

Alternative Report
to the Polish government's report on the implementation
of the
“Optional Protocol to the Convention on the Right of the Child
on the sale of children, child prostitution and child
pornography”
with reference to article 12(1) of the Protocol

Republic of Poland

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This alternative report has been developed by:

The Nobody's Children Foundation

and

The Helsinki Foundation for Human Rights,

in cooperation with:

1. Association for Children and Young People, Chance (Szansa)
2. International Organization for Migration
3. Local Committee for the Protection of the Rights of the Child in Poznań
4. NASK Hotline, Dyzurnet.pl
5. Polish National Committee for UNICEF

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List of Acronyms

CBOS – Public Opinion Research Center

CBS - Council of the Baltic States

CoE – Council of Europe

CMPPP - National Centre for Teachers' Education, the Methodical Centre for Psychological and Pedagogic Support

CODN - National Centre for Teachers' Education

CRC – Convention on the Rights of the Child

CSEC – commercial sexual exploitation of children

ECPAT - End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes

ILO – International Labour Organisation

MEN – Ministry of National Education

NASK - Research and Academic Network

NCF – Nobody's Children Foundation

NGO – non-governmental organisation

OPSC – Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

I. Introduction

Pursuant to article 12, point 3 of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution, and child pornography (OPSC), the government of the Republic of Poland has prepared the first report on the implementation of the Protocol. The report has been developed in accordance with the guidelines adopted by the Committee on the Rights of the Child at its 77th meeting on 1 February 2002. However, many significant issues have been passed over or addressed too hastily, while some information has been needlessly repeated several times. **The report lacks statistical data, research findings, information on the budget for the implementation of the Protocol, as well as clear references to the Convention on the Rights of the Child and its general principles.**

No NGOs were invited to take part in the preparation of the report and the government did not hold any of the consultations recommended in the guidelines of the Committee on the Rights of the Child.

It is worth emphasizing that it took 9 months between the ratification of the Protocol (10 September 2004) and its coming into effect in May 2005, which implies that the formal procedure (publication in the Polish Journal of Laws) significantly delayed the enforcement of the document. The delay may have also resulted, at least partly, from **the absence of a body officially responsible for the implementation of the Protocol. There is also no mechanism or procedure for systematic, regular evaluation of the implementation process.** In *Handel dziećmi. Wybrane problemy* (Child Trafficking: Selected Problems) – an analysis published in 2007 by the Warsaw University's Human Trafficking Studies Center – the authors conclude: “... *Despite the fact that the Protocol was ratified by Poland in 2005, its incorporation into the Polish legal system is still far from complete. There is no one in the government who feels responsible. Although the Protocol appoints the Ministry of Justice and the Ministry of Education as responsible bodies, for the past two years there has been a kind of negative competition between the two departments, with each one trying to surpass the other in shunning responsibility...*”. This harsh statement can hardly be considered groundless. Moreover, **the Protocol has not been sufficiently promoted or disseminated**, even though one has to admit that the problems of human trafficking, child exploitation, and child prostitution and pornography are not taboos any more, and that an increasing number of efforts are being made, including cooperative actions taken by the government and NGOs. **What is missing, however, is systematic, better coordinated work.** It should be also mentioned here that **Poland has not yet developed its Plan Against Commercial Exploitation of Children**, which it is obliged to prepare and implement based on the commitment made by the representatives of the Polish government at the 1st World Congress Against

Commercial Sexual Exploitation of Children in Stockholm in 1996 and confirmed at the Yokohama Congress in 2001.

In this alternative report we provide significant information missing in the government's report, elaborate on the issues that were not presented with sufficient accuracy, and, most importantly, make recommendations that we believe are necessary to implement in Poland in order to improve the observance of children's rights to protection from trafficking, prostitution, and pornography.

II. Ban on the sale of children, child prostitution and child pornography

Re: Article 1, points 4-5

In the government's report the provisions of the Penal Code on combating child trafficking, child prostitution, and child pornography have not been quoted accurately. Article 253 of the Penal Code has two sections. The first one concerns human trafficking and the other one – arranging adoptions against the provisions of the Criminal Code Article 204 has four sections that refer not only to recruiting or abducting a person to work as a prostitute, but also to soliciting or enticing another person to engage in prostitution. The statutory penalty is higher if the victim is a minor (section 3). According to article 200, section 2 of the Penal Code, presenting sexual activity to another person is an offence if such a presentation is made to a child under 15. The same applies to article 202 of the Penal Code². The report should have also listed several other articles of the Penal Code, such as article 199 sections 1-3 (sexual abuse of a minor – not limited to a child under 15 – by abusing a relationship of dependence or taking advantage of a critical situation), article 189 section 1 (deprivation of liberty), and article 191 section 1 (using force or an illegal threat to compel another person to specific behaviour), as well as article 104 of the Code of Misdemeanours (exploiting a minor for begging³).

The government's report does not mention article 97 of the Act on granting protection to aliens within the territory of the Republic of Poland, which refers to granting the permit for tolerated stay if deportation could violate any of the rights defined in the Convention on the Rights of the Child

2 Amended provisions of the Penal Code have been in effect since 6 December 2008. They are not included in the governmental report as they came into force after its submission. Section 4 was added to article 101, which provides that offences involving sexual abuse of a minor may not become subject to the statute of limitations earlier than 5 years after the victim's 18th birthday. Article 202 was amended by adding section 4b, worded as follows: „whoever produces, distributes, presents, keeps, or possesses any pornographic content that involves a generated or processed image of a minor, shall be penalized with a fine, limitation of liberty, or imprisonment for a maximum period of two years”. Moreover, the wording of section 5 thereof has been modified. The section provides that objects used for perpetrating the illegal acts defined in article 202 of the Penal Code shall be subject to forfeiture (even if are not property of the perpetrator).

3 Exploitation of children for begging has been combated through one-time actions in Poland. The police and municipal guards intervene occasionally. Generally, this phenomenon is quite common in larger cities. Police and municipal police data show that between 2007 and 2008 (July) there were 945 interventions in cases of children involved in begging. In 309 cases legal sanctions were applied against adult (data from National Police Headquarters 2008)

(CRC). This regulation came into force on 29 May 2008, although previously binding laws required that any decision on whether to deport a child should take into account the protection of the child's best interest. Generally, deportations of minors without care are not applicable. In most cases foreign children are placed in public care institutions, and according to new regulations foster care should be considered as the first option. The report fails to mention several other documents important for the issues regulated by the Protocol, including: International Labour Organisation (ILO) Convention No. 182 on the Worst Forms of Child Labour, ratified in 2001 (Dz. U. [Journal of Laws] 2001, no. 125, item. 1364); Council of Europe (CoE) Convention on Cybercrime, signed in 2001; the CoE Convention on Action Against Trafficking in Human Beings, signed in 2005, ratified Nov. 2008, will come in force on 1st March 2009 and the CoE Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, signed in 2007 (work is underway to align the national law with the requirements of the Convention)⁴.

The State report mentions: *"the United Nations Convention Against Transnational Organized Crime, adopted by the UN General Assembly on 15 November 2000, signed by Poland on 12 December 2000 in Palermo"*; however, missing information is that it was ratified in November 2001. More importantly, it is mentioned: *"the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, in particular women and children, completing the above Convention, adopted by the UN General Assembly on 15 November 2002"*; however missing info is that this protocol was ratified by Poland on the 26th of September 2003 and is therefore legally binding.

Sexual crimes concerning children and youth

Re: Article 3, point 7

Prostitution is not penalized in Poland. When involving minors, it is regarded as a symptom of demoralization. What is considered a criminal offence is enticing/soliciting to prostitution, recruitment for prostitution, and gaining profit from another person's prostitution. If the person induced or recruited for prostitution is a minor, or if the perpetrator profits from prostitution practiced by a minor, the penalty is more severe (article 204, section 3 of the Penal Code), but few perpetrators are detected and even fewer are proven guilty and convicted.⁵

4 In December 2008 an international conference was held in Warsaw, focused on implementing the CoE Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse in Europe; the conference was organized by the Council of Europe and the Polish Ministry of Justice.

5 Police statistics included in the "Temida" system show that several dozen cases are brought to court annually based on article 204, section 3 of the Penal Code (1999 – 20, 2000 – 30, 2001 and 2002 – 42, 2003 – 33, 2004 – 42, 2005 – 57, 2006 – 23, 2007 – 43; out of which the following numbers of cases ended up in conviction, respectively: 14, 10, 10, 15, 14, 20, 20, 29, and 12). Between 1999 and 2007 28 adults (in total) were convicted for abducting a minor with the aim of making him/her engage in prostitution abroad (article 204, section 4 of the Penal Code), unfortunately there are no statistics about victims.

A report by the National Police Headquarters suggests that „with regard to article 204, section 3 of the Penal Code (inducing a minor to practicing prostitution) 10 preparatory procedures were instigated in 2007 (compared to 14 in 2006), 44 offences were identified (29 in 2006) and 23 suspects were charged (27 in 2006). In 2007 the police identified 242 victimized minors, while in 2006 – 45.”⁶

The number of child prostitutes in Poland is difficult to estimate. Representatives of NGOs active in this area (such as La Strada Foundation) believe that the problem is not marginal. There are few studies into the prevalence of child prostitution⁷ and the police do not have reliable information on the problem, either⁸. Children living in residential care institutions and unaccompanied foreign children are the most vulnerable. Child prostitution requires close monitoring and more effective action both at the identification/investigation stage, and in the phase of supporting the victims. **It is also necessary to educate professional groups, especially teachers and residential care staff, on the risk of child prostitution.**

Sale of children

Re: Article 3, points 8-10

The lack of a precise definition of human trafficking in the Polish Penal Code has been discussed for a long time⁹. Unfortunately, although a relevant provision in the National Programme for Combating and Preventing Human Trafficking emphasizes the need to adopt such a clear definition, it has not been introduced so far. The definition is being developed at the Ministry of Justice; its draft version has passed the procedure of inter-department harmonization and is to be referred for public consultation. It is hard to understand the governmental report's suggestion that *“the detection rate of human trafficking is low due to Poland's deportation regulations. Victims who are staying in Poland illegally are deported right away, which makes it difficult to collect evidence. Victims are unable to collect evidence against perpetrators”*. In fact, the binding regulations (referred to earlier in the report) guarantee victims of

6 A report on the activities of the police in preventing crime and social pathologies in 2007, National Police Headquarters, Office for Prevention and Traffic, Warsaw, 2008.

7 A study titled „Child Prostitution in the Eyes of Lower Silesians”, conducted in 2006 by the Lower Silesia Centre for Social Policy, found that only 16% of youth, 20.7% of ordinary citizens, and 42% of social workers were aware that having sex with a person under 15 was a crime. 20% of young respondents reported they personally knew someone who practiced prostitution. Aroused material aspirations were mentioned as one of the main causes of child prostitution. Girls aged 15–16 and boys in the 14–15 age groups are the most likely to prostitute themselves. Social workers from local welfare institutions reported the following numbers of confirmed cases of child prostitution: 55 in Wrocław, 43 in Legnica, 34 in Wałbrzych, 21 in Luban, and 23 in Jelenia Góra.

8 During the international conference mentioned in footnote 4 (December 2008), the spokesman of the National Police Headquarters said that child prostitution in shopping malls – as a service offered for specific material goods or for money – was becoming more and more common in Poland. The police do not conduct any information-gathering operations (shopping malls are private properties).

9 It should be emphasized here that the provision in article 253, section 1 of the Penal Code violates the *nullum crimen sine lege certa* principle by not defining the concept of “human trafficking” with sufficient precision. This leads to interpretation problems in the adjudication of such cases. Therefore, it has been suggested that a clear definition of human trafficking should be introduced into the Penal Code (an opinion of the Justice Institute of 2006). A draft with such amendments has been in preparation for a long time.

child trafficking the right to a temporary stay in Poland, as well as legal and medical assistance. They are also granted the right to stay in Poland for 2 months if they decide to cooperate with law enforcement bodies. Minor victims should be placed in foster families (as priorities) or residential care institutions, however usually they are placed in institutions.

Admittedly, the problem of child trafficking is poorly known in Poland, but not because the victims are deported. Here is the statement that we have obtained from the National Headquarters of the Border Guard: “... *Taking an active part in the implementation of the National Programme for Combating and Preventing Human Trafficking, and performing several tasks directly associated with this problem, up to date the Border Guard has not identified a single case involving a child victim of trafficking...*”¹⁰. Police files for the years 2003–2007 include three cases of trafficked children¹¹, while the statistics of the Ministry of Internal Affairs and Administration show that between 2002 and 2007 the group of identified victims of child trafficking included 76 children^{11a}. All this means that **the offence of human trafficking, and especially trafficking in children, is not easy to identify and, consequently, to prosecute.** This results from several factors.

The absence of internal borders within the European Union and the application of simplified control procedures at border crossings facilitate human trafficking. **Poland’s eastern border is guarded more strictly, but there are no laws regulating the control of children who travel and cross national borders with their legal or actual guardians.** Moreover, children who travel on their own – in many cases with fake documents – are instructed by their “guardians” that by applying for the refugee status they will secure themselves a temporary stay in a care institution. **Most foreign unaccompanied children who are placed in intervention/care institutions escape soon after,** usually with some help from their “guardians” (research conducted by the Nobody’s Children Foundation on a sample of unaccompanied alien children placed in Polish institutions in 2005 and 2006, has shown that only 5% stayed there for at least a year. Throughout the period included in the study 318 such children were placed in care institutions)¹².

Polish border guards are increasingly aware of the trafficking problem, but still do not have sufficient knowledge. The Nobody’s Children Foundation’s surveys exploring policemen and border guards’ opinions on the problem of child trafficking in Poland and on the situation of unaccompanied foreign children staying in the country, have found relatively poor knowledge about the problem. When asked to estimate the number of children who are trafficked in Poland annually, the respondents’ answers ranged from 0 to 20,000 cases. More than 55% of the respondents

10 The National Border Guard Headquarters’ reply of 23 June 2008 to the Helsinki Foundation for Human Rights’ request for data on child trafficking.

11 Information obtained from the TEMIDA system about the problem of human trafficking in Poland between 2003 and 2007 (data from police database).

11a Statistical data on human trafficking prepared by Office of Organized Crime in Prosecutor Office shows that 64 victims below 15, 12 victims age 16-17. It is not clear why children age 17-18 are omitted in this data.

12 Foreign children in Polish residential care institutions and foster families, January 2005 – May 2006; a report from the Nobody’s Children Foundation’s research; by M. Kukułowicz.

provided numbers in the 0–100 range. Simultaneously, a vast majority (87,6%) of the respondents – 239 police officers and 51 border guards – reported that when performing their professional duties they had never encountered a situation of suspected child trafficking. 6.6% reported to have experienced such a situation just once in their professional life, and 5.5% had such suspicions several times (with border guards being twice as likely to have encountered such cases than police officers). At the same time, 86.9% of the respondents admitted that they did encounter foreign children who seemed neglected. It turned out that 75.2% of the respondents had some – at least occasional – contact with unaccompanied alien children. 69.6% of the respondents reported that they did encounter – at least from time to time – alien children with no ID documents. The same percentage admitted that when performing their professional duties they had contact with foreign children who seemed under strong pressure exerted by an adult. 66.2% of the subjects have never suspected that an adult presenting him - or herself as a child's caregiver, was lying; 14.5% could remember one such situation; and 16,5% has had such suspicions several or even many times. Notably, on the one hand, the respondents reported they had not identified victims of trafficking, and on the other hand, a majority of them had direct contact with children from high-risk groups.¹³

Moreover, there are no procedures or instruments making it possible to undertake intervention when a child is crossing the border.

In most cases victims of trafficking, especially children, do not feel threatened. They trust the adults who have promised them work and a better life in another country. Once they are victimized, they are isolated and intimidated by the perpetrators, so they rarely have any opportunity to disclose their harm. If the perpetrator is detained, they are usually charged with exploiting the minor for prostitution or pornography, as it is much more difficult to prove that the person has been involved in human trafficking. In the years 2000–2006 the total number of perpetrators convicted on the charge of trafficking in human beings (articles 253 and 204, section 4 of the Penal Code) was 94¹⁴. The previously mentioned statistics suggest that between 2002 and 2006 there were 60 identified victims under 15 and 10 more aged 16-17. In 2007 there were 4 registered victims under 15 and just 2 in the 16–17 age group¹⁵. Thus, the official data suggest that the prevalence of the problem in Poland is insignificant. However, there is a general consensus that this is not a true picture of the problem. So what is the true picture? No one really knows due to the nature of child trafficking, which makes it difficult to identify victims. NGOs, such as La Strada Foundation or the Nobody's Children Foundation, help child victims of sexual abuse or exploitation for prostitution. They are fully aware, however, that only few victims choose to seek help and are able to do so¹⁶.

13 *Opinie przedstawicieli policji i straży granicznej na temat zjawiska handlu dziećmi w Polsce oraz sytuacji dzieci cudzoziemskich bez opieki przebywających na terytorium Polski* oprac. G. Roszkowska FDN 2007

14 The Statistics Department of the Ministry of Justice: „adults validly convicted of the offence of human trafficking in the years 2000–2006”.

15 Data gathered by the Ministry of Internal Affairs and Administration, see also footnote 11a.

16 Between 2004 and 2006 there were 6 minors among the clients seeking help from the La Strada Foundation. In 2008 the Foundation provided support in two cases of minors (information from Irena Olczyk, employee of the La Strada Foundation). Among all the foreign unaccompanied children who apply for the refugee status in Poland interviewed at the Nobody's Children Foundation (about 60 altogether), in 8 cases suspicions of children being

The risk of child trafficking is the highest among unaccompanied foreign children, so called “street children”, and children in residential care institutions. Therefore, preventive efforts should focus primarily on these groups and on professionals who have contact with them.

The research conducted among children in institutions by NCF in 2005 shows that in the previous year about one in ten children living in institutions has experienced some form of sexual abuse – sexual touching and indecent exposure, soliciting sex over the Internet, or forced sexual intercourse.

Rape or forced sexual intercourse has been experienced by 8% of the respondents; 3% of the children have experienced this type of sexual abuse more than once. A vast majority of the victims have identified a known peer as the perpetrator of this form of victimization. Two thirds of the victims have not told anyone about having been raped.

One in ten respondent’s reports having had sexual intercourse with an adult before the age of 15; 12% of this group were under 7 when they experienced this form of abuse.

In general, children living in residential care institutions recognize the commonly accepted sexual norms. What is disturbing, however, is a relatively high level of approval of coercion or even violence in intimate contact, as well as the fact that 25% of the respondents approve of sexual activity between a child under 15 and an adult¹⁷

The problem of human trafficking in Poland has been addressed more systematically since the appointment of the Group for Combating and Preventing Human Trafficking (in 2004) and a working group comprising both governmental experts and independent representatives of NGOs, whose task is to monitor the problem. During the past few years the groups have managed to train several hundred professionals, introduce a few legal amendments, publish awareness-raising materials targeted at high-risk groups (including children), and develop several publications for professionals. A clear procedure (or algorithm) of dealing with an adult victim of trafficking has also been developed. At the moment, work is underway on creating a similar procedure for a child victim¹⁸. The Office for Organized Crime in the National Prosecution Service, has developed rules of dealing with foreign children – victims of trafficking, within the “Methodical Guidelines for Prosecutors Who Conduct or Supervise Criminal Proceedings in Cases Involving Human Trafficking”.

Re: Article 3, point 11

Poland has signed but has not yet ratified the Convention on Human Rights and Biomedicine, which is important in the context of child trafficking. Efforts aimed at its ratification are underway, even though the convention arouses much controversy in some circles.

taken out illegally from the home countries (Ukraine and Vietnam), physical violence, and sexual exploitation were reported to the prosecutor’s office (information from K. Fenik, employee of the Nobody’s Children Foundation).

17 Victimization of child residents in Polish care institutions. Research report. M. Sajkowska FDN 2005

18 At the moment the work is at the stage of consultations with experts.

Adoption

Re: Article 3, points 12-15

It is likely that there are cases of illegal adoption in Poland. Recently, there have been alarming signals that the lawful institution of “designated adoption” (where the biological parent may choose or designate the person who will take care of his or her child) can be easily used for child trafficking¹⁹. The statistics of the Ministry of Justice show that only 2 persons were convicted on the charge of arranging illegal adoptions in the years 2000–2007.

The punishability of criminal offences

Re: Article 3, point 16

The governmental report quotes sections 1a and 1b of article 41 of the amended Penal Code, which provide that perpetrators of specific offences against children may be legally banned from performing certain professions. According to these two provisions, if the perpetrator commits such an act for the first time, it is up to the court to ban the person for life from working with children. Such a ban has to be imposed obligatory only if the perpetrator has been sentenced for the second time. It seems that the ban for working with children should be imposed in the first sentence.

Apart from the provisions of the Penal Code, quoted in the government’s report, it is worth mentioning disciplinary regulations applied to teachers and tutors if they are suspected of violating the rights of a child. They can be suspended from performing their duties even at the stage of explanatory proceedings (article 83, point 1a of the Teacher’s Charter²⁰). Similar regulations apply to care workers in residential institutions in the welfare sector²¹.

Any person seeking employment as a teacher or tutor is required to present a certificate of a clean criminal record from the National Register of Convicted Offenders. Notably, no such criminal record check is required from employees of residential care institutions. Neither the Welfare Act, nor the Directive on Child Care Institutions require the personnel of such institutions to prove their clean criminal record²².

19 Offers like „I’ll give a child away” have appeared on the Internet recently. Presumably, they mask a range of transactions using the institution of designated adoption. The Helsinki Foundation has appealed to the Minister of Justice to tighten the prosecutor’s supervision in adoption proceedings.

20 The school manager suspends the teacher and the supervisory body suspends the school manager if criminal proceedings have been instigated or a motion has been submitted for initiating a disciplinary procedure in relation to a breach of a child’s rights or wellbeing. J. Podlewska, O. Kudanowska. *Ochrona dziecka przed krzywdzeniem ze strony profesjonalistów. Analiza obowiązującego stanu prawnego.* Dziecko Krzywdzone. Teoria, Badania, Praktyka” 3(24)2008

21 Article 87a of the Welfare Act (Journal of Laws, No. 64, item 593, with amendments), passed in 2004: “1. A care worker employed by a residential care institution and charged with a violent offence, including family violence, shall be suspended by operation of law until the completion of the proceedings. 2. The manager of a residential care institution shall terminate the contract of employment with any care worker who has been validly convicted on the charge of a violent offence.”

22 J. Podlewska, O. Kudanowska. *Ochrona dziecka przed krzywdzeniem ze strony profesjonalistów. Analiza obowiązującego stanu prawnego.* Dziecko Krzywdzone. Teoria, Badania, Praktyka” 3(24) 2008, p. 111.

Re: Article 3, point 17

The regulations referred to in this part of the alternative report came into force on 6 December 2008²³. In the period addressed in the governmental report virtual child pornography was legal in Poland. At the moment, however, the Polish Penal Code does not provide definitions of “pornographic material” and “pornographic material with the participation of a minor” (child pornography).

With reference to the information provided in the governmental report that the definition of the “child’s age” stems from the provisions of the Council of Europe’s Convention on Cybercrime, it should be clarified that (1) Poland has not ratified the convention yet (but only signed it – on 23 November 2001); and (2) article 9, point 3 of the Convention states clearly that the age limit for a minor may not be lower than 16 years. In the Polish legal system “a minor” is defined as a person under 18, but the provisions concerning sexual abuse in the Penal Code define a minor as a person under 15. Thus, the Polish law is not fully aligned with the Convention and the last amendments to the Penal Code have not eliminated this incompatibility, although it should be added that most regulations in the Polish law are consistent with the provisions of the Convention²⁴. The last amendment involved article 267 of the Penal Code, which concerns unauthorized access to information²⁵. In case of sexual offences, the Polish Penal Code provides special protection for children under 15, but public display, production, recording, and distribution of pornography with the participation of a minor (i.e. a person between 15 and 18) is also penalized.

III. International legal cooperation

International legal assistance

Re: Article 6, point 20

Unfortunately, work on the ratification on the Council of Europe’s Convention on Human Trafficking, signed by Poland in 2005, has taken longer than was originally planned (the ratification took place in November 2008).

23 See note 2.

24 Podlowska and Kudanowska point to the legislator’s inconsistency in this respect and compare different age limits set for sexual offences in various articles of the Penal Code.

Article of the Penal Code	Minor under 18	Minor under 15
art. 199, section 2, abuse of a relationship of dependence	X	
art. 200, sexual abuse		X
art. 202, section 2, presenting pornographic content		X
art. 202, sections 3 and 4, recording pornographic content with the participation of a minor	X	
article 204, section 3, solicitation and pimping		X

J. Podlowska, O. Kudanowska. Ochrona dziecka przed krzywdzeniem ze strony profesjonalistów. Analiza obowiązującego stanu prawnego. Dziecko Krzywdzone. Teoria, Badania, Praktyka 3(24)2008, p. 103

25 Article 267, section 1 provides: “Whoever, without being authorized to do so, acquires information not destined for him, by opening a sealed letter, or connecting to a wire that transmits information or by breaching electronic, magnetic or other special protection for that information shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to 2 years”; section 2: „The same punishment shall be imposed on anyone who, without being authorized to do so, obtains access to a whole information system or to a part thereof”.

At the same time, as mentioned earlier, efforts aimed at the ratification of the Council of Europe's Convention on Combating Sexual Violence against Children – which was signed in 2007 – are underway.

Re: Article 6, points 21-22

It is not clear why the government's report concludes that the appointment of specialized structures responsible for combating human trafficking and child pornography, has reduced these types of offences. Undoubtedly, we know more about the problem and the detection rate is higher now – especially for the offence of exploiting children for pornography²⁶ – but it is hard to say that these offences have been significantly reduced.

IV. Preparatory proceedings

Seizure, confiscation

Re: Article 7, points 23 -24

This part of the governmental report concerns the forfeiture of benefits (property) from the offence. Two articles – 155 and 100 – of the Penal Code are quoted incorrectly. It is unclear why so much attention is devoted to this issue.

Combating child pornography on the Internet

Re: Article 7, point 25

In a relatively short time the topic of protecting children online has generated a lot of public attention and has been undertaken by several Polish stakeholders. Research shows that risks to children and young people online are a serious problem²⁷, which requires both legislative and

26 Statistics of the Ministry of Justice on adults convicted on the charge of presenting pornography to minors under 15 (article 202, section 2) show: 1999 – 4 convicts; 2000 – 5; 2001 – 4; 2002 – 7; 2003 – 7; 2004- 9; 2005 – 17; 2006 – 14; 2007 – 8. The total numbers of perpetrators convicted of production, distribution, and possession of child pornography (victims below 15 years) were: in 1999 – 2, 2000- 5, 2001 – 3, 2002 – 8, 2004 –18, 2005 – 44, 2006 – 96, 2007 – 110. It is clearly visible that the situation changed significantly in 2004 and 2005, when new regulations were adopted and the problem began to be treated more seriously.

Studies of sexual violence against children in Krakow, conducted by the Demos Foundation for Social Growth, the "U Siemiachy" Association, and the Nobody's Children Foundation show that one in seven students of junior secondary schools has experienced some form of sexual abuse. 14% of the respondents have experienced indecent exposure by another person, and 10% of the students report to know someone (a friend) who has been sexually abused. 8% of the subjects admit that they know a person who has been filmed naked. Moreover, 8% of the respondents report they have been „molested" on the Internet and 16% know someone who has experienced this form of abuse.

27 Studies of children's exposure to dangerous content on the Web, conducted by the Nobody's Children Foundation and Gemius SA in 2006, found that 71% of the respondents aged 12–17 (in a sample of 2559 children) reported having had contact with pornographic and sexual content, and nearly half of the respondents experienced many such situations. At the same time, every fourth child says their parents do not show any interest in what they do on the Internet. Only 9% report parental control. A survey conducted by the same institutions in 2007 on a sample of 2090 adults found that 14% of the respondents reported having had contact with child pornography, and 50% of them experienced such situations repeatedly. Only 5% said they had notified adequate institutions. 55% of the respondents who did not take any action said they had not known where to report such cases. 9% did not see the need to do so.

educational measures, and systematic monitoring²⁸.

The first steps were taken by NGOs. Since 2004 the Nobody's Children Foundation has run a national campaign "Child in the Web". Another organization active in the field for a long time is the Kidprotect.pl Foundation.

In 2005 Poland, as the first of the new EU members, joined the European Commission's programme "Safer Internet", aimed at promoting safe and effective use of the Internet, and combating illegal content²⁹. In Poland the programme has been implemented by the Polish Safer Internet Node, which comprises of Nobody's Children Foundation and NASK (Research and Academic Computer Network). Both organizations are engaged in joint educational efforts for safer Internet use targeted not only at children and young people, but also educators, parents and professionals working with children. Since 2005 NASK has been running a hotline (Dyzurnet.pl) that accepts reports of illegal online content on the Web, and the Nobody's Children Foundation – in cooperation with the TP (Polish Telecom) Group Foundation – in 2007 launched the Helpline.org.pl project, where children, youth, parents, and professionals can raise concerns about different dangerous situations young Internet users encounter online and may seek professional support (www.helpline.org.pl).

In 2007 a new provision was introduced to the Education System Act, obliging schools and other educational institutions to install and update software protecting students from access to harmful or threatening content³⁰.

In April 2008 Nobody's Children Foundation contributed to the open consultations on school curriculum which were launched by the Ministry of Education. Basically all changes to Informatics curriculum suggested by the NCF have been taken into account and Internet safety topics will be obligatorily implemented in a revised version of the curriculum, which will be in force starting September 2009.

Apart from Internet safety being integrated into curriculum the novelty is that all primary school

Statistics gathered in 2007 by Helpline.org.pl – a project run by the Nobody's Children Foundation – show 116 cases of grooming children on the Web; the 2008 data reveal 148 such cases.

28 The first attempts are being made to monitor online networks in terms of content that may pose a threat to children. The President of the Office for Electronic Communications has prepared an action plan to improve the protection of children and youth who use services available on the electronic market. On the initiative of the National Council of Radio Broadcasting and Television, education on these issues is going to be provided by the media.

29 http://ec.europa.eu/information_society/activities/sip/index_en.htm

30 Article 4a of the Act on the Education System

1. The Council of Ministers shall issue a directive that will impose on schools and other institutions enabling students to have access to the Internet the obligation to install and update software protecting children from any content that could threaten their healthy psychological development, and shall determine the minimum requirements for such software.

2. The directive mentioned in point 1 shall specify the range of materials that can pose a threat to students' normal psychological and moral development, with a special emphasis on materials presenting pornography, violence, immoral or antisocial behavior, and materials promoting hatred and discrimination.

3. The minister responsible for education shall enable schools and other institutions to use, free of charge, software protecting from access to content that may threaten students' psychological and moral development, meeting the minimum requirements referred to in point 1, in versions compatible with operational systems commonly used in Poland, consistent with the principle of equal treatment of various system platforms.

4. In order to fulfill the obligation defined in point 1, schools and other institutions may use other software tools meeting the minimum requirements referred to in point 1.

students in the first 3 grades (7-10 yrs old) will have mandatory computer classes (with Internet safety module). Together with the implementation of new curriculum teachers will be trained to acquaint themselves with new elements.

Although not yet in force, these curriculum changes have resulted in an increased interest in Internet safety awareness tools from the part of educators. As an example: 1/3 of Polish secondary schools (2500) have received "Stop cyberbullying" campaign toolkit produced by the NCF.

The "STOP cyberbullying" campaign organised by the Nobody's Children Foundation and ad agency VA Strategic Communication was launched in January 2007 in response to the growing number of cyberbullying cases in Polish schools. According to research conducted by the NCF and Gemius Agency every second Polish Internet user aged 12-17 (52%) has had some contact with abuse on the Web or via mobile phones. 47% of the child respondents have experienced crude name-calling; 21% have been humiliated or mocked; 16% have been intimidated and blackmailed. The "STOP cyberbullying" campaign included TV and radio spots, and press advertisements. As a part of the campaign a 2-minute educational video, accompanied by a lesson plan on cyberbullying was also produced.

In 2008 the Nobody's Children Foundation launched two e-learning courses on Internet safety for students aged 7-12. The e-learning modules complement the node's previous projects - the story line is based on the Sieciaki.pl educational project (www.sieciaki.pl). The courses cover topics such as an introduction to the Internet, e-privacy, meeting strangers online, harmful content, netiquette, computer addictions and viruses. Modules are adapted to the age of the user and consist of games, crosswords, puzzles and other interactive tasks. After completing the course the user can take a test and after successfully completing the test a certificate is available for printing. Through the e-learning platform the teacher can follow the pupils' progress, print out certificates and generate statistics reflecting student participation in the course. The program has been widely promoted among schools and local educational authorities. Since February 2008 over 30.000 users registered on the e-learning platform.

In 2008, on the initiative of the Government's Plenipotentiary for Equal Treatment, an interdisciplinary team for preventing discrimination of minors in electronic media was created. However, there have not been truly systematic efforts in this area so far.

Recently the government has announced further amendments to regulations that concern punishing people who make sexual proposals to children on the Internet. Some websites have already responded to the European Commission's initiative and are going to install easy-to-use pornography blocking software which enables fast reporting.

V. Protection of the rights and interests of children – victims of crimes

Penal procedure

Re: article 8, points 26-27

It is true that child-friendly interview rooms have been created across Poland. There are 300 of them at the moment. In 2008 the Ministry of Justice, in cooperation with the Nobody's Children Foundation, began granting certificates to rooms that meet the required standards. At the initial stage 30 institutions applied for the certificates, which were finally granted to 9 of them. The interview room certification program was initiated by the Nobody's Children Foundation, which runs the centre mentioned in the governmental report ("Mazowiecka" Advocacy Centre). Regrettably, the numbers of properly equipped interview rooms and professionally prepared child interviewers (psychologists, judges, prosecutors) are still insufficient, especially outside big cities. Even if such a room exists, it is not necessarily used by the court, which results from the fact that many judges and prosecutors still attach insufficient importance to providing secure interview settings for child witnesses.

Importantly, the procedure is also used by unaccompanied alien children who apply for the refugee status in Poland. In 2003 a new provision was added to the Act on Granting Protection to Aliens, which imposes a special manner of interviewing unaccompanied foreign children who apply for the refugee status in Poland. Children have to be interviewed under specific conditions – in the presence of an expert, in specially prepared rooms. Since 2004, pursuant to an agreement with the Office for Repatriation and Aliens, such interviews are conducted in facilities run by the Nobody's Children Foundation in the presence of the Foundation's experts. Based on such an interview, an expert opinion is developed – a diagnosis of the child's psychophysical condition for the purposes of the refugee procedure and the assessment of the risk of trafficking.

Re: article 8, points 28 -29

Unfortunately, the Algorithm of Conduct of Law Enforcement Officers in Case of Revealing a Crime Consisting in Trafficking in Children mentioned in the government's report has not been developed yet.

Personnel training

Re: article 8, points 30-32

True, there are training programmes for prosecutors and police officers, but their number and scale are insufficient.

The above mentioned opinion surveys on child trafficking and the situation of unaccompanied alien children in Poland, conducted by the Nobody's Children Foundation among representatives of the police and the border guard, show that these groups of professionals have relatively poor knowledge about child trafficking (see re: art. 3 points 8-10).

The National Contact Point for Unaccompanied and Trafficked Children, created in Poland within an international programme carried out by the Council of the Baltic Sea States (CBS), is currently run by the National Centre for Teachers' Education (CODN) and, unfortunately, it is hard to assess how it really works. When asked about specialist training programmes for teachers and students, focusing on the issues addressed in the governmental report, the CODN replied that no such training had been provided.

VI. Preventing trafficking in children, child prostitution and child pornography

Information, education and prevention

Re: article 9, points 35-50

There are no systematic educational or preventive efforts undertaken by the state³¹. Rather, there are one-time actions and conferences, which are often organized by NGOs. One could conclude from the governmental report that professionally prepared teachers provide reliable knowledge about threats related to trafficking for all the children in Polish schools. This is not the case, however in order to verify the information provided in the report, we asked the Ministry of National Education (MEN), the National Centre for Teachers' Education (CODN), the Methodical Centre for Psychological and Pedagogic Support (CMPPP), the Mazowsze Centre for Teachers' Education, and three randomly selected local education offices for specific information about training for teachers and students on the problems discussed in the report. MEN and the CMPPP did not answer at all, and the National Centre for Teachers' Education and the Mazowsze Centre for Teachers' Education replied that no such training had been organized³². The Warsaw Education Office answered that no such information had been collected so far, and information on training programmes can be obtained from NGOs: the Nobody's Children Foundation and La Strada Foundation. We were also informed that school managers had not reported the need for such training. However, the Chief Education Officer for the Mazowsze region found the problem so

31 There is not enough sexual education in Polish schools even though research shows that 80% of Poles support introducing sexual education to school curricula ("Abortion, sexual education, in vitro fertilization", Research: CBOS 2005). Moreover, other research – Z. Izdebski, "Risky sexual behavior in the area of HIV/AIDS: A comparative study 1997–2005", Zielona Góra University, 2006 – has found that classes on safe sexual behavior were provided to not more than 1/3 of young people.

32 A written reply from the National Centre for Teachers' Education of 26 September 2008; oral information from the director of the Mazowsze Centre for Teachers' Training, October 2008.

important that he decided to check whether appropriate training had been provided for teachers³³.

In response to our inquiry, the Gdansk Education Office conducted a survey among local centres for teachers' education. The response rate was 35%. The survey found that 1232 teachers had been trained between 1998 and 2008 in the form of workshops, conferences, and training sessions for school staff. The issues discussed in this report were addressed during training sessions focusing on the prevention of social threats at school³⁴.

The Wroclaw Education Office obtained answers to our questions from 789 schools (20% of all schools in the region). In 12% of these schools there are no teachers trained on the discussed issues; in 16% of the schools there is at least 1 teacher with adequate training in the area of child trafficking; in 45% of the schools there is at least 1 teacher trained on the problems of child prostitution and child pornography; and in 52% of the schools there is at least 1 teacher trained in the area of Internet-related threats such as cyberbullying. In 88% of the schools that responded to the survey, special classes had been organized for students, most often focusing on cyberbullying. The classes were conducted by teachers, school psychologists, or school (guidance) counsellors³⁵.

What is also important is training on the discussed issues provided for university/college students who are preparing to work with children and adolescents. As regards preschool education, we were informed that in Poznan (a city in the West of Poland) the curricula of colleges/universities that train preschool or kindergarten teachers did not include issues related to child sexual abuse and sexual exploitation. Postgraduate training occasionally addresses issues related to domestic violence, however without focusing on the problem of sexual abuse and sexual exploitation and how to respond to such suspicions³⁶.

Assistance to victims of criminal offences

Re: article 9, point 51

Unfortunately, no systematic specialised assistance is provided for child victims. There are not enough competent professionals, and properly equipped interview rooms are not always available. Institutions and organizations providing psychological and legal help are still scarce, especially outside big cities. As a result, children who have experienced violence, sexual abuse and exploitation, fail to receive help essential for their rehabilitation. Currently, the Ministry of Justice is

33 A written reply from the Warsaw Education Office of 17 October 2008. Unfortunately, the results of the survey will be known after the publication of the alternative report. If the knowledge about the problems of trafficking, prostitution, and pornography turns out insufficient, the Chief Education Officer for Warsaw is interested in the organization of adequate training.

34 A written reply from the Gdansk Education Office of 3 October 2008.

35 A written reply from the Wroclaw Education Office of 31 October 2008.

36 Data gathered by Magdalena Czub and Magdalena Ferenc, employees of the Local Committee for the Protection of the Rights of the Child in Poznan, within the Daphne II project: „Listen to me now – Abused child under special protection”. The data were collected by analyzing the curricula of colleges/universities offering preschool education programmes in Poznan and by gathering information on post-graduate training programmes offered by colleges/universities and by the Centre for Teachers' Education in Poznań.

making efforts toward creating such a system of help services for all victims of crimes (pilot program).

The first national free Helpline for Children and Youth 116 111, was launched on 6 November 2008. In accordance with the European Commission decision on reserving the national numbering range beginning with "116" for harmonized services of social value (Official Journal, WE L 49, 15 Feb 2007), it is recommended that all EU member states activate identical phone numbers to provide social services. 116 111 has been reserved for a service called "Helpline for children".

The Helpline for Children and Youth 116 111 helps children who need support, care, and protection. Callers may express their worries, talk about things that are important to them, and contact the service in difficult situations.

From the launch of the Helpline until the end of 2008 its consultants accepted over 2700 relevant calls; 67% of the callers were girls.

Children and youth aged 12-18 constitute more than 80% of the callers contacting the Helpline for Children and Youth 116 111. In most cases they call the service to seek support. Many young people seek advice, concrete help or a referral to the right institution.

Between 6 November and 31 December 2008 the Helpline's consultants conducted 43 conversations concerning child sexual abuse.

Re: article 9, points 53 – 57

Indeed, there are legal regulations – amended in 2008 – that guarantee unaccompanied and trafficked children assistance and placement in a child care institution, or even (as provided by the amended laws) in a foster family (as the first choice).

In practice the system of care and assistance does not work effectively and there is need to allocate funds into such programs. There are no effective ways of protecting those foreign children who have come to Poland with the intention to "make their way" to Western Europe, and who are usually manipulated by their fake caregivers who promise them a better life in the West. Also, there are no effective mechanisms for identifying victims of trafficking and prostitution³⁷.

³⁷ See footnote 12 and 13. Moreover, information obtained from an employee of a child-care institution in Warsaw, where unaccompanied foreign children are placed, suggests that so far there have been no cases of trafficked children. On the other hand, a 2007 report of the International Organization for Migration shows that 3 out of 16 minors who officially sought asylum in 2007, disappeared (in 2006 2 such children disappeared, out of 20 minor asylum seekers). No data are available for other years.

Government programmes and strategies

Re: article 9, points 58-59

The government's report suggests that the number of offences related to human trafficking, including trafficking in children, is on the rise. However, the basis for drawing such a conclusion is unclear. No statistics were provided earlier in the report and the authors wrote that knowledge about the problem was limited due to the fact that foreign children who crossed the border illegally were deported right away. On the other hand, article 6, points 21-22 of the governmental report suggest that the appointment of dedicated services had reduced this type of crime.

Indeed, these inconsistent data seem to prove that knowledge about the problems addressed in the report is very limited.

The "Algorithm of Conduct of Law Enforcement Officers in Case of Revealing a Crime Consisting in Trafficking in Children" of dealing with trafficked children has not been developed so far.

It is true, that there is the National Programme for Combating and Preventing Human Trafficking and there are dedicated structures in the police responsible for combating human trafficking (e.g., the initiative of appointing provincial teams for human trafficking). Undoubtedly, these are positive developments, but such efforts are not sufficient to solve the problem.

Re: article 9, points 61-62

The programmes mentioned in the governmental report have indeed been launched. Unfortunately, they do not really translate into common education and preventive efforts.

An average teacher has very limited knowledge about threats such as child trafficking, child prostitution or child pornography, and knows even less about how to help potential victims (see the comment to article 9, points 35-50).

On the initiative of the Association for Children and Young People, "Chance" ("Szansa"), the Council of Europe's publication, *COMPASS: A manual on human rights education with young people*, was translated into Polish and published by "Chance" and CODN in 2005. It is a set of materials for teachers, promoting human rights and designed to help reduce threats to children and youth.³⁸

³⁸ In 2006 the Minister of Education prohibited distribution of this manual, accusing it of promoting homosexuality. Today the manual is sold out, but teachers who have a copy are allowed to use it.

VII. International cooperation and support

Re: article 10, points 71-76

The governmental report offers a chaotic and selective description of a number of projects and conferences. However, this is not information on strategic international cooperation. We know, for instance, that Poland has not joined the Code of Conduct - for the Protection of Children Against Sexual Exploitation in Tourism - an international initiative against child sex tourism (which has been signed by 900 tourism companies in 34 countries). This is important from the perspective of counteracting child exploitation for prostitution. We should also expand cooperation with Interpol and Europol in the area of combating sexual offences against children³⁹.

The work of the National Contact Point for Unaccompanied and Trafficked Children has been commented earlier in this report (see the comment on article 8, points 30-32).

³⁹ During the above mentioned Warsaw conference focusing on the implementation of the Council of Europe's Convention, a representative of Europol said that cooperation and information exchange at the national and international levels was insufficient.

RECOMMENDATIONS

1. Combating child trafficking, child prostitution, and child pornography requires **systemic efforts**. Elements of such a system already exist but efforts in this area are not consistent and coordinated enough. It is necessary to appoint the body (ministry) responsible for coordinating the work of **different** departments, setting priorities and long-term plans, and monitoring their implementation. Services responsible for combating these problems should have clearly defined competences and principles of cooperation. They also require specialist, professional training.
2. Poland should intensify its efforts toward introducing a definition of human trafficking to the Penal Code.
3. Poland must ratify the CoE Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse and the CoE Convention on Cybercrime. As part of the process, the age limit in the definition of “a minor” should be increased from 15 to 16 years (in accordance with article 9, point 3 of the Convention on Cybercrime).
4. Poland should intensify efforts to ratify Convention on Human Rights and Biomedicine (signed already in 1999) in order to strengthen the protection against illegal trade of human organs and tissues.
5. In the state budget there should be funds allocated to combating the problems discussed in the report.
6. A consistent methodology and a system of collecting and processing statistical data – on both perpetrators and victims of trafficking, child prostitution, and child pornography – should be created. The data collected so far are incomplete and inconsistent, which makes it difficult to analyze the problem. We should also collect data on minor victims under 18, even though in some cases the Polish Penal Code does not provide protection for children older than 15. The database used by the Border Guard (*Pobył – Stay*) should include the category of unaccompanied foreign children, which would facilitate collecting statistics on this group.
7. It is necessary to introduce procedures and efforts facilitating the identification of trafficking victims, including procedures of inspecting and registering all cases of minors who cross the border on their own or with adults other than their parents.

8. It is necessary to develop a model of supporting and reintegration, protecting and helping child victims of trafficking, prostitution, and pornography and to allocate resources for their implementation
9. It is necessary to collect information on unaccompanied alien children and to launch a more effective system of helping such children, including access to translation services and to immediate psychological interventions. Such a system should also prevent the disappearance of such children from care institutions. According to NGOs, assistance offered to such children today is insufficient.
10. Social campaigns designed to raise awareness on the different manifestations of CSEC (namely, child prostitution, child pornography, child trafficking for sexual purposes and child sex tourism) and the threat that they pose to children – targeted at both parents and children – should be carried out on a broad scale, systematically (rather than as one-time actions), with the support of public TV and radio stations.
11. It is necessary to provide specialist training both for professionals who conduct investigation and explanatory proceedings (such as the police, municipal guards, border guards, and prosecutors) and for employees of education and child-care institutions. Such education sessions should be conducted by thoroughly trained teachers. Interviews for child victims should be conducted in child advocacy centers (friendly interviewing settings) by trained professionals.
12. Special attention should be devoted to unaccompanied foreign children who do not apply for the refugee status. Professionals need to be equipped with tools ensuring more effective identification of such children.
13. It is necessary to expand professional training opportunities available to psychologists who assess cases of sexual violence and child trafficking.
14. Issues related to human trafficking, prostitution, and pornography should be included in the obligatory curriculum at the departments of law, psychology, pedagogy, and social work.
15. Polish tourism organizations should be encouraged to join the „Code of Conduct” initiative.
16. It is necessary to fulfil the commitment made by the Polish government at the 1st World

Congress against Commercial Sexual Exploitation of Children in Stockholm in 1996 by developing the National Plan Against Commercial Exploitation of Children.

17. A clear definition of child pornography, encompassing a broad spectrum of depictions whether fixed in visual, audio or electronic supports should be introduced into the Penal Code.
18. The Polish Government, in collaboration with NGOs and other concerned stakeholders, need to establish minimum care standards for institutions providing residential care (such as Codes of Conduct for care staff) and ensure that funds are allocated for the monitoring and implementation of such standards.
19. Tightening the prosecutors monitoring and supervision in adoption proceeding.
20. The Algorithm of Conduct of Law Enforcement Officers in Case of Revealing a Crime Consisting in Trafficking in Children should be developed and implemented.
21. The research and monitoring should be conducted on the issue of sex tourism in Poland as we do not have any data concerning this problem.
22. The blocking system to credit cards should be implemented for buyers of child pornography on the Internet.