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UNIVERSAL PERIODIC REVIEW

Report of the Working Group on the Universal Periodic Review

Poland

Addendum

Responses of Poland to recommendations**

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RESPONSES OF POLAND TO RECOMMENDATIONS

1. The Government of Poland welcomes the recommendations made in the course of its Universal Periodic Review on 14 April 2008. It has given to them careful consideration and its responses are as follows:

Recommendations 1 and 2

2. Poland as one of the initiators to elaborate the Convention on the Rights of the Child, attaches great importance to the compliance by national legislation with the provisions of the Convention, in particular with regard to the prevention of violence against children. Polish legal system penalizes any form of physical violence against children. Any such offence against a child is subject to prosecution *ex officio*. The Family and Guardianship Code envisages the institution of “reprimanding a juvenile” as a form of parental authority. However, that institution must not be seen as consent to apply corporal punishment, it should be interpreted jointly with the definition of parental authority contained in the said Code, which describes that authority as actions solely for the good of the child. The government has initiated the elaboration of appropriate amendments to the Family and Guardianship Code. Amended article 95 explicitly stipulates that in the exercise of parental duties the child’s dignity and rights should be respected. One should also mention the Law of 29 July 2005 on counteracting domestic violence, which one of the main objectives is to ensure protection of children from physical and mental violence. The *National Program for Counteracting Domestic Violence in the Years 2006-2016* determines the tasks of the national and local authorities in this area.

Recommendation 3

3. Polish law is compatible with the provisions of the Convention on the Rights of the Child, including those concerning juvenile justice. However, the concept of “criminal responsibility of juveniles” does not exist in the Polish legal system. The law on proceedings involving juveniles stipulates that courts competent in family matters may apply reformative measures to juveniles aged 13 to 17 who commit a punishable offense, and educational measures to juveniles under 17 who display symptoms of demoralization. There is no lower age limit to the application of educational measures, since these measures do not involve detention (responsible supervision by parents, supervision by court probation officers, etc.) and are meant to help parents in raising their children and prevent their demoralization. Thus, there are no grounds to postulate that educational measures should not be applied to children under 13, since such measures are not criminal in nature and are designed to have pedagogical and socio-therapeutic effect.

Recommendation 4

4. Comparative analysis of the provisions of the *International Convention for the Protection of All Persons from Enforced Disappearance* and of Polish legal regulations indicates that Polish law does not leave unpunished the behavior covered by the definition of enforced disappearance contained in the Convention. The Polish legal system provides for appropriate punishment for such offenses and establishes adequate standards of their prevention. Poland is also a party to a number of conventions that also address the issue of enforced disappearance (e.g. *International Covenant on Civil and Political Rights*, *Convention against Torture and Other Cruel, Inhuman*

or *Degrading Treatment or Punishment* and the *Facultative Protocol to the Convention*). Thus, the ratification of the Convention would not extend the scope of protection against enforced disappearances in Poland. However, we are ready to consider ratifying the Convention, if it contributes to the enhancement of the international standards in this area.

Recommendation 5

5. Poland will continue to exchange good practices and information in this regard. So far such exchange has been established with i.e. Spain, Ireland, France, the United Kingdom and the United States of America.

Recommendations 6, 14, 19 and 27

6. Poland envisages the adoption of the draft law on equal treatment by the end of 2008. It will regulate in a comprehensive manner the issues relating to equal treatment of persons without regard to sex, race, ethnic origin, religion or belief, political views, disability, age, sexual orientation, or marital and family status. The catalog of the premises of discrimination, specified in the law, is an open one, since under Article 32.2 of the Polish Constitution “No one shall be discriminated in political, social or economic life for any reason”. The law complements the relevant legal solutions already in force. The draft law on equal treatment envisages the responsibility of two institutions for matters related to equal treatment: the Commissioner for Civil Rights (Ombudsman) and the cabinet minister competent for family matters and equal treatment. The scope of activity of the Minister and Ombudsman will cover all types of discrimination. At present, the Ministry of Labor and Social Policy is in charge of the coordination of undertakings related to the status of women and the family in society, as well as with combating all forms of discrimination. These tasks have been transmitted to the Ministry from the Government Plenipotentiary for Equal Status of Women and Men. The Ministry has been notified to the European Commission as the organ competent for equal treatment, for the purposes specified in respective EU directives. Furthermore, the Government appointed on 30 April 2008 the Plenipotentiary for Equal Treatment, with the rank of secretary of state in the Office of the Prime Minister. The Plenipotentiary's obligations complement those of other ministers in this area. He/she is responsible *inter alia* for government policy on equal treatment and analyses the impact of legal regulations on issues relating to equal treatment.

Recommendations 7, 8, 9 and 10

7. The Government of Poland has undertaken a number of actions aimed at tackling the problem of overcrowding and conditions in prisons. The government started implementing the “Program to secure additional 17.000 places in prisons in the years 2006-2009”. Furthermore, the decision introducing the “Program of Modernization of the Prison Service in the Years 2009-2012” will be adopted by the government soon. It is expected that the requirement of appropriate space for each inmate will be fulfilled by 2009. In addition to the measures designed to increase the number of prison places, Poland will continue efforts to improve the conditions of life in the penitentiaries. Meanwhile, the effects of overcrowding are being alleviated through a wide range of programs addressed to inmates, including collective rehabilitation, therapy, schooling and vocational training, work, cultural and sports events. The Polish Code of Penal Proceedings stipulates that total duration of detention on remand cannot exceed 12 months at the stage of

preparatory proceedings, and two years – before sentencing by the court of the first instance. The extension of those periods of detention on remand may only take place under specific conditions determined in the Code. The Ministry of Justice has prepared draft amendment to the Code of Penal Proceedings (currently under consultations within the government), which provides for significant changes in the catalogue of these conditions.

Recommendation 11

8. Gender mainstreaming is consistently implemented by the Ministry of Labor and Social Policy. It also implies planning, monitoring and valuation of all undertakings designed to promote equal status. One of the instruments serving the implementation of the principles of gender mainstreaming is also the system of monitoring the equal treatment of men and women in Poland.

Recommendations 12 and 23

9. Under the Polish law incitement to hatred, insulting of a person for reason of his/her national, ethnic, racial or religious affiliation, or for reason of being non-religious, are punished (Articles 256 and 257 of the Penal Code). Offenses involving hatred or intolerance, for reasons other than cited above, including sexual orientation, are treated as common crimes, such as insult, violation of corporal integrity, violence, injury and punishable threats. The National Prosecutor's Office coordinates actions of prosecutors with regard to violations of freedoms or incitement to hatred for national, ethnic, racial or religious reasons. This takes place, *inter alia*, within the framework of the "National Program for Counteracting Racial Discrimination, Xenophobia and the Related Intolerance for the Years 2004-2009". Offenses committed for racist or xenophobic reasons are subject to scrutiny by superior-level organs, while the files of cases in which preparatory proceedings were denied or terminated are examined by appeal prosecutor's offices to determine the viability of such decisions. Information on the outcome of these examinations is then analyzed by the National Prosecutor's Office and the results of such analysis are conveyed to all prosecutor's offices nationwide to ensure uniform methods of conducting preparatory proceedings in such cases. Any procedural errors are discussed during training sessions for prosecutors. This practice proves to be effective.

Recommendation 13

10. The proposal to punish the promotion of homosexuality in educational establishments was put forward in 2007, during the preparation of the amendment to the law on the system of education. There was no follow-up to that proposal.

Recommendation 15

11. The Ministry of Justice has prepared draft amendment to the Penal Code with regard to the offense of defamation. It envisages in particular that a specific type of such offence consisting in the use of the mass media will not be punished anymore.

Recommendation 16

12. Since the Human Rights Committee has repeatedly noted the need for instituting a permanent procedure for the implementation of the Committee's opinions issued in response to individual complaints against Poland submitted pursuant to the First Facultative Protocol to the International Covenant on Civil and Political Rights, the Government of the Republic of Poland affirms, that the opinions of the Committee and the rulings of other international human rights bodies are implemented on an on-going basis, despite the absence of formal procedures.

Recommendation 17

13. The freedom of expression and association are enshrined in the Polish Constitution and all public institutions are obliged to respect it. In this regard, groups campaigning for equality and against discrimination based on sexual orientation are protected by the law enforcement institutions pursuant to the Polish law. Furthermore, to enhance the freedoms guaranteed by the Constitution, the Ministry of the Interior and Administration is preparing the amendment to the law on public assemblies, designed to ensure that the refusal by municipal authority to allow a public assembly can be heard on appeal before the planned date of the assembly.

Recommendation 18

14. The tasks resulting from the law on counteracting domestic violence are implemented at every administration level within the framework of the National Program of Counteracting Domestic Violence for the Years 2006-2016.

Recommendation 20

15. Information about the alleged existence of secret detention centers in Poland, where persons suspected of terrorist activity were supposed to be kept have been an object of numerous press releases since the autumn 2005. Given the seriousness of the allegations, the competent authorities acted immediately in order to thoroughly investigate the matter. The outcome of these enquire was presented in an official statement released on 10 November 2005 wherein it was unequivocally stated that: "the Polish Government strongly denies the speculation occasionally appearing in the media as to the existence of secret prisons on the territory of the Republic of Poland, supposedly used for the detention of foreigners suspected of terrorism. There are no such prisons in Poland and there are no prisoners detained in the contravention of the laws and international conventions, to which Poland is a party". To address the issue the Parliamentary Committee for Secret Services held also special session on 21 December 2005, where the Minister – Co-ordinator of Secret Services presented appropriate information to the MPs. The Committee did not find any violation of the binding law and international conventions ratified by Poland and therefore did not initiate any legal proceedings to examine the case.

Recommendation 21

16. Polish authorities are attentive to all opinions formulated by international legal and political bodies concerning lustration proceedings before Polish courts. It should be noted that the lustration laws were reviewed by the Constitutional Tribunal, in consequence of which the regulations were brought in line with the constitutional principles of protection of human rights.

Recommendation 22

17. Two multi-module projects are planned in 2008 under Operational Program Human Capital of the European Social Fund. The first project is focused on reconciling the vocational and family roles of men and women. It will involve research on the family roles adopted by men and women (division of household chores, attitudes to work etc.) for the purpose of charting changes in social trends, including those stimulated in the framework of the Operational Program Human Capital. The second project will be designed to stimulate women's socio-economic activity at the local and regional level.

Recommendation 23

18. The Ministry of Labour and Social Policy is responsible for implementing the strategy of the European Year of Equal Opportunity for All. The activities under the strategy include media campaigns, courses for trainers, integration meetings, elaboration of textbooks and teaching methods. Financial support has been provided for NGOs, social partners, schools and universities which represent the interests of all discriminated social groups, with particular reference to discrimination for reasons of sex, race ethnic or national origin, religion or belief, political views, disability, age or sexual orientation. New programs promoting diversity and enhancing anti-discrimination attitudes and legal awareness are now developed.

Recommendation 24

19. Polish law guarantees most of the rights envisaged in the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. To ratify the Convention it would be necessary to modify regulations concerning migrant workers regularly employed in Poland and to introduce fundamental modifications concerning irregular migrant workers. It should be noted, however, that Polish law fully guarantees the basic human rights of all migrant workers and members of their families (regardless of their legal status) – including rights guaranteed under the Convention.

Recommendation 25

20. The use of methods banned under the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* is not permitted in Poland. The Polish Penal Code envisages the penalty of between one and ten years imprisonment for the use of force, illegal threats or other form of physical or mental cruelty by a public official or person acting in his/her name in order to obtain specific testimony, explanations, information or statements. Furthermore, the Penal Code penalizes physical or mental cruelty against a person legally deprived of liberty, with punishment also envisaged for public officials who allow the commitment of such acts in dereliction of their duty. Any other abuse of force by public officials during the fulfillment of their duties, or in dereliction of duty, reported by the injured party or otherwise disclosed, is investigated in each instance through preparatory proceedings, being treated as autonomous crimes of abuse of authority or dereliction of duty, or cumulatively with other applicable offenses. Furthermore, it should be pointed out that Poland is a party to various international treaties dealing with prosecution of torture. The definitions of torture contained in

these conventions constitute part of the Polish legal order and are applied directly by Polish courts.

Recommendation 26

21. Poland signed the Convention on March 30 2007. However, before a decision is taken on ratification, a detailed examination of domestic legislation will be conducted to identify possible amendments to existing laws to ensure full compatibility with the Convention and to assess their financial, economic and social consequences. The review will begin in mid-2008 and, due to the complexity of the subject matter covered by the Convention, is expected to last between 9 and 12 months. A preliminary analysis of domestic legislation, conducted prior to the signing of the Convention, demonstrated that most of its provisions are already incorporated in Polish law.

Recommendation 28

22. The National Training Centre of Staff for Common Courts and Prosecutor's Offices conducts training on human rights and counteracting discrimination. In 2008, further training courses for prosecutors will be devoted to counteracting discrimination, with special reference to European Union law against discrimination. Furthermore, Human Rights Advisers to Voivodship (province) Police commanders will undergo training in October 2008, in the framework of the ODIHR law enforcement officer program on combating hatred-related offenses, which Poland joined in October 2006. The project, involving Polish and foreign experts on hatred-related offenses, will involve periodic courses using "training-the-trainer" method.

Recommendation 29

23. The Government of Poland is determined to continue the activities of Human Rights Advisers attached to the Chief Commander of Police and Voivodship Commanders. At the same time, the Government is ready to exchange experience with other countries on the activity of the Advisers and the relevant good practices.
