



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 9 to 16 September 2020

The Polish Government has requested the publication of this report and of its response. The Government's response is set out in document CPT/Inf (2020) 32.

Strasbourg, 28 October 2020

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EXECUTIVE SUMMARY

The objective of the CPT's seventh visit to Poland, and its very first ad hoc visit, was to review the implementation of the Committee's long-standing recommendations concerning the treatment of persons in police custody.

The majority of persons interviewed by the delegation, who were or had recently been in police custody, stated that they had been treated by the police in a correct manner. However, the delegation did hear a number of allegations of physical ill-treatment. Most of these allegations referred to the use of excessive force at the time of apprehension or immediately after apprehension, in respect of persons who were reportedly already under control and who did not resist (or no longer resisted) arrest. The ill-treatment allegedly consisted mainly of violently pushing a person face down to the ground (or facing towards a wall), kneeling over the person including on his/her face or stepping on him/her, occasionally accompanied by slaps, kicks and/or punches. There were also numerous allegations of painful and prolonged handcuffing behind one's back, and some persons alleged having been lifted by the handcuffs and/or dragged on the ground while cuffed. The delegation also heard a small number of allegations of physical ill-treatment consisting of slaps and, in one case, kicks in the course of questioning inside the police establishment.

The delegation's findings during the 2019 ad hoc visit clearly indicate that persons taken into police custody in Poland continue to risk being ill-treated, in particular at the time of apprehension. This is a source of ongoing serious concern to the CPT and demonstrates the need for the Polish authorities to step up their efforts in this area. In the light of the above, the Committee once again calls upon the Polish authorities to pursue rigorously their efforts to combat ill-treatment by the police.

The absolute absence of progress as regards the fundamental safeguards against ill-treatment advocated by the CPT, namely the right of access to a lawyer and to a doctor, the right to notify one's detention to a third party and the right to be informed of the above-mentioned rights, is the source of the Committee's deepest concern after the 2019 ad hoc visit to Poland. It is the CPT's view that serious deficiencies observed once again by its delegation have a persisting and systemic character, which appear in an even more negative light when set against the ongoing phenomenon of ill-treatment of persons in police custody.

Based on its delegation's findings from this ad hoc visit, the Committee considers that if no expedient and decisive action is taken by the Polish authorities, the risk of persons in police custody being subjected to ill-treatment is likely to increase further in the near future. The CPT very much hopes that the present report will enable the highest-level Polish authorities, first of all the Minister of Internal Affairs and Administration, to become fully aware of this risk and to take long-overdue remedial and preventive action.

The CPT stresses that if no progress is made by the Polish authorities to radically improve the level of their co-operation with the Committee, including as regards the implementation of the CPT's long-standing recommendations, the Committee may well be obliged to have recourse to Article 10, paragraph 2, of the Convention and to make a public statement on the matter. The CPT hopes that urgent and decisive action by the Polish authorities will render such action unnecessary.

I. INTRODUCTION

A. The visit, the report and follow-up

1. In pursuance of Article 7 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as “the Convention”), a delegation of the CPT carried out a visit to Poland from 9 to 16 September 2019. The visit was one which appeared to the Committee “to be required in the circumstances” (see Article 7, paragraph 1, of the Convention) and its objective was to review the implementation of the CPT's long-standing recommendations concerning the treatment of persons in police custody. It was the Committee's seventh visit to Poland and the very first ad hoc visit.¹

2. The visit was carried out by two CPT members, Mykola Gnatovskyy (President of the CPT) and Marika Väli. They were supported by Borys Wódz, Head of Division at the CPT's Secretariat, and assisted by two interpreters, Aleksander Jakimowicz and Aleksandra Sobczak.

3. The CPT's delegation spoke with persons in police custody in several police establishments in Gdańsk, Kraków, Sopot and Warsaw, as well as with recently arrived remand prisoners at Gdańsk, Kraków and Warsaw-Służewiec Remand Prisons.²

4. The report on the visit was adopted by the CPT at its 101st meeting, held from 2 to 6 March 2020, and transmitted to the Polish authorities on 17 March 2020. The various recommendations, comments and requests for information made by the Committee are set out in bold type in the present report. The CPT requests the Polish authorities to provide within three months a response containing a full account of action taken by them to implement the Committee's recommendations and replies to the comments and requests for information formulated in this report.

B. Consultations held by the delegation and co-operation encountered

5. In the course of the visit, the CPT's delegation held consultations with Government officials (from the Ministry of Internal Affairs and Administration and from the Chief Police Command) and prosecutors from the National Prosecutor's Office. Further, the delegation met Adam Bodnar, the Human Rights Commissioner (Ombudsman), and staff of the National Preventive Mechanism (NPM), as well as representatives of the Polish Helsinki Foundation.

A full list of the officials and other persons consulted during the visit is set out in the Appendix II to this report.

¹ See the full list of visits and their dates on the CPT's website, <https://www.coe.int/en/web/cpt/poland>. All the Committee's reports and responses of the Polish authorities to date are in public domain, upon the authorities' request.

² See the full list of establishments visited in Appendix I.

6. The delegation received excellent co-operation from the management and staff of the police establishments and remand prisons visited. The delegation had rapid access to all premises it wished to visit, was able to meet in private with persons with whom it wanted to speak and was provided with access to all the information it required. This was indeed positive and demonstrated that information about the Committee's visit and the CPT's mandate had been circulated to the establishments concerned.

The Committee also wishes to express its appreciation of the efficient assistance provided to its delegation before and during the visit by the Liaison Officer appointed by the Polish authorities, Piotr Charkiewicz from the Ministry of Justice.

7. By contrast, the CPT deplores the inadequate level of co-operation from the Polish authorities at central level. Co-operating with the Committee implies the authorities' willingness to engage in a meaningful dialogue at the appropriate level. The delegation was unable, despite requests reiterated several times (starting from the letter notifying the visit), to present its preliminary observations to the Minister of Internal Affairs and Administration or at least to one of the political level senior officials of his Ministry (i.e. one of the Secretaries of State).

8. Furthermore, the CPT must recall once again that the principle of co-operation between Parties to the Convention and the Committee also requires that decisive action be taken to improve the situation in the light of the CPT's recommendations. In this respect, after the Committee's seventh visit to Poland, the CPT is very concerned to note that no real action has been taken to implement its long-standing recommendations as regards the practical operation of fundamental legal safeguards for persons in police custody, as well as on some other issues such as remand prisoners' restrictions on contact with the outside world and the inadequate screening for injuries on arrival to remand prisons (including the recording and reporting mechanisms). Seen in this context, the failure of the Polish authorities to organise an end-of-visit meeting with the Minister of Internal Affairs and Administration and/or one of the Secretaries of State is particularly deplorable.

9. The CPT must stress that if no progress is made by the Polish authorities to radically improve the level of their co-operation with the Committee, including as regards the implementation of the CPT's long-standing recommendations, the Committee may well be obliged to have recourse to Article 10, paragraph 2, of the Convention.³ The CPT hopes that urgent and decisive action by the Polish authorities will render such action unnecessary.

³ "If the Party fails to co-operate or refuses to improve the situation in the light of the Committee's recommendations, the Committee may decide, after the Party has had an opportunity to make known its views, by a majority of two-thirds of its members to make a public statement on the matter."

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

1. Preliminary remarks

10. The legal framework governing the detention of adult criminal suspects by the police has remained basically unchanged since the CPT's previous visit. Persons apprehended by the police, unless released, must be brought before the court within 48 hours of apprehension with a request for applying "temporary arrest" (i.e. remand in custody). The apprehended person must be released if, within 24 hours from that moment, he/she has not received a copy of the court decision ordering temporary arrest. Persons remanded in custody must be transferred to a remand prison without delay.

As for the detention of juveniles suspected of a criminal offence, they must be released from police detention if, within 72 hours, a court decision on the placement in a shelter for juveniles, an appropriate protective educational facility or an appropriate treatment facility has not been issued. Further, the Act on the Procedure in Juvenile Cases (Juveniles Act) allows the police to hold juveniles in a police establishment for children (PID)⁴ for up to 5 days if they have absconded from a shelter or an educational or correctional facility, as well as pending their transfer to another institution after a court decision has been issued. Further, Section 40a of the Juveniles Act allows the police to hold in a PID, for up to 24 hours, a juvenile who is being transferred to a shelter or an educational or correctional facility, in case of a "justified interruption of convoy".

Pursuant to the legislation currently in force, the police may hold intoxicated persons for up to 24 hours; they should be released as soon as they can pass a breathalyser test.

Further, the Police Act⁵ allows the police to hold apprehended persons in "transit rooms" (in local police stations) for the time needed to prepare a transfer to a police detention facility, a PID or a prison (but in any case for no longer than 6 hours), as well as in "temporary transit rooms" (which may be set up outside police establishments) for the time required to decide on how to proceed further with the person (but in any case, for no longer than 8 hours). The time spent in the above-mentioned rooms is included within the maximum permitted length of police custody.

11. As had been the case during the 2017 periodic visit,⁶ the information gathered by the CPT's delegation during this ad hoc visit suggests that the above-mentioned legal time-limits were respected in practice. In most cases, criminal suspects remained in police custody⁷ for periods between 24 and 48 hours, after which they were either released or transferred to a remand prison.

⁴ "Policyjna izba dziecka".

⁵ Section 15 (7) b.

⁶ See paragraph 13 of document CPT/Inf (2018) 39, <https://rm.coe.int/16808c7a91>.

⁷ The official name for police cells is "police premises for apprehended persons" ("Policyjne pomieszczenia dla osób zatrzymanych"), generally referred to under the acronym PDOZ.

2. Ill-treatment

12. It should be stressed from the outset that the majority of persons interviewed by the delegation, who were or had recently been in police custody, stated that they had been treated by the police in a correct manner. However, the delegation did hear a number of allegations of physical ill-treatment.

Most of these allegations referred to the *use of excessive force at the time of apprehension* or immediately after apprehension in respect of persons who were reportedly already under control and who did not resist (or no longer resisted) arrest. The ill-treatment alleged consisted mainly of violently pushing a person face down to the ground (or facing towards a wall), kneeling over the person including on his/her face or stepping on him/her, occasionally accompanied by slaps, kicks and/or punches.

There were also numerous allegations of *painful and prolonged handcuffing* behind one's back, and some persons alleged having been lifted by the handcuffs and/or dragged this way on the ground. The delegation also heard a small number of allegations of *physical ill-treatment* consisting of slaps and, in one case, kicks *in the course of questioning* inside the police establishment.

13. In a few cases the delegation gathered medical evidence compatible with the allegations received. By means of an illustration, the following two cases can be mentioned here:

- A remand prisoner interviewed by the delegation at Kraków Remand Prison on 13 September 2019 alleged that, upon his apprehension on 9 September 2019, he had been subjected to the use of excessive force by the police despite offering no resistance. He had allegedly been pressed face down against the ground, handcuffed behind his back and lifted by the handcuffs when transported to the police car; he had reportedly been pressed again face down against the floor when taken out of the car upon arrival at a police establishment. Examined by the delegation's forensic medicine specialist, the person concerned displayed: a light pink abrasion on his left cheek, measuring 5 x 3,2 cm; light pink bruises, circular in shape, on his left wrist; haematomas, 1,8 cm wide, on the inside of the left wrist; pain of both wrists upon palpation; and a red abrasion on his left knee.
- A detained person interviewed by the delegation at a police establishment in Warsaw alleged that he had been subjected to the use of excessive force by the police (again, reportedly despite offering no resistance) upon his apprehension on the previous day. His face had allegedly been pressed against the ground and he had been handcuffed behind his back in a very painful manner. As in the aforementioned case, the person concerned also alleged having been pushed against the ground (and kicked) by police officers upon arrival to the police establishment. The delegation's forensic doctor examined the person and observed: on the right side of his forehead, a light pink haematoma, irregular in shape and measuring 6 x 4 cm; also on the right side of his forehead, dark red patches with excoriations in the background (as well as swelling of the same area); on the left side of his head, at the external corner of the eyebrow, a similar haematoma and excoriations measuring 2.5 x 2 cm; on both wrists, two parallel reddish-pink excoriations (more towards the external surface on the left wrist) with the length of 1.9 cm on the left wrist and 1.2 cm on the right wrist.

14. It is to be added that several interviewed persons alleged that they had been threatened and/or verbally abused while in police custody.

15. At the outset of the visit, representatives of the Chief Police Command and of the National Prosecutor's Office assured the delegation that there was a policy of "zero tolerance" for ill-treatment of persons in police custody in Poland. Among mechanisms put in place to implement this policy, they mentioned the procedure for co-operation with the Office of the Human Rights Commissioner (already described in reports on the CPT's 2013 and 2017 periodic visits⁸) and the procedure for handling complaints of police ill-treatment, which had to be directly and immediately transmitted to the relevant prosecutor, in addition to the relevant police human rights plenipotentiary and the Internal Affairs Bureau of the Police. The delegation was also informed that the Instructions issued by the Prosecutor General in June 2014⁹, concerning investigations into alleged torture and ill-treatment by police and other law enforcement officers,¹⁰ were still in force.

⁸ See e.g. paragraph 18 of document CPT/Inf (2018) 39. Pursuant to an order issued by the Minister of Internal Affairs and Administration, the Internal Affairs Bureau of the Chief Police Command and the Human Rights Plenipotentiary of the Chief Police Commander (as well as regional-level Plenipotentiaries) are required to systematically and immediately inform the Office of the Human Rights Commissioner of all complaints they receive of ill-treatment by police officers. The Human Rights Commissioner is also automatically informed of any incident involving a police officer and resulting in death or serious injury, as well as cases when there is *prima facie* suspicion of an unjustified use of force and means of coercion.

⁹ PG VII 021/4/14.

¹⁰ The main elements of these Instructions are as follows: prosecutors must open investigations immediately after having received a complaint or any other information concerning alleged torture/ill-treatment. As a rule (save in exceptional situations, when there are extraordinary objective obstacles), the prosecutor must personally and directly interview the complainant or any other person from whom the information on alleged torture/ill-treatment originates; the person is interviewed as a witness. It is prohibited to close the proceedings after the interview: other (material) evidence is always required before a decision on closing the proceedings can be taken. The police or other law enforcement officials may only be tasked with operational conduct of the investigation in exceptional and limited (in scope) cases; the rule is that such activities should be performed personally and directly by the prosecutor. The prosecutor in charge of investigation is personally responsible for the effective and speedy investigation; any delay should be expressly motivated in a detailed and written manner. If there is the slightest doubt about impartiality of a given prosecutor (or even all prosecutors from the given prosecutor's office), the senior prosecutor must confer the investigation to the prosecutor/team of prosecutors from another region, without paying attention to the usual rules on territorial competence. Whenever special means ("means of coercion") have been applied, the prosecutor must investigate whether they have been used in a justified manner and whether the available documentation reflects this accurately. Whenever the alleged victim sustained injuries, a forensic medical examination must be ordered immediately. If there is a parallel disciplinary or internal inquiry, the prosecutor must acquaint him/herself with all the relevant documentation. Actions by a police/law enforcement official must be assessed as to their conformity with the law, taking into account the factual circumstances and the extent of the official's official powers under the circumstances. Whenever sufficient evidence of misconduct is found, the prosecutor must inform the official's superior and require immediate steps, even before the investigation is terminated. Torture/ill-treatment cases are to be subjected to particularly severe periodic scrutiny by superior prosecutors. Whenever a prosecutor opens an investigation in such a case, he/she must inform the superior prosecutor immediately. The Head of the Preliminary Inquiry Department of the National Prosecutor's Office (together with specialised prosecutors – so-called "co-ordinators" – at the level of each Regional Prosecutor's Office) carries out ongoing monitoring of such cases and reports to the National Prosecutor every 6 months. Any recommendations are immediately communicated to the prosecutors concerned. The above-mentioned Instructions also apply to all homicide cases involving police/other law enforcement officials.

In addition, the delegation was told that the Internal Affairs Bureau of the Police had recently been granted more powers (including the power to carry out operational activities, assisting prosecutors in investigations and carrying out preventive monitoring and analytical work) and rendered more autonomous from the Chief Police Command (by granting it its own budget and allowing it to carry out its own human resources policy). The delegation's interlocutors further drew the delegation's attention to improvements in police human rights training, which now also included courses on the role of monitoring mechanisms (including the SPT, the CPT and the NPM) and on the protection of "whistleblowers".¹¹ At the same time, it was stressed that the draft Public Transparency Act,¹² which contained *inter alia* provisions on the protection of "whistleblowers", had still not been adopted by the Parliament (Sejm), which meant that no corresponding changes could be made to the relevant Police regulations.

Other steps taken or planned included the recently issued new instructions on the use of electric discharge weapons (tasers) containing much more detailed and restrictive provisions on the circumstances in which tasers could be applied and on the recording and reporting instances of their use, as well as the generalised use of CCTV in police detention facilities (PDOZ)¹³ and of bodycams for police officers.¹⁴

16. The delegation's interlocutors from the Ministry of Internal Affairs and Administration and from the Chief Police Command expressed the view that the above-mentioned steps and procedures (at least those of them that had already been adopted and implemented) had contributed to the improvement of the treatment of persons in police custody, as demonstrated by the decreasing number of registered complaints concerning alleged police misconduct.¹⁵ Senior prosecutors from the National Prosecutor's Office, who provided the delegation with statistical information concerning proceedings vis-à-vis police officers following complaints of ill-treatment and other forms of misconduct,¹⁶ shared this assessment.

¹¹ Reportedly, some 26.000 police officers (out of the total number of some 100.000) had already been retrained.

¹² "Ustawa o jawności życia publicznego".

¹³ With more clear procedures and longer period of preservation of the CCTV footage.

¹⁴ At the time of the 2019 ad hoc visit bodycams were being used by the police in 3 voivodeships (regions) out of the total of 16 (i.e. in Lublin, Łódź and Mazovia regions); it was planned to gradually expand the practice throughout the country.

¹⁵ According to the statistics compiled by the Internal Affairs Bureau of the Police, there had been approximately 13.000 complaints against the police (concerning all kinds of misconduct, not only ill-treatment of persons in police custody) in 2018, as compared with some 15.000 complaints in 2017. As regards, more specifically, complaints of ill-treatment of persons in police custody, the Internal Affairs Bureau had received such complaints in respect of 42 police officers in 2017 and 30 police officers in 2018.

¹⁶ The prosecutor in charge of the Information and Analytical Department of the National Prosecutor's Office presented to the delegation information concerning the period between 1 January 2018 and 6 September 2019. During the aforementioned period, prosecutorial organs had received 64 notifications concerning a possible violation of Section 246 of the Criminal Code (ill-treatment to extract a confession); investigation had been initiated in 24 cases out of which proceedings had been terminated in 22 cases for lack of *prima facie* evidence of crime; in one case (concerning two police officers) an indictment had been issued and proceedings were still pending in respect of one case. Regarding Section 247 of the Criminal Code (ill-treatment of a person in police custody), 234 notifications had been received, 54 investigations initiated and 3 indictments issued in respect of seven police officers. Concerning Section 231 of the Criminal Code (exceeding official powers), 8.352 notifications had been received, 2.362 investigations initiated including 58 cases with identified suspects (131 officers), 1.630 proceedings had been terminated (including 166 proceedings concerning identified suspects) and 25 indictments issued concerning 41 accused officers (it should be added that the statistical information in respect of Section 231 of the Criminal Code concerned all uniformed services including the Border Guard and the Prison Service, and that it comprised all kinds of communications received by prosecutorial organs including in very minor cases; thus, as stressed by the representative of the Information and Analytical Department of the National Prosecutor's Office, the real scale of violations was better reflected by the number of indictments). The statistical

The CPT takes due note of the aforementioned information which, however, is not sufficient for the Committee to form a clear view of the situation; in particular, the statistics provided at the outset of the visit fail to mention the number of criminal convictions and any disciplinary sanctions. Consequently, **the Committee wishes to receive the following information (split per year) in respect of the whole year 2018, the whole year 2019 and the first quarter of 2020:**

- **the number of complaints of ill-treatment made against police officers and the number of criminal and disciplinary proceedings which have been instituted as a result;**
- **an account of criminal and disciplinary sanctions imposed following such complaints.**

17. More generally, the delegation's findings during the 2019 ad hoc visit clearly indicate that – despite all the different measures referred to in paragraph 15 above – persons taken into police custody in Poland continue to risk being ill-treated, in particular at the time of apprehension. This is a source of ongoing serious concern to the CPT and demonstrates the need for the Polish authorities to step up their efforts in this area.

In the light of the above, **the Committee once again calls upon the Polish authorities to pursue rigorously their efforts to combat ill-treatment by the police. Police officers throughout the country should receive at suitable intervals a firm message that all forms of ill-treatment (including verbal abuse) of persons deprived of their liberty are unlawful and will be punished accordingly. It should also be reiterated to the police officers that no more force than is strictly necessary is to be used when carrying out an apprehension and that, once apprehended persons have been brought under control, there can be no justification for striking them. Where it is deemed essential to handcuff a person at the time of apprehension or during the period of custody, the handcuffs should under no circumstances be excessively tight¹⁷ and should be applied only for as long as is strictly necessary.**

Further, **police officers must be better trained in preventing and minimising violence in the context of an apprehension. In cases in which the use of force becomes necessary, they need to be able to apply professional techniques which reduce as much as possible any risk of harm to the persons whom they are seeking to apprehend.**

The CPT would also like to be informed whether the draft legislation on the protection of “whistleblowers”, referred to in paragraph 15 above, has now been adopted.

information provided to the delegation also included data concerning Section 245 of the Criminal Code (violence or threats vis-à-vis a witness, an expert, and interpreter or an accused): during the aforementioned period, 30 notifications had been received by prosecutors, 10 investigations initiated, one suspect identified but there had been no indictments.

¹⁷ It should be noted that excessively tight handcuffing can have serious medical consequences (for example, sometimes causing a severe and permanent impairment of the hand(s)).

18. At the outset of the visit, the delegation was informed of a recent legislative amendment (new Section 168a of the Code of Criminal Procedure) which, according to the Human Rights Commissioner and NGO representatives, could potentially be interpreted as allowing courts to accept evidence obtained through torture and other forms of ill-treatment.¹⁸ Were it indeed to be the case, the new provision would represent a significant step backwards in the protection of persons in police custody against ill-treatment and a violation of international law.¹⁹ **The Committee would welcome the Polish authorities' observations on this subject.**

3. Safeguards against ill-treatment

19. The absolute absence of progress²⁰ as regards the fundamental safeguards against ill-treatment advocated by the CPT, namely the right of access to a lawyer and to a doctor, the right to notify one's detention to a third party and the right to be informed of the above-mentioned rights, is the source of the Committee's deepest concern after the 2019 ad hoc visit to Poland. It is the CPT's view that serious deficiencies observed once again by its delegation (see paragraphs 20 to 27 below) have a persisting and systemic character, which appear in an even more negative light when set against the ongoing phenomenon of ill-treatment of persons in police custody, as already described in paragraphs 12 to 14 above.

Before turning to describing the particular deficiencies and making (or rather reiterating) recommendations in respect of each of the aforementioned safeguards, the Committee wishes to stress that, in its view, **decisive (including legislative) action by the most senior-level authorities, first of all by the Minister of Internal Affairs and Administration himself, is urgently required in order to remedy this most deplorable state of affairs.**

20. Once again, the delegation that carried out the 2019 ad hoc visit heard numerous allegations of delayed (for up to 48 hours) or even denied (during the whole period of police custody) notification of custody and several persons detained told the delegation that they had received no feedback as to whether such notification had been performed. **The CPT again calls upon the Polish authorities to take effective steps to ensure that persons deprived of their liberty by the police are systematically accorded the right to inform a close relative or another third party of their situation, as from the very outset of their deprivation of liberty (that is from the moment when they are obliged to remain with the police).**²¹

¹⁸ The text of the new provision reads as follows: "Evidence may not be dismissed only because it has been obtained in violation of procedural or substantive law, unless evidence has been obtained by a public official performing his duties and in relation to homicide, deliberate infliction of bodily harm or deprivation of liberty".

¹⁹ In particular, of Article 15 of the United Nations Convention against Torture (of which Poland is a Party) which states as follows: "Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made."

²⁰ As compared with the situation observed during the 2017 periodic visit, see in particular paragraphs 24 to 28 of document CPT/Inf (2018) 39.

²¹ See also Articles 5 and 6 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 and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty, OJ L 294, 6.11.2013, p. 1–12, <https://eur-lex.europa.eu/eli/dir/2013/48/oj>. It is noteworthy that the deadline for the transposition of this Directive into the Polish law expired on 27 November 2016.

The exercise of this right should always be recorded in writing, with the mention of the exact time of the notification and the person who was notified.

Further, the Committee calls upon the Polish authorities to ensure that detained persons are systematically provided with feedback on whether it has been possible to notify a close relative or other person of the fact of their detention.

21. As for the access to a lawyer in police custody, the delegation concluded that it remained highly exceptional, even for juveniles;²² in practice, it was only available to the few apprehended persons who were wealthy enough to have their own lawyer and lucky enough to have their lawyer's name and telephone number with them at the moment of apprehension.

Despite the CPT's long-standing recommendations,²³ there was still no access to *ex officio* lawyer before the court proceedings started (and in many cases such access was delayed for much longer periods, see paragraph 23 below). Further, the delegation observed once again that, even in the rare cases when the lawyer did come to see his/her client at a police establishment, the confidentiality of client-lawyer conversations was virtually never guaranteed.²⁴

22. To sum up, in the Committee's view,²⁵ Poland has not only failed to implement the CPT's recommendations concerning access to a lawyer but also failed to transpose into its national law the requirements of the EU Directive on access to legal aid.²⁶

Consequently, the Committee calls upon the Polish authorities to immediately take measures to ensure that the right of access to a lawyer is effectively guaranteed to all persons in police custody as from the very outset of their deprivation of liberty, in accordance with the aforementioned EU Directives.

The CPT also once again calls upon the Polish authorities to develop, without further delay and in co-operation with the Polish Bar Council – a fully-fledged and properly funded system of legal aid for persons in police custody who are not in a position to pay for a lawyer, to be applicable from the very outset of police custody.²⁷

²² Despite the legal requirements set out in the Juveniles Act, especially in Section 32f ("The police may only interview a detained juvenile in the presence of his/her parents or a legal guardian or his/her lawyer. If it is impossible to secure the presence of the above-mentioned persons, the police must summon another person whom the juvenile knows and whose name he/she has communicated to the police. If this person is unavailable, the police must summon a representative of the school attended by the juvenile, a social assistant dealing with the juvenile's family, a representative of foster care administration or of an NGO specialised in juvenile affairs and/or social rehabilitation of juveniles").

²³ See e.g. paragraph 25 of document CPT/Inf (2018) 39.

²⁴ Meetings took place in offices or in corridors, in the presence of police officers. This is *nota bene* a violation of Article 4 of the aforementioned Directive (EU) 2013/48, which establishes confidentiality of lawyer-client conversations and does not allow for derogations (see also Article 3, paragraph 3a, of the said Directive).

²⁵ And despite assertions to the contrary the CPT's delegation heard at the outset of the visit from senior officials from the Ministry of Internal Affairs and Administration and from the Chief Police Command.

²⁶ See, in particular, Article 4, paragraph 4b, and Article 5 of Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings, OJ L 297, 4 November 2016, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016L1919>. The deadline for transposition expired on 25 May 2019. This Directive should be read in connection with the above-mentioned Directive (EU) 2013/48 (in particular, Article 3, paragraph 2c, and Article 4).

²⁷ See also Article 7, paragraph 1, of Directive (EU) 2016/1919.

Further, **the Committee calls upon the Polish authorities to ensure that persons detained by the police can in all cases exercise their right to talk to a lawyer in private.**²⁸

23. In addition to the aforementioned deficiencies of the legal aid system for persons suspected and accused of criminal offences, the delegation was struck by one particularly negative practice observed in remand prisons visited, namely that newly-arrived remand prisoners (even those in respect of whom the competent prosecutor had approved the appointment of an *ex officio* lawyer) were quasi systematically deprived of the possibility of contacting their lawyer (whether in person or over a telephone) during the initial period of detention on remand (usually lasting between a month and a month and a half), due to the requirement of each such contact being specifically authorised by the organ of inquiry²⁹ (i.e. the prosecutor). This created a paradoxical and somewhat absurd situation where inmates were formally granted free legal aid but were in fact incapable of receiving it. **The CPT calls upon the Polish authorities to remedy this unacceptable state of affairs.**

The above was, by the way, part of a more general phenomenon observed by the delegation: despite the change in legislation concerning remand prisoners' contacts with the outside world,³⁰ the practice had remained the same as in the past i.e. newly-arrived remand prisoners continued to be subjected to restrictions on visits and telephone calls as a rule, at least for the first month (or a month and a half) of their imprisonment. In this context, reference is made to the comments and recommendation in paragraph 84 of the report on the 2017 periodic visit.³¹ **The Committee once again calls upon the Polish authorities to implement this long-standing recommendation.**

24. As regards access to a doctor, the delegation's observations in the police establishments visited suggested that, as a rule, persons in need of medical care were provided with such care (i.e. either the police called an ambulance or took the detained person to a hospital emergency ward). However, there was no confidentiality of medical examinations in cases when an apprehended person was taken to the doctor (or when an ambulance was called to the police establishment), the injuries observed on persons brought to police detention facilities continued to be poorly recorded (if at all) and non-medical police staff had unrestricted access to medical documentation concerning persons in police custody.

The Committee once again calls upon the Polish authorities to implement its long-standing recommendation that all medical examinations of persons in police custody be conducted out of the hearing and – unless the doctor requests otherwise in a particular case – out of the sight of police officers.

²⁸ Which is a requirement of Article 4 of the Directive (EU) 2013/48, in connection with Article 3, paragraph 3a.

²⁹ "Organ dysponujący".

³⁰ See paragraph 82 of document CPT/Inf (2018) 39.

³¹ "The CPT notes with concern that, despite its long-standing recommendations on the matter, remand prisoners are still obliged to request authorisation from a judge or a prosecutor for every single visit. In this regard, the Committee reiterates its view that remand prisoners should be entitled to receive visits (and make telephone calls) as a matter of principle, rather than these being subject to authorisation by a judicial authority. Any refusal in a given case to permit such contacts should be specifically substantiated by the needs of the investigation, require the approval of a judicial authority and be applied for a specific period of time. If it is considered that there is an on-going risk of collusion, particular visits (or telephone calls) can be monitored. The Committee calls upon the Polish authorities to bring the relevant legislation into conformity with these principles without further delay."

The CPT also reiterates its recommendation that information concerning detained persons' health be kept in a manner which ensures respect for medical confidentiality. Police officers should only have access to such medical information strictly on a need-to-know basis, with any information provided being limited to that necessary to prevent a serious risk for the detained person or other persons. There is no justification for giving staff having no health-care duties access to information concerning the diagnoses made or statements concerning the cause of injuries.

As regards the documenting of medical examinations and reporting of injuries observed on persons in police custody, the Committee calls upon the Polish authorities to take further action to ensure that:

- the records drawn up following the medical examinations of persons detained by the police contain: (i) an account of statements made by the person in question which are relevant to the medical examination (including his/her description of his/her state of health and any allegations of ill-treatment), (ii) a full account of objective medical findings based on a thorough examination; (iii) the health-care professional's observations in the light of i) and ii), indicating the consistency between any statements made and the objective medical findings;
- the records also contain the results of additional examinations performed, detailed conclusions of specialised consultations and a description of treatment given for injuries and of any further procedures performed;
- any traumatic injuries observed in the course of medical examination are recorded in a dedicated register. In addition to this, all injuries should be photographed in detail and the photographs kept, together with the "body charts" for marking traumatic injuries, in the detained person's individual medical file;
- the results of every examination, including the above-mentioned statements and the health-care professional's conclusions, are made available to the detained person and his/her lawyer;
- whenever injuries are recorded which are consistent with allegations of ill-treatment made by a detained person (or which, even in the absence of allegations, are indicative of ill-treatment), the record is systematically brought to the attention of the competent prosecutor, regardless of the wishes of the person concerned; the health-care professional should advise the detained person concerned that the writing of such a report falls within the framework of a system for preventing ill-treatment, that this report automatically has to be forwarded to the prosecutor and that such forwarding does not substitute for the lodging of a complaint in proper form.³²

³² Reference is also made here to more detailed standards contained in the substantive section of the CPT's 23rd General Report ("Documenting and reporting medical evidence of ill-treatment"), in particular in paragraphs 73 to 82 (document CPT/Inf (2013) 29, <https://www.coe.int/en/web/cpt/medical-evidence-ill-treatment>).

25. In addition, **the CPT reiterates once again its long-standing recommendation that persons deprived of their liberty by the police be expressly guaranteed the right of access to a doctor (including a doctor of their own choice, it being understood that an examination by such a doctor may be carried out at the detained person's own expense) from the very outset of their deprivation of liberty. The relevant provision should make clear that a request by a detained person to see a doctor should always be granted; it is not for police officers, nor for any other authority, to filter such requests.**

26. Regrettably, the delegation that carried out the 2019 ad hoc visit observed that the Committee's concerns regarding the poor recording of injuries in penitentiary establishments had not been addressed: none of the remand prisons visited kept a specific register to record injuries (information was entered in prisoners' medical files only),³³ the descriptions were superficial³⁴ and did not contain conclusions by a doctor as to the possible origin of injury or the consistency of the injuries with the statements made by a prisoner. As in the past, there was no systematic transmission of information on injuries observed to the relevant prosecutor. Furthermore, it appeared that the confidentiality of medical examinations of newly-arrived remand prisoners was not always observed (i.e. some of the inmates interviewed by the delegation alleged that the examination had taken place in the presence of non-medical prison staff).

The CPT once again calls upon the Polish authorities to take prompt measures (including through the issuance of instructions and the provision of training to relevant staff) to ensure that any injuries observed when a remand prisoner is medically screened upon arrival are fully recorded in a dedicated register and duly reported; recommendations enumerated in paragraph 24 above apply *mutatis mutandis* also to medical screening upon arrival at remand prisons.

27. Finally, the delegation observed that the rules and the practice with respect to information on rights³⁵ continued to be deficient: most of the interviewed persons (who were or had recently been in police custody) had reportedly received this information with a significant delay (several hours after apprehension, usually after initial questioning and sometimes only when they had been brought to the prosecutor) and the manner in which information was drafted and presented³⁶ was such that most of the detained persons with whom the delegation spoke said that they had signed the form without having had the time to read it and without really understanding the meaning of the document. The delegation's impression was that the current procedure was a mere formality and that no effort was made by police officers to actually explain their rights (including verbally) to persons in their custody.

³³ The Head doctor at Gdańsk Remand Prison had taken the initiative of setting up a trauma register, but only injuries sustained by inmates inside the establishment were recorded in it.

³⁴ E.g. the descriptions seen by the delegation's forensic doctor at Kraków Remand Prison did not mention the colour and/or dimensions of the injuries, and there was often no information on the type of injury (whether it was an excoriation, an ecchymosis, a haematoma, etc.). The descriptions of injuries were somewhat better at Gdańsk Remand Prison (probably because one of the doctors employed there was qualified in forensic medicine) but even there the descriptions often lacked information on the sizes and morphological signs of lesions.

³⁵ Described in paragraph 28 of the report on the 2017 periodic visit (document CPT/Inf (2018) 39): "there was an appendix with information on the detained person's rights stapled to the standard form of apprehension protocol, which the detained person was asked to sign".

³⁶ I.e. lengthy quotations from the Code of Criminal Procedure, drafted in a legal language, printed in small font and with small spaces between the lines.

Further, as had been the case during the 2017 periodic visit, only a small minority of the detained persons interviewed by the delegation stated that they had been given a copy of the aforementioned form.³⁷

Consequently, **the Committee once again calls upon the Polish authorities to take steps to ensure that all persons detained by the police are fully informed of their fundamental rights as from the outset of their deprivation of liberty (that is, from the moment when they are obliged to remain with the police). This should be ensured by the provision of clear verbal information at the time of apprehension, to be supplemented at the earliest opportunity (that is, immediately upon the first arrival at a police establishment) by the provision of written information on detained persons' rights. Persons detained should always be given a copy of the above-mentioned written form. Particular care should be taken to ensure that detained persons understand their rights; it is incumbent on police officers to ascertain that this is the case.**³⁸

³⁷ Although the delegation saw written information on rights (as well as on the house rules and on organs/organisations to which detained persons could complain such as the Human Rights Commissioner and the Helsinki Foundation) posted on the walls inside the cells at police detention facilities visited; further, in at least one of the PDOZ visited (at the City Police Command in Gdańsk), the delegation saw a list of *ex officio* lawyers who could be contacted, but the long list was posted in the corridor, which made it unlikely that any detained person would have the chance to read it and make any use of the information that it contained.

³⁸ See Article 3 of Directive 2012/13 of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (OJ L 142/1, 1 June 2012), <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:142:0001:0010:en:PDF>, which states as follows: “1. Member States shall ensure that suspects or accused persons are provided promptly with information concerning at least the following procedural rights, as they apply under national law, in order to allow for those rights to be exercised effectively: (a) the right of access to a lawyer; (b) any entitlement to free legal advice and the conditions for obtaining such advice; (c) the right to be informed of the accusation [...]; (d) the right to interpretation and translation; (e) the right to remain silent. 2. Member States shall ensure that the information provided for under paragraph 1 shall be given orally or in writing, in simple and accessible language, taking into account any particular needs of vulnerable suspects or vulnerable accused persons.” Poland was supposed to transpose this Directive into its national law by 2 June 2014.

See also Article 4 of the same Directive:

“1. Member States shall ensure that suspects or accused persons who are arrested or detained are provided promptly with a written Letter of Rights. They shall be given an opportunity to read the Letter of Rights and shall be allowed to keep it in their possession throughout the time that they are deprived of liberty.

2. In addition to the information set out in Article 3, the Letter of Rights referred to in paragraph 1 of this Article shall contain information about the following rights as they apply under national law:

- (a) the right of access to the materials of the case;
- (b) the right to have consular authorities and one person informed;
- (c) the right of access to urgent medical assistance; and
- (d) the maximum number of hours or days suspects or accused persons may be deprived of liberty before being brought before a judicial authority.

3. The Letter of Rights shall also contain basic information about any possibility, under national law, of challenging the lawfulness of the arrest; obtaining a review of the detention; or making a request for provisional release.

4. The Letter of Rights shall be drafted in simple and accessible language. An indicative model Letter of Rights is set out in Annex I.

5. Member States shall ensure that suspects or accused persons receive the Letter of Rights written in a language that they understand. Where a Letter of Rights is not available in the appropriate language, suspects or accused persons shall be informed of their rights orally in a language that they understand. A Letter of Rights in a language that they understand shall then be given to them without undue delay.”

4. Final remarks and proposed further dialogue

28. Based on its delegation's findings from this ad hoc visit, as described in particular in paragraphs 12 to 14 and 20 to 27 above, the CPT is of the view that if no expedient and decisive action is taken by the Polish authorities, the risk of persons in police custody being subjected to ill-treatment is likely to increase further in the near future. The Committee very much hopes that the present report will enable the highest-level Polish authorities, first of all the Minister of Internal Affairs and Administration, to become fully aware of this risk and to take long-overdue remedial and preventive action.

Being guided by the principle of co-operation, one of the fundamental principles set out in Article 3 of the Convention, the CPT stands ready to discuss these matters, as well as more generally the ways to improve the quality of its ongoing dialogue with the Polish authorities (see paragraph 8 above), directly with the Minister of Internal Affairs and Administration in Warsaw at a mutually-agreed time. Further details of the proposed high-level talks will be the subject of a separate letter from the President of the CPT.

APPENDIX I

List of the establishments visited by the CPT's delegation

Establishments under the responsibility of the Ministry of Internal Affairs and Administration

- City Police Headquarters, Gdańsk
- Regional Police Headquarters, Kraków
- City Police Headquarters, Sopot
- Metropolitan Police Headquarters, Warsaw
- IVth District Police Station, Warsaw - Wola

Establishments under the responsibility of the Ministry of Justice

- Gdańsk Remand Prison
- Kraków Remand Prison (Montelupich)
- Warsaw-Służewiec Remand Prison

APPENDIX II:

**List of the national authorities, other bodies and non-governmental organisations
with which the CPT's delegation held consultations**

A. National authorities

Ministry of Internal Affairs and Administration

Analytical and Migration Policy Department

Mr Adam Knych	Director
Mr Marek Stodolny	Deputy Director
Ms Joanna Sosnowska	Head of Migration and Trafficking Division
Mr Dominik Wowniuk	Head of Supervision and Administrative Proceedings Division
Mr Dawid Grochowski	Adviser, Supervision and Administrative Proceedings Division

Public Order Department

Mr Adam Wójcik	Head of Police and Border Guard Organisational Division
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Police Headquarters

Mr Krzysztof Łaszkiewicz	Plenipotentiary of the Chief Police Commander for Human Rights Protection
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National Prosecutor's Office

Ms Barbara Sworobowicz	Director of Preliminary Proceedings Department
Mr Robert Król	Prosecutor, Preliminary Proceedings Department

B. Office of the Commissioner for Human Rights (Ombudsman)

Mr Adam Bodnar	Commissioner for Human Rights
Ms Hanna Machińska	Deputy Commissioner for Human Rights
Mr Przemysław Kazimirski	Head of the NPM Team
Mr Michał Żłobecki	Senior Adviser, NPM Team
Mr Michał Hara	Head of Legislative Unit, Criminal Law Department

C. Non-Governmental organisations

Helsinki Foundation for Human Rights