

# HELŚIŃSKA FUNDACJA PRAW CZŁOWIEKA HELSINKI FOUNDATION for HUMAN RIGHTS

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European Court of Human Rights (Application no. 63898/09)

*Chrostowski v. Poland*

## WRITTEN COMMENTS BY THE HELSINKI FOUNDATION FOR HUMAN RIGHTS

15 December 2011

### INTRODUCTION

These written comments are submitted by the Helsinki Foundation for Human Rights (HFHR) in Warsaw, Poland pursuant to the leave granted to HFHR by the European Court of Human Rights (‘‘Court’’), under Rule 44 § 2 of the Rules of the Court.

These comments are limited only to the points of law, including questions of interpretation of the Convention as well as experts opinions. These submissions do not include any comments on the fact of the case of *Chrostowski v. Poland* (Application No 23692/09). Specifically their aim is not to impact the factual assessment of the case or questions of admissibility, but only to broaden the view of the Court on the problem. Therefore, the focus of the opinion is set on the general principles involved in the case.

### INTERES OF HELSINKI FOUNDATION FOR HUMAN RIGHTS

HFHR is a non – governmental organization established in 1989 by members of the Helsinki Committee in Poland, in order to promote human rights and rule of law in Poland as well as to contribute to the development of an open society in Poland. One of the activities of the HFHR includes legal actions undertaken in the public interest, including the representation of parties and preparation of legal submissions to national and international courts and tribunals. The aim of such submissions is to influence the process of changing laws and practice that we find contrary to human rights.

Since its establishment, the HFHR has been promoting the standards of the European Convention on Human Rights (‘‘Convention’’). This refers, *inter alia*, to guarantees of Art. 3 of the Convention. The case of *Michał Chrostowski v. Poland*, if facts as submitted by the Applicant are confirmed, may reflect a problem of protection of prisoners where perpetrator

of the violence act is not the public officer but fellow - prisoner.

The judgment of the Honorable Court may answer the question to what extent is the State responsible for the protection against violence among prisoners and is obliged to counteract to such situations.

## **I. THE PROTECTION SYSTEM IN PENITENTIARY UNITS**

### **1. Special protection to certain groups within penitentiary units**

The HFHR would like to highlight that in the legal literature it is stressed that prisoners' security may be threatened or impaired by acts or omissions of other fellow-prisoners, Prison Service officers, third party or by other reasons, such as *force majeure*<sup>1</sup>. Moreover, prisoners' security is defined as a broad term that includes respect for physical integrity that might be disturbed by beating, kicking, poking as well as protection against mental torture<sup>2</sup>.

It is important to stress that within the penitentiary units, there are certain groups of prisoners that are very likely to be exposed to acts of aggression, especially coming from the fellow-prisoners. According to legal experts, in particular, these are the groups of vulnerable persons as well as persons being convicted for causing harm to children and women (mothers) and paedophiles. In reference to the latter ones, the analysis shows that among the prison subculture it is justifiable to cause harm and be aggressive towards these groups of prisoners.

There is a general duty to ensure humane treatment and respect for the dignity of all persons deprived of their liberty. This principle is agreed as the a fundamental and universally applicable legal rule. Article 3 prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour.

Moreover, there are several detail international regulations as well as Polish ones aiming to ensure proper level of protection taking into consideration the above-mentioned groups of prisoners and the aggression coming from fellow-prisoners.

### **2. International regulations**

To indicate the international standards aiming to guarantee prisoners' security, it is worth to mention regulations of Council of Europe – standards of European Committee for the Prevention of Torture (CPT) and recommendations of Committee of Ministers or Parliamentary Assembly.

For instance, the Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules<sup>3</sup> states that a good order in prison shall be maintained by taking into account the requirements of security, safety and discipline, while at the same time providing prisoners with living conditions which respect human dignity. The necessary level of security shall be reviewed at a regular basis throughout a whole period of person's imprisonment. Further, European Prison Rules defined also the conditions of the special high security measures. According to this regulation, special high security or safety measures shall

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<sup>1</sup> T. Szymanowski, Z. Świda, Kodeks karny wykonawczy. Komentarz, Warszawa 1998 (*Executive Criminal Code. The Gloss*, Warsaw 1998, p. 255)

<sup>2</sup> *Ibidem*

<sup>3</sup> Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules (Adopted by the Committee of Ministers on 11 January 2006 at the 952nd meeting of the Ministers' Deputies), available at: <https://wcd.coe.int/ViewDoc.jsp?id=955747>

be applied only in exceptional circumstances and shall be accompanied with clear and transparent procedures.

The CPT<sup>4</sup> underlines that any strategy for solving the problem of intimidation and violence between prisoners, if it is to be effective, requires prison staff to be in a position, including in sufficient numbers, to exercise their authority in an appropriate manner.

Moreover, according to the CPT standards, the key component at the management of inter-prisoner relations is a careful assessment, classification and cell allocation of individual prisoners within the population. As legal literature indicates, the preliminary intention of the classification is the separation of the potential perpetrators of violence from their potential victims<sup>5</sup>.

The CPT identifies three possible solutions that are often adopted in penitentiary systems to protect the prisoners suspected or convicted of sexual offences. The first one is based on the separation of such prisoners from the rest of the prison population. Another approach is to disperse prisoners suspected or convicted of sexual offences throughout the prison concerned. A third approach can consist of transferring prisoners to another entity, accompanied by measures aimed at concealing the nature of their offence. The CPT does not promote any of these approaches particularly as the most effective. In the opinion of the CPT, the decision to apply one of these approaches should be based on the particular circumstances of each case<sup>6</sup>.

### **3. Polish safety regulations**

The Polish law also provides for proper regulations aiming at guaranteeing necessary level of protection for prisoners in penitentiary units.

The Polish Executive Criminal Code<sup>7</sup> states that the prison administration should take appropriate steps to ensure the personal safety of prisoners. For instance, the Art. 73.1. of the Executive Criminal Code indicates the discipline in prison as a measure to ensure the safety of prisoners and realization of the penalty's purposes.

Providing the security within penitentiary units is the legal obligation of the Prison Service, explicitly mentioned in the Act on the Prison Service<sup>8</sup>. The national legislation provides that the level of security in the penitentiary unit is a consequence of organizational system of the facilities, the activities of the prison service officers and their numbers. Art. 9 of the Act on the Prison Service indicates that the number of regular posts in different organizational units shall be calculated also on the bases of unit's security reasons.

Obligations related to ensuring the safety of prisoners are also dedicated to a penitentiary judge. The obligations are the elements of judge's supervision competence related to the

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<sup>4</sup> Report to the United Nations Interim Administration Mission In Kosovo on the visit to Kosovo carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 8 to 15 June 2010

<sup>5</sup> A. Nawój – Śleszyński, *Problemy zapewnienia bezpieczeństwa osobistego osobom pozbawionym wolności przez administrację więzienną w warunkach przeludnienia jednostek penitencjarnych* (w:) S. Lelental, G. Szczygieł, *X lat obowiązywania Kodeksu karnego wykonawczego*, Białystok 2009, s. 229 – 259 (*Problems of ensuring the personal safety of persons deprived of liberty by the prison administration in the overcrowded penitentiary units. Ten years of the Executive Criminal Code*, Białystok 2009, p. 229 – 259)

<sup>6</sup> CPT Standards, available at <http://www.cpt.coe.int/en/documents/eng-standards.pdf>

<sup>7</sup> Ustawa z dnia 6 czerwca 1997 r. Kodeks karny wykonawczy (Dz.U. 1997 Nr 90 poz. 557) (Executive Criminal Code of 6 June 1997, Journal of Laws 1997 No. 90, item 557)

<sup>8</sup> Ustawa o Służbie Więziennej z dnia 9 kwietnia 2010 r. (Dz.U.2010 Nr 79, poz. 52) (Act on the Prison Service of 9 April 2010, Journal of Laws 2010 No 79, item 52)

execution of sentence. The judge is obliged to take care of the safety conditions in prison, as well as to control the officers' reaction in cases of rebellion, self-harm and deaths.

The classification of prisoners is also stipulated in Polish law. Art. 82.1 of Executive Criminal Code states that in order to create adequate conditions in penitentiary units, prisoners are classified on the basis of negative selection of prevention of harmful effects and positive selection concerning establishing an environment conducive to individual proceedings<sup>9</sup>.

The provisions of the Polish penitentiary law establish the conditions for effective protection of the safety of prisoners. Moreover, they impose an obligation on the prisons' authorities to ensure the safety of any person deprived of liberty. Particular regulations on the classification of prisoners ensure their safety; one of the conditions for classification is the type of the criminal offense, as well as location of prisoners within the prison or detention center, types and kinds of prisons, the possibility of a permanent monitoring of substantiated cases, the possibility of placing in a single cell and possibility of transfer from one unit to another prison. Prisoners also have their own duty to care for their personal safety. Each of the prisoners is responsible to inform the supervisor of any risks to their safety and is responsible for avoiding those risks.

It has been a long penitentiary practice, despite the lack of statutory regulation in this area, to extend the special protection to the perpetrators of crimes against sexual freedom, where the victim was a minor. Those perpetrators are counted among the so-called "Victims". They are segregated from the other prisoners in each prison, by being placed in separate locations or residential purposes, avoiding contact with others. Those perpetrators are also subject to frequent inspection by the officers of the Prison Service.

Additionally, it is worth mentioning that on 26th March 2011 the Art. 88 d of the Executive Criminal Code<sup>10</sup> came into force which regulates the system of special protection dedicated to specific groups of prisoners – where in connection with pending or completed criminal proceedings serious damage has occurred or there is a direct apprehension of a serious threat to life or health. In such a situation, the director of a penitentiary unit is obliged to guarantee to a detainee the conditions of increased isolation and security. Special protection can be initiated by the motion of the Court in front of which criminal proceedings is conducted, the prosecutor conducting or supervising the investigation or the Convicted himself. The motion should include the reasons for such protection and maximum duration which cannot exceed 6 months.

#### **4. International regulations on security in psychiatric wards**

The need to protect the endangered groups of prisoners is also indicated in relation to psychiatric wards. There are regulations that, first of all, impose an obligation on a State to guarantee psychiatric treatment to prisoners with mental and disturbances. Second, they indicate the necessity to provide them security and human rights protection in psychiatric wards.

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<sup>9</sup> S. Lelental, *Wykład prawa karnego wykonawczego z elementami polityki kryminalnej*, Łódź 1996, s. 131 (*Lecture on criminal law implementing the elements of criminal Policy*, Lodz 1996, p. 131)

<sup>10</sup> Ustawa z dnia 16 września 2011 r. o zmianie ustawy - Kodeks karny wykonawczy oraz niektórych innych ustaw Dz. U. 1997 Nr 240 poz. 1431 (Act of 16 September 2011 amending the Executive Criminal Code, Journal of Laws 2011 No 240, item 1431 )

First, the Art. 82 of the UN Standard Minimum Rules for the Treatment of Prisoners of 1955<sup>11</sup> should be mentioned. It states that persons who are found to be insane shall not be detained in prison and arrangements shall be made to remove them to mental institutions as soon as possible (Art 82.1.). Prisoners who suffer from other mental diseases or abnormalities shall be observed and treated in specialized institutions under medical management (Art. 82.2.) Similar obligation results also from the Article 47.1 of the European Prison Rules which provides that the specialised prisons or sections under medical control shall be available for the observation and treatment of prisoners suffering from mental disorder or abnormality.

Further, the necessity to guarantee that prisoners held in psychiatric detention facilities are treated in compliance with human rights was stressed in the 1994 Parliamentary Assembly of Council of Europe's Recommendation no1235 (1994) on psychiatry and human rights<sup>12</sup>.

Among the three serious problems regarding the treatment in psychiatric detention facilities, the Parliamentary Assembly enumerated, inter alia, sexual abuse in psychiatric care (apart from the lobotomy and electroconvulsive therapy). Therefore, member-states need to put special emphasis to provide necessary protection of detainees against such abuses in psychiatric detention facilities.

In respect to the problems and abuses in the psychiatric wards, the Parliamentary Assembly put special emphasis to ensure that, first of all, the code of ethics must be created that explicitly stipulate that it is forbidden for therapists to make sexual advances to patients. On the other hand, what is crucial to the case under consideration, the Parliamentary Assembly indicated that the use of isolation cells should be strictly limited and accommodation in large dormitories should also be avoided. Therefore, the risk of violence and abuses of fellow-prisoners is also minimalised.

## **5. Protection against sexual abuses in penitentiary units and psychiatric wards in Poland of persons convicted for paedophilia acts**

Taking the above-mentioned regulation into consideration, we believe that two standards should be taken into consideration when analysing cases of sexual abuses by prisoners. First, it is the fulfilment of State's positive obligation to protect prisoners convicted for paedophilia from fellow-prisoners' aggression. The second issue is the issue whether Polish authorities fulfils its positive procedural obligations under Art 3 of the Convention.

The HFHR would like to highlight that we find it problematic to assess the scale of the problem. In Poland there are no analysis which would give answer to the question at how many prisoners suffer mental disorders and what is the nature of these disorders. This is a question of great importance since criminological and psychological research shows that the proportion of mentally disordered among prisoners population is relatively high<sup>13</sup>.

<sup>11</sup> UN Standard Minimum Rules for the Treatment of Prisoners Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977, available at: <http://www2.ohchr.org/english/law/treatmentprisoners.htm#wp1018574>

<sup>12</sup> Assembly debate on 12 April 1994 (10th Sitting) (see Doc. 7040, report of the Committee on Legal Affairs and Human Rights, Rapporteur: Mr Stoffelen; and Doc. 7048, opinion of the Social, Health and Family Affairs Committee, Rapporteur: Mr Eisma). Text adopted by the Assembly on 12 April 1994 (10th Sitting), available at: <http://assembly.coe.int/Main.asp?link=http%3A%2F%2Fassembly.coe.int%2FDocuments%2FAdoptedText%2Fta94%2FEREC1235.htm>

<sup>13</sup> J. Sławińska „Nasilenie odchyleń od normy psychicznej wśród skazanych” Przegląd Penitencjarny Nr 3, Warszawa 1983 r. (*The intensification of mental abnormalities among the convicts*, Penitentiary Review, no

Taking into consideration the international regulations as well as the practice and experience of the HFHR and the experts' opinions, there are 5 standards that sufficiently preserve from sexual abuses in the penitentiary units. These are as follows:

- a. single prisons cell,
- b. lack of overcrowding in Polish detention centres,
- c. taking proper care of sexual needs of prisoners that would be fulfilled without harm to other fellow-prisoners,
- d. good relationship between prisoners and prison officers,
- e. transparency of the situation in the penitentiary unit.

In the light of the above considerations, it is crucial to consider particularly two issues. The first one is related to overcrowding in Polish detention centres which in the opinion of HFHR remains the systemic problem.

The Central Board of Prison Service reports that the average population of prisons and detention centres in Poland stands at 96.7 per cent of the units' capacity. However, the detailed statistical data from 9 December 2011 indicates that in many wards the population level exceeds 100 per cent, reaching the alarming 127 per cent in some facilities<sup>14</sup>. The statistics have been based on a minimum standard of three square meters of a cell space per prisoner.

Moreover, there are prisons in Poland that provide single cells for prisoners. However, in case of overcrowding in these facilities, the single cells are used inappropriately.

In such situation, the proper protection of detainees by the prisons' officers become much more difficult. As the legal experts claim, where the overcrowding appears in the detention facility, it is hard to subordinate all prisoners and keep them disciplined. Therefore, the level of the overcrowding significantly increases the aggression among prisoners. Such situation may lead to certain abuses, including sexual abuses. As it was stated in point 1 of the legal brief, the abuses made by fellow-prisoners against certain group of prisoners (e.g. pedophiles) are, in the prisoners' subculture, well justified.

The second problem worth considering is the lack of transparency in the penitentiary units. In reference to this it is crucial to analyse the official statistics on number of rapes and abuses in Polish prisons<sup>15</sup>:

<b>Year</b>	<b>Rapes</b>	<b>Abuses of prisoners</b>
<b>January – October 2011</b>	4	53
<b>2010</b>	5	65
<b>2009</b>	10	67
<b>2008</b>	9	78
<b>2007</b>	6	89
<b>2006</b>	5	83

3, Warsaw 1983)

<sup>14</sup> Available at: [http://sw.gov.pl/Data/Files/001142rdeb/2011-12-09\\_szczegolowa-informacja-o-zaludnieniu-oddzialow-mieszkalnych.pdf](http://sw.gov.pl/Data/Files/001142rdeb/2011-12-09_szczegolowa-informacja-o-zaludnieniu-oddzialow-mieszkalnych.pdf)

<sup>15</sup> Available at: <http://sw.gov.pl/pl/o-sluzbie-wiezionej/statystyka/statystyka-roczna/>

It should be noted that these figures do not include all situations that could be described as violence between prisoners because above mentioned situations are officially classified as an extraordinary event, essential for the state of safety in penitentiary units. They should be treated as specific and dangerous element of the prison subculture.

In our opinion, these statistics do not reflect the actual scale of a problem. There is thus no precise source of information on violence among prisoners in penitentiary institutions.

First, this may result from the fact, that reporting a problem of such abuses and subsequently informing the prosecutor office may significantly influence the image of the prisons' administration and its effectiveness in fulfilment of its obligation. Therefore, there might be a risk of not considering with sufficient seriousness all reports of such abuses.

Second, such lack of transparency in official statistics may result from the fact that the acts of abuses may not be reported to the authorities by the prisoners themselves. This tendency is presented in the statistics regarding the complaint procedure in Poland:

<b>Year</b>	<b>Number of complaints</b>	<b>Defined by administration as justified</b>
<b>2010</b>	218	0
<b>2009</b>	192	0
<b>2008</b>	213	0
<b>2007</b>	169	0
<b>2006</b>	161	0
<b>2005</b>	142	2

According to the international standards, the State is obliged to provide independent, impartial and effective complaint procedures for processing the alleged violations of rights and to provide adequate remedies in case such violations actually take place. The scale of the conflict situation between prisoners can be also evaluated by the analysis of the number of complaints on the treatment by fellow – prisoners submitted to the Prison Service.

However, experts claim that these statistics are also not a comprehensive source of information. When analysing this problem, it must be taken into consideration, that reporting about such abuses to prisons' service might significantly influence the relations between such prisoner with fellow-prisoners. This means, it might influence the existence in prisoners' subculture. The reluctance of prisoners may meaningfully decrease the number of reported abuses.

Additionally, there is a significant amendment of the Criminal Executive Code coming into force on 1 January 2012. This act significantly modifies the current version of the Code.

The HFHR presented written comments on the amendments in which it stressed its concern about the complaint procedure in executive criminal proceedings. According the new regulation "The sentenced person submitting requests or complaints shall reasonably justify the statement of his/her complaint and attach the relevant documents". Further, if the complaints and requests are based on the same basis of fact, contain words or phrases commonly regarded as vulgar, offensive or being a prisoners' slang or they are not reasonably justified, then the authority is allowed to leave the requests or complaints without

adjudication.

In the opinion of the HFHR above changes should be assessed negatively. We think they may limit the ability to complain on various aspects of detention. In our opinion this right is essential from the perspective of prisoners' rights' protection.

As a result they may lead to significant limitation of the effective investigation and punishment of sexual abuses in penitentiary units. The complaint to the Prison's Service and penitentiary courts is the first and the most important step to detect abuses and conflict situations among prisoners.

## **II. Discontinuation of criminal proceedings initiated by the Applicant in the light of State's procedural and positive obligations under Article 3 of the Convention**

The procedural obligations imposed on the Contracting State by Article 3 of the Convention, in cases of violent incidents between prison inmates, might be regarded as one of the most crucial issues in the light of the practical and legal aspects of the protection system in penitentiary units.

The prosecution and criminal proceedings in cases regarding offences between inmates should be of a considerable interest of public law enforcement authorities, as evidenced by - in terms of material aspect - the separation of this particular offence on a person deprived of liberty in the Criminal Code.

It shall also be underlined, that in cases regarding crimes reported to public law enforcement authorities, it's on the public authorities part to properly qualify the reported crime in accordance with the Criminal Code provisions, as to secure the proper course of proceedings. Moreover, at the further parts of the judicial proceedings, the Court hearing the case has the right, under Article 399 § 1 of the Code of Criminal Proceeding, to change the legal qualification of the alleged crime not exceeding the allegations of original indictment. The above shall be seen as procedural guaranties that the initiated criminal proceeding is properly conducted and is compliant with fair trial principles as well.

Actions and decisions undertaken by public law enforcement authorities in course of the criminal proceeding shall be evaluated in terms of their compliance with the procedural standards under Article 3 of the Convention. The procedural standards, understood as constituting specified obligations on the State's part are of formal character and consider both the issues of (1) the authorities obligation to conduct an investigation (see *Aksoy against Turkey*, application no. 21987/93, para. 98), (2) the obligation to ensure the quality of investigation that ought to be public and effective (see *Assenov and others against Bulgaria*, application nos. 90/1997/874/1086, para. 102; *Labita against Italy*, application no. 26772/95, para. 131; *Lewandowski i Lewandowska against Poland*, application no. 15562/02, para. 70) as well as (3) the authorities obligation to proceed speedy and accurately (see *Pieniak against Poland*, application no. 19616/04, para. 60-61) and (4) the obligation to undertake all reasonable steps available to secure the evidence concerning the reported incident (see *Dzwonkowski against Poland*, application no. 46702/99, para. 62)<sup>16</sup>.

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<sup>16</sup> Summary based on : L. Garlicki, *Konwencja o Ochronie Praw Człowieka i Podstawowych Wolności. Komentarz*, Ed. C.H. Beck, vol. I, pp.114-115.

The infringement of procedural standards derived from Article 3 of the Convention, following to the ECHR jurisprudence, justifies the assumption that the violation of the Convention occurred. Therefore, likewise in the case of *Dzwonkowski against Poland* (*Ibidem*, para. 66), the superficiality of investigation, lack of objectivity resulting in decisions containing conclusions unsupported by a careful analysis of the facts resulting in the lack of a thorough and effective investigation justifies a statement on violation of the State's procedural obligations under Article 3 of the Convention.

Therefore, as it reflects from the jurisprudence of ECHR, the imprudence in conducting the criminal proceeding, both in terms of the evidence collection and the legal qualification of alleged offences, may result in the conclusion of the violation of the procedural obligations imposed under Article 3 of the Convention.

The issue of State's procedural obligations remain in a very close relation with the doctrine of State's "positive obligations" imposed on the State party by the Convention. The doctrine of "positive obligations" is being constantly developed in the ECHR jurisprudence, however it originated namely on grounds of Article 2 of the Convention. The State's positive obligations may come into force in vertical relations (i.e. between public authorities and individuals), as well as in horizontal relations (i.e. in relations between individuals).

Taking into consideration the above, on ground of the Article 3 of the Convention, the State's positive obligations doctrine shall be understood and applied not only in the material aspect (infringement of the prohibition of torture or inhuman or degrading treatment or punishment), but also in the procedural aspect (the State's obligation to introduce legal frameworks guaranteeing the respect of the prohibition stated in Article 3). The breach of the State's positive obligations under Article 3 of the Convention might lead to a legitimate allegation of failure in establishing and in compliance with adequate legal frameworks, introducing legal instruments aimed at protecting individual's from inhuman or degrading treatment. The State's positive obligations on the public law enforcement and judicial authorities in the context of Article 3 of the Convention shall be understood as the authorities' obligation to take appropriate and prudent steps to safeguard the proper course of criminal proceeding, protecting individuals from inhuman or degrading treatment.

## CONCLUSIONS

It is not fully clear whether in Poland there is a systemic problem with the lack of proper protection in detention centres of people threatened of the aggression of fellow-prisoners. There are, however, certain conditions which should be taken into account by the Court when assessing eventual existence of such problem, and they include questions whether Polish law guarantee proper protection against sexual abuses in Polish detention facilities, whether the practice of prisoners' officers comply with the international standards, whether overcrowding is a systemic problem decreasing the level of security and whether the investigation is properly conducted.

As to the latter one, in our opinion in fellow prisoners rape cases, the only effective measure is the investigation conducted by public law enforcement authorities and further access to justice may guarantee entire fulfilment of the ban of torture and inhumane and other degrading treatment. Effective criminal proceeding in such cases should particularly consist of a detailed analysis of reported offences with consideration of the circumstances of and place where the incident took place, proper legal qualification of the alleged offence adopted

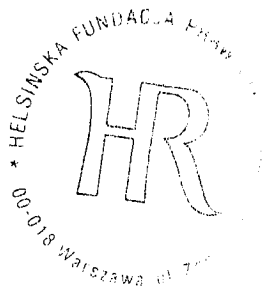
by the public law enforcement authorities, an effective investigation providing collection of reliable evidence and the safeguard of the procedural rights of the injured party.

Any limitation of the right to complaint on the acts of aggression both at the administrative level of penitentiary units as well as at the prosecutor/court proceedings may lead to the decrease of the detection of the acts of aggression.

We are deeply convinced that clarification of the standard regarding the procedural obligations of State in the Polish context may ensure the transparency and effectiveness of the protection of prisoners being victims of sexual abuses.

The opinion was prepared by lawyers of the Helsinki Foundation for Human Rights with kind contribution of the experts – Prof. Monika Płatek and Ph.D. Teodor Bulenda from Warsaw University.

On behalf of the Helsinki Foundation for Human Rights,



*[Signature]*  
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