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COMMENTS TO THE LIST OF ISSUES PRIOR TO REPORTING

**Submitted by the Helsinki Foundation of Human Rights
for consideration of the UN Human Rights Committee in reference to the session no 111.**

Warsaw, 16 June 2014

1. International law

Reference:

Article 2.2 of ICCPR

Current situation:

Poland has important shortcomings dealing with ratification of international legal measures which are aimed at increasing human rights protections. Those deficiencies concern both international level (Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, 2008; Optional Protocol to the Convention on the Rights of Persons with Disabilities, 2006; Convention relating to the status of Stateless Persons, 1954) and regional level (Protocols nos. 12, 14bis and 15 to the European Convention on Human Rights; European Social Charter – revised, 1996; European Convention on the Compensation of Victims of Violent Crimes, 1983; Convention for the protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine, 1997 and its additional protocols; European Convention on Nationality 1997, Convention on Contact concerning Children 2003, Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, 2007; Council of Europe Convention on Access to Official Documents, 2009), including EU (EU Charter of Fundamental Rights).

Questions for the government:

What actions does the government plan to undertake to ratify the above-mentioned legal acts?

2. Hate crimes

Reference:

Article 2 of ICCPR

1648/2014

Current situation:

In the area of hate crime, two problems seem particularly visible: a low number of successful investigations of hate crimes and a lack of regulation of hate crimes based on sexual orientation and gender identity.

While the number of cases concerning hate crimes is constantly on the rise (in 2012 – 473 cases; in 2013 – 835), the percentage of cases in which perpetrators are charged has been falling (in 2007 – 40% of cases; 2011 – 17%; 2012 – 26%; 2013 – 18%). Even though discontinuations of proceedings due to their low social harm have mostly been eliminated, there has been a visible surge in the number of cases discontinued because the perpetrators could not be found.¹ This may be related to the increased incidence of hate speech, including hate speech on the Internet.

There have already been 3 draft laws on amendments to the Penal Code proposing to include sexual orientation and gender identity among discriminatory motivations. Despite the government's suggestion that the works on the drafts be merged and continued, there have been no developments in this area.

Questions for the government:

How will the government try to tackle the discrepancy between the growing number of cases of hate crimes and falling number of persons charged in those cases?

Are there steps taken to improve the efficiency of prosecutorial and police proceedings? Is training on hate crimes offered to prosecutors and police officers evaluated?

Does the government plan to take legislative steps in order to extend the catalogue of discriminatory motivations of hate crimes to include sexual identity and sexual orientation?

3. Law on Equal Treatment

Reference:

Article 2 of ICCPR

Current situation:

Despite the recommendation in the Human Rights Committee's concluding observations of 15 November 2010, the Law on Equal Treatment is still not exhaustive, and offers different scopes of protection to different groups of vulnerable persons.

Questions for the government:

Does the government plan to amend the Law on Equal Treatment in order to unify the extent of protection afforded to various vulnerable groups?

¹ Prosecutor General's Office, *Extract from the Prosecutor General's report concerning proceedings, conducted in 2013 by organizational units of the prosecution, into crimes motivated by racist or xenophobic prejudice (i.e. registered cases, cases initiated in this period, or continued in this period but initiated or registered in earlier periods) based on data provided by appellate prosecutors, 2013.*

4. Business and human rights

Reference:

Article 2 of ICCPR

Current situation:

In resolution no. 17/4 of 16 June 2011 the Human Rights Council adopted the United Nations Guiding Principles on Business and Human Rights. Since that time, there has been no attempts in Poland to implement the UN Guiding Principles.

From this time in Poland, there are no attempts in the field of implementing in UN Guiding Principles on Business and Human Rights.

Questions for the government:

Does the government plan to implement the UN Guiding Principles on Business and Human Rights into its legal system?

5. Domestic violence

Reference:

Article 3 of ICCPR

Current situation:

Despite many positive changes introduced in the Law on Domestic Violence Prevention, the system is not fully effective. In 2013, the Supreme Audit Chamber published a very critical report on public administration's actions in the field of domestic violence. The report highlighted a series of problems in the system of domestic violence prevention, including the lack of financial resources (e.g. for special support centres for victims of domestic violence, or for interdisciplinary teams of professionals – police officers, medical and educational professionals, social workers etc. – who, in addition to their other responsibilities, are directly engaged in the work with members of families afflicted by this problem).

Questions for the government:

What actions has the government undertaken in order to solve the problems emphasised by the Supreme Audit Chamber in its report?

Will additional funds be assigned to the system of domestic violence prevention in order to make it effective?

6. Unmanned combat Aerial Vehicle

Reference:

Article 6 of ICCPR

Current situation:

In the letter of 31 August 2012 (ref. 3403/DPZ), Ministry of Defence informed that Polish government is planning to acquire drones (unmanned aerial vehicles), including combat drones. They might be used for the purposes of, inter alia, cooperation with alliance forces. Introduction of drones into Polish army will be preceded by organisation of trainings and analysis. In April 2014 media reported, however, that due to geo-political situation

concerning Ukraine, Polish government is seeking to acquire them two years earlier than anticipated. This has been stipulated as a priority for Polish army.

However, until now there have been no plans to introduce special regulations regarding the use of combat drones. This may raise number of concerns, especially when taking into consideration the extensive use of armed drones overseas by the United States.

Questions for the government:

What are the legal basis under which Poland is planning to acquire drones and operate combat drones both at the Polish territory and overseas?

7. Abuse of violence by the Police

Reference:

Article 7 of ICCPR

Current situation:

The issue of excessive use of force by law enforcement officials has been already raised by the Human Rights Committee in its concluding observations delivered in 2010. Additionally, the abuse of power by police officers was underlined by other international bodies, in particular by the European Committee for the Prevention of Torture and Inhumane and Degrading Treatment or Punishment (CPT) in its report of 2009 and by the Committee Against Torture in its recommendations of 2013. The problem of excessive use of force by Police officers, however, has not been solved in Poland yet. According to statistics, criminal proceedings concerning the complaints against police officers are rarely conducted and most of them are discontinued by law enforcement agencies. Thus, mechanisms such as criminal or disciplinary proceedings aimed at punishing the police officers who abuse violence and ultimately at elimination of such cases, do not fulfill their role.

For instance, the case of K.J. and K.W. indicated the above-mentioned problem. During the interrogation at the District Police Headquarters in Lidzbark Warmiński they were seriously beaten in order to extort testimony. The police officers forced them to kneel on chairs with their faces to a wall and beat them with batons on their bare feet. K.J. also declared that he was slapped in the face several times. Since the investigation was discontinued, K.J. and K.W. submitted application to the European Court of Human Rights.

Questions for the government:

How does the government intend to eradicate cases of police misconduct?

Has the government adopted any plans for amending the police disciplinary proceedings which would increase the effectiveness of these proceedings?

8. Coercive measures

Reference:

Article 7 of ICCPR

Current situation:

On 5 June 2013 a new law on usage of coercive measures by the public authorities entered into force. However, as mentioned in section 7 above, there are still cases of abuse of power

e.g. by the police officers during the interrogation of a suspect. The law of 2013 imposed an obligation on the government to prepare for the Parliament an information about the practice of new law 12 months after its entrance into force.

Questions for the government:

Could the government present the evaluation of practice regarding the new law on usage of coercive measures and firearms?

9. Healthcare service for convicts in Poland

Reference:

Article 7 of ICCPR

Current situation:

Prison healthcare service in Poland suffer from deep problems and require immediate remedies. It has to deal with enormous problems related in particular to: insufficient numbers of medical personnel, lack of investment in the infrastructure of facilities, overcrowding of prisons which increases the population of inmates and generates high medical expenses related to the provision of medical services, lack of funds for medicines and medical services. It should be also noted that during each visit in Poland the delegation of the European Committee for Prevention of Torture visited prison hospitals. In each of the hospitals it pointed unsatisfactory infrastructure, living areas designated for inmates and the need to improve living conditions, lack of therapeutic classes and basing the therapy only on pharmacological treatment.

Questions for the government:

Does the government plan to take legislative steps in order to conduct comprehensive reform of the healthcare system in penitentiary units?

Are there steps taken to improve the efficiency of healthcare services for convicts?

Will additional funds be assigned to the system of healthcare in penitentiary units?

10. Offense of rape

Reference:

Article 2, 7, 17 of ICCPR

Current situation:

In 2014 an amendment of the Penal Code which introduced the model of *ex officio* indictment of rape cases came into force. However, this reform was not accompanied by introduction of additional mechanisms targeted at minimization of secondary victimisation. It is crucial to ensure a proper treatment of victims of rape by law enforcement officials. The government should implement a legal and policy framework providing a detailed procedure of treatment of rape victims during the investigation, especially during pre-trial victims' examination conducted by the police or public prosecutor. Also, the HFHR underlines that ensuring the right to fair and human treatment of rape victims requires the wide range of educational programmes for law enforcement officials.

Questions for the government:

Does the government plan to introduce a legal and political framework in order to ensure the rights of rape victims?

Does the government plan to organize the educational programmes for law enforcement officials devoted to treatment of rape victims?

11. Reproductive rights

Reference:

Article 6, 7, 17 of ICCPR

Current situation:

There is an overall and systematic problem of access to emergency contraception and legal abortion in Poland. In the recent case *P. and S. v. Poland* (application no. 57375/08), the European Court of Human Rights found an infringement of Article 3 ECHR (as well as Articles 5.1 and 8 ECHR) in the context of rights of women-victims of sexual violence. In the context of art. 3 the ECHR stated that having regard to the circumstances of a case seen as a whole P. was treated by the authorities in a deplorable manner and that her suffering reached a minimum threshold of severity under article 3 of the Convention. According to the Court, the government's approach did not meet the requirements inherent in the States' positive obligations to establish and apply effectively a criminal-law system punishing all forms of sexual abuse. The facts of the case need to be adduced to portray the magnitude and quality of the problems to be addressed by Polish authorities.

The conscience clause is misused by the doctors and there is still a lack of effective mechanisms for review of doctors' decisions. In 2007 in a case *Tysi c v. Poland* (case no. 5410/03) the European Court of Human Rights found that the Polish legal framework did not provide an effective mechanism to resolve disagreements as to the availability or legality of therapeutic termination in any case, either between a pregnant woman and doctors or between medical staff themselves. The present regulations of the Act on Patients' Rights introduced in the wake of the judgment in *Tysi c v. Poland* do not provide effective measures to challenge the doctor's decision before the Medical Board. This procedure fails to answer the needs of women seeking legal abortion. It should be noted that as far as access to abortion is concerned, a 30-day time limit for the Medical Board to review the doctor's decision is excessive because, in most of the cases, a pregnancy may be legally terminated only during its first 12 weeks. Moreover, the HFHR observes that since the duty to submit all relevant medical documents and provide the legal basis of the objection is imposed on the patient, patients may be discouraged from using the review procedure.

As a conclusion, the HFHR underlines that the review mechanism remains ineffective for women and girls seeking legal abortion and places them in the most humiliating position. Moreover, this issue might become even more important, taking into consideration the currently ongoing debate in Poland regarding the conscience clause. In May 2014 more than 3 thousand Polish doctors has signed so called "declaration of faith" by which they underlined their attachment to catholic values.

Questions for the government:

Does the government plan to take steps in order to ensure effective access to safe, legal abortions where they are legal under the Polish law?

Does the government plan to amend the appeal mechanism provided by Patient Rights Act 2008?

Does the government plan to take steps in order to change the practice of misuse of the conscience clause?

12. Human trafficking and slavery

Reference:

Article 8 of ICCPR

Current situation:

In last concluding observations, issued in 2010, the Human Rights Committee recommended undertaking measures aimed to protect victims of human trafficking. However, explicit guarantees that victims of trafficking will not be prosecuted or detained are still missing from Polish law.

Questions for the government:

Is the government planning to further amend the Criminal Code for the purpose of fully protecting victims of trafficking?

Are there any plans to update the existing algorithms of actions in cases of human trafficking, in particular when victims are minors?

13. Pre-trial detention

Reference:

Article 9 of the ICCPR

Current situation:

Many positive changes were introduced to the Polish Code of Criminal Procedure concerning the use of pre-trial detention (eg. regulations introducing unlimited access to case files of preparatory proceedings that substantiate application of pre-trial detention, narrowing down the justification for extension of pre-trial detention, specifying conditions of use of pre-trial detention). Despite these changes, the rule that the pre-trial detention shall be used as an exception still is not always applied in practice.

In many cases application of non-custodial alternatives instead of pre-trial detention is not considered. The courts examining the prosecutor's motions for application or extension of pre-trial detentions are not willing to use the alternatives. The reason for that is probably the fact that the court control of ordering the pre-trial detention is often automatic and superficial. Additionally, the preventive measures figures differ enormously from appellation to appellation. These divergences are attributable not only to different characterization of the appellation areas but also to inconsistent practice of Polish courts. According to courts' claims, pre-trial detentions is the only preventive measure that can ensure the correct course of criminal proceedings.

Questions for the government:

What steps are considered to popularize the use of non-custodial alternatives to pre-trial detention?

Does the government plan to take legislative steps in order to enhance effectiveness of non-custodial preventive measures?

How will the government try to tackle the discrepancy between the courts in application of less restrictive measures?

Are there steps taken to improve the efficiency of the court control of ordering the pre-trial detention?

14. Detention of migrant children

Reference:

Article 9 of ICCPR

Current situation:

Irregular migrant children and asylum seeking children can be placed in detention centres. Only unaccompanied asylum seekers and unaccompanied irregular migrants under age of 15 are explicitly excluded from detention. However, most of migrant children in Poland stay with families so the whole families are placed in detention centres. Currently, children constitute approximately one fourth of all the foreigners placed in detention centres in Poland.

Right to education of children staying in detention centres is not properly implemented.

Questions for the government:

Does the government plan to end the detention of children for migration-related purposes?

15. Legal aid in criminal proceedings

Reference:

Article 9, 14 of the ICCPR

Current situation:

Access to legal aid at the stage of arrest is not well developed in Poland. Arresting authorities use the absence of provisions regulating legal aid during arrest and despite their duty to instruct the person as to his/her right to contact an attorney, they often impede the contact with a chosen counsel. Binding law also does not regulate immediate appointment of counsels free of charge by the court where the request of the person is filed by the prosecutor.

In the case of mandatory defense, access to legal aid depends on how promptly the prosecutor lodges a motion for appointment of a defense counsel free of charge and also is not instant. This means that even if the prosecutor files the above-mentioned requests to the court at an early stage of the proceedings, in practice, the appointment will, at the earliest, be possible after the early pre-trial detention hearings. Lack of access to a lawyer during questioning by the arresting authority at the initial stage of criminal proceedings often results in self-incriminating confessions.

Moreover, the law still does not regulate the legal position of experts in criminal proceedings, whose opinions play important role during the judicial proceedings. New procedure will allow for “private” opinions, without guaranteeing financial aid for accused who will not afford ordering such expert opinions. It is commonly argued, that a complete regulation of the position of the experts – their obligations, rules of their accountability – is necessary for effective fight against the extensive length of judicial proceedings.

Questions for the government:

Does the government plan to take legislative steps in order to eliminate mentioned difficulties in access to a lawyer at the initial stage of criminal proceedings?

When the status of court experts (*biegli sądowi*) will be fully regulated (e.g. at the statutory level)?

16. Free legal assistance for poor people in civil proceedings

Reference:

Articles 2,14, 26, 32 of ICCPR

Current situation:

Despite many attempts, there are still no provisions providing for free legal aid for poor people, especially in civil cases. People who are poor or low-income are unable to obtain legal representation when facing situations, such as eviction, foreclosure, domestic violence, workplace discrimination, termination of subsistence income or medical assistance, and loss of child custody.

Questions for the government:

Does the government plan to adopt the law which provide for free legal aid for poor or low-income people?

17. The abuse of provisional room in correctional facilities for juveniles

Reference:

Article 10 of ICCPR

Current situation:

According to the Juvenile Act a juvenile may be placed in a provisional room (*izba przejściowa*) only in certain situations including, for example, admission to the correctional facility in order to make a juvenile’s diagnosis. Also, in exceptional cases, where safety or the order of facility is put at risk, a juvenile might be placed in provisional room.

Despite this, operation of certain correctional institutions emphasizes the practice of abusing provisional room as a form of punishment or substitution for the solitary confinement (use of which is much more difficult and formal under binding law than the application of provisional room). Another negative practice refers to keeping juveniles in provisional room for a maximum period of 14 days (both for diagnosis and safety measures). Other unit’s example emphasizes that such issues might be resolved in much shorter time.

Questions for the government:

Does the government plan to take any measures to reduce the abuse of transitional room as a form of punishment?

18. Post-penal isolation

Reference:

Article 10 of ICCPR

Current situation:

In June 2014 Law on post-penal isolation entered into force². It states the legal ground for isolation aimed at treatment of persons who after leaving the prison might still be dangerous for the society because of their mental disorders. The isolation may be ordered by the civil court for unlimited period of time. The President of Poland and the Human Rights Defender send motions to the Constitutional Court arguing that the new law violates the prohibition of dual criminality and is disproportional limitation of personal freedom. They upheld that even though the isolation is aimed at the therapy of the mental disorders, it is in fact a second penalty.

Questions for the government:

What is the evaluation of the law on post-penal isolation (how many people were covered by the new regulation)?

What are the plans of the government dealing with the protection of psychological health in the prisons?

19. Expulsion proceedings against foreigners legally staying in Poland

Reference:

Article 13 and 14 of ICCPR

Current situation:

Foreigners legally staying in the territory of Poland may be expelled in pursuance of a decision where authorities may refrain from justifying it, fully or partially, due to state security as well as public security and order. Since the information on which the decision is based is classified, in practice the reasons given in a negative decision comprise only of an indication that refusal was based on security considerations.

The authorities may also deprive foreigner right to view the expulsion case file and to make notes or copies thereof. This include case files which are classified and other files which the public administration body excludes for reasons of being against the public interest. Although the foreigner may apply for judicial review, he or she is deprived of the ability to effectively challenge the decision because both the foreigner and his or her attorney has no appropriate security clearance to view classified documents. Therefore, the foreigner is deprived of the right to effective remedy as well as right to a lawyer and thus right to fair trial in expulsion proceedings.

² The Act of 22 November 2013 on proceedings against people with mental disorders posing a threat to life, health or sexual freedom of other persons.

This issue is visible in the cases regarding expulsion after a foreigner was refused a fixed-term residence permit on grounds concerning state defence or security or the protection of security and public order or the interests of the Republic of Poland. Additionally, the above-mentioned issue appears when expulsion proceedings are launched after a foreigner was refused to be recognized under Polish law as a Polish citizen on the basis of classified documents.

Questions for the government:

Does the government plan to amend the Law on Foreigners and Code of Administrative Proceedings in order to provide above mentioned foreigners with any safeguards guaranteeing that their right to fair trial is respected, in particular that they are allowed in any form (e.g. through specially appointed lawyers with security clearance) to access case files and thus effectively submit reasons against expulsion?

20. Rendition and secret detention

Reference:

Article 2, 3, 12, 13, 14 of ICCPR

Current situation:

Polish Prosecution Service has been conducting the investigation into the alleged complicity of Poland in the Central Intelligence Agency rendition and secret detention program established within the so called global war on terror, which involved torture and ill-treatment of persons suspected of involvement in terrorism-related crimes. Most of the case files are classified and the need to protect national security is invoked in regard to this investigation.

The investigation has been pending since more than 5 years. It is prolonged, ineffective and it has not ensured accountability of persons involved in secret detention and rendition program. The instigation has been transferred twice to different prosecutors in charge and currently it is conducted by the Appeal Prosecutor Office in Cracow. Three persons detained in Guantanamo has been granted victim status. Recently, however, the prosecutors in charge refused to grant another person such a victim. As reflects from the recent public statements, the Prosecution is not able to conclude the investigation without the information and assistance provided by the United States. Until now, American authorities has not answered the Polish requests submitted under the Mutual Legal Assistance Treaty.

In December 2013 the European Court of Human Rights hold a hearing in joint cases against Poland submitted by two persons recognized in Polish investigation as victims - Al Nashiri and Abu Zubaydah. The judgment has not been delivered yet.

Questions for the government:

What steps has been taken by the authorities to conduct effectively and without undue delay the investigation into alleged involvement of Poland into CIA rendition and secret detention programs and to ensure accountability of any person involved in the alleged crimes?

When it is estimated that the investigation will be completed?

What are the reasons for lack of full cooperation of Poland with the European Court of Human Rights and did not provide classified information upon the Courts' request?

How does the government plan to tackle the lack of responses from the United States of America to the request for mutual assistance under the Mutual Legal Assistance Treaty submitted by the Polish authorities?

21. The presumption of innocence in the juvenile proceedings

Reference:

Article 14 of ICCPR

Current situation:

According to the last amendment to the Juvenile Act, all juvenile proceedings are held pursuant to the provisions of the Code of Civil Procedure. Meanwhile, before that change, cases concerning juveniles who have committed crimes (called by the Juvenile Act as punishable acts) were held pursuant to the provisions of the Code of Criminal Proceedings. As a result of that change, presumption of innocence and the benefit of doubt are not used in Juvenile Proceedings at all.

Questions for the government:

Are there any steps taken to improve the procedural guarantees of a person suspected of committing a punishable act in juvenile proceedings?

22. Damages for wrongful indictment

Reference:

Article 14 of ICCPR

Current situation:

In recent years HFHR has witnessed the increase in cases related to the compensatory damages for wrongful conviction and temporary detention. However, it has not been decided to legally regulate damages for wrongful indictment. This is particularly desirable in the case of proceedings in which innocent people were accused over a long period of committing a serious crime. For example, in one case known to HFHR, an innocent person has been accused of committing a murder for almost 19 years. Undoubtedly, this situation may affect not only mental state of that person but also its social life.

Questions for the government:

Are there any steps taken to regulate the issue of damages for wrongful indictment?

23. Retention of telecommunication data and invigilation

Reference:

Article 17 of ICCPR

Current situation:

Since 2011 the case on limits of invigilation is pending before Constitutional Court. The hearing took place on 1-3 April 2014 and was adjourned without appointing a new day for the hearing. Human Rights Defender and General Prosecutor (who initiated the proceedings before the Court) argue that some aspects of rules on operational control (especially technical measures used for wiretapping and invigilation) and retention of telecommunication data violate the constitutional rights (right to privacy, secrecy of correspondence). Great impact on

the ruling in this case might have a judgment of the Court of Justice of EU in *Digital Rights Ireland* case, in which the Court annulled the directive on data retention. The law on data retention implemented into Polish legal system were often at the lower level than the minimum standards established by the above directive, thus it is highly probable that the Polish regulation is also unconstitutional.

Questions for the government:

How the government is going to implement the *Digital Rights Ireland* judgment?

24. Cooperation with foreign intelligence agencies in respect of mass surveillance

Reference:

Article 17 of ICCPR

Current situation:

Information about mass scale surveillance conducted by the National Security Agency of the United States was reported over a year ago. It covers communication both within and outside United States and is conducted in order to protect national security. It was also underlined that US is running phone metadata program. This raises questions about the legality of interference into the right to privacy. This issue was underlined by the Human Rights Committee in the concluding recommendations of April 2014 addressed to the United States government.

Additionally, it was reported that the number of European states' intelligence services, including Polish intelligence agencies, cooperated with National Security Agency in mass scale surveillance. European Parliament in its resolution of 12 March 2014 on the US NSA surveillance program, surveillance bodies in various Member States and their impact on EU citizens' fundamental rights and on transatlantic cooperation in Justice and Home Affairs urged European states to take certain actions. Among others, the EP urged Poland to clarify the allegations of mass surveillance activities and strengthen the oversight mechanisms over the intelligence activities.

Questions for the government:

What measures has been taken or are planned to be taken by the government to ensure that its surveillance activities conform to the obligations under the Covenant?

What actions are planned by the government to ensure that any interference with the right to privacy complies with the principles of legality, proportionality and necessity?

How the government is planning to reform the oversight system of surveillance activities as regards the information about the cooperation with National Security Agency in mass scale surveillance?

25. Lack of regulations with regard to video surveillance

References:

Article 17 of ICCPR

Current situation:

The use of CCTV cameras in Poland is increasing but at the same time it does not fall under the scope of any specific regulations. The lack of adequate legal framework in this respect poses a serious risk of a misuse and illegitimate interference in the citizens' right to privacy. There have been no developments enforced concerning the regulation of the use of CCTV cameras although many institutions such as the Data Protection Authority or Human Rights Defender called for its urgent introduction as early as in 2011. In December 2013 the Ministry of Interior presented draft legislation guidelines for the Act on the use of video surveillance. The draft legislation guidelines provide general conditions for the use of CCTV both by public institutions (in the public sphere) as well as by the private entities (for example in the workplace). It was supposed to be a first step in the legislative process towards the CCTV regulation in Poland (the draft guidelines are to serve as a basis for the future draft law proposal containing specific provisions on the use of the video surveillance). Unfortunately no further steps have been taken since then to push forward this urgent matter.

Questions for the government:

When does the government plan to adopt the video surveillance regulations which are urgently needed in order to secure the citizens' right to privacy from the arbitrary use of the CCTV cameras in Poland?

26. Criminal sanctions for the use of freedom of expression

References:

Article 19 of ICCPR

Current situation:

The Polish law contains exceptional number of provisions introducing criminal sanctions for deeds related to the use of the freedom of expression. Criminal liability is previewed *inter alia* by certain provisions of Polish Criminal Code such as defamation, insult, insult of a public official, insult of a constitutional body, insult of the president of Poland or head of another state. These provisions do not comply with the freedom of expression international standards as they offer strong protection for politicians or other public officials and entities that should be resistant to criticism. Law provides also criminal sanctions for insult of 'religious feelings' or national symbols which are often used against artists who criticize catholic church or use catholic as well as national symbols in their work. There are also several criminal sanctions contained in the Polish Press Law Act (for example for non-fulfilling the obligation of authorization of the interview by a journalist which was criticized by the ECtHR in the judgment *Wizerkaniuk v. Poland*, application no. 18990/05). This makes the Polish legal system very restrictive as for criminal liability in the field of freedom of expression, even though criminal sanctions should be reserved only for the most serious abuses such as hate speech or incitement to violence. In the past there were several legislative proposals attempting to abolish some of these criminal provisions but eventually they have not been enforced.

Questions for the government:

Does the government plan to introduce any legislative changes with regard to criminal law provisions especially such as defamation, insult of the president, lack of press authorization or insult of religious feelings in order to comply with international freedom of expression standards which reserve criminal liability only for the most serious abuses and in general exclude its use for the protection of reputation of public officials?

27. Lack of effective redress mechanism in data protection field

References:

Article 17

Current situation:

The EU's Fundamental Right Agency report 'Access to data protection remedies in EU Member States' published in January 2014 revealed that the effectiveness of the data protection redress mechanisms in Poland and other EU countries is considerably low. The report identified barriers such as 1) the lack of educational activities and low legal awareness on data protection in the society; 2) insufficient enforceability and complexity of data protection law; 3) very limited access to professional legal aid resulting from an absence of state-funded pre-trial legal aid system and lack of data protection training in the course of prosecutors' and judges' education. As a consequence, victims of data protection violations have very limited capacity to exercise their right to privacy.

Question for the government:

What kind of steps does the government plan to take in order to increase the effectiveness of data protection remedies in Poland as recommended in the EU's Fundamental Right Agency report 'Access to data protection remedies in EU Member States'?

28. The situation of the local press in Poland

References:

Article 19 of ICCPR

Current situation:

Local media lack sufficient editorial and financial background in Poland as well as they often can't afford professional legal aid and therefore are more vulnerable to the political or commercial pressure. One of the biggest threats to independent local media are newspapers published by local governments (financed with public funds) which hamper functioning of independent 'watchdog' media. These newspapers often 'pretend' to be regular press and interfere with a free competition on the local media market (for example by undercutting prices of adverts and taking over local advertisers – an important source of income for the local independent press). The Polish law is very vague in this regard and does not regulate precisely what kind of publishing activity can be conducted by local governments. It is interesting to note that two Regional Accounting Chambers (in Łódź and Wrocław) already claimed that publishing regular newspapers by local governments, especially when it comes to paid adverts does not fall within competences of self-governments and should not be allowed. Still, the RAC decisions have not been implemented by many local governments across the country.

Questions for the government:

Does the government plan to take any steps in order to restrict the possibility to publish newspapers by local governments (and their subordinated institutions) which disturb free competition on the local market (especially by publishing paid adverts) and hamper independent local press?

29. Statelessness

Reference:

Article 24 of ICCPR

Current situation:

Children are not fully protected from statelessness in Poland. The law on nationality (*ustawa o obywatelstwie polskim*) does not protect from statelessness children that are not foundlings but whose statelessness is a result of the conflict of nationality laws for example. There are quite a few dramatic examples of children without any nationality whose stay is only de facto tolerated by the Polish state. This loophole in the legislation is very important one. The only possibility for a child in such a situation is to file a petition to the President who can thus confer nationality ex gratia. Otherwise, there is no determination procedure for statelessness and no special protection status for stateless people and in practice the only status that is available to be obtained is the one in the deportation procedure – tolerated stay. There is also a question of the protection from statelessness when nationality is lost. Even though there is a ban in the Polish Constitution on deprivation of citizenship in practice such situations happen, also to children. When the decision on nationality is annulled, this is done under administrative procedure and the procedure does not provide for any special rules in respect of statelessness.

Questions for the government:

Does the government plan to enhance protection of stateless children by introducing statelessness determination procedure and special protection status for stateless people?

Does the government plan to introduce changes in law in order to protect children who are not foundlings from statelessness?

Does the government plan to introduce additional guarantees in the administrative procedure so that a potential statelessness of a child is a factor taken into consideration when decision concerning nationality is annulled?

30. Political rights of people with disabilities

Reference:

Article 25 of ICCPR

Current situation:

According to article 62 (2) of the Constitution of the Republic of Poland persons who, by a final judgment of a court, have been subjected to legal incapacitation have no right to vote and to be elected. Incapacitated persons are automatically and indiscriminately excluded from participation in elections, regardless of the nature of their disability, their individual abilities and the scope of the incapacitation measure.

In 2012 the government started working on changing the model of incapacitation but the restrictions imposed on political rights of incapacitated persons were not taken into consideration.

Questions for the government:

Does the government plan to take legislative steps in order to guarantee the right to vote for all persons with disabilities, including those with more need of support, on an equal basis with others?

31. Access to public service

Reference:

Article 25 of ICCPR

Current situation:

In general, the process of legal training for lawyers is not adjusted for persons with disabilities. In particular, the problem is visible under the rules related to the form of initial and final exams for lawyers. Some reasonable accommodation (i.e. prolonged exam time) were ensured only during final exams for advocates (adwokat), legal counselors (radca prawny) and notaries, whereas similar adjustments were not introduced in regulations related to initial exams for solicitors, barristers, notaries, as well as initial and final exams for judges and prosecutors.

Additionally, disabled persons are still deprived of the possibility to perform certain public service. For instance, it should be mentioned that persons with disabilities are excluded from the prosecution service, since they are not able to perform all tasks stipulated in the Prosecution Act. Thus, it is not possible to narrow the scope of tasks of individual prosecutors and adjust work place for the purposes of employment of persons with disabilities.

Questions for the government:

Does the government plan to take steps in order to provide reasonable accommodation for persons with disabilities during professional exams for lawyers?

Does the government plan to take steps in order to provide access to public service on equal basis, in particular does the government plan to amend the law in order to allow and introduce reasonable accommodation for persons with disabilities within prosecution service?



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