



Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.: General
29 August 2019

Original: English

Committee against Torture

Concluding observations on the seventh periodic report of Poland*

1. The Committee against Torture considered the seventh periodic report of Poland (CAT/C/POL/7) at its 1759th and 1762nd meetings (see CAT/C/SR.1759 and CAT/C/SR.1762), held on 23 and 24 July 2019, and adopted the present concluding observations at its 1776th meeting, held on 5 August 2019.

A. Introduction

2. The Committee welcomes the dialogue with the State party's delegation and the oral and written replies provided to the concerns raised by the Committee.

B. Positive aspects

3. The Committee welcomes the ratification of the following international instruments by the State party:

(a) The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, in 2014;

(b) The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, in 2015;

(c) The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, in 2015.

4. The Committee also welcomes the State party's initiatives to revise its legislation in areas of relevance to the Convention, in particular:

(a) Amendments to the Code of Criminal Procedure that eliminated the authority to refuse to make files available in connection with remand or the extension thereof; that established that complaints against pretrial detention must be examined no later than seven days from the date of the transmission of the complaint to the court; that extended the time allowed for the submission of bail bonds, which may result in converting pretrial detention into an alternative measure; that ensured that pretrial detention was not extended beyond 12 months if the custodial sentence does not exceed 3 years, or beyond 2 years if the custodial sentence does not exceed 5 years; and that made it possible to use the assistance of an interpreter for communication between the suspect or the accused and his or her attorney, which entered into force on 1 July 2015;

* Adopted by the Committee at its sixty-seventh session (22 July–9 August 2019).



(b) The amendment, in 2014, of criminal law provisions to introduce ex officio prosecution of the sexual crimes specified in articles 197–199 of the Penal Code, and to repeal article 205, thereby abolishing the mode of prosecution applied in cases of rape committed prior to 27 January 2014.

5. The Committee further welcomes the initiatives of the State party to amend its policies, programmes and administrative measures to give effect to the Convention, including:

(a) The adoption by the Council of Ministers of the National Programme for Counteracting Domestic Violence for 2014–2020, in 2014, and its adoption of the National Action Plan for Equal Treatment;

(b) The issuance by the Prosecutor General of guidelines on the conduct by prosecutors of criminal proceedings related to deprivation of life and inhuman or degrading treatment or punishment perpetrated by police officers or other public officials, in 2014;

(c) The adoption by Parliament of the programme for the modernization of the Prison Service from 2017 to 2020, in 2016;

(d) The issuance by the Chief of Police of regulation No. 14 on activities to counter trafficking in persons, in 2016;

(e) The introduction of an electronic surveillance system as a form of custodial sentence for people sentenced to less than a year of imprisonment, and the release of 2,735 such persons, in 2016;

(f) The entry into force of a document regulating the use of electroshock weapons by the police, in August 2018.

C. Principal subjects of concern and recommendations

Pending follow-up issues from the previous reporting cycle

6. In its previous concluding observations (CAT/C/POL/CO/5-6, para. 29), the Committee requested the State party to provide further information regarding areas of particular concern, including on the strengthening of legal safeguards for persons deprived of their liberty (para. 8), on protection for asylum seekers (para. 13) and on the conduct of prompt, impartial and effective investigations into all reports of torture or ill-treatment (para. 18); and follow-up information on remedies and redress provided to victims of torture and ill-treatment (para. 21). The Committee expresses its appreciation for the State party's follow-up response provided on 19 November 2014 (CAT/C/POL/CO/5-6/Add.1). It notes with regret, however, the absence of a reply to its request for additional information contained in the letter sent by the Rapporteur for follow-up to concluding observations on 29 August 2016. In view of the information provided and the concerns described below (paras. 12, 15, 16, 18, 25, 26, 31, 32, 34, 36 and 38), the Committee considers that the recommendations in paragraphs 8, 13, 18 and 21 of its previous concluding observations have been partly implemented.

Definition of torture as a separate crime in the Penal Code

7. The Committee is concerned:

(a) That its previous recommendations regarding the absence in the State party's Penal Code of a specific offence of torture, in accordance with article 4 (2) of the Convention (A/55/44, paras. 92–95, CAT/C/POL/CO/4, para. 6, and CAT/C/POL/CO/5-6, para. 7), have not been implemented to date;

(b) At the continued absence of a definition of torture that includes all the elements contained in article 1 of the Convention and provides for punishment commensurate to the gravity of this crime;

(c) That various provisions of the Penal Code that continue to be “applied in cases of torture” and that cover a broader range of offences such as violation of bodily

integrity, punishable threats, dependent person abuse, causing bodily injury or forcing another person by violence or unlawful threat into a specific behaviour, the extortion of confessions by a public officer with the use of violence, unlawful threats and physical or psychological abuse, as cited by the delegation of the State party, do not reflect the gravity of such crimes adequately and render impossible fast and impartial investigations and the imposition of appropriate penalties on the perpetrators;

(d) That an attempt by the Ministry of Justice in 2017 to introduce a definition of torture in the Penal Code was defeated at first reading in the Sejm (the lower house of Parliament);

(e) That the statute of limitations regarding acts of torture has not been unequivocally repealed (arts. 1, 2 and 4).

8. **The Committee:**

(a) **Reiterates its previous recommendations to the State party and urges it to take effective legislative measures to include torture as a separate and specific crime in its Penal Code, and to adopt a definition of torture that covers all the elements contained in article 1 of the Convention;**

(b) **Urges the State party to ensure that penalties for torture are commensurate with the gravity of this crime, as set out in article 4 (2) of the Convention, which would also help to differentiate acts of torture from ill-treatment. In addition, the State party should ensure that perpetrators of torture are punished in accordance with the seriousness of the offence, in keeping with article 4 (2) of the Convention;**

(c) **Once again draws attention to its general comment No. 2 (2007) on the implementation of article 2, which states that serious discrepancies between the Convention's definition of torture and that incorporated into domestic law create actual or potential loopholes for impunity (para. 9);**

(d) **Urges the State party to ensure that the absolute prohibition of torture is non-derogable and that acts of torture are not subject to any statute of limitations and are not limited to those arising from crimes against humanity and extreme suffering caused by an official;**

(e) **Requests the State party to provide it with information regarding the status and outcome of the analysis undertaken by the Ministry of Justice of whether torture should be included in the Penal Code.**

Status of the Convention in the domestic legal order

9. While taking note of the assertion that the Convention is directly applicable in the State party, the Committee is concerned:

(a) That, according to available information, the Convention was cited as a source of law for the first and only time in a ruling by a judge of the Regional Court in Lublin in 2018;

(b) That the implementation of the Convention in the State party cannot but be affected by reforms of the country's judicial system, including those concerning the Constitutional Tribunal, which hamper the constitutionally protected principle of judicial independence and enable the legislative and executive branches to interfere with the administration of justice, as noted in the report of the Special Rapporteur on the independence of judges and lawyers on his mission to Poland (A/HRC/38/38/Add.1) (arts. 1, 2 and 4).

10. **The State party should:**

(a) **Clarify the nature of the Convention's status in its domestic legal system and ensure that provisions of the Convention are fully applicable in the national legal order as a source of law;**

(b) **Ensure that judges, magistrates, prosecutors, lawyers and other public officials receive specific training on applying the Convention so that they are in a position to invoke the rights established in its provisions, assert them and apply them directly in court;**

(c) **Provide the Committee with specific information on cases in which the Convention has been invoked and directly applied in domestic courts;**

(d) **Review the ongoing judicial reform to ensure that it complies with international standards of independence of the judiciary, principles of rule of law and separation of powers and the State party's Constitution.**

Use of evidence obtained by illegal means

11. The Committee is seriously concerned that, under article 168a of the Code of Criminal Procedure, evidence gathered illegally, including by way of a criminal offence, is not considered to be inadmissible in criminal proceedings unless it has been obtained as a result of murder, deliberate damage to health or deprivation of liberty. It is further concerned that statistical data concerning cases in which charges have been dismissed on account of admission of evidence or testimonies obtained under torture or improper treatment are not collected, and that forced confessions may therefore still be used as evidence in courts (arts. 2, 15 and 16).

12. **The Committee recommends that the State party:**

(a) **Take effective steps to enact legislation that explicitly prohibits the admissibility of evidence obtained as a result of torture and ill-treatment in all judicial proceedings, in conformity with article 15 of the Convention, and repeal article 168a of the Code of Criminal Procedure;**

(b) **Ensure that courts examine the circumstances under which statements and confessions, including self-incriminating statements of persons interrogated as witnesses, have been made and that, if a claim of coerced confession has been made, they suspend proceedings until the claim has been thoroughly investigated;**

(c) **Take immediate steps to ensure that, in practice, statements made as a result of torture may not be invoked as evidence in any proceedings, except against the person accused of torture as evidence that the statement was obtained under torture;**

(d) **Ensure that a review of convictions based solely on confessions is conducted, especially if the confessions have been made under torture, and that prompt and impartial investigations are carried out into such cases, so that persons convicted on the basis of coerced evidence are afforded a new trial and adequate redress and the perpetrators are prosecuted and punished, including under the principle of command responsibility;**

(e) **Provide training to judges and prosecutors in order to ensure their ability to effectively identify torture and ill-treatment and investigate all allegations of confessions obtained under torture;**

(f) **Collect statistical information on testimonies that were dismissed on the basis that they were obtained under torture or improper treatment and provide it to the Committee in the next periodic report.**

Recent amendments to the Penal Code

13. The Committee is gravely concerned about the amendments to the Penal Code adopted by the Sejm in May 2019, after only two days of deliberations, which, according to the Council of Europe Commissioner for Human Rights, would negatively affect certain categories of prisoners; introduce harsher penalties for numerous crimes; raise the upper limit for prison sentences to 30 years as well as raise the lower limit; restrict the ability to hand down non-custodial sentences; extend the period of eligibility for conditional release; lengthen the period of imprisonment after which life-sentenced prisoners or those sentenced

to at least 20 years of imprisonment may apply for conditional release from 25 to 35 years; and introduce the penalty of life imprisonment without parole (arts. 2, 4, 11–13 and 16).

14. The Committee calls on the Senate to give careful and thorough consideration to the substance of the amendments to the Penal Code adopted by the Sejm in May 2019, and to their potential implications, including in light of the State party's international obligations. If adopted, these amendments could, inter alia, give rise to a significant increase in the country's prison population and would hinder respect for the principle of human dignity and of a humanitarian approach to the treatment and rehabilitation of prisoners, as enshrined in the Constitution of Poland and the international human rights instruments to which it is a party.

Fundamental legal safeguards

15. The Committee is concerned:

(a) That persons deprived of their liberty continue not to enjoy in practice all the fundamental legal safeguards from the very outset of their deprivation of liberty, such as prompt access to a lawyer or legal adviser before their initial interrogation;

(b) That officers in police stations are not aware of their responsibility to provide persons entitled to State-funded legal aid with a list of on-duty attorneys and legal advisers, which can reportedly take days or even weeks, so that public defenders are generally not able to participate in the initial questioning of an arrested person;

(c) That deficiencies in the system of police registers result in lawyers having difficulties in locating their clients before their initial interrogation; and that some police stations lack rooms that would guarantee privacy, which obliges lawyers and their clients to meet in corridors and in the presence of police officers;

(d) That the Code of Criminal Procedure continues to limit the confidentiality of lawyer-client communication, and that restrictions relating to private communication may last up to 14 days and are not subject to judicial control;

(e) That prosecutors may decide that a suspect can be interrogated without the participation of their lawyer;

(f) That proposed draft amendments to the Executive Penal Code would limit the access of persons deprived of liberty to lawyers and would introduce body searches that may be considered degrading, including those conducted by persons who are not of the same sex; and that persons deprived of their liberty may not have prompt access to a medical examination (art. 2).

16. The State party should take effective measures to guarantee that all detained persons are afforded, in law and in practice, all fundamental legal safeguards from the very outset of their deprivation of liberty, in accordance with international standards, including the safeguards mentioned in paragraphs 13 and 14 of the Committee's general comment No. 2. In particular, it should:

(a) **Take effective steps to ensure that all detained persons have prompt access to legal assistance, including on-duty attorneys and legal advisers provided by State-funded legal aid, before their initial interrogation;**

(b) **Ensure that officers in police stations are aware of their responsibility to provide persons entitled to State-funded legal aid with a list of on-duty attorneys and legal advisers;**

(c) **Ensure that deprivations of liberty are recorded in a national register at all stages, including transfers to different facilities, that lawyers and legal advisers have access to such information, and that lawyers and legal advisers are able to obtain prompt access to their clients and communicate with them in private in adequate premises;**

(d) **Review the provisions of the Code of Criminal Procedure that allow for limits to be placed on the confidentiality of lawyer-client communication; subject**

these provisions to judicial control and to the possibility of appeal; and ensure that prosecutors do not interrogate suspects without the participation of their lawyers;

(e) **Ensure that detained persons receive a confidential medical examination by an independent doctor within 24 hours of their arrival in a place of detention; that they have the right to request and receive an independent medical examination at any time, out of the sight and hearing of law enforcement personnel unless the doctor requests otherwise; and that they are not subjected to searches amounting to degrading treatment by persons of the opposite sex;**

(f) **Take effective steps to bring its legislation and practice into line with international instruments to which it is a party, including the Convention and, inter alia, Directive 2013/48/EU of the European Parliament and of the Council.**

Pretrial detention

17. The Committee is concerned:

(a) At the extent of application and the duration of pretrial detention, and that the Code of Criminal Procedure does not provide for a maximum period of pretrial detention;

(b) That pretrial detention can be extended without justification; that courts have difficulties justifying extensions and that the Code of Criminal Procedure allows for six-month extensions of pretrial detention after the first verdict of the court of first instance;

(c) That the Code of Criminal Procedure stipulates that pretrial detention is not applied in cases where a crime carries a custodial sentence of one year or less; and that appeals against decisions on pretrial detention have a low rate of success (arts. 2, 14 and 16).

18. **The State party should:**

(a) **Ensure that pretrial detention is used as an exception and a measure of last resort and is applied for a limited period of time; and establish a maximum period prescribed by law that can be monitored by a court of law;**

(b) **Take measures to put a stop to the practice of extending pretrial detention, and in particular to the six-month extensions of pretrial detention after the initial verdict of the court of first instance that are allowed under the Code of Criminal Procedure, to ensure that pretrial detention is not prolonged arbitrarily and to ensure that pretrial detainees are held separately from convicted prisoners;**

(c) **Consider replacing pretrial detention with non-custodial measures, especially for sentences not exceeding two years, and consider alternatives to detention, in accordance with the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules);**

(d) **Ensure that redress and compensation are provided to persons who are victims of unjustified prolonged pretrial detention.**

Police brutality

19. The Committee is seriously concerned about:

(a) Reports of excessive use of force by the police, including with electric discharge weapons (tasers), against arrested persons who were handcuffed or otherwise immobilized, despite the fact that the law stipulates that force may be used only to ensure compliance with police orders;

(b) Reports that officers who were charged with offences were not sentenced; that, in one case, it was impossible to determine the identities of the police officers who were responsible for using violence; and that persons who have suffered injuries by the police are mostly able to obtain justice only when applying to and receiving a judgment from the European Court of Human Rights;

(c) A credible report that a person who was beaten and had visible bruises and swelling and had signalled to the police that he had health problems was denied access to a medical doctor, and that his injuries were not recorded in his arrest record;

(d) The death in a police station in Wroclaw in May 2016 of Igor Stachowiak after four policemen used a stun gun against him while he was handcuffed; the fact that, despite being accused of committing a crime under article 247 of the Penal Code, those policemen returned to service after a short suspension; and the fact that they have not been suspended from their duties while their case remains pending (arts. 2, 12–14 and 16).

20. The State party should:

(a) **Ensure that all allegations of torture and ill-treatment by law enforcement officials and all deaths in custody are investigated promptly, effectively and impartially by mechanisms that are structurally and operationally independent, with no institutional or hierarchical connection between the investigators and the alleged perpetrators; and ensure that perpetrators, if found guilty, are punished in a manner that is commensurate with the gravity of their acts;**

(b) **Ensure that all persons under investigation for having committed acts of torture or ill-treatment are suspended immediately from their duties and remain so throughout the investigation, while ensuring that the principle of presumption of innocence is observed;**

(c) **Implement the judgments of the European Court of Human Rights; expedite the criminal proceedings against the four police officers allegedly responsible for the death of Igor Stachowiak and inform the Committee about their outcome;**

(d) **Ensure that records of injuries are kept where cases of torture and ill-treatment can be recorded and ensure that all interrogation rooms in all parts of the country have closed-circuit television and the equipment necessary to make video and audio recordings of interrogations;**

(e) **Ensure that the use of electrical discharge weapons (tasers) is strictly compliant with the principles of necessity, subsidiarity, proportionality, advance warning (where feasible) and precaution; and that they are not included as part of the regular equipment of custodial staff in prisons and other places of deprivation of liberty, including police stations; provide information on the 23 eligible entities that, in accordance with national regulations, are authorized to use electrical discharge weapons, and on the characteristics of “non-penetrating missiles”, the modalities of their use and their effects on the human body;**

(f) **Systematically provide training to all law enforcement officials on the use of force, including in the context of crowd control, and on the provisions of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, the Ordinance of 17 September 1990 on the Use of Coercive Measures by the Police and the Act of 24 May 2013 on Coercive Measures and Firearms.**

Rendition programme and other international practices

21. The Committee is concerned that, more than a decade since the conclusion of the rendition and secret detention programmes of the Central Intelligence Agency of the United States of America from 2001 to 2008, which allegedly included torture and ill-treatment of persons suspected of terrorism-related crimes, the State party has failed to elucidate the alleged complicity of and abuse of power by public servants who, in different towns from 2001 to 2005, enabled the establishment of places of detention in Poland. It is also concerned that the Regional Prosecutor’s Office in Krakow has not been able to produce a ruling in case No. PR II Ds. 16.2016. The Committee further regrets the absence of the requested information on diplomatic assurances or the equivalent thereof in relation to cases of refoulement, extradition or expulsion that may have taken place during the period under review (arts. 2, 3, 12 and 13).

22. **The Committee reiterates its recommendation to the State party to complete the investigation into allegations of its involvement in the high-value detainee**

rendition and secret detention programme of the Central Intelligence Agency from 2001 to 2008 and to ensure that persons involved in the alleged crimes of torture and ill-treatment are held accountable. It urges the State party to expedite, to the extent possible, the investigation by the Regional Prosecutor's Office in Krakow of case No. PR II Ds. 16.2016. In addition, the State party should provide updated information on its action pursuant to the issuance of the judgments by the European Court of Human Rights in the cases of *Al Nashiri and Husayn (Abu Zubaydah)*, which became final on 16 February 2016, including in the context of the State party's ratification of the Rome Statute of the International Criminal Court. Finally, the State party should provide information on any diplomatic assurances sought or given by the State party during the period under review.

Commissioner for Human Rights and the national preventive mechanism

23. The Committee is concerned at:

(a) Reports that the Office of the Commissioner for Human Rights, which incorporates the national preventive mechanism, has not received financial resources that would be sufficient to allow it to discharge its mandate fully and effectively and to visit all places of deprivation of liberty;

(b) Reports of insufficient human, institutional and financial resources at the national preventive mechanism, and very low visibility of and knowledge about the mechanism among the general public and law enforcement agencies, which has impeded follow-up action after its visits to places of detention and has hampered the hiring of additional specialized staff;

(c) Personal attacks voiced against, and criticism of, the current Commissioner for Human Rights (ombudsperson), Adam Bodnar, in particular after statements he made in relation to events that took place in June and July 2019;

(d) Credible information that the Commissioner for Human Rights, who was appointed by the Parliament, was called upon to resign by one of the Deputy Ministers of Justice one day after the consideration of the seventh periodic report of Poland, for which the Office of the Commissioner for Human Rights provided an alternative report that was posted on the Committee's web page, potentially amounting to reprisals against the Commissioner for submitting a report to the Committee, which would constitute interference by the executive in the functions of an institution established by the legislature (art. 2).

24. **The State party should:**

(a) **Allocate the amount of financial resources requested by the Office of the Commissioner for Human Rights to enable it to discharge its mandate, and significantly increase the resources provided to the national preventive mechanism in order to enable it to function effectively, hire the necessary specialized staff and fully implement its mandate in accordance with the Optional Protocol to the Convention, including to ensure follow-up to its visits to places of deprivation of liberty. In this connection, the Committee draws the State party's attention to the guidelines on national preventive mechanisms developed by the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT/OP/12/5), according to which States parties should provide their national preventive mechanisms with the necessary resources to operate effectively, ensure that they enjoy complete financial and operational autonomy when carrying out their functions and ensure the impartiality and independence of their members;**

(b) **Conduct an awareness-raising campaign in order to heighten knowledge among the general public, law enforcement agencies and medical institutions about the mandate and work of the national preventive mechanism;**

(c) **Ensure the independence, security and ability to function of the Commissioner for Human Rights so that he or she can fully discharge his or her constitutional mandate, in keeping with international standards.**

Non-refoulement and amendments to the law on protection for foreign nationals

25. The Committee is concerned:

(a) That persons in need of international protection are not always given access to the territory of Poland, in particular at the Terespol border crossing with Belarus and the Medyka border crossing with Ukraine, even in the case of vulnerable persons;

(b) That the draft amendments to the law on protection for foreign nationals, which were adopted in February 2019, may limit further access to the State party's territory, with the introduction of border proceedings under an accelerated procedure whereby a decision is given in 20 days that would result in the refusal of asylum claims, and that appeals to the court in the context of border proceedings would not have a suspensive effect;

(c) That families with children and unaccompanied minors over 15 years of age are being placed in guarded centres for foreigners, where conditions require improvements;

(d) At the insufficient capacity to identify asylum seekers, refugees and other persons in need of international protection who are survivors of torture and the lack of adequate protection and care for survivors of sexual and gender-based violence (arts. 2, 3, 11–13 and 16).

26. **The State party should:**

(a) **Enshrine in its legislation the principle that detention of asylum seekers, and in particular children and vulnerable persons, should be used as a measure of last resort, for as short a period as possible and in facilities appropriate for their status;**

(b) **Ensure that that it complies fully with its obligations under article 3 of the Convention and that individuals under the State party's jurisdiction receive appropriate consideration by the competent authorities and are guaranteed fair and impartial review by an independent decision-making mechanism on expulsion, return or extradition, with suspensive effect, and that such individuals have access to legal assistance;**

(c) **Refrain from placing persons in need of international protection, and in particular children, in guarded centres for foreigners;**

(d) **Ensure the rapid and appropriate identification of persons in a vulnerable situation, including survivors of torture and ill-treatment, as well as sexual and gender-based violence, and provide them with adequate access to health care and psychological services;**

(e) **Refrain from engaging in pushbacks and refoulement, and set up accessible and protection-sensitive entry systems at border crossing points;**

(f) **Consider ratifying the Convention relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness.**

Training

27. The Committee is concerned that specific training on the provisions of the Convention, and in particular on the absolute prohibition of torture, is not part of the training of law enforcement and military officers, prison staff, border guards, judges, prosecutors, forensic doctors and medical personnel. It is also concerned that the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) is not part of the mandatory training provided to medical personnel and other public officials engaged in the custody, interrogation and treatment of persons subjected to any form of arrest, detention or imprisonment (art. 10).

28. **The State party should:**

(a) **Ensure that law enforcement and military officers, prison staff, border guards, judges, prosecutors, forensic doctors and medical personnel receive training on the provisions of the Convention, and in particular on the absolute prohibition of torture;**

(b) **Ensure that medical personnel and other public officials engaged in the custody, interrogation and treatment of persons subjected to any form of arrest, detention or imprisonment receive mandatory training on the Istanbul Protocol;**

(c) **Develop and implement a methodology to assess the effectiveness and impact of educational and training programmes relating to the Convention and the Istanbul Protocol;**

(d) **Ensure that all law enforcement officers, civilian judges, military judges and public prosecutors receive mandatory training emphasizing the link between non-coercive interrogation techniques, the prohibition of torture and ill-treatment and the obligation of the judiciary to invalidate confessions made under torture.**

Conditions of detention in police detention units and prison facilities

29. The Committee is concerned:

(a) At reports of inadequate material conditions in police detention units, including in relation to sanitary facilities, exercise yards and the quality of food; and in particular at reports that the officers employed at the municipal police station in Białystok had complained that the living conditions there, including an informal ban on washing the bedding, blankets, pillows and mattresses used by detainees, endangered the lives and health of both the detainees and the police officers;

(b) That all cells in police detention units are located in the basements of the buildings housing them, which results in inadequate ventilation and insufficient access to light;

(c) At the increase in the prison population during the period under review to an occupancy rate of around 92 per cent; and that some prisoners are housed in facilities that fall below the national legal standard of 3 m² per person in cells that are too narrow;

(d) That there is mould on the walls and ceilings of cells of prisoners incarcerated in historic buildings and older penitentiary units, which exposes them to mould spores; that sanitary annexes have not been removed from all cells; that not all sanitary units have shower stalls and toilets allowing inmates adequate privacy; and that pretrial detainees and prisoners in closed penitentiary facilities remain in their cells for 23 hours a day;

(e) That health care in prisons is provided by medical staff employed by the Prison Service, which may hinder their clinical independence and affect trust-based doctor-patient relations, especially since the law requires medical practitioners to certify whether a prisoner is fit for punishment in a disciplinary cell, which is contrary to the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules); that there is a considerable shortage of medical staff, including psychiatrists, and slowness in referrals to outside specialists; and that diagnoses by prison medical staff are often incorrect and superficial and have resulted in deaths in custody;

(f) That prisoners are classified not in terms of the level of danger that they pose to other prisoners but according to the length of their prison sentence, which may lead to inter-prisoner violence.

30. **The State party should:**

(a) **Ensure adequate material conditions in all police detention units, including sufficient ventilation and lighting, clean bedding and appropriate sanitary conditions; and, where possible, ensure that police detention facilities are above the ground;**

(b) **Rigorously implement the programme for the modernization of the Prison Service from 2017 to 2020; provide updated information to the Committee on the outcome of the work of the task force for developing solutions to reform penitentiary services; and consider increasing the use of non-custodial measures and alternatives to detention, in keeping with the Tokyo Rules;**

(c) **Prevent overcrowding, with a view to bringing conditions of detention into line with international standards enshrined in the Nelson Mandela Rules and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), and ensure that prisoners have living space in accordance with the national standard;**

(d) **Build new penitentiary units and refurbish and modernize historic and older units, taking into account their sanitation and toilet facilities, lighting, ventilation and heating; remove all inmates from cells with mould; provide for meaningful activity and sufficient exercise for all persons deprived of their liberty;**

(e) **Ensure the clinical independence of medical staff in prisons and transfer responsibility for them to the Ministry of Health; hire additional qualified medical and psychiatric personnel and psychologists; enable the referral of inmates requiring specialized medical care to outside medical facilities without delays for administrative reasons or because of a lack of prison staff to escort them;**

(f) **Introduce a risk assessment tool across the prison system; provide training to penitentiary staff in the management of prisoners and the prevention of violence, self-mutilation and suicides; and promptly, thoroughly and impartially investigate all incidents of violence and deaths in custody, ensuring independent forensic examination.**

Investigation of acts of torture and an independent complaints mechanism

31. The Committee is concerned:

(a) About the low number of conclusive prosecutions of alleged acts of torture of persons deprived of their liberty, in particular by law enforcement officials, other than those pursuant to cases brought before the European Court of Human Rights; and about the discrepancy between the number of complaints submitted by victims of torture and ill-treatment and the number of sentences handed down, despite the issuance by the Prosecutor General of guidelines regarding crimes related to the deprivation of life or inhuman or degrading treatment and punishment where the perpetrator is a police officer or other public official;

(b) That the merging of the functions of Minister of Justice and Prosecutor General may have a negative effect regarding investigations into violations of the Convention;

(c) That, out of 39,000 complaints submitted by inmates in 2016, mainly concerning their treatment by Prison Service officers, living conditions and health care, only 377 were found to be justified;

(d) That budgetary and staffing constraints are curtailing the ability of the national preventive mechanism to monitor all places of deprivation of liberty and to receive and process complaints.

32. **The State party should:**

(a) **Ensure that all reports of torture or ill-treatment are investigated and establish an investigative mechanism that is capable of carrying out independent and effective criminal investigations and prosecutions of allegations of torture and ill-treatment committed by public officials, and that operates independently;**

(b) **Ensure that complainants are protected against any ill-treatment, intimidation or reprisals as a consequence of their complaint; that they are duly informed of the actions taken on their complaint; and that victims are provided with redress and compensation;**

(c) **Establish the reasons for the discrepancy between the number of complaints submitted with regard to living conditions and health care in prisons and the number found to be justified;**

(d) **Keep a centralized register of complaints of torture and ill-treatment that includes information on the corresponding investigations, trials and criminal or disciplinary penalties imposed;**

(e) **Provide additional financial resources to the national preventive mechanism in order to enable it to better fulfil its functions and carry out more visits to all places of deprivation of liberty, including psychiatric institutions and social care homes, without prior notice; ensure that members of the national preventive mechanism are able to meet in private with detainees; raise with the authorities the matter of detention conditions and conduct in places of detention amounting to torture and ill-treatment; and ensure that its recommendations and reports to the authorities are made public;**

(f) **Grant access to independent organizations, including national and international civil society organizations, to all facilities where persons are deprived of their liberty, including psychiatric institutions and migrant detention centres, for monitoring purposes;**

(g) **Compile statistical data on the number of complaints, investigations, prosecutions, convictions and penalties in cases of torture and ill-treatment.**

Gender-based, domestic and other forms of violence and access to legal abortions

33. The Committee is concerned:

(a) That domestic violence, including marital rape, are not separate offences in the Penal Code;

(b) That only a relatively small number of cases of domestic violence result in the conviction of perpetrators, that prosecution is envisaged only for recurring acts and that the conduct of proceedings is dependent on the victim's consent;

(c) At the absence of sufficient support for victims of domestic abuse, and at actions or omissions by State agencies or other entities that engage the responsibility of the State party under the Convention, including the inadequate provision of specialized support shelters in the country and the absence of assistance in finding housing away from the perpetrator of violence;

(d) That, while there are three sets of circumstances in which abortions are legal in Poland within a 12-week period, there is no effective regulation of conscience-based refusals by doctors to perform abortions, with no guidelines on how to access legal abortion services and no information on the lack of obligation to seek additional medical opinions from a specialist, a joint consultation or confirmation by a ward administrator in cases where denial of procedure will result in physical and mental suffering so severe in pain and intensity as to amount to torture; and that an excessive period of 30 days is given to the Medical Committee in which to issue a decision, which may also be attributed to actions or omissions by State agencies or other entities that engage the responsibility of the State party under the Convention.

34. **The State party should:**

(a) **Amend its legislation to include crimes of domestic violence, including marital rape, as specific crimes in the Penal Code entailing ex officio prosecutions; and ensure that all cases of gender-based violence against women and girls, especially those involving actions or omissions by State authorities or other entities that engage the international responsibility of the State party under the Convention, are thoroughly investigated, that the alleged perpetrators are prosecuted and, if convicted, are punished appropriately, and that the victims receive redress, including adequate compensation;**

(b) **Ensure the full implementation of the National Programme for Counteracting Domestic Violence, including by gathering data on the extent of such violence, and of the National Action Plan for Equal Treatment; and refrain from threats to withdraw from the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence;**

(c) **Encourage victims to report cases of violence to the authorities; and ensure that all allegations of violence against women, including domestic and sexual violence, are registered by the police and are promptly, impartially and effectively investigated;**

(d) **Ensure that all victims of gender-based and domestic violence benefit from protection, including restraining orders, and have access to medical, social and legal services, including counselling, redress and rehabilitation, to safe and adequately funded government-run shelters throughout the country and to assistance in finding other accommodation;**

(e) **Consider decriminalizing abortion and issue guidelines on how to proceed with legal abortion, being mindful of the possible severe physical and mental consequences of denial, including after conscience-based refusals by doctors to perform abortions, and without requirements not specified in law; ensure that medical boards issue a decision within 10 days; ensure the provision of post-abortion health care for women, irrespective of whether they have undergone an illegal or legal abortion; and ensure that neither patients nor their doctors face criminal sanctions or other threats for seeking or providing such care.**

Situation of vulnerable persons and hate crime

35. The Committee is concerned:

(a) That persons with intellectual and psychosocial disabilities have been placed in psychiatric hospitals and other public care institutions and have been detained there for prolonged periods, including periods of up to 42 and 49 years, or for more than 10 years for relatively small misdemeanours for which the prison sentence would have been much shorter for the same offence; and that such persons are often arbitrarily deprived of legal capacity and have often been placed and received treatment in the above-mentioned institutions without their consent, in the absence of appropriate safeguards;

(b) That women and girls with intellectual disabilities have been subjected to forced and coerced sterilizations, performed without their free and informed consent, both by institutions and at the request of their relatives;

(c) That persons with psychosocial disabilities who have completed a prison sentence may be placed in the National Centre for the Prevention of Antisocial Behaviour following an application from the director of the penitentiary facility concerned, and could thus undergo a period of detention that could constitute double punishment for the same act and that could be continued indefinitely;

(d) About incidents of physical assault and hate speech against migrants from Africa, Asia and Arab countries and against Roma and Ukrainians, while acknowledging the State party's statement that all hate crimes are of "particular interest" to the Office of the Prosecutor General and the police; and that cases of hate crime are substantially underreported due to a lack of confidence in the police, according to a recent survey report on the nature and scale of unreported hate crime produced by the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe and the Office of the Commissioner for Human Rights; and that violent incidents against lesbian, gay, bisexual, transgender and intersex persons continue to be reported but are not adequately investigated and prosecuted;

(e) About the existing flaws in rules concerning mechanical restraints and seclusion that do not apply to chemical restraints; and that these rules do not allow for continuous, direct and personal supervision of an immobilized patient by a nearby member of health-care staff.

36. **The State party should:**

(a) **Ensure that persons with intellectual and psychosocial disabilities are not deprived of their legal capacity unless this is done on a legal basis, with a careful independent mental evaluation procedure, access to assisted decision-making and the possibility of judicial review, and that such persons are not placed in and do not**

receive treatment in psychiatric hospitals without their consent unless this is done on a legal basis, as a matter of last resort, with a careful forensic psychiatric evaluation, access to assisted decision-making and the possibility of judicial review;

(b) Promptly, impartially and effectively investigate all allegations of involuntary sterilization, prosecute the alleged perpetrators and, if they are found to be responsible, punish them. Medical personnel who have conducted sterilizations without free, full and informed consent should be held criminally liable, prosecuted and punished. They should also be trained on appropriate means of obtaining free and informed consent from women before they undergo sterilization. The State party should establish an effective compensation mechanism through which victims of involuntary sterilization have access to fair and adequate redress, and should consider extending the time limit for filing compensation claims;

(c) Ensure that every case in which a person is placed in the National Centre for the Prevention of Antisocial Behaviour is subject to strict judicial review and scrutiny by a medical board; and that persons placed in the Centre have access to legal assistance and have a right of appeal;

(d) Ensure that all residential centres are regularly monitored and that the recommendations made by the monitoring bodies, including the national preventive mechanism, are fully implemented;

(e) Ensure that all cases of hate crime are reported and that reasons for the gross underreporting of such crimes are addressed as a matter of urgency through appropriate measures, including training of the police and trust-building activities among police officers. The Committee reiterates its previous recommendation to take all necessary measures to combat discrimination and violence against persons of Arab, Asian and African origin, lesbian, gay, bisexual and transgender people and persons belonging to the Roma community, and to take effective measures to prevent all manifestations of hate crime and ensure prompt and effective investigation of all such incidents, with appropriate prosecutions;

(f) Amend the rules concerning mechanical restraints and seclusion and the supervision of the use of chemical restraints, and ensure the continuous and direct monitoring of immobilized patients; and provide appropriate training for health-care staff in the use of means of restraint in psychiatric institutions.

Trafficking in persons

37. While welcoming the adoption of the police regulation on activities to counter trafficking in persons in 2016, the Committee is concerned that the State party lacks a central mechanism to identify victims of trafficking, especially victims of forced labour in the shipbuilding, agriculture and construction sectors. While investigations are sometimes opened, as in the recent case involving 107 nationals of the Democratic People's Republic of Korea, these investigations have appeared to be ineffective and to lack impartiality, particularly with regard to interpreting services and formal proceedings for those investigated. In addition, the Committee regrets that there is no clear definition of forced labour in the Penal Code and that there is inadequate training for law enforcement personnel on identifying victims of forced labour (arts. 2, 10, 12–14 and 16).

38. **The State party should:**

(a) Enforce domestic anti-trafficking laws and policies, take effective measures to prevent human trafficking and increase protection for victims of trafficking, including victims of forced labour in agriculture, shipbuilding and construction;

(b) Promptly, effectively and impartially investigate, prosecute and punish the crime of trafficking in persons and related practices and ensure the necessary procedural guarantees, such as the provision of independent interpreters, during the investigations;

(c) Provide redress to victims of trafficking, including legal, medical and psychological aid and rehabilitation, adequate shelters and assistance in reporting incidents of trafficking to the police;

(d) Provide mandatory and continuous training on trafficking to all justice and law enforcement personnel;

(e) Systematically monitor and evaluate the impact of measures against trafficking and compile data on investigations, prosecutions and punishments against traffickers.

Follow-up procedure

39. The Committee requests the State party to provide, by 9 August 2020, information on follow-up to the Committee's recommendations on ensuring the independence, security and ability to function of the Commissioner for Human Rights, the prevention and prosecution of police brutality and the clinical independence of medical personnel, and on improving the medical care provided to prisoners (see paras. 24 (a) and (c), 20 (a) and 30 (e) above). In that context, the State party is invited to inform the Committee about its plans for implementing, within the coming reporting period, some or all of the remaining recommendations in the concluding observations.

Other issues

40. The Committee invites the State party to ratify the core United Nations human rights treaties to which it is not yet party.

41. The State party is requested to disseminate widely the report submitted to the Committee and the present concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations and to inform the Committee about its disseminating activities.

42. The Committee requests the State party to submit its next periodic report, which will be its eighth, by 9 August 2023. As the State party stated during the review that gave rise to the present recommendations that it had accepted the simplified reporting procedure, the Committee will, in due course, transmit to the State party a list of issues prior to reporting.