

**Alternative Report to the Republic of Poland's Report
on the Realization of the Convention on the Rights of the Child
for the period 1993 – 1998**

Initial remarks

1. The Government Plenipotentiary for Family Affairs (rank of Secretary of State) prepared the official government report. This person was in power between 1997-2000, when the Coalition of Solidarity Election Action (AWS) and the Freedom Union (UW) (the rightist parties) ruled and was responsible for family-related state policy. During the period between 1993-1997 power remained in the hands of the Democratic Left Alliance (SLD) and the Polish Peasant Party (PSL) (the leftists). Thus, the rightist government prepared the report for the period when the opposition was in power. The Democratic Left Alliance once again are ruling the country since 2001.

2. The authors expressed in the report a certain attitude, presented a few times on an international forum, which raised serious controversies among the international public (e.g. during the conference "Beijing + 5", which took place in 2000, in New York).

The activities of the Government Plenipotentiary for Family Affairs, as well as the publicly expressed opinions on many social matters raised – also in Poland – criticism and protests, particularly from non-governmental, pro-women organizations, and those acting on behalf of children's and sexual minorities' rights.

3. Personal opinions and attitudes of civil servants, as well as a great lack of understanding of the Convention's intentions and of some of the Polish regulations, in the light of the binding interpretation, should be assessed as inadequate to their contents. The authors ignore the accepted standards of human rights, according to which children also have rights as specific individuals, despite the obvious fact that parents who decide on their upbringing.

4. The report focuses to a great extent on presenting the binding law: it does not comprise information about the execution of those provisions in the reality; it comprises no information about facts that would illustrate the stage of the Convention agreements' execution. Much of the information is incomplete; some of it is not presented, including such data, which put the government in a favorable light (among others – the ratification of international laws relevant for the legal protection of children).

5. The report does not refer to the recommendations forwarded by the UN Committee on the Rights of the Child to the Government of Poland after the review of the first report on the realization of the Convention on the Rights of the Child.

6. The government's report is almost historical. In the meantime, many changes have been introduced in Poland. These changes have seriously influenced the observance of children's rights. Thus, in our alternative report, we shall refer to the most significant problems presented in the government's report, and we shall try to point out both the positive changes, as well as those which – unfortunately – threaten the proper execution of children's rights.

Chapter III

Paragraph 1. Harmonization of the domestic legislation with the provisions of the Convention

On the list of the legal acts referred to, at least two significant legal acts were omitted – the amendment of the act on the system of education (many times amended together with the following acts, both in the reported period and after, because of the serious reform of the whole system of education in Poland);

- the act on social welfare, also many times amended, specifying the system of aid distribution to children and families, as well as the system of welfare for children deprived of parental care.

After 1998 changes in the welfare system for children were continued – in 2000 a new regulation on welfare centers was issued. It specifies the standards of welfare and upbringing, containing a provision on the necessity of children's rights observance. In 2001 another amendment of the act on juvenile proceedings appeared, to secure their rights to a greater extent; an expert team was appointed to prepare the draft of a new law.

- The Act on the Commissioner for Children's Rights came into power in January 2000. The current Commissioner has been acting since June 2001.
- In 1997 Poland ratified the European Convention on the Exercise of Children's Rights, which came into force in 2000.

Paragraph 2. Mechanisms on the national and local level, coordinating the policy of children's welfare and controlling the realization of the Convention

There is no authority, and there never was, to coordinate the policy on children and to control the implementation of the Convention. The appointment of the Commissioner for Children's Rights does not change the situation. Moreover, the coordination of children welfare policy is the state obligation, not the Commissioner for Children's Rights. The role of the Commissioner is to guard the observance of the law.

The existence of social organizations that polarize the Convention does not free the state authorities from the obligation, that has not been realized to a satisfactory extent (see the paragraph below).

Paragraph 3. Propagation of principles and provisions of the Convention

12 training seminars in the period of five years, in 9 centers (twice in several of them) is – on the scale of the whole country – very few. One could even suppose that there were more, but still – the number is far from satisfactory. The fact that they were organized in only a few centers gives evidence to the public initiative rather than a state-planned action.

Chapter V. Information on the execution of general principles

In the government's report the notion referred to was the "good of the child", which does exist in the Polish legislation, but could be interpreted differently. In the court sentence practice there are situations when the court really takes the interest of the adults more into consideration than of the child..

In the report, when talking about the good of the child, only the aspect of this specific notion was presented. For example, a provision was passed that guarantees parental power for adoptive parents. On the other hand, the possibility that an adopted child may not find out about his or her real background, biological parents, or siblings, was not presented. It is obligatory to ask the opinion of a child over 13 on adoption (a younger child may also be asked if the court finds that the child comprehends the situation), however in practice, very young children are adopted, and – for obvious reasons – they are never asked about their opinions. The binding rule is that in case of adoption, siblings should not be separated. In practice, however, it is extremely rare for a large number of siblings to be adopted together. In such cases, brothers and sisters, especially of different ages, lose contact with each other. That, however, depends on the adoptive parents' decision.

In the issue related to the child's autonomy and the respect for his or her views, arguments copied from the former report were used. It seems, that still too little consideration is given to hearing the child's opinion, although the Supreme Court has issued two significant cassation decisions, in relation with Article 12 of the Convention, that the proper court should find out about the opinion of the child (the courts of the 1st and 2nd instance decided that the child's opinion is irrelevant, as it would not be taken into account anyway) [Decisions: II CKN 855/97 and I CKN 1 122/98].

In 2001 the Commissioner for Citizens' Rights applied to the President of Poland to initiate action towards the completion of the provision on parental powers in the Family Code (Article 95) with the clause on the parents' obligation to respect children's dignity.

Chapter VI. Civil rights and freedoms

Paragraph 2. Maintenance of identity

The government has not given its opinion on the problem of adopted child discrimination. (The comment in chapter V).

It is worth mentioning here about the lack of legal regulations concerning the principles and procedures of realization and consideration of genetic examination in the instances of establishing paternity (regarding this issue the Commissioner for Citizen's Rights has applied to the Minister of Justice).

Paragraph 3. Freedom of speech and the protection of privacy

The government has not treated this issue seriously in their report. The ratification of the European Convention on the Exercise of Children's Rights (1997) was not mentioned. It was mentioned in the part about the submission, to the Convention ratification, of a declaration to Articles 12 – 16. (The contents of the declaration give evidence to the fact that the whole idea of the Convention was misunderstood). Also, the draft of a resolution on the withdrawal of reservations was mentioned (one should understand that the authors had the declarations in mind as well). The resolution was not passed. Later, rule fell into the hands of the rightist coalition and it was not

interested in changes. Freedom of speech in the case of children often truly raises a good deal of controversy, particularly among teachers. In the catalogues comprising students' rights in schools, or those concerning a child raised in children's welfare centers this right is generally written. In practice, its execution depends on the good will of the teacher/guardian. Children, asked during monitorings run by the Helsinki Foundation for Human Rights about the observance of student rights at school (report 1996), or in children's centers (2000), show that the children do not have the feeling that they are able to freely express their views. Most often they said: "the teachers prefer that we think the way they do"; "I prefer to pass my matriculation exams, and to talk about my views with my schoolmates"; "there are teachers that want us to say what we think, but there are not many of them".

On the other hand it is necessary to point out that since the ratification of the Convention in court or administrative proceedings, the child's point of view is treated more seriously. A 13-year-old must be asked for consent in case of a medical examination and an operation (the Act on the Medical Profession from 1996). A 16-year-old cannot – without his or her consent – be sent to a psychiatric hospital (unless the court decides so) – the Act on the Protection of Mental Health from 1994. A minor – if testifying before court – has the right of say in matters related to him or her. The provisions in this issue could be regarded as satisfactory, however, the practice is far from such (complaints concerning the lack of consideration for the child's opinion, having understanding of his or her situation in cases of guardianship and parental powers).

Paragraph 4. Right to freedom of thought, conscience and religion

This right is understood by the authors as exclusively the right to religious education in schools. The legal provisions referred to guarantee the students the choice, religious education or ethics. Such a solution is one of the guarantees of respecting the freedom of conscience in public schools.

In practice, many schools, for various reasons (directors maintain that the interest is minimal) do not organize ethics lessons. In a survey run in 1995 by the Institute of Applied Social Sciences of the University of Warsaw, among students of different types of schools in several voivodeships – 45% of the surveyed youth was against the introduction of grades in religion classes, 33% were for them. Every third surveyed thought that if religion class were to be graded this would mean that it would become obligatory for all students.

Conclusions from the survey:

- The participation in religion classes at school was declared by 85,4 % of the surveyed youth.

About 3% of the surveyed youth experienced some manifestation of intolerance according to the survey. However, the percentages are reflected in quite serious absolute numbers thus in the state system of primary and secondary education at least several thousand students may be affected.

- There is no real alternative for religion classes in schools. The ethics education comprises a minor percentage of youngsters. Students do not take by themselves any initiatives towards organizing such classes, and the school authorities rather do not offer such programs.

Recently there have been cases of schools in which decisions were made to include the grades from religion classes to the total grade point average, which is against the binding provisions (religion is an optional class). In such cases the Commissioner for Citizens' Rights intervened.

Religion in schools raises controversies, especially because it is not the subject of comparative religious studies, where children would have a chance to learn about different religions, respect and tolerance for others.

Paragraph 5 Freedom of association and peaceful assembly

According to the binding law in Poland, juveniles are not allowed to organize assemblies, which seems to be contrary to the Convention's provision. It is not known why 15-year-olds or 17-year-olds should not organize a peaceful assembly, with consideration given to limitations, necessary in a democratic state.

Paragraph 6 Freedom from torture, or other forms of cruel, inhuman, or degrading treatment

In the government's report only two basic legal regulations were referred to. They do not give yet evidence of the protection of children from degrading, cruel treatment, or punishment. (Obviously and fortunately, we do not have to think about torture or inhuman treatment).

Cases of using illegal forms of punishment are worth mentioning, like degrading treatment in places like instruction and resocialization institutions – this results from the above-mentioned monitorings of the Helsinki Foundation for Human Rights and the Commissioner for Citizens' Rights. This happens also in schools. Over 30 % of students have testified that they have experienced some form of physical abuse by a teacher (hitting, pulling by the ear, etc.), and twice as much –psychological abuse (name-calling, threatening, offending). Only 4% of students maintain that in such cases the teacher apologized to the student.

One form of degrading treatment is the use of child to beg. The law forbids explicitly the using of children for beggary. Unfortunately, this phenomenon – announced from time to time by the media – exists. The state does not have any idea how to sensibly solve the problem. The police in their report give details of several dozen of interventions in different cities, which gives evidence of lack of policy action regarding this problem. This phenomenon is connected, to a great extent, with foreigners, however, more and more often one can meet Polish citizens, both the adults with children, and children without guardianship.

Chapter VII Family environment and alternative welfare

The change in the system of child guardianship was realized in two stages:

In the first stage, in 1999, the responsibilities connected with children's guardianship were transferred from the Department of Education to the Department of Labor and Social Welfare. The running of foster families, adoption-instruction centers and some other institutions (children's homes, "family" children's homes - closer to the idea of a foster family than an institution- , children's emergency centers, residential special education institutions, community centers and community clubs) became the

responsibility of the local authorities, but the founding remained within the Ministry of Education. The purpose of the changes was to establish a system, which would enable a fast reaction to needs and problems observed on the local level, and – at the same time – enable the rational economy of finances. The first stage of transformation of the child welfare system became a difficult one, especially for those who were the object of the system's functioning. The children's homes and residential special education institutions were still in a difficult financial situation (there were not enough resources not only for the investments, but also for basic needs, such as payments for energy, water, and sometimes even for food). For foster families in the budget for 1999 the necessary sum of money was not secured, the result of which a lot of city mayors did not have resources for the support of already functioning foster families.

In the second stage, which started on 1st January 2000, together with the date of the Act of 18th February 2000 on the Amendment of the Act on Social Welfare and the Act on Pensions from the Social Security Fund coming into force (Journal of Laws No. 19, item 238). There, coherent legal frames for the system of welfare for children and families were introduced. In the new chapter on social welfare (1a – *The welfare system for families and children*) the scope of assistance was specified for families with difficulties in performing their duties, as well as the scope of assistance given to children partly or totally deprived of parental care, and socially unfit. The tasks in the field of organization, maintenance, funding and supervision over different family aid institutions were divided among the local authorities (voivodeship, powiat, and gmina). A new type of a child welfare institution was established – the foster family performing the functions of a children's emergency center (irregular stay of a child – preferences for children up to 10 years of age – in the family, until the time of legal settlement – until now a few dozen of such families were established, which is far below the needs). Also, the standards of care and upbringing were introduced, of services given by the family and in children's homes, principles of control of realization of standards and the deadline (until 2006) to adapt those institutions to the binding standards.

A threat to the reform might be the insufficient resources planned for its completion, the lack of competent, professional personnel who would understand the need to maintain children in their own environment and work with their natural families, and the too small financial and psychological assistance for foster families.

Paragraph 2. Separating from parents

According to the binding law, the removal of a child from his/her natural family should take place after the extinction of all possible ways of assistance granted to the family, so that the separation of a child with his or her family was the extreme necessity. The results of visits paid by the staff of the Commissioner for Citizens' Rights in the powiat family assistance centers (institutions legally obliged to grant aid to families) show that there are still children staying in institutions, although they could have very well stayed in their family homes, if only their families had been given proper support, psychological and social support. In spite of the existing provisions there are not enough resources for training and employment of professionals working with families "incompetent in childraising".

The monitoring of the observance of children rights in children's homes realized by the Helsinki Foundation for Human Rights [the report from 2000] has shown that the educators manipulate the children's right to maintain contact with their parents and limit them, contrary to the regulations. For example, the instance of not cleaning up somebody's room or bad grades at school could result with the punishment of depriving them of the right to go home for the weekend. Although – according to the law – only the court is able to deprive the child of contacts with his or her family, and only in extreme cases (Article 113 of the Family and Guardianship Code). It is worth mentioning here that in the Polish Family and Guardianship Code the rights of parents appear, including the right of contacts with their children, but there is no explicit definition that also children have the right to contact their parents, which is articulated by Article 9 of the Convention.

Issues related to the regulation of contacts between parents and children, after and before the divorce still remain a serious problem. There are many situations when the child's right to the contact with one parent (often the father) is abused. The regulations seem satisfactory, but the court practice and the execution of the courts' decisions are not always so.

Paragraph 5. Children deprived of their family environment

Foster families

The reform of the welfare system for the children deprived of parental care assumes that if there is no way of leaving the child in its natural family, he or she should be sent to a foster family, not to an institution. In practice, the support for foster families and the principles of their financing are not favorable enough for the development of this form of child welfare. The Commissioner for Citizens' Rights applied in 2001 to the Minister of Labor and Social Welfare to change the unfair provisions on the state-granted financial help for foster families (provisions concerning financial help for foster families have been amended many times, in the meantime the amount of resources this report refers to were reduced). The provisions were amended after the application of the Commissioner. In the case of foster families, the Commissioner has forwarded an application to the Constitutional Tribunal.

Children's homes

So far the number of children in permanent-residence institutions has not been reduced. These homes have not become, as it had been assumed, open-community centers, granting different forms of aid. Still, the children living in them are stigmatized (they call themselves 'the poor children'), their education level remains below the population average, and generally – this institution does not prepare them for normal life. They lack an individual approach, seen only as a part of a specific group, although it is the neglected child who needs attention and help. Money assigned to the maintenance of the child in an institution bears no relation to the results. The system of foster families or "family" children's homes is much less expensive and much more efficient. In theory, there are regulations enabling the establishment of family-like forms of care, but in practice – the number of family centers has dropped. Unfortunately, the basis of the state welfare system for children deprived of parental care is traditional, institutional large children's homes. In the

report there is a fragment referring to the possibility of using the facilities offered by children's homes (meals, participation in classes, etc) by children who need support. The regulations do make it possible, but this form of assistance is not widely used.

Villages

There are three children's villages in Poland and only a small percentage of children reside in them. The main deficiency of this idea is the assumption that the guardian must be a single mother, and the villages are located in the suburbs of small towns, which – in some way - isolates the children from the local environment.

Children's emergency centers

During the period 1994-1999 the Commissioner for Citizens' Rights inspected these institutions. Unfortunately, the observance of children's rights and their living standard raised numerous reservations. The assumption is that these are temporary welfare institutions, until the moment of the court decision concerning the child's issue – returning the child to his or her family, or sending them to a permanent children's home, or to a foster family. The children, though, remained in the emergency centers much longer than the regulations anticipated (the stay should last no longer than three months, sometimes they live there for over a year). It happened, that runaways from different institutions or family children's homes stayed in conditions of arrest, although they never committed any crime.

Residential special education centers

The government's report does not include the fact that disabled children have been living in these institutions for a long time, and that most of them are deprived of parental care. The assumption was that they should function as boarding schools, but instead became permanent places of residence. The living and educational conditions are insufficient, and a significant number of graduates from these institutions have slim chances of finding jobs and functioning on their own. The Ministry of Education has for a long time been considering a reform of these institutions (over 30,000 children live in them). Unfortunately, the work has been delayed and the centers have been functioning without a legal basis for two years (the executive act regulating the organization and principles of those centers lost power in July 2000). The Commissioner for Citizen's Rights has already applied three times to the Ministry of Education to issue a regulation, but other issues always seemed to be more urgent.

Juvenile reform centers

The Commissioner for Citizens' Rights also visited those institutions in the period 1994-1999. In conclusions forwarded to the Minister of Education he wrote, among others, the following: "the use of punishment forms that are not included in the official regulations, physical and psychological abuse in some centers raises serious reservations"; "contacts with the family is a child's right and only the court of law is able to limit those"; "the basic living standards are not sufficiently secured. Children have no medical care, particularly specialist". "The standards of care and re-

socialization do not guarantee them chances to prepare for life in a normal environment. 21% of children in juvenile reform centers had previously spent time in such centers before or in other child welfare care institution.”; “Judges dealing with family-related proceedings insufficiently supervise the observance of children’s rights, the lack of contact between them and the children decreases the instructors’ level of legal knowledge, which, consequently, impacts the children’s situation”.

Since 2000 the Minister of Labor and Social Welfare has been supervising those centers, similarly to welfare and emergency centers. Regulations have changed, but the children’s situation has not changed much.

Paragraph 6. Adoption

After 1998 regulations on adoption-welfare centers changed. They are subordinated under the Minister of Labor and Social Welfare, and the Poviast Starosty runs them. Their task is to actively recruit candidates for adoptive parents, however, it seems that at the time this form of care over the children deprived of parental care is not very popular in Poland. In the last few years the number of adoptions, both domestic and foreign, has significantly dropped.

- Poland has ratified the Convention on the Protection of Children and on the Cooperation in International Adoptions (in force since 1 October 1995),
- The European Convention on the Adoption of Children (in force since October 1996)
- The European Convention on the Recognition of Judgments Concerning Guardianship over a Child and the Restoration of Guardianship over a Child (in force since 1 March 1955)

Paragraph 7. Illegal transfer and export abroad

Here information concerning the state activity in the field of prevention of the trade and illegal export of children did not appear. Unfortunately, not much is known about this issue. There are no data available; the government does not monitor this phenomenon.

Paragraph 8. Child abuse and negligence, physical and mental rehabilitation

The information contained in the report is very general. Truly, in recent years the problem of abuse against children and family abuse has stopped being a taboo.

In the 1990’s serious progress was made in the issue of uncovering the problem of abuse against children. The phenomenon was identified, diagnosed and described as a social problem. The notion of ‘child abuse’ was introduced to social science, legal regulations and statistics of the judiciary.

In the beginning, only the non-governmental organizations dealing with the protection of children and women’s rights took active interest in family abuse.

They granted not only legal assistance and therapy to the victims of abuse, but also started educational campaigns to – on the one hand – raise the public’s and the decision-makers’ sensitivity, on the other hand – to organize an efficient system of assistance granting to the victims. Research was conducted to diagnose the phenomenon and to assess its scale. In 1995 in the office of the Government’s Plenipotentiary for Family and Women Affairs UN material was translated and published – *The strategies of dealing with family abuse*. In 1997 in the frames of this

office, a program of national policy concerning family and a domestic program of action for women was prepared. In both of them the countering of family abuse and the establishment of an efficient system of assistance for the victims were considered.

Also, a specialist program was prepared "Against abuse – even the chances", with UN participation (United Nations Development Program), the implementation of which started in August 1997.

The State Agency of Solving Alcohol-Related Problems, in the frames of its educational activity and therapies, runs the Polish Emergency Service for the Family Abuse victims, the "Blue Line". It also runs training seminars for experts and public campaigns.

The Agency has prepared a procedure of police interventions in cases of family abuse, the so-called Blue Card. Since October 1998 the Blue Card procedure is binding, by the regulation of the Chief Commander of the Police Force. According to the act on the social welfare, the poviats centers of family assistance are obliged to organize and run crisis intervention centers, to undertake preventive actions and to organize aid for family abuse victims. So far, those centers function in only 15% of poviats. There are also not enough qualified diagnosis and therapy experts.

Still, the insufficient and unevenly distributed network of institutions granting support to the abuse victims remains a serious problem.

The scale of child abuse in the light of statistics and research findings

1. It results from the data of the Police Headquarters that in recent years the number of home interventions in cases of abuse has increased significantly (in 1999 – 72, 031, confirmed 34,073; in 2000 – 86,146, including the confirmed 37, 163). The victims up to 13 years of age – respectively 23 ,929; 27, 820); the victims above 13 to 18 years of age 13, 546; 15, 540). For cruelty to a family member (Article 207 of the penal code) in 1990 – 9, 025 sentenced, in 1995 – 11, 282 sentenced, in 1999 – 13,877, in 2000 – 13,471.

2. In a survey conducted by the Polling Center OBOP, in December 1997, the answers to the question, *whether there are many or rather few families in Poland in which cases of abuse (beating, cruel or degrading treatment of adult family members) take place*, the responses were as follows:

- there is more than half of such families – 8%,
- between half and one fourth – 32%,
- less than one fourth – 35%,
- difficult to assess – 9%.

To the question, *whether there are many families in Poland in which cases of child abuse committed by parents take place*, the responses were as follows:

- there are more than half of such families – 10%,
- between half and one fourth – 34%,
- rare cases – 17%,
- difficult to assess – 8%.

Almost 90% of the surveyed opted for intervention in case of family abuse, and 87% of them considered assistance for abuse victims as everyone's moral obligation.

3. In a survey conducted by the Polling Center CBOS, in June 2001, in connection with the campaign "Childhood without abuse" 26% of the surveyed maintained that they know of at least one family in which children "get beaten up", and 17%, that they know of cases of corporal punishments from minor reasons, 35% of the

surveyed have experienced at least one of the above mentioned forms of negligence or wrongful treatment of a child (corporal punishment, leaving without guardianship, over-punishment, mental cruelty, starving, abuse, sexual molesting).

4. The organizers of the campaign “Childhood without abuse” referred to the following data:
 - 60% of Polish adults use corporal punishment to their children up to the age of 19,
 - every sixth 12-year-old admits having been injured (bruises, scratches) by their parents,
 - almost 23% of Polish students admitted that in their homes physical abuse took place at least several times; 37% talk about several cases of psychological abuse,
 - 34% of patients of addiction programs assess that in the period of intense drinking they abused their children, 50% abused them psychologically,
5. In 2000 under the guardianship court supervision remained 171,729 children, including in foster families 40, 650, in welfare centers – 30 748.

Paragraph 9. Periodical review on the circumstances of sending children to juvenile residential-educational centers

Respective regulations were introduced. They impose the obligation over the judges (in case of sending to shelter-homes or juvenile reform centers, and to a psychiatric hospitals) to control the legality of stay, and the pedagogic supervision of the grounds for a stay in welfare centers. Unfortunately, in practice these remain as formalities and the children who were sent to welfare center leave them when they legally become adults, after they become adult; juveniles leave reform centers after graduation from schools (the average length of stay in reform centers has increased significantly – according to studies conducted by the Commissioner for Citizens’ Rights from 1.4 to 2.5 years, although it is known that the length of stay in a reformatory center is not compatible to the re-socialization results and is far from standards in juvenile-related issues. The note under the chart above paragraph 9 is worth a comment. It was written that sending juveniles to reformatory centers could not be treated as temporary arrest. Formally – this is true. However, in the light of human rights standards it is a form of depriving someone of his or her freedom. In the case of adults in pre-trial detention centers, the time limits of arrest are observed much more than in case of juveniles. As the inspections of the Commissioner for Citizens’ Rights have indicated, in many cases juveniles remained in custody much longer than the regulations anticipated.

Inspections of the Commissioner for Citizens’ Rights were referred to in the report, assuming that the state realizes in this way the provisions of the Convention on the Rights of the Child. The Commissioner for Citizens’ Rights is an independent institution appointed by the Lower Chamber of Parliament (Sejm) and he guards the observance of law, but he does not perform executive, legislative or judiciary duties.

Paragraph VIII Basic health and medical care

1. Disabled children

The state has taken some range of activities to help disabled children on the one hand, but on the other hand a number of examples can still be found that disabled children are not treated on the same level as healthy children and since they are disabled they should be protected in a special way. The way special educational-instructional centers operate is an example of negligence (page 7). The availability of rehabilitation benefits and equipment (wheelchairs, orthopedic shoes, etc.) is limited. The Ministry of Education forgot to print textbooks for blind and short-sighted children – the Polish Association for the Blind demanded the textbooks for children. Recently (February of 2002) the allowances for tickets for disabled children and their guardians were partly canceled. Protests from non-governmental organizations caused the spokesman for disabled persons' rights to initiate an amendment to the act limiting the allowances.

In January of 2002 the Commissioner for Citizens' Rights initiated working out a program of complex early assistance to disabled newborns. Early diagnosis and therapy could limit or even eliminate disability of a significant group of children.

2. Health and medical services

The availability of health services depends greatly on the financial status of the family. The crisis and budget limitations in the first period of transformation contributed to systematic commercialization of the public health care centers.

Besides the commercialization, the privatization process went on which focused especially on dental services. Along with the massive privatization of pharmacies and more liberal rules of trade, the increase in the prices for medicine took place, while the refunds for them were limited.

All those phenomena became the source of high costs paid by patients. In 1998 because of the lack of funds, 30% of families did not buy the recommended medicines; almost 1/3 of them had to give up dental assistance although they needed it and over 1/5 did not undergo specialist examinations and rehabilitation.

In the 1990's the standards of dental assistance offered by public health centers dropped, especially in villages. The lack of such assistance has resulted in the neglect of children's needs. For one orthodontist there were almost 8000 children with occlusion deformation, which is highly above norms. The surveys of the Chief Census Office in 1996 indicate that less than every third child at the age 2-14 underwent dental examination during the period of three months before the survey. Including the 30% of children who used the assistance of a private dentist. A dentist has never examined over 50% of children at the age of 5. In the school year 1995/1996 only every third student was diagnosed by a dentist, but only 9% were cured. With such dental care it is very difficult to fight tooth decay among children and youth. Tooth decay appears in 92% of children at the age of 7, and 98% of youth at the age of 18.

In the government report it is written that health care for children is treated as a priority in the state health policy. Unfortunately, the policy is commonly criticized also in connection with the reform of health care organization and financing (1999). Independence was given to public health care centers and a new system of insurance was introduced, national health service started to operate.

"A number of negative phenomena were reported in child health care. Deepening differences in the state of health and availability of health care appeared among social groups and differences between regions. In spite of the provisions of the National Health Program and health policy guidelines of highly developed countries and also in spite of the recommendations of the World Health Organization and

European Commission and UNICEF health care in Poland stopped moving in the direction of prophylactic treatment for children and young adults. Polish health care started to move away from its model, pediatric care, highly recognized in Western Europe, characterized by continuity of prophylactic-diagnostic-therapeutic-rehabilitation procedure. Also eliminated were verified and well functioning organization structures of mother and child health care. Health care was withdrawn from schools, the indices and performance of preventive vaccination worsened significantly, the realization of a number of prophylactic benefits were given up including balance examinations and screening examinations of children (...) the situation was worsened by chaos and the elimination of monitoring and substantial – organizational supervision. In general in the mother and child care similarly as in the whole health care system in Poland the health care system reform implemented without full preparation caused withdrawal of prophylactic and focused on reparation activities at the same time as the result of lack of financing and organizational deficiencies the availability of specialist, ambulatory and infirmary health care worsened as well. The result of the above-mentioned phenomena is the unequal chance to attain good health.”

“In Poland (...) there is a need to (...) work out, approve and implement National Program of overcoming inequalities in child and youth health matching the challenges and needs that appeared lately. UNICEF’s report persuades that it is not only a question of finances – in order to eliminate the sphere of relative poverty of children should assign only 0.56% of the gross national product”. [fragment of the publication published in 2001 entitled “Zdrowie naszych dzieci” (*The Health of Our Children*) edited by Pawel Januszkiewicz (national consultant in the field of pediatrics) and Janusz Szymborski (former plenipotentiary of the Minister of Health in mother and child care supervision)].

The Commissioner for Citizens’ Rights visited children’s hospitals including psychiatric hospitals. It was noticed that the basic criterion in contracting services for children by national health services are economic reasons not standards of diagnostic, therapeutic procedures, or health rehabilitation which would enable adjustment to the patients’ needs. The medical and nursing care is not sufficient and the availability of rehabilitation services is limited. In some hospitals, especially psychiatric hospitals, the standard conditions were not satisfactory (little space, walls not painted for a long time, depressing atmosphere). Some of the children could avoid hospitalization in a psychiatric hospital if there were a network of local psychiatric clinics.

3. The social security system and the system of services and institutions in the field of child welfare

In the period between 1995 -1998 the number of people below the relative poverty level and minimum existence standard has grown. The scope of critical poverty has grown from 4.3% in 1996 to 5.6% in 1998 and the relative poverty from 12.8% in 1995 to 15.8 in 1998. In the period 1997 -1998 an exceptional growth of poverty was recorded among farmers: the scope of relative poverty has grown from over 21% to 27%, and the critical poverty from ca. 7% to over 10%.

Besides the accepted criteria of poverty, a certain pattern appears that indicates the growth of the poverty threat, due to the growing number of children. The most threatened are families with many children, especially those with four or more children to sustain. In 1998 among married couples with at least 4 children 83.9% were below the social minimum, 42.2% below the relative poverty level, and below

the minimum existence level – 20.4%. For families with one child those indicators were, respectively, as follows: 33.4%, 6.9% and 1.7%.

The survey of the Chief Census Office indicates that **children up to 14 years of age were one third of the population living in the sphere of critical and relative poverty. On the average, every fifth child up to 14 years of age remained in the sphere of relative poverty, and almost every twelfth lived in families remaining in critical poverty.** (All data come from the survey of the Institute of Labor and Social Policy).

The surveys indicate also that the “situation of poverty” in many families is transforming into a permanent “status of poverty”, with the symptoms of future status inheritance by children. This phenomenon is deepened by the fact that children are born mainly in financially and socially low-status families. **For a significant group of children the threat of social marginalization and ostracism is growing.**

In the light of new challenges resulting from the growing differences in families' situation, in the period of 1993-1998 the state welfare system has not adapted instruments of its policy to the needs of families and children. Changes in the system of family benefit distribution resulted with the limitation of the number of people entitled to family and social welfare allowances, the decrease of the amount of guardianship allowance and the educational allowance for single parents. The mechanism of allowances' valorization due to the increase in prices and services results in a reduction of allowances in relation to the average income in the national economy.

A positive change is the introduction of an allowance in the form of social pension and making the right for the nursing allowance independent from the right to the family allowance, granting an additional family allowance for a disabled child raised by a single parent and a more favorable indicator of valorization in case of nursing allowance. Those changes indicate that families with disabled children have acquired additional support in the system of financial benefits.

The expenses for family policy in the years 1993 – 1994 constituted 1.7% of GNP and since 1995 amounted to the level of 1.3% - 1.4% of GNP. The decrease of expenses resulted mainly from the limitation of the right to family allowance.

The resources assigned for social welfare allowances were insufficient; they were consumed first of all by obligatory allowances and there was a lack of resources for temporary allowances, paid mainly to the unemployed, who lost their right to the unemployment dole. The families of the unemployed could not, in that case, count on any significant support from social welfare services. Unfortunately, the situation in this area is becoming more and more difficult. The unemployment rate is growing, and the government – in a financial crisis – is limiting social welfare expenses.

Chapter IX. Education, free time, cultural activities

The 1990's could be characterized by social growth in educational aspirations, which is confirmed by statistics. In the period 1990-1998 the indicator of school-attendance in case of youth between 15 and 18 years of age grew from 83,5% in the period 1990-1992, to over 87% in the period 1996-1998. In the same period of time, the school-attendance indicator of young adults from 19 to 24 years of age grew from ca. 21% to over 34%.

It was undoubtedly influenced by the development of private universities (in the school year 1992/1993 18 private universities functioned, with 16,169 students, and in the school year 1998/1999 in 158 universities there were 332,483 students).

It is also a form of escape from unemployment due to longer studies (the number of unemployed youth is twice as high as the average rate of unemployment, which is a structural feature of Polish unemployment – in November 1998 the average unemployment rate was 10.6%, and for youth of 15 –19 years of age – 34.5% and at the age of 20-24 - 21%).

The growth of students continuing their education in general education secondary schools which prepare students for higher education and the decrease in the number of students in basic vocational schools is a positive phenomenon. In the school year 1990-1991 22.8% graduates of primary schools were accepted to such secondary schools and 45,9% of graduates continued their education in basic vocational schools. In the school year 1998/1999 analogous indicators were on the level 35,1% and 29.0%.

The possibility of realization of educational aspirations is highly determined by the family situation: incomes, parents' education, and place of residence. After 1989 educational chances for children from families of high financial status have risen, however, for children from poorer families – they have decreased. This refers particularly to rural families – together with a lower level of self-confidence, they limited their educational aspirations. The small percentage of rural youth that finish a academically oriented secondary school and acquire a matriculation certificate and their truly symbolic presence among university beginners is the most telling indicator of the growth of uneven educational chances. **A child from a rural family in the 1990's had ten times less of a chance to become a student than in the 1980's.**

Solutions applied so far, i.e. social scholarships which are optional for schools and supervisory authorities have proved to be inefficient and caused the breakdown of the system of school scholarships. In the school year 1990/1991 scholarships were granted to 7.0% of students of basic vocational schools and to 9.8% of general education secondary schools, and in the school year 1997/1998 – respectively 2.9% and 1.4%. The lowest rate of students was granted scholarships in the school year 1994/1995 (0.5% of basic vocational school students and 0.7% of general education secondary school students). Systematically, each year the number of scholarship-granted students was lower: from 52% in the school year 1990/1991 to 33% in the school year 1997/1998. The tendencies to decrease appeared also in relation to students using dormitories, boarding schools and academic houses.

The amount of public expenses for education in the period 1993-1998 was on the level of 5.3% - 5.7% of the GNP. In order to overcome the distance separating Poland from the countries of the European Union, the portion of public resources assigned to education should be 8% GNP, for at least ten years.

More than 40% of family budgets with children attending different kinds of schools assessed the expenditure connected with their education as a heavy or very heavy burden to bear. Every fifth family resigned from, or limited, additional activities for children, every ninth limited or cancelled school payments and every tenth family did not buy necessary school books.

On the other hand the student participation in the private education system grew systematically: from 1.1% in the school year 1993/1994 to 8.1% in the school year 1997-1998. The participation of young people studying in private two-year colleges schools is particularly high (1998/1999 – 47.9%) and in private universities (1998/1999 – 26.0%).

A special threat to breaking down the gap concerning educational chances for youngsters is posed by the differences in social and economic situation on the local level – self-government (the gmina). Richer communities better support schools and

– at the same time – raise their educational standards. Poorer local communities cannot afford to meet even the basic needs. In the period 1993-1998 in the paradigm of calculating educational grants there were no preferences for poor local communities.

Evening out educational chances should be achieved by pre-school education. Meanwhile the number of pre-schools is decreasing and the differences between cities and villages are growing (in 1993 the difference between the level of pre-school education access in cities and villages was less than 18 percent, already in 1997 it grew to over 25 percent) which was noted even in the government report. Unfortunately, in spite of declarations concerning evening out chances there are not any concrete measures taken. The obligatory education of 6-year-olds does not solve the problem of differences resulting from social reasons. A serious deficiency of the reform is the marginal approach to pre-school education.

In the government report it has been written that “after 1993 the situation of extra-school education centers stabilized”. In reality their number is decreasing systematically and participation in classes is to be paid for which significantly limits the number of participants. The situation is worsened by the fact that schools do not have money to organize classes outside of lessons hours. Therefore the spare-time spending offer and possibility to pursue one’s interests for children and youth is very poor and depends on the socio – economic situation of the family which is another factor differentiating youth’s educational chances.

In the year 1998 the reform of the educational system was implemented. Apart from program and organizational changes students were being prepared for another, outside form of exams between individual stages of education and also matriculation exam. The process of implementing the reform was the subject of much controversy, but the decision of the new Minister of Education (just after accession to power by the coalition of the Democratic Left Alliance and the Polish Peasant Party in October 2001) nearly overnight to change regulations and suspend the reform – to go back to the previous form of the matriculation exam (after protests the Minister of Education decided to give the possibility to choose the form of exam, but only for students taking matriculation exam in the current year) was subject to no less controversy. Unfortunately, such actions undermine young people’s trust in authority and the rule of law. Implementation of the new matriculation exam was announced for the year 2006, but there is no guarantee that another coalition will not take office in the meantime and amend this decision.

Chapter X. Means of special protection

1. Children in critical situations

- children with refugee status

In 2001 the Act on Aliens was amended. It provides for the procedure of granting refugee status to a minor (in 2002 a draft executive regulation on minor aliens deprived of guardianship in the period of proceedings concerning the granting of refugee and the method of verifying the circumstances enabling expulsion of a minor). Unfortunately in the act mentioned above in the chapter on joining families the possibility of parents joining a minor refugee on his or her motion is not possible (this would make it possible for parents to come to Poland to join their child).

An important problem concerning alien children left in Poland by their parents is the difficulty in regulating their legal status (in general this concerns Romanians,

Bulgarians). Such children are destined to stay in welfare centers. They cannot be adopted and there are no candidates for foster families for them.

- **physical and mental rehabilitation**

It is incomprehensible why in this chapter in the government report motor rehabilitation connected with medical allowances concerning children's disability or injuries was described. However, the information on offering assistance or therapy by psychological-pedagogical centers is quite irrelevant to rehabilitation of victims of negligence or exploitation. In general such activities are undertaken sporadically more often by non-governmental organizations dealing with assistance to abused children than by public institutions. As it was mentioned above there are no regular actions and there are not enough specialists either.

2. Children in conflict with the law

In the government report similarly as in other chapters only the basic legal regulations were given which to a large extent determine standards of proceedings with minors, but this is not the full picture. After the reporting period, in 2000 another amendment to the Act on Minors' Cases Proceedings was performed on assumption to improve the standards of their protection.

There are still some questions that demand specifying. The following are worth mentioning:

1. According to the Convention on the Rights of the Child and according to Polish law adulthood (capacity to enter into legal transactions) is reached at the age of 18. Establishing different limits of the age at which one is a minor is questionable and causes terminological confusion.
2. Following the last amendment of the Act on Minors' Cases Proceedings art. 40 states the necessity of informing a detainee of the charges against him or her and rights vested in them. It seems that the necessity to inform a minor of his or her rights and powers as a party in the consecutive stages of the proceedings (among other things to lodge a motion as to evidence, to appeal a decision, to move for a court-appointed defender, etc.) was not sufficiently articulated. Practice shows that in spite of the fact that minors have the rights of a party he or she is treated as an object and minors themselves are little active in their own cases (which may be the result of factual ignorance of their rights). Surveys show that court-appointed defenders appear when defense is obligatory. The possibilities of defense by motion of a minor or his or her parents are almost not used which may be evidence of ignorance of procedures.
3. Right to defense is implemented inadequately. A clear rule-instruction for a minor should be implemented on their right to give explanations, to refuse to give answers to particular questions, to use a defender as early as at the stage of interrogation, etc.
4. The family court judge first decides whether to apply corrective measures or education measure and only later becomes acquainted with the case, when the procedure should clearly be reversed.

5. In the course of custodial – education proceedings there is no guarantee to have an interpreter free of charge for a person who does not understand the Polish language. It does not concern the corrective proceedings and acts carried out by the police since in such cases the Code of Penal Procedure applies.
6. There is no provision ordering to try a case quickly “in a reasonable term”. Though such directive is in the rules of performing inner official duties of civil courts still in practice it is not observed.

(Study entitled “Proceedings in Minors’ Cases in Poland” 2001, Marianna Korcyl-Wolska’s of Lublin University, published by Zakamycze)

In the years 1997-1999 the staff of the Family Law Team of the Commissioner for Citizens’ Rights Office inspected minors’ shelters, police shelters for children and juvenile detention centers.

The following are basic problems noticed at that time:

- Failure to comply with the statutory time of stay in shelters and police shelters for children, too long stays in centers not always justified
- Insufficient knowledge of rights among juvenile offenders, especially concerning procedures of lodging complaints and appeal against decisions. Though minors signed that they had become familiar with the regulations, and the regulations were hung in a visible place, still no one took care to see that minors knew and understood the meaning of their rights. Too little importance was attached to minors’ complaints concerning non-regulation punishments by personnel.
- The catalogues of punishments and rewards and rights and privileges connected to it were not differentiated sufficiently and depending on the kind of the center. Parole and transfer to so-called youth social adaptation centers were applied too rarely.
- The basic guarantees of human rights protection comprised in The European Convention for the Protection of Human Rights and Fundamental Freedoms, the Convention on the Rights of the Child and UN principles concerning protection of minors deprived of liberty should be reflected in chapters on minors’ rights in law enforcement provisions concerning institutions of minors’ detention and stay.
- Failure to comply with the principles of applying and evidencing of means of applying physical restraint.
- Assistance in starting a life after leaving the institution was not organized well enough. It is an important stage of the resocialization process, otherwise expenses incurred and educational work may easily be frustrated.

Generally, as mentioned earlier, planned and organized preventive actions are lacking. Lately (in 2002) as means to cut back on spending a number of centers for work with the youth (centers where juvenile offenders work but remain in their own environment). Such actions cause anxiety and lack of understanding – instead of

widening the offer of different actions towards minors and preventive actions the few important institutions are liquidated.

3. Child exploitation

In the government report several provisions of the Penal Code were mentioned, the ones concerning sexual abuse of children and protection against child exploitation in prostitution or pornography. Government actions in order to counteract and monitor the phenomenon were not mentioned. The scale of the problem is relatively poorly recognized although some research in this field has already been carried out. From police data it appears that in 1997 there were 2210 and in 2001 there were 1448 offences confirmed (sexual abuse of minors up to 15 years of age). Undoubtedly there are still few competent professionals who are able to make a reliable diagnosis of sexual abuse. The manner in which children are questioned, both at the stage of collecting evidence and proceedings before the court, needs changes. There are few places in the country where a child can be heard in "safe" conditions using audiovisual techniques and one-way mirrors (in 2001 one of the first of such rooms was opened with due ceremony in one of Warsaw police stations). Greater sensitivity and understanding of the problem both on the part of police and judges is something to be praised, however, the problem needs reliable research and organization of effective assistance system for victims both in the course of proceedings before the court and as well as later.

In the government report the problem of drug addiction and preventive actions were referred to. Unfortunately, preventive actions are superficial and of little efficiency. Deliberate conception of preventive actions not only in the field of counteraction against drug addiction but also in a wider sense is lacking, including ways in which young people might spend their free time.

Centers and places of addiction therapy are lacking and there is no offer for the so-called beginners.

Another problem that was not referred to at all is commercial exploitation of children in prostitution and pornography. It is worth reminding that our country has not completed the declared obligations yet (working out of a plan of action after the Congress in Stockholm). Neither the government, the representative of which participated in 1996 in the 1st Congress, nor the following one, which appointed a minister for family-related issues and did not refer to the problem of children's sexual abuse for commercial reasons in its current or future social policy. Annually several cases of trade in women and children are recorded in our country, and the number of juvenile boys and girls involved in prostitution is assessed as a few hundred. In 2000 the police recorded 30 cases of criminal encouraging juveniles to prostitution, in 2001 there were 43 of such crimes. Such crimes are easy to detect but the numbers quoted show that the police are not engaged in the problem seriously enough. This issue is the subject of interest only for non-governmental organizations.

Another aspect of child exploitation is beggary (comment to chapter VI item 6) and child labor. In the report the section on child labor was comprised in the chapter: definition of a child. The report does not include information that the protection of the labor code does not comprise children who work on farms belonging to their parents. According to the provisions of the family and guardianship code parents should care for the best securing of the child's interests, i.e. the proper mental and physical

development, education. The child is obliged to help in the family home. Thus, the parents primarily decide about the kind of work and the conditions for it on the farms. The law on the farmers' social security of 1990 in a sense accepts the children's participation in farm work. According to provisions set forth thereof, the "home dwellers" of the farmer are subject to accident insurance, which includes also the children.

The surveys of the Institute of Rural Medicine in Lublin indicate that farm children up to the age of 15 work on farms from 2 to 3 hours daily, and in the summer (mainly during vacations) around 6 hours daily. Almost all children from the age of 7 to 14 participate in harvests and potato-digging. Farm children perform duties considered especially dangerous to them (driving agricultural machines, spreading of chemical substances or artificial fertilizers). The over-working results with development aberrations and is endangered with accidents at work. According to the official data, annually cases of a few hundred children up to the age of 15 are reported to the Agricultural Social Security. They all underwent accidents at work on farms (e.g. in 1995 – 973 cases reported)

4. Children belonging to minorities or of indigenous origin

It seems that the majority of the problems concern children belonging to the Roma minority. It results from the official data of the Ministry of National Education that about 30% of Roma children do not fulfil compulsory education (in fact the number may be much greater). The problem is complicated as not all Roma are interested in their children's education and the administrative penalty imposed on them according to the binding law is of little effectiveness. Recently Roma classes have been created. There is also one school that is very successful in educating Roma children, but the problem is not solved on the scale of the country.

Summary

In the end of the government report it is written that the information presented proves that the Republic of Poland fully respects the obligations resulting from the Convention. The information undoubtedly does not prove it although it has to be admitted that since the ratification of the Convention many detailed, good regulations have been enacted that have impact on observing children's rights. Still there are plenty of serious problems which demand, apart from declarations and statements of the type "during the period of political transformation care for children's welfare is one of the primary tasks facing the Polish government" (2nd paragraph of the "conclusion" very concrete actions in the field of observing the most important rights:

Right to education:

Access to education should be independent from social and economic status of parents, domicile and evening out of chances should be respected here especially for children from rural and neglected environments as early as at the stage of initial pre-school education; a realistic system of scholarships for gifted students is indispensable;

Right to obtain information

School curricula indeed provide for classes on human / children's rights but practice shows that still both children and adults (teachers) do not know what human rights are in fact. The evidence is catalogues of rights comprised in different statutes / regulations of schools and education institutions. They comprise among other things entries concerning the right to use school rooms, etc., but very often they do not

comprise the most basic rights such as the right to obtain information, to be protected from degrading treatment and punishment (although in general this is an entry on prohibition of corporal punishment). Information on submitting complaints in cases when rights are not observed is lacking as well, although it is generally known that without procedural rights, human rights may be empty declarations. It is important for children to learn at school not only in theory, but also in practice, the rule of law functioning principles and to learn respect for law in general.

Protection from degrading treatment and punishment / protection from violence:

Positive changes are visible but monitoring and reliable examination of the phenomenon of violence is still needed both in the family and in welfare centers, schools, and resocialization centers ; the procedures of protection for the victims of violence and therapeutic programs available in local environment are also indispensable.

The freedom to express opinions / participation in matters concerning the child:

Positive changes are visible also in this question but this right is especially important and in practice young people are often treated as though they were the objects rather than the subjects of their case even when they are old enough to comprehend the matter. That is why the possibilities to hear out a child in all the matters regarding him or her should be used to a greater extent .

Right to be brought up in family and to care provided by public authorities in the situation when a child is deprived of parental care

It is indispensable to monitor the changes in the system of care for children deprived of parental care: real preferences for natural and foster families (financial and psychological) ; reliable investigation of grounds for children's stay in children's homes – institutions and removing them from their natural family only as a last result; converting of children's homes into open, environmental day, centers; trainings for personnel working with parents and children.

Protection of children in special situations

Proceedings in juvenile offenders' cases need monitoring especially as lately part of the society influenced by media information on increasing threat of juvenile delinquency demands higher penalties. In the social pressure atmosphere the rights of juvenile offenders may be threatened (more frequent decisions to apply corrective measures, prolongation of stay in juvenile detention centers).

In Poland serious programs and actions are lacking concerning prevention and directed towards youth in general and to the youth threatened by demoralization. Just as young people leaving children's home need assistance to begin living on their own, juvenile offenders need help upon leaving the detention center. Without such help it is likely that any resocialization that took place during their stay may be negated.

Social rights

Access to health protection for children including rehabilitation and consistent investment in prophylactics is indispensable.

The high rate of children living in poverty is disturbing although there are different actions of the state, but they turn to be of little effectiveness. Verification of the adopted policy of assistance to children and families living in poverty is essential. An economic crisis should not worsen the situation of minors'.

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