

# **CHILDREN'S RIGHTS BEHIND BARS**

## **Human rights of children deprived of liberty: Improving monitoring mechanisms**

### **POLAND NATIONAL REPORT**

August 2014

## TABLE OF CONTENT

ABBREVIATIONS .....	3
I. INTRODUCTION .....	4
1. Partner organisation .....	4
2. Team of Helsinki Foundation for Human Rights involved in the project .....	4
3. Methodology .....	5
II. THE INTERNATIONAL FRAMEWORK .....	5
1. Convention on the Rights of the Child (CRC) .....	5
2. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) .....	6
3. European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) .....	8
4. Convention for the protection of human rights and fundamental freedoms (ECHR) .....	9
a. The jurisprudence of the ECtHR in the framework of decisions on the state concerned, relating to children's deprivation of liberty .....	10
5. The International Covenant on Civil and Political Rights (ICCPR) .....	11
III. THE NATIONAL FRAMEWORK .....	12
1. Constitutional standards .....	12
2. Juvenile justice system .....	13
3. Facilities in which children might be deprived of their liberty .....	13
a. Correctional facilities .....	13
b. Children's Shelters .....	14
c. Hostel .....	14
d. Police Remand Home for Children .....	15
e. Youth Educational Centers .....	15
f. Sociotherapeutic Youth Centers .....	16
g. Psychiatric hospital .....	16
h. Nursing home .....	16
i. Special education needs schools and special educational centers .....	17
j. Guarded Centers for Foreigners .....	17
1. National Preventive Mechanism in Poland .....	26
a. General overview .....	26
b. Methodology of the NPM in Poland .....	27
c. Monitoring visits in units for juveniles .....	28
d. Assessment of legal acts .....	29

3. Supreme Audit Office ( <i>Najwyższa Izba Kontroli</i> ).....	29
a. Legal bases .....	29
b. Activities in the field of juvenile justice system .....	29
4. Supervision performed by the Minister of Justice .....	30
5. Supervision of youth educational centers and sociotherapeutic centers .....	31
6. Family Judges Supervision.....	32
7. Monitoring carried out by independent bodies .....	32
V. Complaint mechanism – legal framework .....	34
1. The Ombudsman.....	34
2. The Ombudsman for Children .....	36
3. Right to complaint in detention facilities .....	38
VI. From theory to practice: Analysis .....	40
1. From theory to practice: monitoring mechanism .....	40
National Preventive Mechanism.....	40
General assessment of monitoring bodies .....	41
2. From theory to practice: complaint mechanism .....	42
VII. Conclusions .....	43
1. Monitoring mechanism .....	43
Recommendations: .....	43
2. Complaint mechanisms .....	44
Recommendations: .....	44

## **ABBREVIATIONS**

<b>CAT</b>	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the United Nations General Assembly on 10 December 1984
<b>CPT</b>	European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, adopted by the member states of the Council of Europe, meeting at Strasbourg on 26 November 1987
<b>CRC</b>	Convention on the Rights of the Child, adopted by the United Nations General assembly on 20 November 1989
<b>ECHR</b>	Convention for the Protection of Human Rights and Fundamental Freedoms
<b>ECtHR</b>	European Court of Human Rights
<b>OPCAT</b>	Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted on 18 December 2002 at the fifty-seventh session of the General Assembly of the United Nations by resolution A/RES/57/199 entered into force on 22 June 2006
<b>NPM</b>	National Preventive Mechanism
<b>Constitution</b>	The Constitution of the Republic Of Poland, as adopted by the National Assembly on 2nd April 1997

## I. INTRODUCTION

### 1. Partner organisation

The Helsinki Foundation for Human Rights (hereinafter: the HFHR) is a non-governmental organization established in 1989 in Warsaw in order to promote human rights. The HFHR is the oldest and the largest human rights organization in Poland, acting already for over 20 years. The HFHR objective is the promotion of human rights in Poland and countries of the post-Soviet region.

The main areas of its activity include:

- domestic education in the field of human rights;
- international activity: programs promoting democracy, constitutionalism, rule of law and human rights in the countries of the Commonwealth of Independent States;
- public interest activity aimed to increase standards of human rights' protection in Poland, implemented through monitoring, intervention and strategic litigation before domestic and regional courts. Since 2007, the Foundation has held consultancy status at the United Nations Economic and Social Council (ECOSOC).

The Helsinki Foundation for Human Rights since 1993 has been running a program „Rights of the Child”. Within the program we carry out activities in the field of education, intervention and monitoring. During last years the Foundation completed among others training on international standards of child protection and treatment of minors. They were directed to the teachers, judges, probation officers and Ministry of Education and Social Welfare's employees.

Furthermore, Helsinki Foundation for Human Rights monitors detention centers both for youths and adults. Within the project *“Children Deprived of Liberty: Between Legacy and Reform”* we visited more than 20 facilities for juveniles e.g. Supervised Juvenile's Detention Centers, 6 Youth's Educational Centers, Police Remand Homes for Children and Juvenile's Shelters.

In addition, HFHR disseminates international standards on child care in CIS countries. Among others in 2007 the Foundation has organized a seminary: „The role of school pedagogue in the system of child care – the model used in Poland”. Its objective was to present to the representatives of Ukrainian Ministry of Education and Ministry of Social Welfare the Polish system of child and family care, especially including difficulties in implementation of the European standards to the Polish system. Within the program “Human Rights and their defence mechanism” we have organised with Belarus organisation “Viesna” a seminary “Human Rights in Belarusan School”, in which 31 teachers of different types of schools in Belarus have participated. Significant part of the seminar was devoted to the child protection issues and standards of conduct in juvenile's cases.

The Legal Department of the Helsinki Foundation for Human Rights has made a number of actions aimed at monitoring child rights at the court's proceedings and has also observed parliament work connected with legislation, which may affect the rights of children.

### 2. Team of Helsinki Foundation for Human Rights involved in the project

#### Researchers

Katarzyna Wiśniewska- a graduate of the Faculty of Law and Administration, Jagiellonian University in Cracow, PhD candidate at the Faculty of Law and Administration at the Jagiellonian University, advocate trainee at the Warsaw Bar Association, coordinator of the project *“Children deprived of liberty: Between Legacy and Reform”*, lawyer at Strategic Litigation Program..

Marcin Wolny - a graduate of the Faculty of Law and Administration, University of Warsaw, laureate of the Best Trainee competition at the Helsinki Foundation for Human Rights, advocate trainee at the Warsaw Bar Association, assistant of the project *“Children deprived of liberty: Between Legacy and Reform”*.

## Supervision

Adam Bodnar - PhD in law, Vice-President of the Board and the head of the Legal Department of the HFHR, assistant professor at the Faculty of Law and Administration of the Warsaw University (Human Rights Department), visiting professor at the Central European University in Budapest, the Senior Legal Expert within the FRALEX network of the EU Agency for Fundamental Rights.

### 3. Methodology

The main objective of our national research study was to acquire an overview of the different categories of places where children may be deprived of their liberty. Our intention was also to present how the respect of children's rights is controlled inside these places (monitoring mechanisms), as well as how children can enforce their rights in case of violation (complaint mechanisms).

In order to achieve the intention of the project we conducted in-depth desk research concerning legal regulations, reports on the activities of national and international monitoring bodies. Moreover, we organized meetings with key actors in the field of monitoring and supervisions of facilities for juveniles and complaints mechanisms (the representatives of the Department of Enforcement of Judgments and Probation of the Ministry of Justice, the head of National Preventive Mechanism, the Plenipotentiary of the Police Headquarter for Human Rights). In order to assess the current complaint mechanisms and monitoring tools we met with the representatives of non-governmental organizations, among others, Legal Intervention Association (*Stowarzyszenie Interwencji Prawnej*)<sup>1</sup>, Fundacja Po Drugie<sup>2</sup> and the Helsinki Foundation for Human Rights (*Helsińska Fundacja Praw Człowieka*).

In order to present the practical aspects related to the monitoring visits, we visited the correctional facility, the shelter for minors, the youth care center and the youth center for social therapy<sup>3</sup>. The purpose of the interviews was to identify opinion about the monitoring visits, the advantages of supervisory visits, usefulness and efficiency of recommendations, as well as their impact on the functioning of the institution. Another issue raised was the effectiveness of complaints mechanisms, their availability and popularity among minors.

## II. THE INTERNATIONAL FRAMEWORK

The 1997 Constitution of the Republic of Poland sets out that Poland observes the international law binding upon her and that international agreements (including the Convention) are part of domestic legislation and are applied directly, unless their execution is dependent on the enactment of a separate law. According to the article 91 of the Constitution after promulgation thereof in the Journal of Laws of the Republic of Poland, a ratified international agreement shall constitute part of the domestic legal order and shall be applied directly, unless its application depends on the enactment of a statute. An international agreement ratified upon prior consent granted by statute shall have precedence over statutes if such an agreement cannot be reconciled with the provisions of such statutes. If an agreement, ratified by the Republic of Poland, establishing an international organization so provides, the laws established by it shall be applied directly and have precedence in the event of a conflict of laws.

### 1. Convention on the Rights of the Child (CRC)

<sup>1</sup> Association for Legal Intervention (*Stowarzyszenie Interwencji Prawnej*) was established in 2005 by a group of young activists and lawyers. Since then SIP evolved into a professional non-profit organization with the aim of combating social exclusion through provision of free legal advice to people whose rights and freedoms are threatened or violated and raising legal and civil awareness in the society.

<sup>2</sup> *Po Drugie* foundation helps young people at risk of social exclusion, pathology, helplessness. The foundation takes care of foster children and former residents of juveniles facilities.

<sup>3</sup> Correctional Center for Juveniles and Shelter for Juveniles in Falenica (*Zakład Poprawczy i Schronisko dla Nieletnich w Falenicy*), ul. Jachowicza 4, date of visit: 21 July 2014

Youth Educational Center No. 3 in Warsaw (*Młodzieżowy Ośrodek Wychowawczy nr 3 w Warszawie*), ul. Patriotów 90, date of visit: 28 July 2014.

Sociotherapeutic Youth Center No. 7 in Warsaw (*Młodzieżowy Ośrodek Socjoterapii nr 7 w Warszawie*), ul. Ossowska 81, date of visit: 29 July 2014.

Poland has ratified Convention on the Rights of the Child in 1991. Since then several Committee on the Rights of Child's (CRC) reports basing Poland has been published. In its report from 1995 the CRC pointed out that Poland lacks in systematic monitoring mechanism and system of data gathering. In the opinion of the Committee there was also insufficient coordination between ministers, central and local authorities. Therefore CRC recommended Poland to establish multidisciplinary monitoring mechanism and strengthen cooperation with NGOs dealing with human rights.

In the report from 2009 CRC expressed concern about the situation of the Polish Ombudsman for Children. In CRC opinion should provide the office of Ombudsman for Children with sufficient financial and human resources to monitor the implementation of the Optional Protocol. According to the CRC Poland should also encourage collaboration with civil society in the areas of policy formulation, planning and budgeting government programs remaining the Optional Protocol.

According to the last Report of the Republic of Poland on the implementation of the provisions of the Convention on the Rights of the Child in the years 1999-2010 pursuant to the Regulation of the Minister of Justice on correction centers and shelters for juveniles (§ 57 and 86) juvenile delinquents and juveniles residing in correction centers are provided with: respect for their personal dignity, protection against violence, exploitation and abuse and all manifestations of cruelty, access to information about the applicable internal regulations, awards and disciplinary measures, resocialisation activities of the establishment, resocialisation process, food adapted to their developmental needs, clothes, underwear, shoes, school materials and textbooks, personal care products, access to health care and rehabilitation services, including in particular pregnant juveniles, during and after the delivery, protection of family relations, sending and delivering correspondence, subject to limitations provided for in the law (see below), possibility of contacting a juvenile's attorney or legal representative at the establishment and without the presence of any other people, psychological care and help, procedures for submitting complaints, requests and proposals. Poland was the 43th State to sign 3<sup>rd</sup> Optional Protocol to the Convention on Child Rights. Unfortunately it has been nearly a year since the date of signing (23 September 2013) and the 3<sup>rd</sup> Protocol has not been ratified by Polish Parliament yet.

The 3<sup>rd</sup> Protocol to CRC extends the powers of the Committee on the Rights of the Child on the mechanism of receiving and dealing with individual and international notices of violation of children's rights.

In last month's ratification of the 3<sup>rd</sup> Optional Protocol was the subject of multiple appeals issued by Ombudsman for Children to Polish authorities. In response to Ombudsman appeal the Minister of Labour and Social Policy stated that the decision on the 3<sup>rd</sup> Optional Protocol's ratification shall be taken after analyzing social and financial consequences of the ratification. The Minister assured that the analyze will proceed without undue delay and that all relevant institutions (including Ombudsman Bureau) will be involved in it.

## **2. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)**

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984 was adopted and ratified by Poland on 21 October 1989 (promulgated in the Journal of Laws - Dziennik Ustaw - Dz.U. of 1989; No. 63; items 378, 379).

Article 13 of the that Convention obliges State Parties to ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. It also guarantees that steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

According to article 22 a State Party may at any time declare that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation provisions of the Convention. Poland, by virtue of the resolution of the Council of Ministers of 30 March 1993, has recognized the competence of the Committee against Torture in respect of receiving and examining complaints submitted by States and individuals. Until the present day no complaints have been reported.



In the document of 18 January 2008 the Minister of Justice, on the basis of the resolution of the Council of Ministers No. 144/ 2005 of 25 May 2005- officially appointed the Ombudsman to act as the National Preventive Mechanism within the meaning of the art.3 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Human Rights Defender (the Polish National Ombudsman) has been appointed to act as the National Prevention Mechanism (NPM) from January 2008. In 2010 in Ombudsman established in its office a separate unit to perform duties of NPM. Although, due to a large number and a variety of places of detention NPM is still supported in its tasks by the staff of Ombudsman Bureau.

Polish Government presented six periodic reports of the Republic of Poland on the implementation of the provisions of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The last report covered the period from 1 October 2004 until 15 October 2011 (with special emphasis on the period from 1 May 2007 until 15 October 2011).

Concluding observations on the combined fifth and sixth periodic reports of Poland were published by the Committee on 23<sup>rd</sup> December 2013. We would like to present only those that are the most important from the perspective of juvenile justice system.

The Committee regrets that despite its previous recommendations in this regard (A/55/44, paras. 85–95 and CAT/C/POL/CO/4, para. 6), the State party still maintains its position on not incorporating the provisions of the Convention — the definition of torture including all the elements of article 1 and the provision of a specific offence of torture in accordance with article 4, paragraph 2, of the Convention — into domestic law. The Committee is seriously concerned that the other provisions of the Penal Code that are “applied in cases of torture” do not reflect the gravity of the crime of torture and therefore do not provide for commensurate punishment for the perpetrators (arts. 1 and 4).

The Committee recommends that the State party take effective legislative measures to include torture as a separate and specific crime in its legislation and to adopt a definition of torture that covers all the elements contained in article 1 of the Convention. The State party should ensure that penalties for torture are commensurate with the gravity of the crime in accordance with article 4, paragraph 2, of the Convention. In this regard, the Committee draws attention to its general comment no. 2 (2007) on the implementation of article 2 by States parties, which states that serious discrepancies between the Convention’s definition and that incorporated into domestic law create actual or potential loopholes for impunity (para. 9).

The Committee welcomes the wide range of educational programs currently in place for law enforcement officials, prisons staff, border guards and medical personnel, including training on the Istanbul Protocol. However, the Committee is concerned that it is the training institutions themselves that assess the courses and that there is no evaluation of their practical impact on the incidence of torture and ill-treatment (art. 10).

The Committee recommends that the State party develop specific methodologies to guarantee more objective and comprehensive evaluation of the training and education courses on the absolute prohibition of torture and ill-treatment that are provided to law enforcement and medical personnel, judges, prosecutors and persons working with refugees, migrants and asylum seekers.



The Committee is concerned at reports that the police use illegal methods and abuse their power during interrogations, and that few criminal proceedings are conducted into such allegations, the majority of cases being discontinued by the prosecution authorities. It is also concerned that lengthy court proceedings have created a backlog of cases in the court system. Furthermore, while noting the statistics provided on convictions under articles 231 (abuse of power), 246 (obtaining testimony using force) and 247 (tormenting a person deprived of liberty) of the Penal Code, the Committee regrets the lack of information provided on the number of complaints filed, criminal proceedings brought, persons acquitted and the length of sentences handed down in relation to these crimes (arts. 2, 12, 13 and 16).

The Committee welcomes the proposed amendments to the Aliens Act of 2003 which introduce alternatives to detention and allows for a broader scope of persons entitled to family reunification, however it remains concerned that under the current legislation asylum seekers, including children, are detained in guarded centers or under arrest in prison like conditions for the purpose of expulsion. The Committee is also concerned about the insufficient legal assistance to asylum seekers, especially those in detention centers (arts.3, 10 and 11).

The Committee recommends that the State Party refrain from detaining asylum-seekers, including children, and guarantee them, including those that may face detention, access to independent, qualified and free legal advice and representation, in order to ensure that the protection needs of asylum seekers, refugees and other persons in need of international protection are duly recognized and effective.

### **3. European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)**

The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) was signed by Poland on 11<sup>th</sup> July 1994 and it came into force on 1<sup>st</sup> February 1995. The delegation of CPT visited Poland five times:

- 1) 30/06/1996 - 12/07/1996
- 2) 08/05/2000 - 19/05/2000
- 3) 04/10/2004 - 15/10/2004
- 4) 26/11/2009 - 08/12/2009
- 5) 05/06/2013 - 17/06/2013

In 2004 the CPT visited:

- Police Remand Home for Children in Cracow
- Police Remand Home for Children in Elbląg

After its visit in 2004 the CPT recommended<sup>4</sup> that the Polish authorities take the following steps at the police establishments for children (as well as in other police establishments for children in Poland, as appropriate):

- improve the decoration and equipment of bedrooms, in particular by providing them with storage space for personal items;
- supply detained children with appropriate daytime clothes and shoes;
- ensure the provision of food in adequate quantity and the availability of drinking water throughout the day;
- ensure that detained children are offered at least one hour of outdoor exercise a day; the exercise yard at the police establishment for children in Elbląg should be refurbished and equipped with a shelter against poor weather;

<sup>4</sup> Report to the Polish Government on the visit to Poland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 4 to 15 October 2004 (CPT) available at: <http://www.cpt.coe.int/documents/pol/2006-11-inf-eng.pdf>

- develop the range of constructive activities offered to detained children, with particular emphasis on education;
- ensure that all new arrivals are medically screened without delay and that the establishments receive regular visits by a doctor or a nurse;
- ensure that staff working at police establishments for children benefit from suitable initial and ongoing training;
- improve the possibilities for children to maintain contact with their families; in particular, save in exceptional and duly motivated circumstances, they should be allowed to receive regular visits from their relatives. Further, they should be allowed to make and receive telephone calls.

In 2009 the delegation visited the following places of detention for children:

- Police establishment for children, Będzin
- Police establishment for children, Katowice
- Police establishment for children, Poznań

In the report published on 11 July 2011 the CPT pointed out its doubts about the Polish Juvenile Act. The Committee states that the legal provisions applicable to the detention of juveniles suspected of criminal offence have also remained unchanged. Such juveniles have to be released from police detention if, within 72 hours, a court decision on the placement in a shelter for juveniles, an appropriate protective educational facility or an appropriate treatment facility has not been issued. However, Polish legislation apparently contains no time limit for the accommodation of juveniles in a police establishment after a court decision has been issued, pending their transfer to another institution. In some cases monitored by the CPT delegations, suspected juvenile offenders were detained by the police for periods up to several weeks and, in one case two months before being transferred to a specialised institution for juveniles. The Committee encouraged the Polish authorities to take the necessary steps to ensure that the Juveniles Act is amended accordingly.

During the last visit of the CPT in 2013 the delegation visited four police establishments for children (PID).

- Police establishment for children, Bydgoszcz
- Police establishment for children, Lublin
- Police establishment for children, Szczecin
- Police establishment for children, Warsaw

In all visited establishments material conditions of detention were generally satisfactory, especially in terms of living space (e.g. bedrooms for four juveniles measuring between 18 and 28 m<sup>2</sup>), lighting and ventilation, equipment, sanitary and washing facilities, food and cleanliness; that said, the bedrooms had a somewhat austere appearance (absence of pictures, posters, plants, etc.). The delegation noted that juveniles were provided with tracksuits (and no longer pajamas as had previously been the case) which they wore during the day. The delegation was pleased to note that, unlike in 2009, juveniles detained in all the PIDs visited were able to take outdoor exercise on a daily basis. However, the exercise yards, although sufficient in size and fitted with some seating and sports equipment, were not protected against inclement weather; the Committee invites the Polish authorities to remedy this deficiency.

#### 4. Convention for the protection of human rights and fundamental freedoms (ECHR)

Poland became party to the Convention for the protection of human rights and fundamental freedoms on 19 January 1993. Subsequently, it acceded to several Protocols to the Convention. On the basis of the ECHR, persons alleging a violation by Poland of their rights set forth in the Convention may lodge applications with the European Court of Human Rights.

The ECtHR gave 1,042 judgments in the cases against Poland until 2013. In 885 cases the Court found violations of the ECHR. Nearly half of the judgments of the ECtHR concerned 5 member States, including Poland. The Government of Poland is represented in the proceedings before the European Court of Human Rights by the Plenipotentiary of the Minister of Foreign Affairs for cases and proceedings before the European Court of Human Rights – Ms Justyna Chrzanowska.

Since 2007 a special interministerial Committee for matters of the European Court of Human Rights, which was established in Poland, deals with the execution of Court's judgments in respect of Poland<sup>5</sup>. The main task of this Working Group is to prepare opinions on actions designed to prevent future violations and to monitor performance of the Government Program and Policies on executing the judgments of the ECHR. The Working Group consists of the Plenipotentiary for proceedings before the ECHR, the Deputy Plenipotentiary for proceedings before the ECHR and experts from each of the ministries<sup>6</sup>.

**a. The jurisprudence of the ECtHR in the framework of decisions on the state concerned, relating to children's deprivation of liberty**

In the judgment *Adamkiewicz v. Poland*<sup>7</sup> European Court of Human Rights (hereinafter - "ECtHR") stated that Poland violated article 6 § 3 (c) – right to defence in connection with 6 § 1 of the Convention – right to a fair trial. ECHR stressed that in instances of repressive proceedings, when the suspect is under age, the state is obliged to guarantee that they have access to a lawyer. ECtHR also pointed to the fact that in such cases the state should follow the principle of protection of minor's interests. Another premise is the principle of individualization, which requires adjusting the proceedings to the age, health conditions and stage of intellectual and psychological development. European Court of Human Rights claimed that it was not possible for the applicant to defend himself effectively, which resulted in the violation of the right to a fair and public hearing. ECtHR held that the term "minor's interest" should be interpreted strongly in the light of the procedural rights of a minor. It also approved the claim about making effective defense impossible, as well as the claim about lack of objectivity of the juvenile department that heard the case. In the Polish system of dealing with juvenile offenders, a juvenile department judge conducts explanatory proceedings and adjudicates on the application of correction means, which is supposed to serve the interest of minors, since the juvenile department is first of all expected to take into account their interests and well-being. ECtHR suggested that such a solution does not entirely match the standards of a fair and public trial. Thus, we will also monitor a proper implementation of fair trial standards.

In the judgment *P. and S. v. Poland*<sup>8</sup> ECHR analyzed the standards of "educational supervision" performed by the State. On 9 April 2008 P. (hereinafter: the first applicant) went with a friend to the Public University Health Care Unit in Lublin. She said that she had been raped on 8 April 2008 by a boy of her own age. The medical staff told her that they could neither examine her nor provide medical assistance because she was a minor and the consent of her legal guardian was necessary. Dr E.D. reported the case to the police and notified the first applicant's parents. Later that day, after reporting that an offence of rape had been committed, the applicants attended at Public University Hospital no. 4 in Lublin, accompanied by a female police officer. S. gave her consent for an examination of her daughter to be carried out. The first applicant was in a state of emotional shock. At the hospital, psychological help was offered to her. Bruises on her body were confirmed by a family doctor several days after the alleged event took place, between 9 and 14 April 2008. The rape resulted in pregnancy. The applicants decided together that an abortion would be the best option, considering that the first applicant was a very young minor, that the pregnancy was the result of forced intercourse, and that she wanted to pursue her education. On 19 May 2008 the first applicant was questioned by the police. Her mother and the alleged perpetrator's defence lawyer were present during the questioning. The first applicant stated that the perpetrator had used force to hold her down and to overcome her resistance. On 20 May 2008 the District Prosecutor, referring to section 4 (a) item 5 in fine of the Law on Family Planning (Protection of the Human Foetus and Conditions Permitting Pregnancy Termination) ("the 1993 Act") (see paragraph 54 below) issued a certificate stating that the first applicant's pregnancy had resulted from unlawful sexual intercourse with a minor under 15 years of age. At the police station the applicants were questioned on the same day, from approximately 4 p.m. until 10 p.m. No food was offered to them. The officers showed the applicants the family court decision which the police had

<sup>5</sup> Zarządzenie Nr 11 Ministra Spraw Zagranicznych z dnia 28 czerwca 2006 r., w sprawie utworzenia Zespołu Roboczego przy Ministrze Spraw Zagranicznych do spraw przygotowania Programu Działań Rządu w sprawie wykonywania wyroków Europejskiego Trybunału Praw Człowieka wobec Rzeczypospolitej Polskiej, Dz. Urz. MSZ z dnia 25 lipca 2006 r., Nr 4, poz. 238.

<sup>6</sup> Report "Poland and the European Court of Human Rights. Selected issues and recommendations", available at: [http://panstwoprava.org/site\\_media/storage/files/2011-07/raport-echr738516.pdf](http://panstwoprava.org/site_media/storage/files/2011-07/raport-echr738516.pdf) (22.07.2014).

<sup>7</sup> The judgment of the ECHR from 2<sup>nd</sup> March 2010 in the case *Adamkiewicz v. Poland*, application no. 54729/00.

<sup>8</sup> The judgement of the ECHR from 30<sup>th</sup> October 2012 in the case *P. and S. v. Poland*, application no. 57375/08.

received by fax at about 7 p.m. from the Warsaw hospital. That decision, given by the Lublin Family Court, restricted the second applicant's parental rights and ordered the first applicant to be placed in a juvenile shelter immediately. Subsequently the police took the first applicant to a car. She was driven around Warsaw in search of a juvenile shelter that would accept her. The second applicant was not permitted to accompany her daughter. As no place was found in Warsaw, the police drove the girl to Lublin, where she was placed in a shelter at approximately 4 a.m. on 6 June 2008. She was put in a locked room and her mobile phone was taken from her. On 6 June 2008 priest K.P. visited her there and told her that he would lodge an application with the court requesting it to transfer her to a single mother's home run by the Catholic church. It was not in dispute between the parties that the first applicant was "deprived of [her] liberty" within the meaning of Article 5 § 1. The Court reiterates that the exhaustive list of permitted deprivations of liberty set out in Article 5 § 1 must be interpreted strictly.

The Court observed that the first applicant was placed in the juvenile shelter pursuant to Article 109 of the Family and Custody Code. It can therefore accept that the decision of the Family Court was lawful in terms of domestic law. As to Convention lawfulness, the Government justify her detention on the grounds of "educational supervision" within the meaning of Article 5 § 1 (d). The Court therefore considered whether the detention complied with the conditions imposed by that subsection. The Court accepted that, in the context of the detention of minors, the words "educational supervision" must not be equated rigidly with notions of classroom teaching: in the context of a young person in local authority care, educational supervision must embrace many aspects of the exercise, by the local authority, of parental rights for the benefit and protection of the person concerned. The Court observed that the Family Court imposed detention on the first applicant, having regard to her pregnancy and referring to the doubts as to whether she was under pressure to have an abortion. The Court already acknowledged, in the context of Article 8 of the Convention, that there was a difference in the way in which the pregnancy affected the situation and life prospects of the first and second applicants. It was therefore legitimate to try to establish with certainty whether the first applicant had had an opportunity to reach a free and well informed decision about having recourse to abortion. However, the essential purpose of the decision on the first applicant's placement was to separate her from her parents, in particular from the second applicant, and to prevent the abortion. The Court is of the view that by no stretch of the imagination can the detention be considered to have been ordered for educational supervision within the meaning of Article 5 § 1 (d) of the Convention if its essential purpose was to prevent a minor from having recourse to abortion. Furthermore, the Court is of the opinion that if the authorities were concerned that an abortion would be carried out against the first applicant's will, less drastic measures than locking up a 14 year old girl in a situation of considerable vulnerability should have at least been considered by the courts. It has not been shown that this was indeed the case. Accordingly, the Court concludes that the first applicant's detention between 4 and 14 June 2008, when the order of 3 June 2008 was lifted, was not compatible with Article 5 § 1 of the Convention.

In 2013 European Court of Human Rights communicated a case *Grabowski v. Poland*<sup>9</sup>. According to the statements of facts, The defense counsel was refused the right to control the legitimacy of the decision to place a minor in a children's shelter after the period for which the measure has been decided. The court informed the counsel that after the correctional proceedings were initiated, there is no separate decision on the prolongation of stay in the children's shelter. Therefore, it shall be assessed that the abovementioned regulation and the practice of its execution may not be in conformity with constitutional and international standards of deprivation of liberty. It is necessary to enact necessary procedural guarantees to the art. 29 of the Act on Juvenile Justice.

## 5. The International Covenant on Civil and Political Rights (ICCPR)

HFHR in its comments to the list of issues prior to the report of UN Human Rights Committee<sup>10</sup> pointed out that according to the Juvenile Act a juvenile may be placed in an transitional room only in certain situations including, for example, admission to the correctional facility in order to make his or her diagnosis. Also, in exceptional cases, where safety or the order of facility is put at risk, the juvenile

<sup>9</sup> The communication from 30<sup>th</sup> January 2013 of the case *Grabowski v. Poland*, application no. 57722/12.

<sup>10</sup> Comments to the list of issues prior to the Report of UN Human Rights Committee submitted on 16 June 2014 by the Helsinki Foundation for Human Rights.



might be placed in transitional room. Despite this, operation of certain correctional institutions emphasizes the practice of abusing transitional room as a form of punishment or substitute for the solitary confinement (which use is much more difficult and formal). As disturbing might be also identified the negative practice to keep juveniles in transitional room for maximum a 14-day period (both for diagnosis and safety measures). Other unit's example emphasizes that such issues might be resolved in shorter time.

### III. THE NATIONAL FRAMEWORK

#### 1. Constitutional standards

The Polish Constitution stipulates standards for the treatment of children. It states a guarantee that the deprivation of freedom of the individual is a breach of the physical integrity of the person, and also refers to a variety of other issues relating to underage persons. The institutional framework for the rights of children deprived of their liberty has been normalized by a number of legal regulations. Children's rights were not specifically developed for the Polish Constitution. Its analysis begins with Art. 18 of the Constitution, which establishes the principle that *"marriage between a man and a woman, the family, motherhood, and parenthood are under the security and care of the Polish Republic"*. Children hold a special priority in terms of the promised assistance for the continuance of families.

The key provision for children's rights is Article 72 of the Constitution, according to which the Republic of Poland is obliged to ensure the protection of children's rights. According to the second sentence of the Article, *"everyone has the right to demand of the public authority the protection of children from abuse, cruelty, exploitation and depravity."* These are fundamental rights, and are directly connected to the key principle in the Polish legal system of respect for the dignity of the individual<sup>11</sup>.

In the legal literature it is indicated that the scope of the government's responsibilities in terms of protecting children is broadly established in order to ensure children the proper physical and moral upbringing<sup>12</sup>. Notably, the above-cited regulations are principles that should guide the legislator. However, on the grounds of Polish law, they cannot be determined as concrete legal rights of children.

Regarding the issue of deprivation of liberty, it is important to note that the Polish Constitution contains multiple guarantees of *habeas corpus*. According to Article 41 of the Constitution, all people, including children, are assured of physical security of the person and freedom of the individual. Denial or limiting freedom can only occur for the reasons and by the procedures stipulated by law. Anyone who is deprived of his or her liberty by a court order has the right to appeal to the court to immediately determine the legality of the deprivation. If there is a deprivation of liberty, it is necessary to speak out immediately to a family member or to a person who has been designated by the person whose liberty has been deprived.

The appropriate guarantees also apply to persons who have been detained. In accordance with Article 41(3) of the Constitution, it is required that every detained person must be informed without delay, and in a way that he or she may understand, as to the reason for the detention. The detainee should be held for no more than 48 hours from the time of the submission of the arrest to the court. The detainee must be released from detention if he or she is not served a court order along with the charges within 24 hours from the submission to the court. The abovementioned regulations shall be applied accordingly in the procedure for detaining underage persons and depriving them of liberty for the procedural purpose.

<sup>11</sup> E. Morawska, *Protection of children's rights in the light of the art. 72 of the Polish Constitution. Comments based on the judiciary of the Polish Constitutional Tribunal*. Kwartalnik Prawa Publicznego 2007/4/125-144.

<sup>12</sup> W. Skrzydło, Polish Constitution. Legal commentary (*Konstytucja RP. Komentarz*), LEX el/2013.

## 2. Juvenile justice system

The notion of “*criminal accountability of juveniles*” does not exist in the Polish legal system.

Under Polish law, a criminal defined as juvenile (a minor) is under the age of 17. As a rule, these persons cannot be held responsible for prohibited acts in the same way as adults. However, pursuant to Art. 10 § 2 of Penal Code thereof, persons over the age of 15 who committed most serious crimes (enumerated in § 2 hereof, i.e. e.g. murder, murder with specific cruelty, causing serious bodily injury, rape together with another person, taking a hostage, hijacking an air vessel or a ship) can be liable to a penalty in accordance with the PC, however only if the circumstances of the case and the stage of development of the offender, his personal traits and conditions, give good reasons for such penalty, and in particular if the previously applied educational or correctional measures were futile. In such cases, the limit for responsibility is the age of 15, in which case the family court has decided the perpetrator would incur the same liability as an adult. It means that under no circumstance does a person under the age of 15 bear criminal responsibility and no penalty can be applied to such person.

The central regulation regarding responsibility for the rights of underage persons is contained in the 26 October 1982 Act on Juvenile Justice. The wording of the Act's preamble establishes that the purpose of the Act is to prevent the depravation and delinquency of the youth, as well as to create a means for minors who had fallen afoul of the law to return to normal life.

The Juvenile Justice Act stipulates that a corrective measure can be applied by the family court with respect to a juvenile between the ages of 13 and 17 who has committed an offence; the court may apply educational measures with respect to juveniles up to 18 years-old who show signs of depravation. The execution of educational or corrective measures with respect to persons subject to them under a court ruling may take place no longer than by the time they attain the age of 21.

According to the Act on Juvenile Justice all juvenile case proceedings appear before the Family Court. It resides over the course of the proceedings, taking care to ensure outcomes that provide for the best interest of the child. The Court has the power to decide on the use of juvenile correctional and educational measures. The Court also has the power to impose duties upon the child's parents (Art. 5-7 of the Act on Juvenile Justice).

## 3. Facilities in which children might be deprived of their liberty

### a. Correctional facilities

Placement in a correctional facility is the most severe corrective measure that can be applied upon a minor. Only minors from the ages of 13-17 can be sent to correctional facilities, but they can only remain there up to the age of 21.

A minor might be placed in correctional facilities only when he or she has committed a crime. The decision of application is brought about when the desired educational goal of the proceedings cannot be reached through other measures, and also where there is a high degree of depravation of the minor.

Correctional Facilities generally consist of: dormitories, schools and colleges for practical studies. The Minister of Justice supervises their activity. It has also the power to create or shut down a Correctional Facility.

Ministry of Justice's Ordinance of October 17, 2001, on Issues Regarding Correctional Facilities and Children's Shelters regulates the particular functions of Correctional Facilities. This ordinance stipulates the types of Correctional Facilities, their inner organization, means of performing proper supervision, as well as detailed rules to manage the institutions' operation, reception, transfers, dismissals and residence of minors in the institutions. The ordinance includes means of ensuring safety within these institutions. The functioning principles of Correctional Facilities and Children's Shelters are stipulated by their internal regulations. These are drawn up by the director of the particular institution and then submitted to the President of the nearest District Court to be ratified.

Minister of Justice Ordinance enumerates types of Correctional Facilities. They differ in educational impacts and security means.

A juvenile is placed in an establishment with greater extent of imprisonment if the specific prerequisites set out in the Regulation referred to above are satisfied, i.e.:

- semi-open centres – juveniles whose punishable acts and adverse behavioural changes provide no basis for placing them in open resocialisation establishments;
- closed centres – juveniles who have frequently escaped from open or semi-open resocialisation centres;
- centres with increased educational supervision – juveniles disorganising operations in other centres
- 

The Ministry of Justice's Ordinance stipulates means for administering security measures through the visual monitoring of Correctional Facilities. The rooms that are either permanent or temporary residences for minors are monitored the entire time. Digital recordings of the center's full-time residents, transitional residents, persons in solitary confinement, and those that are ill, are archived until the minor is released from the institution.

#### **b. Children's Shelters**

Children's Shelters were designed as temporary detention facilities. A minor can be placed in Children's Shelter only when he or she was suspected of committing a crime. Therefore placing a minor in a Shelter can be considered as an equivalent of pre – trial detention.

Grounds and procedure for placing minor in a Children's Shelter were described in art. 27 Juvenile Act. A court might place minor in Children's Shelter only if it's likely that he or she will be placed in Correctional Facilities when proceeding ends. There has to be also a high risk that the minor will try to hide himself or obstruct the proceedings. Minors can be placed in Children's Shelter also when it's impossible to determine his identity.

Exceptionally a minor be placed in a Children Shelter also when he or she has committed a serious crime (e.g. murder or rape) and it is likely that he or she will be placed in Correctional Facilities when proceedings ends. In such cases the risk of proceedings obstruction or impossibility to determine minor identity do not have to be proved.

Children's Shelter are supervised by the Minister of Justice, who has a power to create and abolish the Shelter.

#### **c. Hostel**

Hostel is an organizational unit for minors who are placed in a correctional facility that facilitates the process of becoming independent or prepare minors to leave the correctional facility. The decision to place a minor in a hostel is made by the head of the correctional facility, as long as it is justified by the prospects of the minor becoming independent and leaving the correctional facility. There is one additional condition – while residing in a hostel minor should either work or attend a school. Minor who was placed in a hostel remains a pupil of the correctional facility.

Hostel provides minors with a 24-hour tutorial supervision as well as temporary accommodation. Minors residing in a hostel are obliged to partially cover the living expenses (up to 25% of the total costs).

Usually, hostel is a ward of a correctional facility. However, it can be also run by an association, foundation or any other social organization which aims at supporting the social re-adaptation of minors. Expenses connected with minors' stay in a hostel can be covered from the state budget. Every time, the detailed regulations concerning the coverage of the minors' living costs are stipulated in a contract signed by the Ministry of Justice and the unit that runs a hostel.

The main legal act that regulates the rules of the minors' stay in hostels is the Ordinance of the Minister of Justice of January 13, 2012 concerning the rules of minors' hostel admittance and release,



conditions of minors' stay in hostels and supervision over minors placed in hostels. The detailed conditions concerning minors' stay in hostels are regulated by hostel regulations.

#### **d. Police Remand Home for Children**

Police remand home for children is the institution for a short-term juveniles' detention. Minors are usually held in this facilities for several days after their arrest. Police Remand Homes for Children operate within district Police headquarters. They are established and liquidated by the Minister of Interior, who also supervises them.

Grounds and procedure for placing minor in a Police Remand Home for Children were described in art. 32 and 32h of Juvenile Act. Firstly, minors can be placed in Police Remand Home for Children if it is necessary owing to circumstances, especially if:

1. there is a justified suspicion that he/she committed a punishable act and
2. there is a justified fear that he/she could hide or destroy the evidence or
3. it is not possible to determine the identity of minor.

A minor who was detained on such grounds should be released after 48 hours from informing Family Court about its detentions unless it was informed about placing it in Children Shelter or Youth Educational Center, foster family or medical clinic.

If the minor was informed about placement in such facility it's possible to held him or her in Police Remand Home for Children until transport to competent facility, but no longer than 5 days after the decision.

For maximum five days, in Police Remand Home for Children might be also kept a minor who has fled from detention facility, e.g. Children Shelter.

Juvenile Act allows to place in Police Remand Home for Children a minor who is convoyed. Such detention should last no longer than 24 hours.

Last but not least, a minor might be placed in Police Remand Home for Children at the request of Family Court when there is a necessity to conduct procedural actions. Maximum period of such detention is 48 hours.

Police Remand Home for Children have to meet conditions described in chapter 6 of the Minister of Internal Affairs' Ordinance on issues regarding rooms for person who were detained, brought to sober; transitional rooms, temporary transitional rooms and Police Remand Homes for Children, their internal regulation and surveillance systems.

#### **e. Youth Educational Centers**

Placement in Youth Educational Centers is one of the educational measures that can be applied by Family Court to a minor who has violated the law or shows the signs of demoralization.

Youth educational centers are designated for children and youth, socially maladjusted children who require special organization of education and special working, upbringing and socialization methods.

Among specific tasks of youth educational centers there are elimination of causes and effects of social maladjustment, preparation of foster children to live in compliance with current social and legal norms.

Youth educational centers are designated exclusively for youth, in cases of whom the Family Court (according to the provisions of Act on Juvenile Justice) decided to place a minor in the Center as an educational measure.

Youth educational centers are established on the basis of the resolution of the local government. The Act on the Educational System allows for the establishment of such centers also by nonpublic bodies. The supervisory body in relation to youth educational centers is the Ministry of National Education.

Basic legal acts that regulate the activities of the youth educational centers are the Ordinance of the Minister of National Education of December 27, 2011 concerning the detailed rules to manage the institutions' operation, reception, transfers, dismissals and residence of minors in the youth educational centers and the Ordinance of the Ministry of National Education of May 12, 2011 concerning types and detailed regulations of public institutions' operation, conditions of children's and youth's residence in such institutions and the amount and rules of payment made by parents for their children's stay in such institutions.

#### **f. Sociotherapeutic Youth Centers**

Sociotherapeutic Youth Centers are designated for children and youth who, due to their developmental disturbances, problems with learning and social functioning disturbances are prone to social maladjustment and require special organization of education, methods of work, upbringing and sociotherapy.

Since September 1, 2012 at least one of the following institutions is a part of the sociotherapeutic youth center: primary, middle or high school for children with special educational needs.

Among the tasks of the sociotherapeutic youth center there are elimination of causes and effects of emotional and behavioral disturbances and preparation of foster children to live in compliance with current social and legal norms.

The aforementioned tasks are performed through the organization of rehabilitative, therapeutic, prophylactic-educational activities that enable children to obtain competences useful in proper functioning in a family and social environment.

The admission to the center is initiated on the parents' motion or through the decision of the psychological- pedagogical clinic about the need for a special education. Until December 31, 2011 it was also possible to place a minor in a sociotherapeutic youth center on basis of the Family Court's decision to use educational measures.

Sociotherapeutic youth centers are established on the basis of the resolution of the local government. The Act on the Educational System allows for the establishment of such centers also by nonpublic bodies. The supervisory body in relation to sociotherapeutic youth centers is the Ministry of National Education.

#### **g. Psychiatric hospital**

The operation of psychiatric hospitals is regulated by several legal acts, among which the Act of August 19, 1994 on Mental Healthcare, as well as the Act of March 15, 2011 on Healthcare.

According to the article 12 of the Act on Juvenile Justice in cases when at least two psychiatrists appointed by the court decide that the minor is mentally disabled, mentally ill, addicted to alcohol or intoxicants or there is other disturbance of mental processes, the court can decide to place a minor in a psychiatric hospital.

Furthermore, minor can be placed in a psychiatric hospital in case, there are circumstances stipulated in the Act on Mental Healthcare. According to the regulation, minor can be placed in a psychiatric hospital without his consent (or his legal representative's consent) in case his or her behavior demonstrates that owing to the illness minor poses threat to his/her or others' life or health.

#### **h. Nursing home**

Nursing Home is an institution offering help for people requiring a 24-hour care due to age, health problems or disabilities. In such a range, it provides people who need help with basic living, care, supportive and educational conditions. The body that runs such a home might be also a private bodies such as a foundation or religious association.

The establishment and operation of a nursing home requires prior obtainment of a competent administrative body. Also private bodies may apply to obtain such a decision.

The Act on Juvenile Justice allows for the placement of a minor in a nursing home as long as there is a need to provide a minor – severely mentally disabled – with an educational care. In such a case a head of a nursing home is obliged to inform the court, at least once every 6 months, about the minor's state of health progress in his treatment. The court, at least once every 6 months decides, basing on medical opinions, if there is still need to detained minor in nursing home.

The detailed regulations concerning the operation and organization of nursing homes are stipulated in the Act of March 12, 2004 on social welfare. The rules of placing minors in nursing homes were precisely regulated in the Ordinance of the Minister of Labor and Social Policy of May 5, 2011 concerning the specific way and procedure of reception, transfers, dismissals and residence of minors in nursing homes.

#### **i. Special education needs schools and special educational centers.**

Special education needs schools and special educational centers are run, most of all, for children and youth who are mentally or physically handicapped, autistic or multiply disabled. Moreover, in special education need schools one can place children and youth who require the application of special educational incentives, psychological or pedagogical support or revalidation training owing to their disabilities. Such centers might be run for children who, owing to their disabilities, cannot attend kindergarten in their place of residence. Children and youth are admitted to a special education needs school for the period of kindergarten education or school education. The *sine qua non* condition is that the person has the official document proving that he/she has special education needs.

Special education needs schools and special educational centers are established on the basis of the resolution of the local government. The Act on the Educational System as well as the Ordinance of the Ministry of National Education of May 12, 2011 concerning types and detailed regulations of public institutions' operation, conditions of children's and youth's residence in such institutions and the amount and rules of payment made by parents for their children's stay in such institutions allows the establishment of such centers also by nonpublic bodies.

#### **j. Guarded Centers for Foreigners**

Foreigners who try to obtain the refugee status in Poland may reside in open or closed centers. Usually, people who crossed Polish border illegally and remain in Poland illegally are placed in the latter type of centers. In a closed center or remand center one can also place a foreigner who is minor. The only exception is a situation when minor is not in somebody's custody. In such a case, the Border Guard may file a motion to the Family Court to place a minor in an educational center. The placement of a minor foreigner in a closed center can be decided exclusively upon the court's decision.

The issue of the proceedings in cases of the foreigner's detention and placement in a guarded center are regulated in the Aliens Act and the Act on granting protection to foreigners within the territory of the Republic of Poland.

Guarded centers for foreigners are established upon the ordinance of the Minister of Interior. In the same manner the Minister of Interior decides on their liquidation. The detailed rules of the operation of guarded centers for foreigners are regulated by the Ordinance of the Minister of Interior and Administration of August 26, 2006 concerning the conditions of guarded centers and remand centers with the intention of expulsions as well as the organizational regulations of foreigners' stay in a guarded center or in the remand center with the intension of expulsion. -Guarded centers were categorized (two are dedicated only to families with children);

According to the previously applicable Act on Foreigners, both children with families and unaccompanied minors can be placed in guarded centers for foreigners. The new law limits the placement in guarded centres of unaccompanied minors. According to the new regulation this should only relate to people over 15 years of age. Moreover, the best interest of a child should be taken into consideration when detention order is being issued by the court.

#### 4. Statistics

	Correctional centers for juveniles	Children's shelters	Youth Educational Center	Sociotherapeutic Youth Centers	Police Remand Home for Children
Number of units in 2013	27	15	92	70	19
Number of places in 2013	1277	492	5558	3552	376

Year	Correctional Facilities' Capacity	Children Shelters' Capacity	Correctional Facilities' Occupancy	Children Shelters' Occupancy	Correctional Facilities Occupancy		Children Shelter Occupancy	
					Boys	Girls	Boys	Girls
2008	1291	646	1358	466	1211	147	433	33
2009	1277	646	1230	516	1098	132	466	50
2010	1277	626	1219	422	1078	141	381	41
2011	1277	626	1102	348	969	133	318	30
2012	1277	492	961	340	857	104	295	45
2013	1277	492	902	269	799	103	239	30
1st half 2014	1277	492	925	276	815	110	244	32

Year	Number of places in hostels	Number of places for boys	Number of places for girls	Population of hostels
2013	24	24	0	12
1st half 2014	24	24	0	13

School year	Youth Educational Center		Youth Educational Centers for Girls	Youth Educational Centers for Boys
	Number of units	Capacity	Capacity	Capacity
2012/2013	85	5135	1521	3587
2013/2014 r.	93	5598	1684	3890

**Police Remand Homes for Children**

<b>Total</b>	<b>General Occupancy in a year</b>	<b>Number of Boys</b>	<b>Number of Girls</b>
2012	8853	7179	1404
2013	8501	6909	1592
I-VI 2014	3773	3065	708

**Occupancy of each Police Remand Home for Children**

<b>Police Remand Home for Children</b>	<b>General occupancy in a year</b>	<b>Number of boys</b>	<b>Number of girls</b>
<b>Legnica</b>			
2012	140	121	19
2013	179	145	34
I-VI 2014	closed	closed	closed
<b>Wałbrzych</b>			
2012	290	257	33
2013	250	220	30
I-VI 2014	130	108	22
<b>Wrocław</b>			
2012	440	357	83
2013	659	514	145
I-VI 2014	319	246	73
<b>Bydgoszcz</b>			
2012	161	144	17
2013	503	403	100
I-VI 2014	256	211	45
<b>Lublin</b>			
2012	414	336	78
2013	357	281	76
I-VI 2014	143	116	27
<b>Gorzów Wlkp.</b>			
2012	243	219	24
2013	194	160	34
I-VI 2014	105	93	12
<b>Zielona Góra</b>			
2012	0	0	0
2013	0	0	0

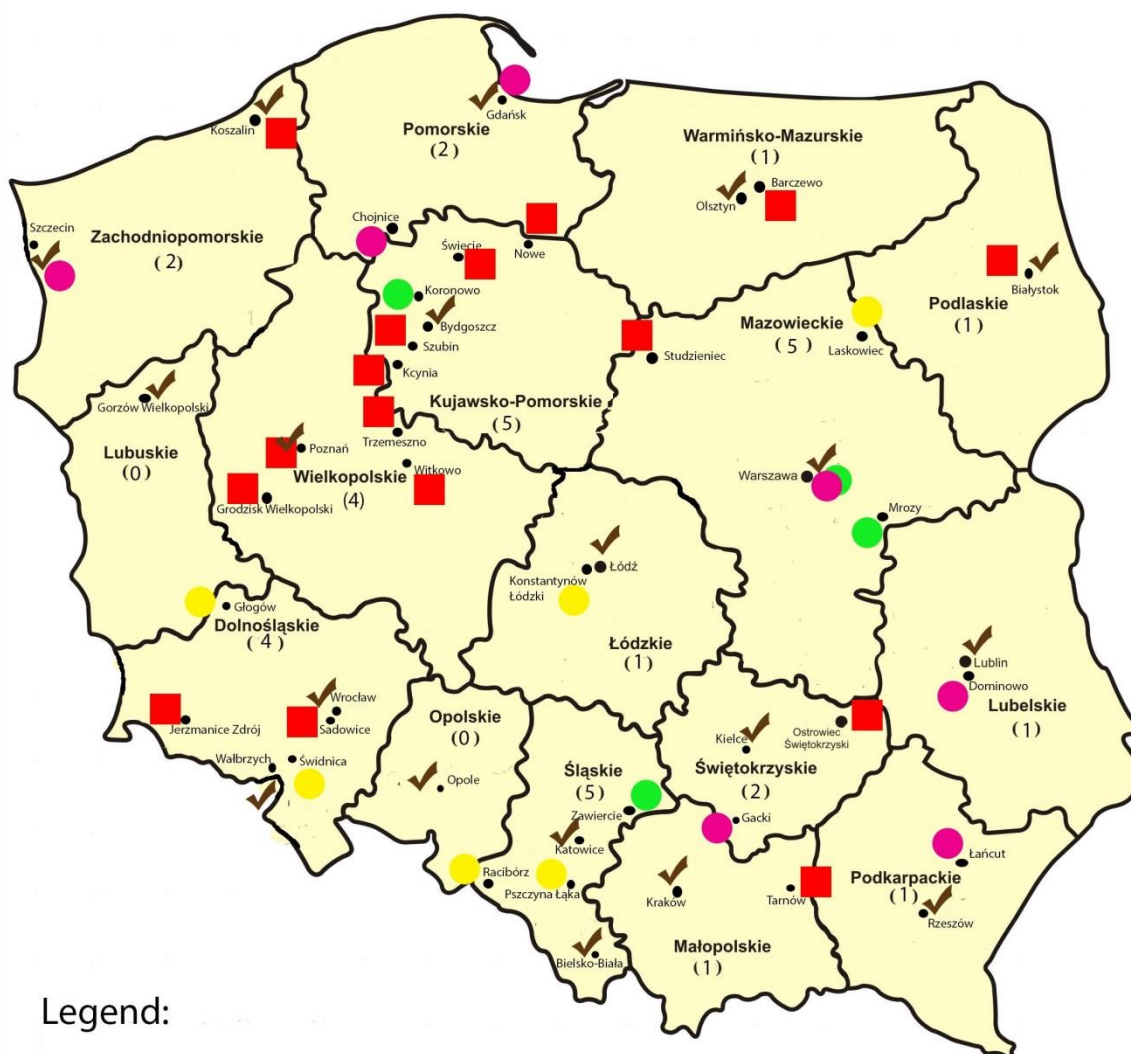
I-VI 2014	closed	closed	closed
<b>Łódź</b>			
2012	442	379	63
2013	446	387	59
I-VI 2014	190	156	34
<b>Kraków</b>			
2012	390	304	86
2013	381	294	87
I-VI 2014	226	181	45
<b>Tarnów</b>			
2012	104	82	22
2013	0	0	0
I-VI 2014	closed	closed	closed
<b>Radom</b>			
2012	199	167	32
2013	73	64	9
I-VI 2014	closed	closed	closed
<b>Płock</b>			
2012	104	90	14
2013	102	85	17
I-VI 2014	closed	closed	closed
<b>Warszawa</b>			
2012	1101	839	262
2013	1027	815	212
I-VI 2014	463	362	101
<b>Opole</b>			
2012	218	187	31
2013	203	175	28
I-VI 2014	84	64	20
<b>Rzeszów</b>			
2012	178	128	50
2013	209	158	51
I-VI 2014	103	76	27
<b>Białystok</b>			
2012	321	188	33
2013	307	243	64
I-VI 2014	148	122	26
<b>Gdańsk</b>			
2012	326	281	45
2013	347	289	58
I-VI 2014	216	179	37
<b>Słupsk</b>			
2012	50	43	7
2013	21	20	1

I-VI 2014	closed	closed	closed
<b>Katowice</b>			
2012	848	733	115
2013	908	772	136
I-VI 2014	542	464	78
<b>Będzin</b>			
2012	303	257	46
2013	339	270	69
I-VI 2014	closed	closed	closed
<b>Bielsko-Biała</b>			
2012	516	442	74
2013	267	216	51
I-VI 2014	127	102	25
<b>Częstochowa</b>			
2012	309	273	36
2013	158	130	28
I-VI 2014	closed	closed	closed
<b>Kielce</b>			
2012	191	175	16
2013	287	253	34
I-VI 2014	152	136	16
<b>Elbląg</b>			
2012	183	146	37
2013	126	107	19
I-VI 2014	closed	closed	closed
<b>Olsztyn</b>			
2012	328	270	58
2013	297	236	61
I-VI 2014	130	100	30
<b>Poznań</b>			
2012	235	198	37
2013	381	302	79
I-VI 2014	209	174	35
<b>Ostrów Wlkp.</b>			
2012	164	150	14
2013	121	108	13
I-VI 2014	closed	closed	closed
<b>Koszalin</b>			
2012	121	109	12
2013	29	20	9
I-VI 2014	108	85	23
<b>Szczecin</b>			
2012	364	304	60
2013	330	242	88



## 5. Mapping

### Correctional Facilities, Children Shelters and Police Remand Homes for Children in Poland



#### Legend:

- (1) Number of Correctional Facilities and Children Shelters in the region
- ✓ Police Remand Home for Children
- Correctional Facility for boys
- Correctional Facility and Children Shelter (for boys)
- Correctional Facility and Children Shelter (for girls)
- Children Shelter (for boys)



## Sociotherapeutic Youth Centers in Poland



Legend:

- Rehabilitation SYC (co-educational)
- SYC (co - educational)
- Sociotherapeutic and rehabilitation - sociotherapeutic SYC (co - educational)
- SYC for girls
- ▲ SYC for boys
- ▲ Sociotherapeutic and rehabilitation-sociotherapeutic SYC (for boys)
- (1) Number of units in the region

## Youth Educational Centers in Poland



### Legenda:

- Resocialization YEC (co-educational)
- ▲ Resocialization YEC (for boys)
- Resocialization YEC (for girls)
- ▲ Resocialization - rehabilitation YEC (for boys)
- Resocialization - rehabilitation YEC (for girls)
- ▲ Resocialization and Resocialization - rehabilitation YEC (for boys)
- Resocialization and Resocialization - rehabilitation YEC (for girls)

(1) Number of units in the region



## IV. Monitoring mechanism in Poland

### 1. National Preventive Mechanism in Poland

#### a. General overview

The Human Rights Defender (the Polish National Ombudsman) has been appointed to act as the National Prevention Mechanism (NPM) from January 2008. In the document of 18 January 2008 the Minister of Justice, on the basis of the resolution of the Council of Ministers No. 144/ 2005 of 25 May 2005- officially appointed the Ombudsman to act as the National Preventive Mechanism within the meaning of the art.3 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. According to the Article 1.4. of The Act on the Human Rights Defender of 15 July 1987 (Journal of Laws 2011.222.1320) the Defender shall perform the function of the inspector for the prevention of torture and other cruel, inhuman or degrading treatment or punishment (National Prevention Mechanism). As stated in the Article 8.2. Defender shall regularly examine the treatment of prisoners. In the view of Article 13.1a When pursuing the task referred to in Article 8( 2), the Defender also has the right to: 1) record sound and image in places where prisoners are detained, upon the consent of the persons to be recorded, 2) meet people deprived of their liberty with no other people present and meet people who, according to the Defender, may provide important information.

Pursuant to Article 18(3) of the OPCAT, the States Parties undertake to make available the necessary resources for the functioning of the national preventive mechanisms. The accomplishment of the National Prevention Mechanism (NPM) tasks is financed from the state budget, precisely – from the part of the State budget which is allotted to the Ombudsman fulfilling the role of the NPM in Poland. Therefore, the funds granted to the NPM are not linked with the Government budget in any way. This regulation is one of the crucial guarantees of the independence of the NPM provided for in the Optional Protocol to the Convention against Torture (OPCAT).

In 2012 and 2013 the activities of the National Preventive Mechanisms were performed by the Team VII of the Office of the Human Rights Defender comprising 13 employees. The personnel of the Offices of Local Representatives of the Human Rights Defender in Gdańsk and Wrocław also participated in the visits.

The NPM Team visits all types of places of detention referred to in Article 4 of the OPCAT. From February 2012, the visiting teams have consisted also of external experts: psychiatrists and clinical psychologists. The Ombudsman repeatedly states that because of insufficient human resources proper realization of its tasks is impossible.

In the opinion of the CPT, presented in its last Report<sup>13</sup>, despite these positive trends and the unquestionable commitment of the staff of the Polish NPM, it appeared clearly from the delegation's findings during the visit that a further increase in resources (both human and financial) would be required for the Polish NPM to perform efficiently the role of a national monitoring mechanism of places of deprivation of liberty, capable of carrying out frequent and unannounced visits to all types of such places throughout the country. Indeed, in most of the establishments visited by the CPT, the most recent visit by the NPM dated back to some years before, and as a rule it had not been a comprehensive monitoring visit. The CPT recommends that steps be taken to further increase the resources made available to the National Preventive Mechanism, in the light of the above remarks.

In the light of the Optional Protocol to the Convention and the guidelines on national preventive mechanisms (CAT/OP/12/5, paras. 7, 8 and 16), the CAT recommends that the State party ensure that the national preventive mechanism is endowed with sufficient resources to discharge its mandate effectively and on a fully independent basis.

<sup>13</sup> <http://www.cpt.coe.int/documents/pol/2014-21-inf-eng.pdf>

## **b. Methodology of the NPM in Poland**

In all the visited establishments, the National Preventive Mechanism operates based on the same methodology. The first stage is to establish the composition of the visiting group. According to OPCAT, experts of national preventive mechanisms should have the required capabilities and expertise. The visiting team usually consists of several persons, with one person performing the role of the group coordinator. Two persons, including the team coordinator responsible for drawing up the report from the visit, perform the inspection of the premises and buildings of the establishment, while others conduct individual conversations with prisoners. In order for groups to be interdisciplinary, the visits are also performed by experts in general medicine, psychiatrists and psychologists. They draft an expert opinion which is incorporated in the visit report. The duration of a visit depends on the size of the visited establishment and on the problems encountered on site. It usually lasts for one to three days.

The visits of the National Preventive Mechanism have the following stages:

- A conversation with the management;
- Inspection of all rooms;
- Individual and group conversations with the detainees;
- Conversations with the personnel;
- Analysis of documents;
- Formulation of post-visit recommendations during the conversation summing up the visit, and receiving explanations from the management.

It should be noted that the methodology of the monitoring in facilities for juveniles in some aspects differs from the monitoring in other places of detention. Especially the way of interviewing is adopted to minors and their communication skills. The director of NPM emphasizes that in psychiatric hospitals some of the questions are presented in writing. The specific character of monitoring of facilities for juveniles requires wider research sample. That is a consequence of the juveniles' tendency to confabulation.

If an inmate reports an unlawful event, he/she has the opportunity to lodge an official complaint. Yet if the person does not consent to addressing the issues officially, the visitors consider the information as a report to be investigated in a way that prevents identifying the source. If the unlawful event is confirmed, the members of the visiting team report their findings to the director of the visited establishment and the complainant remains anonymous if he/she does not file an official complaint. If the visitors are unable to confirm the complainant's charges, these are reported during the summarizing conversation as unverified reports, and it is the establishment director's duty to investigate them. When the visit is completed, a report is drawn up which describes all the findings and conclusions, as well as recommendations for the body managing the visited establishment and for its supervisory bodies. If the establishment's management does not agree with the recommendations, the NPM representatives request the supervisory bodies to issue their opinion and position on the matter. If the visitors reveal torture or inhuman, degrading treatment or punishment, the visitors file a notification of a suspicion of a crime following the visit. In each case, the victim must consent to having his/her personal data revealed and to referring the case to law enforcement bodies. In drastic cases, it is admitted to depart from the rule, and the decision is made personally by the Human Rights Defender who signs the notifications of a suspicion of a crime to the public prosecutor. The situation is different when information about torture, inhuman or degrading treatment or punishment is derived from documents or CCTV footage, not directly from the victims. In such case, the visitors do not have to request consent for passing the case to law enforcement bodies and each time file a notification of a suspicion of a crime<sup>14</sup>.

<sup>14</sup> Description of the methodology from the Report of the Human Rights Defender on the activities of the NPM in Poland in 2012, (*Raport RPO z działalności w Polsce KMP w roku 2012*), available at: <http://rpo.gov.pl/en/content/reports-national-preventive-mechanism> (21.07.2014).

Year	Total number of visits	Police Remand Home for Children	Correctional centers	Children's Shelter	Youth educational center	Sociotherapeutic youth center
2008	76	4	3	4	3	2
2009	106	5	4	5	7	4
2010	80	4	2	-	12	1
2011	89	10	2	2	12	7
2012	124	-	1	-	8	4
2013	125	4	7	3	15	-

### c. Monitoring visits in units for juveniles

In 2012, the representatives of the NPM drew up two thematic reports. One of them was the Report of the Human Rights Defender on visits to the Police emergency centres for children<sup>15</sup> carried out by the National Preventive Mechanism.

This Report highlighted the major problems encountered in the Police emergency centers for children which require improvement/change, such as:

1. lengthy stay of juveniles in the Police emergency centers for children after the court issues a decision on using the appropriate measure
2. the failure to ensure that all newly admitted juveniles undergo immediate medical examination and that they are regularly visited by a doctor or a nurse;
3. lack of detailed regulations on contacts (including by phone) of juveniles with their families and external world;
4. elimination of inappropriate practices of the officers on duty in the emergency centers, such as operational and investigatory activities, infringement of the rule that personal searches are performed by a person of the same sex or use of prohibited coercive measures (straitjackets) or handcuffs without sufficient grounds for using them;
5. elimination of inappropriate (i.e. in breach of the Ordinance) disciplinary measures towards juveniles consisting in filing reports on inappropriate behavior of juveniles to family courts, schools, etc., ban on watching television, partial or total ban on visits of parents or guardians, making relevant entries in the documentation concerning juveniles. The representatives of the NPM are of the opinion that the isolation procedure should be regulated in an act, since it is a procedure interfering to a significant extent into juveniles' rights and freedoms; extending the offer for juveniles to include a greater number of educational and cultural classes.

According to the Report of its activity in 2013 in the opinion of the representatives of the National Preventive Mechanism law on juvenile justice, despite its subsequent amendment in 2013, is still insufficient for the legal protection of minors. During visits the representatives of NPM observed many improper practices that affect rights of minors especially: right to liberty and privacy. In the opinion of the NPM Parliament should take action to regulate via the legal act of statutory rank the following issues: access to medical care (including specialized care for pregnant minors), contact with parents/legal guardians and attorney (including telephone contact), a procedure for the isolation of juveniles in police establishments for children, making personal control in correctional centers, the use of video surveillance in places of detention for minors.

<sup>15</sup> Report of the Human Rights Defender on visits to the Police emergency centers for children (*Raport z wizytacji w policyjnych izbach dziecka przeprowadzonych przez Krajowy Mechanizm Prewencji*), available at: <http://rpo.gov.pl/pl/content/raport-z-wizytacji-w-policyjnych-izbach-dziecka-przeprowadzonych-przez-krajowy-mechanizm> (24.07.2014).



#### d. Assessment of legal acts

The obligation to issue opinions about legal acts, both applicable legal acts and drafted legislation, by the entity acting as a national preventive mechanism stems from Article 19(c) of the OPCAT. In 2013, opinions on 5 draft legal acts were issued, with no reservations voiced in the Regulation of the Minister of Justice amending the regulations on correctional facilities and shelters for minors. In 2014, an assessment of three acts was presented including the draft guidelines of the Act on Juvenile Justice.

### 3. Supreme Audit Office (*Najwyższa Izba Kontroli* / NIK)

#### a. Legal basis

Supreme Audit Office (*Najwyższa Izba Kontroli*) is another important actor within the system of protection of human rights. It is a Supreme Audit Institution with a widely recognized standing, whose reports are an expected and sought for source of information for bodies of the state and the general public. The organisation and the functioning of the Polish Supreme Audit Office (the NIK) are set out in the Constitution of the Republic of Poland and in the Act on the NIK of 23 December 1994. The NIK is subordinate to the Sejm (the lower chamber of the Polish Parliament) and it is headed by the President, who is appointed by the Sejm for a six year term of office. The NIK's basic task is to conduct audits related to the execution of the state budget. It also audits public finance spending and the management of public assets by state and local governmental bodies and economic entities (businesses). Every year, the NIK submits three key documents to the Sejm: its analysis of the execution of the state budget and monetary policy guidelines, its opinion on the vote of approval for the government and its annual.

The NIK, as the guardian of public funds, takes care of legal, sound and efficient spending and reliable accountability of these funds. Not only does the NIK disclose irregularities, but it also proposes possible solutions aimed at better spending in the future as well. NIK audits show in which areas the state operates well and which need to be improved. If the irregularities found stem from loopholes in the regulations or unclear legal provisions, the NIK postulates changes in the law (so called *de lege ferenda* proposals). When NIK auditors find criminal offences or negligence, they inform the law enforcement bodies.

#### b. Activities in the field of juvenile justice system

The Supreme Audit Office's (*Najwyższa Izba Kontroli*) Report "*The operation of correctional facilities and children's shelters*" from 2009, indicates a need for a fundamental reform of a rehabilitation and youth care system<sup>16</sup>. The report described many infrastructural, supervisory and organisational problems that indicate inefficiency of the current regulations. The system of juvenile rehabilitation was assessed as ineffective despite the fact that the state had been assigning high budget for the maintenance of these facilities. In 2007, in the country scale, the average monthly cost of maintaining one detainee of the supervised juvenile detention center was 6.880 PLN (1.627 EUR), and in 2008 it was already 8.013 PLN (1.895 EUR). The Supreme Audit Office negatively assessed the rehabilitation system in the Polish correctional facilities. The system was found incoherent and incomplete. Moreover a significant part of tasks assigned to the units were not completed or were not in a compliance with law.

In the period of 1 July 2001 - 31 December 2008 the percentage of juveniles from supervised juveniles detention centres, who returned to the path of crime was 58%. The system of juvenile is ineffective despite the fact that state has assigned high expenses for the maintenance of these facilities.

The audit was conducted by the Department of Science, Education and National Heritage with the participation of eight delegations from Bydgoszcz, Katowice, Kielce, Lublin, Lodz, Olsztyn, Poznan and Szczecin. In the process of developing the methodology the auditors obtained materials from the

<sup>16</sup> Report "The operation of correctional facilities and shelters for juveniles" (*Informacja o wynikach kontroli funkcjonowania zakładów poprawczych i schronisk dla nieletnich*) of the Supreme Audit Office is available at: <http://www.nik.gov.pl/plik/id,73,vp,73.pdf> (23.07.2014)

Ministry of Justice, Ministry of Education and the National Police Headquarter and publications about the problems of pathological behavior among juveniles. In December 2008, a representative of the Supreme Audit Office participated in the meeting of directors of correctional facilities and shelters for juveniles, organized by the Ministry of Justice.

The audit *"The operation of correctional facilities and shelters for juveniles"* was preceded by two ad hoc controls) at the Correctional Center and Juvenile Shelter in Laskowiec (in the period from 19 May 2008 to 27 June 2008) and the Shelter for Juveniles in Warsaw -Okecie (from 17 July to 19 September 2008).

Supreme Audit Office controlled 23 facilities (11 correctional centers for juveniles, seven children's shelters and 5 facilities linking these two functions) in 10 regions (66 per cent. from all the facilities). The audit concentrated on the period 2007 - the first quarter of 2009. The Office conducted a survey of 632 alumni who have left the controlled facility.

Only one of controlled facilities – correctional center and shelter for juveniles in Konstancin-Jeziorna was assessed positively. Five facilities (shelters for juvenile in Stawiszyn and Szczecin and correctional establishments in Poznan, Trzemeszno and Witkowo) controllers set a negative rating. To functioning of 17 units (74 percent) controllers have larger or smaller reservations.

Supreme Audit Office in its report criticize the functioning of the rehabilitation of juveniles detained in detention centers and shelters for juveniles. This system is incomplete and inconsistent, and a significant part of the tasks is not performed or is performed in accordance with applicable laws and regulations.

The auditors identified numerous problems that should be eliminated by formulation the rules of:

- providing security in correctional centers and shelters for juveniles
- cooperation between correctional centers and juvenile shelters with the institutions appointed to assist juveniles in their life outside the facility,
- providing psychological and educational assistance in correctional centers and shelters for juveniles, including types of activities conducted by a psychologist and educator, and the justification of this activity,
- taking care of the juveniles leaving the correctional facilities and shelters for juveniles and conducting periodic analyzes and assessments of the implementation of the tasks of the correctional facilities and detention centers for juveniles in the field of rehabilitation.

Supreme Audit Office also negatively assessed the supervision of the Minister of Justice, the former teams of pedagogical supervision and family courts under correctional centers for juveniles and shelters for juveniles. It recommended that the Minister of Justice should provide effective supervision of family courts, the district teams of pedagogical supervision.

#### 4. Supervision performed by the Minister of Justice

Supervision over correctional centers and shelters falls within the competences of the Minister of Justice via its representatives and the presidents of the district courts (§ 100 of the Regulation of the Minister of Justice *on correction centres and children's shelters*).

In the special department responsible for the supervision work judges and educators.

They are responsible for supervising the activities of juvenile establishments and shelters, issuing guidelines and orders concerning the implementation of activities and tasks assigned to them, determining lines of supervision with respect to pedagogical, administrative and organisational activities, auditing compliance with the rights and obligations of juveniles, performing analysis of application of legal regulations, carrying out visitations and inspections covering selected areas of activities of such establishments or all such activities, organising trainings and examining complaints and requests.

A comprehensive supervisory visit is organized once every five years. Detailed analysis of the functioning of the units are prepared even once a week. Their subjects are: extraordinary events, the

use of coercive measures, security of the units, training courses, supervision of financial aspects, the rate of reversion to the crime, the number of juveniles in different units. Detailed quarterly reports are submitted by the directors to the NPM.

Pedagogical supervision involves e.g. supporting establishments and shelters in their educational, care-giving and teaching activities, carrying out analyses and assessments of the status, conditions and effectiveness of such activities, inspiring teachers for pedagogical, methodological and organisational innovativeness, preparing annual and current educational supervision scope reports containing numerical data, description of substantive activities, together with conclusions on the line of development of such juvenile establishments and shelters and possible ways of improving the quality of educational impact, assessing the activities of the manager of such establishments or shelters and providing him/her with recommendations, organising trainings, conferences and meetings providing conclusions or arrangements, cooperation with foundations, associations and other organisations and institutions, establishments and shelters with respect to new programmes for juveniles and modern educational impact methods, examination of the documentation concerning the process of education, care-giving and teaching as well as compliance with documentation requirements.

Visitations are carried out at least once per five years. Visitations or inspections are reported, together with respective recommendations, to the Minister of Justice and managers of specific juvenile establishments or shelters. Within the time limit prescribed for the implementation of post-visitation or post-inspection recommendations managers of juvenile establishments or shelters provide the Minister of Justice with information about the scope and methods of their implementation<sup>17</sup>.

During each comprehensive visitation it is specifically investigated whether the rights of juveniles residing in such establishments or shelters are sufficiently respected. The juveniles and staff establishments are interviewed in accordance with the questionnaires. The findings are analysed and discussed in the establishments and published in post-visitation or post-inspection reports, and – if necessary – formulated as recommendations. Each time when inspectors visit the establishments, they hold pedagogical structured interviews aimed at finding out information about non-compliant treatment of juveniles by the staff of the establishments. This analysis covers also documentation concerning the award and disciplinary procedures by checking compliance with proper proportions in this respect as the evaluation, award and disciplinary systems used in juvenile establishments should be based on the system aimed at strengthening positive aspects (awards)<sup>18</sup>.

It should be mentioned that in 2013 the Ministry of Justice conducted a comprehensive review of supervisory tools.

## 5. Supervision of youth educational centers and sociotherapeutic centers

The Centre for Education Development (CED) was established on 1 January 2010, as the result of merger of National In-Service Teacher Training Centre and Methodological Centre of Psychological-Pedagogical Counselling. CED is a national teacher training institution.

The Centre objectives include:

- actions for quality assurance in education, particularly through supporting schools and educational institutions in carrying out their statutory tasks;
- support of changes in the system of education in the field of teachers' professional development.

CED verifies whether Youth Educational Centers ensure proper educational and resocialization activities for minors.

<sup>17</sup> Description from the Report of the Republic of Poland on the implementation of the provisions of the Convention on the Rights of the Child in the years 1999-2010.

<sup>18</sup> *Ibidem*.

## 6. Family Judges Supervision

According to Minister of Justice's Ordinance of 16 June 2009 r. on the detailed method, scope and mode of supervision over execution judgments in juvenile proceedings, family judges are authorized to supervise over facilities in which minors are held.

Such supervision shall be exercised with respect to several matters. Family judges are obliged to examine the legality of minors detention; respect of their rights; living conditions; educational measures and safety procedures used in the facility; minors access to health care, educational and cultural activities; timeliness and accuracy in complaint handling.

Family judge's monitoring visit do not have to be announced. After each of them judge shall draw up a report describing the visit and post-audit recommendations. Facility's director has 14 days to comment the recommendations. Post – audit meeting can also be arranged. After the deadline to implement recommendations the facility director should report on actions taken.

To improve the family judges supervision over facilities for minors president of the Circuit Court is obliged to organize once a year a meeting with all supervisors, facilities' directors and their managing bodies.

Facilities, that HFHR have visited were regularly monitored by family judges. During monitoring visit they have inspected all the rooms, talked with staff and minors. In one of the facilities they have also participated in pedagogical council.

Interviews with facilities' directors shows that family judges usually are satisfied with monitoring results. During visits they point out minor things that have to be changed. More serious violations are included in the final report.

According to the facilities' director judges who supervises them are usually focused on solving problems, not just finding negative aspects of their work.

## 7. Monitoring carried out by independent bodies

In recent years facilities in which minors were deprived of liberty, were visited by representatives of NGO's.

During 25 years of its activity Helsinki Foundation for Human Rights several times conducted monitoring of the facility where children were kept. Representatives of HFHR examined Correctional Facilities, Youth Educational Centers, Police Remand Homes for Children and Psychiatric Hospitals. They inspected rooms, verified living conditions, quality of meals and access to medical care.

Association for Legal Intervention and Helsinki Foundation for Human Right conducted in 2012 and 2014 a monitoring of Guarded Centers for Foreigners. The first report, *"Migration is not a crime"*, was issued in the wake of the 2012 protest of foreigners placed in guarded centers. This year's monitoring aimed to check how the situation has improved and whether promises made by public authorities have been fulfilled. During monitoring visits special attention was given to the situation of children held in this facilities. Visiting organizations verified whether children detained there have proper access to education. They also examined the protection of children who are held in Guarded Centers for Foreigners without parents. In the opinion of the monitoring organizations detention of children in such facilities might be recognized as inhuman or degrading treatment. According to the Report *"Still Behind Bars"* from 2014<sup>19</sup> since 2012, guarded centers for foreigners have undergone visible changes, including the relaxation of the regime. Nevertheless, many things still need to be improved.

<sup>19</sup> The Report *"Still Behind Bars"* is available at: [http://www.hfhr.pl/wp-content/uploads/2014/05/HFPC\\_SIP\\_raport\\_wciaz\\_za\\_kratami.pdf](http://www.hfhr.pl/wp-content/uploads/2014/05/HFPC_SIP_raport_wciaz_za_kratami.pdf) (24.07.2014)

The conducted monitoring showed that Polish authorities have taken a number of steps to reform the guarded centers. For instance, foreigners have been given more freedom to move within the centres, or a free access to mobile phones. Also, repressive practices, such as roll-calls, compulsory attendance at meals, personal and room searches, have partially been curtailed. Still, what has not changed is the prison-like look of the centers and a limited access to psychological and legal counselling. On top of that, increasingly more children stay at the centers. Minors currently make up nearly a quarter of the centers' population, as compared to 10 per cent recorded during the previous monitoring. The authors emphasized that it shall never be in the best interest of the child to be kept in detention due to reasons related to migration. Children are kept in guarded centers surrounded by barbed wire fences, where playrooms have bars on the windows and access to education is not sufficient. These factors are not conducive to the child's development. Both the HFHR and the Association for Legal Intervention make the point that detention of children should be absolutely forbidden.

The monitoring also revealed practices violating the dignity of foreigners. For instance, those who need to see a doctor are still transported handcuffed, in prison vans, which is a humiliating experience for them. They feel like criminals and are seen as such by the Polish people whom they meet. Regrettably, a practice of addressing foreigners by their identifications numbers has not been totally abandoned. Another problem is that foreigners detained in the centres don't have proper access to legal aid.

The latest monitoring of children facilities is being conducted since 2013 by HFHR. Its financed by European Commission project "Children Deprived of Liberty". During that project Correctional Facilities, Children's Shelters, Youth Educational Centers, Psychiatric Hospitals and Nursing Homes are visited. During monitoring HFHR representatives pays special attention to living conditions, minors' right to privacy (in the context of electronic surveillance system), access to education, social reintegration, religious services and medical care. HFHR representatives were also interested in issues concerning use of coercive measures, disciplinary punishment and transitional room.

Conducting monitoring has to be preceded with various of formal requirements. Consent of Minister of Justice has to be given when visiting Correctional Facilities and Children's Shelters. Similarly visit to Police Remand Home for Children have to be preceded by obtaining consent from Head of Police. Although Minister of Education pointed out that it has no power to give consent to a visit in Youth Educational Centers, it indicated that it supports the project's objectives. It means that all Youth Educational Centers monitoring were dependent of facility's director consent. Some of them refused consent for monitoring visit arguing that in last months they were visited by numerous monitoring bodies and everything was correct.



## **V. Complaint mechanism – legal framework**

According to the art. 63 of the Constitution everyone shall have the right to submit petitions, proposals and complaints in the public interest, in his own interest or in the interests of another person - with his consent - to organs of public authority, as well as to organizations and social institutions in connection with the performance of their prescribed duties within the field of public administration. The procedures for considering petitions, proposals and complaints shall be specified by statute.

These issues are clarified by Code of Administrative Procedure. Pursuant to its art. 237 and 244 complaints and motions shall be handled without any unnecessary delay in 14 days (it refers only to complaints and motions that do not require a collection of evidence, explanation or information). Complaints which require agreement, conducting explanatory proceedings or examining the files. There is a deadline for such complaints should be handled within a month.

### **1. The Ombudsman**

The Ombudsman in Poland is the main body established to protect rights and freedoms. According to the art. 80 of the Constitution of the Republic of Poland everyone shall have the right to apply to the Ombudsman for assistance in the protection of his freedoms or rights infringed by organs of public authority.

Principles of Ombudsman operation were set up in the Ombudsman Act of 15 July 1987 on Human Rights Defender. According to its article 9 measures shall be taken by the Ombudsman on request of citizens, their organizations, self-government organs and on the Ombudsman own initiative.

Application to the Ombudsman does not require any particular form. Such an application can be submitted in writing, orally (the employee of the Office of the Ombudsman prepares the protocol about the reception of the application) or in electronic form. However, according to the practice, the application should contain first name and surname; correspondence address; exact information about the subject of the case, including arguments indicating the violation of somebody's freedoms or rights; necessary documents (copies) which are in the possession of the applicant. However lack on one of these documents elements does not result in the application being left without examination. It has to be emphasized that application to the Ombudsman is free of charge

Having become acquainted with each application received, The Ombudsman may take up the case, instruct the applicant as to whatever action the person is entitled to take, convey the case according to competence, abandon the case, against notification thereof the applicant and the person involved.

After case examination the Ombudsman is entitled to explain applicant that no infringement of liberties and rights of a human and a citizen has been found; refer to the agency, organization or institution whose activity has been found to have caused an infringement of the liberties and right of a human and a citizen and ask them to apply measures provided by law; such motion may not, however, infringe upon independence of the judiciary. The Ombudsman is also able to demand that proceedings be instituted in civil cases, participate in any ongoing proceedings with the rights enjoyed by the prosecutor. It may also demand that preparatory proceedings be instituted by a competent prosecutor in cases involving offences prosecuted ex officio, ask for instituting administrative proceedings, lodge complaints against decisions to administrative court and participate in such proceedings with the rights enjoyed by the prosecutor. The Ombudsman is also entitled to move for punishment as well as for reversal of a valid decision in proceedings involving misdemeanor, under rules and procedures set forth elsewhere and lodge cassation or extraordinary appeal against each final and valid sentence, under rules and procedures set forth elsewhere.

Number of complaints received by the Ombudsman's Bureau concerning children's rights protection in resocialisation institution									
year 2012					year 2013				
<i>Police Remand Home for Children</i>	<i>Children Shelter</i>	<i>Correctional Facility</i>	<i>Educational Centres for Juveniles, Juvenile Sociotherapies Centers</i>	<b>Total</b>	<i>Police Remand Home for Children</i>	<i>Children Shelter</i>	<i>Correctional Facility</i>	<i>Educational Centres for Juveniles, Juvenile Sociotherapies Centers</i>	<b>Total</b>
0	4	6	17	<b>27</b>	0	3	2	5	<b>10</b>

Number of complaints concerning children's rights protection in resocialisation institutions with positive outcome									
year 2012					year 2013				
<i>Police Remand Home for Children</i>	<i>Children Shelter</i>	<i>Correctional facility</i>	<i>Educational Centres for Juveniles, Juvenile Sociotherapies Centers</i>	<b>Total</b>	<i>Police Remand Home for Children</i>	<i>Children Shelter</i>	<i>Correctional facility</i>	<i>Educational Centres for Juveniles, Juvenile Sociotherapies Centers</i>	<b>Total</b>
1	0	1	9	<b>11</b>	0	1	1	10	<b>12</b>



## 2. The Ombudsman for Children

Although the institution of Children Ombudsman was described in the art. 72 of Constitution of the Republic of Poland, the grounds for its operation have to be sought in Act of 6 January on Children Rights Defender. The Ombudsman for Children is independent of other state authorities and is answerable only to the Sejm on principles defined in a separate law. His budget is independent of the Government. The Ombudsman for Children is appointed by the Sejm with the consent of the Senate for a term of office of 5 years; one re-election is possible.

According to art. 1. 2. of the act of 6<sup>th</sup> January 2000 on the Ombudsman for Children (Journal of Laws Dz. U. of 6th January 2000) The Ombudsman for Children, hereinafter referred to as "the Ombudsman", shall safeguard the rights of children as set forth in the Constitution of the Republic of Poland, the Convention on the Rights of the Child and other regulations of law, with respect for the responsibility, rights and obligations of parents. In performing his duties, the Ombudsman shall be guided by the best interest of the child and shall take into consideration that family is the natural environment for the child to develop. The Children Ombudsman is entitled to examine any case, require information or documents from public authorities. The Children Ombudsman is also able to initiate and participate in civil proceedings and demand prosecutors proceedings to be initiated. It is empowered to conduct analyses and opinions. The Children Ombudsman may also refer to the public authorities and ask them to take action in children case.

The Ombudsman for Children is obliged to submit an annual report to the Sejm and Senate about his actions and provide information on the state of respect for the rights of the child in Poland.

The Act on Children Rights Defender does not specify any form or conditions that possible complaint on children rights have to meet. It means that Children Ombudsman should recognize complaint brought both in writing or orally.

The Ombudsman for Children shall perform his duties with the assistance of the Bureau, which consists of specialized organizational units. One of the Ombudsman Bureau's department is responsible for monitoring the rights of children and intervening in matters relating to the implementation of the right to education, right to family, staying in a foster family or a care houses and protection of children against violence, cruelty, exploitation and demoralization.

According to the Report of the Ombudsman for Children's activities in 2013 the most important cases conducted by the Ombudsman related to stay of children in special institutions were:

- the Ombudsman for Children received information about the bad conditions of hygiene and sanitary conditions in the building of Youth Educational Center in D.
- the Ombudsman for Children received a complaint concerning the unworthy treatment of juvenile in Shelter for Juveniles in M. It is reported that girls, dressed only in underwear, were placed disciplinary in rooms without equipment, so-called transition room. Minor signaled the need to go to the toilet to the camera monitoring because of the lack of special devices. Supervisory activities undertaken at the request of the Commissioner-Department of Decision Implementation and Probation of the Ministry of Justice confirmed that three graduate placement in temporary places that were not equipped in accordance with § 44 paragraph. 4 and § 51 paragraph. 5 of the Regulation of the Minister of Justice of 17 October 2001 on correctional facilities and shelters for juveniles (OJ z2001, No. 124, item. 1359, as amended. Amended.)

Year	Number of complaints received by the Ombudsman for Children concerning the possibility of irregularities in resocialisation institutions					
	Youth Educational Centers	Sociotherapeutic Youth Center	Children Schelter	Correctional Facility	Remand Home for Children	Total
2012	25	6	2	2	1	36
2013	17	5	0	3	0	25
2014	9	1	0	3	0	13

Year	Number of irregularities confirmed					
	Youth Educational Center	Sociotherapeutic Youth Centers	Children Shelters	Correctional facility	Remand Home for Children	Total
2012	11	1	1	0	1	14
2013	8	2	0	2	0	12

Year	Number of complaints made by minors					
	Youth Educational Center	Sociotherapeutic Youth Centers	Children Shelters	Correctional Facility	Remand Home for Children	Total
2012	3	0	0	1	0	4
2013	5	2	0	1	0	8
2014	4	1	0	2	0	7

### 3. Right to complaint in detention facilities

Under each legislation governing the operation of facilities for children, children are entitled to lodge a complaint. In few cases such right is based on the provisions of an Act. In most of them basis of such right should be sought in certain Regulations governing the operation of the facilities for children. None of these documents contains any restrictions to the form, content or the way in which the complaint should be lodged.

According to article 57 of the Ministry of Justice's Ordinance of October 17, 2001, on Issues Regarding Correctional Facilities and Children's Shelters minors who are held in that facilities shall have a possibility to make a complaint. It should be noted that correspondence of a juvenile placed in a correction centre or children's shelter, except for correspondence with public and governmental authorities, in particular with the Human Rights Defender or Ombudsman for Children and authorities established on the basis of international agreements concerning the protection of human rights, ratified by the Republic of Poland by way of a legislative act, can be controlled by a manager of a correction centre, establishment or juvenile shelter or an authorised pedagogue, solely in the case of reasonable suspicion that it contains information against the legal order, safety and security of the centre, establishment or shelter, public moral rules or can have an adverse impact on the conduct or resocialisation of a juvenile. If it is determined that correspondence contains such information, it is not delivered, while the juvenile concerned and the family court in charge of the case are notified thereof and of the reasons for such decision. The juvenile is informed that he/she has the right to submit a complaint. The non-delivered correspondence is included in the personal records of the juvenile<sup>20</sup>.

Each and every juvenile establishment should have in a generally accessible place, a list of institutions and their addresses where juveniles can submit their requests, proposals and complaints without being controlled by the staff of the establishment. These institutions include: Director of the respective Correction Centre / Juvenile Shelter, President of the respective Regional Court, District Pedagogical Supervision Team at the respective Regional Court, Department of Common Courts and Department of Decision Implementation and Probation at the Ministry of Justice, Office of the Ombudsman for Children, Office of the Human Rights Defender. Additionally, during each visitation of the establishment juveniles are provided with an opportunity to personally submit complaints and requests<sup>21</sup>.

<sup>20</sup> The Report of the Republic of Poland on the implementation of the provisions of the Convention on the Rights of the Child in the years 1999-2010.

<sup>21</sup> *Ibidem*.

	Complaints concerning the functioning of the correctional centres for juveniles and shelters for juveniles to the Ministry of Justice <sup>22</sup>			Complaints concerning the functioning of the correctional centres for juveniles and shelters for juveniles to the courts <sup>23</sup>
	Number of complaints	Number of complaints defined as justified	Percentage of justified complaints	
<b>2010</b>	17	2	11,8 %	3 <sup>24</sup>
<b>2011</b>	16	1	6,2 %	9 <sup>25</sup>
<b>2012</b>	21	1	4,7%	n/a

This issue was similarly described in the Minister of Internal Affairs' Ordinance on issues regarding rooms for person who were detained, brought to sober; transitional rooms, temporary transitional rooms and Police Remand Homes for Children, their internal regulation and surveillance systems. In accordance with its article 8 minors who are held in Police Remand Homes for Children have a right to make a complaint.

According to the Rules governing stays at Police Remand Homes for Children, the juvenile should be also informed of their rights and obligations orally immediately after being admitted. Immediately after admitting a juvenile into the home, the Director or a member of staff authorised by them, should have a conversation with the juvenile during which they inform them of their rights and obligations, the activities' schedule and the rules governing the facility. This needs to be confirmed by the juvenile's own signature (s. 1(2)). This information includes also the right to make requests, complaints and proposals addressed to the Director of the facility or the designated police officer. Similar obligation is also applicable in other types of detention facilities. However, according to the outcomes of another project the information about juveniles' rights and duties is not always presented in a clear and understandable manner.

It is worth to underline that there is no specific model of information provided to children. As it is mentioned above they should be informed about their rights and obligations immediately after their admitting. In some facilities this obligation is realized only by presenting the special ordinance to the child, in others there is prepared a specific leaflet or a special film explaining the rules governing the facility. Such presentation is usually accompanied by the conversation with the director of the facility or the staff member.

<sup>22</sup> Information about the complaints and requests submitted to the Ministry of Justice in 2012 (*Informacja o sposobie przyjmowania i załatwiania skarg i wniosków skierowanych do resortu sprawiedliwości w 2012 r.*)  
Information about the complaints and requests submitted to the Ministry of Justice in 2011 (*Informacja o sposobie przyjmowania i załatwiania skarg i wniosków skierowanych do resortu sprawiedliwości w 2011 r.*)  
Information about the complaints and requests submitted to the Ministry of Justice in 2010 (*Informacja o sposobie przyjmowania i załatwiania skarg i wniosków skierowanych do resortu sprawiedliwości w 2010 r.*)  
available at: <http://bip.ms.gov.pl/pl/kontakt/informacja-o-sposobach-przyjmowania-i-zalatwiania-spraw/>

<sup>23</sup> Information about the complaints and requests submitted to the Ministry of Justice in 2011 (*Informacja o sposobie przyjmowania i załatwiania skarg i wniosków skierowanych do resortu sprawiedliwości w 2011 r.*)  
Information about the complaints and requests submitted to the Ministry of Justice in 2010 (*Informacja o sposobie przyjmowania i załatwiania skarg i wniosków skierowanych do resortu sprawiedliwości w 2010 r.*)  
available at: <http://bip.ms.gov.pl/pl/kontakt/informacja-o-sposobach-przyjmowania-i-zalatwiania-spraw/>

<sup>24</sup> Complaints regarding the functioning of the institutions for juveniles were registered in the district of appeal: Gdansk - 1, Lublin - 1 and Poznan - 1.

<sup>25</sup> Complaints regarding the functioning of the institutions for juveniles were registered in the district of appeal: Bialystok - 4, Katowice - 1, Gdansk - 1, Lublin - 3.

It should be also noted that since 2004, *the Police* operates a **network of plenipotentiaries for the protection of human rights**. The main task of them is the promotion of human rights and ensuring the observance of standards of protection in the Police as well as ongoing monitoring of police officers for their actions in respect of human dignity and human rights and to propose solutions to maintain high standards in this area. According to the information obtained by the HFHR these way of complaining is not used at all by the juveniles. It is the consequence of the fact that juveniles and staff are not familiar with this institution (the information about the plenipotentiaries is not available in detention facilities). The Police authorities get information of the functioning of the Police Remand Home for Children from the report of NPM and other monitoring bodies and they find them very useful.

Also Minister of Labor and Social Policy of August 23 2012 Ordinance on *nursing homes* instructs the **administration of nursing homes** to support nursing homes' residents in lodging complaints and requests.

Minors who are *residents of Youth Educational Centers, Youth Sociotherapeutic Centers, Special education needs schools and special education centers* also have right to make a complaint. According to Minister of Education of Ordinance of 7 March 2005 on framework statutes of public institutions, statutes of such facilities should include description of how to lodge a complaint concerning children rights violation.

The situation of a child who is held in *psychiatric hospital* is governed by the Act of 19 August 1994 on Mental Health. In accordance with its content a child who is a patient psychiatric hospital shall have right to make a complaint. Such complaint might be lodged e.g. to **the Ombudsman of Psychiatric Hospital Patients**. This authority may inform the patient about his rights, help him in making complaint to hospital authorities or other body.

According to Act of 20 August 2003 on Aliens, *an alien placed in guarded centers* shall be entitled to submit complaints, petitions and motions to the head of the center, **to the Border Guard or Police**.

## VI. From theory to practice: Analysis

### 1. From theory to practice: monitoring mechanism

#### National Preventive Mechanism

At the beginning the **Human Rights Defender's Office** was allocated no additional budget or personnel to fulfill these additional duties. This was the subject of a public vocal protest by the Human Rights Defender, Professor Irena Lipowicz. For this reason the control mechanisms provided in the Optional Protocol to the CAT was considered as ineffective and illusory. There are 1,800 units that need to be monitored; this requires the involvement of 38 persons, whereas in 2011 there were 7 persons. Therefore, there were only 89 inspections in 2011. According to information provided by the Human Rights Defender in the reported time, no sufficient grants were allocated in 2011 for this purpose. The budget projections for 2011 anticipating raising funds up to 1.740.000 PLN were unsuccessfully submitted to Polish Parliament and finally budget was 1.265.000 PLN. The situation was supposed to change since 2012 due to additional funds granted to Human Rights Defender, which, however, still do not meet United Nations standards. In 2012 the overall budget for Human Rights Defender was 38.190.000 PLN. Out of this, the budget for the NPM amounted to 1.629.000 PLN. According to the annual report of the Human Right Defender, the budget in 2012, as in previous years, was not sufficient to fulfill all the duties described by OPCAT. In 2013, 3.131.342zł was allocated for the activities of the Team of the National Preventive Mechanism. As it was mentioned above, according to the annual report of 2012, similar to the previous years, the financing allocated for the activities of the National Preventive Mechanism was insufficient to implement the tasks of the NPM defined by the OPCAT. Such information was not included in the Report of 2013.

Owing to financial problems, activities of the Human Rights Defender were the subject of criticism of NGOs, especially of the coalition Agreement for the Implementation of OPCAT (*Porozumienie na rzecz wprowadzenia OPCAT*), which aims for proper and comprehensive implementation of the

document. With reference to the subject of the Mechanism's reports whenever NPM encounters examples of serious human rights' violations or the risk of such breaches, its recommendations are formulated too gently. NPM should firmly demand an immediate cessation of negative practices, that have been noticed during NPM's visits. In our opinion it is also necessary to directly indicate institutions in which serious violation of human was identified.

NPM's annual reports analysis indicates that there is a lack of effective dialogue between the NPM and Polish Government on the issues that have been noticed during the monitoring. After NPM's report reading it is not easy to determine, whether NPM's recommendation were introduced or whether any disciplinary actions were taken against personnel responsible for violations. It would be far more better if it could be known from the report how the NPM is reducing the risk of future human rights' violations. In particular whether meetings with representatives of the prison system and police, judges or prosecutors are conducted.

Re-visiting the institution should be assessed positively. However, in NPM reports, no detailed comparison of the situation observed during the primary and secondary visit could be found.

Unfortunately, the NPM is still not able to issue opinion on the whole legislation affecting freedom of torture and other forms of ill-treatment. It is important for prevention of torture that the NPM should take the floor in such cases even if it was not formally invited to prepare opinion. It is also important to present its statement in the juvenile justice system.

However, it should be noted that the activity of NPM is very important and have an impact on the standards for people deprived of liberty. National Preventive Mechanism submits its reports to the Ministry of Justice. According to the opinion of the representatives of the Ministry they analyze the realization of the NPM's recommendations. The Ministry formulates an opinion to the report and prepare its comments that are submitted to the NPM. The Ministry does not always agree with all recommendations of the NPM. Despite this fact, the representatives of Ministry of Justice treat NPM as a complementary supervisor to the Ministry of Justice.

According to the information obtained by HFHR, the directors of facilities inform the employees about the findings and recommendations of the monitoring bodies. It is also a subject of a discussion at the special pedagogical meeting. The pedagogy of visited facility informs us that they try also to follow the recommendations for the other institutions. Due to the short period of control, the staff can arrange it so that it is not troublesome. The staff informs us that the monitoring visits give the chance to assess their work from different perspectives. The staff of the facilities positively assess the monitoring procedure of the Polish NPM. They emphasized that delegation is well – prepared and their visit is well-organized. In their opinion its activity does not affect the functioning of the facility.

The representative of NPM emphasizes that the NPM does not have problems with access to the facilities for juveniles because the authorities get used to its mandate to monitor the facilities from the perspective of human rights standards. However, they do not always agree with the NPM's recommendation and sometimes they try to undermine them. The NPM representative pointed out that sometimes it do not find assistance in other monitoring or supervision bodies.

### General assessment of monitoring bodies

It should be emphasized that the frequency of monitoring depends on the facility. The independent monitoring visits (excluding: visits conducted by judges, school superintendent and the Ministry of Justice) are not regularly. For this reason, some of the units are visited every month. In others the monitoring is conducted once every few years.

The directors of visited facilities assess the idea of monitoring visits positively. In their opinion, they are the most interested in the fact that the institution respect human rights. Such visits allow them to evaluate their work. The recommendations are treated by them as the guidelines for the future. However, in their opinion, too often, the monitoring bodies focus only on formal criteria rather than on activities for juveniles and their efficiency. They concluded that the legal acts usually include some general regulations that are difficult to interpret. In their opinion monitoring bodies' recommendations helps them to understand the proper meaning of this regulation. Some of the directors note that the



monitoring visit help to overcome the routine of their functioning and they are the impulse to modify their outdated practice.

The directors are irritated by the fact that recommendations of different monitoring bodies are contradictory. As a consequence, they have problems with sufficient implementation of them. They pointed also that the monitoring bodies should be aware of the monitoring conducted by other institutions and their recommendations.

The directors pointed out that some of the recommendations should be addressed to the bodies responsible for coordinator of the system of juvenile justice, because not all of the recommendations can be implemented only at the level of the institution. They would like to have the impression that both monitoring body and the facilities' staff have a common goal: to ensure the rights of juveniles.

One of the interviewed directors would like to be treated as a partner by the body who carry out monitoring. He would like to contact with them in current human rights problems connected with the functioning of the institution.

Former deputy director of one of the facility reported objections to suggesting questions asked during the monitoring visits. He pointed a bad atmosphere during some monitoring studies. In his opinion, such atmosphere affected the contact between juveniles and staff of the facility. Some of staff claim that the monitoring bodies too often conduct the visit in a hurry. In their opinion that affects the results of monitoring.

The juveniles do not remember the names of monitoring bodies. In one of the facility the remember only the recommendations of sanitary inspectorate which limited the amount of salt used in facilities' kitchen. However, they pointed out that during monitoring visit they do not feel comfortable and they recognize a kind of "zoo effect" because they feel like a part of the exhibition.

## 2. From theory to practice: complaint mechanism

During our visits we identify some problems that may appear in the complaints mechanism in Poland:

- some of the accusations invoked in complaints might not be involved in the complaint proceedings.
- some applications are qualified as requests not complaints
- important circumstances of the examined case might not be documented with proper evidence.
- applicant might not be informed about the closing date when the complaint is handled, when it is impossible to meet the deadline regulated by the binding law or exceeding the initially set deadline of handling the complaint, about which the applicant was informed.
- cases might be handled by the director of the facility, even though the competent person for the above cases is the independent body
- handling the case submitted by the third person and concerning the detained one, without taking into consideration regulations which states that petitions, complaints and motions can be submitted in the public, personal or somebody else interest, with the provision that the person agrees.

Ministry of Justice monitors how the right to make a complaint is implemented. For this reason during facilities' monitoring supervisors ask minors and staff members about that right. In the opinion of Minister of Justice representatives legal solutions concerning that issue has to be considered as effective ones.

In 2013 12 complaints on Correctional Facilities and Children's Shelters were delivered to the Ministry of Justice. They were lodged by facilities' staff members, minors, they parents or tutors. In the same year 15 complaints were handled. Only 5 of them were considered to be justified. 9 were stated to be unfounded. 1 one was dealt in different way.

According to the representatives of Ministry of Justice in last year minors' awareness of right to complaint has risen. In their opinion it was caused by National Preventive Mechanism monitoring and educational activities organized by the facilities.

In the opinion of NGO representatives in some of the facilities complaint secrecy is negated by the duty to read the complaint aloud in front of other minors. Majority of facilities inform minors about the complaint procedure. In their opinion, despite the fact that on information boards addresses and phone numbers to supervising institutions and human rights bodies can be found, the minors still do not know how to lodge a complaint. Handbook on that issue, sample complaint form and easy access to envelopes and stamps would be useful. However, in the opinion of NGO representatives questions about negative consequence of lodging complaint has to be asked.

Minors, that we have talked to, have a knowledge about complaint procedure. They were informed about that during their admission to the facility. Information on that issues can be also found on information boards. However, minors do not see any need for making an official complaint. They prefer to use internal complaint – tell their tutor or facility's director about their problems. In minors' opinion such system is quite effective. For example, in one of the visited facilities a minor has complained to director on the behavior of one of staff members. As a result, that person lost his job.

The directors of the facilities treats complaints as an information about the current problems of minors and the functioning of the facility. Despite the fact that they find complaint procedure very useful, they claim that it is not used very often by minors. Only in one facility, the special point for anonymous complaint was established. The directors, similar to juveniles, treats the internal procedure as the most effective.

## **VII. Conclusions**

### **1. Monitoring mechanism**

The importance of monitoring in facilities for juvenile cannot be negated. All of the key actors in juvenile justice system emphasize the role of the recommendations of monitoring bodies. In their opinion these recommendations significantly improved juveniles' awareness about their rights and human rights standards. Despite this positive opinion, some elements of the monitoring visits should be modified. Proposed changes may lead to more effective implementation of the recommendations formulated by monitoring bodies.

#### **Recommendations:**

- strengthening cooperation between different monitoring bodies
- exchange of post-audit report between different monitoring bodies
- elimination of contradictory recommendations formulated by different bodies or different representative of the same body
- increasing the number of the practitioners working for the monitoring bodies
- submitting the recommendations to the institution competent for their implementation (e.g. the law changes recommendation should be addressed to the Legislative authority instead of the director of the facility)
- identifying of good practices and including them in the post-audit report
- making efforts to maintain good atmosphere during the monitoring
- making effort to reduce the onerousness for juveniles during visits.

## 2. Complaint mechanisms

The complaint mechanism in facilities for juveniles exists but it is not very popular among juveniles. For most of them, more effective is informal conversation with the minor. However, they think that it can be used in special circumstances.

### Recommendations:

- ensuring the right to lodge an anonymous complaint
- facilitation the procedure to lodge a complaint to independent body by creating template of such complaint
- ensuring that there will be no negative consequences of lodging the complaint
- providing information about the results of the complaint.