

MA Eva Dawidziuk
The Executive Criminal Law Department
The Office of the Commissioner for Civil Rights Protection
Poland

Prevention of torture

Ladies and Gentlemen,

I have the honor to represent the Office of the Commissioner for Civil Rights Protection of the Republic of Poland. In my speech I will try to show the efforts that are taken by Poland in ensuring effective and full implementation of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol.

Poland has ratified the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 14th September 2005. The Protocol entered into force on 22nd June 2006 after twentieth instrument of ratification or accession had been deposited with the Secretary-General of the United Nations. The objective of this Protocol is to strengthen anti-torture prevention measures by establishing a system of regular visits in the places where people are deprived of their liberty.

Taking the topic of our discussion into consideration, I would like to answer for the following questions:

- to what extent Poland has prohibited torture in Polish criminal law ;
- what kind of mechanisms exist in Poland to ensure that allegations of torture and ill-treatment are investigated in a transparent and impartial manner;
- how is Poland ensuring in practice that torture prevention is incorporated in training for law enforcement personnel, judiciary and detention center staff;
- what steps are taken in Poland to establish the national preventive mechanism.

I. The prohibition of torture in polish legislation.

First of all, in Poland the prevention of torture is guaranteed on constitutional level. The Article 40 of the Constitution of the Republic of Poland states that no one can be subjected to torture or cruel, inhuman or degrading treatment or punishment. Moreover, Poland has enacted legislation to address issues relating to torture and ill-treatment. In accordance with the provisions of paragraph 1 of the Article 4 of the Polish Criminal Executive Code, it is prohibited to use torture, inhuman or degrading treatment or punishment towards detainees.

The Committee against Torture in its fourth periodic report of Poland has recommended enacting a specific offence of torture in the Polish Penal Code, as defined in Article 1 of the Convention against Torture. However, Poland has ratified or acceded to a number of international human rights conventions and protocols. One of them is the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The definition of torture is contained in the Article 1 of it, according to which torture means any “act by which severe pain of suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions”.

Because ratified international agreements are the sources of universally binding law of the Republic of Poland, such definition of torture is the part of polish legal order and it is not necessary to incorporate it to the Polish Penal Code. This fact is underlined by the Article 91 of Polish Constitution which indicates that after promulgation thereof in the Journal of Laws of the Republic of Poland, a ratified international agreement shall constitute part of the domestic legal order and shall be applied directly, unless its application depends on the enactment of a statute. Moreover, an international agreement ratified upon prior consent granted by statute shall have precedence over statutes if such an agreement cannot be reconciled with the provisions of such statutes.

Furthermore, it must be indicated that Poland has been taking the ongoing efforts to ensure better protection of human rights, including the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment. This statement is supported by the fact that Poland has ratified or acceded recently:

- The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ;
- The Optional Protocol to the Convention of the Rights of the Child on the involvement of children in armed conflict ;
- The Optional Protocol to the Convention of the Rights of the Child on the sale of children, child prostitution and child pornography;
- The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women;
- The Protocol to the Convention against Transnational Organized Crime to prevent, suppress and punish trafficking in persons, especially women and children.

II. What kind of mechanisms exist in Poland to ensure that allegations of torture and ill-treatment are investigated in a transparent and impartial manner?

Poland has judicial complaints mechanism that deals with cases related to torture. The acts connected with torture and other cruel, inhuman or degrading treatment or punishment, ill-treatment of persons deprived of their liberty as well as ill-treatment aimed at obtaining a statement and the use of force on witnesses are regarded as crimes. It is directed in the Articles 245-247 of the Polish Penal Code. In all those cases the proceedings are initiated on the base of the complaint made to the police or the public prosecution. Measures can be also taken on the prosecution's own initiative.

III. How is Poland ensuring in practice that torture prevention is incorporated in training for law enforcement personnel, judiciary and detention center staff?

There is a wide range of educational programs in Poland for law enforcement officials, prison's staff, border guards as well as medical personnel currently in place.

First of all, there are training programs for judiciary related to human rights. The highest standard of education is provided by the National Training Center for the Personnel of Common Courts and Prosecution Offices which launched its activity on 1st September 2006.

Also issues connected with human rights can be found in programs of all kinds of Prison Service schools and preparatory courses, especially in the Central Training Center of Prison Service in Kalisz. Besides specialist trainings are being organized for the Board Guard officers and Police officers.

However, as was directed by the Committee against Torture, Poland should develop and implement a methodology to assess the effectiveness and impact of such training on the reduction of cases of torture, violence and ill-treatment.

IV. The establishment of the national preventive mechanism in Poland.

On the basis of the Article 17 of the Optional Protocol (hereinafter referred to as the Protocol) each State Party shall establish independent national preventive mechanism for the prevention of torture at the latest one year after the entry into force of the Optional Protocol. Taking into consideration that the States Parties shall guarantee the functional independence of this mechanism and the independence of its personnel, it has been decided that the national preventive mechanism can be performed by the Office of the Commissioner for Civil Rights Protection. The Article 210 of the Constitution of the Republic of Poland underlines that the Commissioner meets above criteria. It states that the Commissioner is independent in its activities of other State organs. Moreover, the analyze of the Protocol and the Paris Principles shows that the organization and tasks of the national preventive mechanism, which are described in those documents, should ensure constitutional sovereignty and independence of the Commissioner from other State organs and its accountability only to the Sejm in accordance with principles specified by statute.

Taking those all arguments into consideration, Polish Ombudsman Prof. Andrzej Zoll supported the idea of the implementation of tasks of the national preventive mechanism within the Office of the Commissioner for Civil Rights Protection as soon as in 2003. As was decided, the national preventive mechanism can be concentrated in the Executive Criminal Law Department by virtue of its statutory tasks.

The Executive Criminal Law Department is eligible to all the things stipulated in Article 20 of the Protocol. The Department has the power to examine regularly the treatment of persons deprived of their liberty in places of detention and make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of such people and to prevent torture and other cruel, inhuman or degrading treatment or punishment. Simultaneously, it has the power to submit proposals and observations concerning existing or draft legislation. It has access to all information concerning the number of persons deprived of their liberty, the number of such places and their location. In accordance with data provided on 31st July 2007, there were approximately 90 thousand inmates in 155 pre-trial detention centers and penitentiaries, 300 thousand people a year in 60 police detention centers and 350 thousand a year in 50 detoxification centers. There were also approximately 259 thousand people a year in 48 sobering-up centers.

Furthermore, the Executive Criminal Law Department has access to all information referring to the treatment of detainees and conditions of detention, access to all places of detention, their installations and facilities. What is important there is also the opportunity to have private interviews with persons deprived of their liberty without any witnesses. And the last but not least the Department has the liberty to choose the places to visit and people to interview.

The concentration of the national preventive mechanism in the Executive Criminal Law Department means that it would also coordinate the actions undertaken by other Departments of the Office of the Commissioner for Civil Rights Protection. Those are Departments to which tasks belong examining regularly the treatment of persons deprived of their liberty. The range of their activities would involve:

- visiting army detention centers, guarded centers for aliens, deportation detention centers, Border Guard detention centers;
- the protection of rights of mentally ill people who are undergone compulsory treatment, also on the base of the protective measure ordered by a court.

What is worth underlining, the Commissioner for Civil Rights Protection has taken specific steps to establish the national preventive mechanism in Poland. The calculation of the costs was prepared and the consulting meetings were organized. The employees of the Office of the Commissioner took part in that.

On 26th September 2005 there was the meeting in Warsaw with Mr. Mark Thomson, Secretary General of the Association for the Prevention of Torture. A few months later, on 2nd February 2006 the meeting took place in Geneva and it was organized by the APT and the OHCHR. After that there was a discussing panel in Warsaw on 5th October 2006. It referred to the creation of the national preventive mechanism and was organized by the APT and the OECD. Besides in September 2006 the Commissioner for Civil Rights Protection of the Republic of Poland was the host of the regional workshop on torture prevention which took place in Warsaw. Moreover, from March to October 2006 the employee of the Office of the Commissioner for Civil Rights Protection took part in the training organized by the APT and the OHCHR. It referred to the prevention of torture and was directed to the employees of state's institutions dealing with human rights in Europe and Central Asia.

Taking those all things into consideration, I can make a statement that Poland has been taking the ongoing efforts to create the national preventive mechanism and starts its activity.

Thank you for your attention!