

## **Round-Table on Detention Conditions in the EU**

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### **Propozycja wystąpienia Rzecznika Praw Obywatelskich dr Janusza Kochanowskiego**

#### **POLISH STANDARDS OF CONTROL IN DETENTION PLACES AND CURRENT PROBLEMS**

Ladies and Gentlemen,

The overview of detention conditions in Poland which I am going to present to you as well as our practices of control is based on Ombudsman's functioning as National Preventive Mechanism under the OPCAT. We have been acting since January 2008, but although this might seem like a very recent development, Polish Ombudsman's Office has 20 years of experience in carrying out examinations of places of detention with the aim to prevent tortures and any inhuman or degrading treatment.

First let me give you a broader picture of detention places in Poland. According to the most recent data Poland has one hundred and ninety-two prisons and remand prisons. With the overall capacity of over eighty-three thousand, over eighty-five thousand persons have been kept there, including almost the thousand persons held on remand. Women were only 3.2 per cent of the whole population in prisons.

Since we have assumed the tasks of NPM, my collaborators have visited sixty places of detention, that is about thirty per cent. Our limited capacities last year were due to financial problems which I reported both internationally – to SPT and APT, and in my personal address to the Polish parliament. Apart from these difficulties, I must add that the overall number of detention places listed under article 4 of the OPCAT is about one thousand. With the personnel of the NPM unit being fifteen persons, supported by a few persons from our local offices in Gdańsk, Katowice and Wrocław, regular inspections are obviously impossible.

NPM visitations are meant to be an objective outlook at the wholistic functioning of a detention place. They take two to three days and in most cases no advance notice is sent to prison authorities. The only exception is made in case of very large places (up to one thousand persons) where a fax is sent on the day of inspection in order to facilitate it. We have been informed that such information sometimes provokes sudden changes introduced by authorities.

Inspection is planned in advance, but its agenda is never made public, and detention places are selected by random, considering their location and available data concerning particular problems or special cases. Such data often come from NGO's with whom I work within the framework of an agreement on the implementation of the OPCAT. Currently the members of this network are Amnesty International Poland, Polish Section of International Commission of Lawyers, Legal Intervention Society, Helsinki Foundation of Human Rights, Criminology Department of the University of Warsaw, among others.

Typically the whole visitation procedure is adjusted to the tasks of NPM and is aimed at the strengthening of the protection of the persons detained against tortures and other forms of cruel, inhuman or degrading treatment or punishment. Usually all major installations are inspected, detention wards are chosen randomly, however we always visit isolation wards, any places where disciplinary measures are executed, baths and meeting rooms. Particular

attention is paid to private individual interviews with the imprisoned persons. We select especially those who are prone to abuse, the elderly, the disabled, foreigners, those who were subject to coercion within past six months or the dangerous.

Following APT recommendations our inspection teams more and more often include psychologists, specialists in addictions and medical doctors whose opinions form an integral part of our reports. Such reports and recommendations are usually prepared within three weeks after a visitation.

The practice which I have just described produces the panorama of problems faced by detention system in Poland. Generally these problems identified in preventive inspections can be put in three groups.

The first is living conditions, and usual complaints concern insufficient light, deficiency in hot water, furniture and poor air circulation. Toilet facilities are sometimes depriving the inmates of privacy in wards where many prisoners are held. Poor bathing conditions are often reported. Part of detention places are totally inaccessible for persons with disabilities, and often locating such persons in upper floors with no access to lifts makes it virtually impossible for them to participate in many activities to which they are entitled. Facilities sometimes built in early twentieth century or before are very difficult to improve, and general reconstructions are seldom, which sometimes leads us to conclusion that certain facilities ought to be closed due to safety reasons.

Low investments in this area result from the fact that lately most financing was directed to create seventeen thousand new places for detained persons which was necessary to fight the problems of overpopulation in Polish prisons. The figures have improved and currently the overpopulation is one hundred and two per cent, but still sometimes the standard of three square meters per person is hardly met. The improvement measures have been introduced after a decision of the Constitutional Court of May 2008 which qualified overpopulation as

inhuman and invalidated relevant provision of the Penal Execution Code. The problem has also been raised from the perspective of Strasbourg Court in two cases decided - *Orchowski and Sikorski versus Poland*. About one hundred and sixty similar cases are pending.

My collaborators note the tendency to close down cultural facilities or hospital wards in order to create additional space and discrepancies of population of certain blocks.

Apart from living conditions another group of problems in Polish detention places concerns the treatment by prison guards. Particularly vulnerable groups are always interviewed during our visits, and cases of verbal and physical abuse are mentioned. However only several persons decided to launch official complaints. The need remains to educate the guards in different aspects of relations to the detained persons and of their right, but places where prison personnel was evaluated in very positive terms have also been reported.

The third group of problems to be addressed is the functioning of medical care in Polish detention places. The number of complaints in this area is particularly alarming. They concern mostly the long period of waiting for specialist consultation, ineffective treatment, ignoring health problems or improper treatment by doctors. Emergency calls after hours are very restricted, and sometimes the cost of such calls is imposed on the patients. In one of the facilities the conditions of medical examination have been challenged as public and guaranteeing no privacy which amounts to degrading treatment.

Inadequate medical care and poor living conditions are most often raised in damage or compensation suits before Polish civil courts and international tribunals. Last year I addressed the Prime Minister to consider establishing a special commission made of representatives of the Ministry of Justice and the Ministry of Health to examine the quality of medical care in prisons, but the

reply was negative and reported cases of bad practices dismissed and labeled as 'isolated'.

All of these aspects of detention and imprisonment system in Poland are but a small fragment of the problems discussed within this round-table meeting, and in fact of the problems which we deal with in our daily functioning. All the details are available to the wide public in 2008 Ombudsman's Report on the Activity of National Preventive Mechanism and in reports published every three months. They are all available also from our official website.

The working out of standard rules pertaining to detention conditions in the European Union by independent national and international bodies is both necessary to be carried out and very promising. I may only hope that the information presented in my remarks can be useful in this respect.