

HR HELSINKI FOUNDATION for HUMAN RIGHTS

June, 2019

Submission to the review of Poland during the 67th session of the Committee Against Torture, 22 July 2019 – 9 August 2019

The Helsinki Foundation for Human Rights (HFHR) is a non-governmental organisation established in 1989, based in Warsaw (Poland). HFHR is one of the largest and most experienced non-governmental organisations operating in the field of human rights in Eastern and Central Europe. Since 2007, HFHR has a consultative status with the United Nations Economic and Social Council (ECOSOC).

HFHR's objective is the promotion and protection of human rights. Its main activity areas include:

- domestic education in the field of human rights;
- international activities: programs promoting democracy, constitutionalism, the rule of law and human rights in the countries of the Commonwealth of Independent States;
- public interest activities aimed at increasing the standards of human rights protection in Poland, implemented through monitoring, intervention and strategic litigation before domestic and regional courts. The HFHR is also a member the National Focal Point within the European Union Fundamental Rights Agency's research network FRANET.

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DEFINITION OF TORTURE

The Polish Criminal Code does not provide any specific provisions concerning the use of torture. A demand to introduce such provision has been regularly and consistently made by the Commissioner for Human Rights¹. In his opinion, Polish regulations do not criminalise all elements of the definition of torture referred to in article 1 of the Convention against Torture. According to the Ombudsman, “(...) *the provisions of the Criminal Code do not take into account situations of the application of torture for the purpose of punishing individuals for acts committed by them or by a third party, or which they are suspected of committing, or for the purpose of intimidation or exerting pressure on them or on a third party, or for any other purpose arising from any form of discrimination*”².

NATIONAL PREVENTIVE MECHANISM

The National Preventive Mechanism (hereinafter: NPM) plays an important role in the system for preventing improper treatment in places of detention. In Poland, for over a decade, the NPM has operated through the office of the Commissioner for Human Rights.

Since its establishing, the National Preventive Mechanism has been struggling with underfunding³. Moreover, the Commissioner for Human Rights on numerous occasions emphasised that deficiencies in the number of staff in his Bureau prohibit the full and complete execution of obligations arising under the protocol of the UN Convention on the Prevention of Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment⁴.

Over the last decade, because of the gradual increase of the Ombudsman Bureau's funding, the NPM was able to increase its operational capacity. The situation has changed in 2016 when the Parliament decided to cut the funding of the Ombudsman Bureau.

¹ Commissioner for Human Rights' letter to the Ministry of Justice dated 24 October 2018, Ref. No. KMP.570.3.2018.JJ,

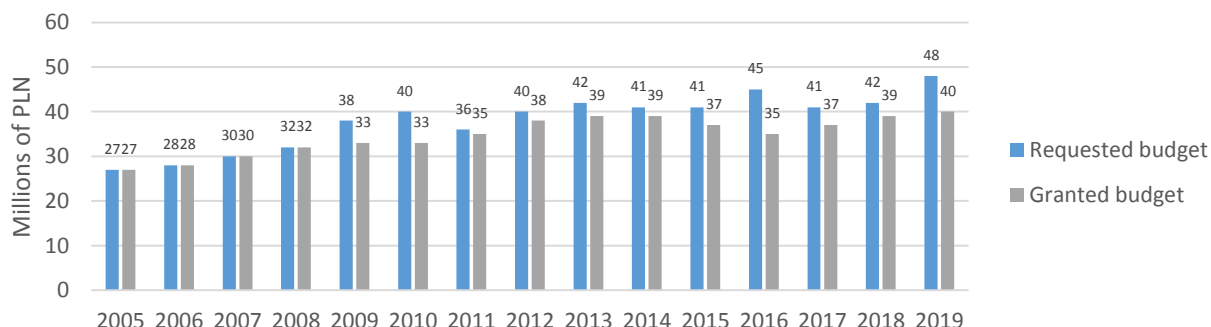
<https://www.rpo.gov.pl/sites/default/files/Wyst%C4%85pienie%20Generalne%20z%2024.10.2018%20r.%20do%20Ministra%20Sprawiedliwo%C5%9Bci%20w%20sprawie%20penalizacji%20tortur.pdf> (accessed: 11-06-2019).

² Ibid, p. 4.

³ Commissioner for Human Rights statement regarding the financial situation of Ombudsman Bureau in 2009: <https://www.rpo.gov.pl/pl/content/wyst%C4%85pienie-rpo-podczas-sejmowej-debaty-nad-projektem-ustawy-bud%C5%BCetowej-na-2009-r> (accessed: 11-06-2019).

⁴ Commissioner for Human Rights report on National Preventive Mechanism activity in 2016, <https://www.rpo.gov.pl/sites/default/files/Raport%20Krajowego%20Mechanizmu%20Prewencji%20Tortur%20RPO%20za%202016.pdf>, p. 12 (accessed: 11-06-2019).

Ombudsman's Bureau budget in years 2005 - 2019



Not only it has threatened the operation of the Commissioner for Human Rights' Bureau but also hampered NPM's ability to visit all types of detention places. It had also a significant impact on the numbers of the NPM's visits to detention facilities. While in 2015 the NPM visited 121 places of detention, in 2016 and in 2017 it was not able to visit more than 85 places of detention⁵. Moreover, limited financial resources resulted in a lack of possibility to employ new members of staff or improve the wage conditions of current employees. The budget of the Commissioner for Human Rights' Bureau was slightly increased in 2017, 2018 and 2019. However, in all of the cases, the Parliament denied the Ombudsman Bureau request to increase its budget to the expected degree⁶.

Moreover, the issue of proper NPM activity is becoming especially important due to the growing limitations of non-governmental organisations' access to detention centres. For example, in 2016 the HFHR submitted a request to the Head of the Police for the consent for conducting observations at 2-4 police stations accompanied by interviews with lawyers, the detained and the police officers. In January 2017, the Head of the Police refused to allow the monitoring, with a justification that the monitoring would result in „*too many threats of breaching legal norms*”⁷.

THE POLICE VIOLENCE

Since its inception, the Helsinki Foundation for Human Rights has been monitoring the work of the police. Despite nearly 30 years from the beginning of the democratic transition in Poland the misconduct of Police officers, especially an excessive use of violence, remains one of the key problems in the area of torture prevention.

⁵ Report on the NPM activity in 2017, available at: <https://www.rpo.gov.pl/sites/default/files/Raport%20RPO%20z%20dzia%C5%82alno%C5%9Bci%20Krajowego%20Mechanizmu%20Prewencji%20Tortur%20w%202017.pdf>.

p. 10. The Report on NPM activity in 2016, available at: <https://www.rpo.gov.pl/sites/default/files/Raport%20Krajowego%20Mechanizmu%20Prewencji%20Tortur%20w%202016%20r..pdf>, p. 6 (accessed: 11-06-2019).

⁶ Commissioner for Human Rights press release on Sejm's decision regarding Commissioner for Human Rights Bureau budget in 2018: <https://www.rpo.gov.pl/pl/content/poslowie-komisji-za-obnizeniem-budzetu-rpo> (accessed: 11-06-2019).

⁷ B. Grabowska – Moroz, Inside Police Custody – Procedural Rights at Police Stations, State report, http://www.hfhr.pl/wp-content/uploads/2019/01/Inside-Police-Custody-Poland_en.pdf, p. 5 (accessed: 11-06-2019).

In recent years, the HFHR monitored and litigated a serious number of cases involving the abuse of power by the Police. In many of such cases, abusive officers were charged but not sentenced.

The case of Kanciał v. Poland

On May 23, 2019, the ECtHR delivered a judgement in the case *Kanciał v. Poland*⁸ concerning a mistreatment of an individual during an arrest by an anti-terrorist squad and a detention in a police unit. According to Mr Kanciał's allegations, he had been hit on his head, back and neck and given shocks from an electrical discharge weapon on his back, buttocks, and genitals.

A prosecutor took up his allegations in July 2011 over charges of abuse of power by the police but discontinued the investigation the following year. The prosecutor took evidence from the applicant, other people who had been in the apartment, the police officers, and a forensic expert, and examined medical evidence on the applicant's injuries, but it (not convincingly) justified how the injuries had occurred, suggesting only that they in some way had been caused by the speed of the police operation.

The ECtHR found that the police did not need to use force on the applicant after he had been immobilised and so that they had applied excessive force. It also appeared that such acts had not been in line with the law, which required that force should only be used to ensure compliance with the police orders. As a result, the Court found that the applicant, in that case, had been subjected to inhuman and degrading treatment, in violation of the substantive aspect of Article 3 of the European Convention on Human Rights.

Moreover, the ECtHR found also a breach of the art. 3 of the Convention in its procedural aspect. According to the Court, the authorities failed to answer important questions, such as in what way the police officers had used force and how the applicant had been injured. In the opinion of the ECtHR, the investigation conducted in that case failed to meet the standards required by the Convention, which resulted in a violation of Article 3 in its procedural aspect.

The case of K.J. and K.W.

In February 2013, police officers beaten K.J. and K.W.⁹ during an interrogation at the police unit in Lidzbark Warmiński. The officers used undue force to elicit the victims' testimonies. An official inquiry into the case was discontinued because it was impossible to determine the identities of the police officers who were responsible for using violence.

The victims, represented by a counsel instructed by the HFHR, applied to the European Court of Human Rights. In 2014, the Court accepted the Government's unilateral declaration that admitted the use of torture against the applicants in contravention of Article 3 of the European Convention.

The incident at Ryki police station¹⁰

⁸ The ECtHR judgement of 23 May 2019 in the case *Kanciał v. Poland*, application no. 37023/13

⁹ Report on the Human Rights of Persons Deprived of Liberty, available at: <http://www.hfhr.pl/wp-content/uploads/2017/05/Report-CPT-FIN.pdf>, p.6 (accessed: 11-06-2019).

¹⁰ Commissioner for Human Rights' press release on the situation in Ryki police station, available at: <https://www.rpo.gov.pl/pl/content/70-latek-pobity-na-policji-w-rykach-interwencja-KMPT> (accessed: 11-06-2019).

In 2018, the representatives of the NPM conducted an unannounced monitoring visit to the police station in Ryki and came across the case of an apprehended man, who complained about being beaten by the police. The inspection of his body revealed many bruises and swellings. Moreover, the man alleged that he was also denied a possibility to visit a medical practitioner, even though he reported to the police officers he had cardiological problems. Neither that fact nor the information about his injuries were indicated in the record of his apprehension.

Knurów riots¹¹

In May 2015, the police used riot shotguns while confronting a group of football fans in Knurów. One of the fans, hit by a rubber bullet in the neck, died of the injuries after being rushed to the hospital. The HFHR sent a statement to the Chief Commissioner of the Silesia Police Department. Quoting the judgment of the European Court of Human Rights in *Wasilewska and Kalucka v. Poland*, the Foundation argued that the police should have ensured the presence of an ambulance at the scene of the incident.

The case of Robert Kuchta and Sebastian Mętel v. Poland¹²

Recently the HFHR has presented an amicus curiae opinion to the ECtHR in a case of a violent assault during a police action. The incident took place in 2015 in Kraków when officers raided the apartment of one of the applicants on false intelligence that a crime suspect was hiding on the premises. According to the applicants, the police breached the door and deployed tear gas indoors despite the presence of a five-month-old infant. The officers knocked the man to the floor and started beating him.

The second applicant arrived at the scene shortly after he had learned about the situation. The intervening officers also beat him. Both men were arrested and brought to a police detention centre but were soon taken to the hospital as their medical condition deteriorated. The prosecutor office assessed the incident, however, did not find any grounds to launch an official inquiry on alleged abuse of powers by the police.

The case of Igor Stachowiak¹³

The most important case of the last 5 years concerned Igor Stachowiak's death at a police station in Wrocław, after the police officers repeatedly and chronically used a stun gun against him, despite the fact he was handcuffed.

The local prosecutor's unit initiated a criminal investigation in those cases. Despite shocking video coverage from the stun gun, the police officers involved in the death of Igor Stachowiak returned to the service after a short-term suspension.

The public authorities' attitude towards Igor Stachowiak's death has significantly changed after one of the leading TV stations broadcasted footage recorded by the stun gun. Subsequently, police officers involved in the case of Igor Stachowiak's death were dismissed and charged with abuse of rights. According to their line of defence, they did not get appropriate training to use such coercive measure.

¹¹ Report on the Human Rights of Persons Deprived of Liberty, available at: <http://www.hfhr.pl/wp-content/uploads/2017/05/Report-CPT-FIN.pdf>, p.7 (accessed: 11-06-2019).

¹² ECtHR, application no 76813/16

¹³ Report on the Human Rights of Persons Deprived of Liberty, available at: <http://www.hfhr.pl/wp-content/uploads/2017/05/Report-CPT-FIN.pdf>, p.8 (accessed: 11-06-2019).

The report of the Commissioner for Human Rights and HFHR's survey

The Commissioner for Human Rights also reported on the problem of the police brutality¹⁴. According to his findings, between 2008 and 2015 slightly more than 30 police officers were found guilty of using violence or threat in order to elicit suspects' or witnesses' testimonies (Article 246 of the Polish Criminal Code).

Research carried out by HFHR among defence lawyers showed similar outcomes¹⁵. All surveyed lawyers indicated that they have carried out at least one case in which their client complained about police officers' misconduct. The lawyers consistently observed that in cases involving police violence the main problem are not only difficulties with proving police's violent behaviour, but also the law enforcement officers' disregard to such incidents and tendency to downplay such accusations.

Outcomes of the Minister of Internal Affairs Study

In December 2015, the Ministry of Internal Affairs and Administration commissioned a report concerning the occurrence of aggression among the police officers¹⁶. Its task was to identify not only the scale of the police officers' aggression towards individuals but also the reasons for their violent behaviour.

The report identified two main sources of aggression among police officers. According to its conclusion, the aggression of the police officers is mainly a result of their frustration and a reduced sense of security.

According to the police officers themselves, their frustration results from the negative social perception of their profession. Moreover, the report lists also other reasons for the frustration, indicating *inter alia*: pressure to achieve the appropriate statistical result and excessive bureaucracy as well as low chances to achieve professional success. These factors correlate with part of the main obstacles in the police work identified by the police officers themselves. Beyond that, the police officers identified as obstacles low wages, frequent change of appropriate regulations as well as supplies shortages.

The report also analyses the problem of inappropriate training of police officers, suggesting that it is an important factor related to police aggression. According to the report's conclusions, the police officers do not receive enough training to easily maintain a psychological advantage over the individual they are supposed to deal with. In their opinion, neither basic training nor further training includes an element of persuasive techniques that police officers could use towards the individual. One of the examined police officers said that „*an average seller of vacuum cleaners knows more manipulation techniques than a policeman after several years of work*”. Lack of appropriate training enhances the chances of

¹⁴ Commissioner for Human Rights' general statement on an access to legal assistance for persons deprived of liberty, available at: <https://www.rpo.gov.pl/sites/default/files/Wystapienie%20generalne%20-%20obronca%20od%20poczatku%20zatrzymania.pdf> (accessed: 11-06-2019).

¹⁵ A. Klepczyński, Mistreatment of persons deprived of the liberty and apprehended by the police, available at: <http://www.hfhr.pl/wp-content/uploads/2018/05/HFPC-z%C5%82e-traktowanie-podejrzanym-i-zatrzymanym-badanie-ankietowe.pdf> (accessed: 11-06-2019).

¹⁶ Ministry of Internal Affairs, Research report concerning the occurrence in the police force of aggression directed against individuals outside the police force with whom police officers have contact in connection with performance of official duties, available at: <http://www.hfhr.pl/wp-content/uploads/2018/04/Raport-MSWiA.pdf> (accessed: 11-06-2019).

the police officers becoming more vulnerable to stressful situations and increases the risk of their inadequate reactions and the use of excessive violence.

The report recommended introducing into the police training systemic training on the ability to build a psychological advantage, increasing the number of training on intervention techniques, especially the use of coercive measures, establishing an appropriate motivating system as well as conducting a social campaign strengthening the authority of the police officers.

Living conditions at police detention units

The HFHR also expresses concerns about the material conditions of some of the police detention facilities. In 2018, the Commissioner for Human Rights received several complaints from the police officers employed at Municipal Police Station in Białystok concerning *inter alia* inappropriate living conditions endangering the life and health of both the detainees and the police officers. The monitoring conducted by the NPM confirmed the circumstances described in the complaints and proved that there was an informal ban at the station on washing linen, blankets, pillows, and mattresses for detainees¹⁷.

HFHR's concerns relate to the fact that none of the superior police officers has reacted to that problem, despite numerous internal complaints from the staff of that police station. In HFHR's opinion, it might prove the lack of appropriate awareness of inhuman and degrading treatment and may indicate a systemic problem. Moreover, the fact that one of the police officers, who has informed the Commissioner for Human Rights, has been subsequently dismissed from the police, proves that the police has not established any appropriate policy when it comes to whistle-blowers. Finally, the decision to dismiss that officer may create in future a chilling effect on every other police officer who would like to inform relevant bodies about their colleagues' misconduct.

ACCESS TO LEGAL ASSISTANCE

Since 2015, the Helsinki Foundation for Human Rights has conducted several pieces of research to assess the status of implementation of Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings. The outcomes of those reports suggest that the domestic regulations fail to reasonably comply with the EU standard and do not guarantee a detained person prompt access to lawyer's assistance, especially in case of state-funded legal aid.

HFHR's study¹⁸

Accordingly to Article 245 § 1 of the Code of Criminal Procedure detained persons, upon their request, shall immediately be given the opportunity to contact an advocate or legal counsellor by any means available, and also to talk directly with the lawyer. They also should have direct access to the list of attorneys and legal advisors on duty, created for the purpose of accelerated proceedings.

¹⁷ National Preventive Mechanism, report on the monitoring of police unit in Białystok, available at: <https://www.rpo.gov.pl/sites/default/files/Wyci%C4%85g%20-%20PdOZ%20przy%20KMP%20Bia%C5%82ystok%202018.pdf>

¹⁸ A. Klepczyński, An inaccessible access to lawyer assistance, available at: http://www.hfhr.pl/wp-content/uploads/2018/01/HFHR_JUSTICIA2017_National-Report_PL.pdf (accessed: 11-06-2019).

Most of the lawyers, interviewed by HFHR, indicated problems with prompt access to their detained clients. In their opinion, the procedure of accessing a lawyer has not been institutionalized at all and generally requires a detained person to provide the police with contact details to a lawyer. Furthermore, the interviews conducted by the HFHR with police officers proved that they are not fully aware of their duties concerning providing a list of attorneys and legal advisors on duty. As a result, those lists are generally not available at the police stations. When a detained does not receive contact details to their lawyer, they have to be supported by e.g. a family member who could provide a contact to a lawyer.

State-funded legal aid

The problem of lack of contact to a defence lawyer is even more complicated in case of the state-funded legal aid. It usually takes days or even weeks to successfully appoint a public defender. As a result, the public defenders are generally not able to participate in the first questioning of a suspect.

In the past, the issue of legal assistance was a subject of numerous letters of the Commissioner for Human Rights addressed to the Minister of Justice¹⁹. In all the cases the Minister of Justice did not find Commissioner's arguments convincing and refused to pursue any legislative changes.

Practical problems

Moreover, the issues concerning access to legal aid are not only limited to the matter of time. As there is no evidentiary system on the individuals apprehended by the police, lawyers have problems to determine in which police unit are their arrested clients. As a result, it makes it difficult for lawyers to provide apprehended individuals with prompt legal assistance before their clients are interrogated.

Confidentiality of lawyer-client conversation

HFHR research also proved that there is a problem with the confidentiality of the lawyer – client conversation. Firstly, it relates to the Code of Criminal Proceeding provision that allows the police officers (in case of apprehended individuals) or the prosecutor (in case of pre-trial detainees) to limit the confidentiality of individuals' contact with the defence lawyer. In the case of detainees, such restriction may last even up to 14 days and it is not a subject of judicial control.

Furthermore, according to nearly all interviewed lawyers, many police stations lack suitable rooms guaranteeing the privacy of lawyer-client conversation. As a result, lawyers are often forced to conduct such conversations in the police units' corridor or even in the presence of police officers. Not only it narrows the scope of possible legal advice that a detained person might receive in such circumstances but also threatens the suspect's right to defence as the Code of Criminal Proceeding does not guarantee that the police officer will not be interrogated about what they heard while assisting such a conversation.

Since 1 July 2015, the Parliament introduced a possibility for a detainee to contact a defence lawyer by phone. In 2018, HFHR received a formal complaint from a detainee indicating that he was denied a possibility to make a phone call to his defence lawyer because of having

¹⁹ Commissioner for Human Rights' general statement on an access to legal assistance for persons deprived of liberty, available at: <https://www.rpo.gov.pl/sites/default/files/Wystapienie%20generalne%20-%20obronca%20od%20poczatku%20zatrzymania.pdf> (accessed: 11-06-2019).

made a call to another defence lawyer (representing him in different criminal proceedings) on the same day.

The outcomes of CPT's report

Part of the above-mentioned issues was emphasised in the last report of the Council of Europe's Committee for the Prevention of Torture (CPT). According to its observations, the presence of lawyers at police stations was seldom. In relation to the above, CPT urged the government of Poland to establish a system of immediate access to a lawyer for persons that cannot afford to cover the costs of a defence lawyer's assistance²⁰.

VIDEO RECORDING

Numerous times, the HFHR appealed for the introduction of legal measures allowing video recording of police interventions. In HFHR's opinion, it would help to unequivocally test the credibility of charges made by subjects of police actions and limit the scope of police mistreatment and abuse of violence. Since 2017, the Police launched a pilot project to assess the use of body-worn cameras during police officers service. Its outcomes resulted in a decision to gradually equip Polish police units with such cameras.

Unfortunately, as of yet, no decision was made regarding the mandatory use of cameras in case of interrogations. Currently, there are no legal barriers to record police interrogations. However, mainly due to the police officers and prosecutors attitude, it happens quite rarely.

USE OF EVIDENCE OBTAINED THROUGH TORTURE

Pursuant to Article 168a of CPC, the evidence cannot be considered inadmissible solely on the grounds that it was obtained in violation of the provisions of the proceedings or by way of a criminal offense, unless the evidence was obtained in connection with the performance of official duties of a public officer as a result of murder, deliberate damage to health or deprivation of liberty. As a result, according to the domestic Polish law and in non-compliance with international standards the courts are able to use in criminal proceedings evidence obtained through all types of tortures, with exception to those that include aforementioned crimes or those that were not applied by public officers.

PRISON POPULATION

Average population density at penitentiary units has decreased during last decade. While in 2009 in some facilities it exceeded 130%²¹ of their overall capacity, by 2015 this indicator dropped to about 84%²². The drop of the prison population was the result of, *inter alia*, various rulings of the European Court of Human Rights especially concerning prison overcrowding. It was also connected with the Supreme Court rulings where incarceration of a prisoner in an overcrowded cell was found an unlawful violation of their personal rights, that

²⁰ 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 11 to 22 May 2017, available at: <https://rm.coe.int/16808c7a91> (accessed: 11-06-2019).

²¹ Prison Service statistics, available at: https://www.sw.gov.pl/uploads/5846c013_38ac_45ef_bd4c_213cc0a80015_rok_2008.pdf (accessed: 11-06-2019).

²² Prison Service statistics, available at: <https://www.sw.gov.pl/assets/12/29/79/ce6663c30cb8ea38fcee716bb9b9fd250d4a341f.pdf> (accessed: 11-06-2019).

must be compensated by the state. Since 2015, the average population of prisons increased, reaching the maximum of 92,9% in June 2019²³.

The reasons for prison population's growth might be found in numerous legislative shifts in the Criminal Code, increasing the general punitiveness of Polish criminal system. They caused a significant increase of threat of imprisonment, enabling a criminal court to impose even 25 years of imprisonment on an individual who committed an economic offense.

On 17 May 2019, the Parliament adopted an amendment to the Criminal Code, which is heading in the same direction. Not only the maximum length of imprisonment was increased (from 25 to 30 years), but also some of the solutions allowing a court to use non-isolative sanctions instead of imprisonment were abolished.

The most important change relates to a conditional early release in case of life prisoners. While the current meaning of the Criminal Code enables a court to tighten the conditions of such releases by exceeding the minimum length of sentence that must be served, the amendment to the Criminal Code goes even further. According to its meaning, the court will be able to *a priori* deprive a life prisoner of a right to ask for parole. Not only this is a violation of numerous soft law standards, but also it is contrary to the European Court of Human Rights rulings.

Living conditions

Living conditions of individuals deprived of liberty vary significantly across the country. In new penitentiary facilities, the risk of inhuman or degrading treatment of individuals deprived of liberty stemming from the conditions of their detention is far lower than in older facilities, frequently located in historic buildings. An opportunity for the continued improvement of the living conditions of the prison population should be the act implementing the "Program Modernizing Prison Services in 2017-2020," adopted by the parliament in 2016. Its implementation will certainly contribute to improving the state of human rights observance. Nonetheless, it will not resolve all attendant problems.

The most significant of the observed problems include the following ones:

- **Inappropriate standard of living space per inmate.** With its standard of 3 m² per inmate, Poland is among the countries that guarantee the lowest amount of residential space per prisoner. Moreover, not all of the cells meet CPT criteria of living space per prisoner, especially in terms of cell minimum width²⁴.
- **Lack of access to sunlight.** Pretrial detainees (and some of the prisoners) tend to be incarcerated in cells where shades effectively block access to sunlight and fresh air.
- **Improper ventilation.** Prisoners serving their sentences in older penitentiary units often stay in cells without appropriate ventilation, where mould appears on cell walls and ceilings. As a result, they are particularly exposed to mould spores.

²³ Prison Service statistics, available at: <https://www.sw.gov.pl/assets/91/87/19/b03b44cadfb7f330293c7a6bdce8577a1fce0f42.pdf> (accessed: 11-06-2019).

²⁴ 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 11 to 22 May 2017, p. 33, available at: <https://rm.coe.int/16808c7a91>

- **Insufficient access to hygiene.** Prisoners staying with many inmates in one cell often do not have sufficient access to toilets, especially in the morning. Despite large demand, the standard number of toilets in such cells does not differ from the number of toilets in singular or double cells.
- **Lack of privacy.** The Prison Service is gradually excluding sanitary annexes from the cells. In March 2018, nearly 1050 cells still had sanitary annexes. On the other hand, still slightly more than 110 prisons' baths did not have separate shower stalls²⁵.
- **Insufficient amount of time spent outside the accommodation cell.** In Polish penitentiary units, inmates are entitled to only 1-hour walk per day. As a rule, prisoners serving their sentence in closed penitentiary facilities and pretrial detainees remain locked in their cells for 23 hours of a day.
- **Insufficient design and equipment of yards.** Penitentiary units' yards tend to be quite small, surrounded by high walls and equipped only with a bench. Often, they do not guarantee prisoner any protection from inclement weather.

UNJUSTIFIED VIOLENCE IN PENITENTIARY UNITS

In 2017, the HFHR received an anonymous complaint from a staff of penitentiary unit along with the video record of prison officer beating an inmate. The record showed a Prison Service officer punching with his fist a prisoner lying on a cot. According to the individuals who reported the incident to HFHR, the facility's director and head of security, after reviewing the film, disregarded the situation and claimed they saw no "*behaviour that violated the law*" and described the guard's activity as an "*unconventional manner of handcuffing*". After the HFHR's intervention, the Director of the District Prison Service Inspectorate notified the prosecutor's office regarding the possibility of the commission of a crime against one of the inmates.

PRISON HEALTH CARE

The issue of prison health care remains one of the main subjects of complaints sent by prisoners to the HFHR. Poland is a part of a group of states in which the healthcare system constitutes a part of the penitentiary system and is provided by prison services officers as well as civilian employees. In the opinion of HFHR, such situation significantly affects the relationships between penitentiary healthcare personnel and the inmates, hindering the ability to establish proper, based on trust, doctor-patient relation. It is particularly visible in the context of placing a prisoner in a disciplinary cell. According to Polish legislation, the medical practitioner has to certify that the inmate is fit for punishment.

Recently, HFHR has conducted several interventions concerning the failure to assure individuals deprived of liberty appropriate health care.

²⁵ Commissioner for Human Rights' statement on sanitary annexes in penitentiary units, available at: <https://www.rpo.gov.pl/sites/default/files/Wyst%C4%85pienie%20do%20SW%20w%20sprawie%20k%C4%85cik%C3%B3w%20sanitarnych.pdf> (accessed: 11-06-2019).

The case of Agnieszka Pysz

The most important case related to the lack of access to health care is the case of Agnieszka Pysz, who died at Warszawa Grochów Remand Centre a few days after she was transferred to that facility. Since admission, she was complaining about her health. Other inmate's statements indicate that the security personnel had been notified of woman's ill health numerous times. The presiding physician, however, claimed that the woman was malingering and ordered her to psychiatric consultation. Despite several attempts of Ms Pysz's fellow inmates, the prison staff did not decide to call for an ambulance before her death. In the opinion of HFHR, the circumstances of her treatment indicate a significant risk of a substantive violation of Article 2 of the Convention.

Moreover, it has to be underlined how the Prison Service initially tried to explain the case of Agnieszka Pysz. Not only the composition of the team appointed to conduct explanatory proceedings but also its conclusions raise doubts. Relatively quickly, it turned out that the team was chaired by the physician who was directly responsible for Ms Pysz's treatment. The team managed by this physician did not recognize any misconduct in a way Agnieszka Pysz was treated. The team's only recommendation was to discuss the case of Agnieszka Pysz's death during the next professional training. Due to the Commissioner for Human Rights' reaction and media attention, the case of Agnieszka Pysz became a subject of public opinion interest. The criminal proceeding in this case has been initiated and is still pending.

The case of DB

The HFHR also intervened in the case of a DB diagnosed with paranoid schizophrenia in a public healthcare system. During serving a sentence of 9 months in one of the penitentiary units, a prison physician examined DB and did not diagnose him with schizophrenia. The prison physician preventively prescribed further medication, different than the one DB was on before admission to the prison. In the doctor's opinion, the man was malingering, even though a week before his incarceration DB left a public psychiatric hospital.

To protest against improper treatment DB went on a hunger strike which resulted in his transfer to a single monitored cell that was not adjusted to the needs of persons with schizophrenia. The man continued his strike in the solitary confinement. Due to concerns regarding his health condition, he was transferred to a hospital ward in another prison, where he was immediately diagnosed as a paranoid schizophrenic patient.

Currently, the case of DB is being examined by ECtHR under article 3 and 8 of the Convention.

The situation of prisoners with disabilities

A frequently observed problem is a failure to adapt penitentiary facilities to the needs of prisoners with disabilities. According to the National Preventive Mechanism, the monitoring of penitentiary units proved that most of the penitentiary units labelled as adapted to the needs of prisoners with disabilities failed to guarantee them fully independent functioning within the penitentiary facilities²⁶.

²⁶ Commissioner for Human Rights' report on National Preventive Mechanism activity in 2016, <https://www.rpo.gov.pl/sites/default/files/Raport%20Krajowego%20Mechanizmu%20Prewencji%20Tortur%20RPO%20za%202016.pdf>, p. 26 (accessed: 11-06-2019).

Moreover, the treatment of inmates with disabilities was also the subject of recent ECtHR's ruling in the case *Bujak v. Poland*²⁷, in which the Court assessed the failure to provide a disabled inmate with appropriate orthopaedic devices and appropriate care. As a result, the applicant was forced to rely on assistance from other inmates. In the opinion of the Court, the situation violated the applicant's dignity and contributed to a level of suffering which exceeded that normally associated with deprivation of liberty. As a result, ECtHR found the conduct of Polish authorities to constitute a breach of Article 3 of the Convention.

COMPLAINTS IN PENITENTIARY UNITS

The most recently available data indicate that in 2016 prisoners in penitentiary units submitted slightly more than 39,000 complaints which resulted in 62,362 explanatory proceedings²⁸. Only 377 of those complaints were found justified, while over 24,000 of them, involving 41,128 allegations, have been rejected.

The highest number of complaints concerned the treatment of individuals deprived of liberty by the Prison Service officers and employees. However, only 25 allegations of an overall number of 13,299 allegations in this category were found justified. Cases in that category included:

- failure to act (1,881 allegations – 6 were found justified);
- verbal aggression (964 allegations – none was found justified);
- the manner of conducting a personal search or a search of a cell (928 allegations – none was found justified)
- drafting applications for disciplinary punishment (874 allegations - 5 were found justified),
- failure to provide security (607 allegations -3 were found justified).
- beating (274 allegations – none was found justified)

Allegations concerning living conditions constituted the second largest group of complaints (of 8,123 allegations 138 were recognised as justified). Slightly more than 7,000 allegations concerned prison healthcare, of which only 54 were found justified.

HFHR's study

The HFHR has recently conducted a research project on evaluating the penitentiary complaint and judicial oversight system. According to its findings, both the internal complaint procedure (within the prison administration) and the external system (when a penitentiary judge reviews the case), are ineffective tools for the protection of the rights and dignity. Furthermore, interviewed experts emphasized that the system of penitentiary oversight of the imprisonment conditions is purely theoretical as penitentiary judges reviewing the cases usually rely only on documentation provided with the complaint and do not have any direct contact with a complaining prisoner.

Additionally, experts found the frequency of monitoring the detention places by the penitentiary judges insufficient. At the same time, penitentiary judges who took part in the project indicated that the current regulations concerning solitary confinement may make

²⁷ ECtHR judgement of 21 March 2017 concerning the case of *Bujak v. Poland*, case no. 686/12.

²⁸ Ministry of Justice, Information on complaints brought to Ministry of Justice, <https://archibip.ms.gov.pl/pl/kontakt/informacja-o-sposobach-przyjmowania-i-zalatwiania-spraw/download.3541.0.html>

appropriate penitentiary oversight impossible. Pursuant to Article 145 § 3 of the Executive Penal Code, punishing someone with solitary confinement for a period exceeding 14 days requires consent from a penitentiary judge. A punished inmate has the right to submit a complaint (irrespective of the length of the punishment assigned), but this does not suspend the execution of the punishment. Therefore, judges' evaluation of a submitted complaint in connection with punishing to solitary confinement shorter than 14 days may be ineffective as the complaint will likely be reviewed after the execution of the punishment.

On the other hand, the interviewed professionals indicated that there is no legal assistance to prisoners procedure. This may have an impact on the effectiveness of this legal measure. In the light of the lack of legal assistance system for persons deprived of liberty, non-governmental organizations (including those engaged in the protection of human rights) play a special role in the scope of complaints against detention conditions, and so is the case of legal clinics and institutions monitoring incarceration standards. The experts indicated that the activities of these organisations contribute to increased awareness among individuals deprived of liberty of the rights and the attendant required standards of detention, including those stemming from the European Court of Human Rights jurisprudence.

Furthermore, in the course of this research project, interviewees noted that foreigners, who do not possess sufficient language skills in Polish, may have particular difficulties in taking advantage of the complaint procedures. As the factors hampering access to this procedure, the interviewees indicated: difficulties in accessing interpreters inside penitentiary facilities, as well as access to documents or regulations translated into a language of the individual deprived of liberty.

NATIONAL CENTER FOR THE PREVENTION OF ANTISOCIAL BEHAVIOR

The Act of 22 November 2013 on proceedings against individuals with mental disorders that threaten the life, health, sexual freedom of other individuals (hereinafter: the Act) came into force in early 2014. The Act regulates the court proceedings against individuals who, after having completed the punishment of deprivation of liberty, may still constitute a threat and there is the apprehension that they will commit a crime in the future, due to their mental health condition.

The Act was adopted as a reaction to media reports on an imminent release in early 2014 of individuals convicted of the death penalty prior to 1989. After the changes in the system of the state in 1989 these sentences were commuted to 25-years imprisonment.

Pursuant to the Act, proceedings are initiated based on an application from the director of the penitentiary facility incarcerating an individual who may constitute a threat. Such proceedings may be initiated if the individual:

- is serving a final sentence involving the deprivation of liberty or a 25-years prison sentence, executed in the therapeutic system, for an act committed prior to July 1st, 2015,
- suffered from mental disorders in the form of mental retardation, personality disorder or sexual preference disorder during the executory proceeding,
- has diagnosed mental disorders of such a nature or intensity that there exists at least a high probability that they will commit a violent crime or pose a threat of violence

against life, health or sexual freedom, which is subject to a sentence of deprivation of liberty, the upper limit of which totals at least 10 years.

The court's finding of such grounds results in the possibility of applying one of two kinds of preventive measures: preventive supervision or confinement in a special closed facility, i.e. the National Centre for the Prevention of Antisocial Behaviour in Gostynin (hereinafter: NCPAB). The court proceedings on the application of these preventive measures are regulated by the provisions of the Civil Proceeding Code.

After an individual is confined in the NCPAB, they are subject to a therapeutic proceeding. The main goal of this proceeding is to improve the individual's health and behaviour to a degree enabling them functioning in a society in a manner that does not constitute a threat. However, in the opinion of psychiatrists, currently, there is no medically recognised treatment available that would provide effective therapy to such individuals.

The duration of incarceration at the NCPAB is not set beforehand. However, no less than every six months, relying on the psychiatric opinions and records of the therapeutic proceeding the court establishes whether the placement at the NCPAB is still necessary. Furthermore, a individual deprived of liberty may, at the time, apply to the court for a ruling of whether continued incarceration at the NCPAB is necessary.

The Act evoked criticism from the medical and psychiatric communities. However, on 23 November 2016, the Constitutional Court ruled that the Act is constitutional. The court allowed the possibility that the therapy provided at the NCPAB may not always be effective. Nonetheless, in the court's evaluation, confinement at the centre constitutes a *“form of deprivation of personal freedom that combines elements of forced psychiatric detention (...) and several forms of prevention provided for in the Criminal Code, described in the study of the law as post penal-forms of prevention”*.

Despite similarities to the punishment of deprivation of liberty, incarceration at the NCPAB was not classified by the Constitutional Court as a criminal penalty. The court described it instead as a *“means of pure prevention, security”*. Judge A. Wróbel submitted a dissenting opinion to the ruling. In his evaluation, *“results of research concerning proceedings against particularly high-risk criminals prove that the societal effectiveness of preventive supervision combined with mandatory therapy is superior to various kinds of so-called post-penal means of isolation”*. In the evaluation of justice Wróbel, the *“mechanism for placement in the center was not necessary to realize the fundamental goals of the Act, i.e. therapy and rehabilitation of high-risk criminals, because these goals may be better achieved by an approved mechanism of preventive oversight provided for in the Act and through provisions of the act on the protection of mental health”*.

Doubts concerning the compliance of the Act with international human rights standards

Regulations concerning placing individuals in the NCPAB raise serious doubts as to their compliance with international human rights standards. First, due to the incapability of achieving the assumed therapeutic effect, confinement at the NCPAB may constitute a criminal punishment involving the deprivation of liberty. During the legislative proceeding on the draft Act, the psychiatrists opinions clearly stated that personality disorders cannot be effectively treated if the treatment was to be forcible and in the conditions of isolation. In psychiatrists' opinions, the NCPAB would not have a therapeutic nature, but only preventive or repressive. Moreover, individuals who are not *“mentally ill”* in the medical sense or even

“*of unsound mind*” (as defined in Article 5 para 1 let. e of the European Convention of Human Rights) may be placed in the NCPAB.

There are serious doubts whether it is permissible to force therapy on individuals who committed crimes in a state of complete sanity and have served their sentences. In the event of finding that incarceration at the NCPAB is of a repressive nature, this may give rise to a violation of the prohibition against double punishment for the same act or the prohibition against retroactive application of the law. As has already been indicated above, the Act applies to individuals convicted of crimes committed prior to July 1, 2015, but it is not necessary for the said crime to have been committed after the Act’s coming into force (that is, January 2014). In other words, at the time of committing the crime, the perpetrator was not able to foresee that after completing his or her sentence, their detention could be continued infinitely at the NCPAB.

In HFHR’s opinion, even if the confinement at the NCPAB does not constitute a criminal sanction, its proportionality raises additional questions. As it is noted in the dissenting opinion to the decision of the Constitutional Court, equally good or even better effects may be achieved using less invasive means, e.g. preventive oversight and therapy in ambulatory conditions. Also, there are objections concerning the procedure verifying the need for further placement in the NCPAB. Pursuant to the Act, *“no less than once every six months, the court, pursuant to the opinion of a psychiatrist and the results of therapeutic proceedings, shall establish, whether continued stay at the Center of an individual that constitutes a threat is necessitated”*. In the referenced decision, the Constitutional Court found that this provision is unconstitutional as the court should have available the opinion of at least two experts who are institutionally independent of the NCPAB. However, Tribunal’s decision has not been implemented yet.

The means of coercion provided by the Act are also problematic. This list includes means typical of psychiatric facilities such as e.g. isolation, immobilization using a straitjacket, holding down, but also enables the use of handcuffs, security baton, and manual dispensers of incapacitating substances.

The living conditions at the NCPAB also raise concerns. First, according to information provided to the HFHR by the NCPAB in October 2018, the mandated number of medical personnel was not present. There were only 3 psychiatrists and 15 psychologists for 56 patients, while the Minister’s ordinance based on the Act requires 1 psychiatrist and 6 psychologists per every 10 patients. This undoubtedly affects the quality of therapy provided at NCPAB. Second, the standards concerning the maximum capacity of residential rooms at the NCPAB are not fully implemented either. Initially, the aforementioned ordinance provided that each confined individual should have an individual residential room. In September 2015, the ordinance was amended and allowed two individuals to reside in one room. However, due to the constant influx of new internees, of which there are currently 65, even that standard was not maintained. It even happened that some of the rooms were occupied by 8 residents²⁹. As a result, the Minister of Health amended the ordinance and removed the limit on the capacity of residential rooms.

²⁹ National Preventive Mechanism, Report on the monitoring of NCPAB in Gostynin p. 9, available at: <https://www.rpo.gov.pl/sites/default/files/Raport%20KMPT%20%20z%20wizytacji%20KOZZD%20w%20lutym%202019%20r..pdf>, (accessed: 11-06-2019).

Numerous problems also stem from the limitations in the NCPAB Rules and Regulations. Pursuant to the Polish Constitution, any limitations on individual rights and freedoms must have a statutory basis. However, in the case of the NCPAB, numerous restrictions result from internal regulations. Of special significance here are the regulations concerning personal checks and disciplinary measures. None of them has any basis in the Act.

There is also a problem with interim measures involving deprivation of liberty applied by civil courts to 5 patients of the NCPAB (as of February 2019). Meanwhile, according to the Supreme Court ruling of 30 January 2019, such interim measures cannot be used to deprive individual liberty. Despite such ruling, the situation of the aforementioned patients did not change, and they remain to be unlawfully deprived of liberty.

Application of the Act in practice

A series of other problems stemming from the Act revealed the practice of its application. They are described in a HFHR's client's complaint to the European Court of Human Rights. The man was convicted in 2004 to a 10-year sentence of deprivation of liberty for the crime of rape. In the course of criminal proceedings, he was not found to have any mental disorders that rendered him insane or prevented execution of the punishment. About seven months prior to the completion of his sentence, he was sent to complete the rest of that sentence in a therapeutic ward, however previously he did not receive any therapy. Several months prior to the end of the sentence, proceedings were initiated regarding placing him at the NCPAB. However, prior to those proceedings being finalized, he completed his sentence and was released from the penitentiary facility and spent about a year at liberty. During this time, his behaviour was exemplary – he had no conflicts with the law, formed a relationship, and found a job. Despite this, after a year, he was placed in the NCPAB.

In the complaint to the ECtHR, the applicant alleged that he is not “mentally ill” as defined in Article 5 para 1 let. e European Convention of Human Rights, and therefore his detention is unreasonable. He further argued that confinement at the NCPAB is not of a therapeutic nature but instead constitutes a double punishment for the same crime. According to the applicant, the provisions of the Act were applied arbitrarily in his case because he was placed under therapeutic proceedings shortly before completion of his punishment, after the coming into force of the Act, which may suggest that the actual goal of the therapy was to simply enable his confinement at the NCPAB. The applicant further alleged that it is unreasonable to extend his confinement at the NCPAB.

Since June 2017, the NCPAB has been indicating that the applicant's continued confinement is not necessary as he does not constitute a serious threat to society anymore. Despite that, the court refused several times to dismiss him from the NCPAB, citing an external opinion. Furthermore, proceedings to establish that continued detention lasted nearly a year, which is unduly long period of time. The complaint also alleged the disproportionate limitation of the right to privacy and family life. The applicant alleged that the constant presence of security personnel during his visits with his wife and daughter render impossible unrestricted conversations and contacts with the family. The complaint has been registered by the ECtHR but has not been communicated to the government of Poland yet.

GUARDED CENTERS FOR FOREIGNERS

Identification of asylum seekers

According to the HFHR's observations, the system of identification of vulnerable asylum-seekers, including victims of torture, does not work properly in Poland. The asylum application form includes a question whether the applicant was subjected to violence or torture. HFHR experience shows that even if the applicant declares so, then not always they are identified and treated as vulnerable persons. Even if the applicants have visible scars on their bodies, they are not properly examined as to the possible sources of the harm. At the same time medical experts are not appointed to make such an assessment.³⁰ According to the Association for the Legal Intervention between 1 January and 30 June, 2018, Polish asylum authorities did not appoint experts who could assess psychical and physical harms suffered by the asylum applicants.³¹ Moreover, the Polish authorities do not collect statistics on the number of asylum seekers identified as vulnerable.³²

According to the law, the applicant who declared themselves in the asylum application as a victim of violence has a right to request a psychologist's presence during the asylum interview. If they are proposed to make such a request and refuse to do so, then it is used as an argument that the testimonies concerning torture are not credible.

In the number of decisions known to the HFHR, the authorities refused international protection to the applicants who declared being torture victims. In such cases, the authorities usually claim that the applicants' testimonies were not credible. However, the authorities did not conduct a psychological or medical examination of the applicants. On the other hand, NGOs providing legal assistance to the applicants claim that discrepancies in applicant's statements might result from their mental disorders. However, the courts upheld several of such decisions³³. In some cases, the authorities acknowledge that the applicant suffers from the Post Traumatic Stress Disorder or other mental health problems but claim that they resulted from an unspecified traumatic experience, not from persecution.

In the number of asylum refusal decisions, authorities acknowledge that the person was a victim of violence or torture. However, the authorities classify it as regular operational activities of the police, misuse of powers or single acts of violence not having a character of persecution. Several such decisions known to the HFHR were upheld by the courts.

Moreover, according to the European Union Agency for Fundamental Rights, many asylum seekers and other migrants in Poland continued to end up in immigration detention as a result of poorly functioning identification- and referral- mechanisms³⁴. This information is proven in the recent reports of the National Preventive Mechanism³⁵. Assistance to victims of violence

³⁰ Asylum Information Database, Country Report Poland, available at: <https://www.asylumineurope.org/reports/country/poland/use-medical-reports> (accessed: 11-06-2019).

³¹ Stowarzyszenie Interwencji Prawnej, SIP w działaniu, prawa cudzoziemców w Polsce w 2018 r., available at: https://interwencjaprawna.pl/wp-content/uploads/2019/05/raport_sip_w_dzialaniu_2019R.pdf (accessed: 11-06-2019).

³² Asylum Information Database, Country Report Poland, available at: <https://www.asylumineurope.org/reports/country/poland/asylum-procedure/guarantees-vulnerable-groups/identification> (accessed: 11-06-2019).

³³ This practice has been confirmed also by other NGOs see: https://interwencjaprawna.pl/wp-content/uploads/2019/05/raport_sip_w_dzialaniu_2019R.pdf (accessed: 11-06-2019).

³⁴ European Union Agency for Fundamental Rights, Migration: Key fundamental rights concerns - Quarterly bulletin 2 2019, available at: https://fra.europa.eu/sites/default/files/fra_uploads/fra-2019-migration-bulletin-2_en.pdf (accessed: 11-06-2019).

³⁵ National Prevention Mechanism, Report on a visit in a guarded centre and arrest in Przemyśl in October 2017 and in Krosno Odrzańskie in September 2017, available at: www.rpo.gov.pl/sites/default/files/Wyci%C4%85g-

who are asylum seekers or migrants has been primarily provided by NGOs, given that there is still no rehabilitation centre for foreigners in the country, according to the National Preventive Mechanism³⁶ and European Union Agency for Fundamental Rights³⁷. Moreover, based on the HFHR's experience it can be said that even private psychological opinions prepared in cooperation with the NGOs are not sufficiently taken into account by the criminal courts ruling on foreigners' detention. Instead, these courts rely mostly on the Border Guards medical assessments. In only one case run by HFHR's lawyers, the detention court appointed its own independent expert.

A positive development is that obtaining a refugee status, subsidiary protection or humanitarian stay in Poland or abroad by a foreigner is recognized by the courts as a bar against extradition, although they are not explicitly listed as such in the Code for Criminal Procedure.

Amendment to the law on asylum

In February 2019, the government published another version of the draft amendment of the asylum law³⁸. It introduces so-called border proceedings. It provides detention of applicants who made an asylum application at the border and had no document (visa or residency card) allowing them to cross the border. The asylum application within border proceedings shall be considered in an accelerated procedure (decision shall be given within 20 days). As a rule, asylum claim considered within border proceedings are to be refused. According to the draft law, vulnerable applicants (including victims of torture) are excluded from the border proceedings. However, according to the HFHR, identification of vulnerable applicants within such a short period of time may not be possible.³⁹

The draft law also provides that appeal to the court within border proceedings has no suspensive effect. The appeal shall be lodged directly to the administrative court, it must be prepared in Polish and fulfil several formal requirements (unlikely in ordinary proceedings where an appeal shall be lodged to the Refugee Board – second instance administrative authority – and such appeal has no special formal requirements). Moreover, the administrative court conducts only *ex nunc* assessment of the points of law only. Therefore, such provisions do not fulfil requirements of the right to an effective remedy before a court as required by the EU law.

[Strze%C5%BCony%20O%C5%9Brodek%20dla%20Cudzoziemc%C3%B3w%20Przemyc%C5%9Bli%202017.pdf](https://www.rpo.gov.pl/sites/default/files/Wyci%C4%85g-Strze%C5%BCony%20O%C5%9Brodek%20dla%20Cudzoziemc%C3%B3w%20Przemyc%C5%9Bli%202017.pdf) (accessed: 11-06-2019).
www.rpo.gov.pl/sites/default/files/Wyci%C4%85g-Strze%C5%BCony%20O%C5%9Brodek%20dla%20Cudzoziemc%C3%B3w%20Krosno%20Odrza%C5%84skie%202017.pdf (accessed: 11-06-2019).

³⁶ Poland, National Prevention Mechanism, (Krajowy Mechanizm Prewencji), 28 June 2018, statement available at: <https://www.rpo.gov.pl/pl/content/o%C5%9Bwiadczenie-krajowego-mechanizmu-prewencji-tortur-z-okazji-mi%C4%99dzynarodowego-dnia-pomocy-ofiarom> (accessed: 11-06-2019).

³⁷ European Union Agency for Fundamental Rights, Migration: Key fundamental rights concerns - Quarterly bulletin 2 2019, available at: https://fra.europa.eu/sites/default/files/fra_uploads/fra-2019-migration-bulletin-2_en.pdf (accessed: 11-06-2019).

³⁸ See: <https://legislacja.rcl.gov.pl/projekt/12294700/katalog/12410554> (accessed: 11-06-2019).

³⁹ Helsinki Foundation for Human Rights, HFHR comments on proposed amendment to asylum law, available at: <http://www.hfhr.pl/en/hfhr-comments-on-proposed-amendment-to-asylum-law/and> <http://www.hfhr.pl/wp-content/uploads/2019/02/zm-uouco-uwagi-HFPC-02-2019.pdf> ; <https://www.ecre.org/poland-draft-amendment-to-the-law-on-protection-of-foreigners-another-step-to-seal-europes-border-op-ed-by-polish-helsinki-committee/>

The situation of families with children and unaccompanied minors

The Ombudsman for Children in his letter to the Minister of Interior and Administration from September 2018, drew attention to the legal and factual situation of families with children and unaccompanied minors, placed in guarded centres for foreigners, run by the Border Guards⁴⁰. The Ombudsman for Children particularly underlined that the interpretation and practice of the application of provisions on the prohibition of detention of foreign victims of violence accepted by the Border Guards Headquarters seriously violate the fundamental right of minors to protection against unreasonable and arbitrary deprivation of liberty⁴¹. It concerns the interpretation and application of Article 400 (2) of the Act on foreigners and Article 88a § 3 (2) of the Act on granting protection to foreigners. Both of these provisions state that it is unacceptable to place in guarded centres the foreigners whose psychophysical state creates a presumption that they were subjected to violence. According to the Ombudsman's for Children statement, all the guidelines and practices applied by the Border Guard – according to which the release of foreigners who are victims of violence from the guarded centres is possible only after stating that they cannot be treated in detention conditions, and only when their detention threatens their health or life – are irreconcilable with the above mentioned national legal provisions⁴².

In the opinion of the Ombudsman for Children, the legal admissibility of placing families with children and unaccompanied minors aged over 15 in guarded centres for foreigners for the purpose of the return procedure remains a major issue raises doubts whether alternative measures (non-isolation measures) have priority over the detention in practice⁴³. In the period of 2014-2017, 1103 children were placed in detention centres and in the opinion of the Ombudsman, this number of children is too high and raises the question whether Border Guard respects the best interests of the child. In the Ombudsman for Children's view, the administrative detention of children is never in their best interests and always violates the rights of minors and even when applied for a very short time it may have a permanent effect on the mental state of minors' affecting their further development. Moreover, in December 2018, the UNHCR Representation in Poland has published, at the conference organized in Warsaw, its 2017 report on the applicability of the best interests of the child principle as the primary consideration in detention decisions as well as the alternatives to detention in Poland⁴⁴. According to the findings of the report, not only domestic law but also international law requires national authorities making decisions on the detention of children to take into consideration their best interests, but in practice this principle is rarely implemented by the national authorities. However, in the vast majority of cases analysed for the purpose of the

⁴⁰ Ombudsman for Children (Rzecznik Praw Obywatelskich, RPO), 7 September 2018, available at: <http://brpd.gov.pl/aktualnosci-wystapienia-generalne/w-trosce-o-maloletnich-umieszczonych-w-strzezonych-osrodkach-dla> (accessed: 11-06-2019).

⁴¹ *Ibidem*

⁴² *Ibidem*

⁴³ Poland, Ombudsman for Children (Rzecznik Praw Dziecka, RPD), Information prepared in relation to the list of issues prior to reporting (LOIPR) for Poland being drafted by the Committee on the Rights of the Child on the implementation of the Convention on the Rights of the Child, 29 June 2018, available at: http://brpd.gov.pl/sites/default/files/raport_rpd_onz.pdf (accessed: 11-06-2019).

⁴⁴ Poland, United Nation High Commissioner for Refugees, Office in Poland (UNHCR), report is not yet available online.

UNHCR's study, District Courts did not examine the best interests of the child nor took it into consideration when ruling on their detention. Children were usually mentioned only in the operative part of the court decision while in the justification only the situation of their parents was assessed. In only one case the court did not accept the Border Guards' request to detain family with children referring to the best interests of the child⁴⁵.

On 10 April 2018, the European Court of Human Rights delivered a judgment in the case *Bistieva and Others against Poland*.⁴⁶ The case concerned the detention of a Chechen family of asylum seekers. The Court held that the Polish authorities had not viewed the family's administrative detention as a measure of last resort. According to the ECHR, the Polish authorities had not considered the best interests of the children. The Court further held that Polish authorities should have considered the application of non-custodial measures and that detention should be only the last resort solution. The ECtHR also observed that the applicants' detention lasted five months and twenty days. The Court stated that it is of the view that the detention of minors called for greater speed and diligence on the part of the authorities. As a result, the Court held that the detention of the family constituted a violation of Article 8 of the European Convention on Human Rights.

Moreover, already in 2014, the HFHR filed an application the European Court of Human Rights on behalf of a Russian citizen of Chechen nationality who stayed at a guarded centre for foreigners together with her five minor children, even though she stated that she had been a victim of domestic violence from her husband. She mentioned it in her asylum application, nevertheless, she was not released and was then deported to the Russian Federation where, as she reported, she continued to be a victim of violence from her husband. The case was communicated to the Polish government in 2014⁴⁷.

In 2016, the European Court of Human Rights communicated to the Polish government subsequent cases of placing foreigners in a guarded centre for foreigners⁴⁸. The case concerns a family from Chechnya (parents with a child), who several times tried to claim refugee status at the border crossing in Terespol, but the Border Guard refused to accept it. It was not until the fourth time that the application for granting the refugee status was accepted. Then the whole family was placed in the Guarded Centre for Foreigners in Biała Podlaska. Two applicants applied for refugee status in Poland for the first time and after submitting the application their stay on the territory of Poland was legal. Therefore, their placement in a guarded centre was not in line with the ECtHR's jurisprudence which permits the deprivation of liberty of a foreigner only in two situations: when it is necessary to prevent illegal entry or to secure the expulsion of a foreigner. HFHR also indicated in the complaint that one of the applicants had been identified as a victim of torture after a few months in detention and after a survey carried out by a psychologist from an NGO. Because Polish law prohibits the placement of persons who have been subjected to violence in a guarded centre, the

⁴⁵ Ibidem

⁴⁶ ECtHR judgement of 10 April 2018 in the case of *Bistieva and Others v. Poland*, application no. 75157/14.

⁴⁷ ECtHR, the case of *Blalova v. Poland*, application no. 23685/14.

⁴⁸ ECtHR, combined cases of *A. B. v. Poland* (application no. 15845/15) and *T.K. and S.B. against Poland* (application no. 56300/15).

identification of such persons should be a routine activity. Meanwhile, an effective system of identification and assistance to victims of torture has not yet been implemented.

Another case of unlawful detention was communicated to the Polish authorities by the European Court of Human Rights on 8 January 2018⁴⁹. The case concerns a family from Tajikistan (a mother with two infants). They were placed in the detention centre in Przemyśl even though the claimant's physical and mental state indicated that she had been a victim of violence and that her health deteriorated as a result of detention. The applicants also pointed out that while issuing the detention order authorities had failed to properly investigate its impact on minor children⁵⁰.

Moreover, on 29 January 2019 ECtHR communicated to the Polish authorities another case of detention of asylum seekers family transferred to Poland under 604/2013 Regulation. They complained that they were detained despite bad mental health situation of one of the children. They have also complained about violation of their procedural rights during detention proceedings⁵¹.

The principle of non-refoulement

HFHR has prepared a numerous number of opinions on the individual situation of foreigners as well as on the human rights situation in specific countries (country of origin reports) for the purpose of the extradition proceeding before the domestic courts. Some of the HFHR's opinions were used by the courts in order to properly indicate that the extradition may result in a human rights violation.

Nevertheless, the principle of non-refoulement is not fully respected. There are reported cases of asylum-seekers, mainly of Chechen and Tajik origin, being refused entry to Poland, despite their invoking asylum request at the border. Among those, there are victims of torture and violence, including victims of gender-related persecutions. Their individual situation is not considered by Border Guards, who, after only cursory interviews, during which asylum claims are routinely ignored, issue the decisions on the refusal of entry to Poland. According to reports of the Human Rights Commissioner⁵² and non-governmental organisations⁵³, such practice, particularly present at Belarusian and Ukrainian border crossing points in Terespol and Medyka, violates national and international law on asylum. Many asylum-seekers of Chechen origin are being pushed-back to Belarus, which, according to the recent ECtHR ruling, is not a safe country for them⁵⁴. Human rights organisations documented already few cases of asylum-seekers who were refused entry to Poland and, consequently, were detained in Belarus and faced deportation or were deported to their country of origin⁵⁵.

⁴⁹ ECtHR, the case of *M.Z. and others* against Poland, application no. 79752/16.

⁵⁰ *Ibidem*

⁵¹ ECtHR, the case of *R.M. and others* against Poland, application no. 11247/18.

⁵² Commissioner for Human Rights' press release on inspection of railway border crossing at Terespol, available at: <https://www.rpo.gov.pl/pl/content/inspection-railway-border-crossing-terespol> (accessed: 11-06-2019).

⁵³ Human Rights Watch, Poland Trapping Asylum Seekers in Unsafe Belarus, available at: <https://www.hrw.org/news/2017/05/16/poland-trapping-asylum-seekers-unsafe-belarus> (accessed: 11-06-2019).

⁵⁴ ECtHR judgment of 11.12.2018 in the case of *M.A. and Others v. Lithuania*, application no. 59793/17.

⁵⁵ Amnesty International, Terespol: asylum seekers who were denied entry are at risk, available at: <https://amnesty.org.pl/terespol-uchodzcom-zawracanym-z-polskiej-granicy-grozi-niebezpieczenstwo/> (accessed: 11-06-2019).

Supreme Administrative Court delivered so far 25 rulings as a result of complaints filed by foreigners who were denied entry to Poland despite claiming asylum. In each case, the Court found a violation of national law and overruled Border Guards decisions on the refusal of entry. The Court stressed that lack of a proper way of documenting the interviews held with foreigners at the border on the reasons of seeking entry to Poland as well as the lack of access to the lawyer can obstruct access to the asylum procedure. Ministry of Interior and Administration refused to introduce amendments to national law in order to ensure its compliance with the established case-law of administrative courts. At the same time, the practice at the border remained unchanged.

In addition, Polish authorities failed to comply with several interim measures issued by the European Court of Human Rights. In those cases, the ECtHR urged Polish authorities not to remove applicants to Belarus and accept their applications for international protection. All those applicants were refused entry to Poland. The cases are pending before the ECtHR⁵⁶.

The HFHR would also like to point out that the non-refoulement principle is not fully respected in respect of foreigners already present in the territory of Poland either. One of the recent cases that drew public attention was the deportation of Azamat Baiduyev under provisions of 2016 Anti-Terrorist Act. Due to security concerns, he was deprived subsidiary protection and shortly after that he was deported to Chechnya, despite indications he might face tortures there. Polish authorities failed to examine possible violation of non-refoulement principle and Article 3 of the ECHR. The case files, supposedly containing materials connecting Baiduyev with terrorist activities, were partially classified, and he was not informed about the grounds of the decision taken⁵⁷.

Finally, it must be particularly emphasized, that the number of applicants for international protection rapidly dropped since 2017 (In 2015 there were 12325 applicants, in 2016 – 12322, in 2017 – 5078, in 2018 2- approx. 4100 and in the first quarter of 2019 – only 960 applicants). Apparently, it happened due to a continued policy of push-backs of the asylum seekers by Polish authorities at the eastern border.

Alternatives to detention

Polish law provides alternatives for detention and they are used in practice. However, in cases of asylum-seekers transferred to Poland under Dublin regulation detention is used routinely.

The HFHR experience shows that asylum seekers are often detained in order to secure their personal participation in the asylum procedure. However, in number of cases, detention is extended even when all activities where personal participation of the applicant was required

⁵⁶ Helsinki Foundation for Human Rights, ECtHR to communicate Poland applications of refugees denied entry in Terespol, available at: <http://www.hfhr.pl/en/ecthr-to-communicate-poland-applications-of-refugees-denied-entry-in-terespol/> (accessed: 11-06-2019).

⁵⁷ Amnesty International, Russia: Chechen refugee forcibly disappeared after being unlawfully deported from Poland, available at: <https://www.amnesty.org/en/latest/news/2018/09/russi-chechen-refugee-forcibly-disappeared-after-being-unlawfully-deported-from-poland/> (accessed: 11-06-2019).

(usually interviews) have already taken place. In this situation, their further detention is not justified. This tendency is confirmed by other NGOs.⁵⁸

The HFHR observation also shows that courts refuse to use alternative measures and decide to place asylum-seekers in guarded centres stating that they do not have permanent residence and financial resources. However, they do not consider the fact that every asylum-seeker has the right to reside in an open centre for asylum seekers and gets a small pocket allowance monthly. Thus, it is possible, for example, to oblige an asylum seeker to live in a centre and report to the Border Guard unit instead of ruling on detention. This practice has been confirmed by Ombudsman for Children⁵⁹.

The HFHR experience also shows that the courts issue orders to place a foreigner in a guarded centre for the longest period allowed by the law.

The problem with assessing the best interest of the child was directly raised by the European Court of Human Rights judgement in the aforementioned case *Bistieva and Others v. Poland*. Currently, there are several others cases communicated to the Polish authorities concerning unlawful detention of asylum seekers families with children: *Bilalova v. Poland* (23685/14), *A.B. and Other v. Poland* (joint applications 15845/15 56300/15), *MZ and Others v. Poland* (79752/16), *Nikoghosyan v. Poland* (14743/17) and *R.M. and Others v. Poland* (11247/18).

Access to legal assistance

In theory, foreigners placed in guarded centres may ask NGO lawyers for assistance. However, since the government has not allocated EU funds (Asylum Migration Integration Fund) to NGOs since 2016, the number of lawyers providing free legal assistance to migrants and refugees, including those in guarded centres, has significantly decreased. These funds constituted the basic source of financing free legal aid for refugees and migrants. It caused serious problems on the part of NGOs and currently the legal aid provided by them cannot be considered as sufficient.⁶⁰

The call for proposals for migrant and refugees' integration activities to be financed from the AMIF funds has been announced by the government in 2019. However, this call only partly concerns the provision of legal assistance.

ANTI-TERROR LAW

The Act on anti-terror activities of 10 June 2016 introduced a possibility to issue a return decision to a foreigner who is considered to be a person who may conduct terrorist or espionage activity. Such a decision is immediately enforceable.

Within return proceedings neither foreigner nor his lawyer are informed about the classified evidence and factual basis of the decision (they have no access to the classified case files -

⁵⁸ Association for Legal Intervention, ALP in practice, rights of the foreigners in Poland in 2018 r., available at: https://interwencjaprawna.pl/wp-content/uploads/2019/05/raport_sip_w_dzialaniu_2019R.pdf (accessed: 11-06-2019).

⁵⁹ Ombudsman for Children, Statement on children detention in guarded centers for foreigners, available at: <https://brpd.gov.pl/aktualnosci-wystapienia-generalne/orzekanie-o-umieszczeniu-maloletnich-cudzoziemcow-w-strzezonych> (accessed: 11-06-2019).

⁶⁰ More information: European Commission, Poland: NGOs providing integration support to immigrants face serious financial problems, 11/09/2017, available at: <https://ec.europa.eu/migrant-integration/news/poland-ngos-providing-integration-support-to-immigrants-face-serious-financial-problems> (accessed: 11-06-2019).

article 74 of the Code of Administrative Proceedings; decision contains no information about why the foreigner was considered as posing threat to security – article 6 of the Act on Foreigners). However, according to the authorities and national courts jurisprudence, all procedural guarantees are ensured in such proceedings as the court has access to all case materials (including secret evidence) and is obliged to assess it.

However, such provisions are incompatible with the EU law. According to the Court of Justice of the EU jurisprudence “the person concerned must be informed, in any event, of the essence of the grounds on which a decision (...) is based, as the necessary protection of State security cannot have the effect of denying the person concerned his right to be heard.”⁶¹.

Only in one judgment the Supreme Administrative Court decided that above mentioned standard should be applied instead of Polish national law⁶².

In September 2018, the HFHR lodged to the EU Commission an official complaint on the breach of the EU law in this respect by Poland⁶³.

COMBATING DOMESTIC VIOLENCE⁶⁴

Poland still has not implemented an effective domestic violence victims’ protection system. It is estimated, though, that the scale of domestic violence in Poland is significant – EU Agency’s for Fundamental Rights research shows that 19% of women in Poland experienced physical or sexual violence from an ex-partner or another person⁶⁵.

Polish criminal law does not provide for a separate crime of domestic violence. There is only a crime of physical or mental maltreatment of an immediate family member or another person being in a permanent or temporary relation of dependence to the perpetrator⁶⁶. A perpetrator of this crime is subject to deprivation of liberty for between 3 months to 5 years.

On 31 December 2018, Polish Ministry of Family, Labour and Social Policy proposed an amendment to the Act on combating domestic violence of 29 July 2005. The amendment included several controversial changes that in general weakened the protection of victims. In particular, it altered the definition of domestic abuse by stating that it should relate only to recurring acts of violence, and made the continuation of violation reporting procedure dependent on the victim’s consent. After a wave of criticism from civil society, Polish prime minister informed that the government would withdraw from the project.

Several issues can be raised concerning administration of justice in domestic violence cases. First, it should be noted that a relatively small amount of cases concludes with conviction of the perpetrators for the penalty of deprivation of liberty without the conditional suspension of its enforcement. Secondly, total number of penal measures of prohibition from approaching to

⁶¹ Helsinki Foundation for Human Rights: Charges? Secret. Right to defence in cases built on sealed evidence, available at: <https://www.hfhr.pl/en/charges-secret-right-to-defence-in-cases-built-on-sealed-evidence/> (accessed: 11-06-2019).

⁶² Supreme Administrative Court judgment of 6.02.2019, II OSK 3002/18

⁶³ Helsińska Fundacja Praw Człowieka, Helsińska Fundacja Praw Człowieka złożyła skargę do KE ws. przepisów przewidujących tajne materiały w sprawach cudzoziemskich, available at: <https://www.hfhr.pl/helsinska-fundacja-praw-czlowieka-zlozyla-skarge-do-ke-ws-przepisow-przewidujacych-tajne-materialy-w-sprawach-cudzoziemskich/> (accessed: 11-06-2019).

⁶⁴ See further: http://www.hfhr.pl/wp-content/uploads/2019/01/A.-K.-p.-Polsce-amicus_POL.pdf

⁶⁵ <https://fra.europa.eu/en/publication/2014/violence-against-women-eu-wide-survey-main-results-report>

⁶⁶ Article 207 of Polish Criminal Code of 6 June 1997.

certain individuals imposed on perpetrators in such cases is rather insignificant, too. Furthermore, the existing mechanisms for isolating perpetrators from victims – either by preventive measures taken in criminal proceedings, or by order to leave the premises in civil proceedings, did not prove to be effective.

Poland also lacks an efficacious system of support for victims of domestic abuse. The Ministry of Family, Labour and Social Policy estimates that even 75% of such persons did not apply for any kind of help⁶⁷. To make the matters worse, the Ministry of Justice refused to continue the subsidy for certain NGOs that deal with women's rights, making the protection of victims even weaker⁶⁸. Those organisations are also persecuted in another way – in October 2017, the police raided the offices of BABA Association and Centre for Women's Rights on the pretext that they were investigating a corruption case, seizing computers and documents⁶⁹.

ACCESS TO ABORTION

Poland has one of the strictest provisions concerning abortion in Europe – as a rule, abortion is prohibited. According to the law, pregnancy can only be terminated under one of the following three circumstances: 1) if it poses threat to woman's life or health; 2) if, according to a prenatal examination or other medical conditions, a grave and irreversible damage of the foetus or an incurable disease threatening its life is highly probable; 3) if there is a good reason to suspect that pregnancy is an effect of a prohibited act⁷⁰.

The number of admissible abortions in Poland is not significant, yet it has been rising for years. In 2002, the government reported only 153 cases of pregnancy termination⁷¹. In 2017, however, there was a total number of 1061 abortions, the vast majority of which (1039) were carried out due to the damage or disease of the foetus⁷². The exact number of procedures that take place in the domestic underground or as part of the "abortion tourism" remains elusive, yet it is estimated that it might include from 80,000 to even 190,000 cases per year⁷³.

⁶⁷ Miedzik M., Godlewska-Szurkova, Badania porównawcze oraz diagnoza skali występowania przemocy w rodzinie wśród osób dorosłych i dzieci, z podziałem na poszczególne formy przemocy wraz z opisem charakterystyki ofiar przemocy i sprawców, available at: https://www.gov.pl/documents/1048151/1060973/DPS_przemoc_Badania_por%C3%B3wnawcze_oraz_diagnoza_skali_wyst%C4%99powania_przemocy_w_rodzinie_w%C5%9Br%C3%B3d_os%C3%B3b_doros%C5%82ych_oraz_dzieci_z_podzia%C5%82em_na_poszczeg%C3%B3lne_formy_przemocy.pdf/a364db1f-0078-1ff7-97bd-61e173110ef3

⁶⁸ Ambroziak A., Chrzczonowicz M., Ziobro odmawia dotacji Centrum Praw Kobiet. Bo „zawęża pomoc tylko do kobiet”, available at: <https://oko.press/centrum-praw-kobiet-znow-srodkow-minister-dofinansuje-caritas/>

⁶⁹ Radziejewicz A., Policja w Centrum Praw Kobiet - zabrano komputery i dokumenty. "To jest odbierane jako nękanie", available at: <http://www.tokfm.pl/Tokfm/7,103454,22469416,policja-w-siedzibach-organizacji-kobiet-czy-to-jest-odbierane.html>

⁷⁰ Article 4a of the Act on planning the family, protection of human foetus and conditions of admissibility of pregnancy termination of 7 January 1993.

⁷¹ Szelewa D., Prawa reprodukcyjne w Europie i w Polsce: zakaz, kompromis, czy wybór, available at: <https://library.fes.de/pdf-files/bueros/warschau/14405.pdf>

⁷² Sejm, Sprawozdanie Rady Ministrów z wykonywania oraz o skutkach stosowania w 2017 r. ustawy z dnia 7 stycznia 1993 r. o planowaniu rodziny, ochronie płodu ludzkiego i warunkach dopuszczalności przerywania ciąży, available at: <http://orka.sejm.gov.pl/Druki8ka.nsf/0/6F82FBB36BAA945CC125839200434FC7/%24File/3185.pdf>

⁷³ Szelewa D., Prawa reprodukcyjne w Europie i w Polsce: zakaz, kompromis, czy wybór, available at: <https://library.fes.de/pdf-files/bueros/warschau/14405.pdf>

As of yet, Polish authorities have not introduced any effective and fast procedure guaranteeing women that abortion, when it is permitted by law, should be carried out. The existing appeals procedure against doctor's opinion or decision is too formalised and, thus, it does not ensure that termination of pregnancy will occur within the 12 week period prescribed by law. Moreover, no provision expressly imposes an obligation to indicate another doctor ready to carry out an abortion in the case when the whole medical personnel invokes the conscience clause.

In recent years, the European Court of Human Rights gave several rulings concerning access to legal abortion in Poland. In *R.R. v. Poland*⁷⁴ a woman did not obtain extra prenatal examination until she was 23 weeks pregnant, even though the USG revealed a serious risk of an incurable condition of the foetus. When she asked for termination of her pregnancy, the doctors replied that it was too late because the foetus is already capable of surviving outside her organism (which constitutes a legal condition precluding abortion, according to Polish provisions). The Court decided that Poland, by not providing adequate prenatal diagnostics to the applicant, has violated article 3 (prohibition of inhuman treatment) and article 8 (the right to private life) of the European Convention of Human Rights. Noting the lack of progress since 2014 in the adoption of the necessary reforms on the part of Polish government concerning the judgement, Committee of Ministers of the Council of Europe decided to transfer this (and another one) case under the enhanced procedure⁷⁵.

In *P. and S. v. Poland*⁷⁶, a 14-year old daughter and her mother lodged an application concerning a refusal to carry out an abortion. The daughter asked for termination of pregnancy that was caused by prohibited act (which was officially confirmed in writing by the public prosecutor). All doctors invoked the conscience clause and did not indicate any other who could provide the service, as well as misinformed the girl and her mother about the procedure. Having found the violation of articles 3, 5 and 8 of the Convention, the Court stressed, in particular, that states are obliged to organise their healthcare systems in a way that guarantees an effective access to legal abortion, regardless of the doctors' right to conscience clause. The Court also indicated how vital the states' informative duties concerning abortion were for exercising the right to private life. According to Committee of Ministers of the Council of Europe, Polish government has taken no steps to execute this judgement, particularly in the areas like procedures ensuring that women seeking lawful abortion are provided with adequate information, monitoring the use of the conscience clause and compliance with the referral obligation and ensuring appropriate treatment of minors seeking lawful abortion⁷⁷.

⁷⁴ Application 2761/04.

⁷⁵ Committee of Ministers, Council of Europe, *Tysi c and R.R. v. Poland* (Applications No. 5410/03, 27617/04), Supervision of the execution of the European Court's judgments https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680937560

⁷⁶ Application 57375/08.

⁷⁷ https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=090000168093755e