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Response

of the Polish Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Poland

from 9 to 16 September 2019

The Polish Government has requested the publication of this response. The CPT's report on the September 2019 visit to Poland is set out in document CPT/Inf (2020) 31.

Strasbourg, 28 October 2020

Warsaw, 23 June 2020

Ministry of Justice

Secretary of State

DWMPC-III.853.45.2020

Mr
Mykola Gnatovskyy
President
of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

Dear Mr. President,

in response to the report on the ad hoc visit to Poland of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), which took place between 9 and 16 September 2019, I kindly present the following information and comments:

I. Issues relating to penitentiary establishments

Contact between persons detained on remand and outsiders

Pursuant to Article 211 § 2 of the Act of 6 June 1997 – the Penal Enforcement Code (Journal of Laws of 2020, item 523), the legislator has regulated the right to give notice of the whereabouts of a person detained on remand: "§ 2. A person detained on remand shall have the right, as soon as he or she is placed in a pre-trial detention facility, to notify his or her closest person or another person, association, organisation or institution, as well as his or her defence counsel, of his or her whereabouts. A foreigner detained on remand shall also have the right to

notify the competent consular office or, in the absence of such an office - the competent diplomatic representation."

Information on the whereabouts of a person detained on remand shall be sent to the persons or entities designated by him/her after his/her signature has been affixed on the notification, in accordance with the address given by him or her (*§ 2 of the Regulation of the Minister of Justice of 22 December 2016 on organisational and procedural regulations for the enforcement of pre-trial detention* – Journal of Laws of 2016, item. 2290).

In turn, in Articles 217 and 217 c of the Penal Enforcement Code, the legislator has regulated the contact of a person detained on remand with outsiders.

Article 217 [Visits and correspondence]

§ 1. A person detained on remand may be visited after an order granting consent to visit is issued by the authority in whose custody the detainee remains. Where a person detained on remand remains in the custody of several authorities, visiting consent granted by each of them shall be required, unless otherwise directed by the same.

§ 1a. Subject to § 1b, a person detained on remand shall have the right to at least one visit per month with the closest person.

A decision to grant consent to a person detained on remand being visited as a factual event shall be decided by the director of the pre-trial detention facility or prison, as the enforcement authority, within a specified period of time, taking into account whether the visit will not disturb the order and security in the pre-trial detention centre. However, the requirement (Article 217 § 1a of the Penal Enforcement Code), according to which a person detained on remand has the right to at least one visit per month with a person belonging to the circle of closest persons, must be complied with.

It should also be noted that pursuant to § 15(2)(10) of the *Regulation of the Minister of Justice of 22 December 2016 on the organisational and procedural regulations for the enforcement of pre-trial detention* (Journal of Laws of 2016, item. 2290), it is the director of the pre-trial detention centre who determines the days, times, place and order of the visits in the internal order of the detention centre. If a convict or a person visiting him or her violates the established rules of visiting, such visit may be interrupted or terminated earlier (Article

105a § 7 of the Penal Enforcement Code in conjunction with Article 209 of the Penal Enforcement Code).

Pursuant to Article 217c in the wording of the Act amending the Act – Criminal Code and certain other acts of 20 February 2015 (Journal of Laws of 2015, item 396), which entered into force on 1 July 2015:

Article 217c [Phone access]

§ 1. A person detained on remand:

1) may use the telephone, subject to § 2 and 3, on the terms set out in the organisational and procedural regulations for the enforcement of pre-trial detention, with the consent of the authority in whose custody he or she remains;

2) may not use other means of wired and wireless communication.

§ 2. The authority in whose custody the person detained on remand remains shall issue an order granting consent for the use of the telephone unless there is a reasonable fear that it will be used:

1) for the purpose of unlawfully hinder criminal proceedings;

2) for the purpose of committing the offence, in particular inciting the offence.

§ 3. Where a person detained on remand remains in the custody of several authorities, consent granted by each of them shall be required, unless otherwise directed by the same.

§ 4. A person detained on remand may appeal against an order to refuse consent to use the telephone to the court to whose custody he or she is surrendered. An appeal against a public prosecutor's order shall be examined by the superior public prosecutor.

Documenting injuries of persons admitted to penitentiary facilities.

Medical care and training of prison health care staff.

§ 36 of the Regulation of the Minister of Justice of 23 June 2015 *on administrative activities related to the enforcement of pre-trial detention and penalties and coercive measures resulting in the deprivation of liberty and on documenting these activities* (Journal of Laws, item 927, as amended) provides:

1. In the case of escorting a person with personal injuries to the penitentiary unit, the escorting authority serves a document providing details of the circumstances and the causes of these injuries and a document containing the description thereof, drawn up by a healthcare

professional. The document may also be issued by a healthcare professional of the medical facility for detainees of the penitentiary facility to which the latter has been escorted.

2. The provisions of paragraph 1 shall apply *mutatis mutandis* to a person that reports for the purpose of serving a sentence, except that the document is drawn up by a healthcare professional of the medical facility for detainees and, if this is impracticable, by a healthcare professional of another medical facility.

3. If the person referred to in paragraph 1 explains that the injuries were caused in connection with his or her arrest or thereafter, details of the fact of escorting the same, together with his or her explanation of the causes and circumstances of the injuries, shall be forwarded to the penitentiary judge."

The above provisions shall govern the recording by the Prison Service of any injury to people escorted to penitentiary facilities that are caused in connection with their arrest or immediately thereafter.

Medical records are kept in accordance with the Regulation of the Minister of Justice of 26 February 2016 *on the types and scope of medical records kept in medical entities for persons deprived of liberty and the manner of their processing* (Journal of Laws 2016, item 258), which does not take into account the need to keep a "register of injuries". If any injuries are found, they are recorded in a health book. Any illness, including trauma (injury), may only be recorded in medical records. Entering other documents, e.g. a "register of injuries" would force medical staff to duplicate records unjustifiably.

If an inmate is found to be injured, the healthcare professional will record this fact in a health book, together with a description of the place and extent of the injury. In addition, he shall draw up and forward to the director of the penitentiary facility an official memo in this respect.

Officers and civil servants of the prison health service are regularly trained, including in respect of raising awareness of human rights aspects and content of the Istanbul Protocol. Since July 2017, all penitentiary facilities and Prison Service Training Centres have included the issues addressed in the said protocol in their Prison Health Service training schedules. At the same time, during the training of the management of the prison health service, the contents of the "Manual on the Effective Investigation and Documentation of Torture and Other Inhuman or Degrading Treatment or Punishment" are also discussed. At a superior level, the conduct of a healthcare professional also in the prison health service, is regulated by the Act on the Professions of Physician and Dentist of 5 December 1996 (Journal of Laws of 2017, item 125) and the Code of Medical Ethics.

Pursuant to the Penal Enforcement Code, upon request of an officer or a prison staff member of a medical facility for persons deprived of liberty, medical services may be provided to a sentenced person without the presence of an officer not practising a medical profession. In the majority of cases, the medical staff of the medical facilities for persons deprived of their liberty, in the absence of danger from the detainee, refrain from using preventive protective measures during a medical examination or other medical treatment. The staff have appropriate knowledge of the factual circumstances in which the health services provided objectively require respect for the intimacy and personal dignity of the patient while maintaining safety.

II. Police-related issues

With regard to the cases of suspected ill-treatment of persons detained by police officers described by the CPT delegation, I would like to inform, that an in-depth analysis has been carried out to identify the cases described in the Report.

Two cases concerning arrest and detention of persons in a custody suite in Warsaw were selected, which may correspond to the circumstances specified in the Report. In these cases, no investigations were carried out, nor were disciplinary or complaint proceedings carried out due to the lack of information which could indicate irregularities related to the arrest of these persons. Therefore, no material was forwarded to the Public Prosecution Office for criminal law analysis.

As regards the second case described in the Report, concerning a person detained in a Detention Centre in Kraków, I would like to inform that the findings made did not make it possible to identify the person who had been interviewed by the CPT. It was established that on 9 September 2019, six persons were detained and consequently placed in the Custody Suite of Provincial Police Headquarters in Kraków and subsequently in a Detention Centre (including one person detained by the Border Guard officers). Additional checks in Police and Border Guard units in Kraków, for which the above-mentioned persons were detained and then arrested, did not confirm that any actions had been taken in respect of detention irregularities. Nor did the verification of the documentation kept in the Custody Suite of Provincial Police Headquarters in Kraków confirm that any of the persons had visible injuries, reported injuries or filed a complaint concerning the arrest.

At the same time, I would like to inform you that the Police have detailed findings in the above-mentioned matters which, if necessary, may be forwarded to the Committee by separate correspondence.

At this point it should be mentioned that in the Report the CPT notes that there are cases of improper treatment of persons detained by police officers, including irregularities regarding the use of handcuffs, use of physical violence, verbal abuse (...) without, however, making their allegations more specific. It may create impression that the delegation formulated its observations based solely on interviews held with the detainees. The reservations so formulated make it impossible to comment on the allegations and to embark on investigation.

Police Internal Affairs Office

Separation of the Police Internal Affairs Office (BSWP) from the organisational structure of the Police Headquarters on 27 January 2018 and creation of a separate organisational unit apparently had a positive impact on the independence and transparency of the performance of official tasks envisaged for this unit and strengthened a general public belief that it is autonomous.

The Police Internal Affairs Office performs tasks throughout the country within the scope specified in Article 5b(1) of the Police Act. According to the procedure in force in Poland, criminal proceedings against suspects, who are police officers, fall within the jurisdiction of the Public Prosecution Office. In practice, this means both the public prosecutor's personal activities under Articles 307 and 308 of the Code of Criminal Procedure and in the investigations themselves. The participation of BSWP officers in such pre-trial proceedings is provided for in the situation where the prosecutor leading the investigation issues an order to entrust the performance of individual operations. The overriding role of the public prosecutor and limitation of participation of BSWP officers to the performance of operations strictly specified by him, by the same guarantees the impartiality of the procedural outcome of the case.

By Decision No. 11 of 1 April 2019, the Commander of the Police Internal Affairs Office appointed the Human Rights Protection Plenipotentiary to the Commander of the Police Internal Affairs Bureau. In 2019, the Plenipotentiary trained a total of 52 BSWP officers in respect of human rights in the context of mobbing and discrimination.

In 2018, BSWP officers participated in 433 briefings and meetings with management staff in Police units and in 71 preventive meetings in Police schools; in 2019 such meetings were held 566 times and 67 times, respectively. During these meetings, BSWP officers

addressed issues related to the use of broadly understood violence while on duty, both in the context of possible criminal liability and misunderstood professional solidarity, which requires such behaviour to be tolerated and concealed. The subject matter of the meetings was supported by examples of cases carried out with the participation of the BSWP and ending with final convictions.

Protection of the so-called "whistleblowers" in the Police and the area of the so-called environmental conspiracy of silence.

At the end of 2019, the was created a police working group for activities in the area of shaping attitudes and behaviours in the police environment, aimed at overcoming misunderstood professional solidarity and improving the path of safe whistleblowing, without exposure to ostracism and environmental exclusion. This team is to undertake analytical work on the phenomenon of the so-called environmental conspiracy of silence and to propose solutions for the protection of the so-called whistleblowers in the Police.

Body-worn video cameras and tasers. Video and audio recording.

For the transparency of police officers' official activities and introduction of a solution allowing for objective assessment of a given situation, in case of any associated doubts, since December 2017 the Police have been gradually implementing the process of equipping police officers with body-worn video cameras as part of the Police Modernisation Programme for 2017-2020. It is planned to equip road traffic and prevention officers of all garrisons across the country with similar cameras. Currently, there are 2,290 body-worn video cameras in the custody of the Police. In 2020, there are plans to purchase more body-worn video cameras (approx. 1,500), but this objective depends on the available financial resources.

In 2019, a "Manual for the use of the Audio-Video Recording System (RAW), including body-worn video cameras used by police officers of the prevention service" was developed. It defines, among others, the responsibilities of managers of police organisational units where processing of personal data takes place, the responsibilities of the camera user, RAW system administrator, and indicates the need to keep relevant records.

It should be emphasised that the collected video and sound recording is to be used as evidence for documenting the legality of the undertaken official activities and the use of the recordings when necessary, during pre-trial proceedings, complaint proceedings, disciplinary proceedings, for training purposes, or for the purpose of determining the causes and

circumstances of extraordinary events or possible violations of the rights of persons against whom the intervention is undertaken.

In order to increase the effectiveness of supervision over the use of electric tasers, on 18 July 2018 Guidelines No. 4 of the Chief Police Commander *on the procedures selected and the manner of exercising supervision over the conduct of police officers or other designated persons with objects intended for use for restraining individuals with the use of electricity, remaining in the police equipment* (Official Journal of the National Police Headquarters of 2018, item 82) were issued and entered into force on 24 August 2018. The Guidelines are aimed at improving the physical safety of both those on whom tasers are used, as well as the physical and legal security of police officers, who are exposed to various types of slander, including that related to the abuse of powers. One of the provisions of the above-mentioned Guidelines concerns the introduction of an obligation to promptly inform superiors of subsequent levels of management, including the Chief Police Commander, in writing, about irregularities found in the use or utilization of tasers and the actions taken in this respect.

The Police are working on a draft of a legal act under the working title: *the ordinance of the Police Chief Commander on the principles, methods and forms of carrying out official activities related to the observation and recording of video and sound with the use of audio-video recording system (RAW) or other technical devices recording video and sound in police means of transport, police facilities or certain police official task*s. Its aim is to regulate all necessary issues concerning the functioning of the Audio and Video Recording System (RAW), body-worn video cameras in the Police and the rules of using these cameras or other audio and video recording devices used in the performance of official tasks, in police means of transport and police facilities.

Statistical data

Below I present a summary of statistical data (on a national scale) regarding the number of complaints handled by the Police on their own in the period between 2017 and 2019, with a distinction being made for *Inhuman or degrading treatment*.

No.	Complaints and requests handled by the Police on their own	2017	2018	2019
1.	All categories of complaints in total	15,087	13,037	12,451
2.	*Inhuman or degrading treatment*	463	408	364

As per the data of the Police Internal Affairs Office, in 2018, a total of 43 charges of violence on duty were presented to 30 police officers, while in 2019, in the same category of crimes, a total of 28 charges were made against 26 police officers.

Disciplinary proceedings

In 2017, the Police Chief Commander, recognising the need to make the supervision of disciplinary proceedings more realistic and intensified, in particular in cases regarding acts of considerable harm to both the society and the image of the Police, he instructed the Provincial (Capital) Police Chiefs and Police School Chiefs to adopt the following principles for application:

In the event of disclosure of an act of disciplinary misconduct:

- consisting in the abuse of powers or failure to comply with the obligations to use coercive measures, firearms or temporary custody where another person has been harmed,
- consisting in a violation of §4 or §6 of the *Police Professional Ethics Principles*,
- concerning exposure or violation of the safety of life or health of persons under Police supervision,
- which also meets the elements of a crime,
- consisting in reporting for duty or performing duty while intoxicated,
- having a local or nationwide media character,

the disciplinary superior should put the investigation and disciplinary proceedings under scrutiny and supervision.

In these matters, he should:

- promptly notify the higher-level disciplinary superior in writing of the commissioning of the investigation and the initiation of proceedings. The higher-level disciplinary superior should each time carry out a thorough analysis of the information collected in terms of the circumstances which indicate the need to disqualify the disciplinary

superior and the disciplinary spokesperson, in particular, due to the occurrence of circumstances provided for in Article 135c(2) of the Police Act;

- for investigation and disciplinary proceedings, appoint, as far as possible, disciplinary spokespersons with the greatest experience in conducting disciplinary cases;
- ensure the utmost objectivity and guarantee the rights of the victim when conducting investigation and disciplinary proceedings.

In the above-mentioned disciplinary matters:

- special care should be taken with regard to securing evidence (relating not only to the effects arising, but also to the causes of a violation of the law), including from documents, surveillance recordings and recordings of conversations conducted with the on-duty service of Police organisational units by telephone and radio and, in the event of identifying victims who have suffered any damage to their health, a medical opinion, as well as with regard to findings of personal sources of evidence,
- in the course of evidence-taking activities, each time examine the decision-making process (directions and orders issued) concerning or affecting the course of the event which is the subject of the case and the role of superiors, as well as persons supervising or issuing orders in respect of such an event,
- evidence from personal sources of evidence interested in a specific outcome, including in particular police officers involved in a disciplinary event, should be assessed with particular prudence and objectivity,
- in the event of an appeal against a disciplinary decision, consider carefully, in order to guarantee the utmost objectivity, the establishment of a committee to examine the appealed decision,
- when an act constituting a disciplinary offence at the same time meets the elements of an offence and criminal proceedings are conducted in this case – interact, as far as possible, with the competent public prosecutor in order to explain the case comprehensively.

The Police Chief Commander also ordered that in the cases in question, together with a request for an extension of the time limit for evidence-taking stage, the files of disciplinary proceedings should be forwarded. This rule applies to all disciplinary proceedings in which the

time limit for extending the evidence-taking stage is to exceed 3 months from the date of initiation of disciplinary proceedings. Moreover, it ordered that the authority examining the request be promptly informed about the occurrence of facts which make its execution devoid of purpose, e.g. when disciplinary proceedings have been stayed or discontinued. He also ordered that in the cases in question copies of decisions relevant to the course of disciplinary proceedings (e.g. regarding the initiation of disciplinary proceedings, change of charges or stay of proceedings). The senior disciplinary superior, on the other hand, is obliged to analyse the documents submitted in terms of whether the decisions are properly issued.

It should also be noted that supervision over conducted disciplinary proceedings is exercised on a continuous basis by relevant senior disciplinary superiors, including the Police Chief Commander. Pursuant to Article 134i(2) of the Police Act of 6 April 1990 a senior disciplinary supervisor may initiate or take over disciplinary proceedings before a decision is pronounced if, in his/her opinion, this is necessary due to the nature of the case.

It is worth stressing in this context that in the above-mentioned letter of 2017 the Police Chief Commander instructed senior disciplinary superiors, *inter alia*, to analyse information about events concerning the use of means of physical coercion, firearms or temporary detention in which another person has been harmed, in order to ensure that disciplinary cases are examined objectively. The letter also stresses that the victim's rights must be guaranteed and evidence must be carefully secured. The provisions of a guarantee character for victims are set out in the Police Act, which in Article 134i(1)(2) specifies that the disciplinary superior if there is a justified suspicion that a police officer has committed a disciplinary offence, may initiate disciplinary proceedings upon request of the victim. The victim shall then be informed of the initiation of such proceedings and its outcome by sending him or her a copy of a decision or order issued. The material provided by the victim is enclosed with the disciplinary case file. Moreover, where the victim has submitted a request to initiate disciplinary proceedings, he or she shall have the right to challenge the decision refusing the initiation of disciplinary proceedings and the decision on the discontinuance of disciplinary proceedings, pursuant to Article 135(2) of the Act referred to above. Article 135c(1)(4) of the Police Act is also a guarantee provision for the victim, according to which the disciplinary superior or the disciplinary spokesperson shall be excluded from participation in disciplinary proceedings if there is a personal relationship between him or her and the defendant or the victim, which may call his or her impartiality into question.

Statistical data on disciplinary liability requested by the Committee, i.e. on "mistreatment by police officers", shall be included in the data distinguished in police statistics under the terms "disciplinary offences in connection with human rights violations" and "disciplinary offences in connection with the use or application of firearms or means of physical coercion". Considering the fact that a disciplinary offence consisting in a human rights violation may result from the misuse of the means indicated and that therefore the same disciplinary offence may be included in both categories of disciplinary offences indicated, it should be noted that the statistics do not add up.

These data for 2018-2019 are as follows:

Year	Number of validly concluded disciplinary proceedings for disciplinary offences related to:		Sum of the disciplinary penalties imposed for disciplinary offences related to:	
	violation of human rights	use of firearms or means of physical coercion	violation of human rights	use of firearms or means of physical coercion
2018	5	20	1	1
2019	26	19	10	11

It should be clarified here that in some of the cases indicated in the table, disciplinary proceedings ended in a final discontinuance due to dismissal of police officers from service, as in such a situation the continuation of proceedings is devoid of any purpose. In 2018, there were 4 (for disciplinary proceedings related to human rights violations) and 5 (for disciplinary proceedings related to the use of firearms or means of physical coercion) cases of discontinuance, while in 2019 there were 8 and 3 cases of discontinuance, respectively.

Criminal proceedings

In 2018, in the public prosecution offices, 581 proceedings were recorded, including 234 proceedings against police officers. Out of the indicated number of all cases, concerning both Police and other public officers, 5 cases ended with a bill of indictment, a motion for conditional discontinuance of proceedings in 1 case, discontinuance of proceedings in 193 cases and refusal to initiate pre-trial proceedings in 275 cases.

In 2019, in turn, 449 proceedings were recorded, including 169 proceedings against Police officers. Out of the total number of proceedings, 5 cases ended with a bill of indictment (against 7 persons), discontinuance of proceedings in 158 and refusal to initiate pre-trial proceedings in 226 cases.

Rules for using handcuffs

As regards the use of means of physical coercion by police officers in the form of handcuffs, the allegations made in the Report cannot be accepted uncritically.

According to standards, including those set by the CPT, "the duty of care which is owed by the police to persons in their custody includes the responsibility to ensure their safety and physical integrity". Individuals who are in police custody, following performance of official duties with them, should be released in at least not worsened condition. The basic idea behind the use of handcuffs is to ensure the safety of detainees, as well as that of police officers and third parties, and not to exert pressure or cause pain or anxiety, and each time this is done in accordance with the powers available to Police officers in this respect.

When undertaking statutory tasks using the powers vested in the Police, officers, in certain statutory cases, may use or resort to strictly defined means of physical coercion and firearms (Act *on means of physical coercion and firearms* of 24 May 2013 (Journal of Laws of 2019, item 2418), hereinafter referred to as the Means of Physical Coercion Act)

According to the wording of the provisions of the Means of Physical Coercion Act, a Police officer may use means of physical coercion:

- after having unsuccessfully requesting the person to behave lawfully and after having informed him or her of the intention to use these means. This rule is departed from where there is an imminent threat to the life, health or liberty of a police officer or another person, or where a delay would put a legitimate interest protected by law at jeopardy,
- in the manner necessary to achieve the objectives of that use, proportionately to the degree of risk, selecting the least severe means,
- so as to cause damage to the least possible extent,
- with special care, taking into account their characteristics which may endanger the life or health of a police officer or another person.

Additionally, if the circumstances of the event so warrant, a police officer may use more than one means of physical coercion at a time or use more than one such means at the same time, as per the rules set out in the Means of Physical Coercion Act.

Furthermore, a police officer is obliged to refrain from the use of means of physical coercion where the purpose of their use has been achieved.

At this point it should be stressed that a police officer can only use physical force in the form of restraint techniques against women with apparent pregnancies; individuals whose appearance indicates that they are aged up to 13 and those with apparent disabilities. This rule is departed from when it is necessary to repel a direct, unlawful attempt on the life or health of a police officer or another person and the use of physical force is insufficient or impossible. A police officer may then use other means of physical coercion (including handcuffs) or firearms.

It follows from the above-mentioned legal regulation that one of the means of physical coercion is cuffs: handcuffs, ankle cuffs, combined cuffs. With regard to the use of handcuffs, regardless of the rules mentioned above, in the content of Article 11 of the Means of Physical Coercion Act, the legislator identified general cases in which they can be used. Thus, as the law now stands, a means of physical coercion in the form of handcuffs may be used if at least one of the following measures must be taken:

1. to enforce the lawful conduct in accordance with the instructions given by the authorised person;
2. to repel a direct, unlawful attack on the life, health or liberty of the authorised person or another person;
3. to prevent activities directly aimed at attacking the life, health or liberty of the authorised person or another person;
4. to prevent a breach of public order or security;
5. to prevent a direct attack on areas, facilities or equipment protected by the authorised person;
6. to protect law and order or security in the areas or facilities protected by the authorised person;
7. to prevent an attack on the integrity of the State border within the meaning of Article 1 of the Act of 12 October 1990 on the protection of the State border;
8. to prevent damage to property;
9. to ensure the safety of the transport or escort;
10. to apprehend a person, prevent them from absconding or to chase them;
11. to arrest a person, prevent them from absconding or to chase them;

12. to overcome active resistance;
13. to counteract activities aimed at self-aggression.

It is also important that handcuffs are used to partially immobilise the limbs and are generally worn on hands held at the back. However, in the case of preventive use of handcuffs, or if, in his or her opinion, the risk of absconding, demonstrating an active resistance, or engaging in behaviour which may endanger the life, health or property is insignificant, a police officer may put handcuffs on hands held in front.

As regards combined handcuffs or ankle cuffs under Article 15(5) of the Means of Physical Coercion Act, they may only be used with respect to:

- aggressive persons;
- persons detained in connection with a suspicion of an offence committed with the use of firearms, explosives or other dangerous tools or an offence referred to in Article 115(20) (a terrorist offence), Article 148 (murder) or Article 258 (participation in an organised criminal group, directing an organised criminal group) of the Criminal Code of 6 June 1997 (Journal of Laws of 2016, items 1137 and 2138 and of 2017, items 244, 768 and 773);
- persons deprived of liberty.

In addition, it should be added that ankle cuffs are used simultaneously with handcuffs.

Apart from the procedure to be followed by a police officer before the use of means of physical coercion, as well as the requirement that at least one of the above-mentioned cases occur, the Means of Physical Coercion Act also authorises the so-called preventive use of, among others, handcuffs in order to prevent the escape of a person apprehended, escorted, detained, transported or deprived of liberty, as well as in order to prevent the symptoms of their aggression or self-aggression. It should be stressed that in the case of preventive use of means of physical coercion, a police officer neither requests a person to behave lawfully nor informs the same of the intention to use these means where a delay would put a legitimate interest protected by law at jeopardy.

When analysing the above-mentioned three categories of persons with respect to whom combined cuffs or ankle cuffs may be used, in the opinion of the Bureau of Prevention of the National Police Headquarters, it should be assumed that the third category of persons, the so-called “persons deprived of liberty”, does not include all persons detained (all the more so juvenile delinquents brought to youth education facilities), if this does not apply to persons detained on remand or persons sentenced to imprisonment.

It should also be noted that, pursuant to Article 16a of the Police Act, against a juvenile brought to the police custody, in the cases referred to in Article 11(1) to (3), (8) and (10) to (14) of the Means of Physical Coercion Act, police officers may use means of physical coercion, including handcuffs, but only when put on the hands and legs, excluding combined handcuffs.

It should be remembered that the use of handcuffs by a police officer depends solely on his or her decision, whether its use is required. This decision is based on the finding that at least one of the premises of their use has occurred, taking into account the assessment of the risk and the symptoms of aggression or threat.

Training programme against the use of torture

In 2017, a centrally coordinated training programme called "Local Training Programme for Prevention of Torture" was implemented in the Police structures. The programme covered in particular: police officers of patrol and intervention cells, police officers serving in police custody suites for persons detained or brought to sober up and police custody suites for juveniles, as well as police officers from the investigative and criminal divisions. The programme is also intended for superiors of all levels of management.

The programme includes issues of torture and violent behaviour in psychological and legal aspects and a module on the prevention of torture. It also addresses issues of whistleblowing and environmental conspiracy of silence. The training also discusses ECHR judgments and the Istanbul Protocol.

Training courses are provided by trained police trainers, often in cooperation with police psychologists, officers of the Police Internal Affairs Office and non-governmental organisations working for the protection of human rights.

In 2018, 850 training courses were conducted with the participation of 19,222 police officers.

In 2019, 1,393 training courses were conducted with the participation of 25,421 police officers.

In total, roughly 45 thousand police officers were trained by 1 January 2020. Training courses will be continued in the years to come.

Access to a lawyer

In Poland, a mechanism is in place whereby an arrestee has the possibility of obtaining information about advocates and attorneys-at-law in a given locality whose assistance he or she may use (a list of advocates and attorneys-at-law is available from the Police unit). Such a solution was introduced by the amendment to the criminal procedure, which is more detailed in the Regulation of the Minister of Justice of 23 June 2015 *on the manner of ensuring that a defendant may use the assistance of an advocate in accelerated proceedings* (Journal of Laws, item 920).

This system is referred to in the provision in the Guidelines No. 3 of the Chief Police Commander of 30 August 2017 *on the performance of certain investigative operations by police officers* (Official Journal of the National Police Headquarters of 2017, item 59), which reads as follows: "In order to enable an arrestee to consult with an advocate or an attorney-at-law, the procedure specified in the Regulation of the Minister of Justice of 23 June 2015 *on the manner of ensuring that a defendant may use the assistance of a defence counsel in accelerated proceedings* (Journal of Laws of 2015, item 920) shall apply mutatis mutandis" (Journal of Laws, item 920)".

Medical examination of detainees

The area of medical examinations of persons detained by the Police is regulated in the Regulation of the Minister of the Interior of 13 September 2012 *on medical examinations of persons detained by the Police* (Journal of Laws of 2012, item 1102). Pursuant to the above regulation, a detained person must be subject to a medical examination where it appears from the information available to the Police or the circumstances that the detained person is a pregnant woman, a breastfeeding woman, a contagiously ill person, a person suffering from mental disorders or an intoxicated minor (Section 1(3)(2)). As such, it has been guaranteed that persons who should be afforded special care will each time undergo medical examination.

At the same time, it should be stressed that the provisions of the Regulation on medical examinations of persons detained by the Police provide a guarantee that a person who declares that he or she suffers from diseases requiring permanent or periodic treatment, the interruption of which would pose a threat to life or health, or who requests a medical examination will also undergo a medical examination (Section 1(3)(1) of the Regulation).

With regard to the issue of the non-confidentiality of examinations of persons detained or brought to sober up, this area has been regulated in § 4(2) of the aforementioned Regulation of the Minister of the Interior.

According to the above-mentioned regulation, the decision on the presence of a police officer during the medical examination of a detainee is made by the healthcare professional performing the examination. Usually such situations occur in cases where aggressive individuals are examined, or where there is a reasonable suspicion of an attack on their health or life. In such situations, police officers are responsible for the safety of both the person examined and the healthcare professional and medical staff conducting the examination. The presence of a police officer is intended to prevent the person from escaping and to ensure broadly understood safety, both for the healthcare professional conducting the examination and for the examined person himself or herself.

The issue of evidencing the medical examination is regulated by the aforementioned regulation. Pursuant to the provision of § 5(1), following a medical examination of a detainee, a healthcare professional shall state whether or not there are medical contraindications to keep a detainee in the police detention facility. A healthcare professional shall issue a relevant certificate (§ 5(3)), the template of which is specified in the appendix to the Regulation of the Minister of the Interior of 4 June 2012 *on the rooms for persons detained or brought for the purpose of sobering up, detention rooms, the temporary detention rooms and the police custody suites for juvenile delinquents, the rules of procedure for stays in those rooms, rooms and chambers and the treatment of image recordings from those rooms and chambers.* At the same time, it should be noted that police officers carrying out activities with a person detained or brought to sober up do not have access to medical records in which the results of medical examinations are documented. All medical records shall remain in the medical entity conducting examinations for such persons and shall not be made available to Police officers.

Right to information

With regard to the issue of failure to ensure the detainees' right to information, including the ineffective provision of information on the detainee's rights it must be mentioned that the police officer must immediately inform the detainee about the reasons for his or her detention and his or her rights. In the context of the foregoing, it should be pointed out that in Article 244 § 5 of the Code of Criminal Procedure, the legislator included a statutory delegation related to the determination by way of a regulation of a model instruction containing in particular information on the detainee's rights:

- to receive the free assistance of an interpreter,
- to make a statement and to refuse to make a statement,
- to receive a copy of the detention report,

- to have access to first aid,
- as well as the rights indicated in § 2, in Article 245, Article 246 § 1 and Article 612 § 2 and information about the content of Article 248 § 1 and 2, bearing in mind the need to understand the instruction also by persons not assisted by an attorney.

With regard to the Custody Suite, it shall be implemented on the basis of an obligation arising from § 1(1), (3) and (4) of the Regulation on the stay of persons in rooms for persons detained or brought for the purpose of sobering up, constituting Annex 1 to the aforementioned Regulation *on rooms for persons detained or brought for the purpose of sobering up* (...). In accordance with §1(1) of this Annex, a person admitted to the room shall be immediately informed about:

1. his or her rights and obligations by becoming familiar with this regulation. A person admitted to the room confirms the fact of becoming familiar with the regulation of the stay by signing the card of having become familiar with the regulation of stay of persons placed in the premises for detainees or persons brought in for sobering-up;
2. equipping the room with monitoring devices, including those for surveillance and recording images, if installed.

A detainee confirms that he or she is acquainted with his or her rights by signing the detention report.

Moreover, in accordance with §1(2) of the Regulation (...), a person who does not speak Polish and is admitted to the room is provided with an opportunity to communicate in matters concerning his or her stay in the room through an interpreter. In addition, in accordance with §16(2) of the Regulation on the rooms (...), a copy of the Regulation and a list of the institutions which uphold human rights is to be placed in a room for persons detained or brought to sober up in such a way that it cannot be destroyed or human health cannot be attacked. Copies of the regulations in question, that are kept in the Police custody suites, have also been translated into foreign languages, which are available on the Police website.

In the case of juveniles placed in the facilities for juveniles, the above issues are regulated by analogy in the above-mentioned Regulation.

III. Additional information:

The CPT asked the Polish authorities to explain the questionable Article 168a of the Code of Criminal Procedure. It was argued that this provision could be interpreted as allowing courts to accept in criminal proceedings evidence obtained through torture or degrading and inhuman treatment.

First of all, it should be noted that the so-called fruit of the poisonous tree doctrine does not apply in Polish law. The legislator in the explanatory memorandum to the Act of 11 March 2016 amending the Code of Criminal Procedure and certain other acts (Journal of Laws, item 437) amending Article 168a of the Code of Criminal Procedure pointed out that "it is advisable to assess every situation in casu, taking into account all aspects of the case, on the basis of generally accepted principles in the body of judicature and doctrine in the perspective of the last few decades". Furthermore, as noted in the explanatory memorandum of the Act, the case-law of the European Court of Human Rights also does not prohibit the use of indirectly illegal evidence, despite their illegal origin being identified.

For example, in Schenk v Switzerland, the ECHR stated that although Article 6 of the ECHR guarantees the right to a fair trial, but this does not regulate any rules in terms of the admissibility of evidence, leaving this task to national authorities. In the reasoning of that judgment, the Court indicated that the use by the court of evidence in the form of a recording from a tape obtained from an illegal source does not infringe the right to a fair trial, since under Swiss law the manner in which such a recording was made or came into its possession is irrelevant to its admissibility in criminal proceedings (ECHR judgment of 12 July 1988, application no. 10862/84). Similarly, in Khan v. UK (ECHR judgment of 12 May 2000, application no. 35394/97), the Court ruled that Article 6(1) of the ECHR is not violated by the use of the recording of the defendant's conversations during the trial, despite a violation of the right to privacy.

It should be noted that, in accordance with Article 171(2)(a) of the Code of Criminal Procedure, it is prohibited to: 1) influence the statements of the examined person by means of force or unlawful threat; 2) use hypnosis or chemical or technical means affecting the mental processes of the person examined or aiming at controlling unconscious reactions of the body in connection with the examination. Article 171(7) of the Code of Criminal Procedure provides that explanations, testimonies and statements made in the circumstances precluding freedom of expression or obtained against the prohibitions listed in the provision referred to in the preceding sentence may not constitute evidence.

It should also be stressed that the Polish legal system recognises as offences the following acts:

- using violence against a person or an unlawful threat in order to compel another person to specified action, omission or forbearance (Article 191 of the Criminal Code),

- using violence or an unlawful threat to influence a witness, an expert, a translator, a prosecutor or a defendant, or violating their physical integrity with such purpose (Article 245 of the Criminal Code),

- using violence, unlawful threat or physical or mental abuse in any other way with respect to another person by a public official or a person acting on his/her instructions to obtain specific testimony, explanations, information or a statement (Article 246 of the Criminal Code).

Polish regulations grant the possibility of notifying close persons of the detention in any case. Pursuant to Article 245(4) of the Code of Criminal Procedure in conjunction with Article 261(1) of the Code of Criminal Procedure upon request of the detainee, the person closest to him or her shall be promptly notified, however, this may be the person indicated by the detainee. Furthermore, another person, instead of or in addition to the closest person, may also be notified. The possibility of notifying the closest person of the detention is also provided for in proceedings in cases regarding minor offences. Pursuant to Article 46(3) of the Minor Offence Procedure Code, at the request of the detainee, the closest person, as well as the employer, shall be notified about the detention.

In the case of persons detained on remand, Article 211(2) of the Penal Enforcement Code applies. It stipulates that a person detained on remand shall have the right, as soon as he or she is placed in detention, to notify his or her closest person or another person, association, organisation or institution, as well as his or her defence counsel, of his or her whereabouts. A foreign person detained on remand shall also have the right to notify the competent consular office or, in the absence of such an office, the competent diplomatic representation. It is worth adding that the above regulations correspond to the requirements 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 of 2013, p. 1). No legislative changes are therefore necessary.

The CPT report criticises Poland for incorrectly implementing Directive 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 of 2016, p. 1) by failing to provide sufficient access to free legal aid prior to the initiation of legal proceedings.

At the same time, it was pointed out that during arrest and detention, the possibility of a confidential conversation between the arrested/detained person and his/her lawyer is drastically reduced.

With regard to the above allegations, it should first be stressed that the right to legal aid – in accordance with Directive 2016/1919 – is conditional on the financial situation of the suspected and accused person or on considerations of equity (Article 4). Polish law makes the granting of legal aid conditional on these two conditions (Articles 78 to 81 of the Code of Criminal Procedure). Therefore, such aid may not be granted in each case. In practice, there are cases where, at the stage of examination or another investigative operation, a person does not benefit from legal aid. This is in line with the Directive.

Irrespective of the issue of access to free aid, pursuant to Article 245(1) of the Code of Criminal Procedure, a detainee on his request should be given the opportunity to contact a lawyer without delay, in an available form, and to have a direct conversation with him or her.

In the case of detention, a person also benefits from the assistance of a lawyer thanks to the expedited procedure provided for in Article 517j of the Code of Criminal Procedure.

As regards the provisions of the Code of Criminal Procedure on the confidentiality of contacts with a lawyer, a number of issues should be highlighted.

First of all, it should be noted that Article 245(1) of the Code of Criminal Procedure, which provides for the possibility to reserve the presence of a Police officer during a conversation of a person with a lawyer, has been amended. In its version in effect prior to 2013, the provision did not prescribe any conditions the satisfaction of which would allow for such presence to be reserved. Following the Constitutional Tribunal judgment of 11 December 2012 (K 37/11), in which the Tribunal ruled that Article 245(1) of the Code of Criminal Procedure is incompatible with Article 42(2) in conjunction with Article 31(3) of the Constitution of the Republic of Poland, this situation has changed. In the said judgment, the Tribunal stated, *inter alia*, that – in accordance with the earlier case law of the Constitutional Tribunal – the right to defence may be subject to restrictions (see, *inter alia*, the Constitutional Tribunal judgment of 9 July 2009, file no. K 31/08, OTK ZU No. 7/A/2009, item 107, paragraph III 2.2. and of 3 June 2008, file no. K 42/07, op. cit., paragraph III 3.). The Constitutional Tribunal drew

attention to the fact that the European Court of Human Rights also allows for the possibility of certain limitations of unrestricted contact between a client who is deprived of his/her liberty and his/her lawyer (judgment of 13 January 2009, *Rybacki v. Poland*, application no. 52479/99, §§ 56 and 58), provided that there is an important reason for this, which requires an assessment whether from the perspective of the proceedings as a whole, that restriction does not infringe the right to a fair hearing (judgment of 9 February 1996, *Murray v. United Kingdom*, application no. 18731/91, § 63). In this case, the Constitutional Tribunal held that the provision of Article 245(1) of the Code of Criminal Procedure is incompatible with Article 31 of the Constitution of the Republic of Poland due to absence of conditions limiting the presence of a police officer during contacts between a detainee and a lawyer. In accordance with the requirements indicated by the Constitutional Tribunal in the above-mentioned judgment in the case K 37/11, the Act of 27 September 2013 amending the Code of Criminal Procedure (Journal of Laws, item 1282) amended Article 245(1) of the Code of Criminal Procedure accordingly by limiting the discretion in deciding on the presence of a Police officer during conversations of a detainee and a lawyer. Thus, the provision was made compliant with the Constitution of the Republic of Poland. It is noteworthy that the same act also amended Article 73 of the Code of Criminal Procedure with a view to clarifying the conditions allowing for the presence of a public prosecutor during a conversation between a person detained on remand and his or her defence counsel. It should, therefore, be noted that the provisions of Article 73(2) and (3) of the Code of Criminal Procedure and Article 245(1) of the Code of Criminal Procedure, in their current wording, take into account the constitutional standard of the right to defence set out in the judgments of the Constitutional Tribunal in the cases K 25/11 and K 37/11. In these judgments, the Constitutional Tribunal accepted the admissibility of temporarily limiting the confidentiality of contacts between the accused person and his or her defence counsel. Moreover, the applicable provisions of Articles 73 and 245 of the Code of Criminal Procedure are in line with the aforementioned Directive 2013/48. Article 4 of the Directive provides for the principle of confidentiality of communication between the accused person and his or her lawyer. However, it is not absolute.

The Directive provides for the possibility of temporary derogations from the right of access to a lawyer and, at the same time, provides for certain circumstances in which interference with the right of confidential contacts with a lawyer is permitted (recitals 33 and 34).

It should also be noted that under Polish law there is a possibility of judicial review of a decision on the supervision of communication with a lawyer on the basis of Article 245(1)

and Article 73(2) of the Code of Criminal Procedure. The reservation of presence in relation to an arrestee or a person detained on remand may be subject to judicial review as part of an appeal against arrest lodged pursuant to Article 246(1) of the Code of Criminal Procedure or on the basis of Article 252 of the Code of Criminal Procedure, of an appeal against pre-trial detention. In view of the foregoing, it should be recognised that the confidentiality of the client-lawyer contact during arrest and pre-trial detention is sufficiently ensured. Furthermore, Polish law goes beyond the standard of the Directive in this respect as it does not provide for any derogations from the right of access to a lawyer, but only the possibility of temporarily limiting the confidentiality of such access.