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**Comments of the Helsinki Foundation for Human Rights, Warsaw to the
Interim Report of the Polish Government of 11 March 2009 on the
implementation of the Council of Europe Commissioner for Human Rights'
Recommendations**

Warsaw, 20 July 2009

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Recommendation 1 – Continue efforts to accelerate judicial proceedings. Review the law and practice by which apprentice judges are being asked to take on cases beyond their experience.

The Helsinki Foundation for Human Rights (hereinafter ‘HFHR’) approves of the measures described by the Government in the Interim Report including: the increase in financial outlays for the judicial system, additional employment of assisting legal employees in courts and the new system of remuneration of judges and prosecutors. However, HFHR would like to draw the Commissioner’s attention to the fact that no steps were taken by the Government to improve the system of recording court proceedings, as was detailed in Recommendation no 1.

The Government refers to the draft law on the National School of the Judiciary and Prosecutors in the context of the obligations imposed on the legislator after the judgment of the Constitutional Court of 24 October 2007 (case no SK 7/06). However, this law was already binding on the date the Government presented the Interim Report (it entered into force on 4 March 2009; *Ustawa o Krajowej Szkole Sądownictwa i Prokuratury z dnia 23 stycznia 2009 r.*, Dz.U. 2009 nr 26, poz. 157). In HFHR's opinion the success of the National School of the Judiciary and Prosecutors will depend on its prestige and ~~on~~ the efficiency of the system of training.

Recommendation 2 – Settle outstanding matters related to the domestic remedy for excessive length of judicial proceedings.

The Government refers to the ‘draft Law amending the law on complaint against violation of the party’s right to have a case examined without undue delay in judicial proceedings.’ It should be noted that the Law amending the Act on Complaints for Violation of a Party’s Right to Trial within a Reasonable Time was already a statute on the date the Government presented the Interim Report to the Commissioner [*Ustawa z dnia 20 lutego 2009 r. o zmianie ustawy o skardze na naruszenie prawa strony do rozpoznania sprawy w postępowaniu sądowym bez nieuzasadnionej zwłoki*, Dz.U. 2009.61.498] – it was passed by the Parliament on 20 February 2009 (entered into force on 1 May 2009).

The Law amending the Act on Complaints for Violation of a Party’s Right to Trial within a

Reasonable Time introduces a possibility to lodge a complaint during criminal preparatory proceedings if they last excessively long. This possibility was advocated by HFHR and was necessary in light of judgments of the European Court of Human Rights (hereinafter 'ECtHR), i.e. *Krawczak v. Poland* (case no. 40387/06). Moreover, the new law also sets the minimum sum of money (2000 zł., c. 450 EUR) which has to be awarded as just satisfaction to the applicant in cases of protracted proceedings; due to this change the negative practice of awarding only a 'symbolic' sum of money will cease. However, the law does not solve all the problems e.g. it does not precise what is the legal character of the sum of money that the court awards in cases of protracted proceedings – is it a compensation (for material damages) or rather just satisfaction (for moral harm) (it is particularly relevant for example in tax law).

Recommendation 3 – Improve dissemination of the ECtHR's case law and ensure that legal training for judges reaches a wide audience.

Based on experiences of the Helsinki Foundation for Human Rights, measures to disseminate ECtHR's case law and trainings for judges on the ECtHR's case law described in the Interim Report have proven unsatisfactory. The ECtHR's case law with respect to Poland, as well as new standards set in different thematic areas (eg. concerning pre-trial detention) should be disseminated periodically to all courts. Additionally, information should be provided to judges on judgements of Polish courts in which ECtHR jurisprudence was mentioned or applied. Trainings for judges in ECtHR case law should become an obligatory element of education for all judges and should be subsidized by the government.

HFHR has appealed to the Minister of Justice by sending a letter on 1 October 2008 in which we asked him to consider undertaking translation and publication of all ECtHR cases with respect to Poland. In answering our letter the Minister stated that current activities in this respect do not fully match expectations and needs of institutions, organisations and individuals concerned with human rights protection. He also declared that a mechanism of frequent publishing of full texts of ECtHR judgments important for the practice of administering of justice will be created¹.

¹ Letter to the Ministry of Justice of 1 October 2008, no 3288/2008/AB <http://www.hfhrpol.waw.pl/oswiadczenie-122-pl.html>; Letter from the Ministry of Justice of 24 April 2009,

Recommendation 4 – Establish an independent body to investigate police misbehavior.

Despite efforts described in the Interim Report, a special group of experts to deal with Police misbehaviour within the framework of the Office of the Commissioner for Civil Rights Protection has yet to begin operation. There is a real need for greater protection for victims of Police abuse in Poland. Prosecutors are not effective in dealing with such cases. The Report prepared by HFHR in 2006² shows that in forty one cases concerning serious misbehaviour of the Police of which HFHR was informed in years 2001-2006, only one case was successfully heard before the Court, whereas the other nineteen were discontinued by prosecution.

The disciplinary system of dealing with complaints on improper behavior of Police officers also has many flaws. The complaints are initially heard by lower Police units, even if they are lodged to the higher units like Voievodship Police Unit [*Komenda Wojewódzka Policji*] or to the Main Police Headquarters [*Komenda Główna Policji*]. Very often complaints are evaluated by the direct supervisors of policemen whose misbehavior is the object of the complaint. Furthermore, the social perception of many citizens is that these complaints are not dealt with in an objective and just way because the policeman deciding upon the case know the alleged perpetrators. In many cases analysed in the abovementioned Report, the result of prosecutor's proceedings was decisive on starting up disciplinary proceedings against policemen. For these reasons, the whole system of complaints against police misbehaviour must be assessed negatively. The judgments of the ECHR in cases such as *Dzwonkowski v. Poland* (no. 46702/99) and *Czesław Lewandowski and Danuta Lawandowska v. Poland* (no. 15562/02) prove that allegations of improper Police misbehavior are not adequately investigated.

Recently, the HFHR intervened in a case with the Chief of the Police [*Komendant Główny Policji*]. In this case, a mentally ill man was shot by a police officer in the small city of

no DWM V 078 – 19/09 <http://www.hfhrpol.waw.pl/pliki/MSiETPC.PDF>

² A. Rzeplinski, K. Wilamowski (red.) *Zapobieganie torturom w instytucjach izolacyjnych Europy Centralnej i Wschodniej. Raport z działalności Programu Grupa Polska, Helsińska Fundacja Praw Człowieka, Warszawa, 2006.*

Borucza during a police altercation in his house. We asked for details concerning this tragic incident and an explanation why no other means of direct coercion were used (handcuffs, truncheon). We also asked the local prosecution office in Wołomin to inform HFHR about developments in preparatory proceedings which were started in this case.

Recommendation 5 – Take urgent measures to combat overcrowding in prisons and improve the application of alternative penalties which do not involve incarceration.

Overcrowding in Polish prisons is a very serious problem. There has not been enough efforts undertaken to meet the Committee against Torture's requirements of 4 sq.m. of living space per cell per prisoner. Prisons are currently running at 106 % capacity, with 84 511 prisoners inhabiting 79 442 places. Furthermore, approximately 38 700 persons wait for a place in prison in order to serve their sentence.

In this respect it is important to note that on May 26, 2008, the Polish Constitutional Court (case no. SK 25/07) found that Article 248 § 1 of the Penal Code – which allowed the detention of prisoners under conditions in which each prisoner has less than 3 sq.m. of living space for an indeterminate length of time – is inconsistent with the right of all to be treated in a humane manner (under Articles 40, 41 para 4, and 2 of the Polish Constitution). Under the judgment, the Polish government has 18 months to remedy the situation (deadline is on 1 December 2009).

On 10 June 2009 the Polish government sent a draft law to the Polish Parliament [*Sejm*] on changing certain provisions of the Executive Penal Code (*projekt ustawy o zmianie ustawy – Kodeks karny wykonawczy wraz z projektem aktu wykonawczego*; draft no 2075). This draft law is meant to implement the judgement of the Constitutional Court no SK 25/07; it abolishes art. 248 of the Executive Penal Code and introduces new provisions in art. 110 (art. 110 §2a-2i).

According to this draft law, a director of prison or detention facility may place a convict in a cell where she/he has less than 3 sq.m for a period of time no longer than 90 days. This standard is appropriate in cases where: a) martial law, state of emergency or state of natural calamity were introduced, b) if where a state of epidemics was introduced on the territory

where a prison is situated or if there is a danger of epidemics c) if there is a need to prevent some other event being a direct threat to the safety of a convict or safety of the prison or detention center or if there is need to prevent effects of such event (§2a).

Moreover, it is possible to place a convict in such conditions if there is an urgent need to place certain categories of prisoners (e.g. a person serving a custodial sentence exceeding 2 years or recidivists) and there is no free space in other facilities. In this case, a prisoner may be placed in such conditions for no longer than 14 days but this period may be extended if a penitentiary judge agrees to it, however the overall period cannot exceed 28 days (§2b-2c). In any case, a prisoner can be placed again in such conditions after a period of 180 days from the last placement (§2i). The prisoners have a right to complain to the court about this decision and the court should decide within 7 days (§2f).

The draft law also contains additional directives for prison and detention center directors. While issuing this decision they should minimize the risk of deteriorating conditions of serving a sentence or detention on remand and aim at quick placement back in normal conditions (§2d). In a decision, reasons for which a convict is placed in such conditions as well as a time limit should be included (§2e). The decision to place a prisoner in such conditions should be annulled if the reasons for which it was issued cease to exist (§2g). It is necessary to provide each prisoner with everyday walks longer than half an hour and additional entertainments (§2h).

In Helsinki Foundation for Human Rights' opinion this project does not meet the standards set up in Constitutional Court Judgement where it was stated that situations in which a prisoner may be kept on the space less than 3 sq.m. should be exceptional. Therefore, an urgent need to place in a particular prison or a detention center certain categories of prisoners even if there is not enough space (§2b) should not be included as a reason to reduce living space in prisons. Moreover, the law allows for placement of a person in a space not less than 2 sq.m., which is considerably lower than standardized living conditions (with 2 sq.m. per prisoner he has no space to move) and the limit should be placed at 2,5 sq.m. Lastly, the fact that a convict may be placed in such conditions after 180 days makes it possible to rotate prisoners and in a systematic way and perpetuate the conditions of overcrowding. This draft law does not solve any problems linked with overcrowding in prisons. To meet the standards of the Constitutional Court judgment, serious organizational measures need to be taken.

The recent judgment of the Supreme Court confirmed that prisoners may claim compensation for serving their sentence in overcrowded cells. The Court found that in case of Adam D. (case no. V CSK 431/06) living in an overcrowded cell may violate personal goods of prisoner and be a reason for a civil law suit for inflicted harm.

Overcrowding of prisons and detention centres is linked with other problems in the functioning of the prison system in Poland. Serious human rights violations are linked with, for example, inadequate healthcare offered in these institutions. Three recent cases show many problems in the functioning of health care system in Polish detention facilities and in prisons. Firstly, at the beginning of 2008, Mr. Claudio Crulic, a Romanian citizen, died while on hunger strike. In this case, the partial responsibility lays with Prison Service which did not react early enough to the hunger strike and failed to undertake adequate measures to prevent it. Secondly, in a case *Dzieciak against Poland* (no 77766/01) of 9 December 2008 European Court of Human Rights judged that Poland had violated right to life of a person kept in pre-trial detention. The ECtHR noted that the quality and promptness of the medical care provided to the applicant during the four years of his pre-trial detention had put his health and life in danger. In particular, the lack of cooperation and coordination between the various state authorities, the failure to take the applicant to hospital for two scheduled operations, the lack of adequate and prompt information to the trial court on the applicant's state of health, the failure to secure him access to doctors during the final days of his life and the failure to take into account his health in the automatic extensions of his detention had all amounted to inadequate medical treatment and had constituted a violation of Poland's obligation to protect the lives of those it holds in custody. Thirdly, in case *Kaprykowski against Poland* of 3 February 2009 (no 23052/05) ECtHR stated that detention of a person suffering from epilepsy without adequate medical treatment and assistance constituted inhuman and degrading treatment, amounting to a violation of Article 3.

Another important problem in Polish prisons involves conditions in which handicap prisoners are kept. Polish prisons are not prepared for such prisoners and – in HFHR's opinion – it is a systemic problem of Polish prisons. The source of this problem is a lack of financial means to

modernise prisons as well as lack of coherent politics on the country level towards handicap prisoners. There are no regulations concerning obligations of Prison Service (*Służba Więzienna*) towards handicap prisoners. HFHR has submitted *amicus curiae brief* in a case *Zarzycki v. Poland* (case no. 15351/03) in which we analyse different problems in this respect.

The low quality of the functioning of the Polish prisons system was brought to light by the suicides which took place in *Krzysztof Olewnik case*³. Three people out of twelve sentenced for ordering or taking part in the series of events committed suicide in prison. This led to dismissal of people responsible for the Polish prison system. In our opinion, parallel to efforts aimed at diminishing overcrowding of prisons there should be an increase in financial outlays for prison service and personnel working in prisons – psychologists, doctors, nurses etc. The additional financial means should be provided to increase personal safety of prisoners, to counteract crimes committed in prisons and to plan resocialization. However, due to the financial crisis, in February 2009, the Polish government adopted the plan to make budgetary savings where it cuts on expenses for the prison system. Therefore there will be no radical changes in the near future in the functioning of the Polish prisons. This may end in tragic outcomes such as rebellions in prisons⁴.

Recommendation 6 - Application and functioning of pre-trial detention in Polish law.

In HFHR's opinion the functioning of pre-trial detention is one of the biggest problems of Polish judiciary system. In a judgement of 3 February 2009 in case *Kauczor v. Poland* (no. 45219/06) ECtHR stated that the abuse of temporary detention in Poland is not a result of misinterpretation of law by courts in individual cases but is structural in nature. There are several reasons responsible for the abuse of pre-trial detention by Polish courts:

³ Krzysztof Olewnik, 25, was the son of a prominent businessman from Drobin near Płock, northwest of Warsaw. He was abducted on the night of Oct. 26-27, 2001 and his family received a ransom demand a few days later. Olewnik was chained to the wall of a cellar for two years before being tied up and gagged in a cesspit. Negotiations continued with the kidnappers all this time. The family finally gave them 300,000 euros in July 2003 by throwing the money off a bridge in Warsaw. Olewnik was strangled soon after the money was collected. His body was found buried in a forest in October 2006. Source: <http://www.warsawvoice.pl/view/17581/>

⁴ Interview with Paweł Moczydłowski (former Director General of Prison Service), *Gazeta Wyborcza*, Duży Format, 2 February 2009.

1) It is partially a consequence of an institutional set-up of the Prosecutor's Office. Art. 8 of the Law on Prosecutor's Office (*Ustawa z dnia 20 czerwca 1985 r. o prokuraturze*, Dz.U. 1983 nr 31 poz. 138) provides for many exceptions to the principle of an independence of a prosecutor who is in charge of an investigation. In fact, it provides superior prosecutor with many measures to influence decisions made by a prosecutor who is in charge. Powerful position of superior prosecutors is especially important in the case of pre-trial detention, because a prosecutor's failure to make a motion requesting detention of an accused person or a suspect may result in disciplinary measures against him. Thus, prosecutors submit such motions (requesting detention or requesting its prolongation) too often. In this way, they pass the responsibility for use of pre-trial detention on courts. Furthermore, prosecutors tend to use pre-trial detention as a tool to force a suspect to make testimony. A suspect in such situation may face a deal according to which in exchange for explanations his detention would be annulled.

2) Another reason is the regulation concerning a court hearing during which it is decided about use or prolongation of pre-trial detention. The literal meaning of Article 96 of the Code of Criminal Procedure (*Kodeks postępowania karnego z dnia 6 czerwca 1997*, Dz. U. 1997 nr 89 poz. 555; hereinafter 'CCP') suggests that such hearings of a court are not public. It means that not only such hearings are closed for general public or journalists, but also for the representatives of the non-governmental organizations. As a result, courts decide arbitrarily whether to allow an attendance of such representatives. In Helsinki Foundation for Human Rights' opinion this leads to lack of the social oversight of the application of the temporary detention in Poland.

3) One of the reasons partially responsible for the abuse of pre-trial detention may be the courts' practice based on Article 249 § 3 of the CCP (which is strictly connected with the proper guarantees of a right to defence of a detainee). The practice of courts based on this provision results in the lack of information for the attorney about the court session during which a decision upon detention is taken. Such practice endangers a right to defence of the accused.

The above mentioned problem should be seen in a wider perspective of a suspect's access to an attorney in the case where he cannot afford one. The rules of providing for *ex officio* attorneys are unclear in Poland (cf. Art. 78 § 1 of CCP). Thus it happens that the suspect who cannot afford legal representation does not appear personally in the court deciding on

prolongation of the pre-trial detention – usually he/she is only present during a court session when pre-trial detention is applied for the first time. Such situation is possible due to lack of provisions in the CCP obliging the court to inform a suspect and bring him to the court for the session during which a decision concerning a prolongation of his/her detention is taken. Due to this legislative gap a right of defence for a suspect who is not represented by an attorney is seriously limited. Quite often the first real contact of the suspect with a court takes place after a bill of indictment is filed and trial proceedings are started. However, it is worth pointing out that on 3 June 2008 the Polish Constitutional Court found that the Art. 156 § 5 of CCP – according to which a prosecutor had a right to make secret documents gathered during investigation that support decision about detention – is unconstitutional (case no K 42/07).

4) Another reason is that the jurisprudence of the Supreme Court on legal issues connected with pre-trial detention is scarce and consists of only a few cases. Extraordinary cassation appeals concerning pre-trial detention cases may be filed to the Supreme Court only by the Polish Ombudsman or by the Prosecutor General. Therefore, the Supreme Court has little chances to interpret different provisions of the CCP and their application in individual cases concerning pre-trial detention and thus have limited impact on the jurisprudence of lower courts.

5) The ease of the prolongation of the detention on remand and its length remains a systematic problem of Polish legal system. According to the Polish law, the length of pre-trial detention cannot exceed three months (Art. 263 § 1 of the CCP). In Poland criminal investigation is usually not terminated during this period of time – it often happens that prosecutors during the third month of detention file a motion to the court asking for prolongation of the detention. The justification for such a prolongation is usually that investigation has not been completed and that other actions, e.g. hearing of a witness, have to be undertaken. In such cases the court of first instance may prolong the detention for a period (or periods) which as a whole may not exceed 12 months (Art. 263 § 2 of the CCP). The whole period of pre-trial detention until the date on which the first conviction by the court of first instance is imposed may not exceed two years. However, the court of appeal within whose jurisdiction the offence in question has been committed, can prolong pre-trial detention for a further fixed period exceeding two years, for example when evidence needs to be obtained in a particularly complex case or from abroad or when the accused has deliberately prolonged the proceedings. It should be noted that another

ground for the prolongation of the pre-trial detention – “*other important obstacles which could not be overcome*” – has been found unconstitutional by the Polish Constitutional Court (judgment of 24 July 2006, case no. SK 58/03).

The Constitutional Court in the abovementioned case decided that this provision allowing for extension of pre-trial detention for a period longer than one year in preparatory proceedings is unconstitutional. It was declared as not precise enough and opening possibilities for being overused to justify prolongation of the detention. In the same judgment, the Constitutional Court made some *de lege ferenda* remarks. According to the Court, a motion to the court of appeal for prolongation of pre-trial detention for a fixed period exceeding 2 years, should be made in a preparatory proceedings by the Prosecutor General. A given prosecutor dealing with the case should ask Prosecutor General for such a motion. Constitutional Court in its *de lege ferenda* remarks suggested also that a fixed time limit for which pre-trial detention can be applied as a remedy for speeding up the criminal proceedings should be considered. The Polish Ombudsman is of the opinion that such maximum time-limit should be established. Taking into account this position, the Ombudsman acceded to the constitutional complaint submitted by Józef J., who questions the lack of such limit. The case is currently under consideration of the Constitutional Court (No. SK 46/07). The judgment of the Constitutional Tribunal, although important, did not change the policy regarding pre-trial detention – proposed solutions have not been introduced into the Polish legal system.

Recommendation 7 – Ensure that detainees have direct contact with a lawyer.

The Government has not at all addressed the problem of very low remuneration for advocates in cases in which they have been appointed by the state. It is not uncommon for an advocate who has been appointed by the state as defence counsel in a criminal case to receive a total of 100 to 150 EUR for participation in complicated proceedings, lasting over two to three years. Furthermore, this remuneration is paid out in total after the proceedings are completed with a final and binding judgment. Given the amount of time and work invested by an advocate in order to diligently conduct a typical criminal case, the remuneration received is often completely inadequate and therefore does not provide even minimal incentive for the

advocate to seek contact with the detainee. This of course does not justify the failure to act by the advocate. It does however explain the mechanisms underlying the problem.

The Government indicates that complaints made to the Ministry of Justice regarding a lack of visits from a state appointed lawyer to prison detainees are not common. The Helsinki Foundation for Human Rights often encounters complaints in this respect from detainees. It is also the experience of the Helsinki Foundation for Human Rights that such complaints are often raised orally by detainees before the court, where the detainees indicate that they have not had a chance to consult their case with the state appointed lawyer and have not had the opportunity to meet with the lawyer before the hearing.

In summary, the mere reference by the Government to introduction of the amendment of art. 20 of the Code of Criminal Procedure must be considered a wholly inadequate and insufficient reaction to the problems raised by the Commissioner in the Memorandum to the Polish Government.

Recommendation 8 – Enact a comprehensive body of anti-discrimination legislation. Set up a single specialised body to combat discrimination in all areas of life and on all grounds.

In Poland there is lack of the comprehensive anti-discrimination law, protecting different fields of social life from discrimination due to racial or ethnic origin. In fact only the field of labour law is adequately regulated from the point of view of this type of discrimination. There is also no equality body which prevents the development of policies towards counteracting discrimination. Accordingly, the Racial Equality Directive 2000/43/EC (hereinafter “RED”) has not been implemented in Poland in this respect.

The Prime Minister Donald Tusk announced on 8 March 2008 the appointment of a new plenipotentiary for equal treatment [*Pełnomocnik Rządu ds. Równego Traktowania*] as a member of the cabinet in the rank of the secretary of state in the Chancellery of the Prime Minister (*sekretarz stanu w Kancelarii Prezesa Rady Ministrów*). Relevant law was enacted by the Council of Ministers - Ordinance of 22 April 2008 on Government Plenipotentiary for

Equal Treatment and entered into force on 30 April 2008⁵. The office of the Plenipotentiary (within the office of the Prime Minister) was established in September 2008 and currently employs 5 persons. The task of the Plenipotentiary is to execute the governmental policy with regard to equal treatment including counteracting discrimination based on gender, race, ethnic origin, nationality, religious or beliefs, political convictions, age, sexual orientation, civil (marital) and family status. Among competencies of this new office are: analysis and research, monitoring, collaboration with other organs, local self-governmental units and NGOs, creation of draft laws, pronouncement of opinions about laws drafted by other organs, taking actions aiming at elimination or limitation of results caused by violation of the rule of equal treatment. Plenipotentiary may create special research teams and call for particular research or expertise as well as may provide a report as a result of this research. It may also issue recommendations. However the Plenipotentiary does not have a right to take complaints and assist individual victims.

Since the office of the Plenipotentiary is relatively new it is too early to evaluate its operation. However a lot of critique was already formulated including a collective complaint of 36 NGOs to the European Commission⁶. The main problems of the office are as follows:

- not clear distinction of the competencies in between the office and other institution dealing with discrimination issues – Department for Women, Family and Counteracting Discrimination within the Ministry of Labour and Social Policy⁷;
- lack of independence since the office is placed within the government, precisely in the office of the Prime Minister; lack of separate budget;
- lack of adequate staff;

⁵ Rozporządzenie Rady Ministrów z dnia 22 kwietnia 2008 r. w sprawie Pełnomocnika Rządu do spraw Równego Traktowania [*Ordinance of the Council of Ministers of 22 April 2008 on the Government Plenipotentiary for Equal Treatment*], Dziennik Ustaw [*Journal of Laws*] No. 75, item 450.

⁶ Letter of Polish 36 NGOs of 9 February 2009 to the European Commission (DG Employment, Social Affairs and Equal Opportunities) on non-enforcement of certain EU equality directives, including RED. The letter is available at the website <http://www.feminoteka.pl/news.php?readmore=4464>.

⁷ Good example of this lack of clear division of competencies, or even some kind of conflict, is the process of the preparation of the draft law on equal treatment. The main role in this respect is played officially by the Ministry of Labour even the Plenipotentiary seems to be more adequate institution to do it (and takes part in the process by commenting on the draft law and also collecting opinions of the civil society).

- lack of information policy.

The situation would be significantly improved if the law on equal treatment was adopted. This law has been in the preparation process for the last couple of years. Following on previous preparation on 2 April 2007 the Ministry of Labour and Social Policy has announced draft Act on Equal Treatment and sent it for social consultations. Since that time, for the last two years there were already several versions of the draft law, yet still the outcome is unsure.

Furthermore, successive versions of draft law differ significantly. At the beginning the scope of the law was very wide, consecutive versions limited it, narrowed to almost verbatim implementation of directives (filling the gaps of previous improper implementation of the RED and Directive 2000/78/EC as well as correcting some mistakes of previous implementation). Finally the latest, however still unofficial draft law (January 2009) comes back to the initial version and is wide in scope.

The initial draft law (April 2007) was much wider and went beyond the scope of the RED and Directive 2000/78/EC, it was in a sense anticipating the proposal of the new horizontal anti-discrimination directive discussed within EC. It prohibited discrimination in access to social security, health care, education, access to goods and services publicly accessible (including housing) because of race and ethnic origin, nationality, gender, religion or beliefs, political beliefs, disability, age, sexual orientation, property, marital and family status.

Draft law of 21 January 2008 has limited the scope of law. It left protection of all groups in terms of social security, health care and education; however limited the protection in access to goods and services to gender, race and ethnic origin.

Draft of 24 April 2008 has narrowed the scope even more, in order to simply implement the directives and do not go beyond them (to provide protection from discrimination in all fields beyond labour matters only because of gender, race and ethnic origin).

Two last drafts (October 2008 and January 2009) changed the name of the act, instead of 'law on equal treatment' it is now being called 'law on implementation of the European Union regulations in relation to equal treatment'. However the scope of the last version is again wide and covers the prohibition of discrimination based on all possible grounds of discrimination in access to social security, health care, education, access to goods and services publicly

accessible (including housing).

Also the concept of the equality body changes in the consecutive versions of the draft law. The latest version envisages that the assistance to victims would be provided by the Ombudsperson (relevant amendments of the law on Ombudsperson are being proposed) and the independent surveys, reports and recommendations (as well as legal assistance to subjects other than natural persons) would be the competence of the new Plenipotentiary for Equal Treatment in the rank of the secretary or under-secretary of state in the ministry responsible for equal treatment (the draft law does not determine which ministry is the one). The Plenipotentiary would be appointed and removed by the Prime Minister on the motion of the Minister responsible. The law does not cover the budgetary and staffing issues. Placing the office of the Plenipotentiary within the structure of the government raises doubts in terms of independence in its actions. However it must be noted that this is just one more draft version of the law (still not official) and it is impossible to predict what would be the final outcome.

On 4 May 2009, the Committee of the Council of Ministers has asked for some additional discussions between various ministers regarding the draft law. It also asked for an opinion of the Legislative Council (*Rada Legislacyjna*) as regards the compliance of the draft law with the Constitution.⁸ It appears that these additional consultations will prolong the process of the finalization of works on the draft anti-discrimination law.

Furthermore, in the beginning of July 2009, Ms. Agnieszka Chłoń-Domińczak, Vice-Minister of Labour, was dismissed. It was clear that the reason for her dismissal was purely political, as she was highly regarded for her active work and competences. Nevertheless, the Minister of Labour Jolanta Fedak as one of arguments for dismissal referred to slow work on the anti-discrimination law.⁹ It seems, however, that this argument was used just for political purpose and had no relevance to actual reasons for dismissal. Non-adoption of anti-discrimination law is not an effect of personal failure of one or the other politician, but rather lack of prioritization of this issue in the whole Government.

In a recent letter by the European Commission to 36 protesting NGOs, the Commission

⁸ See statement of the Committee of the Council of Ministers of 4 May 2009, available at http://www.mps.gov.pl/bip/download/Stanowisko%20rowne%20traktowanieKRM_05-05-09.pdf

⁹ See statement by Jolanta Fedak, Minister of Labour, of 6 July 2009, available at http://www.mpips.gov.pl/index.php?gid=339&news_id=1511.

confirmed non-implementation of EU equality directives, including RED, and declared start of infringement procedure with respect to Poland. On 14 May 2009, the European Commission referred Poland to the European Court of Justice (ECJ) for non-transposition of EU rules prohibiting gender discrimination in access to and supply of goods and services (Directive 2004/113/EC). The implementation of this Directive is provided in the same draft anti-discrimination law, which implements the RED and its provisions on access to and supply of goods and services. There is a chance that due to the pending case before the ECJ, the Government will accelerate its works on anti-discrimination work.

Recommendation 9 – Put in place adequate legal measures to combat hate speech and discrimination of those with different sexual orientation or gender identity. Take appropriate measures to raise awareness of diversity in cooperation with civil society.

Measures taken by the Government to raise awareness of diversity in cooperation with civil society are not adequate and the work of the Government Plenipotentiary for Equal Treatment Elzbieta Radziszewska in this respect is assessed negatively by LGBT organizations.

The Government mentions intensive legislative works on Law on Equal Treatment “which is designed to provide comprehensive protection for persons subject to discrimination, including discrimination for reasons of sexual orientation”. The Government does not mention that the Draft Law on Equal Treatment does not provide for full protection from discrimination on grounds of sexual orientation, which was mentioned above.

There are many other problems concerning the issue of adequate legal measures to combat hate speech and discrimination of those with different sexual orientation and gender identity. In Poland there are no separate criminal rules that would protect members of sexual minorities, although special protection is granted to members of other minorities. According to Article 256 of Criminal Code [*Kodeks Karny*], ‘Whoever publicly promotes a fascist or other totalitarian system of state or incites hatred based on national, ethnic, racial or religious differences or for reason of the absence of any religious belief, shall be subject to a fine, a penalty

of restriction of liberty or a penalty of deprivation of liberty for up to two years'. According to Article 257 of the Criminal Code, 'Whoever publicly insults a group within the population or a particular person because of his/her national, ethnic, racial or religious affiliation or because of the absence of any religious belief, or for these reasons breaches the personal inviolability of another individual, shall be subject to the penalty of deprivation of liberty for up to three years'. These regulations protect only national, ethnic and religious minorities (possibly also individuals who do not belong to any religion). Sexual minorities are not protected, although they are also victims of hate speech crimes.

Sexual minorities are protected against hate speech only by general rules of the Criminal Code and the Civil Code. In particular, Article 212 of the Criminal Code is often applied, according to which: '§1. Whoever imputes to another person, a group of persons, institution, legal person, or organizational unit not having the status of a legal person, such conduct, or characteristics that may discredit them in the face of public opinion or result in a loss of trust necessary for a given position, occupation or type of activity, shall be subject to a fine, a penalty of restriction of liberty or a penalty of deprivation of liberty for up to one year. [...]'

The rules which protect ethnic, national or religious minorities (that is Article 256 and 257 of the Criminal Code) constitute *sui generis* aggravated rules in comparison to Article 212 of the Criminal Code. While the sanctions under both sets of rules are comparable, the crimes mentioned in Article 256 and 257 of the Criminal Code are prosecuted *ex officio*, whereas defamation (Article 212 of the Criminal Code) is prosecuted only upon a private charge. It means that the indictment must be written and then supported in court by the injured person. This can discourage such person from claiming his rights. In contrast, in the case of offences prosecuted on the basis of Article 256 and 257 of the Criminal Code, it is enough for the injured person to inform the prosecutor of the offence and then the prosecutor takes the role of prosecuting attorney. In HFHR's opinion there are no reasons for the legislator to treat different minorities differently, by guaranteeing some of them stronger criminal protection. Therefore it might be reasonable to consider changes in Criminal Code, even though some doubts may be formulated whether it will improve the protection of sexual minorities¹⁰.

¹⁰ More extensive argumentation in this respect may be found in the Country report on homophobia and discrimination on grounds of sexual orientation: Poland: http://fra.europa.eu/fraWebsite/research/background_cr/cr_hdgso_en.htm

Recommendation 10 – Ban racist and anti-Semitic publications and broadcasting. Implement effectively the existing articles of the Criminal Code relating to incitement to racial and ethnic hatred.

Racist and anti-semitic publications and broadcasting is a problem which is still unresolved in Poland. As an example we can mention the inability of the Polish authorities to deal with a neo-fascist website www.redwatch.info. It is a website which has been operating since January 2006 and which presents materials of a fascist and racist nature. In particular, the website lists a number of people who, in the opinion of the authors of the website, represent a threat to Polish society. Information on the website includes photos, addresses and even mobile phone numbers of a number of people. The descriptions of people also contain information on political beliefs, social activities, and sometimes describe people using vulgar language. Despite the arrest of three people connected with Redwatch, this website is still operating. The Polish government tried to intervene in this respect with the US authorities (where the servers are located). However, assistance has been refused. Consequently, the website is still operating and there is no real and effective measure which can change this situation. There are new servers where the website also operates. Since the establishment of the website a few proceedings have been undertaken with the aim of identifying the website managers but they did not end in formulating the bill of indictment.

In this context it should also be mentioned that at the head of Polish public television from December 2008, stands a young man who was the publisher of a racist newsletter called "Front." (its editorial line was the following: "We don't tolerate cowards, snitches and Jews.") His election as vice-president of the public television in 2006 was supported by the League of the Polish Families and the Law and Justice Party. From the beginning in his position as a president of the public television Piotr Farfał imposed his will steadily purging the network of journalists and officials opposed to him and his nationalist line. He has also given prominence to eurosceptic views challenging the European Union, forcing a break in programming to broadcast an interview with Declan Ganley. Recently, he took one of Poland's largest dailies (Gazeta Wyborcza) to court for calling him a "former neo-nazi." In February, the court ruled against him, with the judge saying that Farfał was a public person, "who should not be one

because of the views he once expressed.”

Recently the Franco-German cultural television channel broke off cooperation with Polish state television over Farfal’s presence, saying “he does not share our values.” Open Republic, an organization aimed at stamping out xenophobia and anti-Semitism issued a letter calling it “a shameful and highly damaging thing that a former neofascist is at the head of [public television].”

In cases of anti-semitic or racist publications or broadcasting, there exist problems with initiating civil law proceedings for violation of personal rights when a person is addressing Jews or the Jewish nation with racial slurs. This is because an individual harm must be proved and it is not sufficient to show that a given person forms part of the insulted group. Even though criminal proceedings are available in the latter case, often penalties are not severe enough to deter the use of hate speech.

Recommendation 15 – Ensure that women falling within the categories foreseen by the Polish abortion law are allowed, in practice, to terminate their pregnancy without additional hindrance or reproach. Create an appeal or overview procedure whereby the decision of a doctor not to issue a certificate permitting an abortion be subject to review.

The Government did not enforce the judgment *Alicja Tysic v. Poland* of 20 March 2007 (no. 5410/03). Instead of real and effective proposals on how to create good procedures and access to legal abortion, there was only a debate on whether the Polish Ombudsman should ask the Constitutional Court for the control of the constitutionality of abortion laws. Following the debate on the potential motion by the Ombudsman in January 2008, the issue of enforcing the *Alicja Tysic* judgment has not been widely discussed. During his recent visit to Poland (May 2009) UN special rapporteur on the right to health Mr Anand Grover expressed his concern with existing problems in access to certain services in the area of reproductive health (e.g. legal abortion, pre-natal examinations).

In the Interim Report the Government presents regulations of the Law on Patients’ Rights and

the Patients' Right Spokesman of 6 November 2008 (*Ustawa o prawach pacjenta i Rzeczniku Praw Pacjenta*, Dz.U. 2009 r., Nr 52, poz. 417) as being introduced because of the need to implement *Alicja Tysiąc v. Poland* judgment. However, this law does not introduce effective procedure that was required in ECHR's judgment and was criticized by the Polish Ombudsman who intervened with the Polish Prime Minister on this topic¹¹. In his opinion the provisions of this law violate the right to court and are not in the best interest of patients. Firstly, according to the law a patient has a right to submit an objection against opinion or certificate issued by the physician to the Medical Commission (*via* Spokeman for Patients' Rights). The decision issued by the Medical Commission is final and this – according to the Ombudsman – violates a right to court. Secondly, a patient who wants to submit an objection to the Medical Commission has to justify it and give the legal basis of his claim otherwise objection is rejected. In should be also added that the Medical Commission has 30 days to make a decision which is totally inadequate in cases of women who would like to perform a legal abortion as the time factor is crucial in such cases (e.g. in case when the pregnancy is the result of a crime a pregnancy is possible only till the 12th week).

Helsinki Foundation for Human Rights would like to draw Commissioner's attention to the fact that there are also other problems linked with the Polish law on termination of pregnancy, for example an access to pre-natal examinations for pregnant women. An example of the defective application of this act is the case of B. S. Wojnarowscy against Cardinal S. Wyszyński Hospital in Łomża. In this case the Supreme Court ruled (IV CK 161/05) that so called wrongful birth claims (filed by the parents of a child born alive but with a disability, and claiming that a doctor was negligent in permitting the pregnancy to continue to birth) are admissible according to Polish law. The case was remanded and B. i S. Wojnarowscy were granted damages by the Appellate Court in Białystok (I A Ca 278/08) . In front of the European Court of Human Rights is pending a case of *R.R. v. Poland* which concerns problems with access to pre-natal examinations and consequently to abortion.

¹¹ <http://www.rpo.gov.pl/pliki/12299535250.pdf>

Recommendation 16 – Improve access to information, legal assistance and education for those asylum seekers residing in reception centers. Ensure that those granted a permit to tolerated stay benefit from measures leading to a proper and effective integration into Polish society.

It has to be emphasized that the draft legal act on access to free legal assistance has been discussed since many years now and at the moment there is no noticeable progress in this regard. Currently the only form of legal assistance provided by the state to the asylum seekers is representation in front of the Regional Administrative Court (*Wojewódzki Sąd Administracyjny*; provided the Court decides to grant it, depending on the material situation of asylum seeker). It is however not sufficient as in administrative procedure an appeal to the court does not have a suspensive effect on the decision of the second instance authority (unless the court decides otherwise) and a foreigner who made an appeal to the court has no right to social benefits. Additionally, less funding was allocated to the national European Refugee Fund, which is at present the major source of financing for the NGOs providing legal assistance to asylum seekers in Poland. There are only few organisations providing this kind of assistance and the number of lawyers is not sufficient. Additionally, some of the reception centres are located far from the main towns, the NGOs have limited possibilities to cover the travel costs to the centres, and asylum seekers do not get travel costs refunded. As a consequence access to legal counseling is limited and many asylum seekers face difficulties when trying to contact a lawyer. In the guarded centres communication possibilities are even more hampered; some foreigners reported that the fax can be sent only twice a week.

As far as we are aware, asylum seekers are not, as a rule, informed about their rights in a way they would understand. Most of asylum seekers who contact HFHR's lawyers have little or no knowledge at all concerning their rights and obligations (most information they got from

other refugees and it is often distorted) and their first contact with a lawyer is when they receive a negative administrative decision.

Even though asylum seekers have a possibility to take part in language courses, some of them complain that not in every reception centre there are courses available to different age groups (for instance courses mainly for children, but not for adults) or there are no separate courses depending on the level.

As far as education of children is concerned, even though the enrolment rates have increased, both legal and practical obstacles still remain. There are no specific regulations on acceptance, enrolment, qualification and examination of alien children. “The absence of guidelines regarding the practical aspects of dealing with foreign children in Polish schools has resulted in a wide range of attitudes towards these issues. While some schools overcome these difficulties, others – in practice – exclude foreign children from the possibility of advancing in their education”¹². The educational system is not prepared to accommodate the needs of refugee children. “These relate to obligatory school examinations, the assignment of non-Polish speaking pupils to specific levels at school, teaching materials, school funding, training of teachers and the recognition of the psychological needs of children who have experienced war and exile. There are no teaching tools and methods, especially for this group of teenagers —among whom are those who have either missed a few years of schooling, or are illiterate. (...) The most disadvantaged group in Poland – in an educational context – is youth. The lack of access to appropriate schooling in Poland for 12- to 15-year-olds at the lower secondary school age effectively prevents them from receiving quality education. Placed in classes with children who are two or three (or more) years younger, many teenagers feel alienated and quickly drop out. The situation is even more difficult for the 16- to 17-year olds. For most of this age group, the Polish educational system does not have any school to offer”¹³. Additionally, minor foreigners placed in the guarded centers do not have access to education – they cannot go to school and there are no classes in the centres.

¹² Agnieszka Kosowicz, Polish Migration Forum, “Access to Quality Education by Asylum-Seeking and Refugee Children, Poland country report”, 2007, Executive summary, p.1, <http://www.forummigracyjne.org/files/80/ExecutiveSummary.pdf>. Even though the report was written in 2007, these concerns are still valid.

¹³ Ibidem, p. 2-3

It has to be underlined that both the annual and the multi-year programs of the European Fund for the Integration of Third-country Nationals first started in Poland in 2009, so it is difficult to estimate their actual impact on the situation of its beneficiaries.

Besides, since subsidiary protection¹⁴, as defined in the Council Directive 2004/83/EC was introduced in May 2008, the rights of persons who are granted subsidiary protection became restricted. It should be stated more clearly that persons granted the permit for tolerated stay have only rights to shelter, meal, essential clothing and financial support granted for a specific purpose and not the general one.

They are also no more individuals entitled to obtain a Polish travel document for a foreigner which is valid for one year and can be granted to a foreigner who has no possibility to obtain a travel document from the authorities of their country of origin. Those foreigners have only a right to apply for a Temporary Polish travel document, which is valid for the maximum period of 7 days. In addition, all the foreigners granted a tolerated stay permit are excluded from the possibility to apply for the long term resident's EC residence permit or a temporary residence permit. The persons who were granted a tolerated stay permit due to the fact that their decision on deportation could not be enforced for the reasons beyond them and beyond the authorities responsible for enforcing this decision, have lost the right to apply for a permanent residence permit after 10 years of their stay in Poland.

These restrictions are particularly harsh for the stateless persons who were granted a tolerated stay permit due to the fact that their deportation could not be enforced (which is in practice the only way of getting a residence title in Poland): they cannot receive a travel document and have no right to apply for any kind of other residence permit, both temporary and permanent.

Recommendation 18 – Refrain from resorting to criminal law measures for the offence of insult.

The Polish Government highlighted in its report the actual works on the depenalization of the offence of insult. The amendments proposed by the Ministry of Justice eliminate the most severe responsibility related to the offence of insult committed through media and eliminate

¹⁴ Incorrectly called in the Interim Report “supplementary protection”

the penalty of deprivation of liberty for the insult¹⁵. A person committing insult may therefore be fined or condemned to social works (art. 212 par. 1-3 of the Penal Code). The draft amendment modifies prerequisites of exemption from responsibility according to the Polish Constitutional Tribunal judgment of 12 May 2008 (application nr: SK 43/05). According to the draft proposal may not be held responsible for insult a person whose statements were true and if his/her statements were divulged in the public interest (art. 213 par. 1 and 2 of the Penal Code). The offence of defamation is subject to private prosecution by the individual concerned.

The offence of insult will however remain in the Penal Code. Therefore, the amendments are illusory and do not meet the European Court of Human Rights case law standards and the Council of Europe recommendations. The sole possibility of instituting criminal proceedings has a negative influence on the freedom of expression and may provoke the so-called “chilling effect”. Such a regime of penal responsibility poses a danger of constraining the freedom of expression and the public debate. The balance between the need to protect good name and dignity – and the need to protect freedom of speech – remains shifted in favour of the former and to the detriment of the freedom of public debate. It is vital to note that civil proceedings for personal goods are an effective remedy enabling the receipt of compensation in case of good name violation and defamatory statements. The number of civil cases for personal good protection because of insulting statements is still rising and the sums of compensation awarded are increasing.

Furthermore, it is worth noting that the legislation procedure is lengthy in Poland. The draft amendment has been presented to the Parliament on 24 November 2008. The proceedings may last a couple of months (or even a year) before the final text will be adopted. The draft amendment may be modified during the proceedings and its final scope is unknown.

It seems unlikely that an offence of insult will be removed from the Penal Code provisions in the near future. Recently, in June 2009, the politician who was one of the leading persons preaching for the amendment of the Penal code and the deletion of art. 212 in its actual scope (Janusz Palikot from Civic Platform) lodged a private indictment (under art. 212 of the Penal

¹⁵ The draft amendment is accessible on: <http://www.ms.gov.pl/projekty/projekty.php>

code) and civil litigation (under art. 24 of the Civil code) against two journalists and a publisher of one of the leading newspaper „Dziennik”. The newspaper published press materials concerning the finances of his election campaign, as well as material on the supposed allocation of his assets to tax havens, during the last week of May and the first week of June of this year. In civil litigation, Janusz Palikot is demanding 10 million PLN of damages on behalf of Lubelskie Hospicium im. Małego Księcia in Lublin. Helsinki Foundation for Human Rights issued an official statement on 15 of June 2009¹⁶ in which we highlighted that the sentencing of journalists through the criminal courts, especially if they are sentenced to prison, is a disproportionate punishment and it creates a so-called „chilling effect” which leads to a breach of the terms of the Convention. Referring to the civil litigation the HFHR stated that it should be a sufficient mean of protection; however, the high amount of damages demanded by Janusz Palikot on account of the violation of his personal property raises doubts about such a course of action.

Recommendation 19 – Ensure that lustration procedures comply with all the guarantees of a state based on the rule of law and respect for human rights.

The Helsinki Foundation for Human Rights finds the Interim Report of the Polish Government very disappointing and not promising in terms of prognosis of progress in implementation of the Recommendations in the area of lustration law.

At the beginning of the Report, the Government Agent declared broad actions have taken place together with non-governmental actors. Nevertheless, neither representatives of the Government nor representatives of the Working Group for the Implementation of the Recommendations have consulted the problem of lustration instruments with the Helsinki Foundation for Human Rights, which operates the “Human Rights and Settlements with the Past” Program. The Foundation has unique experience and knowledge in this field and is the only nongovernmental organization that acts in this area of human rights in Poland.

The fact that the Government realizes the need to adapt lustration instruments to the

¹⁶ The statement is available on: http://www.hfhrpol.waw.pl/obserwatorium/english/index.php?option=com_content&view=article&id=373:statement-of-the-helsinki-foundation-for-human-rights-on-the-private-indictment-and-demanded-damages-in-the-civil-case-of-janusz-palikot-vs-dziennik&catid=47:aktualnosciprogram&Itemid=66

requirements indicated in the judgments of the European Court of Human Rights against Poland is uplifting. However, the depth of the commented part of the Report illustrates that this is only a declaration. The Government has not shown that it is taking any effective steps to analyze and then implement the judgments of the Court. The attitude of the Government presented in the Report shows that the problem of violations of human rights in the area of lustration instruments is being completely neglected and marginalized.

There are already five judgments of the European Court of Human Rights regarding Polish lustration cases that declared violations of art. 6 § 1 and art. 6 § 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms, as a result of imposing restrictions for persons subjected to lustration proceedings in access to files containing classified archived documents:

- judgment of 24 April 2007 in the case of Matyjek against Poland, application no. 38184/03;
- judgment of 17 July 2007 in the case of Bobek against Poland, application no. 68761/01;
- judgment of 15 January 2008 in the case of Luboch against Poland, application no. 37469/05;
- judgment of 17 February 2009 in the case of Jałowiecki against Poland, application no. 34030/07;
- judgment of 28 April 2009 in the case of Rasmussen against Poland, application no. 38886/05.

In each of the above judgments the Court declared that there had been a violation of the right to a fair hearing due to the violation of the right to an effective defense and the rule of equality of arms in Polish lustration proceedings. There are a series of successive applications waiting to be resolved by the Court, covering the problem of fair trial in lustration proceedings. As serious as these violations are, the Polish Government has yet to take any steps to implement these judgments and eliminate the sources of these declared violations. The problem has been indicated in judgments of the ECHR precisely and brought to the Government's attention by other authorities, including the Constitutional Court of Poland.

Claims in an official document about the need of ensuring principle of the rule of law are far too general.

In the opinion of the Helsinki Foundation for Human Rights, implementation of the Court's judgments does not require any consultations, especially during the Council of Europe Meeting of the Ministers' Deputies. It requires revision of archived documents administered by the Institute of National Remembrance, classified as secret or top secret on the one hand and on the other possible a short amendment to the lustration act of 2006, stating that restrictions in access to classified documents imposed on the accused by auxiliary application of provisions of the Code of Criminal Procedure do not apply in lustration proceedings to a lustrated person.

In practice under the lustration act of 2006 even higher restrictions on a lustrated person are imposed regarding access to classified documents than under the lustration act of 1997 (this act was the subject of the multiple judgments of the Court, listed above). In the present situation neither lustrated person nor defense counsel are allowed even to make notes while reading classified documents.

Moreover the role of the commissioner of public interest in lustration proceedings has been taken over by the Institute of National Remembrance, which, at the same time administrates the archived documents. Thus, the violation of the principle of equality of arms is presently even more serious.

The minimum steps that the Government should take in implementation of the five judgments of the European Court of Human Rights are in fact not complicated, as explained above. Two years after the first judgment of the Court there is no explanation for any delays. Another problem is the tendency to widening the list of persons exercising public functions, who are subject to lustration. As time passes, the tendency should be exactly opposite.

Other unresolved issues include insufficient or even a lack of effective legal remedies for victims of wild lustration and Wildstein's List.

Wild lustration is the popular name for the process of various leaks published in the media about alleged collaboration with security forces of the communist regime. The sensational information mostly concerns public figures and famous people.

Wildstein's list is a list containing 240 thousand names of officers, collaborators, candidates for collaborators and other people that was leaked from the Institute of National Remembrance, and published on the Internet in January of 2005. This list still remains a great social problem and issue in Poland. According to public perception (albeit to a lesser degree than initially) this list is seen as a „list of collaborators”.

The problem of wild lustration and Wildstein's list usually are assessed together with the problem of access to the archived documents held by the Institute of National Remembrance and the problem of lack of the implementation of the judgment of the Constitutional Court of 11 May 2007.

Considering the need for discussion, for example during the Council of Europe Meeting of Ministers' Deputies, it may be in fact be inevitable to ensure that the lustration procedures comply with all the guarantees referred in the “Guidelines to ensure lustration laws and similar administrative measures comply with the requirements of a state based on the rule of law” placed in the Report by the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe of 3 June 1996, Doc. 7568, Measures to dismantle the heritage of former communist totalitarian systems. This concerns especially the question if all of its restrictions and requirements apply to lustration instruments at the same level as to decommunisation instruments. This concerns in particular the indicated time limit of 31 December 1999.

However, such discussion needs a proper preparation. The Government has not provided in the Report any information about the Polish standpoint in this area or at least an indication that any efforts are being made to work out such a standpoint.

Summarizing, in the opinion of the Helsinki Foundation for Human Rights, the Government has not proved and even indicated that is taking sufficient efforts to ensure that the lustration procedures comply with all the guarantees of a state based on the rule of law and respect for human rights.