Q/4/Rev.1/Add.1, para.188, 30 March 2007, available at <http://www.ohchr.org/english/bodies/cat/cats38.htm>.

³¹ CAT/C/POL/CO/4, *Minorities and other vulnerable groups*, 16 May 2007, available at <http://www.ohchr.org/english/bodies/cat/cats38.htm>.

³² *ibid*

³³ In 2007 only 220 application was submitted compared to 2,654 in 2004. CAT/C/POL/Q/4/Rev.1/Add.1, para.60, 30 March 2007, available at <http://www.ohchr.org/english/bodies/cat/cats38.htm>.

The representative of the Office of Repatriation and Aliens agreed with the Committee concerning the decline in the number of applications.³⁴ He explained that Poland does not have any obligations for aliens who are allowed to stay in the territory of Poland, and that there are different rights applicable to different categories of aliens. The right to social welfare and health insurance are automatically granted if the person has lived in the territory of Poland. The common health insurance principle is also enforced here: either there is access to obligatory health insurance as a part of employment or jobless benefits, or the person may take voluntary health insurance and has to pay health premium minimums. Free health care is provided from the State budget for persons under 18 and for women giving birth.³⁵

Expulsion, *non-refoulement*

Regarding the cases of expulsion or extradition filed before the European Court of Human Rights (ECtHR) including the question of the time period between decision of expulsion and implementation,³⁶ Mr. Grossman asked whether any action has been taken to remedy the vacuum in the Polish legislation identified by the ECtHR.³⁷ The delegation explained that according to prison regulations when there is no time limit for the implementation of expulsion, the maximum time to stay in a detention centre was one year. Regarding the issue on diplomatic assurance, the delegation explained that Polish law applies the principle of *non-refoulement*. In this respect, NGOs assist the Courts in obtaining information about the practice in other countries.³⁸

In its concluding observations the Committee asked the State party to apply the guarantee of *non-refoulement* to all detainees and prevent the rendition of suspects to States where there is a real threat of torture.³⁹

Trafficking

The Committee was interested in legislative aspects of trafficking, and whether Poland has had any perpetrators brought to trial and punished. Committee member Mr. Gallegos also reminded the delegation that the definition of trafficking should be incorporated into the Penal Code in accordance with the Optional Protocol to the *Convention on the Elimination of Discrimination Against Women*.⁴⁰ The delegation informed the Committee that there is no definition on trafficking in persons in the Polish legislation. In its concluding observations the Committee urged the State party to include in its Penal Code a definition of human trafficking⁴¹ and provide statistics on the number of cases brought to court and penalties imposed.⁴²

Renditions and secret detentions

The country co-Rapporteur Mr. Gallegos asked about the secret transfer of prisoners and the existence of secret detention centres. Mr. Duda from the Polish delegation stressed that there had never been secret prisons in Poland for the detention of terrorist suspects. Nor did Poland participate in extraordinary renditions in the

³⁴ He mentioned two main reasons for that first, there had been a global decline in such applications in 2005 in Europe, and second, with regard to Poland's admission to the EU, such mechanisms are undergoing double procedure, such as Dublin procedure. It was mentioned also that Poland is not a destination country-other countries have been far more attractive.

³⁵ The delegation assured that the institution of tolerance is by no means ideal and Poland is taking action to implement subsidiary protection in line with EU regulations.

³⁶ *Shamsa v. Poland*, ECtHR, Judgement of 27 November 2003, Appl. No. 45355/99 & 45357/99. The ECtHR pointed out in its decision that there are no specific laws concerning detention of aliens after the expiry of the deadline for their expulsion

³⁷ *ibid*

³⁸ Recently, Poland refused the extradition of two Turkish nationals and in this particular case they used information from the Amnesty International (AI). The delegation also said that Poland did not return Turkish citizens to Turkey based on the information given by the AI. They did not seek for diplomatic assurance either since they normally ask for it if there is a threat of death penalty.

³⁹ CAT/C/POL/CO/4, *Fundamental safeguards* 16 May 2007, available at <http://www.ohchr.org/english/bodies/cat/cats38.htm>.

⁴⁰ CEDAW/C/POL/CO/6, para. 21, 15 January-2 February 2007.

⁴¹ In accordance with the CEDAW Protocol, *ibid*.

⁴² CAT/C/POL/CO/4, *Trafficking*, 16 May 2007, available at <http://www.ohchr.org/english/bodies/cat/cats38.htm>.

context of the fight against terrorism. The representative of the Central Board of Prison Services added that a special secret task team was established to investigate alleged detention centres in Poland and the result was forwarded to the Parliament in 2005. Committee member Mr. Marino asked whether this report to Parliament, which established that no such prisons exist, would be published. The delegation responded that 'the findings were unambiguous and the report did not find anything that would substantially confirm the existence of such centres'. The delegation added that Poland issued an invitation to the Chairperson of the Committee on Legal Affairs and Human Rights at the Council of Europe to visit Poland for investigative purposes.⁴³ The invitation, however, has not been taken up.

The Committee was also interested in the differences between domestic and international terrorism, and the sanctions in place for the offence for international terrorism. The representative of the Ministry of Justice informed that there are legal acts dealing with the issue of active terrorism and that they are introduced in the Penal Code. In its concluding observations, the Committee urged the State party to share information on the methodology and conclusions of the enquiry into these allegations conducted by the Polish Parliament.⁴⁴

Gender-based breaches of the Convention

Mr. Grossman asked about the regulation on the conduct of police officers in relation to the victims as well as to suspects.⁴⁵ He requested more statistics on crime and data on victims disaggregated by sex and age.⁴⁶

The delegation responded that a national program and task force was established to prepare the code of conduct and establish the network for aid for victims of sexual crime. There were only four cases about alleged sexual abuses lodged by patients in mental hospitals but none of the complaints were substantially argued. According to the delegation, the psychologist had not been notified of any case of sexual abuse against mental patients.

Regarding the principles of the search of women suspects, the delegation informed that when possible the search should be carried out by the representative of similar sex. The search could be made by police officer of the opposite sex if actions take place on the spot.

Mental and psychological torture

Committee member Ms. Gaer asked about periodic audits and protection measures in mental hospitals. The delegation informed the Committee that there was some case law on mental torment and that the use of direct coercion is regulated by the law. Measures can be applied when it is necessary for the prevention of an assault. The use of direct coercion measures was decreased by more than 15%. The Committee also requested information about the protection measures against domestic violence. The delegation responded that the law protects the victims and there is a decline in the number of judgements on domestic violence.⁴⁷

Juveniles

Mr. Grossman asked about the status of new Juveniles Code, the access of juveniles to medical services and to legal representation. Committee member Ms. Belmir asked for more clarification about the age of juvenile delinquency and protection measures against abuse and ill-treatment in closed premises.

⁴³ Can be reached at <http://assembly.coe.int/default.asp>.

⁴⁴ CAT/C/POL/CO/4, *Prompt and impartial investigation*, 16 May 2007, available at <http://www.ohchr.org/english/bodies/cat/cats38.htm>.

⁴⁵ CAT/C/POL/Q/4/Rev.1, para 43.e, 30 March 2007. Available at <http://www.ohchr.org/english/bodies/cat/cats38.htm>.

⁴⁶ CAT/C/POL/Q/4/Rev.1, para 44, 30 March 2007. Available at <http://www.ohchr.org/english/bodies/cat/cats38.htm>.

⁴⁷ In 2005 there were final judgments in over 17.000 cases compared to 16.000 cases in 2006.

The delegation informed that the Polish Criminal Code differentiates between criminal and non-criminal liability. In Article 10 of the Polish Criminal Code, a juvenile is criminally liable when he turns 17.⁴⁸ Those minors are placed in special educational facilities and not in isolated correctional facilities. When there is a need for medical intervention, a juvenile is referred to a specialist for the duration of treatment, and defence counsel can also be appointed to the juvenile. The police are bound to notify the parents of the juvenile detainee and release him no later than 24 hours after detention. Upon a detainee's will, the decision should be taken by the Family Court. Explanation from is taken the juvenile only in the presence of a psychologist or his/her parents.

Abuse of junior soldiers

Committee member Ms. Gaer asked about the abuse of junior soldiers in the military units. The representative from the Ministry of Justice informed the Committee about the operating of unanimous telephone helplines and annual monitoring in the military units. Regarding the statistics on the prosecution of military officers, the delegation informed that there were 219 such cases in 2003 and 221 in 2006. There are no statistics on actual sentences. In its concluding observations the Committee asked the State party to further prevent hazing in the armed forces as well as to ensure prompt and effective investigation and prosecution of such abuses.⁴⁹

Other issues

The Committee asked for information about the measures to protect unaccompanied minors coming to Poland. The delegation informed that all unaccompanied minors in Poland were placed in educational institutions or in foster families. A special representative was appointed to represent their interests in all proceedings and provide them with psychological protection. The delegation also informed the Committee that an accompanying minor may be refused entry to the territory of Poland but it should be in accordance with the guidelines of the *Convention on the Rights of the Child* and such a situation has in any case never occurred.

Mr. Marino, Committee member, asked whether the Polish forces serving in armed conflicts abroad were prosecuted for crimes of torture. The delegation did not follow-up on this question. He also asked about the law on disclosing information on collaboration with the secret police of the former communist Regime. The delegation informed the Committee that until 1999 the Polish law did not envisage sanctions⁵⁰ for collaborating with the secret police.

Conclusions and next steps

The Committee expressed its appreciation for the efforts the Polish delegation in answering the questions put to them. Country co-Rapporteur Mr. Grossman noted that continuing areas of concern for Poland remain the issues of immigrants and aliens; the treatment of vulnerable groups, and 'politically unpopular clients'.⁵¹ Mr. Chiriboga, the second co-rapporteur, expressed his surprise that although a meeting was scheduled with Polish NGOs, no NGOs had shown up. Mr. Chiriboga valued positive measures in terms of ratification of the Optional Protocol⁵² by Poland in 2005 and the availability of a normative framework.

⁴⁸ Only in such cases as homicide, gang rape, assault, terrorist activities, the age was lowered to 15 but additional requirements such as, mental State of the person should be met. (*Delegation*).

⁴⁹ CAT/C/POL/CO/4, *Hazing in the military*, 16 May 2007, available at <http://www.ohchr.org/english/bodies/cat/cats38.htm>.

⁵⁰ But there are sanctions in case of filing false declaration. (*Delegation*).

⁵¹ Human rights regime, he noticed, could not be ensured by isolating them. Security should be compatible with human rights as the condition of the rule of law, he added. Mr. Grossman appreciated the communication on the cases before the ECtHR.

⁵² Available at <http://www.ohchr.org/english/law/cat-one.htm>.

Other Committees also raised similar areas of concern in relation to Poland. The issues of discrimination against Roma and the necessity of police and judicial training was raised by the Human Rights Committee⁵³, including about the rights of sexual minorities. It also called for a prohibition of discrimination on the grounds of sexual orientation.⁵⁴ The Committee on the Rights of the Child (CRC) asked the State party to ensure full implementation of juvenile justice standards.⁵⁵ The Committee on the Elimination of Discrimination Against Women noted insufficient services for victims, including free legal aid, and remaining gaps in data collection on all forms of violence.⁵⁶ It also called upon the State party to include in its Penal Code a definition of trafficking and to strengthen data collection on trafficking.⁵⁷ The Committee on Economic, Social and Cultural Rights urged the State party to take effective measures to combat trafficking in women⁵⁸ and to intensify efforts to combat and punish xenophobic manifestations and acts of violence against certain minorities.⁵⁹ The Committee on the Elimination of Racial Discrimination recommended that law enforcement bodies be given adequate training and instructions about racially motivated crimes.⁶⁰ The Human Rights Committee asked the State party to address overcrowding in prisons and pre-trial detention⁶¹ and to ensure the access to legal aid.⁶² The CRC urged the State party to ensure the appointment of a legal guardian for unaccompanied minors; to ensure that asylum-seeking children temporarily placed in emergency blocks are not held together with juvenile offenders and only remain there for shortest possible time; and that all children awaiting processing of their refugee claims have full access to education.⁶³

The Chairman thanked the delegation and expressed his satisfaction regarding the progress made by Poland. The State party is invited to submit its sixth periodic report by 30 June 2011.

⁵³ CCPR/CO/82/POL, (CCPR 2004); para.17.

⁵⁴ CCPR/CO/82/POL, (HRC, 2004); para.18.

⁵⁵ CRC/C/15/ADD.194 ,(CRC, 2002); para. 51. The Beijing Rules and Riyadh Guidelines were mentioned among other standards.

⁵⁶ CEDAW/C/POL/CO/6, (CEDAW, 2007); para. 18.

⁵⁷ In accordance with Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. See at CEDAW/C/POL/CO/6, (CEDAW, 2007); para. 21.

⁵⁸ E/C.12/1/ADD.82, (CESCR, 2002); para. 46.

⁵⁹ E/C.12/1/ADD.82, (CESCR, 2002) ; para. 13.

⁶⁰ CERD/C/62/CO/6, (CERD, 2003); para. 10.

⁶¹ CCPR/CO/82/POL (HRC, 2004); paras 12, 13.

⁶² Ibid; para. 14.

⁶³ CRC/C/15/ADD.194 (CRC, 2002); para.47.

⁶³ CRC/C/15/ADD.194 (CRC, 2002); para.47.

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