

AWARENESS-RAISING OF JUDICIAL AUTHORITIES CONCERNING TRAFFICKING IN HUMAN BEINGS

COUNTRY REPORT

POLAND

2005

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IOM International Organization for Migration



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1. THE APPLICABLE NATIONAL LEGISLATION WITH REGARD TO THE TRAFFICKING IN HUMAN BEINGS IN POLAND

1.1 Description of the Polish national legislation on trafficking in human beings

a) The Criminal Code of 1969

On 21.03.1950 the **United Nation Convention of fighting trafficking in people and exploitation of prostitution** was opened to signing in Lake Success.¹ The Convention unified regulations of agreements passed to date, and extended them onto a wider group of acts. The convention was ratified by Poland in 1952.

The Crime of human trafficking was firstly classified in article IX § 1 and 2 of regulations introducing the **Polish Criminal Code of 1969**.²

In § 1 the legislator described behavior involving provision, enticement or abduction of another person in order to induce them to prostitution, even with their consent. Formulation of the regulation implied that the crime stated in article IX § 1 of the regulations introducing the penal code did not depend on whether the provision, enticement or abduction of a person in order to induce them to prostitution occurred against the will, without consent, or with the consent of the wronged person. The fact of agreement or the lack thereof might only be of importance at penalty assessment. In § 2 behavior involving trafficking in women even with their consent, and trafficking in children, was described. In this case the reason for trafficking in human beings was not crucial to the existence of the crime.

Therefore, Polish legislation moved further than obliged by the United Nation Convention of 21.03.1950. The crime described in article IX § 2 of regulations introducing the Criminal Code was not a directional crime and, as such, did not require the action of the perpetrator of the crime towards prostitution for the occurrence thereof. Trafficking in human beings for any reason was already a crime.

Upon the basis of the Criminal Code of 1969, criminal responsibility was also borne by anyone who has induced another person to prostitution, as well as anyone who has financially benefited from another person's prostitution or, in order to gain financial profits, has eased the conditions for the prostitution thereof. These crimes were described in article 174 § 1 and 2 of the Criminal Code of 1969.

¹ Official Journal of Acts of 21 October 1952 (number 41 item 278)

² Act of 19 April 1969 – Regulations introducing the penal code (Official Journal of Acts, number 13 item 95)

b) The Criminal Code of 1997

The legislator, in the new **Criminal Code of 06.06.1997**, introduced substantial alternations to both instructions and sanctions of legal regulations concerning trafficking in human beings.³

The crime stated in article IX § 1 of the regulations introducing the Criminal Code of 1969 was incorporated into article 204 § 4 of the new Criminal Code. They are not regulations of identical contents whatsoever. The legislator had left out the phrase ‘even with their consent’ included in article IX § 1 of the regulations introducing the Criminal Code of 1969. In this way, they must have wished to distance themselves from the wrong interpretation suggesting that abduction with the consent of the abducted person is possible.

In case of exploitation of prostitution with the consent of the injured person a perpetrator of the crime shall be subject to the penalty of imprisonment of up to 3 years. In case of enticement or abduction of a person in order to induce them to prostitute, the perpetrator shall be subject to the penalty of imprisonment from 1 to 10 years.

The legislator did not include prostitution in the scope of criminal law, but instead introduced penalization of the following practices:

1. inducing another person to practice prostitution, i.e. prostitution procurement (art. 204 § 1 sentence 1 of the Criminal Code: *Who, with the purpose of obtaining a material benefit, incites a person to prostitution or facilitates prostitution of a person is subject to a sentence of imprisonment for a period of time up to 3 years.*)
2. facilitating prostitution, i.e. pandering (art. 204 § 1 sentence 2 of the Criminal Code: *Who..... facilitates prostitution of a person is subject to a sentence of imprisonment for a period of time up to 3 years.*)
3. profiting from the prostitution of others, i.e. pimping (art. 204 § 2 of the Criminal Code: *The sentence specified in § 1 is applicable to the perpetrator who is profiting by another person's prostitution.*)
4. inducing minors into prostitution, facilitating prostitution and profiting from the prostitution of minors (art. 204 § 3 of the Criminal Code: *If the person referred to in § 1 or 2 is a minor, the perpetrator is subject to a sentence of imprisonment for a period of time from 1 to years.*)
5. enticing or abducting another person for purposes of practicing prostitution abroad (art. 204 § 4 of the Criminal Code: *The sentence specified in § 3 is applicable to the perpetrator who entices or abducts a person into prostitution abroad.*)

Beside the above-mentioned legal regulations, an important role is played by the regulation of article 253 of the new Criminal Code, according to which a person trafficking in human beings, even with their consent, is subject to the penalty of imprisonment of no less than 3 years.

The crime of trafficking in persons is specified by the Polish legislation in article 253 § 1 of the Criminal Code. The subject of such trade transactions are human beings treated by the offender as commodities. The consent of a victim is irrelevant for the offender’s liability.

Art. 253

§ 1. Who traffics in persons, even with their consent, is subject to a sentence of imprisonment for a period of time not shorter than 3 years.

³ Official Journal of Acts of 2 August 1997 (Official Journal of Acts, number 88 item 553)

§ 2. Who, with the purpose of obtaining a material benefit, organizes adoption of children contrary to the provisions of the Act is subject to a sentence of imprisonment for a period of time from 3 months to 5 years.

In this case neither the purpose of trafficking in people nor the facts of the injured person's consent do matter. Formulation of charges most typically involves cumulative qualification of the deed. Indications of two regulations – article 204 §4 of the Criminal Code, and article 253 of the Criminal Code, simultaneously aspire to be considered as the same criminal behavior.

There is no legal definition of the trafficking in human beings in Polish Criminal Code. On 12 December 2000 in Palermo, on behalf of the Republic of Poland, there was signed the UN Convention against international organized crime, assumed by General Assembly of the United Nations on 15 November 2000. On 04.10.2001, on behalf of the Republic of Poland, there was also signed the Protocol of prevention, fighting and penalizing trafficking in people, women and children in particular, as assumed by the General Assembly of the UN on 15 November 2002 (Act of ratification was announced in the Official Journal of Acts of 17 February 2003, and became legally binding 14 days of announcement).

In the protocol mentioned the definition of trafficking in people was formulated. In accordance with article 3 letter (a) of the Protocol, '*trafficking in people means recruitment, transportation, transfer, hiding or hosting persons, with the use of threats or force, or other means of constraint, abduction, swindle, misleading, authority abuse or taking advantage of weakness, handing or accepting payment or other benefit in order to obtain consent of a person having control over another person in order to abuse them.*

The abuse comprises, as minimum, taking advantage of prostitution of other persons or other forms of sexual abuse, work or service of compulsory nature, slavery or slavery-related practice, captivity, or removal of human organs.' According to letter (b) of the aforementioned article, consent of a victim of trafficking in people to intended abuse provided for in letter (a) is of no importance if any of the methods provided for in letter (a) was used. And according to letter (c) of the article, recruitment, transportation, transfer, hiding or hosting a child in order to abuse them is considered as 'trafficking in people' even when it does not involve any of the methods provided for in letter (a). A child then means a person who has yet to become 18 years of age (letter (d) of article 3).

Legal binding with regard to the Republic of Poland of the aforementioned Protocol shall result in the fact that the notion of 'trafficking in people' used in 253 § 1 of the penal code shall be defined on the grounds of Polish law in compliance with the definition used in article 3 of the aforementioned Protocol. According to the article 87 of the Constitution of the Republic of Poland the sources of universally binding law of the Republic of Poland shall be: the Constitution, statutes, ratified international agreements, and regulations. Enactments of local law issued by the operation of organs shall be a source of universally binding law of the Republic of Poland in the territory of the organ issuing such enactments.

Membership in the European Union obliges Poland to take into consideration legal acts of the EU which, being part of *acquis communautaire*, decide of the Polish legal system regarding human trafficking. Among numerous acts of the EU on combating trafficking in people, following shall be emphasized:

- the Outline Decision of the Council of Europe on fighting trafficking in people (2002/629/JAI - 19 July 2002);
- the Outline Decision of the Council of European Union on fighting sexual abuse of children and child pornography (2003/68/JHA – 22 December 2003);
- the Directive of the Council of European Union on short-term stay permits for persons harmed by crimes of easing the conditions for illegal migration or trafficking in people, and who cooperate with appropriate bodies (2004/81/WE – 29 April 2004).

2. PROSECUTION OF THE TRAFFICKING CASES

2.1 Trafficking in human beings in Poland. The analysis of legal proceedings between 1995 and 2005

a) Introduction

Trafficking in human beings, especially women from Central and Eastern Europe emerged from a very concrete social situation since the transition from communism ten years ago. This is mainly the consequence of economic liberalization in the 90-ties and, when growing sex industry, controlled by organized crime groups, has made trafficking a profitable business.

Until the beginning of 90-ies, before the end of the communism, the prostitution was centered mainly in restaurants and hotels. When the market economy appeared, the number of “massage salons” and „biological regeneration salons” increased, providing the prostitution service. What is more, the road prostitution occurred, in particular concentrated along the main roads leading to the border checkpoints

Most of legal proceedings on trafficking in human beings refer to the sex service market. Only a few cases of the victims’ exploitation were related to another field: illegal adoption of children and involuntary servitude (for example non-paid work in farms or market). It is essential to indicate the growing problem of exploitation of the former Soviet Union citizens, as far as the work in so called “black market” sector is concerned.

b) The analysis of legal proceedings between 1995 and 2005

Between the 1995 and 2005 there were **329** preparatory proceedings completed concerning the trafficking in human beings. Among them, in **246** cases the bill of indictment was prepared (in total, **651** people were accused). **83** cases were dismissed, mainly due to lack of evidence of crime committing. (Adults sentenced by common courts for crimes prosecuted on the basis of an indictment by selected articles of Criminal Code, in 2002 and 2003).

TABLE 1
Adults sentenced by common courts for crimes prosecuted on the basis of an indictment by selected articles of Criminal Code, in 2002

Legal qualification	sentenced												of which aliens	
	total	of which women	specification (of which sentenced for)								total	citizenship		
			fine adjudicated as a one-off penalty	of which women	restriction of liberty	of which women	imprisonment (deprivation of liberty)							
Art. 203 c.c*	13	2	-	-	-	-	13	2	8	2	5	Armenian, Bulgarian (4 persons)		
Art. 204 § 1 c.c	40	7	3	-	1	-	36	7	35	7	3	Bulgarian, German, Ukrainian		
Art. 204 § 2 c.c	55	12	8	5	-	-	47	7	43	7	1	Bulgarian		
Art. 204 § 3 c.c	15	-	-	-	-	-	15	2	7	2	-	-		
Art. 204 § 3 c.c	-	-	-	-	-	-	-	-	-	-	-	-		
Art. 204 § 1 c.c in rel. to § 1 c.c	4	1	-	-	-	-	4	-	-	-	-	-		
Art. 204 § 3 c.c in rel.to § 2 c.c	3	-	-	-	-	-	3	1	1	1	-	-		
Art. 204 § 4 c.c	3	4	-	-	-	-	3	-	-	-	-	-		
Art. 253 § 1 c.c	20	4	-	-	-	-	20	4	5	2	3	Bulgarian (2 persons), Ukrainian		
Art. 253 § 2 c.c	-	-	-	-	-	-	-	-	-	-	-	-		

*c.c – Criminal Code

(Source: Department of Statistics; Ministry of Justice)

TABLE 2
Adults sentenced by common courts for crimes prosecuted on the basis of an indictment by selected articles of Criminal Code, in 2003

Legal qualification	sentenced												of with aliens	
	total	of which women	specification of which sentenced for								total	citizenship		
			fine adjudicated as a one-off penalty	of which women	restriction of liberty	of which women	imprisonment (deprivation of liberty)							
Art. 203 c.c*	14	3	1	-	-	-	13	3	66	3	4	Bulgarian		
Art. 204 § 1 c.c	37	7	5	2	1	-	31	5	27	5	1	Ukrainian		
Art. 204 § 2 c.c	62	13	4	-	-	-	58	13	46	13	1	Macedonian		
Art. 204 § 3 c.c	14	4	-	-	-	-	14	4	12	4	-	-		
Art. 204 § 3 c.c	1	1	-	-	-	-	1	1	-	-	-	-		
Art. 204 § 1 c.c in rel. to § 1 c.c	5	1	-	-	-	-	5	1	2	1	1	Belarusian		
Art. 204 § 3 c.c in rel.to § 2 c.c	9	-	-	-	-	-	9	-	8	-	1	Bulgarian		
Art. 204 § 4 c.c	1	1	-	-	-	-	1	1	1	1	-	-		
Art. 253 § 1 c.c	5	1	-	-	-	-	5	1	1	-	1	Bulgarian		
Art. 253 § 2 c.c	1	-	1	-	-	-	-	-	-	-	-	-		

*c.c – Criminal Code

(Source: Department of Statistics; Ministry of Justice)

According to the data on sentences issued by courts of the first instance, **200** people were condemned in cases concerned the trafficking in human beings, in the investigated period. The maximum sentence was issued by the Voivodship Court in Szczecin, in 1997. The accused, charged of selling 51 women to Germany, was sentenced for 7 years of imprisonment. After making an appeal by the public prosecutor, the sentence increased to 10 years of imprisonment.

In total, between 1995 and 2004, there were **1609** victims in cases proceeded before courts. (The outcomes of preparatory proceedings)

TABLE 3

Year	The number of completed proceedings	The number of case indicted	The number of cases discontinued		The number of defendant/accused	The number of victims
			Due to the failure in detecting perpetrator	Due to the absence of any basis for charge		
1995	20	18	-	2	43	205
1996	33	26	1	6	59	232
1997	37	31	1	5	58	163
1998	41	25	2	14	64	109
1999	17	14	-	3	24	172
2000	43	38	1	4	119	93
2001	49	35	6	8	71	167
2002	19	11	4	4	40	361
2003	45	30	4	11	134	261
2004	25	18	2	5	39	98
total 1995 - 2004	329	246	21	62	651	1609

However, the above mentioned data does not reflect the scope of the problem. According to La Strada Foundation against Trafficking in Women, non-governmental women's organization that seeks to prevent and combat the traffic of women in Poland, the majority of victims do not notify the judiciary about the crime.

TABLE 4
The women victims assisted by La Strada (source: Interim Report of La Strada Poland)

Year 2004 Month	The number of new victims	Nationality	The number of contacts with "old" victims	Nationality
January	2	1 – BY 1 – MD	10	BY, MD, UA
	4	4 – P	56	
February	5	2 – BG; 3 – UA; P	15	BG, BY, UA
	5	P	49	
Marc	3	1 – BY, 2 – UA	12	MD, UA
	3	P	60	
April	3	1 – BY, 1- BG, 1 –	12	MD, UA
	8	UA	60	
May	-	P	10	MD, UA
	5	P	70	
June	3	3-UA,	16	BG, BY, UA
	9	P	89	
July	10	BY, B-G, UA, MD	19	MD, UA, BG, BY, PL
	10	PL	59	
August	7	-	12	MD, UA PL
	4	PL	16	
September	5	UA	14	MD, UA, PL
	13		62	
Total	99	38 aliens 59 Poles	663	120 aliens 543 Poles

What is more, the reason of low detectability of crimes related to trafficking in human being follows from polish deportation policy. The victims residing illegally on the territory of Poland are immediately deported to the borders and, consequently, they cannot testify against the traffickers. It is a serious obstacle for collecting the evidence and recognizing the scope of the problem.

Poland is in a special situation with regard to the problem of trafficking in human beings. In the beginning of 90-ties it was mainly the country of source. However, the analysis of legal proceedings, taken between 1995 and 2004, leads to the conclusion that Poland is also beginning the country of transit of the women from the former USRR countries. What is more, there is growing evidence that it is also a country of destination especially for network criminal groups trafficking woman from Bulgaria and the former Soviet Union.

Poland as a country of source. The criminal groups involved in recruiting the victims (trafficked from Poland to Western Europe) are concentrated mainly along with country's border with Germany (near Szczecin, Poznań and Gorzów Wielkopolski). As far as the countries of destination are concerned, Netherlands and Germany are indicated (however, there were a few

cases of trafficking woman to Sweden or Italy). The most serious proceedings related to that sort of cases were leading between 1997 and 1998 by the former Voivodship Prosecution Office in Szczecin and Opole (respectively 51 and 89 victims).

Poland is the **country of transit**, referring in particular to the victims from Moldavia, Lithuania and Latvia, with Germany as country of destination. In the cases investigated during the above - mention period, the victims was transferred mainly through Świnoujście i Szczecin.

Between the 1995 and 2004 there were 81 legal proceedings completed in which Poland was **country of destination** for 432 victims of trafficking. The countries of victims' origin were: Belarus (209 women), Ukraine (115), Romania (16), Moldavia (16), Russia (11), Latvia (8), Vietnam (2, including 1 man), Lithuania (5), Sri Lanka (4), Mongolia (3), Costa Rica (2).

The significant fact, need to be mentioned here, is related to the nationality of the victims with reference to the kind of coercion. According to the police source, women who were forced to work as road prostitutes were mainly Bulgarian citizens; on the other hand, the victims who origin from Ukraine were sold to the brothels. In almost all cases the involvement of the citizens of the victim's nationality in trafficking process was reported. The women offered the seasonal work in farms or salesman job, after being trafficked to Poland were sold several times to different places. That was serious obstacle for successful searching them when missing was notified.

The activity of crime groups involved in trafficking and exploiting of immigrants prostitutes is concentrated mainly in central (near Warsaw, Płock, Zyrardów and Radom) and eastern Poland (near Rzeszów and Białystok).

c) Characteristic of the victims

With reference to the investigation and prosecution cases in the researched period, it is essential to point out basic characteristic of trafficked women. Most of them were conscious about the purpose of departure and kind of work they were suppose to do. The reason for they decided to get involved was very poor living conditions, what was profited by traffickers. The majority of recruited women tend to be between the ages of 18 and 25. Most of them were unemployed, poor and with little education.

The number of alien victims, 1995 – 2004:

Belarus – 209	Romania – 16	Lithuania – 5
Ukraine – 115	Russia – 11	Sri Lanka – 4
Bulgaria – 28	Latvia – 8	Mongolia – 3
Moldavia – 16	Vietnam – 7	Costa Rica – 2

d) Characteristics of the traffickers

In cases under research, the accused of human trafficking were Polish, Russian, Bulgarian, Turkish and German citizens. The profits following from providing one victim to the customer (most of them were German citizens, living in Netherlands or Germany) are estimated at about 1000 – 2000 euro.

According to the police source, the crime groups involved in human trafficking business outside the country are, *inter alia*, members of Turkish minority in Germany. What is more, there is

growing evidence of Polish citizens involved with THB, living out of country. The cases which are currently under research concern the organized group of traffickers, selling young, Asian women to Swiss, British and Canadian night clubs. With reference to the Polish area, the most active criminal network group was one of Bulgarian citizens (in 2001 among 21 defendant were 16 of Bulgarian origin)

What is significant, the several cases where reported of woman involved in criminal activity who were previously the victims of THB. Taking the role of recruiter, they were responsible for getting into first contact with the victims.

TABLE 5
The accused aliens

citizens year	Bulgaria	Ukraine	Turkey	Albania	Spain	Germany	Vietnam	Russia	Romania
2001	16	-	3	1	1	-	-	-	-
2002	7	3	-	-	-	-	-	-	-
2003	7	21	-	-	-	1	1	1	-
2004	5	-	1	-	-	-	3	-	1
total	35	24	4	1	1	1	4	1	1

2.2 Establishment of the system of cooperation, education and prevention in the framework of the National Program of Fighting and Prevention of Trafficking in Human Beings

2.2.1 Establishment of the system of cooperation, education and prevention

a) Adoption of The National Program of Fighting and Prevention of Trafficking in Human Beings for 2003- 2004 and 2005 - 2006

The National Program of Fighting and Prevention of Trafficking in Human Beings for 2003 - 2004 was adapted by the Council of Ministers on 16th of September 2003. (annex no 1 - The National Program of Fighting and Prevention of Trafficking in Human Beings).

The new National Program of Fighting and Prevention of Trafficking in Human Beings for 2005 – 2006 was adopted by the Council of Ministers on 26th of April 2005.

b) Establishment of the intersectional and permanent working team for monitoring the phenomenon of trafficking in human beings (including the collection of statistics data)

The Intersectional Team of Suppressing and Preventing Trafficking in Human Beings has been appointed by The Ordinance of the President of the Council of Ministers on 5th of March 2004. The team is being composed of the representatives of the Ministry of Internal Affairs and Administration, the Main Police Headquarters, the Main Border Guards' Headquarters, the Office for Repatriation and Foreigners, The Ministry of Justice, including the public prosecutor's and courts officers, the Government's Representative for Equal Status of Woman and Men, the

Ministry of National Education and Sports, the Ministry of Economy, Labour and Social Welfare, Ministry of Foreign Affairs, Ministry of Health, the Office of the Committee for European Integration, non-governmental organizations (La Strada and others), with the possibility of cooperation with others experts (for example: financial forces).

The main tasks of the Team:

- monitoring the implementation of The National Program of Fighting And Prevention of Trafficking In Human Beings,
- collecting information and statistics data on the problem of trafficking in people and analysis thereof,
- preparing actions for institutions represented in the working team and others institutions of governmental administration, their subordinates or institutions supervised by them,
- transnational cooperating with foreign partners and institutions.

c) Support of the research programmes regarding to the phenomenon of the trafficking in human beings in Poland, in particular focused on the victims and the operations methods of perpetrators

- The National Prosecutor Office has started to collect information about criminal proceeding in regards to human trafficking cases from 1999 year. From this date the detailed regular report is being published every year. The information regarding criminal proceedings, the way of conclusions of proceedings, numbers of sentenced, injured parties, and witnesses are included in the report. As well as special data about operations methods of perpetrators.
- The Ministry of Justice prepared a special model of collecting more detailed information (personal information, country of origin, etc.) in regards of human trafficking offences.
- The Government's Representative for Equal Status of Woman and Men together with La Strada cooperation prepared the project for repeating the national research into trafficking in human beings. The research was done on December 2004 and published on January 2005.

d) Public awareness campaign introducing the problem of trafficking in human beings:

- to the information programmes of public media;
- to the programmes of the teacher's training centres;
- to the national curriculum in schools;

Absence of the problem of trafficking in people in educational / upbringing programs. Children and youth's unawareness of possible dangers. Growing danger of children and youth becoming victims of trafficking in people (general tendency). Introduction of the problem of trafficking in people to the national curriculum. Preparation of appropriate informative materials.

Obliging experts to include in their opinions the assessment of obedience to the regulations of the Protocol (additional to the UN Convention against international organized crime) of preventing, fighting and penalizing trafficking in people, women and children in particular, featured by authors of course books and manufacturers of educational resources.

2.2.2 Changes in legislation improving effectiveness combating trafficking in human beings

a) Introduction of the definition of trafficking in people provided by the Protocol to the UN Convention to the Polish Criminal Code

The Ministry of Internal and Administration addressed the letter (from 1st of December 2004) to the Council of Ministers with request to summarize the obligations to introduce of the definition to the Criminal Code in the form included in the UN Protocol of prevention, fighting and penalizing trafficking in people, women and children in particular (as assumed by the General Assembly of the UN on 15 November 2002) and the Outline Decision of the Council of Europe on fighting trafficking in people. Legal binding with regard to the Republic of Poland of the aforementioned Protocol shall result in the fact that the notion of 'trafficking in people' used in 253 § 1 of the Criminal Code shall be defined on the grounds of Polish law in compliance with the definition used in article 3 of the aforementioned UN Protocol.

b) Revision of the Act on Aliens – application thereof to *acquis communautaire* (after assuming the EU Directive on short-term stay permits for victims of trafficking in people, cooperating with appropriate bodies)

The draft amendments to the Polish Aliens Act 2003 prepared by Office for Aliens and Repatriation have been sent to Polish Parliament on 30th of September 2004. There are before the Senate at the moment and should be approved soon. The amendments to two articles of the Law foresee the introduction into Art 33 and Art 53 of the law of a two month "reflection period" for victims of trafficking on the condition that they co-operate with investigating authorities, and that they have severed all ties with the traffickers. Within that period they would be provided with aid (accommodation, medical, psychological and social aid). The changes to the Alien Law have mostly been made in light of relevant EU legislation about the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities (e.g. EC Directive).

c) Ratification and adoption of the Facultative Protocol to the United Nation Convention of Children's Rights concerning trafficking in children, prostitution and child pornography

The ratification act was adopted by Polish Parliament on 10th of September 2004 and was signed by President on 25th of October 2004.

The working group within the Intersectional Team of Suppressing and Preventing Trafficking in Human Beings discussed the issues concerning trafficking in children. The National Program of Fighting and Prevention of Trafficking in People for 2005 – 06 will include the tasks and obligations concerned trafficking in children, prostitution and child pornography.

2.2.3 Improvement of effectiveness of actions to combat trafficking in human beings

a) Introduction of classes on procedures in cases of trafficking in human beings to the basic curriculum of the police and border guard training

The subject of trafficking in human being is already introduced to the basic curriculum of the police and border guard trainings.

b) Preparation and implementation of a program of special training for police officers, Border Guard officers, prosecutors and judges on the procedures in cases of fighting trafficking in human beings

a) Police.

The lists of trained and educated police officers were prepared.

Special trainings for police officers:

- I phase – 50 police officers were trained by Police Headquarters on the central training on December 2003;

- II phase - Regional Police Offices organized training for selected police officers from local offices; The training was organized in 7 Regional Police Offices and around 320 police officers were trained up to now.

The seminar about the model of support of the witness and victims protection of the trafficking was conduct for 35 police officers (including the teachers form police schools) on October 2004. Additionally around 500 police officers and 70 police school teachers were faculty trained in police school in Katowice. The La Strada Foundation trained more than 300 police officers and teachers from all police schools in Poland (2003/2004)

b) Border Guards.

The lists of trained and educated border guard's officers were prepared.

The La Strada Foundation prepared training for border guard's officers.

c) Establish the mechanism of coordination in combating trafficking in human beings on the Headquarters of the Police level. Appointment (where justified by the extent of the phenomenon) the special task groups at regional (voivodship) headquarters level and independent positions at lower-rank units, dealing with trafficking in human beings crimes

“The team for coordination of action in preventing and combating trafficking in human beings” has been established in Police HQ under the decision no. 630 issued on 7th December 2004 by Chief of the Police. The main tasks of the Team:

- coordination and monitoring of all actions in regards to trafficking in human beings issues;
- coordination and supervising of actions in combating trafficking in human beings;
- conduction of prevention activities to minimize of trafficking phenomena;
- supervising of the special training' programmes for police officers,
- monitoring of the procedures in cases of fighting trafficking in human beings;
- cooperation with others institutions.

The special police task team have been appointed to combat social pathology including trafficking in human beings at the regional level. The team is composed of 2 -6 police officers dealing with human trafficking.

d) Intensification of the bilateral international cooperation with countries of origin and countries of destination the victims of trafficking

The permanent cooperation has been established with Belarus, Ukraine and Moldova.

e) Annual meetings of experts from countries of origin, transit and destination of the victims – from the Polish point of view – in order to exchange information regarding the constant changes occurring in the phenomenon of trafficking in human beings

Polish experts are members of different bodies established by political inspirations devoted to trafficking in people (Central European Initiative, Organization of Safety and Cooperation in Europe, Council of Baltic Countries etc.).

f) Recommendations for the judicial practitioners with regard to trafficking in human beings cases

The acts of legal proceeding and methodological guidelines with regard to the position of victim in human trafficking cases were prepared and distributed to the prosecutor's offices in Poland on December 2003 (annex no. 2).

In order to improve position of victims of crime, the Ministry of Justice in co-operation with governmental institutions and non-governmental organizations has prepared The Charter of Victims Right (annex no. 3).

g) Recommendations for employees of consular services with regard to dealing with potential victims of trafficking in human beings

The information about the phenomena of trafficking in human beings has been included to the basic trainings to candidates for diplomatic service. The National Program of Fighting and Prevention of Trafficking in Human Beings is a part of education materials for employees of consular services.

2.2.4 Intensification of victim and witness protection

a) Victim and witness protection against victimization of the victim during the investigation through application of appropriate procedures and technical means

In 2001 was signed into effect of the programme on cooperation between Poland and the Czech Republic - The Bureau to Combat Drug Offences and the Prevention of Organized Crime. UN Centres for the prevention of organized crime were set up in Poland and Czech Republic under the heading of "A Legal and Penal Reaction for Trafficking in Persons". Following that a support model for witnesses and victims has been developed within the twin frameworks of the Programme and the cooperation with Czech Republic. The model offers a description how to deal with victims of trafficking. A supplement has been developed by the Border Guards and the Police. Work on devising the model has been supported by the UN and tests are being conducted in Poland's Lubuskie Province, in order that correction can be made before the model is disseminated across the country.

The main aims of the model are to reduce to the unavoidable minimum the number of interrogations and interrogators. Ensure appropriate attitude and professionalism. Ensure subjective, not objective treatment through effective informing of procedures and legal status. Use procedures protecting the witness, such as sight with the use of the Venetian mirror, interrogation with the use of technical means, interrogation without the presence of the accused persons.

2.2.5 Obstacles to the application of legal instruments to prosecute trafficking in human beings in the Poland

a) Lack of the reflection period in Polish legislation

A temporary right to residence is a crucial element of any effective and witness protection strategy. The Polish legislation gives legal opportunity for victim to get a (temporary) residence permit with a view to hear the testimonies of the victim but this provision is not being used in practice due to lack of financial support to the victims. Trafficked persons who decide to give testimony in criminal proceeding should be granted a residence status at least for the duration of such proceedings. They should be entitled to remain in the state's territory for an adequate period of time that allows them to recover and to receive just compensation from the traffickers. The residence permit should include the right to medical, psychological, social and legal counseling and assistance, physical protection, as well as access to the labour market.

The draft amendments to the Polish Aliens Act 2003 foresee the introduction into Art 33 and Art 53 of the law of a 2 month "reflection period" for victims of trafficking on the condition that they co-operate with investigating authorities, and that they have severed all ties with the traffickers. Within that period they would be provided with aid (accommodation, medical, psychological and social aid). The changes to the Alien Law have mostly been made in light of relevant EU legislation about the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities (e.g. EC Directive).

b) Lack of the victim protection system

Within the complex overall structure of a comprehensive anti-trafficking strategy the protection of the safety of persons in danger especially the victim of trafficking is the first priority in polish legislation. Only the key witness may enjoy of secret the personal data if there is a justified concern for safety of life, health, freedom or loss of property of considerable dimension regarding the witness or his next of kin. The order is issued by the court or the state prosecutor based on objective judgment of the danger to the witness. There is a need to establish similar application in relation to the injured party (the victim of trafficking in human being) in Polish legislation.

c) The legal limitation in special investigative techniques

By using a combination of intelligence gathering, human and technical surveillance, undercover deployments and standard investigative techniques, the objective is to identify the traffickers and prosecute them for the offences. The main prerequisites for successful investigation are legal limitation in Polish Law. The uses of the tactics (especially pseudo-purchase, pseudo-sell and pseudo-services by a police officer or civilian) are most effective against trafficking in human beings in other countries. According to Polish Law (article 19a) of the Police Act) these tactics can be used only to the items directly derived from an offence. And the use above mentioned tactics is no applicable in regards to trafficking in human beings offences and perpetrators.

The following investigative methods may be used by the Police and other institutions in trafficking cases: observation, requesting information concerning telecommunications, recording telecommunications, recording confidential communications, systematic information gathering by an investigative officer, infiltration by police officers, civilian infiltration. The recording telecommunication method was used in only four human trafficking cases in 2004 year.

3. ROLE OF THE VICTIM IN CRIMINAL PROCEEDINGS

3.1 The right of the victim with regard to the criminal justice system

The issue of expanding and enforcing of victims' rights has featured within the criminal policy on the agenda since the 90s on, the expansion of organized crime has been reflected in relevant notions appearing in the Criminal Code and the Code of Criminal Procedure. Under the Code of Criminal Proceeding the injured party (the victim of trafficking in human beings) has a relatively wide spectrum of rights in the criminal proceeding.

Among below mentioned things, the following rights of injured parties which appear in the different chapters of the Code of Criminal Procedure, are to emphasized:

- the injured party has a the right to report the crime, or – if he or she suffered from particular crimes – to submit a private motion thereby initiating the criminal procedure;
- the injured party may make initiatives and remarks in the course of criminal proceeding;
- the injured party may be present at certain procedural acts and may have access to the documents concerning him or her;
- the injured party may ask for information about his or her rights from a representatives of the authority, and he or she has the right to receive these information;
- the injured party has the right to use his or her mother tongue;
- the injured party has the right to exercise his or her right through a representative;
- if the injured party does not have a representative, or is unable to enforce his or her rights for any reason, he or she has the right to have the court make counsel available on the basis of legal aid;

The crimes of trafficking in persons and crimes related to prostitution are offences prosecuted *ex officio* in Polish legislation.

a) Subsidiary prosecutor

According to Article 53 of the Code of Criminal Procedure in cases of indictable offences, the injured party may participate in the judicial proceedings as a party thereto, by assuming the role of subsidiary prosecutor, alongside the public prosecutor or instead of him. But the injured party has to before the commencement of the judicial examination in the main trial and files a statement in writing on his intention to act as subsidiary prosecutor. The subsidiary prosecutor has a power vested in party of the judicial proceeding and may:

- be present during the interrogation of accused persons as well witnesses,
- question accused and witnesses,
- submit (lodge) an evidentiary motions,
- avail himself of appellate measures from a decision rendered in the court instance,
- be represented by an attorney during the judicial proceeding.

b) Community representative

The injured party can be supported by Community representative. According to the article 90 § 1 of the Code of Criminal Procedure in judicial proceedings, prior to the commencement of the judicial examinations the right to participate in the proceedings may be petitioned by a representative of a community organization (non – profit organizations), if there is a need to defend a community or social' interests within the statutory purposes of such an organization, especially in matters pertaining to the protection of human rights and freedoms. The representative of a community organization, who has been admitted to participate in court proceedings, may participate in the trial, make statements and submit motions in writing.

c) Preparatory proceeding phase

Regarding the trafficking cases, especially in woman, it is very often that the victim leaves Poland to country of origin just after the statement given to Police during the investigation. In that situation there is a minimum chance to repeat the statement at the hearing in the court. There is possibility to hear the victims/witnesses in preparatory proceeding phase. Under article 316 § 3 of the Code of Criminal Procedure if there is a danger that the witness cannot be heard at the hearing, a party or the state prosecutor or other agency conducting proceedings, may submit a motion demanding that the witness should be heard by the court in preparatory proceeding phase. Above mentioned article was used in 51 cases (8 cases in 2001 year, 13 cases in 2002 year, 16 cases in 2003 year and 10 cases in 2004 year).

d) Protection against secondary victimization - avoiding confrontation

The last amendments of the Code of Criminal Procedure (from the 1st of July 2003) gives the opportunity to exam the witness from distance with using technical facilities such as telephone and video conferences - audiovisual tools (article 177 § 1a of the Code of Criminal Procedure). The injured party/victim has a right to testify during the judicial proceeding without presence of accused person. Generally the presence of the accused at the first-instance hearing shall be mandatory, unless otherwise provided by law. But exceptionally in some cases when the accused party would have influence on victim's testimony the presiding judge may temporarily remove the accused party from the courtroom. In the event that an accused party, despite being warned by the presiding judge, conducts himself in a manner which disturbs the order of the hearing, or is incompatible with the dignity of the court the presiding judge may use above motioned power. After permitting the accused to return, the presiding judge shall promptly inform him of the progress of the hearing during his absence, and allow him to give explanations concerning evidence taken during that time (Article 375 of the Code of Criminal Procedure).

c) Specially protected witness/Incognito witness

The legislation in the Code of Criminal Procedure related to the incognito witness improves and strengthens the situation of the injured party during the judicial proceeding in Poland. According to article 184 of the Code of Criminal Procedure the court, and in the preparatory proceedings -- the state prosecutor may issue an order classifying as secret the personal data of such witness if there is a justified concern for safety of life, health, freedom or loss of property of considerable dimension regarding the witness or his next of kin. The order is issued by the court or the state prosecutor based on objective judgment of the danger to the witness.

In the event that the order has been issued, the personal data of the witness shall be known exclusively to the court, the state prosecutor and, when necessary, to a police official who conducts the proceedings. Records of testimonies of the witness may be made available to the

accused or his defense counsel only in the manner preventing identification of the witness. The witness shall be examined by the state prosecutor and by the court which may direct a judge from its composition to do so -- at a place and in a manner ensuring secrecy as to the identity of the witness.

The article 184 of the Code of Criminal Procedure has been used only in 9 cases related with human trafficking and only in 4 cases in relation to the injured person in 1995-2004 periods.

d) Compensation

The purpose of the Code of Criminal Proceeding is to establish rules which will secure that the perpetrator of a criminal offence should be detected and called to penal responsibility (article 2 § 1 of the Code of Criminal Proceeding).

Under the Polish Code of Criminal Procedure the victims are entitled to receive compensation for damages suffered.

According to article 46 § 1 of the Polish Criminal Code in the case of conviction for causing death, serious detriment to health, disturbance to the functioning of a bodily organ or disturbance to health, an offence against safety in traffic or an offence against the environment, property or commerce, the court, upon a motion from the injured person or from another person so entitled, shall impose the obligation to redress the damage caused, in whole or in part. This obligation is mandatory. And the criminal court can not send a motion to the civil court. This provision is very useful for a prosecutors and a injured party. Pursuant to the article 49a of the Polish Criminal Code the motion to redress the damage until the commencement of the judicial examination at the main trial can be submitted by an injured party or a prosecutor on behalf of an injured party.

e) Sanction imposing a payment to the injured party or to the public purse

Pursuant to the article 46 § 2 of the Code of Criminal Proceeding instead of the obligation to redress the damaged the court may decide upon a supplementary payment to the injured party, in order to compensate them for any serious detriment to health, disturbance to the functioning of a bodily organ or disturbance to health or for any wrong suffered.

f) Adhesion proceeding

Pursuant to the 62 article of the Code of Criminal Procedure the injured party may, until the commencement of the judicial examination at the main trial, file a civil complain against the accused in order to litigate, within the framework of the criminal proceedings, his property claims directly resulting from the offence. Additionally the property claim can be filed by the public prosecutor on behalf of the injured party or support complain filed by the injured person or such other person, if the public interest so requires.

The granting of satisfaction for infringement of a personal interest can be either the subject of the civil complains in the criminal proceeding. The Polish Civil Code legislation can be used in that case in particular the legislation regards the torts.

The article 445 § 2 of the Civil Code can be applied in the human trafficking cases. According to above mentioned article the court may award an appropriate sum to the injured person as pecuniary compensation in the case of deprivation of liberty and the case where a woman was induced by deceit, violence, or the abuse of the relationship of dependence to submit to an illicit sexual act. The accused can be only defendant in the adhesion proceedings.

New amendments of the Code of Criminal Procedure gives the power to the injured party to sue for additional damages in civil proceedings in the case when the adjudicated damages do not

cover the entire loss or do not adequately compensate for the wrongdoing (article 415 § 6 of the Code of Criminal Procedure).

g) The residence visa

The Polish legislation gives legal opportunity for a victim to get a (temporary) residence permit with a view to hear the testimonies of the victim for a successful imposing guilt on the perpetrators. Under the article 33 of the Act on Aliens of 13 June 2003 (Journal of Laws of 2003, No 128, it. 1175) the residence visa may be issued to an alien, despite of the circumstances that justify the refusal of the visa, if:

- provisions of the Polish law require that he or she should appear in person before an agency of the Polish public authority;
- an exceptional personal situation that requires the presence of an alien on the territory of the Republic of Poland has occurred;
- it is required by the interest of the Republic of Poland.

The visa referred to above shall be issued for the period of residence necessary to realize the purpose of its issue. In any case such a visa may not be issued for the period exceeding 3 months.

But the above provision is not being used in practice due to lack of financial support to the victims during theirs stay in Poland. This regulation remains ‘dead’ and is not applied in Poland, as there are no legal regulations settling the financial aspects of the victim’s stay in Poland. Such persons should be provided with financial means for living for the period of their stay in Poland. Difficulty applying this regulation results also from the short time of making a decision on deportation or issuing a stay visa that is provide for (by the law). The deportation decision is very often issued immediately just after detention of the women illegally stayed in Poland. Most of them are directly involved in prostitution. The immediate deportation decision makes effective combating traffickers impossible. Detection of a trafficking in human being offence and collection evidence provides sufficient ground for charging the perpetrator are not possible in that situation.

h) Sanctioning policy

Behavior of the victims of the trafficking in human beings bear very often attributes of an offence *inter alia* illegal border crossing, forgery of documents. Disclosure of above mentioned offences cause a direct charge against aliens who committed offence. The evidence collected during the preparatory proceedings are mostly concentrated on offences committed by victims of trafficking. And the issues of trafficking are omitted. At the same time it is important to consequently treat victims with respect and compassion, and do not to sentence then for minor breaches of legal regulations. Only then victims may be encouraged to support the prosecution of traffickers. There are situations when the victims of trafficking in human being are being accused instead of being the injured party in the court. Following that the victims are not willing to give testimony to the prosecution authorities. Regarding to above and to improve effectiveness of combating trafficking in human being each particular case should be researched and checked if there are fulfilled conditions (article 17 § 1 of the Code of Criminal Procedure) to issue a decision discontinuing criminal proceeding or a decision refusing to start criminal proceeding. The Code of Criminal Proceedings gives following possibilities to desist from criminal prosecuting the minor offences committed by the victims of trafficking:

- discontinuing (or refusing) criminal proceeding according to article 17 § 1 of the Code of Criminal Procedure. The criminal proceeding shall not be instituted, or, if previously

instituted, shall be discontinued, when the circumstances precluding such act occur. One of the circumstances is physical coercion (*vis absoluta*). The victims of trafficking are usually under the constant duress from the perpetrators side.

- discontinuing criminal proceeding on the ground of article 17 § 1 point 2 of the Code of Criminal Procedure in conjunction with article 26 § 1 and 2 of the Criminal Code. The criminal proceeding shall not be instituted, or, if previously instituted, shall be discontinued, when the act does not possess the qualities of a prohibited act, or when it is acknowledged by law that the perpetrator has not committed an offence in situation of appearing the state of necessity. It can apply in situation when the victim will be under the compulsive physical coercion or mental coercion.

Under the article 60 § 3 and 4 of the Criminal Code extraordinary mitigation of penalty may be used to the victims of trafficking in situation when they co-operate with investigating authorities.

i) Disarming criminal organizations – confiscations

Within the framework of Polish national legislation there are legal ways to confiscate of items directly derived from an offence.

Under the article 44 § 1 of the Criminal Code the court can impose the forfeiture of items directly derived from an offence, unless they are subject to return to the injured party or to another entity. The court may decide on the forfeiture of the items which served or were designed for committing the offence unless they are subject to the return to another entity. The forfeiture described above is not applied if its imposition would not be commensurate with the severity of the offence committed, the court may impose a supplementary payment to the State Treasury. In the event that the perpetrator has intentionally prevented the possibility of imposing the forfeiture of items the court may impose the obligation to pay a pecuniary equivalent of their value. In the event that the conviction has pertained to an offence of violating a prohibition of production, possession or dealing in or transporting specific items, the court may decide on the forfeiture thereof.

Property which is the subject of forfeiture shall be transferred to the ownership of the State Treasury at the time the sentence becomes final and valid.

In article 45 of the Criminal Code in the case of sentencing the perpetrator the court may decide on forfeiture of the material benefits gained, even indirectly, from the offence.

The Polish of the Code of Criminal Procedure gives methods to secure penalty on property of the accused. According to the article 291 § 1 in the event of the commission of an offence subject to a fine or forfeiture of material objects, or to imposition of the obligation to redress damage or to pay supplementary payment to the injured or for a public purpose; these penalties may be secured *ex officio* by levying on the property of the accused.

The effectiveness of the above mentioned provisions is improved in connection with the presumption of law described in article 45 § 2 of the Criminal Code. According to that presumption perpetrator holds of items derived from an offence. The abolition of mentioned presumption can be done by perpetrator or other person with presenting of the contrary evidences.

ANNEX 1 - NATIONAL PROGRAM OF FIGHTING AND PREVENTION OF TRAFFICKING IN PEOPLE

Introduction

National Program of Fighting and Prevention of Trafficking in People is an element of the implementation of the program of improving citizens' safety 'Safe Poland' assumed by the Council of Ministers on 28 August 2002.

The need for such a program also arises from the international obligations of Poland, particularly signing and ratification of Protocol (appendix to the UN Convention against international organized crime) of preventing, fighting and penalizing trafficking in people, women and children in particular.

The task of the Program is to implement the recommendations thereof, in order to create conditions necessary for efficient counteracting and fighting the trafficking in people.

The Implementation of the Program shall require participation and cooperation of numerous subjects of governmental administration and non-governmental organizations.

Tasks assigned to individual subjects shall be financed within the budgets at their disposal. Certain elements of the program, particularly those related to data exchange, best practice and training might be financed by the EU programs, such as AGIS (program of police and prosecution cooperation on penal cases), or Daphne. Advanced works on the European Council resolution on initiatives concerning trafficking in women ease the conditions for financing such activities by other sources that is programs like EQUAL 2004, INTERREG, European Fund of Regional Development, or European Social Fund. It is also possible to conclude bilateral agreements with other interested countries.

Designated subjects bear responsibility for the implementation of tasks assigned in the Program. As major part of tasks concerning the implementation of the Program lies within the competence of the Ministry of Internal Affairs and Administration, the Minister of Internal Affairs and Administration is responsible for coordinating and monitoring its implementation. Ministers engaged in the implementation of the Program shall delegate authorized representatives for works related thereto. Prime Minister shall define in a decree the procedure of work on the implementation of the Program.

Time for evaluation of the Program has been defined as 1.5 years from its assumption by the Council of Ministers. After that period the Council of Ministers shall evaluate the results thereof and make a decision on the way of organizing activities aimed at fighting and prevention of trafficking in people.

1. Legal status

On 21.03.1950 the Convention of fighting trafficking in people and exploitation of prostitution was opened to signing in Lake Success.⁴ The Convention unified regulations of agreements passed to date, and extended them onto a wider group of acts.

Crime of trafficking in people was firstly classified in article IX § 1 and 2 of regulations introducing the penal code of 1969.⁵

In § 1 the legislator described behaviour involving provision, enticement or abduction of another person in order to induce them to prostitute, even with their consent. Formulation of the regulation implied that the crime stated in article IX § 1 of the regulations introducing the penal code did not depend on whether the provision, enticement or abduction of a person in order to induce them to prostitute occurred against the will, without consent, or with the consent of the wronged person. The fact of agreement or the lack thereof might only be of importance at penalty assessment. In § 2 behaviour involving trafficking in women even with their consent, and trafficking in children, was described. In this case the reason for trafficking in children was not crucial to the existence of the crime.

Therefore, Polish legislation moved further than obliged by the Convention of 21.03.1950. The crime described in article IX § 2 of regulations introducing the penal code was not a directional crime and, as such, did not require the action of the perpetrator of the crime towards prostitution for the occurrence thereof. Trafficking in children for any reason was already a crime.

Upon the basis of the penal code of 1969, criminal responsibility was also borne by anyone who has induced another person to prostitute, as well as anyone who has financially benefited from another person's prostitution or, in order to gain financial profits, has eased the conditions for the prostitution thereof. These crimes were described in article 174 § 1 and 2 of the penal code of 1969.

The legislator, in the new penal code of 06.06.1997, introduced substantial alterations to both instructions and sanctions of legal regulations concerning trafficking in people.⁶

The crime stated in article IX § 1 of the regulations introducing the penal code of 1969 was incorporated into article 204 § 4 of the new penal code. They are not regulations of identical contents whatsoever. The legislator had left out the phrase 'even with their consent' included in article IX § 1 of the regulations introducing the penal code of 1969. In this way, they must have wished to distance themselves from the wrong interpretation suggesting that abduction with the consent of the abducted person is possible.

In case of exploitation of prostitution with the consent of the wronged person perpetrator of the crime shall be subject to the penalty of imprisonment of up to 3 years. In case of enticement or abduction of a person in order to induce them to prostitute, the perpetrator shall be subject to the penalty of imprisonment from 1 to 10 years.

Beside the above-mentioned legal regulations, an important role is played by the regulation of article 253 of the new penal code, according to which a person trafficking in people, even with their consent, is subject to the penalty of imprisonment of no less than 3 years.

⁴ Official Journal of Acts of 21 October 1952 (number 41 item 278)

⁵ Act of 19 April 1969 – Regulations introducing the penal code (Official Journal of Acts, number 13 item 95)

⁶ Official Journal of Acts of 2 August 1997 (Official Journal of Acts, number 88 item 553)

In this case neither the purpose of trafficking in people nor the fact of the wronged person's consent do matter. Formulation of charges most typically involves cumulative qualification of the deed. Indications of two regulations – article 204 §4 of the penal code, and article 253 of the penal code, simultaneously aspire to be considered as the same criminal behaviour.

On 12 December 2000 in Palermo, on behalf of the Republic of Poland, there was signed the UN Convention against international organized crime, assumed by General Assembly of the United Nations on 15 November 2000. On 04.10.2001, on behalf of the Republic of Poland, there was also signed the Protocol of prevention, fighting and penalizing trafficking in people, women and children in particular, as assumed by the General Assembly of the UN on 15 November 2002 (Act of ratification was announced in the Official Journal of Acts of 17 February 2003, and became legally binding 14 days of announcement).

In the protocol mentioned the definition of trafficking in people was formulated. In accordance with article 3 letter (a) of the Protocol, 'trafficking in people means recruitment, transportation, transfer, hiding or hosting persons, with the use of threats or force, or other means of constraint, abduction, swindle, misleading, authority abuse or taking advantage of weakness, handing or accepting payment or other benefit in order to obtain consent of a person having control over another person in order to abuse them.'

The abuse comprises, as minimum, taking advantage of prostitution of other persons or other forms of sexual abuse, work or service of compulsory nature, slavery or slavery-related practice, captivity, or removal of human organs.' According to letter (b) of the aforementioned article, consent of a victim of trafficking in people to intended abuse provided for in letter (a) is of no importance if any of the methods provided for in letter (a) was used. And according to letter (c) of the article, recruitment, transportation, transfer, hiding or hosting a child in order to abuse them is considered as 'trafficking in people' even when it does not involve any of the methods provided for in letter (a). A child then means a person who has yet to become 18 years of age (letter (d) of article 3).

Legal binding with regard to the Republic of Poland of the aforementioned Protocol shall result in the fact that the notion of 'trafficking in people' used in 253 § 1 of the penal code shall be defined on the grounds of Polish law in compliance with the definition used in article 3 of the aforementioned Protocol.

With respect to the legal status, one shall also remember obligations resulting from future membership of Poland in the European Union, that is the necessity to take into consideration legal acts of the EU which, being part of *acquis communautaire*, shall decide of the shape of Polish legal order. Among numerous acts of the EU on fighting trafficking in people, one shall quote the Outline Decision of the Council of Europe on fighting trafficking in people (2002/629/JAI 19 July 2002) and currently prepared: the Outline Decision of the Council of Europe on fighting sexual abuse of children and child pornography, and the Directive of the Council of Europe on short-term stay permits for persons harmed by crimes of easing the conditions for illegal migration or trafficking in people, and who cooperate with appropriate bodies.

2. Description of the Phenomenon

Trafficking in women in Central and Eastern Europe grew bigger at the beginning of the 1990's. This coincided with the fall of the communist system in Europe. Economic liberalization contributed to the establishment of new, organized groups dealing with sex and pornography. Such industry, connected with organized crime, became so widely spread that trafficking in women and prostitution became serious commercial enterprises. Undoubtedly, employment being the side effect of economic transformation affected the phenomenon.

Before the year 1990 Polish centres of prostitution existed mainly at hotels and restaurants, whereas after the year 1990 the number of the so-called massage parlours and revival clubs, unofficial brothels in fact, significantly increased. These are controlled by organized crime groups. Moreover, Poland features the so-called off-road prostitution. Usually, such prostitutes are foreigners, who came to Poland with tourist visas and provide services to long-distance truck drivers and owners of private vehicles at places not distant from border control points. As far as the phenomenon of trafficking in women is concerned, Poland initially functioned as a victim's country of origin (forced to prostitute mainly in Germany and the Netherlands). It soon became a transit country for women from the countries of the former Soviet Union and other countries in Eastern Europe.

In the years 1995-2002 259 preparatory proceedings on cases of trafficking in women had been completed, out of which 198 proceedings resulted in bringing the cases to the court (61 proceedings had been remitted). On the whole, 478 people had been accused, and 1250 women found to have been wronged. In the aforementioned period most cases had been conducted by prosecutor offices subordinated to prosecution of appeal offices in Poznań, Wrocław and Katowice.

Courts had pronounced 101 verdicts within that period. 181 persons had been sentenced, and 9 persons had been acquitted. Among the 181 sentenced, 62 persons had been imprisoned for 2 to 5 years.

There exists a justified assumption that our country is also becoming a country importing women from Eastern Europe, thus being a country of destination (mainly for gangs trafficking in women from Bulgaria and former countries of the USSR). Immediate deportation of women precludes collection of possible evidence and discovery of the actual rate of the phenomenon.

Poland as a country of destination (place for trafficking in foreign women)

In the years 1995-2002 53 proceedings had been completed (20 investigations in progress in the year 2001), in which Poland was the country of destination, that is a country victims had been abducted to in order to prostitute. The aforementioned proceedings concealed 249 wronged women (incl. 73 citizens of Ukraine, 27 citizens of Bulgaria, 85 citizens of Belarus, 15 citizens of Romania, 16 citizens of Moldavia, 8 citizens of Latvia, 6 citizens of Vietnam, 5 citizens of Lithuania, 11 citizens of Russia, 3 citizens of Mongolia, 2 citizens of Costa Rica). What is characteristic is the fact that the citizens of Bulgaria were forced to prostitute off-road. On the other hand, all wronged women of Ukrainian origin had been sold to society clubs in order to force them to prostitute.

Almost each case featured a citizen of the country of victims cooperating with the perpetrators. Only 11 women were aware of what type of job they were to perform in Poland.

Most often, the victims were promised the job of a salesperson at bazaars, or of farm workers. Women happened to come to Poland of their own accord to find a seasonal job at farms or strawberry plantations. Once the season was over, there appeared someone who offered further employment and then deceitfully abducted them, and sold them to citizens of Bulgaria, engaged in such criminal activities in Poland to the greatest extent. One of the victims was abducted with a significant help from her friend, who assured her of having managed to get a job in Poland for both of them. Having crossed the border, the woman was immediately handed over to 2 men. Women deceitfully enticed to Poland are very often sold to further traffickers for a higher prices several times, thus changing their location, which substantially hinders investigation should they be reported missing.

There is no research data concerning the economical aspect of trafficking in people. Findings of an investigation conducted by District Prosecution's Office in Rzeszów may give certain idea thereof. It had been determined that a Ukrainian female managing a group sold about 60 women to persons managing society clubs for USD 200 each. At the same time, upon the basis of agreements with owners of the clubs, she collected USD 100 monthly on each sold woman due to providing sexual services. The trade had lasted for minimum 2 years.

The area of concentrated activity of criminals engaged in trafficking in woman and forcing them to prostitute in our country is the central part of Poland (the environs of Warsaw, Płock, Żyrardów, or Radom).

Poland as a country of victim's origin

Most serious cases in this category were conducted in the years 1997 / 1998 by the then Voivodship Prosecution's Office in Szczecin (51 wronged women), and the then Voivodship Prosecution's Office in Opole (89 wronged women.) In both cases women were recruited to work in Germany.

In the first case, women were delivered to prostitute with German and Turkish citizens. A Polish citizen, to whom a permanent Turkish citizen of Berlin had offered cooperation, recruited women.

Contact with women was established through placing newspapers advertisements of housekeeping jobs in Germany.

Having delivered women to Berlin, the Pole was paid from 5 DEM 00 to DEM 3000 per each. The women were immediately deprived of passports. The agency worked 'over the phone'.

Women were driven to clients after a telephone order. The driver – bodyguard received from the client money for the services to be provided by the woman and, having examined the apartment, left the victim alone with the client.

Price of service was from DEM 120 to DEM 150, out of which amount the wronged woman was only given approximately DEM 30 to DEM 40.

After some time the Pole became a co-owner of the agency, from which he 'collected' DEM 10 per each hour of sexual service provided by all the women he had delivered to the Turkish man. Several women managed to flee with the help of the drivers with the agency. The case has already been legally judged. The Polish citizen dealing with recruitment of women to work in Germany was sentenced to 10 years of imprisonment.

Another case, conducted by the then Voivodship Prosecution's Office in Wrocław, revealed that a female employee of a 'Revival Parlour' recruited women. It was also a place of providing sexual services.

One of the clients – a citizen of Italy living in Germany, offered the employee cooperation on recruiting women to provide sexual services in Germany. The aforementioned employee recruited about 30 women from among those that had provided services at the ‘Revival Parlour’. In that case, the women were aware of what kind of job they were going to perform, and generally agreed to the offer. The offer was presented to young women of low economic status. Greatest concentration of criminal groups recruiting victims (from Poland) to Western Europe (Germany, the Netherlands, Belgium) occurs along the German border (the environs of Szczecin, Poznań, and Gorzów Wielkopolski).

Poland as a transit country

Poland functions as a transit country, mainly with regard to victims from Lithuania, Latvia and Moldavia. In this case, Germany is the country of destination. The women are smuggled across the border in the environs of Szczecin and Świnoujście. Eastern border of Poland is crossed legally, whereas the German border is crossed upon the basis of falsified documents (Polish passports).

CHARACTERISTICS OF THE WRONGED PERSONS

Majority of determined wronged persons were aware of the purpose of their going abroad and type of job (they were supposed) to perform. Suspects recruiting in Poland women willing to go abroad to prostitute took advantage of their hard economical status.

Women aged 16-20, of primary education and low economical status, were most commonly recruited. Suspects recruiting women generally received from the orderer DEM 500-2000 for the provision of 1 woman. The orderer was always a foreigner (most commonly a German citizen) living in Germany or the Netherlands.

Wrong women decided to report on perpetration of a crime only after the return to Poland and only in situations in which they had been raped or drastically sexually exploited. In 12 cases, the wronged women altered their testimony, which hindered the course of legal proceedings at court.

CHARACTERISTICS OF SUSPECTS ENGAGED IN TRAFFICKING

Most cases that have been, or are presently investigated into in Poland imply that traffickers come mainly from Poland, Russia, Bulgaria, Turkey, and Germany.

According to the police, Turkish minority in Germany appears to be particularly engaged in trafficking in women. Males coming from the area of former Yugoslavia play almost the same role. In Poland, citizens of Bulgaria are most active in this field. In the year 2001, 21 accused foreigners included 16 citizens of Bulgaria (all of them after primary education and coming from the environs of Varna). Apart from Bulgarian citizens, 3 Turkish citizens, 1 citizen of Albania and 1 citizen of Spain were convicted.

Upon analysed cases it had been noticed that women who had previously been victims, were also engaged in this criminal trade. Those women are mostly recruiters and the first to establish contacts with future victims.

3. Suggested actions

1 Establishment of a system of cooperation, education and prevention

Establishment of a permanent working team for monitoring the phenomenon of trafficking in people (including the collection of statistics data).

State to date:

At present, various actions conducted with regard to prevention of trafficking in people (The Police, The Border Guard, The Prosecution's Offices, courts, non-governmental organizations) are not coordinated methodically and systematically. Ad hoc actions remain regular. Although efficient to date, they do not guarantee success as the scale of the problem is becoming larger. Lack of one centre precludes competent and reliable collection of data, which would enable a reliable description of the phenomenon.

Objective:

Establishment of a permanent, inter-department and interdisciplinary working team including: Ministry of Internal Affairs and Administration, Chief Headquarters of the Police, Chief Headquarters of the Border Guard, Office for Repatriation and Foreigners, Ministry of Justice – the prosecution, courts, Commissioner for Equal Status of Women, Ministry of Education and Sports, Ministry of Economy, Labour and Social Policy, Ministry of Foreign Affairs, Ministry of Health, Committee for European Integration, non-governmental organizations (La Strada and others), with the possibility of cooperation with other experts (for instance financial forces).

The group's objectives shall comprise:

monitoring the implementation of the Program,

collecting information and statistics data on the problem of trafficking in people and analysis thereof,

preparing suggested actions for bodies represented in the working team and other bodies of governmental administration, their subordinates or bodies supervised by them,
cooperating with foreign partners.

Responsible for implementation: Ministry of Internal Affairs and Administration.

Date of implementation: IV quarter of 2003.

2 Support of research into trafficking in people in Poland, with regard to its victims and methods of perpetrators in particular.

State to date:

Research carried out so far, of fragmentary nature due to the lack of a uniform database, features errors.

Many a time has a body conducted research on the very same topic, which results in the waste of financial means provided for research out of the budget, or means out of non-governmental administration institutions.

Objective:

Working out methodology and scope of permanent collection of information on the phenomenon. Collection of information and statistics date enabling better coordination of research into the problem. This would enable to define matters requiring immediate

investigation, name possible sources of information etc. therefore it would be possible to effectively support research into trafficking in people on the merits, organization, and finances.

Responsible for implementation: Ministry of Internal Affairs and Administration, Ministry of Justice, Commissioner for Equal Status of Men and Women, in cooperation with non-governmental organizations.

Date of implementation: permanent objective.

3 Introduction of the problem of trafficking in people to programs of public media.

State to date:

Lack of coordination of activities regarding fighting trafficking in people, as well as a Program, precludes methodical influence on the shape of information about the problem of trafficking in people in the public media. As a result, media many a time wanting to provide the audience with interesting information, provide biased view of the situation, consolidate stereotypes harmful to perspectives for counteracting the phenomenon. It also happens that they spread information threatening the safety of the victims.

It results in the lack of programs that would positively and on a long-term basis influence the society's awareness of the matter.

Objective:

Providing the media with a reliable picture of the phenomenon.

Preparation of suggested media actions that would serve both effective prevention and successful fighting the phenomena: training a group of journalists, naming matters that require particular attention of the media.

Systematic informing public opinion of the situation. Using the Internet for this purpose.

Responsible for implementation: bodies on the working group, each within their scope of cooperation with public radio and television.

Date of implementation: by the end of 2003.

4 Introduction of the problem of trafficking in people to the offer of chief teacher training centres.

State to date:

Problem of trafficking in people is not present in teacher training curriculum. Hence, it is difficult to expect their active participation, through influencing their wards, aimed at preventing of children and teenagers becoming victims of the trade.

Objective:

Introduction the problem of trafficking in people to the offer of chief teacher training centres.

Preparation of appropriate informative materials.

Responsible for implementation: Ministry of Education and Sports in cooperation with non-governmental organizations.

Date of implementation: I half of 2004.

5 Introduction of the problem of trafficking in people to the national curriculum.

State to date:

Absence of the problem of trafficking in people in educational / upbringing programs. Children and youth's unawareness of possible dangers.

Growing danger of children and youth becoming victims of trafficking in people (general tendency).

Objective:

Introduction of the problem of trafficking in people to the national curriculum. Preparation of appropriate informative materials.

Obliging experts to include in their opinions the assessment of obedience to the regulations of the Protocol (additional to the UN Convention against international organized crime) of preventing, fighting and penalizing trafficking in people, women and children in particular, featured by authors of course books and manufacturers of didactic resources.

Responsible for implementation: Ministry of Education and Sports in cooperation with non-governmental organizations.

Date of implementation: I half of 2004.

Changes in legislation aimed at effective fighting trafficking in people

1 Introduction of the definition of trafficking in people provided for by the Protocol to the UN Convention on penal code.

State to date:

Although Polish law (the penal code) comprises regulations concerning trafficking in people, it still does lack the definition of trafficking in people, which brings about different interpretation of article 253 of the penal code by courts throughout the country.

Objective:

Introduction of the definition to the penal code in the form included in the Protocol and the Outline Decision of the Council of Europe on fighting trafficking in people would unify the application of article 253 of the penal code, and ease the conditions for proving there has occurred the crime of trafficking in people.

Responsible for implementation: Ministry of Justice.

Date of implementation: by 1 May 2004.

2 Revision of the Act on Foreigners – application thereof to *acquis communautaire* (after assuming the EU Directive on short-term stay permits for victims of trafficking in people, cooperating with appropriate bodies).

State to date:

According to the act of 13 June 2003 on foreigners, a foreigner staying in Poland with an objective different than declared, or their stay is not wanted due to the necessity of protecting public order (for example prostituting) may in particularly justified cases (for instance, to give

testimony imposing guilt on the perpetrators) be issued at stay visa for a definite time. This regulation remains ‘dead’ and is not applied in Poland, as there are no legal regulations settling the financial aspects of the victim’s stay in Poland. Such persons should be provided with financial means for living for the period of their stay in Poland. Difficulty applying this regulation results also from the short time of making a decision on deportation or issuing a stay visa that is provide for (by the law).

Objective:

Establishing an instrument of fighting trafficking in people through introducing the short-term stay permit for victims thereof, who cooperate with appropriate bodies. Project of a Council Of Europe Directive provides, among others, that a victim of trafficking in people detained by the police forces would be given time to consider readiness to cooperate with them. Within that period they would be provided with aid (accommodation, medical, psychological and social aid). Should they agree to cooperate, they may be issued a stay permit for not longer than until the end of legal proceedings at court.

Responsible for implementation: Office for Repatriation and Foreigners + Ministry of Internal Affairs and Administration, Chief Headquarters of the Police, Chief Headquarters of the Border Guard.

Date of implementation: I half of 2004.

3 Ratification and implementation of the Facultative Protocol to the Convention of Children’s Rights concerning trafficking in children, prostitution and child pornography.

State to date:

Lack of ratification.

Objective:

Propagation among administrators of justice of the particular attitude towards cases of trafficking in children. Implementation of Polish international tasks.

Responsible for implementation: Ministry of Justice, Ministry of Internal Affairs and Administration.

Date of implementation: I half of 2004.

Improvement of effectiveness of actions.

1. Introduction of classes on procedures in cases of trafficking in people to the basic curriculum of the police and border guard training.

State to date:

The subject of trafficking in people is presently introduced to the basic curriculum of the police and border guard training. It is very essential as very often the first contact of victims of trafficking in people with such forces has a fundamental impact on their further decisions concerning possible testimony against the perpetrators.

Objective:

Introduction of information on trafficking in people to the basic curriculum of the aforementioned officers' training as well as acquainting them with the suggested procedures in cases of meeting with victim of trafficking in people.

Responsible for implementation: Chief Headquarters of the Police, Chief Headquarters of the Border Guard.

Date of implementation: II half of 2003.

2 Preparation and implementation of a program of special training of police officers, fire brigade officers, Border Guard officers, prosecutors and judges on the procedures in cases of fighting trafficking in people.

State to date:

Lack of uniform, based on the analysis of the phenomenon in Poland, program of special training. Lack of database on persons trained in fighting trafficking in people. Lack of coordination, and conferences, courses and training concerning the phenomenon.

Objective:

Establishing data base on persons trained and list of positions / persons who, due to the duties they perform, should be trained. Preparing a skeleton program of special training. Preparing facilities and financial means enabling the implementation of systematic special training in fighting trafficking in people.

Responsible for implementation: Chief Headquarters of the Police, Chief Headquarters of the Border Guard, Ministry of Justice.

Date of implementation: I half of 2004.

3 Preparation of teaching materials on procedures in cases of trafficking in people for police officers and Border Guard officers.

State to date:

Lack of instructions prepared by the forces. Officers barely possess information prepared by the La Strada foundation.

Objective:

Preparation of instructions / recommendations by the chief officers of police forces on ways of behaviour while meeting with victims of trafficking in people.

Responsible for implementation: Chief Headquarters of the Police, Chief Headquarters of the Border Guard.

Date of implementation: II half of 2003.

4 Training the teaching staff of police forces (police officer colleges, training centres) in the problems of fighting trafficking in people.

State to date:

Knowledge featured by teaching staff very often does not address the current state of the phenomenon, ways of preventing it and fighting it. As a result, officers trained are provided with stereotypes and untrue ideas.

Objective:

Training the teaching staff through special courses attended by representatives of non-governmental organizations. Systematic update of knowledge possessed.

Responsible for implementation: Chief Headquarters of the Police, Chief Headquarters of the Border Guard.

Date of implementation: permanent objective.

5 Establishing at the Chief Headquarters of the Police a mechanism of coordinating actions concerning trafficking in people and appointing (where justified by the extent of the phenomenon) task groups at voivodship headquarters and independent positions at lower-rank units, dealing with trafficking-in-people-related crimes.

State to date:

Different departments and units of the police and the Border Guard (criminal department, organized crime department). There is no mechanism of coordinating and exchanging information on conducted actions, which is bound to affect their effectiveness.

Objective:

Establishing at the Chief Headquarters of the Police (coordination of actions and information exchange) and voivodship headquarters task groups, and at lower-rank units – positions whose competence shall include, among others, coordination of fighting against people.

Responsible for implementation: Chief Headquarters of the Police.

Date of implementation: II half of 2003.

6 Intensification of bilateral international cooperation with countries of origin and countries of destination of trafficking in people.

State to date:

Bilateral contacts with the police forces of countries of origin and destination have been established. There are no special units / teams on the Polish side, which hinders effective development of cooperation on the matter.

Objective:

Intensification of bilateral cooperation, establishment of permanent contact points for information exchange and analysis.

Responsible for implementation: Chief Headquarters of the Police, Chief Headquarters of the Border Guard, Ministry of Internal Affairs and Administration.

Date of implementation: II half of 2003.

7 Annual meeting of experts from countries of origin, transit and destination – from the Polish point of view – in order to exchange information on changes occurring in the phenomenon of trafficking in people.

State to date:

Polish experts are members of different bodies established by political inspirations devoted to trafficking in people (Central European Initiative, Organization of Safety and Cooperation in Europe, Council of Baltic Countries etc.) regardless of different contents of merits of their meetings, they are not focused on the Polish point of view, that is considering Poland as a country of destination, country of origin and transit country.

Objective:

Gaining, through annual meetings, a full picture of the phenomenon of trafficking in people with regard to Poland and Polish citizens, establishing direct contacts with practitioners from other countries. Establishing a permanent mechanism of information, experience and best practice exchange.

Responsible for implementation: Ministry of Internal Affairs and Administration, Ministry of Justice.

Responsible for implementation: I half of 2004.

8 Recommendations for administrators of justice with regard to trafficking in people cases.

State to date:

Lack of precisely formulated standards of procedure in cases of trafficking in people.

Objective:

Preparation of recommendations for prosecutors and judges with regard to procedures in cases of trafficking in people.

Responsible for implementation: Ministry of Justice.

Date of implementation: II half of 2003.

9 Recommendations for employees of consular services with regard to dealing with potential victims of trafficking in people.

State to date:

Knowledge passed during training courses is not complete due to the extent of knowledge of the phenomenon.

Objective:

Providing employees of consular services (through special training and written recommendations) with knowledge of trafficking in people and dealing with potential victims in the situation of issuing a visa (foreigners) and dealing with victims who have established contacts with consular services (Polish citizens). Establishing cooperation on this matter with consular services of the UE countries.

Responsible for implementation: Ministry of Foreign Affairs, Ministry of Internal Affairs and Administration.

Date of implementation: I half of 2004.

Intensification of victim and witness protection

1 Victim and witness protection against repeated victimization during the investigation through application of appropriate procedures and technical means.

State to date:

Victims are repeatedly interrogated, sometimes by persons possessing no elementary knowledge of the problem, in unfavourable conditions.

Objective:

Reduce to the unavoidable minimum the number of interrogations and interrogators. Ensure appropriate attitude and professionalism. Ensure subjective, not objective treatment through effective informing of procedures and legal status. Use procedures protecting the witness, such as sight with the use of the Venetian mirror, interrogation with the use of technical means, interrogation without the presence of the accused persons.

Responsible for implementation: Chief Headquarters of the Police, Chief Headquarters of the Border Guard, Ministry of Justice in cooperation with non-governmental organizations.

Date of implementation: permanent objective.

2 Ensuring (through budgetary means or financial support of non-governmental organizations) the possibility of aiding the victim during the crisis situation and after cessation thereof.

State to date:

It happens that victims of trafficking in people – particularly foreign females, are deprived of the possibility of meeting basic needs, such as food, drink, clothing, hygiene, or safety. The wronged women are for example persuaded to rent a hotel room at their own expense for the period of giving testimony, or to stay at, for instance, police stations. Not always is the health condition examined. Once the witness is not needed for proceedings with their participation, they are deported to their home country without prior examination of safety conditions both during the trip and at the arrival / in the country. The Police turn to non-governmental organizations, mainly the La Strada foundations, in just a few cases.

Objective:

Providing victims with thorough information on their status, decent and safe conditions, possibility to receive support and consultations at each stage of the proceedings.

Responsible for implementation: Ministry of Economy, Labour and Social Policy, Ministry of Internal Affairs and Administration in cooperation with non-governmental organizations.

Date of implementation: permanent objective.

3 Creation of a list of centres and non-governmental organizations capable of and having the rights to provide aid to victims / witnesses of trafficking in people.

State to date:

Knowledge of possible aid and its range is just fragmentary, occasional and based on private contacts. There are numerous places – poviats or local communities, where such aid is barely available.

Objective:

Creation of an integrated record naming not only centres and institutions, but also the range of their activities with regard to the merits and geographical location. Upon the basis thereof it shall be possible to examine to possibility of meeting the needs of a particular wronged person with regard to individual ranges.

Responsible for implementation: working team in cooperation of non-governmental organizations, Ministry of Economy, Labour and Social Policy, Ministry of Internal Affairs and Administration, Ministry of Justice, and Ministry of Health.

Date of implementation: II half of 2003.

4 Introduction of the problem of trafficking in people to the curriculum of social workers' education.

State to date:

Except individual possibilities of local community training and occasional school sessions, there exists no systematic training of social workers.

Objective:

Regular training of workers, as well as introducing the subject to the curriculum of schools for social workers, so that each social worker in Poland would be capable of recognizing incidents of trafficking in people and managing them with regard to organization of aid, attitude to the client, and directing them to other bodies such as a psychologist, the police, the prosecution's office, a non-governmental organization etc.

Responsible for implementation: Ministry of Economy, Labour and Social Policy in cooperation with non-governmental organizations.

Date of implementation: I half of 2004.

5 Preparation and implementation of programs of voluntary return and reintegration of a victim of trafficking in people.

State to date:

Victims of trafficking in people after possible testimony are deported to the country of origin. There also occur cases of taking the over during the return trip already.

Activities of non-governmental organizations, such as the La Strada network, covers only part of such persons. In this case such organizations ensure monitoring their return home and aid at a safe place of dwelling, while seeking a job, or using medical aid.

Objective:

Preparation of procedures and conditions of their implementation concerning individual consultation on each case, organization of a safe trip, possible negotiations with the family, provision of an alternative place of dwelling should there arise a need, the monitored person's return to normal life supported by social services – for example non-governmental organizations. In particularly difficult cases (threat to life) – consideration of the possibility of the victim staying in Poland until the threat ceases to exist.

Responsible for implementation: Ministry of Internal Affairs and Administration in cooperation with non-governmental organizations.

Date of implementation: II half of 2004.

Ad 3. Suggested actions

Establishment of a system of cooperation				
1.Establish a system of cooperation, prevention and fighting of trafficking in people	1.1	Establishment of a permanent working team for monitoring the phenomenon of trafficking in people (including the collection of statistics data).	Ministry of Internal Affairs and Administration	Better coordination of information exchange between bodies engaged in the prevention of and fighting the phenomenon.
	1.2	Supporting and initiating research devoted to trafficking in people in Poland, with regard to its victims and methods used by perpetrators in particular.	Ministry of Internal Affairs and Administration Ministry of Justice, Commissioner for Equal Status of Women, Ministry of Economy, Labour and Social Policy	Better understanding of the problem. Working out methodology and scope of permanent collection of information on the phenomenon (including activities concerning criminal data collection and processing as well as collection of statistics data on crime).
	1.3	Introduction of the problem of trafficking in people to programs of public media. (+ private media and Internet networks).	Bodies on the working group, each within their scope of cooperation with radio and television.	Systematic informing public opinion of the actual situation and dangers related thereto. Fighting stereotypes of victims of trafficking in people in particular.
	1.4	Introduction of the problem of trafficking in people to the offer of chief teacher training centres.	Ministry of Education and Sports, Non-governmental organizations	Introduction of the problem of trafficking in people to the offer of chief teacher training centres. Preparation of appropriate informative materials.
	1.5	Introduction of the problem of trafficking in people to the national curriculum.	Ministry of Education and Sports, Non-governmental organizations	Introduction of the problem of trafficking in people to the national curriculum. Preparation of appropriate informative materials. Obliging experts to include in their opinions the assessment of obedience to the regulations of the Protocol of preventing, fighting and penalizing trafficking in people, women and children in particular, featured by authors of course books and manufacturers of didactic resources.

Changes in legislation				
	2.1	Introduction of the definition of trafficking in people provided for by the Protocol to the UN Convention and the Outline Decision of the Council of Europe on fighting trafficking in people to the penal code.	Ministry of Justice	Propagation among administrators of justice of complex consideration of cases of trafficking in people. Implementation of Polish legal and international obligations.
	2.2	Revision of the Act on Foreigners – application thereof to acquis communautaire (after assuming the EU Directive on short-term stay permits for victims of trafficking in people, cooperating with appropriate bodies).	Ministry of Internal Affairs and Administration Office for Repatriation and Foreigners + Ministry of Justice, Chief Headquarters of the Police, Chief Headquarters of the Border Guard	Creating conditions in favour of making a decision about testifying against perpetrators.
	2.3	Ratification and implementation of the Facultative Protocol to the Convention of Children's Rights concerning trafficking in children, prostitution and child pornography.	Ministry of Justice, Ministry of Internal Affairs and Administration	Propagation among administrators of justice of complex consideration of cases of trafficking in people. Implementation of Polish legal and international obligations.
Improvement of effectiveness of actions.				
3. Improvement of effectiveness of actions by police forces and administration of justice.	3.1	Introduction of classes on procedures in cases of trafficking in people to the basic curriculum of the police and border guard training.	Chief Headquarters of the Police, Chief Headquarters of the Border Guard, Non-governmental organizations	Broadening the officers' knowledge on cases of trafficking in people and dealing with victims thereof. Providing appropriate procedures in cases of meeting with victim of trafficking in people.
	3.2	Preparation and implementation of a program of special training of police officers, fire brigade officers, Border Guard officers, prosecutors and judges on the procedures in cases of fighting trafficking in people.	Ministry of Internal Affairs and Administration Ministry of Justice, Chief Headquarters of	Providing officers meeting with trafficking in people at work with specialist knowledge of fighting this phenomenon.

			the Police, Chief Headquarters of the Border Guard, Non-governmental organizations	
	3.3	Training the teaching staff of police forces (police officer colleges, training centres) in the problems of trafficking in people.	Chief Headquarters of the Police, Chief Headquarters of the Border Guard	Updating and broadening the knowledge, changing the attitude of the teaching staff of police forces to result in more effective officer training. .
	3.4	Preparation of instructions upon the basis of the procedure prepared, concerning behaviour in cases of trafficking in people, and addressed at police officers and Border Guards.	Chief Headquarters of the Police, Chief Headquarters of the Border Guard, Non-governmental organizations	Standardization of behaviour in cases of meeting victims of trafficking in people.
	3.5	Establishing at the Chief Headquarters of the Police a mechanism of coordinating actions concerning trafficking in people and appointing (where justified by the extent of the phenomenon) task groups at voivodship headquarters and independent positions at lower-rank units, dealing with trafficking-in-people-related crimes.	Chief Headquarters of the Police	Effective coordination of activities aimed at fighting trafficking in people.
	3.6	Intensification of bilateral international cooperation with countries of origin and countries of destination of trafficking in people. Cooperation with bodies of other countries (of origin and destination) as well as international organizations, including exchange of statistics data on the phenomenon and discerned changes, on methods and systems of aid provided for victims.	Chief Headquarters of the Police, Chief Headquarters of the Border Guard	Establishment of contact points on trafficking in people between bodies concerned. Introduction of the problems of trafficking in people to the agenda of annual meetings of Police Chiefs. Improvement in international cooperation.
	3.7	Annual meeting of experts from countries of origin, transit and destination (to be defined) in order to exchange information on changes occurring in the phenomenon of trafficking in people.	Ministry of Internal Affairs and Administration Ministry of Justice	Gaining the possibility of analysing the phenomenon on a large scale and exchanging experience between practitioners.
	3.8	Recommendations for administrators of	Ministry of Justice,	Standardization of practices of administrators of justice.

		justice with regard to trafficking in people cases.		Providing prosecutors and judges with specialist knowledge and practical guidelines concerning trafficking in people, fighting the phenomenon and dealing with victims / witnesses.
	3.9	Recommendations for employees of consular services with regard to dealing with potential victims of trafficking in people.	Ministry of Foreign Affairs, Ministry of Internal Affairs and Administration	Providing employees of consular services with knowledge of and practical guidelines concerning trafficking in people, fighting the phenomenon and dealing with potential victims.
Intensification of victim and witness protection				
4. Intensify the victim / witness protection and the process of the victim's rehabilitation.	4.1	Victim / Witness protection against repeated victimization during the investigation through application of appropriate procedures and technical means.	Ministry of Internal Affairs and Administration Ministry of Justice, Non-governmental organizations	More effective victim / witness protection.
	4.2	To ensure (through budgetary means or financial support of non-governmental organizations) the possibility of aiding the victim during the crisis situation and after cessation thereof.	Ministry of Economy, Labour and Social Policy, Ministry of Internal Affairs and Administration Non-governmental organizations	Establishment of an efficient system of aid for victims of trafficking in people, easing the conditions for their return to normal life.
	4.3	Creation of a list of centres and non-governmental organizations capable of and having the rights to provide aid to victims / witnesses of trafficking in people.	Working group, Non-governmental Organizations, Ministry of Economy, Labour and Social Policy, Ministry of Internal Affairs and Administration Ministry of Justice, Ministry of Health	Establishment of practical conditions to ensure the provision of basic living conditions to victims / witnesses.
	4.4	Introduction of the problem of trafficking in people to the curriculum of social workers' education. Providing them with practical skills. Preparation of procedures, methods and principles of working with victims of trafficking in people, foreigners in	Ministry of Economy, Labour and Social Policy, Non-governmental organizations	Providing social workers with necessary knowledge of the phenomenon of trafficking in people that they may use at contacts with victims of this crime.

		particular.		
4.5	Preparation and implementation of programs of voluntary return and reintegration of a victim of trafficking in people.	Ministry of Internal Affairs and Administration Non-governmental organizations, Social service, Aid institutions	Providing a victim of trafficking in people with the possibility of returning to normal life.	

ANNEX 2 – THE ACTS OF LEGAL PROCEEDING AND METHODOLOGICAL GUIDELINES WITH REGARD TO THE POSITION OF VICTIM IN HUMAN TRAFFICKING CASES

The Police officers are often the first who have possibility to identify the victim. For that reason special attention should be paid to conditions in which first examination is conducted:

1. The victim should be heard in the suitably adapted room (so called “blue room”). The accused and the victim have to be separated just after the at the same time detention. The victim should be questioned by suitably trained officer, appointed by the chief of the police station. The officer should be the same sex as a victim. In the course of examination, the presence of the non-governmental organization that provides support to the victim of trafficking or, in specific cases, also the presence of expert psychologist (article 192 § 2 of the Code of Criminal Procedure), is recommended. In case the victim is an alien, the presence of translator is required.
2. Before proceedings, the victim should be provided with possibility of contacting with a relatives or a representatives of the non-governmental organization which offer social assistance to the victims of trafficking.
3. The injured/the victim should be informed in writing about her/his rights and obligations, in particular about the possibility of:
 - Filling a motion in writing on his intention to act as a subsidiary prosecutor.
 - Filling a motion to the court on appointing a court-appointed defender.
 - Filling a motion about the obligation to redress the damage as a penal measure (a statement may be filled by prosecutor) or filling an adhesion claim (civil complain).
 - Putting forward a proposal for excluding the public from the trial – non-public sitting (the hearing may be attended by the two persons designated by the victim)
 - Putting forward a proposal for examination in the absence of accused (a statement may be filled by prosecutor).
4. In the course of receiving personal information, there is the possibility of restriction details regarding place of residence to the exclusive knowledge of the state prosecutor or the court, on the basis of article 191 § 3 of the Code of Criminal Procedure. The pleadings may be then served at the address of NGO indicated by the victim.
5. The victim should be examined by a public prosecutor. The examination should be conducted only once and take place in conditions which ensure intimacy, privacy and dignity (during the course of examination anyone is allowed to enter the room; if necessary, the victim should be provided with: painkillers, access to telephone, should be enabled to smoke and use restroom)
6. It is essential to ensure the privacy of the victim in case of the further examination and confrontations. In the course of the first meeting, the way of contacting with the victim should be established.
7. The presentation should be conducted through two-way mirrors in order to preclude identification of the examined person by the person identified.

8. The social and psychological care of the “La Strada” or another appropriate institution/organization should be provided to the victim when there is considerable risk of victimization or there is no possibility of returning to the country of origin.
9. The victim should not be exposed to contacts with the accused in the course of proceedings (at the police station, at the prosecutor’s office, at the other places e.g. motel or escort agency) and directly after completing it.
10. During the accused detention, a prosecutor ought to put forward a motion to the court for imposing temporary arrest against him. If not, prosecutor should take into consideration imposing surveillance by the police with ban on rapprochement to the victim, her/his house, workplace, or ban on any contacts with the victim. In case of changing and applying another preventive measure, the victim should be kept informed currently.
11. In case when the authority conducting criminal proceeding was informed about any attempt putting influence on the victims’ or witnesses’ testimony or in relation to decision of submitting request for prosecution, a decision of instituting legal proceedings on the basis of article 245 of the Criminal Code to the should be made.
12. Whether behavior of the victim bears attributes of such crimes as crossing the state border illegally, using false documents ect., this is prosecutor who is responsible for investigating if there are conditions for making decision about refusal to start legal proceedings (on the basis of article 17.1 of the Code of Criminal Procedure) or decision discontinuing proceedings (on the basis of article 17.1 of the Code of Criminal Procedure, in conjunction with article 26.1 and 2 of the Criminal Code)
13. If the victim was injured, the expert should be consulted in order to describe the sustained injuries.
14. In case when the testimony of the victim is crucial for the investigation and the evidence about the crime could be the reason for her/his insecurity, there is possibility of covering her by the police protection (including covering her by the witness security program) The above mentioned protection should be realistic, in terms of form, scope, duration and conditions, and submitted in writing as a contract binding the Police and the victim
15. In case the victim is a minor (under the age of 18), before taking proceedings, the police officer should consult the expert psychologist about the emotional and developmental state of the victim. When the minor victim is without the legal custody in terms of Article 512 of the Code of Criminal Procedure, the appropriate motion should be filed to the family court.

In case the victim is an alien, the attention should be paid for the following issues:

1. The presence and assistance of translator is required. The presence of appropriate NGO representative or, in special cases, expert psychologist, is also recommended.
2. During the Police actions the victims should be separated from the perpetrators
3. Before reception the notification of the crime the officer should inform the victim about the rights and obligations and criminal liability/responsibility for giving false testimony (information should be provided in writing in language which is known to the victim)
4. In case of illegal residing on the territory of Poland (lack of valid visa or passport) it is essential to enable the victim to apply for granting residence permit. The Police and relevant non-governmental organization may provide the victim with assistance in obtaining visa. The acceptance for granting visa is issued by appropriate voivod, on the basis of Article 33 of the Act on Aliens of 13 June 2003 (Journal of Laws of

2003, No 128, it. 1175) In exceptional cases, if justified, the victim may be granted fixed residence permit on the basis of article 53 item 3 point 1 of the Act on Aliens.

5. It is essential to examine the victim in accordance with the Article 177 § 1a of the Code of Criminal Procedure.
6. After the completion of proceedings the victim should be provided with housing, social, medical help and possibility to return to the country of origin. The assistance in this field is provided by La Strada and International Organization for Migration.
7. In the course of court proceedings there is opportunity of examining/ inquiring the victim from distance with using technical facilities such as telephone and video conferences (Article of 177 § 1a of the Code of Criminal Procedure)

The examination of the victim should give the answer for the following questions:

1. What were the circumstances in which victim contacted with the person offering work (personal details or description allowing for recognition/ identification/ in which circumstances the victim contacted with the person offering work?)
2. Did the person recruiting the victim contact her/his by telephone?
3. Was the victim misinformed about type and condition of work?.
4. Was the victim charged with cost of journey or necessary documents?
5. When and where did the victim cross the state border? What means of transport was used in the course of journey (type, color, number plate)
6. Did the victim cross the state border legally?
7. Do the criminals know the address of the victim or the addresses of her/his relatives/closest family?
8. In which manner the victim was handed over to another person (their detailed description)?
9. Did the other persons providing the same services experienced the similar situation?

If possible, the examination should allow for identifying all criminals involved in trafficking. The following information may be helpful:

1. Cars which was used by criminals.
2. Credit cards which was used by criminals.
3. Numbers of mobile phones.
4. Description of places where the victim stayed?
5. The title of newspaper where the job announcement appeared.

ANNEX 3 – POLISH CHARTER OF VICTIM RIGHTS

MINISTRY OF JUSTICE

FOREWORD

In order to improve position of victims of crime, the Ministry of Justice in co-operation with governmental institutions and non-governmental organisations has prepared this CHARTER OF VICTIM RIGHTS.

It refers to, guaranteed by the Constitution, the inherent and inalienable dignity of man and citizen which public authorities are obligated to respect and protect; to the fact that Poland is a state of law, implementing principles of social justice where everybody is bound to comply with law; and to recommendations worked out by international community as how to treat victims of crime.

Recently, the catalogue of victim's rights has been significantly expanded. However, the knowledge about it is insufficient and the practice diverts from principles laid out in legal provisions. What really matters is observance of victim's rights in practice and not dead laws.

Therefore, this Charter aggregates all binding victim's rights together with concrete instructions as what to demand and from whom. It should help victims of crime in case their rights are not respected and remind policemen, prosecutors and judges that while aiming to collect evidence, identify and convict offenders, they should not forget about the special position of victims.

*Minister of Justice
Hanna Suchocka*

POLISH CHARTER OF VICTIM RIGHTS

All Polish organisations, institutions and private persons dealing with victims of crime at work should sign this document in order to improve position of victims of crime in Poland.

Having regard to:

- inherent and inalienable dignity of man and citizen, guaranteed by the Constitution of Poland, a source of his freedom and rights, which public authorities are obligated to protect and respect (*Article 30, the Constitution of Poland*);
- the fact that Poland is a state of law, implementing principles of social justice where everybody is bound to comply with law (*Articles 2 and 83 of the Constitution of Poland*);
- recommendations worked out by international community as how to proceed with victims of crime, and especially:
 - UN Declaration of 1985 on basic principles of justice for victims of crime and abuse of power,
 - the European Convention of 1983 on compensation for victims of violent crimes,
 - Recommendations of No. R 85/11 of the Committee of Ministers to Member States on the position of victim in penal law and proceedings,
 - Recommendations No. R 87/ 21 of the Committee of Ministers to Member States on Assistance to Victims and Prevention of Victimisation;

and

- considering that to have a right shall mean to be actually able to make use of procedures to exercise that right, especially if it is infringed or not fulfilled;
- considering the need to advance legal culture by means of real execution of binding laws;
- for benefit of victims of crime, wishing to help them and compensate wrongs they suffered;

We have agreed to write and disseminate this Polish Charter of Victim Rights.

I. Definition and the scope of rights

- 1. In the meaning of this Charter, a victim is a natural person, as well as his/her nearest relatives, whose interest protected by law has been directly infringed or endangered by an offence** (*Article 115, paragraph 11 of the Polish Penal Code, Resolution 40/34 by the General Assembly of the United Nations of 29 November 1985 with annexed Declaration of basic principles of justice for victims of crime and abuse of power, subparagraph A [UN 85], Article 47 of the Constitution of Poland, Articles 49 and 51, paragraph 2 of the Polish Code of Penal Proceedings*)
- 2. The victim has the right to:** 1) assistance, 2) dignity, respect and sympathy, 3) not to be subjected to secondary victimisation, 4) access the administration of justice, 5) mediation and reconciliation with the offender, 6) restitution and compensation. (*UN 85, Article 2 of the Constitution of Poland, Article 2, paragraph 1 of the Polish Code of Penal Proceedings*)
- 3. The victim regardless of whether the offender is identified or not, whether penal proceedings or civil proceedings (when the victim acquires the legal status of the injured party) are instituted or not, and regardless of any family ties between the victim and the offender, shall be provided with assistance of legal, material, medical, psychological and social nature, he/she may need.** (*Articles 2 and 31, paragraph 1, 2 and Article 32 of the Constitution of Poland, Article 2, paragraph 1, subparagraph 3 and Article 49, paragraph 1 of the Polish Code of Penal Proceedings*)

II. Right to dignity, respect and sympathy

- 4. The victim has the right to be treated with dignity, respect and sympathy.** This right shall be particularly observed by practitioners of criminal justice, medical staff and social services. (*Article 47 of the Constitution of Poland, Article 1, paragraph 2 and Article 14.3 of the Polish law on police of 1990, Declaration on the police adopted in 1979 by the Council of Europe, and UN Code of conduct for law enforcement officers (annexed to Resolution No. 34/169 of the General Assembly of the United Nations of 17 December 1979), Article 30 of Polish law on the profession of medical officer referring to Articles 12 and 13 of the Code of Medical Ethics of 1993, Article 8 of the Polish Code of Administrative Proceedings of 1960*)
- 5. The victim shall not be blamed for the offence. One cannot justify the offence with tradition, culture or any stereotypes, making the offender less guilty.**

III. Right to safety and not to be subjected to the secondary victimisation

- 6. The victim has the right to safety and protection, as well as the right to respect for private and family life.** The victim shall not be subjected to the secondary victimisation. It is necessary to make every effort to avoid it. It means a ban to violate privacy of the victim and his/her family for everyone who is in contact with the victim in relation with the offence, having special regard to representatives of governmental agencies, medical staff, social services and mass media. (*Article 8 of Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 [CE], Article 191, paragraph 3 and Article 22 of the Polish Code of Penal Proceedings*)
- 7. The victim has the right to be treated with special care and solemnity by all bodies dealing with administration of justice and prosecution.** Proceedings shall take into account interest

and status of the victim. Hearings of the victim shall be limited to the minimum, be handled in a polite manner, not be delayed nor postponed, and the victim shall not be forced to live all over again his/her tragedy (*Article 30 of the Constitution of Poland, Article 231 of the Polish Penal Code*)

- 8. The victim has the right to personal safety, while the police and the prosecutor are obligated to ensure him/her such safety.** (*Article 14.3 and Article 15.1, subparagraph 3 of the Polish law on police, Article 231, paragraph 1 of the Polish Penal Code*)
- 9. The victim may request his/her personal data are kept in secret.** (*Article 184 of the Polish Penal Code*)
- 10. The victim has the right to request his/her address is kept in secret and available only to the public prosecutor or the court.** (*Article 191, paragraph 3 of the Polish Code of Penal Proceedings*)
- 11. The victim has the right to remain anonymous in releases for press, television, Internet and other media, regarding his/her case.** (*Article 13, paragraph 2 of the Polish press law*)
- 12. Relevant governmental bodies are obligated to endorse each notification of crime made by the victim and to intervene appropriately.** It also applies to cases when the victim is endangered by his/her next-of-kin or when he/she is a child. (*Articles 9, 10, 12 of the Polish Code of Penal Proceedings, Article 15.1, subparagraph 3 of the Polish law on police, Regulation by the Council of Ministers of 17 September 1990 (Official Journey, No. 70, item 409) regarding the mode of requesting ID, detention, personal checks and checks of luggage and freight by policemen*).
- 13. Relevant governmental bodies are obligated to endorse each notification of crime made by a third party and to intervene appropriately.** (*Article 304 of the Polish Code of Penal Proceedings, Article 231 of the Polish Penal Code*)
- 14. The victim has the right to professional assistance of psychological, medical, material or legal nature from the moment of notification about infringement of his/her interest protected by law or about a threat of such infringement.** It means i.a. the right to psychological and legal support from the moment of notification of crime.
- 15. Victims of sexual crimes shall be interrogated by police-functionaries of the same sex; in case the victim is a child, his/her interrogation shall take place in the presence of a psychologist or a person trusted by the child.**
- 16. The victim shall not be subjected to additional sufferings due to contacts with the offender.** Courts shall have separate rooms for victims to protect them from contacts with the accused, their relatives and friends before the hearing.

IV. Right of the victim, as a party in penal proceedings, to justice.

- 17. The victim has the right to a fair indictment.** The victim has the right, within limits established by law, to exercise his/her legal interests without any coercion nor constraint. (*Article 6 of CE*)
- 18. The victim shall have at least equal rights, e.g. right to free legal assistance, with those who are charged with a criminal offence.** The victim shall be entitled to be given a free legal assistance when the interests of justice so require.
- 19. The victim has the right to be a party, as a supplementary prosecutor, to publicly prosecuted criminal cases.** From the filing of charge-sheet until the reading of indictment in court, the victim may state that he/she wishes to be a party to proceedings as supplementary prosecutor.
If the public prosecutor refuses for the second time to prosecute an offence or discontinues prosecution, the injured party may submit his/her private charge-sheet to court within one month. (*Articles 53, 54, 55 of the Polish Code of Penal Proceedings*)
- 20. The victim has the right to reliable, understandable and comprehensive information about his/her rights and procedures to exercise these rights.** (*Article 16 of the Polish Code of Penal Proceedings referring to Articles 2 and 83 of the Constitution of Poland*).
- 21. The victim has the right to reliable, understandable and comprehensive information about the case.**
- 22. The victim has the right to raise a civil complaint regarding the material injuries, if directly due to the offence, in penal proceedings.** The victim is entitled to bring such action before the commencement of proceedings during main trial (*Articles 62 and 69 of the Polish Code of Penal Proceedings*)
- 23. The victim shall be entitled to collect evidence for the case without any additional costs.** It shall apply i.a. to forensic examination and psychological assistance.
- 24. The victim has the right to take part in the preparatory proceedings in his/her case.** (*Article 49, paragraph 1, Article 302, paragraph 2, and Articles 316-318 of the Polish Code of Penal Proceedings*)
- 25. The victim has the right to apply for actions to be executed during preparatory proceedings, hence before the case is directed to court.** (*Article 315 of the Polish Code of Penal Proceedings*)
- 26. The victim has the right to access records of his/her case and make copies of filed documents** (*Articles 156-157 and Article 159 of the Polish Code of Penal Proceedings*)

V. Right of the victim, as a party to penal proceedings, to mediation and reconciliation with the offender.

- 27. The victim has the right to mediation and reconciliation with the offender.** The victim is entitled to address the public prosecutor or the court with such initiative. (*Article 53, paragraph 3 and Article 60, paragraph 2, subparagraphs 1 and 2, Article 66, paragraph 3 of the Polish Penal Code, Article 320, Article 339, paragraph 4, and Article 489, paragraph 2 of the Polish Code of Penal Proceedings*)

- 28. In privately prosecuted cases, the victim has the right to reconciliation and settlement.** (*Articles 489, 499 and 492-494 of the Polish Code of Penal Proceedings*)
- 29. The victim, following either his/her own motion or a motion by the offender, has the right to make a settlement with the offender regarding restitution or reparation.** (*Article 341, paragraph 3 and 4 of the Polish Code of Penal Proceedings*)

VI. Right of the victim to restitution

- 30. The victim has the right to restitution** (*A. 8-11. UN 85, Article 46 of the Polish Penal Code, Article 62 of the Polish Code of Penal Proceedings*)
- 31. The offender shall repair the damage resulting from the offence.** Offenders or third persons responsible for them shall make fair restitution to victims, their families or dependants.
- 32. If the offender or competent institutions (e.g. insurance companies) do not compensate the victim, financial compensation shall ideally be provided by the State:**
 - a) to victims who suffered a major bodily injury or detriment to physical or psychological health as a result of a serious offence;**
 - b) to family, and especially to the victim's dependants, of a victim who died or is physically or mentally disabled due to such victimisation.**