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Communication from Poland concerning the Trzaska Group of cases against Poland (Application No. 25792/94)

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Communication de la Pologne concernant le groupe d'affaires Trzaska contre la Pologne (requête n° 25792/94) (**anglais uniquement**)

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## ACTION REPORT<sup>1</sup>

### Information on measures to comply with judgments concerning excessive length of detention on remand in *Trzaska v. Poland* group of cases

#### Contents:

- Executive summary
- Case description
- Individual measures
- General measures
- Impact of the implemented measures
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#### Executive summary

Since 2000 in almost 170 cases the European Court found that the Polish authorities violated the right under Article 5 § 3 of the Convention to a reasonable length of detention on remand. This was mainly as the reasons relied upon by the domestic courts in their decisions to extend pre-trial detention were limited to paraphrasing the grounds for detention provided for by the Code of Criminal Procedure and that the authorities had failed to envisage the possibility of imposing other preventive measures, alternative to detention, expressly foreseen by the Polish law. Moreover, while the relevant provisions of the domestic law defined detention as the most extreme preventive measure, it was applied most frequently by the domestic courts.

On 6 June 2007 the Committee of Ministers adopted an Interim Resolution concerning the judgments of the European Court of Human Rights in 44 cases against Poland relating to the excessive length of detention on remand. In particular, having regard to the great number of judgments of the European Court finding Poland in violation of Article 5 § 3 of the Convention on account of the unreasonable length of detention on remand and noting that the number of cases in which the European Court had found similar violations was constantly increasing, it encouraged the Polish authorities to continue to examine and adopt further measures to reduce the length of detention on remand, including possible legislative measures and the change of courts' practice in this respect, to be in line with the requirements set out in the Convention and the European Court's case-law.

Following the Interim Resolution, in the *Kauczor* case (application no. 45219/06, judgment of 3/02/2009), the European Court found that the violation of the applicant's right under Article 5 § 3 of the Convention originated in a widespread problem arising out of the malfunctioning of the Polish criminal justice system which has affected, and may still affect in the future, an yet unidentified, but potentially considerable number of persons charged in criminal proceedings (§ 58). Further, the European Court concluded that for many years, at least as recently as in 2007, numerous cases have demonstrated that the excessive length of

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<sup>1</sup> Information submitted by the Polish authorities on 23 October 2014

pre-trial detention in Poland revealed a structural problem consisting of “a practice that was incompatible with the Convention” (§ 60).

The measures implemented by the domestic authorities to address the problem were presented in the Interim Resolution and further comprehensive information was provided by the Polish authorities in the action plan of 21/11/2011. Positive developments presented therein were noted with satisfaction by the Committee of Ministers which, at its 1136<sup>th</sup> meeting (March 2012), decided, in the light of the significant progress achieved and the commitment of the authorities, to continue the supervision of the execution of this group of cases under the standard procedure.

This report details all the measures taken to date. As the main source of the violations in these cases was the practice of the domestic courts, the measures taken have centred on changing that practice, so that the domestic courts take full account of the European Court’s jurisprudence. This has been achieved through extensive training for judges and prosecutors supported by provision of freely available publications of the Court’s case-law and regular updates on jurisprudence. The authorities have also put in place an extensive monitoring system to supervise courts’ use of detention on remand proceedings.

In addition, whilst there were already a number of provisions in the law which provided alternatives to detention on remand, these have been supplemented by further amendments that limit the grounds for detention on remand; ensure better diligence on the presentation of the grounds to the court; limit maximum detention periods; ensure that excessive delay in detention on remand at all levels of jurisdiction is taken into account; and provide an appeal mechanism against certain types of decisions to extend pre-trial detention. Some of these amendments were made following judgments of the Constitutional Court, which applied the Strasbourg Court’s jurisprudence in key cases concerning detention on remand.

The overall impact of these measures can be clearly seen in the statistics presented in part III. of this report. These show a very significant reduction in the use of pre-trial detention and a decrease in the number of individuals held in pre-trial detention. They also show a corresponding general increase in use of measures alternative to detention in recent years. In general, a tendency for a less frequent use of all the preventive measures (both custodial and non-custodial) in criminal proceedings seems to be well consolidated.

Due to the change in the mentality of judges and prosecutors while using the detention on remand in criminal proceedings the number of judgments finding a violation by the European Court has also dropped significantly. In 2013, there were only 3 such judgments, the facts of which pre-dated most of the measures set out in this report. There have also been a significant number of non-violation judgments<sup>2</sup>.

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<sup>2</sup> For example in cases: Wereda (54727/08), Kurkowski (36228/08), Bystrowski (15476/02), Chernyshov (35630/02), Simonov (45255/07), Ściebura (39412/08) or Lesiak (19218/07).

Notwithstanding the significant results achieved to date, the authorities continue to seek improvements. Indeed, further amendments to improve the Code of Criminal Procedure have been enacted by the Parliament and will enter into force in 2015. These include provisions that aim to further limit the use of pre-trial detention for less-serious offences; further limit the possibilities to extend pre-trial detention, and increase flexibility in the provisions allowing defendants to post bail as an alternative to detention. These further steps confirm continuous commitment of the Polish authorities for achieving even higher degree of human rights` protection level.

## Case description

All cases concern excessive length of detention on remand (for the list of cases see: the Appendix I). The grounds on which domestic courts ordered such detentions – in view of the case-law of the European Court – could not have been considered “adequate and sufficient” and proceedings were carried out without due diligence (violation of Article 5 § 3 of the Convention).

In addition, in a number of cases the European Court found other violations of the Convention which are summarized in the Appendix II. Those cases are or were examined in the context of other groups of cases pending supervision of execution (see: the Appendix III).

### I. Individual measures

Detention on remand is no longer applied in any of the cases examined by the European Court. Where the European Court granted just satisfaction in respect of non-pecuniary damage this was paid. No just satisfaction was granted in the cases of Trzaska, Wesółowski, Szeloch, Rusiecki, Kucharski, Depa, Świerzko, Zenon Michalak, Kwiatek, Marecki, Kozik, Owczar, Wolf, Maciejewski, Korzeb, Kurczewski Pasiński, Kurczewski, Rojek, Maruszak and Adam Sienkiewicz.

Individual measures concerning other violations found in the cases belonging to this group are presented in the Appendix IIa.

### II. General measures

#### 1. Awareness raising

As the main source of the violations in this group of cases was the practice of the domestic courts, the measures taken by the authorities have focused on changing that practice, so that the domestic courts take full account of the European Court's jurisprudence and apply these standards while applying and extending detention on remand. Such change in practice, demonstrated by the decrease in the number of pre-trial detentions and decrease in their length, has been achieved through extensive training for judges and prosecutors supported by provision of freely available publications of the Court's case-law and regular updates on jurisprudence.

The Ministry of Justice's website ([www.ms.gov.pl](http://www.ms.gov.pl)) and its newsletter regularly update information about judgments passed by the European Court in Polish cases and the Court's case law standards applicable to different case groups. Each non-repetitive judgement is translated into Polish and published, while briefs about judgements issued in a given week are posted in the website "news" section. A number of judgments concerning the length of detention on remand have been translated (*inter alia* in cases Wereda, Kurkowski, Kowrygo, Popena, Dochnal, Piechowicz, Ruprecht, Chernyshov, Raducki, Ściebura, Finster, Lesiak, Choumakov No 2, Knyter, Rogala, Hartman, Hajol, Bruczyński, Kauczor, Rybacki, Wojciechowski, Raźniak, Mirosław Jabłoński, Pyrak, Czajka, Garycki, Bagiński, Chodecki, DP, Matwiejczuk, Klamecki, Sałapa, Dacewicz, Olstowski, Iwańczuk, Trzaska, Czajka and many more).

A 2012 publication on "The European Court of Human Rights' Case Law and the Right to Reasonable Length of Pre-Trial Detention", explaining the standards applied by the European Court to the excessive length of pre-trial detention was published on the website of the Ministry of Justice. Moreover, beginning in May 2013, the Ministry's website in the tab on the enforcement of judgments, posts information about final resolutions adopted by the Committee of Ministers of the Council of Europe that complete oversight of the enforcement of judgments, as well as proceedings in cases in which a decision to strike out an appeal was made following an out-of-court settlement or submission of an unilateral declaration.

From 2012, information on each violation of the Convention found by the European Court, concerning the domestic courts practice is sent to the relevant court's president and a president of a court of higher instance.

Moreover, in 2011 the Ministry of Justice prepared a publication: "Standards of human rights protection in the law of European Convention of Human Rights" (*„Standardy ochrony praw człowieka w prawie Europejskiej Konwencji Praw Człowieka”*), concerning *inter alia* a right to reasonable time of detention on remand, which was distributed free of charge to all the Polish judges and prosecutors.

Many awareness raising measures taken prior to these dates were previously presented to the Committee and details on those taken in the period 2000-2007 can be found in the 2007 interim resolution<sup>3</sup>. However, it is also interesting to note that as early as on 04/06/2004, the Ministry of Justice sent out a letter addressed to presidents of appellate courts with an analysis of the European Court's case-law relating to the mandatory conditions that have to be met before a person can be placed in detention awaiting trial. The letter emphasised that grounds referred to in Article 258 § 2 of the Code of Criminal Procedure cannot justify keeping someone in detention on remand for a long time. In addition, the Ministry of Justice sent out a circular letter, drawing the attention of the judges and prosecutors to the importance of the properly presented grounds for decisions extending the length of detention on remand.

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<sup>3</sup> Interim Resolution CM/ResDH(2007)75

The National School of Judiciary and Public Prosecution has been continuing its actions aimed at disseminating the Court's case law among judges, both as part of initial training and continuous training of judges and prosecutors. Attention should be drawn in particular to a series of trainings of systemic nature, which initiated in 2012, at the level of appellate courts. The trainings are intended to present information to judges and prosecutors about the most frequent ECHR violations found by the European Court in cases against Poland which concerned the administration of justice (the training was attended by 600-800 judges). Such trainings will be continued in 2014 and the following years. Eventually in the next 5-7 years, all common court judges are to attend such trainings.

## 2. Oversight of national bodies responsible for detention on remand

In order to control the phenomenon of excessively lengthy detentions on a global scale and in individual cases, the authorities have put in place an extensive monitoring system to gather relevant statistical data, combined with the possibility for an administrative oversight of prosecutors' and courts' use of detention on remand.

### a. Oversight of prosecutors' offices

The grounds for applying detention on remand and the length of its duration are examined under the provisions of § 204 and § 205 of the Rules of Procedure Applicable to General Organisational Units of the Prosecutor's Office (Ordinance of the Minister of Justice of 24/03/2011). According to these provisions, every detention on remand exceeding nine months shall be reported by the regional prosecutor to the appellate prosecutor together with information about the estimated date of termination of the preparatory proceedings; if detention on remand is extended over one year, the appellate prosecutor shall notify the General Prosecutor of this fact.

Depending on the assessment of the collected information, there is a possibility of official oversight by superiors of preparatory proceedings carried out in the field (in appellate or regional prosecutor's offices) or monitoring of the proceedings by the General Prosecutor's Office. It should be also underlined that the most complicated investigations, conducted in the units dealing with organised crime and corruption of appellate prosecutor's offices, are monitored directly by the Prosecutor General.

The correctness of the application of detention on remand is also monitored in connection with the examination by superior prosecutors of applications for extension of investigation for a period longer than one year (Article 310 of the Code of Criminal Procedure). A prior extension of investigation by a higher-level prosecutor is a condition for a prosecutor who conducts the investigation to apply to the court for extension of detention on remand. The above oversight scheme indicates that extension of investigation (hence oversight of detention on remand) in the most complex cases investigated by the appellate prosecutor's offices' units dealing with organised crime and corruption falls under the competence of the General Prosecutor's Office.

## b. Oversight of courts

In connection with an amendment to the Act of 27 July 2001 – Law on Organisation of Common Courts, the model of administrative oversight of the administrative operations of common courts of law has been changed as of 28 March 2012.

The Act describes the subject matter of oversight as “ensuring that courts work pursuant to proper internal procedure” directly connected with the administration of justice and other tasks involving legal protection entrusted to courts.

The law distinguishes between two categories of administrative oversight: external by the Minister of Justice and internal by court presidents. The distinction was made to clearly separate between oversight powers exercised by the Minister of Justice and presidents of courts. The law also clearly distinguishes between external and internal oversight powers.

Internal administrative oversight tasks which cover, among others, the examination of the procedure and efficiency of proceedings in individual cases, were entrusted solely to court presidents and the supervisory staff they oversee.

The Minister of Justice was entrusted with tasks relating to external oversight. These consist in overseeing the performance of oversight activities carried out by court presidents, in particular presidents of appellate courts. The purpose of this regulation is to streamline administrative oversight of court work to increase its effectiveness, while leaving the main oversight powers in the judiciary.

The Minister of Justice is also authorised to continue supervising oversight activities carried out by presidents of appellate courts in criminal cases if defendants remain in pre-trial detention for longer than two years. This oversight has been exercised since October 2008. At that time, presidents of appellate courts were charged with overseeing all criminal cases being examined in their appellations, if defendants remained in pre-trial detention longer than 2 years. Their oversight was mandated by the need to maintain standards concerning the length of the application of this preventive measure as set out in the Convention and the ECHR case law relating to Polish cases. The presidents of appellate courts are required to submit quarterly reports on their oversight activities.

The reports are then analyzed by judges inspectors and if they find transgressions in oversight, they address letters to presidents of appellate courts requesting them to submit explanations or undertake appropriate oversight measures aimed at eliminating the identified transgressions.

Moreover, the Minister of Justice, as part of his oversight duties, set “Overall Guidelines for Internal Administrative Oversight” for 2013, which obligate appellate court presidents to, among others, analyse proceedings in which pre-trial detention is applied for more than one year. Appellate court presidents will submit information on how this order was followed up in their 2014 activity reports.

### 3. Legislative measures

Even though the legal framework governing the application and extension of detention on remand in Poland has not been criticised by the European Court, as the source of violation here was rather incorrect practice of domestic courts and prosecutors, the authorities have also undertaken several measures in order to ameliorate the existing legal regime. In general those measures have been implemented on the authorities' own initiative or in execution of judgments of the Polish Constitutional Court.

#### a. Current legal framework

The grounds for applying and continuing detention on remand are set out in the Code of Criminal Procedure. Pursuant to the applicable provisions of law, the application of detention on remand is permissible if there exists a general ground specified in Article 249 § 1 (i.e., if the purpose of such detention is to safeguard proper conduct of proceedings or to prevent the commitment of a new and serious offence by the accused, provided that the evidence that has been collected indicates that it is highly probable that the accused has committed the offence) and one specific ground referred to in Article 258, in particular:

- there is a reasonable risk that an accused will abscond or go into hiding, in particular when his/her identity cannot be established or when he/she has no permanent abode;
- there is a justified fear that an accused will attempt to induce other persons to give false testimony or to obstruct the proper course of proceedings by any other unlawful means;
- if an accused has been charged with a serious offence or an offence for the commission of which he/she may be liable to a statutory maximum sentence of at least 8 years' imprisonment, or if a court of first instance has sentenced him/her to at least 3 years' imprisonment, the need to apply detention to ensure the proper conduct of proceedings may be justified by severe penalty threatening the accused;
- there are reasons to suspect that the accused, who has been charged with an offence or an intentional misdemeanour, will commit an offence against life, health or public security, especially if he/she has threatened to commit such an offence.

Pursuant to Article 259 § 1, if there are no special reasons to the contrary, detention on remand shall be waived, in particular if depriving an accused of his/her liberty would seriously jeopardise his/her life or health, or entail excessively harsh consequences for the accused or his/her next of kin.

Detention on remand shall not be applied in the event that, based on the circumstances of the case, the court is expected to sentence the accused to the penalty of deprivation of liberty with a conditional suspension of its execution, or to a milder penalty, or if the period of detention on remand will exceed the expected length of the penalty of deprivation of liberty without a conditional suspension (Article 259 § 2), or if the offence is punishable by

the penalty of deprivation of liberty not exceeding one year, unless the offender was caught at the scene of the crime or immediately afterwards (Article 259 § 3). However, these restrictions do not apply, if the accused absconds or goes into hiding, persistently refuses to appear when summoned or obstructs proceedings in another unlawful way, or when his or her identity cannot be established (Article 259 § 4).

Pursuant to Article 257 § 1, detention on remand shall not be applied if another preventive measure is sufficient. Pursuant to the provisions of the 1997 Code, other preventive measures include, in particular, bail, police supervision, guarantee by a social entity or by a responsible person, suspension in duties, prohibition to leave the country, conditional supervision (Article 275 § 3), order to leave premises occupied jointly with the victim (Article 275a § 1), suspension in the performance of one's profession, an order to refrain from specified activity or from driving specific types of vehicles (Article 276).

b. Changes aimed at limiting the use of detention on remand

The length of detention on remand and the grounds for extending its duration are set out in Article 263 of the Code of Criminal Procedure. The wording of Article 263 has been modified several times between 2000 and 2011 and, in addition, the Constitutional Court has also pronounced itself on some of its provisions, in particular:

- In Article 263 § 2, the possibility of extending detention on remand for a period that jointly may not exceed 12 months has been given to the court of the first instance that is competent to examine the case (amendment of 20/07/2000, entry into force on 1/09/2000). This provision sets the maximum period of detention on remand that can be applied during the investigation stage, whereas the decision to extend the detention on remand is taken, on a prosecutor's motion, by the court of the first instance competent to examine the case. Handing the decision over to the court competent to examine the case on its merits has helped to accelerate the proceedings relating to the application and to the extension of detention on remand.
- With reference to Article 263 § 3, the Constitutional Court ruled in its judgment of 10/06/2008 (file no. SK 17/07) that Article 263 § 3 violated Article 41 § 1 in conjunction with Article 2 and with Article 45 § 1 of the Polish Constitution in the scope in which a two-year maximum period of application of detention on remand did not include periods during which the person detained on remand concurrently served a prison sentence adjudicated in a different case, thereby allowing for the length of detention on remand to be extended beyond a two-year period by the court of the first instance on general terms.
- Article 263 § 3a was added, which provides that in the event that detention on remand overlaps with a prison sentence served in a different case, the period of the served prison sentence should be included in the periods referred to in § 2 and § 3 (amendment of 12/02/2009, entry into force on 19/02/2009). This provision requires that maximum periods of application of detention on remand be applied in all cases.

According to the hitherto case-law, any prison terms served simultaneously by the accused in another case was deducted from the length of detention on remand.

- With a reference to Article 263 § 4, the Constitutional Court ruled in its judgment of 24/07/2006 (file no. SK 58/03) that Article 263 § 3 permitting the extension of the detention on remand beyond the period of 2 years if "other important obstacles which removal has not been possible exist", violates Article 41 § 1 in conjunction with Article 31 § 1 and § 3 of the Polish Constitution (the Constitutional Court declared the unconstitutional character of this provision only as it relates to preparatory proceedings). The Constitutional Court's judgement led to the elimination of an imprecise ground on the basis of which the application of detention on remand was extended, relating to the existence of other important obstacles whose removal has not been possible.
- In Article 263 § 4, several other grounds for extending the application of detention on remand were also eliminated, including the excessive length of psychiatric observation and the excessive length of preparation of an expert's opinion (amendment of 24/10/2008, entry into force on 22 January 2009). This amendment obligates the authority conducting criminal proceedings to concentrate procedural acts relating to a case and to discipline the appointed experts.
- New Article 263 § 5, was added, providing that a decision of the court of appeal issued pursuant to § 4 may be appealed against to a court of appeal adjudicating in a bench of three judges (amendment of 20/07/2000, entered into force on 1/09/2000). This provision made it possible to appeal against a decision to extend detention on remand whose duration exceeds: 12 months in preparatory proceedings and a total of 2 years until the adoption of a judgment by the court of first instance. Before the amendment, such appeal was inadmissible. The examination of appeals against such decisions by another bench of judges from the same court leads to streamlining of appellate proceedings.
- With a reference to Article 263 § 7, the Constitutional Court ruled in its judgment of 20 November 2012 (SK 3/12) that this provision is unconstitutional where it does not unequivocally specify the provisions for extending pre-trial detention following the issue of the first sentence by a court of first instance in the relevant case. The Court noted in this respect that some of the problems can be resolved, or at least mitigated, by courts' rulings, placing greater emphasis on the protection of the rights of defendants. This applies, in particular, to exerting more due diligence in specifying the grounds (in particular – those relating to circumstances referred to in art. 258.1 of the Code of Criminal Procedure, i.e. fear of flight, going into hiding or obstruction of justice by the defendant) determining that the application of non-isolation preventive measures will not secure due course of proceedings.

c. Changes aimed at streamlining criminal procedure

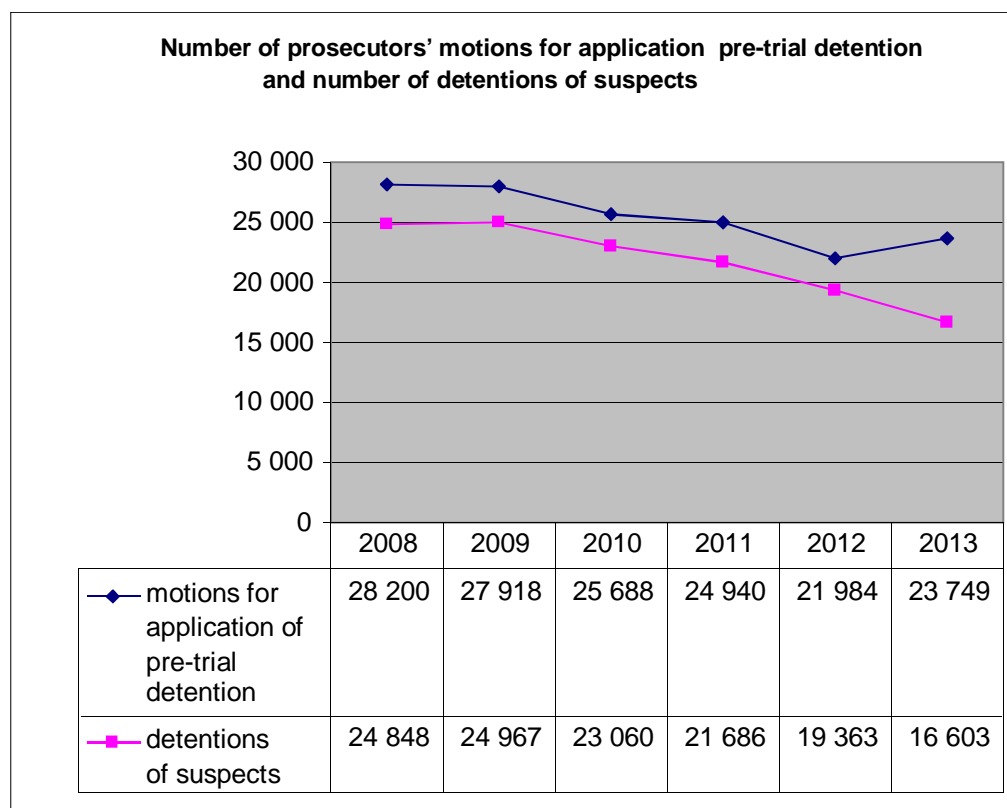
The length of detention on remand depends, to a large extent, on the length of criminal proceedings, both during the preparatory and court trial stages of the proceedings.

A number of actions undertaken by Polish authorities and their results have been presented in detail in the context of the Kudla group of cases. In this context, it should be noted that they cover both legislative, supervisory, organisational and training activities.

### III. Impact of the implemented measures

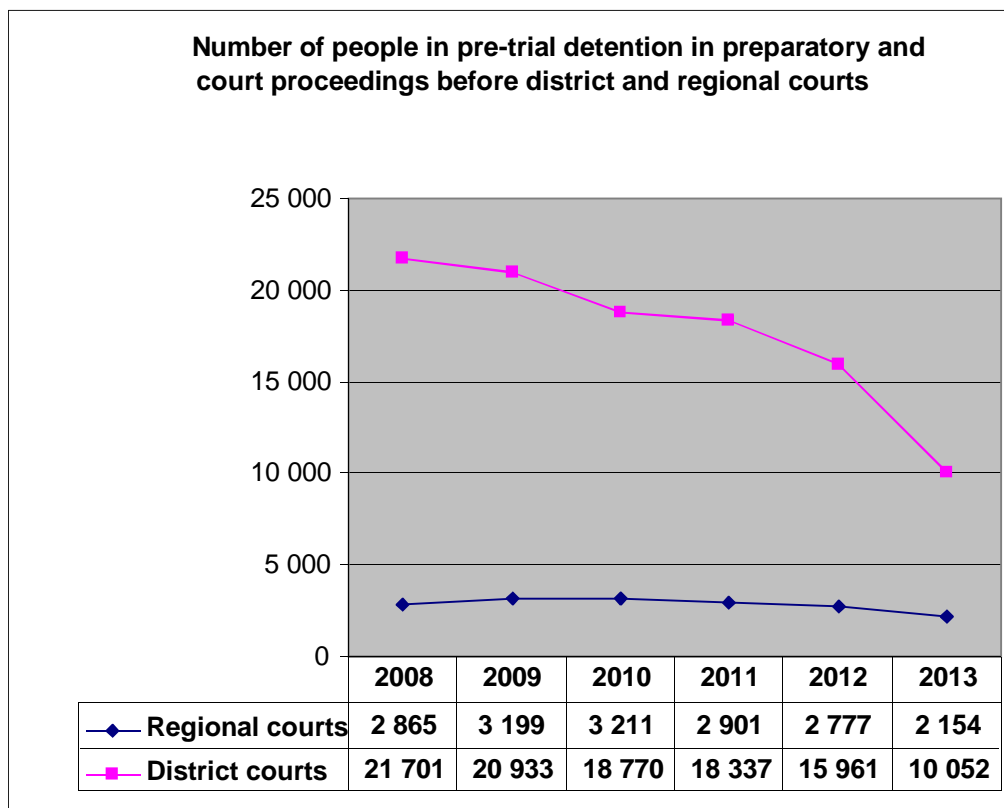
The statistical data shown below represent main trends in the number of motions for the application of pre-trial detention, its duration and the application of other (non-isolation) preventive measures.

*Number of prosecutors' motions for the application of pre-trial detention and the application of pre-trial detention by courts during preparatory proceedings.*



The above graph demonstrates a very significant systematic fall in the number of the application of pre-trial detention and detentions of suspects in preparatory proceedings. Even if the number of prosecutors' motions has been slightly higher in some periods, the application of pre-trial detention has steadily declined.

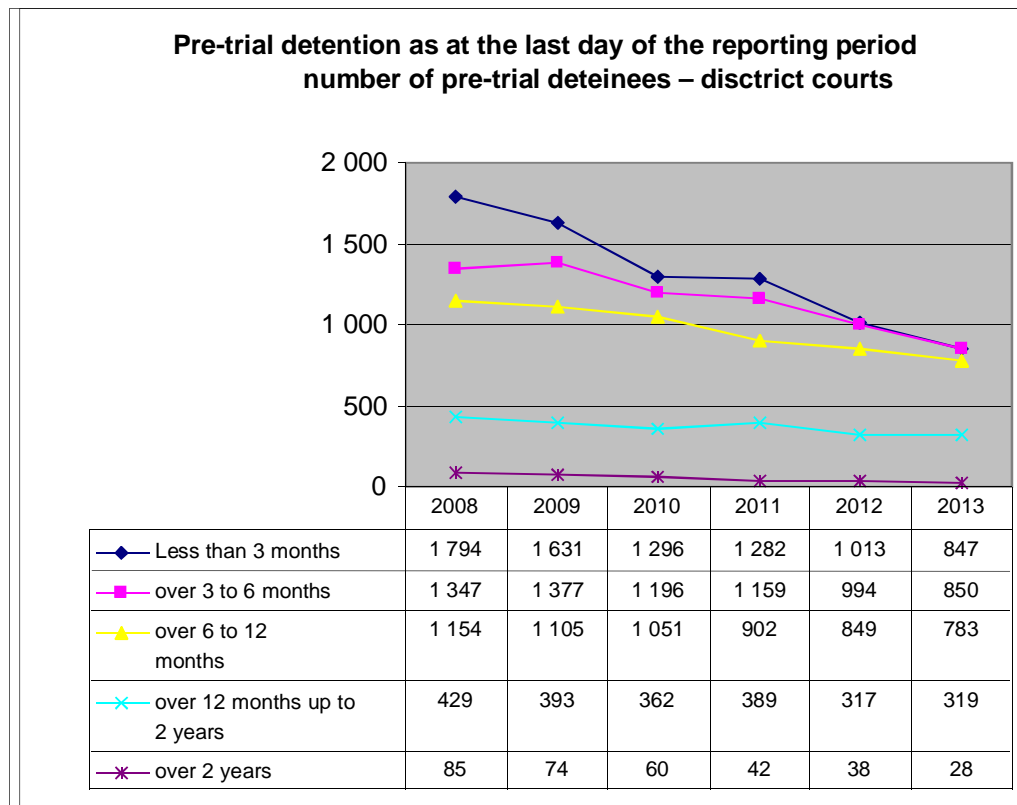
*Number of people held in pre-trial detention in preparatory and court proceedings.*



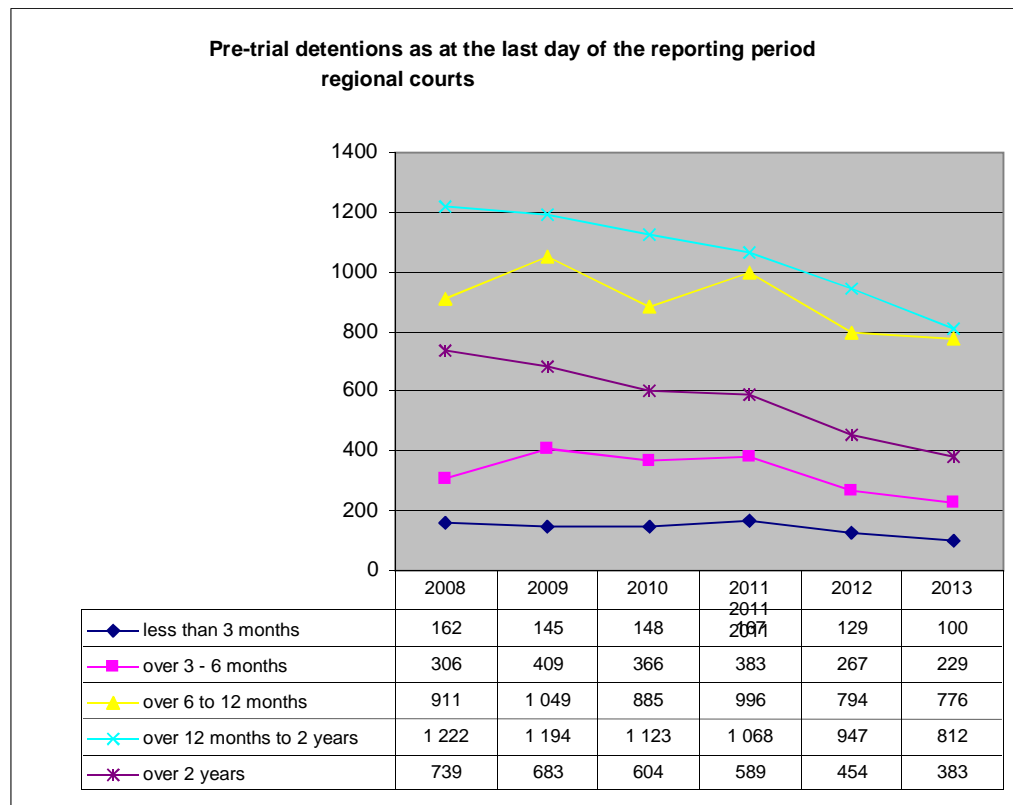
The above graph indicates a significant decrease in the number of persons kept in pre-trial detention in the court proceedings pending before district courts from 15 961 persons in 2012 to 10 052 persons in 2013 , i.e. 37 % less. In the case of regional courts the number of persons kept in pre-trial detention also declined from 2 777 persons in 2012 to 2 154 persons in 2013, i.e. 22,4 % less.

### *Length of pre-trial detentions ordered by courts*

The data below illustrate the number of pre-trial detentions and their duration recorded during the last day of the reporting period, i.e. on 31 December, in 2008-2013. The data was divided into different court categories.



The above graph indicates that as before downward trend regarding the general number of persons in pre-trial detention in the proceedings before the district courts persists. Only in the category of „over 12 months up to 2 years” the number of detained persons is still the same. However it is worth to note that district courts apply mostly pre-trial detentions up to 3 months and lasting over 3 to 6 months. Detentions in the last two time ranges – from 12 months to 2 years and above 2 years represented a small percentage.



In comparison with the district courts pre-trial detentions in the proceedings pending before the regional courts applied in 2013 as in the preceding years lasted longer. However also in this category of pre-trial detentions downward trend is noticeable in every category. In particular it is worth to note that the number of detained persons of the last category (over 2 years) significantly decreased by the end of 2013 in comparison with 2012 r., i.e. 15,6 % less.

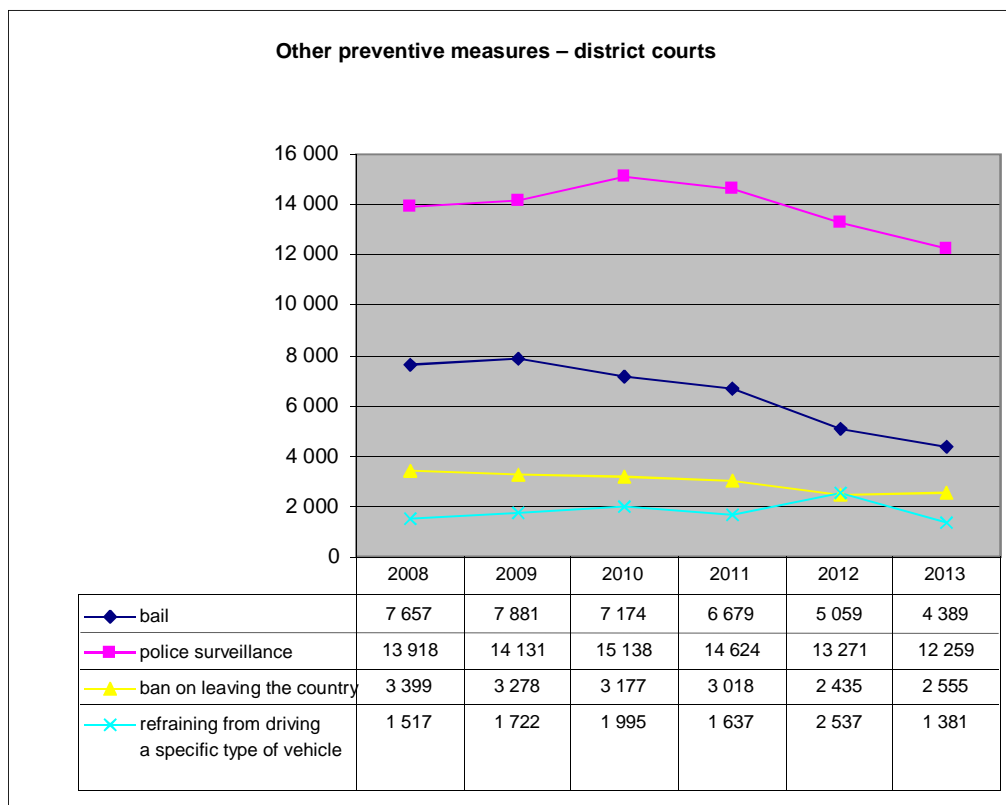
Compared to district courts, regional courts applied longer periods of pre-trial detentions. This is largely due to the fact they deal with more serious offences.

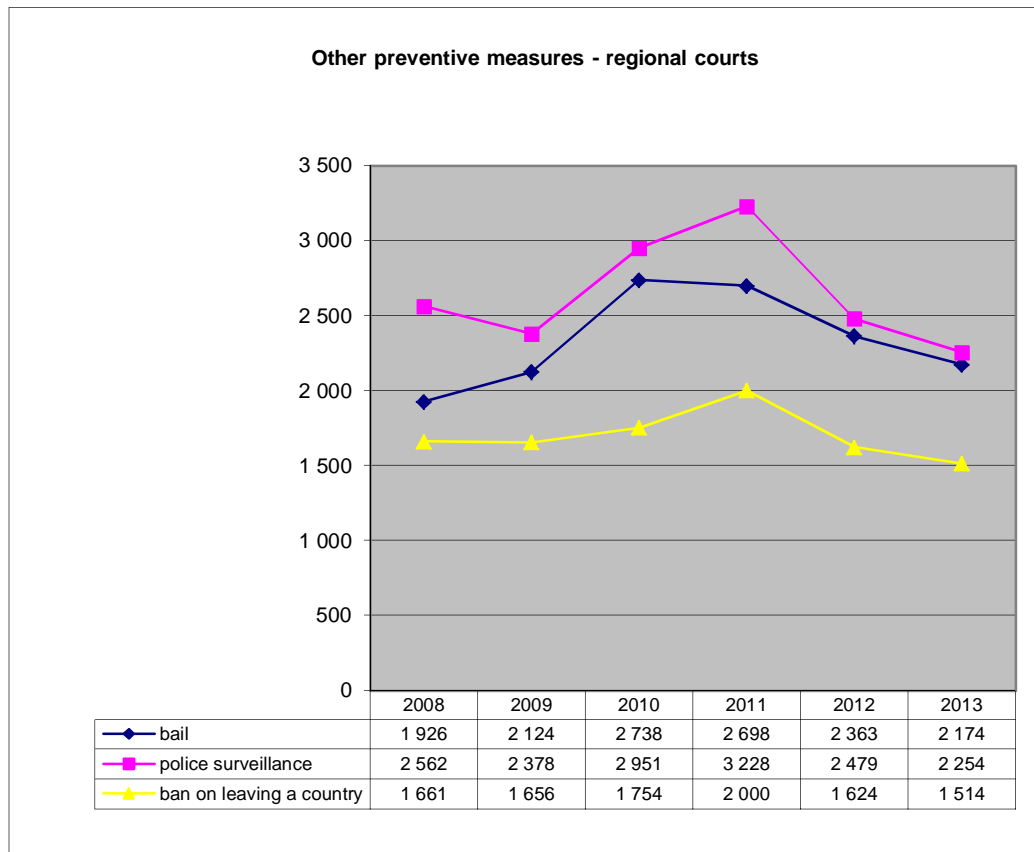
As compared to previous years, a noticeable drop in the number of persons charged in each of the time ranges was observed at the end of 2012.

### *Use of other preventive measures*

The noticeable drop in pre-trial detentions is due to the general less frequent resort to preventive measures and a broad use of alternatives to detention in particular of police surveillance, bail and ban on leaving the country that the courts are applying to secure proper course of proceedings.

Data on the number of non-isolation preventive measures applied was divided into different court categories.





The above graphs illustrate that both in the district and regional courts the number of persons to whom non-custodial preventive measures were applied has slightly declined since 2011. The only exception is increase of the number of application of refraining from driving a specific type of vehicle in district courts in 2012. However this data shall be assessed in the context of significant and systematic drop of the number of persons to whom pre-trial detention was applied which indicates established trend resulting from limitation of the application of this most severe preventive measure together with shortening the time of its application. In 2011 and 2012 the number of preventive measures in the form of police surveillance and ban on leaving the country dropped. Since 2010, the number of bails applied has also dropped. A growing trend has continued in the application of preventive measures involving an order to refrain from driving a specific type of vehicle.

Moreover the statistics presented above should be assessed in the context of significant and systematic decrease in the overall number of preventive measures (both: custodial and non-custodial) that are applied by prosecutors and courts in the course of criminal proceedings. The global statistical data on the application of preventive measures confirms that the decrease in the application of alternatives to detention does not suggest more frequent use of detention on remand, but rather reflects the overall trend to resort to all types of preventive measures, less frequently.

#### IV. Future commitments: Amendment to the Code of Criminal Procedure

Despite the fact that the European Court has not openly criticized the Polish legislation as to the provisions governing extension of the detention on remand, the authorities, beyond the

scope of the measures necessary for the execution of this group of judgments, decided to introduce additional guarantees in the comprehensive amendment to the Code of Criminal Procedure. This amendment, aiming at streamlining and accelerating criminal proceedings, should also shape anew the grounds on which preventive measures are applied and extended. The introduction of additional guarantees to the Polish legal system demonstrates continuous commitment of the Polish authorities to achieving higher level of human rights protection standards.

Legislative changes relating to preventive measures cover more than ten provisions of the Code of Criminal Procedure and provide for stricter criteria for applying the most severe of these measures, i.e. pre-trial detention, while also precisely identifying the grounds for the application of all preventive measures, rules for filing complaints, and enhance the right to defence in this respect.

The most important proposed amendments are:

- introducing the requirement that the court has to appoint a counsel for the defence in the event that the duration of pre-trial detention is extended and to examine complaints about the application or extension of this measure;
- acceleration of the appeal procedure concerning preventive measures. Now, a complaint regarding a preventive measure is to be examined by a court promptly. In the proposed legislative change, this provision would be supplemented by an indication that – in the event the complaint concerns pre-trial detention – it should be examined “no later than within 7 days” from the date such complaint and the court files are handed over to an appellate court;
- supplementing provisions regulating conditional pre-trial detention – the draft law provides that the court could extend the deadline for posting bail at the request of the defendant or his/her defence attorney;
- changes in the scope of formulating grounds for the application of pre-trial detention – the circumstance that the defendant risks a serious sentence will not be a stand-alone premise for applying or extending pre-trial detention. In addition, when it comes to applying pre-trial detention after the first sentence in the case is passed, the threshold of non-final sentence of deprivation of liberty leading to possible application of pre-trial detention was raised to more than 3 years of deprivation of liberty;
- limiting the possibility of applying pre-trial detention in cases involving less serious crimes. Now this measure is excluded in minor offences subject to a penalty of up to 1 year and only relatively, as it does not apply to persons caught red-handed or immediately afterwards. The proposed legislative amendment consists in raising the limit of threats for which this measure would be inadmissible, up to 2 years and by excluding the possibility of applying it to such risk even if the offender was caught red-handed or during a pursuit;

- introduction of additional restrictions when pre-trial detention is extended in less serious cases. When setting the duration of pre-trial detention in preparatory proceedings for a period longer than one year, the proposal is to prohibit its successive extension, when the actual risk of a penalty *in concreto* does not exceed 3 years of deprivation of liberty, and at the stage of court proceedings – when extending pre-trial detention to over 2 years – provided it does not exceed 5 years of deprivation of liberty. In both cases, this change would apply to situations, when the period of pre-trial detention that will be credited against the term of the sentence amounts to at least 1/3 of the possible future punishment (in preparatory proceedings) or even a little bit more (in court proceedings). This prohibition would not apply if the grounds for extending pre-trial detention was the defendant's intentional protraction of proceedings. This measure is intended to prevent defendants from being held longer on in less serious cases (when after a suspect is sentenced and his pre-trial detention is credited against his/her sentence term, he/she has only a very small sentence to serve). It also applies to cases when despite the relatively small harmfulness of the act, the sentence is quite severe because of lengthy pre-trial detention period that was applied.

The government bill amending the Law – Code of Criminal Procedure and other laws presented above was adopted by Polish parliament on September 27<sup>th</sup> 2013 and on October 25<sup>th</sup> 2013 it was published at the Journal of Laws as pos. 1247. The bill will come into force on July 1<sup>st</sup> 2015.

#### V. Conclusions of the respondent state

The Government believe that the information presented above shows positive trends and that they demonstrate that the implemented measures achieved the expected results. Therefore the Government consider that other individual measures are not necessary in the present cases and that adopted general measures will be sufficient to conclude that Poland complied with its obligations under Article 46, paragraph 1 of the Convention.

## Appendix I

Application/ <i>Requête</i>	Case / <i>Affaire</i>	Judgment of / <i>arrêt du</i>	Final on / <i>définitif</i> <i>le</i>
25792/94	TRZASKA	11/07/2000	11/07/2000
25668/03	ADAM SIENKIEWICZ	27/05/2008	01/12/2008
20758/03	ADAMIAK	19/12/2006	19/03/2007
37444/97	BAGIŃSKI	11/10/2005	11/01/2006
3158/06	BANASIAK	23/10/2007	23/01/2008
40153/09	BARANOWSKI GRZEGORZ	09/11/2010	09/11/2010
38713/06	BEREZA	01/04/2008	01/07/2008
18120/03	BIELSKI	03/05/2011	03/08/2011
46117/07	BIENIK	01/06/2010	01/09/2010
22807/07	BIŚTA	12/01/2010	12/04/2010
20005/04	BOBRYK	09/10/2007	09/01/2008
23042/02	CABAŁA	08/08/2006	08/11/2006
3489/03	CEGŁOWSKI	08/08/2006	08/11/2006
17584/04	CELEJEWSKI	04/05/2006	04/08/2006
49929/99	CHODECKI	26/04/2005	26/07/2005
33868/05	CHOUMAKOV	29/07/2008	29/10/2008
55777/08	CHOUMAKOV No. 2	01/02/2011	01/05/2011
30049/06	CYNARSKI	04/11/2008	04/02/2009
15067/02	CZAJKA	13/02/2007	13/05/2007
75112/01	CZARNECKI	28/07/2005	28/10/2005
36250/06	CZUWARA	29/07/2008	26/01/2009
34221/96	D.P.	20/01/2004	20/04/2004
62324/00	DEPA	12/12/2006	12/03/2007
6334/02	DOLASIŃSKI	19/12/2006	19/03/2007
75107/01	DOMBEK	12/12/2006	12/03/2007
5270/04	DRABEK	20/06/2006	20/09/2006
35367/05	DROZDOVS	22/07/2008	22/10/2008
24676/07	DRUŻKOWSKI	01/12/2009	01/03/2010
48247/06	DUBLAS	07/10/2008	07/01/2009
67016/01	DUDA	19/12/2006	19/03/2007
39842/05	DYLLER	15/02/2011	15/05/2011
77832/01	DZYRUK	04/07/2006	04/10/2006
7883/07	FIGAS	23/06/2009	23/09/2009
39163/06	FIŁON	13/01/2009	13/04/2009
18661/09	GALAŻKA	14/02/2012	14/02/2012
7677/02	GAŚSIOROWSKI	17/10/2006	17/01/2007
46949/07	GODYSZ	28/04/2009	28/07/2009
31330/02	GOŁEK	25/04/2006	25/07/2006
14148/05	GOLISZEWSKI	08/12/2009	08/03/2010
38654/97	GORAL	30/10/2003	30/01/2004
41230/04	GÓRECKA	23/10/2007	23/01/2008
28904/02	GÓRSKI	04/10/2005	15/02/2006
14224/05	GRACKI	29/01/2008	29/04/2008
33004/07	GROCHULSKI	18/01/2011	18/01/2011
33176/06	GULCZYŃSKI	02/12/2008	02/03/2009
39469/02	GUZIUK	21/10/2008	06/04/2009
7478/03	HAGEN	14/10/2008	14/01/2009
38227/02	HARAZIN	10/01/2006	10/04/2006
2782/04	HASS	07/11/2006	07/02/2007
25413/04	HOŁOWCZAK	04/03/2008	04/06/2008
37976/06	HILGARTNER	03/03/2009	03/06/2009
27504/95	IŁOWIECKI	04/10/2001	04/01/2002
36258/97	J.G.	06/04/2004	06/07/2004
33492/96	JABŁOŃSKI	21/12/2000	21/12/2000
33985/05	JABŁOŃSKI MIROSŁAW	08/07/2008	01/12/2008
39595/05	JAKUBIAK JAROSŁAW	03/06/2008	03/09/2008
6093/04	JAMROŻY	15/09/2009	15/12/2009

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Application/ <i>Requête</i>	Case / <i>Affaire</i>	Judgment of / <i>arrêt du</i>	Final on / <i>définitif</i> <i>le</i>
35831/06	JANICKI	02/12/2008	02/03/2009
15479/02	JARZYŃSKI	04/10/2005	04/01/2006
17888/07	JASARI	12/10/2010	12/10/2010
25715/02	JAWORSKI	28/03/2006	28/06/2006
747/09	JECZMIENIOWSKI	25/01/2011	25/01/2011
22930/05	KACHEL	23/09/2008	06/04/2009
50020/06	KACPRZYK	21/07/2009	21/10/2009
3994/03	KAŁOL	06/09/2007	06/12/2007
10268/03	KANKOWSKI	04/10/2005	04/01/2006
59526/00	KASZCZYŃC	22/05/2007	22/08/2007
45219/06	KAUCZOR	03/02/2009	03/05/2009
33374/05	KONRAD	08/07/2008	08/10/2008
6200/07	KOWRYGO	26/02/2013	26/05/2013
39586/03	KORZEB	20/05/2008	20/08/2008
44131/05	KOWALCZYK	01/07/2008	01/10/2008
25501/02	KOZIK	18/07/2006	18/10/2006
31575/03	KOZŁOWSKI	13/12/2005	13/03/2006
17732/03	KRAWCZAK	04/10/2005	04/01/2006
34097/96	KREPS	26/07/2001	26/10/2001
12786/02	KROWIAK	16/10/2007	16/01/2008
38018/07	KRZYSZTOFIK	20/04/2010	20/07/2010
16535/02	KUBICZ	28/03/2006	28/06/2006
12848/03	KUBIK	29/01/2008	29/04/2008
73102/01	KUC	17/07/2007	10/12/2007
37766/02	KUC PIOTR	19/12/2006	19/03/2007
51521/99	KUCHARSKI	03/06/2008	03/09/2008
18157/04	KURCZEWSKI	22/01/2008	22/04/2008
20204/02	KWIATEK	06/02/2007	06/05/2007
20200/02	KWIATKOWSKI	12/04/2007	12/07/2007
27556/03	LACHOWSKI	05/12/2006	05/03/2007
44722/98	ŁATASIEWICZ	23/06/2005	23/09/2005
11825/07	LEMEJDA	13/01/2009	13/04/2009
36576/03	LESZCZAK	07/03/2006	07/06/2006
29437/02	LEWANDOWSKI	03/07/2007	03/10/2007
28993/05	LEWICKI	06/10/2009	28/06/2010
24023/06	ŁOŚ	13/01/2009	13/04/2009
25135/04	LYP	13/11/2007	13/02/2008
11887/07	M.B.	26/07/2011	26/07/2011
23755/03	MACIEJEWSKI	07/07/2009	07/10/2009
41012/05	MAKOWSKI	22/07/2008	22/10/2008
57477/00	MALIK	04/04/2006	04/07/2006
10273/02	MARCHOWSKI	08/07/2008	08/10/2008
4646/02	MARCZUK	08/01/2008	08/04/2008
20834/02	MARECKI	02/12/2008	02/03/2009
2697/06	MARKOŃ	30/09/2008	30/12/2008
11253/07	MARUSZAK	07/07/2009	07/10/2009
42868/06	MARZEC03/11/2010	09/06/2009	09/09/2009
16864/02	MICHALAK ZENON	18/09/2007	18/12/2007
13425/02	MICHTA	04/05/2006	04/08/2006
39437/03	MISZKURKA	04/05/2006	04/08/2006
32849/04	MUCHA	06/09/2007	06/12/2007
24613/04	MUSZYŃSKI	13/11/2008	06/04/2009
7224/04	NAUS	16/09/2008	16/12/2008
3500/04	NIECKO	16/10/2007	16/01/2008
34052/96	OLSTOWSKI	15/11/2001	15/02/2002
31246/02	OSUCH	14/11/2006	14/02/2007
30028/06	OSUCH PIOTR	03/11/2009	03/02/2010
34117/02	OWCZAR	18/09/2007	18/12/2007
3252/04	PAKOS	20/01/2009	20/04/2009

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Application/ <i>Requête</i>	Case / <i>Affaire</i>	Judgment of / <i>arrêt du</i>	Final on / <i>définitif</i> <i>le</i>
6356/04	PASIŃSKI	20/06/2006	23/10/2006
42643/98	PASZKOWSKI	28/10/2004	28/01/2005
8661/06	PAWLAK JAN	09/06/2009	09/09/2009
45217/06	PIOTROWSKI	20/05/2008	20/08/2008
18967/02	PISARKIEWICZ	22/01/2008	22/04/2008
4657/02	POLAKOWSKI	31/05/2007	31/08/2007
42146/07	POLANSKI	12/10/2010	12/10/2010
39502/08	POPENDA	09/10/2012	09/01/2013
28633/02	POPŁAWSKI	29/01/2008	29/04/2008
54476/00	PYRAK	12/02/2008	12/05/2008
10274/08	RADUCKI	22/02/2011	22/05/2011
28492/04	RATUSZNIK	06/11/2007	06/02/2008
14613/02	ROCHALA	29/01/2008	29/04/2008
15969/06	ROJEK	22/05/2007	22/08/2007
16706/11	RÓŻAŃSKI	22/01/2013	22/01/2013
5608/04	RUBACHA	12/06/2007	12/09/2007
39912/06	RUPRECHT	21/02/2012	21/05/2012
36246/97	RUSIECKI	21/04/2009	21/07/2009
19583/05	RYCKIE	30/01/2007	30/04/2007
37274/06	SANDOWYCZ	27/01/2009	27/04/2009
19177/03	SCHMALZ	06/09/2007	06/12/2007
10041/09	SIKORSKI HENRYK	25/01/2011	25/01/2011
28031/06	SKALSKI	09/10/2007	09/01/2008
44165/98	SKROBOL	13/09/2005	13/12/2005
15363/05	SOJKA	04/12/2007	04/03/2008
29386/03	STANKIEWICZ	04/03/2008	04/06/2008
30019/03	STEMPLEWSKI	24/10/2006	24/01/2007
3675/03	STENKA	31/10/2006	31/01/2007
25490/03	ŚWIĘCICKI	12/04/2007	12/07/2007
9013/02	ŚWIERZKO	10/01/2006	10/04/2006
39031/05	SZADEJKO	24/04/2007	24/07/2007
33079/96	SZELOCH	22/02/2001	22/05/2001
21541/03	SZMAJCHEL	17/07/2007	17/10/2007
45027/06	SZWEC	04/12/2007	04/03/2008
1326/04	SZYDŁOWSKI	16/10/2007	16/01/2008
56552/00	TELECKI	06/07/2006	06/10/2006
14382/04	TONDERYS	10/07/2007	10/10/2007
27952/08	TROJANOWSKI	08/02/2011	08/05/2011
26918/02	TRZCIAŁKOWSKI	28/11/2006	28/02/2007
26876/03	TRZNADEL	16/01/2007	16/04/2007
26110/04	WEDEKIND	23/10/2007	23/01/2008
44115/98	WEDLER	16/01/2007	16/04/2007
29687/96	WESOŁOWSKI	22/06/2004	22/09/2004
43610/06	WIŚNIEWSKI	29/09/2009	29/12/2009
15667/03*	WOLF	16/01/2007	16/04/2007
29940/06	WOŹNIAK	07/07/2009	07/10/2009
31999/03	ŻAK	24/10/2006	24/01/2007
10949/10	ZAMBRZYCKI	20/12/2011	20/12/2011
25301/02	ZASŁONA	10/10/2006	10/01/2007
13532/03	ZBOROWSKI	31/10/2006	31/01/2007
14239/09	ZDZIARSKI	25/01/2011	25/01/2011
4959/04	ZIĘBA	03/06/2008	03/09/2008
32501/09	ZIRAJEWSKI	09/07/2013	09/07/2013
8456/08	ŻURAWSKI	24/11/2009	24/02/2010
39205/04	ZWIERZ	06/11/2007	06/02/2008
28730/02	ZYCH	24/10/2006	24/01/2007
27992/06	ŻYWICKI	20/01/2009	20/04/2009

## Appendix II

In the cases of D.P. and Bagiński, the European Court found also a violation of Article 5 § 1 of the Convention on account of unlawful deprivation of liberty, as the Regional Courts' applications for the applicants' detention to be prolonged were lodged outside the relevant time-limit, in breach of section 10(a) of the 1995 Interim Law. Unlawful deprivation of liberty was also found in the cases of Góral, Łatasiewicz and Dombek, where between the detention orders of the courts expired and dismissal the applicants' applications for release, there was no judicial decision authorising the applicants' detention.

In the case of Bagiński the European Court found a violation of Article 5 § 3, as the applicant's detention was ordered by a prosecutor.

Violation of Article 5 § 4 on account of the lack of equality of arms in proceedings concerning review of detention was declared in the cases of Trzaska, Wesołowski, Wedler and Bagiński, as the law on criminal procedure, as it stood at the relevant time, did not entitle either the applicant himself or his lawyer to attend the court session held in proceedings concerning review of his detention. Moreover, proceedings concerning review of detention were not speedy in the cases of Iłowiecki, Jabłoński, Pyrak, Lewicki and Żywicki.

Violation of a right to a reasonable length of criminal proceedings (Article 6 §1 ) was found by the European Court in the cases of: Trzaska, Iłowiecki, Szeloch, Jabłoński, Olstowski, Kreps, Góral, Kauczor, Krzysztofiak, Bieniek, Choumakov (No. 2), Dublas, Szydłowski, Adam Sienkiewicz, Ratusznik, Popławski, Naus, Zirajewski, Czajka and Hołowczak.

Violation of a right to private and family life (Article 8) was found by the European Court in the cases Bagiński, Popenda (lack of personal contact with family members), Góral (monitoring of the correspondence with the Commission) and Dzyruk, Michta, Cabata, Cegłowski (monitoring of the correspondence with the European Court).

## Appendix IIa

1) Violations of Article 5 § 1, 5 § 3, 5 § 4 and 8: the pre-trial detentions at issue are over.

2) Excessive length of the criminal proceedings - violations of Article 6 § 1: the domestic proceedings have been ended.

## Appendix III

- 1) Unlawful deprivation of liberty (Article 5 § 1): these cases present similarities to that of Baranowski and Hulewicz (judgment of 28/03/2000 and 23/02/2006 respectively), closed by the Resolution ResDH(2011)139;
- 2) Violations of the right to be brought promptly before a judge (Article 5 § 3) and to participate in proceedings to challenge the lawfulness of detention (Article 5§4): these cases present similarities to that of Niedbała (judgment of 04/07/2000), closed by the Resolution ResDH(2002)124;
- 3) Proceedings concerning review of detention was not speedy (Article 5 § 4): this case presents similarities to that of Baranowski and Hulewicz (judgment of 28/03/2000 and 23/02/2006 respectively), closed by the Resolution ResDH(2011)139;
- 4) Excessive length of criminal proceedings (Article 6 § 1): these cases present similarities to a number of other cases concerning the length of judicial proceedings pending before the Committee of Ministers for supervision of general measures, in particular Kudła (30210/96);
- 5) Violations of a right of family life on account of lack of contact with family members and censorship of correspondence: these cases present similarities to that of Klamecki No. 2 (judgment of 03/04/2003), closed by the Resolution ResDH(2013)228.