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**COMMENTARY ON THE POLISH GOVERNMENTAL REPORT ABOUT APPLICATION OF  
THE CONVENTION ON THE RIGHTS OF THE CHILD**

GENERAL MEASURES OF IMPLEMENTATION

[/a/. The measures taken to harmonize national law and policv with the provisions of the  
Convention](#)

**page 7 point 1; page 8 point 2**

The government report presenting the Constitutional Act of 1992, quoted articles 79 and 80 providing for responsibilities of the state towards the family and children The above mentioned articles were considered to be in accordance with the intent and theoretical under pinnings of the Convention. However, it was not stated in the raport that these rules derived from the Costitution of 1952. The Constitutional Act of 1992 particularly the rules relating to citizen's rights and responsibilities, maintained in forcerules promulgated in 1952. . Most of these rules are said to be characteristic of the precious era, otherwise known as "paper laws" which could

not be executed.

Currently in Poland a new Constitution is being prepared but it is still a point of future.

**page 8 points 4 and 5; page 9 point 6**

It is reported that Poland has undertaken legislative, administrative and some other initiatives to implement the Convention. In fact, there are few such initiatives, with the following being the one's that are known:

\* The Education System Act of 1992 quotes the Convention on the Rights of the Child in its preamble.

\* The project of legislative changes respecting adoption cites the Convention / although, it is worth mentioning that there are some points inconsistent with articles 7 and 8 of the Convention. The Committee for the Protection of the Children's Rights prepared a commentary on the project paying attention to the fact that the adaptation of family law to the Convention requires more careful consideration, not only through foreign adoptions.

\* The Supreme Court passed a resolution / 179 of 12 June 1992/ relating to the provision of the Convention /articles 20 and 21/.

\* The compatibility of the theoretical underpinnings of the Polish law and the Convention was acknowledged at scientific conference that was held at Parliament /Sejm /This attitude might be accepted providing that some particular issues are solved.

The Committee for Protection of the Children's Rights prepared proposals of legislative changes with regard to the Convention standards /see the enclosure/.

**page 9 point 7**

Presently this law is being updated. The notion of demoralization is criticized for being inaccurate. Running away from home and truancy are regarded as the elements of demoralization and the principal cause for the placement of minors /even 1-19 years old boys/ in youth education centres together with those children who committed crime. Unlimited duration of stay in such centres does not motivate the minor to improve his/her behaviour.

**page 11 point 14**

Education Law is provided with some records relating to the notion of respect pupils' personal dignity. However, it lacks any records relating to the means of executing the written laws. Unfortunately, in practice the child's right to such dignity is often broken at school.

**page 12 point 16**

Such a generalization cannot be accepted. Particular solutions leave much to be desired.

**b/. Existing or planned mechanisms at national or local level for coordinating policies relating to children and for monitoring the implementation of the Convention.**

**page 13 point 19**

The office of the Plenipotentiary for Women and Family Affairs was established in April 1991 and closed in February 1992 because of much controversy. It was the office at very high administrative level /by the minister /. Now doesn't exist at this administrative level.

Now, in Poland, we start with discussions about establishing the commissioner for children.

There is no such institution at the appropriate administrative level which would coordinate all the activities for the well-being of the child and which would control the respecting of children's rights in Poland.

**DISSEMINATION OF PRINCIPLES AND PROVISIONS OF THE CONVENTION.**

**page 14 point 22**

Activities propagating the Convention are not sufficient. The report was accessible to the people interested in it but nothing was done in order to present it for public opinion.

## DEFINITION OF THE CHILD

Without comment.

## GENERAL PRINCIPLES

### **a/. Non-discrimination**

#### **page 24 point 48**

This principle seems to be followed in Poland. The information about Ombudsman for Pupils' Rights should be placed in a different part as it has nothing in common with discrimination.

### **b/. The best interest of the child**

The Act of the 7 judges of the Supreme Court passed in 1953 says that the well-being of the child depends on the essential assumptions of the interpretation of legal regulations regarding relations between parents and children.

The notion of "the best interest of the child" is defined inadequately, causing divergent interpretations. These interpretations depend on the outlook on life, intellect, personal experiences and so on. In practice, however, the notion "the best interest of the child" turns out to be very subjective and relative category, which of course has consequences in the application of the law.

It should be pointed out that the expression "the best interest of the child" is not uniformly defined in the official interpretation of the Convention. This phrase means: "the best protection of the child's interests" in articles 3 and 18; "well-being of the child" in article 21 and "the best comprehension of the child's interests" in article 9.

### **c/. The right to life survival and development**

#### **page 29 point 59**

Legal regulations are adequate for the views of the child

#### **page 30 point 65**

The statement that "the child's consent is required in many regulations of the Family and Guardianship Code" is abusive. The 13 years old child is asked to give permission for adoption and for the change of his/her surname in case of adoption and the own the child. In other cases the minor is not asked for consent. In practice only much younger children / often aware of their real names and surnames / are adopted. Sometimes it happens that children do not accept such changes.

#### **point 66**

Limited procedural capacity in cases resulting from legal activities given to children of over 13 years of age means that the child can dispose of his/her personal things; can enter into limited daily contracts, can decide about salaries / according to Polish law one is allowed to work since he/she is 15 years old /. All these rights are unimportant from a practical point of view.

#### **point 67**

The right of the child to be heard in legal and administrative proceedings is rarely applied in practice. According to the law 13 year old child may participate in all legal proceedings except divorce cases and the ones relating to parental authority /these cases are especially important for children /. The court may decide that participation of the child in other cases is inadvisable because for educational reasons. Such a decision does not require separate prosecution. The

expression "educational reasons " seems to be imprecise and mostly depends on the judge's subjective feelings. If the child's preferences are not taken into consideration, for example in case of defining a child's residence after their parents' divorce, it may lead to very dramatic situations.

In Poland there is such an institution called " bailiff execution " which involves separating from the child the person who is not legally entitled to take care of the child. Such situations sometimes happened after divorces. The child does not always accept the court's decisions. In case of divorce the family is examined at the Family Diagnostic Centre, although the judge does not have to take into consideration the opinion of the centre. It happens that the mentioned opinion does not focus upon the child's will or preferences.

The projects permitting wider participation of children in their own cases raises great resistance. Legal regulations might turn out to be adequate if they were distinguished more carefully and if the adjudication practice was changed.

Theoretically, family judges could apply the Convention principles / article 12 / as they are better and more comprehensive than Polish regulations. Unfortunately, such initiatives have not been heard of so far.

### **page 32 point 69**

It may be stated that the Polish legal system accepts -as the basis of its functioning - the general principle of nondiscrimination, the safeguarding of the best interest of the child and the guaranteeing of him/her the right to life and development. However, it is not true that the respect for the child's views is one of the general principles. On the contrary both general assumptions and particular regulations underline the importance of parental authority / children up to their majority must be obedient to their parents - article 95 of Family and Guardianship Code /. It was expressed while ratifying the Convention in the declaration..."the child performing his/her rights, especially those included in articles 12 - 16, should also respect parental authority according to Polish customs and traditions".

Emphasis on this aspect in the declaration means total subjection of the child to his/her parents' authority deeply rooted in Polish tradition. CIVIL RIGHTS AND FREEDOMS

### **a / Name and nationality**

**page 33 point 71** The called "secret adoption" occurs in Poland. It occurs legally through an interpretation of the notion "the best interest of the child". Supporters of "secret adoption" claim that the best guarantee of successful adoption is to keep secret the child's origin. They do not realize that depriving the child of the right to know his/her natural parents and family is inconsistent with the right to identity. An adult person who was adopted in his/her childhood does not have an) possibility to find out his/her origin./ such documents are secret and are not copied /. Secret adoption is claimed to contribute to personal welfare and thus is protected by the right to safeguard private life and the right to intimacy. This reasoning seems to be anachronistic.

The authors of that opinion focus upon the protection of the adoption-parents' well-being rather than the adopted child, with the basic assumption being that the child is treated as the adopting person's child. In practice the principle of secret adoption raises many problems. Adoption-parents live under constant stress that the truth of the adoption will be revealed. Children who are improperly informed about their adoption experience dramatic situations. Unfortunately, the present project of legislative changes still retaining the secret adoption, even though the project is said to be in accordance with the Convention.

### **b./ Preservation of identity**

#### **page 34 point 72**

The Polish legal system allows the change of the child's name and surname without his/her consent if the child is under 13 years of age. The child may never learn his/her -real name if he/she is not aware of it at the time of adoption. Although the Civil Code /article 23 / provides every person the protection of personal well-being, the Family Law applies different regulations with respect to children. Thus, it cannot be said that the system of Polish law is in agreement with article 8 of the Convention.

**page 34 point 73**

The child's identity is not respected in both foreign and domestic adoptions. The project of changes in the Family and Guardianship Code has been developed to improve the adoption procedure and to define those situations in which foreign adoptions are possible. The problem of the child's identity has not been taken up in the project.

**c./ and d./ Freedom of expression Access to appropriate information**

According to the order of the Minister of Education / 1992 / the pupil is free to express his/her thoughts and opinions especially with regard to school life and religion if it does not disturb well-being of others. In law leaves the application of this law leaves much to be desired. It depends on adults' good will and it is difficult to execute. The right to information has not been recorded anywhere. School statutes inform pupils about the right to appropriate system of education which might be understood as the right to information. Generally, children are considered to have access to information. This situation is more difficult in the country /fewer libraries and reading rooms/. The access to information is also limited by high prices of books and magazines

**e./ Freedom of thought, conscience and religion**

**page 37 point 81**

Religion lessons at school raise a lot of controversy. Giving marks on religion /not the study of religions/ on school certificates raises protests among people who are neutral as far as religion is concerned. Until the child attains the age of majority parents decide whether he/she attends religion lessons. The right to religious freedom is not fulfilled here.

**f./ Freedom of association and Peaceful assembly**

**page 34 point 74**

Both the regulations and practice are in accordance with the Convention here.

**g./ Protection of privacy**

There is no legal regulation here /especially for children /. Article 23 of the Civil Code provides every person with protection of his/her personal rights, however, according to article 92 of the Family and Guardianship Code the child is subjected to parental authority until he/she reaches the age of majority. It depends on parents whether a child's rights both given and derived from the essence of humanity are obeyed. Relations between parents and child are difficult to codify but there are several non-legal norms which successfully regulate these relations.

Unfortunately, there is much abuse of parental authority here which is not legally controlled.

The relations between the child and institutions/school, educational or preventive centres/ should be more precisely defined regarding the protection of privacy; however, execution of this right is also difficult.

Recently /under the influence of ratified Convention / educational centers have started changing their regulations withdrawing for instance the censorship of correspondence. /This information comes from the inspection report of youth educational centres of Warsaw borough conducted by Helsinki Foundation for the Human Rights/.

**h./ The right not to be subjected to torture or other cruel inhuman or degrading treatment or Punishment**

**page 37 point 82**

There are no institutions in Poland permitting torture or other cruel methods in the upbringing of children. Degrading treatment or punishment of children at schools, educational and detention centers are serious issues to discuss. Since 1992 school statutes have been provided with a record prohibiting the use of punishments which degrade dignity and personal immunity of the

child. However, there are no records on these regulations are to be regulated. According to the survey conducted by /CPBP 1990/ Central Programme of Basal Investigation, 18% of the youth claimed that various corporal punishments were applied at their schools;

0,2% - responded that corporal punishment was applied very often;  
9,9% - responded that corporal punishments was applied exceptionally.  
Other sources report that only 21% of teachers consider corporal punishments as useless. Pupils maintain that degrading is a common school practice. They enumerated the following features of teachers' behavior as the most common at school:  
83% - vindictiveness  
82% - degrading of pupils 79% - mischievousness  
71% - mockery  
68% - lack of indulgence  
/the survey of CPBP 1989 /

At the educational and detention centres the apply of corporal punishments happens from time to time.

## FAMILY ENVIRONMENT AND ALTERNATIVE CARE

### **a./ Parental guidance**

**page 39 points 93 and 94**

General assumptions of Polish family law address parental rights and responsibilities for the child and the state support for the family. Polish law interferes in family autonomy only in particular cases.

### **b./ Parental responsibilities**

Legal regulations are sufficient. Such institutions like infants nurseries, kindergartens and houses of culture organized by the state help parents take care of their children. Nowadays, because of changes in the political system the state participates in the child's education and upbringing to a more limited degree: for instance, holidays recreation and after school activities are not financially supported by the state . Parents rarely can afford this expense because their incomes are sufficient to cover only the child's necessities.

### **c./ Separation from parents**

**page 40 point 95**

It should be emphasized that inappropriate means are taken to provide the child with the right to his/her personal contact with both parents after divorce. /1993 - 55 thousand divorces; 1,4 million single parent families; 90% out of 1,4 million - only mothers, 2 million that is 16,2% of all minors are brought up by single parent./

The court adjudicating the divorce / the judge may not pronounce the divorce if he acknowledges that the minor might suffer/ decides about the place of inhabitation for the child and contacts with that parent /mostly it is the father / who will not take care of the child directly. The child does not always accept the court's decision. Respecting decisions about the child's contacts depends mostly on the good will of the person / mostly mothers / taking care of the child directly. If that person does not want to agree to any contacts /which it happens very often / the execution of the family court's decision is impossible. Fines are applied very rarely and rather symbolically. It should be emphasized that the Family and Guardianship Code provides both parents with the right to take care of the child /article 97 of FGC /. However, there is no record about the child's right to contact both parents after divorce. This means the article

9 of the Convention is not fully respected.

**page 41 point 97**

This is not a general principle. Parents deprived of parental authority may contact their children staying in education and care centers. The problem is that parents do not want to keep contacts with their children.

**d./ Family reunification**

**page 42 point 98**

Poland has respected this law last years.

e./ Recovery of maintenance for the child

**page 42 point 99**

61 639 court cases regarding alimony were conducted in Poland in 1992. 15322 persons were sentenced to imprisonment because they avoided paying alimony./data given by the Chief Central Statistical Office and the Ministry of Justice/Imprisonment is not an efficient method to obtain alimony because the costs of prisoners' maintenance are very high in Poland. Obtaining alimony from abroad is also very difficult.

**page 43 point 104**

Financial support for foster families is not sufficient.

**f./ Children deprived of family environment**

**page 44 point 106**

In Poland about 100 thousand children are deprived of family environment.The table on page 46 does not present every education and care centres. We have 34631 wards registered in 14452 centres. 30% of them are under permanent care of the above- mentioned centres or "weekly residence" centres. There are 748 children registered in 16 "weekly residence" centres. Some of them spend only weekends at their homes. /data by the Chief Board of Supervision, 1994/.

**page 44 point 107**

About 40% of all children deprived of family environment live in foster families. The phenomenon of the Polish foster family is a little different from the those found in others countries. In Poland foster families are not paid for bringing up the child. They consist of persons related to the child and very often living with him/her /including grandmothers, aunts etc./. They support the child and his/her family financially but in many cases this help is insufficient. It should be emphasized that if the child must be urgently separated from his/her parents the only solution is family emergency care.

**page 45**

In the Polish language version there is information about family children's houses. The idea of this institution is based on taking several 16-121 children by one family and bringing them up. The costs of maintenance are covered by the state. Unfortunately, the number of family children's houses has been decreasing for the last few years although the Ministry of Education promotes family - like forms of care for children deprived of family environment / in 1989 there were 164 family children houses; now there are 132 /. The state does not render sufficient financial assistance for the family children's houses. Sometimes it happens that the financial help is not paid on time. The majority are not provided with sufficient help, so they cannot start independent life / the lack of flats, jobs etc./.

point 107 b

The situation of children staying in children's houses is unsatisfactory:

- \* the children's needs are provided for at only a minimum level
- \* dwelling conditions are poor but there is no money renovation
- \* norms of nourishment are often lowered
- \* lack of adequate medical care / caries and spinal curvature /
- \* insufficient individualization of teaching and help in completing school programme. / Very few wards of children's houses continue their education at high schools.

According to the survey of 1994 only 4 wards out of 19 children's houses continue their education at secondary modern schools. From 2 to 25% of children staying in 15 children's houses continued their education at high schools. /data from the report of the Chief Board of Supervision, 1994 /.In most cases the wards of children's houses come from a pathological environment. That is why they should be provided with additional psychological help; various therapeutic and reeducation activities but they are rarely organized.

\* Insufficient help for the young who should start their independent lives. The state financial assistance is not high but the greatest problem is its unreasonable usage. The costs of the child's maintenance fluctuates from a few to several million zlotys which is equal to 2-3 average monthly payments in Poland. 60 -80% of the cost of the child's maintenance is spent on staff earnings /which are not very high /. Sometimes it happens that the number of tutors is equal to the number Of wards in the children's house, but it does not improve the quality of educational activities Summing up: institutional care of children is ineffective and it should be improved.

#### **page 45 point 107 d**

The problems are similar to the ones mentioned above. It should be pointed out that children's stay in emergency care centres are usually longer than the norms allow. The regulations say that the child is permitted to stay there only for 3 months. In practice over half of the children wait there twice as long.

#### **page 46 point 108**

The problems here are similar to the ones in children's houses. It may happen that minors who are demoralized a little are placed together with those who have committed some penal acts. Unlimited duration of child's placement in educational centre leads often often to escapes. As teaching is organized at the centre the offer of secondary modern education is- limited and insufficient. The fact that the child is leaving the educational centre is not provided with so called "good start" is a serious problem. He/she usually comes back to the demoralizing environment and in that case the effects of resocializing therapy are lost.

point 110

180 thousand of minors are under courts' care and surveillance. About 10% of school population is brought up in alcoholic families. /data by the Ministry of Education, 1994 /

#### **g./ Adoption**

#### **page 48 point 112**

Every year courts decide on 4 thousand of adoption applications. About 50 thousand children are brought up in adoptive families. / data by the Office for Study and Expertises of Parliament Secretary, 1993 /

Controversial problems connected with adoption:

- \* the secrecy of adoption and lack of respect for the right of the child to identity and knowledge of his/her origin /it was described while discussing the right to identity /



\* long-term procedure of stating the legal situation of the child staying at children's house. Only little / 3-4 years old / and healthy children have a chance to be adopted. Those who have not been adopted by the above-mentioned age are brought up by various institutions taking care of children. Judges do not decide quickly enough about depriving parents of parental authority giving more chance to parents rather than to children. Prolonged staying at children's houses may cause development disorders and other diseases.

Foreign adoptions evoke a lot of controversy in Poland. It happened that infantile and healthy children who could have been adopted in Poland left the country forever. /655 children left in 1991; 67% of them did not attain the age of 5; 30% of them were infants / Public prosecutor should participate in legal proceedings with regard to foreign adoption. / In 1991 courts informed the prosecutor's department of about 470 out of 523 cases. The public prosecutor participated in 196 cases. /After the child's departure, the Polish court is obliged to check whether the local authorities abroad accepted the Polish court's pronouncement or not. / 372 out of 523 cases were checked by Polish courts. Data by the Ministry of Justice./

Summing up: legal regulations seem to be sufficient. Only the application of this regulations requires improvement.

#### **h./ Illicit transfer and non return**

##### **page 50 point 118**

Legal protections are sufficient. Such phenomenon does not exist in Poland.  
i./ Abuse and neglect including physical and Psychological recovery and social integration

##### **page 51 point 120**

The problem of violence against children has increasingly addressed in Poland recently. It is difficult to estimate the range of issues as no statistics concerning such cases are generated. Article 184 of the Penal Code speaks about maltreating members of the family but it does not specify children. If maltreatment occurs in the family children are probably the victims. / In 1992, 13012 persons were sentenced by courts for maltreatment./ In 1992 the State Hygiene Department registered 180 children who underwent hospital treatment after being maltreated / E-967-illness unit / and 14 children who died for the same reasons. Considering the problem of violence, it is necessary to remember that not every act of violence is of maltreatment character.

According to surveys conducted by the Nobody's Children Foundation and the Polish Foundation for Children and Youth in Warsaw in 1992 school pedagogues registered 1000 beaten children; 101 -sexually abused; 2000 - emotionally hurt and 4000 - neglected out of 123000 inquired pupils. 9% of pedagogues claim that teachers use physical violence against pupils and 25% know cases of mental violence perpetrated against children. 45% of children at the age of 13 - 15 admitted that parents use corporal punishments against them. 33% out of 45% of the above mentioned added that such punishment occurs occasionally. It should be pointed out that doctors do not always diagnose child abuse and they do not report it to the Police or Public Prosecutor. / In 1992 about 50 cases of the child abuse were registered in Warsaw hospitals. 75% out of 159 pediatricians claim that they have not faced such cases. Data by the Nobody's Children Foundation./ Obvious cases of children's maltreatment are punished. Legal regulations concerning this problem are sufficient however, the realistic possibility of helping suffering children is very limited.

Reasons:

\* the problem of maltreatment is not well known even by those who have permanent contact with children / teachers, pedagogues etc./

\* the traditional pattern of upbringing is based on obedience and punishment /according to inquiry conducted among Warsaw families 80% of parents admitted spanking; 44% admitted beating with various things; 25% used othe punishments: for instance, depriving the child of food or place to sleep./ /data by the Institute of Psychology, Warsaw University, 1991 /

\* ineffective system of help for the child /placing the minor in children's house is the only real form of help, although children regard it as a form of punishment /. Direct help for the family /therapy or casual placement of the child in a foster family/ has not developed in Poland

yet. Various organizations like the Committee for the Protection of Children's Rights and The Nobody's Children Foundation arrange educational activities such as: training, courses, publications, TV programmes and so on.

Nobody's Children Foundation prepared a project of creating a help centre for injured -children. The Committee for Protection of the Children's Rights has suggested establishing an institution called "trust telephone" for children.

#### **j./ Periodic review of Placement**

##### **page 52 point 122**

Every year educational centres conduct evaluation of children's resocialization, their level of education and the possibility of returning to their families. However, most of the children are kept at educational centres until they complete education.

#### **BASIC HEALTH AND WELFARE**

##### **a./ Survival and development**

No comments required.

##### **b./ Disabled children**

According to the evaluation of the Council for the Old, Disabled and Invalids 3% of the population /373 thousand/ of children up to 13 years old are considered to be disabled. Health service and social organizations have registered about 640 thousand children and the youth with considerable health deviation. The biggest group /60-70%/ consist of mentally handicapped children. Another group 115%1 consist of children with motor disfunction Legal and social provisions for these children are rather sufficient, however, in practice they are not easy to execute. Sometimes privileges and granting benefits are symbolic in comparison with costs of medical treatment and rehabilitation. Educational opportunities are limited by the living conditions the extent of disability. Thus it does not provide for educational needs of the child. Boarding houses are not structurally good; the distances to school are too long for the disabled etc. The disabled children /especially those mentally handicapped are said to be too easily exempted from school obligations. There are very few specialists as well as rehabilitation centers. Many children cannot execute their right to free of charge rehabilitation because of the long distance to the center /200km/. There are about 20-30% of children with paralysis who are rehabilitated. The equipment is free of charge but its quality leaves much to be desired. It also cannot be used for too long. Nobody knows what the real needs of the disabled children are. It is easier and more economical to organize education and rehabilitation in cities where disabled children's needs are registered.

##### **c./ Health and health services**

##### **page 59 point 145**

In Poland medical benefits are free of charge but the standard of service is very poor. The system of health protection including social insurance is being reorganized but it is not an easy task to do. According to comprehensive statistics, 35% of children at the age of 6-18 require permanent medical care due to various abnormalities: sight defect - 0,2% of children at the age of 6 15,6% of children at the age of 18 / 25% of schools are inadequately illuminated / flat-foot and scoliosis - 12,5% of children at the age of 18 14,6% of children at the age of 18 caries - 80% of children living in the country, 54% of children living in towns accidents - 10% of all injured in road accidents are children aged 7-14. Very often expensive operations cannot be performed because of the lack of financial means or appropriate equipment.

##### **page 62 point 152**

Very few hospitals are provided with rooming in system and this situation is not to be changed quickly. Not all hospitals in Poland respect the child's right to be cared by close relatives. Visits to hospitals are often limited, as well. On the basis of an agreement with the Minister of Health, The Committee for Protection of the Children's Rights is entitled to interfere incases of

forbidding parents to visit their children at hospitals.

#### **d./ Social security and child care services and facilities**

##### **page 67 points 169-170**

Family allowance has not been revalued for the last 2 years and it amounts to 167 thousand zlotys which is equaling to 5% of an average family income. The works on reform of family allowances are continued and the principle of equal allowances is to be changed for the good of low income families. / The figures presented in the tables should be re-counted according to inflation factor./

##### **page 70 point 178**

Unfortunately, the number of non-obligatory activities performed after lessons has been gradually decreasing.

#### **e ./ Standard of living**

The subject has been thoroughly discussed.

### EDUCATION, LEISURE AND CULTURAL ACTIVITIES

#### **a./ education including vocational training and guidance**

##### **page 80 point 204**

Communal Councils have not taken over the schools, yet as they are not sufficiently prepared /mainly economically/.

##### **page 81 point 207**

The number of children not complying with school obligations was as follows: 3% of children at the age of 7 - 14: 23% of children at the age of 15 - 19 /school year I 992/1993/.

##### **page 88 point 219**

There are accurate and positive records, but there exist no means of executing them.

##### **page 93 point 232**

The Act of Education System is not provided with the record about the children's right to knowledge of human rights.

b./ Leisure, recreation and cultural activities

Children in Poland are said not to have the possibility of executing this right.

### SPECIAL PROTECTION MEASURES

a./ Children in situation of emergency

i./ no comment required

ii./ of no concern

b./ Children in conflict with the law

Polish law concerning procedures in cases of juveniles is in accordance with general principles of the Convention.

Reservations:

\* too general interpretation of the notion of "demoralization"

\* unlimited duration of pronouncing educational and reformatory measures

\* insufficient access to information relating to procedures being conducted at the moment

The present system of resocializing juveniles /mostly reformatories and shelters/ is often criticized. Senate Intervention Office conducted inspection of all reformatories and shelters for juveniles in Poland in 1992/1993. Very serious abuse has been found out. Guardians often beat

and applied various forms of violence /i.e. head shaving; isolation .. / against their subjects. 78% of juveniles examined described these punishments. Discipline and isolation are the fundamental aspects in most shelters and reformatories. The lack of rooms for recreation and relaxation, barred windows prove that the juveniles live under constant stress. The lack of confidence in the system and the feeling of safety was expressed by one of the wards who said "I am afraid to say what I am afraid of".

In 1993 1762 employees took care of 1000 of wards in reformatories /statistics show about 2000 juveniles/. The government is aware of the poor aspects of the resocialisation system. Work on these issues continue.

### **c./ Children in situations of exploitation including physical and psychological recovery and social reintegration**

#### **page 111 point 284**

The system applied by the Polish Labour Code has several gaps regarding employment of young people, making it more difficult to protect the young employees effectively. The report of State Bureau of Labour Inspection shows that the rights of young employees were infringed in 68% of the inspected institutions and works /2,7 thousand of institutions employing 31 thousand of young peoples/.

The most urgent problem to solve is the needed increase of minimum payment of the juvenile employee. It is worth mentioning that there is also called "black market" of juveniles' work. Unfortunately, we have no about it.

#### **ii./ Drug abuse**

##### **pages 111-113 points 285-290**

In spite of various activities planned and performed by government and social organisations the problem of drug abuse has been growing. The number of registered drug addicts has seriously increased, as of late In 1993 there were 16589 drug addicts; 1505 out of them - juveniles/. It is obvious that this number is much bigger in reality. According to planned amendments to the act on drug addiction possessing of drugs will be punished with the possibility to choose between the forms of punishment: either imprisonment or disaccustoming therapy.

#### **iii./ Sexual exploitation and sexual abuse**

Sexual violence is not a well-examined phenomenon but that does not mean it occurs incidentally. According to a famous Polish sexologist 25% of girls and 22% of boys were exposed to pornography by force; 5% of girls and 1% of boys were exposed to voluptuous acts by encouragement or force; 9% of girls and 2% of boys experienced incitement of sexual organs. The inquiry, conducted in 7 children's houses /among 500 wards/ shows that every 25th ward was sexually abused. We were informed by one of the district prosecutors offices in Warsaw that every month sexual abuse is reported to the Police at least once. These data are rather fragmentary and a very thorough analysis is necessary. Legal regulations regarding punishment of perpetrators' sexual crimes against children are sufficient. Some changes should be introduced only into the practice of investigating. As children are thought to be telling lies, during interrogation they have to prove that they were exploited or abused. This is additional humiliation of the victim. We need precise statistics presenting the range of the problem. Polish statistics show that in 1992 in 50 cases of article 175 of the Penal Code to incest; in 836 cases of article of the P C referring to voluptuous act against the child was invoked and in 106 cases article 177 of the PC to demoralization of the child with prostitution were directed to courts. Nothing was said about article 168 of the PC relating to rapes because this regulation does not specify minors. It is obvious that these statistics do not illustrate the real range of the phenomenon.

The system of help for abused and exploited children is imperfect. The new system of help focused on therapy and help inside the family should be prepared and introduced into life.

#### **iv./ other forms of exploitation**

Have not been noticed.

#### **v./ Sale trafficking and abduction**

There were incidental cases of sale trafficking in children occurring during adoptions. Generally, such problem does not exist.

#### **d./ Children belonging to a minority or an indigenous group**

Regulations and practice seem to be adequate and they protect the rights of the minority groups.

#### FINAL REMARKS

##### **Page 116 point 289**

Members of the Committee for the Protection of the Children Rights raised the problem of not separating of brothers and sisters while placing them in the centres. That postulate was directed to Polish legislation /or rather practice/. It did not demand creation of a new record in the convention. We admit gladly that the practice in this aspect is better now.

##### **point 299**

It is obvious that except rights children have many duties to fulfill. The role of the Convention however, does not consist in defining these duties. This remark means that adults are afraid of granting rights to children. It also underlines deeply rooted opinion that rights are vested under the condition of fulfillment of duties. In the past rights deprivation /even those that are nontransferable/ was a common punishment for failing to fulfill duties. Social consciousness has been changing slowly but even now we can observe positive changes in thinking with regard to children's rights. It should be emphasized that the role of the Convention for the Rights of the Child is significant in this process.

#### SUMMARY

Our report has been prepared to serve as commentary or a supplement of particular pieces of information included in government report. Generally, we may say that Polish legal solutions are

quite good. Only some regulations, for example, considering the child's right to identity or his/her right to be heard at legal proceedings relating to himself/herself, require some changes. Undoubtedly, practice leaves much to be desired and should be improved. We often observe and hear of being broken or not being respected children's rights. The system of help to the child and his family is also inefficient. The offer of both social and psycho-pedagogical help require different solutions. The child's right is a new notion in Poland which has not been fixed in the social consciousness yet. There are many circles opposing the granting of children any rights, especially personal ones. On the other hand, however, there are people ready to act in order to promote and comply children's rights. The consciousness of teachers and pedagogues has been changing slowly. They liberalize and democratize schools and educational centres regulations, which evokes great optimism. It should be emphasized that the Convention for the Rights of the Child played very positive and important role in this process.

#### ENCLOSURE

On the basis of intervention and mediation activities regarding protection of children's rights, we prepared proposals of amendments to law taking into consideration the set of rights and personal freedoms included in the Convention. Our proposals are of a working character. They were presented at the Ministry of Justice and evoked great interest there. A team was appointed to work on our proposals. The first meeting took place in Warsaw in May 1994, the next one is planned after summer holidays. At the first meeting we decided that regulating some the problems does not require legislative changes but needs instead the enactment of appropriate dispositions; changing of pronouncements etc. We also met the President of Warsaw Provincial Court in order to discuss the broadening of the formula of so called conciliatory session before divorce, which in its present shape is ineffective /the judge talks to

both divorcing parties for several minutes/. It may not limit the number of divorces but we believe, it will decrease conflicts after divorce relating to contacts with children. Provincial Court has expressed its interest in this idea. If our local undertakings were successful the idea could be spread all over the country. Below, we present our most important postulates:

1. The expression parental authority should be substituted by the expression parental responsibility.
2. The notion "the well-being of the child" should be objectified with regard to most of the comprehended rights and personal freedoms vested in children.
3. The records in Registry files relating to slurring certain facts about the origin of the adopted child ought to be changed. Every major should have the right to know all documents referring to himself/herself /It could be the first step to overt adoption./
4. Children aware of their family situation and surname should be granted the right to decide on the matter of changing of surname their consent to adoption. This right would be given to younger children than it is accepted in our legislature.
5. We propose to introduce the following article into the chapter referring to parental authority /Family and Guardianship Code/: "Being responsible for the child parents are not allowed to infringe the child's rights especially the right to personal dignity, freedom, creation, secrecy of correspondence and personal contacts with relatives. The child who is over 13 years old may reclaim his/her rights.
6. Providing that the child is to be the subject not the object of legal protection the range of rights and autonomy should be considered due to existing regulations of the Civil Code, Family and Guardianship Code and Civil Proceeding Code.
7. More severe sanctions should be applied in case of the lack of compliance with the court's decisions. It mostly refers to the problem of the child's contacts with that parent who after divorce does not take care of the child directly
8. The article of Family and Guardianship Code relating to rights vested in parents should include a record of the child's right to contacts and care of both parents.
9. Pronouncing a divorce the court gives full responsibility to both parents providing that there are no reasons for other solutions. If both parents want to take direct care of the child the court may decide about alternating care.
- 10 Article 184 of the Penal Code should be modified in order to specify maltreatment of the child.
11. The Family and Guardianship Code should be provided with a record forbidding the usage of corporal punishment. Article 95 of FGC with regard to the child's obedience ought to be supplemented: "parents executing obedience are forbidden to use any forms of violence; especially physical. /alternative to point
12. The improvement of adoption procedure requires introduction of an additional record to the Family and Guardianship Code with regard to limitation of parental authority. The criteria parents /or one of them/ have to fulfill in a definite time in order not to be deprived of parental authority should be precisely defined. This would help judges in undertaking decisions about parental authority deprivation.

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## **PROCESS OF IMPLEMENTATION OF THE CONVENTION ON THE RIGHTS OF THE CHILD IN POLAND**

Poland signed and ratified the Convention on the Rights of the Child. It has been in force since 7th July 1991. Before ratification, a scientific conference on "The Convention on the Rights of the Child versus Polish Law" was held at the Polish Parliament /Sejm/. It was stated there that generally, Polish legislations /except few and less important rules/ was in accordance with the contents and requirements of the Convention, thus it could be ratified.

Indeed, the basic assumptions of the Convention: i.e. the principle of equal treatment in relation

to law; family autonomy /respecting rights and responsibilities of both parents/; the principle of the well-being of the child and the principle of welfare state are in agreement with the assumptions of the Polish Family Law. This statement does not entitle to claim that Polish Law is in accordance with the Convention. However, any detailed expertises have not been conducted so far. The matter of compatibility of Polish Law with the Convention was commented on the Supreme Court on the occasion of answering the Supreme Court President's question on how /taking into consideration article 20 of the Convention/to deal with adoption case if the applicant is a resident of a foreign country. Answering this question on the Supreme Court passed a resolution demanding consideration of the relevant resolution of the Convention as the Polish Law does not contain particular normalizations regarding foreign adoptions. It has been acknowledged that the state law contains some gaps which enable courts to apply the Convention resolutions directly. Considering the problem of application of the Convention regulations by courts, it has been claimed that the Constitution of 1952 did not contain any regulations with regard to application of international conventions. What is more, it did not point out any ways of transformation of treaty norms into inner norms. Constitution amendments introduced in 1989 /article 32/allow for international agreements to be ratified and renounced by the President. Any ratification of international agreements that requires serious financial liabilities or necessary changes in legislation must be accepted by Parliament /Sejml. There are no uniform views regarding relations between treaty law and inner law. Some people claim that international agreements become part of the Polish legal system at the moment of its ratification and publication in Dziennik Urzędowy. In case of conflict with inner regulations the international agreement has priority over inner law .The relation between the Convention norms and inner law is to be solved in the future Constitution of the Republic of Poland and in the Act regarding international agreements. Suggested solutions emphasize the priority of treaty law over inner law. The facts that the Parliament /Sejm/ agreed to ratify the Convention on the Rights of the Child and it was published in Dziennik Ustaw mean that the the Convention may be applied by courts as legislative acts with all the consequences coming out of it. It should be underlined that the stipulating character of the Convention resolutions /states assure; they will undertake the right steps; they will respect and so on/ make their direct application more difficult.The record in the Act on System of Education of 1992 may be treated as the indication of the Convention implementation. Its preamble says "Education in the Republic of Poland is common welfare of the society; it is guided by principles included in the Constitution of the Republic of Poland and the recommendations included in Common Declaration of the Human Rights, International Treaty of Civil and Political Rights and International Convention on the Rights of the Child. Articles

35 point b and 36 point l of general school statutory say that the pupil is provided with the right to corporal immunity and respecting of his/her dignity, what is connected with ratification of the Convention.

Unfortunately, recording of the rights does not guarantee their compliance, that is why it is necessary to introduce some means of their execution. Generally, Polish law is compatible with the fundamental regulations of the Convention. However there are many regulations relating to the child's rights and personal freedoms which do not exist in Polish law. In some cases it is only the lack of appropriate records, in others the lack of adequate interpretations that have not been applied so far. For example, article 12 of the Convention states that the child has the right to shape his/her opinions and express them in every legal and administrative proceedings relating to the child. The child may be represented by his/her spokesman or may participate in the mentioned above proceedings himself/herself. Polish law provides for the minor to be heard at some proceedings concerning the child. For example, children are not allowed to express their will in divorce cases /the problem of choosing the parent/guardian taking direct care of the minor; the problem of contacts with that parent who does not take care of the child directly/. In practice, the child's right to contacts with both parents is often broken. The Family and Guardianship Code contains the record of the right of both parents to raise of the child but there is no record about the right of the child to contacts with both parents /article 9 acts 2 and 3 of the Convention/ The next example is the right to identity including the right to surname /article 8 of the Convention/.The Polish Civil Code /article 23/ says that every person has the right to protection of his/her freedoms, for example, his/her surname. Simultaneously the Family and Guardianship Code provides for the change of children's names and surnames without their agreement. Only 13 years old children are asked to give their consent. It is obvious that mostly

children who are small and unaware of their rights are adopted. As there is the regulation saying that "every person has the right to protection of his/her freedoms" no particular legal changes should be introduced except the appropriate interpretations of the existing ones.

Helsinki Foundation for Human Rights together with the Committee for the Protection of the Children's Rights and the Polish Foundation of Children and Youth tried to present the legal situation of the child considering a few fundamental rights /the rights of the child in family, school, hospital, court, educational centre and so on/ and compare them with the Convention standards. Preliminary analysis prove that protection of the child's rights especially personal rights and freedoms are insufficient. In our opinion thorough analysis of Polish civil penal and administrative law would be worth expertising with regard to potential possibility of protecting the rights of the child.

#### SUMMING UP:

We cannot say that the Convention has been implemented into inner law as any activities with regard to this process have not been undertaken so far. However, we may underline the positive effects of the Convention ratification. Discussing the child's rights, especially his/her personal freedoms, is a new phenomenon in Poland and undoubtedly it is connected with the ratification of the Convention. Although the records in Education System Act and General School Statutory referring the child's right to dignity and corporal immunity are still imperfect they prove that some evolution has begun with respect to children's rights. Lately, the possibility of appointing the spokesman of the children's rights has been considered. According to the opinion poll by OBOP 60% of the inquired into that matter state that such institution is necessary in Poland.

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