

Research project EUPRETRIALRIGHTS

Improving the protection of fundamental rights and access to legal aid for remand prisoners in the European Union

EMPIRICAL STUDY

The actors of legal protection, their professional practices and the use of law in detention

Report on POLAND

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1. THE NATIONAL CONTEXT

1.1 Spaces of pre-trial detention

Briefly; organization, variety of spaces of pre-trial detention, including police custody, remand centers and prisons, with a focus on the latter

For the purpose of the national empirical study, Helsinki Foundation for Human Rights (hereinafter: HFHR), requested the statistical data from:

- a) the Central Board of the Prison Service,
- b) the Ministry of Justice,
- c) the Polish Legal Clinics Foundation,
- d) the National Council of the Bar,
- e) the National Council of Legal Advisers.

Moreover, the HFHR interviewed or/and requested additional statistical data from relevant stakeholders, particularly the representatives of:

- a) the Ombudsman,
- b) the National Preventive Mechanism,
- c) the Legal clinic of the University of Warsaw (section for detainees),
- d) the Association for Legal Intervention,
- e) a penitentiary judge from the Regional Court in Piotrków Trybunalski,
- f) three Prison Service officers from the remand center for pre-trial detainees in Piotrków Trybunalski,
- g) three prisoners from the prison in Piotrków Trybunalski, former pre-trial detainees in the remand center for pre-trial detainees in Piotrków Trybunalski,
- h) an attorney from Piotrków Trybunalski (member of the local bar council in Częstochowa),
- i) a penitentiary judge from the Regional Court in Warsaw,
- j) an attorney from Warsaw (member of the local council in Warsaw),
- k) three Prison Service officers from the remand center for pre-trial detainees in Warsaw (Warszawa-Służewiec),
- l) a legal advisor from the remand center for pre-trial detainees and prison in Warsaw (Warszawa-Służewiec),
- m) three prisoners from the prison in Warsaw (Warszawa-Służewiec), former pre-trial detainees in the remand center for pre-trial detainees in Warsaw (Warszawa Służewiec).

For the purpose of gaining a wider and more diverse perspective, the HFHR decided to interview the stakeholders whose activities are important country-wide, such as the Ombudsman and the National Preventive Mechanism. Moreover, the HFHR interviewed respondents from Warsaw (a penitentiary judge, a criminal attorney, a head of a university legal clinic, former detainees of a remand center, Prison Service officers) – in order to gain insight into the situation in a large (capital) city. The interviews were conducted also in Piotrków Trybunalski, which is a medium-size city in central Poland, where a new remand center for the pre-trial detainees was recently opened (interviews with a penitentiary judge, an attorney, former detainees of the remand center, Prison Service officers). We were not able to interview the current pre-trial detainees themselves due to the CEC provisions – a person who intends to visit a pre-trial detainee has to obtain the permission from the relevant authority at whose disposal pre-trial detainee remains, unless the body orders otherwise. Depending on the stage of the criminal proceedings, it may be either prosecutor or court. When a pre-trial detainee remains at the disposal of several authorities, permission is required for each of them to be seen, unless otherwise ordered by the authorities (Article 217 (1) (1a) of CEC). However, we have interviewed a few of former pre-trial detainees who had spent some periods in those centers before they were sentenced and imprisoned.

1. Remand centers for pre-trial detainees (“areszt śledczy”) and prisons (“zakład karny”)

In Poland, there are 195 penitentiary facilities from which 86 are regular prisons for convicts, 67 are remand centers for pre-trial detainees, 38 are external branches of these facilities and 4 are branches for the purpose of temporary accommodation of convicts. All of these facilities are established by the Minister of Justice and run by the Prison Service.

As of 31 December 2017, there were in total 86.868 places within all of these facilities and 73.822 places (85%) within these facilities were occupied.¹

Penitentiary units and their capacity (as of 31 December 2017).

Capacity	Total	Remand centers	Prisons	External branches	Temporary Accommodation
Total	195	67	86	38	4
up to 49	4				4
50-99	17	6		11	
100-199	36	18	4	14	
200-299	30	12	12	6	
300-399	22	8	9	5	
400-499	20	7	12	1	
500-599	6	1	4	1	
600-699	17	3	14		
700-799	13	5	8		
800-899	5		5		
900-999	4	1	3		
1000-1099	11	4	7		
1100-1199	2	1	1		
1200-1299	3		3		
1300-1499	5	1	4		

1) Regime

The penalty of imprisonment is carried out in the following types of penal facilities (Article 69 § 1 of CEC):

- 1) prisons for youthful offenders;²
- 2) prisons for persons serving a sentence for the first time;
- 3) prisons for penitentiary recidivists (repeated offenders);
- 4) penitentiary institutions for military detention;

¹ The annual statistical report of the Central Board of Prison Service, 2017, available at: <http://www.sw.gov.pl/assets/07/04/98/5aef7bb45347469a8fec566a1c8277cd60048432.pdf>

² According to the Article 84 § 1 of CEC, in the prisons for youthful offenders, those who are under 21 years of age are placed; only in justified cases, the convicted persons may serve a penalty in these facilities after the age of 21.

5) in homes for the mother and child located within the territory of penal facilities where incarcerated mothers can exercise custody over their children before they turn three years old (Article 87 § 4 of CEC);.

Moreover, these penal facilities are divided in to three different categories organized accordingly to their regime (Article 70 § 1 of CEC):

- a) open (open prison regime);
- b) semi-open (medium security regime);
- c) closed (high-security regime);
- d) *closed (for convicts who pose a serious social threat or a serious threat to the security of the prison facility).

Open and semi-open prisons have fewer and lower security arrangements than the closed ones. In semi-open and open prisons the cells might be unlocked 24/7. Educational, cultural and sport activities can be organized outside the prison. The prisoners are able to work outside the prison unguarded.

The level of isolation of the inmates is definitely higher in closed prisons because the cells are locked 24/7. In the closed prisons, educational, cultural and sport activities are being organized only within the prison facility. The possibility to work outside the closed prison is only exceptional and possible only under surveillance. Remand centers for pre-trial detainees are always closed-type facilities.

Moreover, in some closed prisons, there are special cells and units for prisoners considered a threat for the safety of the prison and society. Their cells are locked 24/7 and often searched. Prisoners are searched themselves every time they leave or return to their cells. Such prisoners are allowed to benefit from educational, cultural and sport activities only within their unit and under the guard.

A) The open type prisons

In an open-type prisons (Article 92 of CEC):

- 1) prison cells remain open 24/7;
- 2) convicted persons are being employed primarily outside the premises of the prison, without a convoy, at individual work stations;
- 3) convicted persons may be allowed to participate in teaching, training and therapeutic activities organized outside the premises of the prison;
- 4) convicted persons may take part in group-related cultural, educational or sports activities organized by the administration, outside the territory of the prison;
- 5) convicted persons may be allowed to participate in cultural and educational activities or events organized outside the prison;
- 6) convicted persons may move around the premises of the prison in time and places established in the internal order;
- 7) convicted persons may use their own clothing, underwear and footwear;
- 8) convicted persons may receive from the penitentiary deposit the money remaining at their disposal;
- 9) convicted persons may be granted passes from prison, not more often than once a month, for a total period not exceeding 28 days a year;
- 10) convicted person may benefit from an unlimited number of visits;
- 11) convicted persons' visits may be subject to supervision by the prison administration. Conversations of convicts during visits are not subject to control by the prison administration;
- 12) convicted persons, where possible, are provided with conditions necessary to prepare additional meals on their own;
- 13) correspondence of convicted persons is not subject to censorship of the prison administration;
- 14) telephone calls of convicted persons are not subject to control by the prison administration.

B) The semi-open type prisons

In an open-type prisons (Article 91 of CEC):

- 1) prison cells remain open during the daytime, while at night they may be closed;
- 2) convicted persons may be employed outside the territory of a penitentiary institution under a reduced escort system or without a convoy, including also at individual work stations;
- 3) convicted persons may be allowed to participate in teaching, training and therapeutic activities outside the prison;
- 4) convicted persons may take part in group cultural, educational or sports activities organized by the administration outside the prison;
- 5) convicted persons may move around the premises of the prison in time and places established in the internal order;
- 6) convicted persons may use their own clothing, underwear and footwear;
- 7) prisoners may be granted passes from prison, no more frequently than once every two months, for a total period not exceeding 14 days a year;
- 8) convicts may benefit from three visits a month, which may be combined with the consent of the prison director;
- 9) convicts' visits are subject to supervision by the prison's administration; conversations of convicts during visits may be monitored by the prison administration;
- 10) correspondence of convicted persons may be subject to censorship of the prison administration;
- 11) telephone conversations of convicts may be subject to monitoring by the prison administration.

C) The closed type prisons (including remand centers)

In a closed type prisons (Article 90 of CEC):

- 1) cells may be opened during the daytime for a limited period of time, if security considerations do not prevent this;
- 2) convicted persons may be employed outside the premises of the prison in the full convoy system;
- 3) cultural-educational and sporting activities as well as teaching are organized within the prison;
- 4) movement of convicts on the premises of a penal institution takes place in an organized manner and under supervision;
- 5) convicts may use their own underwear and footwear, and with the permission of the prison director - also their own clothing;
- 6) convicts may benefit from two visits a month, and with the consent of the director of a prison, use them once;
- 7) visits are subject to supervision by the prison's administration; conversations of convicts during visits are monitored by the prison administration;
- 8) correspondence of convicted persons is subject to censorship of the prison administration, unless the law provides otherwise;
- 9) telephone conversations of convicted persons are subject to control of the prison administration.

D) The closed type prisons for dangerous prisoners

In a closed type prisons, convicts who pose a serious social threat or a serious threat to the security of the prison facility, shall be detained under the following conditions (Article 88b of CEC):

- 1) cells and places and rooms designated for: work, study, walking, visits celebrating services, religious meetings and teaching religion, as well as cultural and educational activities, in the field of physical culture and sport are equipped with appropriate technical and protective security;
- 2) cells remain closed 24 hours a day and are more often controlled than those in which convicts are detained;

- 3) convicts may learn, work, participate directly in services, religious meetings and religious studies, and take advantage of cultural and educational activities, in the field of physical culture and sport, only in the ward in which they are imprisoned;
- 4) movement of convicts at the premises of the prison is under strengthened supervision and is limited only to the necessary needs;
- 5) convicted persons undergo a personal check each time they leave and return to their cells;
- 6) the prisoners' walk takes place in designated places under strengthened supervision;
- 7) the manner of personal contact of representatives of entities such as NGOs with convicted persons is determined each time by the director of the prison;
- 8) the convicts' sightings take place in designated places under strengthened supervision. ;
- 9) view can be provided in a way that prevents direct contact with visitors, if there is a serious threat to the safety of visitors. Decisions on this matter are made by the director of the prison.
- 10) convicted persons cannot use their own clothing and footwear.

In the prisons for young offenders (closed and semi-open type facilities) convicts also have the right to one additional visit once a month (Article 91s of CEC).

2) Conditions

The minimum conditions of a prison cell are established in Article 110 of CEC. It is important to remind that according to Article 242 § 3a of CEC if the term "prison" is used in this legal act, it means also a prison branch in a remand center for pre-trial detainees and vice versa - the term "remand center for pre-trial detainees" also means a remand center branch in a prison. Also, if the term "convicted" is used, the relevant provisions of CEC shall also apply to pre-trial detainees (Article 242 § 1 of CEC). Furthermore according to Article 209 of CEC the provisions relating to the execution of a custodial sentence, as amended by the provisions of this chapter [of CEC], shall apply accordingly to pre-trial detention. It means that the most significant legal provisions regarding the functioning of Polish penitentiary system apply to both pre-trial detainees and prisoners. Due to that, for the purposes of this report, such a wording was used as well. If some provisions apply only to a pre-trial detainees it is specifically indicated in the report.

According to Article 110 of CEC, a person shall be placed in an individual cell or a cell shared with other inmates and the area of the cell shall be no less than 3 square meters per detainee. However, in certain circumstances, the CEC provisions allow placing a person in a cell where the area is not smaller than 2 square meters per detainee - a person might be kept in such a cell no longer than 14 days. This period might be extended for up to 28 days upon acceptance of a penitentiary judge,. Moreover, under exceptional circumstances such as a state of emergency, state of epidemics or other serious threat to life or health of persons deprived of liberty, the Director of penitentiary facility may decide on the extension of such a placement for up to 90 days (Article 110 (2a) (2b) (2c) of CEC). Besides, when the number of persons deprived of liberty in prisons and remand centers for pre-trial detainees is higher than the country-wide capacity level, the courts can postpone the execution of a sentence. However, this provision does not apply to sexual offenders, recidivists (repeated offenders) and those prisoners who committed a violent crimes (Article 101 (5) and 151 of CEC). Therefore the Directors of penitentiary facilities have an obligation to inform the District Director of Prison Service when their facilities are overcrowded, not later than in a 7 day time (§ 4 of the Regulation of the Minister of Justice of 25 November 2009 on the rules to be followed by the relevant authorities when the number of persons detained in prisons and remand centers exceeded on a nationwide scale the overall capacity of such establishments).

2. Police detention facilities

As described above, every person detained by the Police shall be informed, immediately and in a manner comprehensible to him, of the reasons for such detention. The person shall, within 48 hours of detention, be given over to a court for consideration of the case. If detained person is brought to court, he will be released if an order for temporary arrest is not delivered to him/her within 24 hours from bringing to court. Person remanded in police custody have to be transferred to a remand prison without delay. The police detention facilities are located within the police local units.³

1) Conditions

Conditions in the police detention facilities are regulated in the Regulation of the Minister of Justice of 4 June 2012 on premises intended for detainees or persons brought for detoxification, transition rooms, temporary transit rooms and police rooms for children, regulations of stay in these rooms and how to deal with the records of the image of these rooms.

A) Room for detainees or persons brought for sobering up

According to the § 8 of the above mentioned Regulation, the room for persons detained or brought for detoxification must have:

- 1) the area per one person no less than 3 m²;
- 2) durable and washable floor, resistant to moisture and cleaning and disinfecting preparations;
- 3) tilting window in the wall with an area of no less than the proportion of 1:8 in relation to the floor surface, with a grating installed from bars or flat steel, and from the inside a steel mesh; in the case of mechanical ventilation and an unopened window with an anti-burglary design, it is allowed to refrain from installing an internal steel mesh;
- 4) ventilation ensuring sufficient air inflow and temperature adequate to the season of the year, according to standards defined for accommodation spaces, as well as lighting suitable for reading and writing; lighting switches are located outside the room;
- 5) call buttons for room service; the room service call system is powered by a safe electrical voltage;
- 6) doors with reinforced structure with two latches and a mechanical or electronic lock and safety chain, opening to the outside, equipped with a visor for visibility, secured from the room side with tempered glass, and on the other side- with a movable curtain;
- 7) equipment includes single-person bunks or mattresses lying flat, covered with washable fabric, and tables, stools or benches without sharp edges, attached to the floor or wall.

The door to the room for detainees or those brought for detoxification may be equipped with a door for serving meals and putting handcuffs on persons placed in it, having security devices preventing their opening from inside the room.

B) Transit room

Moreover, the Act of 6 April 1990 on Police (Article 15 (7b)) allows the Police to keep apprehended persons in transit rooms (in local police stations) for the time needed to preparation of a transfer to police detention facility, police rooms for children or prison (up to 6 hours). According to the §24 of the above mentioned Regulation, such a room must have:

- 1) walls that meet the requirements as in the room for persons detained, or made of steel mesh, secured with a steel mesh installed internally;
- 2) doors that meet the requirements as in the room for persons detained, or made of steel mesh with a steel mesh installed on the inside and a mechanical or electronic lock;
- 3) points of light protected from damage;
- 4) a table and stools or benches without sharp edges, attached to the floor or wall;

³ The Police, The list of the police detention facilities, available at: <http://isp.policja.pl/download/12/1595/WykazPdOZnatereniecalejPolski.pdf>

5) floor, ventilation, lighting and buttons for calling staff, meeting the requirements as in the room for persons detained. The door in the intermediate room can be equipped with devices signaling their opening and door used to put handcuffs on persons placed in them, equipped with security devices that prevent them from being opened from inside the room. Moreover, a transit room may have a window that meets the requirements as in the room for persons detained.

C) Temporary transit room

The Police is also able to hold persons in temporary transit rooms (which may be set up outside police establishments) for the time required to decide on how to proceed further with the person (up to 8 hours). The time spent in the above-mentioned rooms is included within the maximum permitted length of police custody. A transit room must have (§29 of the Regulation):

- 1) entrance and exit protected by a steel door or grating, equipped with a mechanical or electronic lock;
- 2) walls that meet the requirements indicated in the Regulation (§ 7 para. 1 point 1), or made of steel mesh and secured with a steel mesh installed internally;
- 3) durable and washable floor;
- 4) lighting;
- 5) air supply and temperature appropriate to the season, according to the standards specified for accommodation;
- 6) access to sanitary rooms used to maintain personal hygiene.

1.2 Main social characteristics of the general detained population in country

As of 31 December 2017, there were in total 86.868 places within all of detention facilities and 73.822 (85%) places within these facilities.

Data on penitentiary units, as of 31 December each year.

Year	2017	2016	2015	2014	2013
Capacity	86868	87409	87395	87742	83898
Population	73822	71528	70836	77371	78994
Pre-trial detainees	7239	5396	4162	6238	6589
Prisoners (convicts)	65769	65079	65664	70125	71595
Punished persons*	814	1053	1010	1008	810
Women	2873	2581	2379	2527	2636
Men	70949	68947	68457	74844	76358

Persons punished based on the Act of 24 August 2001 the Code of Petty Offences

During the last five years, the overall number of the prisoners among the population of all the persons deprived of liberty in the penitentiary facilities increased slightly in 2015 (increased by around 2% according to 2014 and 2013) but in 2016 decreased to the level similar in 2014 and 2013. In 2017 the number of the prisoners was the lowest in the last five years (again compared to the overall population). At the same time, in 2013 - when the number of prisoners was the highest in the last five years period - the number of the pre-trial detainees among all the persons deprived of liberty was the lowest (around 2% lower than in 2013, 2014, 2016 and 4% lower compared with 2017). Summarizing, since 2015, a decrease in the number of prisoners can be observed and, at the same time, there has been an increase in the number of pre-trial detainees. The main factor for these changes cannot be indicated. Notwithstanding, according to some of the experts, the increase in the number of the pre-trail detainees

is a result of the higher number of the prosecutors' requests for pre-trial detention which, according to them, is related to the 2015 political change and the implementation of a new national criminal policy.⁴

Data on prisoners (convicts), as of 31 December each year.

Year	2017	2016	2015	2014	2013
Population	65769	65079	65664	70125	71595
Under 21	994	1069	1163	1506	1733
Over 21	64775	64010	64501	68619	69862
Women	2436	2265	2114	2174	2257
Men	63333	62814	63550	67951	69338

Persons punished based on the Act of 24 August 2001 the Code of Petty Offences

Data on pre-trial detainees, as of 31 December each year.

Year	2017	2016	2015	2014	2013
Population	7239	5396	4162	6238	6589
Under 21	450	357	315	460	611
Over 21	6789	5039	3847	5778	5978
Women	372	237	203	284	331
Men	6867	5159	3959	5954	6258

During the last 5 years, the data on the population of prisoners (convicts) have not changed significantly. However, the changes were observed in the population of pre-trial detainees – an increase can be observed for pre-trial detainees who are over 21 years of age and a decrease for those who are younger than 21 (accordingly: a 3% increase in 2017 and a 3% decrease in 2017 as compared to 2013).

Data on the number of the offenders (punished persons) (based on the Act of 24 August 2001 the Code of Petty Offences), as of 31 December each year.

Year	2017	2016	2015	2014	2013
Population	814	1053	1010	1008	810
Under 21	25	61	60	63	54
Over 21	789	992	950	945	756
Women	65	79	62	69	48
Men	749	974	948	939	762

⁴ Łukaszewicz A., Wnioski o tymczasowe areszty - w więzieniach szybko przybywa aresztowanych, Rzeczpospolita, 13 March 2018, available at: <https://www.rp.pl/Prawo-karne/303139983-Wnioski-o-tymczasowe-areszty---w-wiezieniach-szybko-przybywa-aresztowanych.html>

The same tendency as described above - the increase can be observed within the number of the offenders (punished persons) who are over 21 years of age and the decrease in the number of the punished persons who are under 21 (accordingly: 4% increase in 2017 and 4% decrease in 2017 compared to 2013). Moreover the number of the punished women in 2016 and 2017 was higher by 2% than in 2013 and 2015. Of course, at the same time, the number of the punished men also changed accordingly.

Data on the foreigners in the penitentiary facilities, as of 31 December each year.

Date	Total	Pre-trial detainees	Prisoners (convicts)	Punished persons*
2017	840	433	377	30
2016	662	288	334	40
2015	519	206	307	6
2014	537	229	303	5
2013	521	220	299	2

The number of the foreigners within the penitentiary facilities has been increasing since 2013, with the exception of 2015 when the numbers remained similar as in 2014. A significant increase was observed in 2016 and 2017. However, this situation may be related to the increase in the number of the foreigners obtaining residence permits in Poland in 2016 and 2017.⁵

1.3 Recent evolutions of initiatives to compensate juridical inequalities among detainees/prisoners

There were no recent initiatives to compensate judicial inequalities identified. The complaint system has been widely described in the WP2 part of the report.

1.4 Litigant information

There is no available and reliable information on the litigants within the penitentiary facilities. There is no information on their age, sex, nationality (ratio nationals/foreigners), class, minorities, diplomas and general level of education, types of convictions/grounds for pre-trial detention, position inside facility: social position within the prison hierarchy, kind of convictions/motives for pre-trial detention, prison past. However, the Prison Service provided the information on the level of education of persons detained whose complaints were inadmissible (data from 2013).⁶

Level of education	The reason for treating the case as inadmissible						Total
	Withdrawing the case	Case sent only as information, no request.	Not specifying the allegations within 7 days	Case based on the same factual basis	No justification for requests	A case containing vulgar words	

⁵ The Head of the Office for Foreigners, Annual statistics, available at: <https://udsc.gov.pl/statystyki/raporty-okresowe/zestawienia-roczne/>

⁶ The Polish Ministry of Justice Annual information about the motions and complains in 2013, available at: <https://bip.ms.gov.pl/pl/kontakt/informacja-o-sposobach-przyjmowania-i-zalatwiania-spraw/download,2784,0.html>

1	2	3	4	5	6	7	8
No education	43		1	9	1	1	55
primary school	789	13	38	207	17	23	1087
vocational school	579	12	30	173	12	24	830
junior high school	280	5	16	62		5	368
high school	32	5	1	9	2	1	50
secondary school certificate (Matura)	204	20	19	84	9	12	348
technical school	47	2	3	17	2	2	73
post-secondary school	2	1					3
higher	22	5	4	10		3	44
other	3			2			5
undefined	44	4		12	1	6	67
Total	2045	67	112	585	44	77	2930

Based on this data it can be said that the number of the complaints found inadmissible was higher among the residents of the penitentiary facilities with lower education. However, this data cannot be compared with the data on the general level of education of the persons who submitted all of the complaints in 2013 (also complains which were found admissible) due to their unavailability.

Cases

1. Complaints within the internal system

The way of proceeding with internal complaints submitted by persons deprived of liberty is regulated in the Regulation of the Minister of Justice of 13 August 2003 on the ways of handling applications, complaints and requests of persons deprived of liberty in prisons and in pre-trial detention centers (hereinafter: MoJC). This system of complaints was described in details in the WP2 part of the report. The table below shows the information on the number and manner of settling complaints and applications of persons detained in prisons and remand centers by the Central Board of the Prison

Service and organizational units of the prison system.⁷ The provided information does not include all detainees' requests but covers only formal complaints and applications.

Year	Unrecognized (received in the previous reporting period)	Received during the reporting period	Handled in the reporting period			The way of recognition (concerning no. 6)			Expired (total from no. 5 and no. 6)	It remains to be recognized in the next reporting period
			Total (no. 5 and no. 6)	Including:		positive	negative	other		
				passed for recognition to other entities	handled					
1	2	3	4	5	6	7	8	9	10	11
2016	2034	62621	62379	14477	47902	385	24125	23392	30	2276
2015	2308	63493	63767	14631	49136	432	24547	24157	30	2034
2014	2185	64570	64447	68	64379	450	21561	42368	9	2308
2013	2046	60126	60079	54	60025	409	19651	39965	83	2093
2012	1940	54197	54091	48	54043	363	19624	34056	33	2046

The statistical data on complaints within the internal system shows that the number of submitted complaints was the highest in 2014. The significant change occurred in 2015 and 2016 when around 23% of the complaints received by the Prison Service were passed for recognition to other bodies, while in 2012, 2013 and 2014 less than 1% of these complaints were passed to the other entities. The other numbers were at a similar level in all those years.

According to the data of the Prison Service, in the years 2012-2016,⁸ the problems most frequently raised in complaints of persons deprived of liberty concerned the treatment by the officers and employees of the Prison Service, health care and living conditions.

⁷ The Polish Ministry of Justice, A summary of how to handle complaints and requests in the Central Board of the Prison Service and organizational units of the prison system, 2016, available at: <https://bip.ms.gov.pl/pl/kontakt/informacja-o-sposobach-przyjmowania-i-zalatwiania-spraw/download,3541,5.html>

The Polish Ministry of Justice, A summary of how to handle complaints and requests in the Central Board of the Prison Service and organizational units of the prison system, 2015, available at: <https://bip.ms.gov.pl/pl/kontakt/informacja-o-sposobach-przyjmowania-i-zalatwiania-spraw/download,3339,5.html>

The Polish Ministry of Justice, A summary of how to handle complaints and requests in the Central Board of the Prison Service and organizational units of the prison system, 2014, available at: <https://bip.ms.gov.pl/pl/kontakt/informacja-o-sposobach-przyjmowania-i-zalatwiania-spraw/download,3092,5.html>

The Polish Ministry of Justice, A summary of how to handle complaints and requests in the Central Board of the Prison Service and organizational units of the prison system, 2013, available at: <https://bip.ms.gov.pl/pl/kontakt/informacja-o-sposobach-przyjmowania-i-zalatwiania-spraw/download,2784,2.html>

The Polish Ministry of Justice, A summary of how to handle complaints and requests in the Central Board of the Prison Service and organizational units of the prison system, 2012, available at: <https://bip.ms.gov.pl/pl/kontakt/informacja-o-sposobach-przyjmowania-i-zalatwiania-spraw/download,2517,3.html>

⁸ The Polish Ministry of Justice, Annual information about the motions and complains in 2016, available at: <https://bip.ms.gov.pl/pl/kontakt/informacja-o-sposobach-przyjmowania-i-zalatwiania-spraw/download,3541,0.html>

The Polish Ministry of Justice Annual information about the motions and complains in 2015, available at: <https://bip.ms.gov.pl/pl/kontakt/informacja-o-sposobach-przyjmowania-i-zalatwiania-spraw/download,3339,0.html>

The Polish Ministry of Justice Annual information about the motions and complains in 2014, available at: <https://bip.ms.gov.pl/pl/kontakt/informacja-o-sposobach-przyjmowania-i-zalatwiania-spraw/download,3092,0.html>

A list of the most frequently raised allegations contained in complaints of persons detained in prisons and pre-trial detention centers, managed by the heads of organizational units of the Prison Service.⁹

The Polish Ministry of Justice Annual information about the motions and complains in 2013, available at :
<https://bip.ms.gov.pl/pl/kontakt/informacja-o-sposobach-przyjmowania-i-zalatwiania-spraw/download,2784,0.html>

The Polish Ministry of Justice Annual information about the motions and complains in 2012, available at :
<https://bip.ms.gov.pl/pl/kontakt/informacja-o-sposobach-przyjmowania-i-zalatwiania-spraw/download,2517,0.html>

⁹ The Polish Ministry of Justice, Annual information about the motions and complains in 2016, available at :
<https://bip.ms.gov.pl/pl/kontakt/informacja-o-sposobach-przyjmowania-i-zalatwiania-spraw/download,3541,0.html>

The Polish Ministry of Justice Annual information about the motions and complains in 2015, available at :
<https://bip.ms.gov.pl/pl/kontakt/informacja-o-sposobach-przyjmowania-i-zalatwiania-spraw/download,3339,0.html>

The Polish Ministry of Justice Annual information about the motions and complains in 2014, available at :
<https://bip.ms.gov.pl/pl/kontakt/informacja-o-sposobach-przyjmowania-i-zalatwiania-spraw/download,3092,0.html>

The Polish Ministry of Justice Annual information about the motions and complains in 2013, available at :
<https://bip.ms.gov.pl/pl/kontakt/informacja-o-sposobach-przyjmowania-i-zalatwiania-spraw/download,2784,0.html>

The Polish Ministry of Justice Annual information about the motions and complains in 2012, available at :
<https://bip.ms.gov.pl/pl/kontakt/informacja-o-sposobach-przyjmowania-i-zalatwiania-spraw/download,2517,0.html>

No.	Allegation	Year									
		2012	Positively considered	2013	Positively considered	2014	Positively considered	2015	Positively considered	2016	Positively considered
		0	1	2	3	4	5	6	7	8	9
1	Treatment by officers and employees of the Prison Service	8415	20	9292	41	10340	21	10258	14	13299	25
2	Healthcare	5919	45	6675	55	6439	68	6763	80	7126	54
3	Living conditions	6122	68	6657	84	7254	80	7371	88	8123	138
4	Handling a complaint	2556	95	2416	82	2671	97	2792	60	2844	50
5	The way of handling a request	1476	35	1515	40	1925	42	1940	43	2013	38
6	Correspondence	1694	29	1458	12	1566	19	1628	18	2067	23
7	Visits and phone calls	1119	7	1198	8	1389	16	1760	17	2160	13
8	Transportation	1419	8	1159	5	1002	4	998	4	1035	4
9	Disciplinary penalties	792	6	880	5	953	5	937	7	2308	8
10	Work	767	4	845	7	815	2	894	12	1196	13
11	Deposits	830	17	838	15	910	26	886	25	966	27
12	Decisions of the penitentiary commission	796	6	771	10	642	12	709	8	2079	6
13	Cultural, educational and sport activities	682	2	578	5	647	1	623	0	747	0
14	Familiarizing with opinions and providing documentation	490	6	431	11	447	447	485	7	517	7
15	Parcels	344	13	356	14	364	20	357	12	335	10
16	Passes and exemptions to leave the prison	309	2	331	1	348	2	342	3	863	1

17	Post-penitentiary assistance	139	1	331	1	157	0	145	2	139	0
18	Treatment by cellmate	540	1	284	0	319	0	315	0	333	1
19	Shopping	301	11	255	14	320	10	574	12	387	10

The largest increase in the number of complaints submitted by the persons detained in prisons and pre-trial detention centers in 2016 was noted in relation to the correspondence and the treatment by officers of the Prison Service.

Practical means of litigation

In 2012 the complaint procedure for persons deprived of liberty in the penitentiary facilities has been amended (Article 6 § 3 of CEC). According to the amended rules, a complaint must include a justification and satisfy more stringent formal requirements. Furthermore, complaints (applications or requests) that contain abusive language or prison slang may be disregarded. As it was presented in one of the tables above, these requirements are often a reason for finding the complains inadmissible. Historically, such measures have been questioned by the UN Committee Against Torture as restricting the right to a complaint, and also challenged by the Ombudsman, who was requested by the Helsinki Foundation for Human Rights to ask the Constitutional Tribunal for a constitutional review of the provisions of the Criminal Enforcement Code (CEC). In July 2016 the Constitutional Tribunal ruled that the provisions were constitutional.¹⁰

According to the current studies on the rights of the persons deprived of liberty, 73% of them do not use this right and have never filed a complaint: 39% of those do not have reasons for such complaints, 25% observe severe, negative consequences of the persons filing such complaints, 13% treats such complaints as ineffective instruments and 13% are afraid to be treated by the Prison Service staff as 'complaining person'.¹¹ 22% of the respondents in the mentioned study mostly file their complaints within the internal system – to the Prison Service relevant bodies and only exceptionally the persons deprived of liberty file their complaints to the other bodies such as: penitentiary judge, Helsinki Foundation for Human Rights or the Ombudsman (6%).¹² Moreover, all of the persons who submitted such complaints, regarded them as ineffective.¹³ Moreover, some of the interviewed prisoners said that submitting complaints may result in problems with the Prison Service staff and even in the transfer to another facility¹⁴ and this information was confirmed by the Prison Service staff.¹⁵ Some of the prisoners said that due to that situation, from their perspective, it is better to submit the complains when the person deprived of liberty is about to leave the particular facility.¹⁶

2. Complaints within the external system

For the purpose of the study, the HFHR requested from the Ministry of Justice the information on the number of complaints submitted to the penitentiary courts (penitentiary supervision) by pre-trial detainees but this information was not provided. After the renewed request sent by the HFHR, the

¹⁰ Judgment of the Constitutional Tribunal dated 12 July 2016, case no. K 28/15, published in OTK ZU A/2016, item. 56.

¹¹ Niełączna M., Mechanizm nie-doskonały Dobra administracja więzienna – ustalenia i konkluzje badawcze, Stowarzyszenie Interwencji Prawnej (Association for Legal Intervention), Warszawa 2017, p. 178.

¹² Ibidem.

¹³ Ibidem.

¹⁴ Interviews with the prisoners [city has been hidden for the protection purposes].

¹⁵ Interviews with the Prison Service officers [city has been hidden for the protection purposes].

¹⁶ Interviews with the prisoners [city has been hidden for the protection purposes].

Ministry of Justice responded only in one sentence stating that they have already provided all the data that they possess. What is important, according to some of the stakeholders, the problem is the lack of personal contact of the penitentiary judge with the complainant who is deprived of liberty regarding the penitentiary complaints.¹⁷ Moreover, one of the stakeholders mentioned the lower level of engagement of the judges in penitentiary cases that in the other, such as regular criminal cases¹⁸. However, according to the interviewed penitentiary judges, there are detainees who are writing 1-2 complaints a week. One of the judges also mentioned a prisoner who made 144 complaints. Moreover, the same judge said that 62% of all the complaints in the remand center for the pre-trial detainees, that he is responsible for, were made by only 8 detainees.¹⁹ The expert also noticed an increase of the number of the complaints in the last two years. He could not give the exact reason for this situation, but added that it may be related to the 2015 political change in Poland.²⁰ The other judge said that in the Regional Court where he works, there are around 700-800 complaints to the penitentiary judge a year, but he did not notice any significant differences in the number of the complaints in the recent years.²¹ The expert said that around half of the complaints concern the conditions of penitentiary facilities, some of them concern the quality of food and the behavior of the Prison Service staff towards them.²² Both penitentiary judges, as well as the prisoners, mentioned also complaints about the quality of medical care provided in penitentiary facilities but, according to them, these are not the most common cases.²³ According to one penitentiary judge, most of the complaints are found inadmissible.²⁴ Moreover, the interviewees said that the awareness of the detainees is often related to the length of the stay in the facility and that the number of the submitted complaints grows over time in the facility.²⁵ The penitentiary judges as well as Prison Service officers interviewed said that there is no difference between the conditions in prisons and remand centers for the pre-trial detainees.²⁶ The interviewed prisoners said that conditions in penitentiary facilities are not related to the facility status (prison or pre-trial remand center) and depend on other factors e.g. the date of its last renovation.²⁷ Furthermore we have asked the Ministry of Justice for the detailed data on the number of the compensation cases related to the conditions and daily life standards in the penitentiary facilities. The request on the detailed data on the number of the compensation cases related to the conditions and daily life standards in the remand center for the pre-trial detainees was also directed to the General Counsel – a highly specialized legal institution, whose aim is to ensure security and effective protection of the rights and interests of the Republic of Poland, including the State Treasury and the state property which does not belong to the State Treasury, in particular in proceedings before courts, tribunals and other jurisdictional authorities. Unfortunately, these information was not provided. Only the Ministry of Justice provided the information, but only on the compensation cases for the unjustified pre-trial detention and the use of the pre-trial detention. One of the interviewees said that in the last 10 years the remand center for the pre-trial detainees won most of the compensation cases (lost only 32 from 310).²⁸

¹⁷ Interview with the penitentiary judge from Warsaw and interview with the attorney from Warsaw. Interview with the lawyer from the National Preventive Mechanism.

¹⁸ Interview with the attorney from Warsaw.

¹⁹ Interview with the penitentiary judge from Piotrków Trybunalski.

²⁰ Interview with the penitentiary judge from Piotrków Trybunalski.

²¹ Interview with the penitentiary judge from Warsaw.

²² Interview with the penitentiary judge from Warsaw.

²³ Interviews with the penitentiary judges; Interviews with the prisoners from Piotrków Trybunalski; Interviews with the prisoners from Warsaw;

²⁴ Interview with the penitentiary judge from Piotrków Trybunalski.

²⁵ Ibidem.

²⁶ Interviews with the penitentiary judges; Interviews with the prisoners from Piotrków Trybunalski; Interviews with the Prison Service officers from Warsaw.

²⁷ Interviews with the prisoners from Piotrków Trybunalski; Interviews with the prisoners from Warsaw.

²⁸ Interview with the legal advisor from the remand center for pre-trial detainees and prison in Warsaw; Interview with the Prison Service officer from Warsaw.

The Ombudsman's statistical data shows the general matter of the cases and according to its statistical data on 2017,²⁹ 4275 applications concerned the CEC. This figure naturally contains the complaints of the pre-trial detainees and prisoners related both to the execution of the penalty and related to everyday life in the penitentiary facility. In 2016 the Ombudsman received 4800 complaints on this matter.³⁰ However, the detailed information with the separated data on the particular requests of the pre-trial detainees are not available. According to the interviewee from the Ombudsman's office, there are still many complaints regarding the medical assistance, treatment by co-detainees, treatment by the Prison Service staff in the penitentiary facilities.³¹

2. LEGAL PRACTITIONERS - LAWYERS

2.1 Lawyers and litigation work

1. General information on the legal professions

In Poland, there are two separate legal professions: attorneys and legal advisors. They both have the right to provide legal services and advice. Both attorneys and legal advisors do not officially specialize in the particular branches of law and are qualified to represent clients in all of them, however, in practice, they are of course interested and experienced only in some of them.

Attorneys are associated within the Bar of attorneys, consisting of the National Council of the Bar and 24 local councils. Legal advisors are associated within the Bar of legal advisors, consisting of the National Council of Legal Advisors and 19 local councils. Professional lawyers are obliged to participate in obligatory lectures organized by their local councils, they can choose the topics they are interested in.

2. Training of the attorneys and legal advisors

For the purpose of this project, the HFHR requested data on the trainings, thematic sections of law practitioners available and booklets on the penitentiary law from the National Council of the Bar and the National Council of Legal Advisors. Moreover, both National Councils have sent similar requests the local councils within their bars.

The National Council of the Bar organized a number of conferences where the rights of detainees in penitentiary facilities were discussed together with procedural rights, such as access to a lawyer or the right to defense (events in 2013, 2014). However, the penitentiary law and the rights of the detainees were never a separate subject. Some of the local councils organized conferences on the rights of the persons deprived of liberty (e.g. local council in Poznan in 2014 and in Warsaw in 2017). Moreover, some of them mentioned that penitentiary law is a part of the three year apprenticeship training for the attorneys trainees and a subject of the lectures for the professionals (only the local council in Warsaw

²⁹ The Ombudsman, Information and statistics data for the first quarter of 2017, available at: <http://www.bip.brpo.gov.pl/sites/bip/files/atoms/files/Dane%20informacyjno-statystyczne%20I%20kwarta%C5%82%202017r.pdf>; The Ombudsman, Information and statistics data for the second quarter of 2017, available at: <http://www.bip.brpo.gov.pl/sites/bip/files/atoms/files/II%20kwarta%C5%82%202017%20r%20dane.pdf>; The Ombudsman, Information and statistics data for the third quarter of 2017, available at: <http://www.bip.brpo.gov.pl/sites/bip/files/atoms/files/Dane%20informacyjno-statystyczne%20za%20III%20kwarta%C5%82%202017%20r..pdf>; The Ombudsman, Information and statistics data for the fourth quarter of 2017, available at: <http://www.bip.brpo.gov.pl/sites/bip/files/atoms/files/Dane%20informacyjno-statystyczne%20za%20IV%20kwarta%C5%82%202017.pdf>

³⁰ The Ombudsman, Information and statistics data for 2016, available at: <http://www.bip.brpo.gov.pl/sites/bip/files/atoms/files/ZA%C5%81%C4%84CZNIK%20DO%20Informacja%20o%20dzia%C5%82alno%C5%9Bci%20Rzecznika%20Praw%20Obywatelskich%20w%20roku%202016%20-%20DANE%20informacyjno-statystyczne%202016.pdf>

³¹ Interview with the Ombudsman's representative.

mentioned in details that: 16 lectures on the rights of the persons deprived of liberty and penitentiary law in which 1887 attorneys took part). Local councils do not have thematic sections specialized in the penitentiary law and the rights of the detainees but again, some of them responded that they have human rights sections or/and criminal law sections which are also interested in that field (local councils in Warsaw, Zielona Góra, Szczecin, Toruń). They have not prepared specific booklets or leaflets related to the rights of the persons deprived of liberty or penitentiary law.

The National Council of Legal Advisers responded, also in the name of the local councils, that they have not prepared any booklets/tools or events dedicated specifically to these matters. However, the National Council mentioned that the human rights commission within the council is also interested in that area of law. Moreover, one of the local councils (in Katowice) provided training for their professionals from the area of criminal law (in 2015), but only on procedural rights (the obligations of the legal representatives in the pre-trial proceedings). The reason may be that legal advisers are not usually specialized in the widely understood criminal law. They are able to represent clients as defenders in a criminal proceedings only since July 2015. Moreover, unlike attorneys, they may be employed based on a work contract. However, those who are employed through such a contract cannot represent clients as defenders.

According to one of the interviewed experts, an attorney from Warsaw, there are no trainings specifically on the topic of penitentiary law. She also added that, in general, there is a problem with complaints on the conditions in the penitentiary units because this is a somewhat 'forgotten sphere'. In this area, financing and infrastructure investments are important for the purpose of improving the conditions.³²

General profile of lawyers active on litigation

In Poland, both legal advisors and attorneys are able to practice and represent clients in any field of law (with the proviso for criminal cases indicated above). Formally, there are no formal specializations within these professions, however for the purpose of the public registry the professional lawyer can chose the area of law he or she is specialized in. According to the experts interviewed during the study, in smaller cities and towns, as well as rural areas, attorneys are not specialized in the specific areas of law because the legal market is not allowing it. They take all kind of cases.³³ However, attorneys in larger cities are able to specialize only in particular areas of law, such as criminal law or compensation cases.³⁴ According to the received information, lawyers usually do not specialize in the area of penitentiary law exclusively.³⁵ All professional lawyers are obliged to take the case *ex officio*. As a rule, a lawyer *ex officio* is chosen from the court list of all attorneys and legal advisors delivered by the Bars. The appointments are made in the numerical order. However, in the larger Bars, e.g. the Warsaw Bar, attorneys can decide whether they want to be on the list which is delivered to the court.³⁶

Based on the interviews it can be said that detainees in penitentiary facilities are usually representing themselves in penitentiary cases,³⁷ sometime they are represented by legal aid attorneys but usually in the cases concerning the break in the execution of a prison sentence or a conditional early release from serving the rest of the sentence, not the conditions of detention.³⁸ The member of the Warsaw Bar (the local council), who has 15 years of experience in the criminal cases and the Ombudsman's representative said that they have never heard about the *ex officio* legal aid granted by the court for the purpose of the legal representation in the case initiated due to complaint on the conditions in the penal

³² Interview with attorney from Warsaw.

³³ Interview with the attorney from Piotrków Trybunalski.

³⁴ Interview with the attorney from Warsaw.

³⁵ Interviews with the attorneys.

³⁶ Interview with the attorney from Warsaw.

³⁷ Interviews with penitentiary judges; Interviews with the prisoners from Piotrków Trybunalski; Interviews with the prisoners from Warsaw.

³⁸ Interviews with the attorneys; Interviews with penitentiary judges; Interviews with the prisoners from Piotrków Trybunalski.

facility.³⁹ According to the interviewees, the legal aid lawyers are also granted in the civil law's compensation cases⁴⁰ and one of the respondents said its relatively easy to obtain such legal assistance.⁴¹ However, some interviewees said that it does not happen often⁴² or that it is hard to be granted legal aid for such purpose.⁴³

In larger cities, attorneys cooperate with the large NGOs (particularly HFHR was mentioned), as well as organize events together, including conferences in the field of penitentiary law.⁴⁴ Moreover, one of the interviewed attorneys said that persons deprived of liberty are afraid that their complaints may result in problems within the facility. Due to that, it is better to give such cases to the professionals.⁴⁵ Furthermore, she added, that from her perspective and experience, the obligatory defense should be granted to the all persons deprived of liberty including cases against prison facilities.⁴⁶

Legal relief specialization

According to the study, the attorneys involved in the prison and pre-trial detention cases are usually criminal lawyers or attorneys without any specific specialization (in the smaller cities or rural areas).⁴⁷

2.2 How is litigation case work financed?

What are the known consequences of the origin of funds (e.g. state-funded lawyer vs. paid lawyer) in terms of quality of service?

1. The *ex officio* legal aid

Most of the key information on the legal aid *ex officio* have been already provided in the national law part of the study. It needs to be added that a legal aid lawyer (state granted, *ex officio*) has to request the court in the process to award him a salary for the legal aid he provides based on the official rates in the § 19 of the Regulation the Regulation of the Minister of Justice on the costs incurred by the State Treasury for unpaid legal assistance provided by an *ex officio* attorney of 3 October 2016 and the § 19 of the Regulation of the Minister of Justice on the costs incurred by the State Treasury for unpaid legal assistance provided by an *ex officio* legal advisor of 3 October 2016. Such request, as well as an accompanying statement that these costs have not yet been covered are obligatory and without them, the court would not be able to decide on the salary in the judgement. After the case is final, an *ex officio* attorney, should provide an invoice for the amount equal to the granted salary to the court. The invoice is paid by the court usually without any significant delay. The stakeholders interviewed confirmed that the rates for the state granted attorneys are objectively low and that they have not changed significantly for the last 14 years which is not additionally encouraging the attorneys to an extensive engagement in the legal aid cases.⁴⁸ The experts said that the rates should to be increased.⁴⁹ One of the interviewees – a member of the Warsaw Bar said that the level of the rates in the penitentiary cases is

³⁹ Interview with the attorney from Warsaw; Interview with the Ombudsman's representative.

⁴⁰ Interviews with the attorneys; Interviews with penitentiary judges; Interviews with the prisoners from Piotrków Trybunalski; Interviews with the prisoners from Warsaw.

⁴¹ Interview with the legal advisor from the remand center for pre-trial detainees and prison in Warsaw.

⁴² Interview with the Ombudsman's representative.

⁴³ Interview with representative of the National Preventive Mechanism.

⁴⁴ Interview with the attorney from Warsaw; Data received from the National Council of the Bar;

⁴⁵ Interview with the attorney from Warsaw; Interview with the penitentiary judge from Warsaw; Interviews with the prisoners [city has been hidden for the protection purposes].

⁴⁶ Interview with the attorney from Warsaw.

⁴⁷ Interviews with the attorneys.

⁴⁸ Interviews with the attorneys.

⁴⁹ Ibidem.

“embarrassing”.⁵⁰ Moreover, the prisoners said that due to the fact that even a person exempted from paying fees and court costs is obliged to reimburse the opponent’s costs (Article 108 of the Act of 17 November 1964 the Code of Civil Procedure), the prisoners are afraid to file the compensation lawsuits (the interviewees in each of the visited facilities mentioned that only one prisoner won such a case).⁵¹

2. Pro bono

The legal aid founded by the state has to be distinguished from the legal pro bono work. Professional lawyers, both attorneys and legal advisors in Poland are not obliged to take other cases than those from the *ex officio* system. However, some of them often do, especially in the large private law firms which often cooperate with the NGOs such as Helsinki Foundation for Human Rights or Legal Clinics Foundation.

The Legal Clinics Foundation runs the annual “Pro bono Lawyer” Competition. The first competition was organized in 2004 under the patronage of the National Council of the Bar and the National Council of Legal Advisors. Moreover, the Legal Clinics Foundation runs the “Pro bono Center” which serves as a base for pro bono activities.⁵² The Pro bono Center has set up and coordinates a cooperation network between law firms and NGOs. The law firms participating in the program are assigned specific cases depending on the difficulty and the area of expertise involved. There are 28 legal firms on the current list of the participants.⁵³

The Helsinki Foundation for Human Rights cooperates with numerous attorneys, legal advisors and legal firms for the purpose of legal representation and litigation work. The Foundation’s Strategic Litigation Program is now firmly based on a permanent cooperation with over one hundred lawyers from international and domestic law firms. Among HFHR’s international and domestic legal partners are: Clifford Chance, Weil Gotshal & Manges, Wardyński & Partners, CMS Cameron McKenna Nabarro Olswang, Hogan Lovells. Thanks to the high esteem of the HFHR does not have any trouble with finding pro bono partners. Thanks to the robust cooperation between pro bono lawyers and the Program, the HFHR is able to litigate a great number of strategic cases throughout Poland and thus better deal with human rights violations in Poland. The cooperation has had an immense impact on public life in Poland/on the Polish public life as well as on legal issues – it influences people’s lives, legislation and courts’ decisions. Additionally, the cooperation with the law firms engages the legal establishment in the process of raising human rights standards and has also a positive impact on the rule of law and democracy in Poland. The pro bono network involves a significant number of lawyers that is a clear sign of the raising awareness of the importance of pro bono work among lawyers. The HFHR focuses specifically on protecting human dignity and the ensuing requirement of humane treatment. One of the key areas of the Foundation’s operations is the monitoring of the conditions of deprivation of liberty in prisons and remand centres from the human rights perspective. For this reason, HFHR turns attention to the problems that approach in cases submitted to the HFHR. Recent HFHR’s involvement and cases concerning conditions in the penitentiary facilities are publicly available in English.⁵⁴

The National Council of the Bar and the National Council of Legal Advisors⁵⁵ organize annual countrywide free legal advice events for those who cannot afford to pay for legal services.⁵⁶ According

⁵⁰ Interview with the attorney from Warsaw.

⁵¹ Interviews with the prisoners from Piotrków Trybunalski; Interviews with the prisoners from Warsaw.

⁵² Centrum Pro bono website, available at <http://www.centrumprobono.pl>

⁵³ Centrum Pro bono, Report on 2017, available at: <http://www.centrumprobono.pl/wp-content/uploads/2014/02/raport-2017-1MB.pdf> p. 29.

⁵⁴ Helsinki Foundation for Human Rights, Report on the human rights of persons deprived of liberty, Warsaw, 2017, available at: <http://www.hfhr.pl/wp-content/uploads/2017/05/Report-CPT-FIN.pdf>

⁵⁵ The National Council of Legal Advisors, information available at : <http://kirp.pl/pro-bono/>

⁵⁶ The National Council of the Bar, information available at: <http://www.adwokatura.pl/szukaj/pro%20bono/>

to the member of the Warsaw Bar, some of the attorneys are really active in that field but at the same time some of them, especially conservative ones, do not want to provide legal assistance free of charge. But in general, pro bono activities and initiatives are developing.⁵⁷

2.3 Access of lawyers to their clients

A lawyer who intends to visit a pre-trial detainee has to obtain a permission from the relevant authority at whose disposal pre-trial detainee remains, unless the body orders otherwise. Depending on the stage of the criminal proceedings, it may be a prosecutor or a court. When a pre-trial detainee remains at the disposal of several authorities, permission is required for each of them to be seen, unless otherwise ordered by the authorities (Article 217 (1) (1a) of CEC). However, the interviewed lawyers did not report any serious problems with accessing their clients - they only mentioned that sometimes the responsible bodies are making it difficult and that of course it is easier with the regular prisoners than with a pre-trial detainees. It was also confirmed that the client-attorney privilege is respected in pre-trial detentions as well as in prison facilities and the conditions are allow for discretion, however, sometimes the quality of the meeting rooms is poor. Moreover, in some of remedy centers the waiting time for the visits is long. The lawyers mentioned that penitentiary cases are usually legal aid cases, so they do not search for such cases or clients themselves.⁵⁸ The representative of the National Preventive Mechanism said that sometimes meeting rooms are videotaped and it constitutes a problem from both the attorney's and his client's perspectives.⁵⁹ Furthermore, one attorney said that the bodies responsible for the pre-trial detainees, from his perspective, as a rule allow them to use telephones⁶⁰. However, persons deprived of liberty, both pre-trial detainees⁶¹ and prisoners⁶² can use telephone only once a day. Only in justified cases, the Director of the facility may allow a pre-trial detainee or convict to use an additional telephone conversation.⁶³

3. LEGAL PRACTITIONERS - NGOs

3.1 Description of dedicated networks (NGOs/ Human Rights organisations / Legal Clinics/ Universities / monitoring bodies (that provide legal advice and/or may start litigation).

3.2 How is litigation work financed?

3.3 Within detention facilities

1. Legal clinics at the Universities

⁵⁷ Interview with the attorney from Warsaw.

⁵⁸ Interviews with the attorneys.

⁵⁹ Interview with the lawyer from the National Preventive Mechanism.

⁶⁰ Interview with the attorney from Warsaw.

⁶¹ § 28 of the Regulation of the Minister of Justice of 22 December 2016 on the organizational and procedural rules of the execution of the pre-trial detention.

⁶² § 24 of the Regulation of the Minister of Justice of 21 December 2016 on the organizational and procedural rules of the execution of imprisonment.

⁶³ § 28 of the Regulation of the Minister of Justice of 22 December 2016 on the organizational and procedural rules of the execution of the pre-trial detention; § 24 of the Regulation of the Minister of Justice of 21 December 2016 on the organizational and procedural rules of the execution of imprisonment.

1) Overview

One of the most important actors in the field of providing legal advice for detainees are legal clinics. Legal clinics have been established at the Faculties of Law and Administration, where the students, under the supervision and substantial help of the faculty teachers and practitioners, provide free of charge legal advice for financially disadvantaged members of the community.

Currently, there are about 25 university law clinics in Poland where law students provide advice to the clients. Each year, almost 2.000 students, under supervision of over 350 law professors deal with around 12.000 cases. The Polish Legal Clinics Foundation operating since 2002 has been supporting and coordinating a network of these legal clinics.⁶⁴

The work of university legal clinics is divided into sections, e.g. sections of criminal law, administrative law, labor law, criminal law. In some universities there are sections dedicated to cases of persons deprived of liberty. Clinics are addressed to both law students and law teachers and to the vulnerable social groups such as: unemployed, homeless, retired, persons with disabilities, crime victims, women in difficult situations, foreigners, refugees. The work of the clinics involves the individuals and the entire legal and academic society in working with the most disadvantaged people, often left on the margin of social life. It also fulfills the basic needs concerning free access to justice.

As a rule, students receive letters from detainees and prisoners, often with the documents attached. A significant part of the letters is related to rights of persons deprived of liberty and conditions of penitentiary facilities. Students' work includes: written opinions, statements, applications, appeals, claims, complaints and interventions. On the ground of individual agreements with administration of prisons students may attend regular duties in prison facilities.⁶⁵ A person who intends to visit a pre-trial detainee has to obtain a permission from the relevant authority at whose disposal pre-trial detainee remains, unless the body orders otherwise. However, it was found that some of the students have met with the pre-trial detainees within a prison facilities, although it is an exception.⁶⁶ According to one of the interviewees, the Legal clinic of the University of Warsaw (section for detainees) receives more than 100 cases a year from penitentiary facilities regarding the problems within the facilities.⁶⁷ The interviewee also mentioned that the legal clinic does not provide the assistance for the detainees who already have an attorney for the purpose of the particular case.⁶⁸ The legal clinic does not hire professional attorneys for the purposes of the cases they received.⁶⁹

Moreover, at the University of Warsaw, there is one more legal clinics whose activities concern the rights of the detainees –the Clinic of Article 42 CEC.⁷⁰ The Clinic of Article 42 CEC is located at the Chair of Criminology and Criminal Policy, Institute of Social Prevention and Resocialization, University of Warsaw. The program is integrated into the curriculum for students of higher years of 5 – year MA studies and students of second – degree MA programs and is an open access course. At the Clinic 42 CEC, legal aid or other forms of assistance are provided by students of law and of resocialization with thorough preparation and experience in the penitentiary field. They work in teams and under professional supervision of experts in the field of imprisonment, i.e. in law, human rights and freedoms, prison administration and penitentiary psychology. The name of the university clinic refers to the

⁶⁴ The Polish Legal Clinics Foundation, Fund-raising, available at: <http://www.fupp.org.pl/en/legal-clinics/history>

⁶⁵ Interview with the head of the Legal clinic of the University of Warsaw (section of the detainees).

⁶⁶ Interview with the head of the Legal clinic of the University of Warsaw (section of the detainees).

⁶⁷ Interview with the head of the Legal clinic of the University of Warsaw(section of the detainees).

⁶⁸ Ibidem.

⁶⁹ Ibidem.

⁷⁰ University of Warsaw, Institute of Social Prevention and Resocialisation, the Clinic of Article 42 CEC, information available at: http://old.ipsir.uw.edu.pl/en/about_us/institute_directory/chair_of_criminology_and_criminal_policy/clinic_42/case_selection_criteria

provisions of Article 42 of CEC, which sets forth what follows: Article 42. § 1. The convict may appoint, in writing, as his/her representative, a person worth of trust, with the consent of the latter, in particular from among the representatives of associations, foundations, organizations and institutions defined in Article 38 § 1. § 2. The representative of the convict, within the meaning of § 1 above, may act solely in the interest of the convict, and for that purpose may submit in his name and on his behalf applications, claims and requests to competent authorities and institutions, associations, foundations, organizations, churches and other confessional unions. § 3. The president of the court, an authorized judge, and during the sitting, the court may, at the request of the convict, admit to the proceedings before the court the representative of the convict, as defined in § 1. The decision of the court is not subjected to appeal. The Clinic of Article 42 deals solely with cases related to: granting temporary release from the penalty of imprisonment; granting conditional early release; granting clemency; selected rights set forth in Article 102 of the CEC (the provision concerns the rights of the persons deprived of liberty).

2) Funding

As a rule, the legal clinics are financed by universities. However, the Polish Legal Clinics Foundation receives funding from different sources. The total value of the financial means, equipment and computer software donated and contracted by the Polish Legal Clinics Foundations to the legal clinics amounted to 597.855,20 PLN (equal to 160.000,00 USD). The Foundation has received support from, among others:

- a) the Stefan Batory Foundation for conducting the cyclical regrating competitions for clinics,
- b) the European Law Students' Association ELSA Poland, which is the legal owner of part of the clinics' equipment (on the basis of a subsidy it obtained over the past years from the Stefan Batory Foundation), has undertaken to formally transfer that equipment to the clinics (universities),
- c) legal clinics from 12 cities should receive computer equipment of considerable value from the Ministry of Justice,
- d) the Baker & McKenzie law firm donated computers to legal clinics in Poland, which were adjudicated to the two most needing clinics as a result of a competition,
- e) the Polskie Wydawnictwa Profesjonalnie publishing house donated legal software (LEX Omega), which was given to a clinic after a competition,
- f) the Linklaters international law firm decided to delegate its five lawyers to pro bono work in a clinic,
- g) the Wydawnictwo C.H. Beck publishing house donates each year sets of legal information software (sets of laws with commentaries) to all legal clinics in Poland⁷¹.

2. NGOs and human right organizations

In Poland, there are only a few human rights non-governmental organizations dealing with cases of prison or pre-trial litigation and, at the same time, are well recognized both at the national level and by detainees. These are above all: the Helsinki Foundation for Human Rights⁷², the Association for Legal Intervention, the Amnesty International,⁷³ the "Sławek" Foundation and already mentioned the Legal Clinics Foundation. However, their engagement in providing legal advice for persons deprived of liberty depends on many factors, including economic ones. Moreover, the stakeholders mentioned also Free Courts, Citizens of the Republic of Poland, Women's Rights Center, local city movements,⁷⁴ although in practice these NGOs do not deal with this subject.

⁷¹ The Polish Legal Clinics Foundation, Fund-raising, available at : <http://www.fupp.org.pl/en/foundation/history-mission>

⁷² Interview with the penitentiary judge from Warsaw; Interview with the attorney from Warsaw; Interview with the representative of the National Preventive Mechanism; Interviews with the prisoners from Piotrków Trybunalski.

⁷³ Interview with the representative of the National Preventive Mechanism;

⁷⁴ Interview with the attorney from Warsaw.

1) Helsinki Foundation for Human Rights

The Helsinki Foundation for Human Rights (hereinafter: HFHR) is a leading Polish human rights organization active since 1989. There are two legal programs within the Foundation: the Legal Intervention Program and the Strategic Litigation Program. The Legal Intervention Program focuses on cases of violations of individual rights and freedoms, including rights of all the persons deprived of liberty. All of the cases that qualify for admission into the program are subject to a detailed qualitative analysis, following which a substantive action is undertaken to resolve the case. The Strategic Litigation Program is aimed at enhancing human rights protection in Poland through litigation of thoroughly selected cases. The Strategic Litigation Program has been operating for fourteen years. The HFHR lawyers have successfully litigated numerous cases concerning conditions in penitentiary facilities such as: regulations on high-risk prisoners, forced labour of the inmates, regulations on receiving parcels in correctional facilities, complaints of the inmates, practical issues, medical care in correctional confinement – complaints of the inmates, rights of inmates with physical disabilities, occurrence, prevention and treatment of infectious diseases in correctional facilities, restrictions on access to education or social resettlement of convicted persons.⁷⁵

2) Association for Legal Intervention

Association for Legal Intervention (SIP) was established in 2005 by a group of young activists and lawyers. Since then SIP evolved into an experienced non-profit organization with the aim of combating social exclusion through the provision of free legal advice to people whose rights and freedoms are threatened or violated and raising legal and civil awareness in the society. Their activity focuses on:

- a) Support – they provide legal and social counselling in individual cases; they represent clients in courts and before administrative agencies – their counselling is based on Association's standards and is free of charge.
- b) Information – association develops and conducts trainings for professionals and groups of diverse cultural backgrounds, concerning their rights and duties. They are also aimed at spreading the civil and legal awareness in the society.
- c) Policy – the aim of their actions is to improve the situation of marginalized social groups – through conducting research, monitoring the application of the law and presenting our opinions to bills they influence the state politics and its institutions.

SIP's main goals are: human rights protection, action against marginalization and discrimination, supporting people who are threatened by marginalization or exclusion, providing their clients (in particular, refugees, asylum seekers, foreigners, prisoners, children, adoptive families) with legal advice; restorative justice, mediation; violence mitigation; raising law-awareness in the society. Their approach is treating the provision of legal advice as a beginning of our support, not the aim. Legal assistance is just the first step: the goal is not only to support clients but mostly lobbying for changes in legislation and policies as well as raising social awareness in order to improve the situation of a given social group.⁷⁶ Currently, SIP does not have a section on the rights of the persons deprived of liberty. Those cases are transferred to 'the Clinic of Article 42 CEC' at the University of Warsaw who is run by the long-

⁷⁵ The Helsinki Foundation for Human Rights, website, available at: www.hfhr.pl/en/

⁷⁶ The Association for Legal Intervention website, available at: <https://interwencjaprawna.pl/en/about/what-we-do/>

term employee of SIP.⁷⁷ However, they have the program concerning the rights of foreigners, including those deprived of liberty due to their administrative status.

3) “Sławek” Foundation

The “Sławek” foundation helps the prisoners from detention centers and young offenders’ institutions in safe re-entering society and re-adapting in their families. As a foundation, it operates in order to integrate and bring together the families affected by seclusion and isolation. It works on setting up Polish System of Help in Post-Penitentiary which, by a cross-sectoral collaboration, will make any influence on the ones who need more effective help.⁷⁸

4. PRISONERS AS LITIGANTS

Prisoners are not formally organized for the purpose of the litigation. According to the official statistical data of the Ministry of Justice, only around 10% of the persons detained in penitentiary facilities in Poland submit complaints against the Prison Service authorities. According to one of the stakeholders, an attorney, the persons deprived of liberty are afraid that submitting complaints may result in the problems within the facility. However, the same stakeholder mentioned also that those who are detained for the longer periods of time are usually less afraid to submit such complaints⁷⁹. One of the interviewees said that due to the same wording of the complaints, he knows that such complaints were prepared by the same person.⁸⁰ The Ombudsman’s representative said that such complaints are often admissible and justified.⁸¹ The existence of internal litigants was also confirmed by the interviewed prisoners⁸² and Prison Service staff⁸³ who said that they operate only in prisons and not in remand centers for the pre-trial detainees.⁸⁴ One of the recent studies on the rights of the persons deprived of liberty also proved that in these facilities there are prisoners who provide legal information based on their experience and usually a long sentence served⁸⁵. The interviewed Prison Service officers also said that complaints made by them are often admissible.⁸⁶

4.1 Assessment of shortage of juridical and economical capital of remand prisoners

Visiting arrangements were described in details in the WP2 part of the study. In general, the access to the pre-trial detainees is limited due to the limitations in the CCP. HFHR’s interviewees said that they have never had problems with the visiting arrangements.⁸⁷ However, it is one of the problems raised in the complains submitted by the persons deprived of their liberty, according to the Prison Service statistical data listed before. The head of the criminal law clinic at the University of Warsaw said that they have arrangements with the prisons, which students visit, and such problems have not occurred.⁸⁸

4.2 Access to legal information

⁷⁷ Interview with the lawyer from the Association for Legal Intervention; Please find more at ‘3. LEGAL PRACTITIONERS - NGOs; 3.3 Within detention facilities’.

⁷⁸ The ‘Sławek’ Foundation, website, available at: <https://www.fundacjaslawek.org/misja>

⁷⁹ Interview with the attorney from Warsaw.

⁸⁰ Interview with the penitentiary judge.

⁸¹ Interview with the Ombudsman’s representative.

⁸² Interviews with the prisoners from Piotrków Trybunalski.

⁸³ Interviews with the Prison Service officers from Piotrków Trybunalski; Interviews with the Prison Service officers from Warsaw.

⁸⁴ Interviews with the Prison Service officers from Piotrków Trybunalski.

⁸⁵ Nielączna M., Mechanizm nie-doskonały Dobra administracja więzienna – ustalenia i konkluzje badawcze, Stowarzyszenie Interwencji Prawnej (Association for Legal Intervention), Warszawa 2017, p. 194.

⁸⁶ Interviews with the Prison Service officers from Piotrków Trybunalski.

⁸⁷ Interviews with the prisoners in Piotrków Trybunalski.

⁸⁸ Interview with the head of the criminal law legal clinic at the University of Warsaw.

The content of the written instructions in the criminal proceeding, including the written guidance on the rights and obligations of a suspect in the criminal procedure, a person detained under European Arrest Warrant, a person detained in the criminal procedure and a person temporarily arrested in the criminal procedure as well as the obligation and procedure on providing them were described in the WP2 part of the report. However, it is important to add that the language of the instructions remains a problem.⁸⁹ Currently, their content is often just a repetition or a paraphrase of the legal provisions and is thus incomprehensible to a wide audience. According to the HFHR, the Ministry of Justice should also consider preparing instructions adapted to the needs of the visually impaired and deaf prisoners (e.g. in Braille or in the sound file). Furthermore, HFHR proposed that in order to facilitate proper communication and information, it would be worthwhile to prepare an information brochure, which would be available, among others, at police stations, in detention centers, remand centers for the pre-trial detainees, prisons, courts and prosecutor's offices⁹⁰

The interviewees said that the written forms listing their rights and obligation were provided to them also during the admission to the remand center.⁹¹ Some of them said that the language and the wording of the forms were complicated. They also mentioned that the Prison Service officers were explaining them their rights and obligations⁹².

Furthermore, the prisoners who were interviewed by the HFHR said that within the penitentiary facilities – including the remand centers - the information board is visible (in the corridor) and it contains the information and address of the penitentiary judge, the Ombudsman, NGOs including HFHR.⁹³ The existence of such boards was also confirmed by a representative of the National Preventive Mechanism who noticed leaflets from NGOs or the Ombudsman during their visits to the facilities.⁹⁴ The prisoners also mentioned that if needed such information can be provided by the Prison Service officers.⁹⁵ However, some of the interviewees said that there are no lists of attorneys available in the facilities.⁹⁶ According to the interviewed prisoners, the Prison Service staff provides them with the legal acts.⁹⁷ The Prison Service officers said that the access to legal acts is ensured, the most important legal acts are in printed versions and the internal order is printed in each cell within the facility.⁹⁸ According to a penitentiary judge, there is an access to the legal acts within the penitentiary facilities and the lack of access to them is not a subject of the complaints.⁹⁹ The representative of the National Preventive Mechanism has also confirmed that the access to legal acts is limited only exceptionally and rarely.¹⁰⁰ However, some of the interviewed prisoners said that these legal acts are often outdated.¹⁰¹

⁸⁹ Helsinki Foundation for Human Rights, Jak informować w postępowaniu karnym? Polskie prawo i praktyka, a standardy europejskie, 2016, available at: http://www.hfhr.pl/wp-content/uploads/2016/04/dyrektywa_ca%C5%82o%C5%9B%C4%871.pdf

⁹⁰ Helsinki Foundation for Human Rights, Proposal to the Ministry of Justice, 7 April 2016, available at : http://www.hfhr.pl/wp-content/uploads/2016/04/Uwagi-do-projektow-wzorow-pouczenia_HFPC.pdf

⁹¹ Interviews with the prisoners from Piotrków Trybunalski; Interviews with the prisoners from Warsaw; Interviews with the Prison Service officers from Piotrków Trybunalski.

⁹² Interviews with the prisoners from Piotrków Trybunalski; Interviews with the prisoners from Warsaw.

⁹³ Interviews with the prisoners from Piotrków Trybunalski; Interviews with the Prison Service officers from Piotrków Trybunalski.

⁹⁴ Interview with the lawyer from the National Preventive Mechanism.

⁹⁵ Interviews with the prisoners from Piotrków Trybunalski.

⁹⁶ Interviews with the Prison Service officers from Warsaw.

⁹⁷ Interviews with the prisoners from Piotrków Trybunalski; Interviews with the prisoners from Warsaw;

⁹⁸ Interviews with the Prison Service officers from Piotrków Trybunalski.

⁹⁹ Interview with the penitentiary judge from Warsaw; Interviews with the prisoners from Piotrków Trybunalski;

¹⁰⁰ Interview with the lawyer from the National Preventive Mechanism.

¹⁰¹ Interviews with the prisoners [city has been hidden for the protection purposes].

In prison libraries, books with the templates of basic legal documents are available along with a computer with legal software.¹⁰² The computer in the library had also limited access to the Internet¹⁰³ (restricted by the Central Board of the Prison Service).¹⁰⁴ During one of the recent studies on the rights of persons deprived of liberty performed in the eight penitentiary facilities in the large Polish cities, the author of the study found that that all of the libraries in these facilities were equipped with computers.¹⁰⁵ However, the interviewed prisoners said that they have never used it.¹⁰⁶ The author of the study also confirmed that the persons deprived of liberty often ask Prison Service staff for legal information.¹⁰⁷

The Prison Service officers who were interviewed for the purpose of the study said that they use electronic translators in order to communicate with foreigners.¹⁰⁸ Moreover, some of them mentioned that electronic translators are provided to them for that purpose¹⁰⁹ or even that the complaints are being translated from the sources of the penitentiary facility.¹¹⁰

According to the information provided by the Prison Service staff, persons deprived of liberty are currently aware of their rights but the complaint system is usually appears complicated for them at first.¹¹¹ The high legal awareness of the persons deprived of liberty was also confirmed by the lawyer from the National Preventive Mechanism.¹¹²

4.3 Organisational and practical issues related to legal aid

According to one of the stakeholders, the current system of penitentiary complaints is definitely ineffective from the perspective of the detainees.¹¹³ Only the Prison Service officers interviewed for the purpose of the study said that its effective, especially due to the fact that it is a complaint to the penitentiary judge – not only to the Prison Service authorities.¹¹⁴ The Prison Service officers also mentioned that there are no negative consequences for false accusations in the complaints and due to that some of the persons deprived of liberty are submitting so many of them.¹¹⁵ One of the stakeholders said that there is a risk that if the legal aid system for the persons deprived of liberty was formed it could be abused, but at the same time she said that the current system of complaints is ineffective.¹¹⁶ The level of engagement of the penitentiary judges as well as their effectiveness was also criticized.¹¹⁷ Moreover, according to the recent studies, all of the persons who used such complaints, treated them as ineffective.¹¹⁸ As a result of the filed complaints the persons deprived of liberty are often transferred

¹⁰² Interviews with the prisoners from Piotrków Trybunalski; Interviews with the prisoners from Warsaw; Interviews with the Prison Service officers from Piotrków Trybunalski.

¹⁰³ Interview with the lawyer from the National Preventive Mechanism.

¹⁰⁴ Interviews with the Prison Service officers from Piotrków Trybunalski.

¹⁰⁵ Nielączna M., Mechanizm nie-doskonały Dobra administracja więzienna – ustalenia i konkluzje badawcze, Stowarzyszenie Interwencji Prawnej (Association for Legal Intervention), Warszawa 2017, p. 194.

¹⁰⁶ Interviews with the prisoners from Piotrków Trybunalski; Interviews with the prisoners from Warsaw

¹⁰⁷ Ibidem.

¹⁰⁸ Interviews with the Prison Service officers from Piotrków Trybunalski; Interviews with the Prison Service officers from Warsaw.

¹⁰⁹ Interviews with the Prison Service officers from Piotrków Trybunalski.

¹¹⁰ Interviews with the Prison Service officers from Warsaw.

¹¹¹ Interviews with the Prison Service officers from Piotrków Trybunalski.

¹¹² Interview with the representative of the National Preventive Mechanism; Interview with the head of the Legal clinic of the University of Warsaw (section of the detainees).

¹¹³ Interview with the head of the Legal clinic of the University of Warsaw (section of the detainees)

¹¹⁴ Interviews with the Prison Service officers from Piotrków Trybunalski; Interviews with the Prison Service officers from Warsaw

¹¹⁵ Interviews with the Prison Service officers from Piotrków Trybunalski.

¹¹⁶ Interview with the lawyer from the National Preventive Mechanism.

¹¹⁷ Interview with the lawyer from the National Preventive Mechanism.

¹¹⁸ Nielączna M., Mechanizm nie-doskonały Dobra administracja więzienna – ustalenia i konkluzje badawcze, Stowarzyszenie Interwencji Prawnej (Association for Legal Intervention), Warszawa 2017, p. 178.

to the other facilities.¹¹⁹ Moreover, the system of a penitentiary complain is ineffective from the perspective of the interviewed stakeholders.¹²⁰ Penitentiary supervision is not an effective tool of supervision.¹²¹ From the stakeholder's point of view, it has to be improved but still this is the mechanism which must be exhausted.¹²² Moreover, according to the recent studies, the persons deprived of liberty (40%) said that there is no access to the legal aid in the penitentiary facilities, 26% said that they do not know about it, 27% gave other answer and only 7% said that such access is provided.¹²³ The study also shows that only in the larger cities the legal assistance is provided by the legal clinics at the Universities.¹²⁴ This was also confirmed by the representative of the National Preventive Mechanism who also said that the Prison Service usually does not create obstacles for the students with the access to the persons deprived of liberty.¹²⁵

Formalities for filing a claim for legal aid:

The procedure for claiming legal aid in penitentiary procedures is not formalized. In these proceedings, a person deprived of liberty (again both convicted prisoners and pre-trial detainees based on Article 242 § 1 of CEC) may use the assistance of a lawyer established in this proceeding (Article 8 § 1 of CEC). Moreover, in court proceedings legal representation ("defense") is obligatory if a person is:

- deaf, mute or blind,
- there is justified doubt as to his sanity,
- a minor,
- the court deems that necessary because of other circumstances impeding the defense (Article 8 § 2 of CEC).

Furthermore, according to Article 8 § 2a of CEC the provision of Article 78 of CCP apply accordingly which means that on the request of the defendant who does not have a defense counsel of their own choice, one may demand to have an *ex officio* defense counsel appointed. One needs to adequately demonstrate that is not able to bear the costs of defense without detriment to support and maintenance for themselves and their family.

Granting legal aid in the procedures based on CEC, as well as other courts proceedings depends on the court and can take from a few days to a few months, but usually it takes a few weeks.

Organisation of financial aid for litigation and its concrete implementation

According to most of the stakeholders, the access to legal aid for the persons deprived of liberty, for the purpose of submitting complaints related to their detention, should be increased¹²⁶ and improved because the persons deprived of liberty often direct a different legal questions and problems to the penitentiary judges.¹²⁷ Except for only one interviewee persons deprived of liberty said that they would

¹¹⁹ Interview with the head of the Legal clinic of the University of Warsaw (section of the detainees).

¹²⁰ Interview with the representative of the National Preventive Mechanism; Interview with the head of the Legal clinic of the University of Warsaw (section of the detainees).

¹²¹ Interview with the head of the Legal clinic of the University of Warsaw (section of the detainees); Interview with the person from the National Preventive Mechanism; Interview with the Ombudsman's representative.

¹²² Interview with the head of the Legal clinic of the University of Warsaw (section of the detainees).

¹²³ Niełacznna M., Mechanizm nie-doskonały Dobra administracja więzienna – ustalenia i konkluzje badawcze, Stowarzyszenie Interwencji Prawnej (Association for Legal Intervention), Warszawa 2017, p. 193.

¹²⁴ Niełacznna M., Mechanizm nie-doskonały Dobra administracja więzienna – ustalenia i konkluzje badawcze, Stowarzyszenie Interwencji Prawnej (Association for Legal Intervention), Warszawa 2017, p. 193.

¹²⁵ Interview with the representative of the National Preventive Mechanism; Interview with the head of the Legal clinic of the University of Warsaw (section of the detainees).

¹²⁶ Interview with the penitentiary judge from Piotrków Trybunalski; Interview with the attorney from Piotrków Trybunalski; Interview with the Ombudsman's representative; Interviews with the Prison Service officers from Piotrków Trybunalski; Interviews with the prisoners from Warsaw.

¹²⁷ Interview with the penitentiary judge from Piotrków Trybunalski; Interview with the attorney from Piotrków Trybunalski;

not be able to represent themselves before the court in such cases;¹²⁸ the representative of the Ombudsman also said that from his perspective they do not have enough knowledge to do it properly.¹²⁹

4.4 Prisoners belonging to various minorities, under-represented or isolated groups within prisons

The monitoring of penitentiary facilities done by the National Preventive Mechanism has showed that the majority of penitentiary facilities - labeled or described as adapted to the needs of individuals with disabilities – in practice failed to guarantee them fully independent functioning within the penitentiary facility.¹³⁰ The treatment of inmates with disabilities was the subject of a recent ECHR's verdict in *Bujak v. Poland*¹³¹ where the court found a violation of Article 3 of the Convention due to the failure to provide a disabled inmate with appropriate orthopedic devices and appropriate care which forced him to rely on assistance from other inmates. In the opinion of the court, the situation violated his dignity and contributed to a level of suffering, which exceeded that normally associated with deprivation of liberty.

The treatment of prisoners qualified as those that constitute a particular threat to society or to the security of the penitentiary facility (high-risk inmates) was the subject of ECHR's judgments in *Piechowicz v. Poland*¹³² and *Horych v. Poland*¹³³ in which the court questioned the compliance of Polish practice in this regard with human rights standards. Moreover, in 2016-2017-, ECHR handed down 11 decisions in which it ruled that Poland had violated the Convention through its long-term incarceration of individuals in a regime designated for high-risk inmates. In its decisions, the court primarily noted the automatic and arbitrary assignment of the high-risk inmate status. However due to the methodological limitations, these information were not confirmed during the empirical study.

4.5 Organisation of remedies inside prison facilities among prisoners

Please find more at '4. PRISONERS AS LITIGANTS'.

5. Access to the internet/digital tools for prisoners

The provisions of CEC do not provide the direct right of a person deprived of liberty to access to the computer or to the internet within penitentiary facilities, including the remedies centers for pre-trial detainees. However, in practice – as a rule - the Prison Service carries out the tasks regulated in the Act on Access to Public Information of 6 September 2001 by providing persons deprived of liberty with access to the internet through computers. The data on the availability of computers as well as legal information software or other tools were not provided. However, the interviewees said that the prisoners often ask the prison staff for the hardware copies of the legal acts or templates of the complaints.¹³⁴ The prisoners confirmed that these are accessible and are being provided to them.¹³⁵ However, some of the interviewed prisoners said that these legal acts are often outdated and from their perspective it is better to buy own copies.¹³⁶ The Prison Service officers also mentioned that at times the European Court of Human Rights judgements concerning the rights of persons deprived of liberty are being distributed in prison cells.¹³⁷ The representative of the National Preventive Mechanism said that as a rule the access

¹²⁸ Interviews with the prisoners from Piotrków Trybunalski; Interviews with the prisoners from Warsaw;

¹²⁹ Interview with the Ombudsman's representative.

¹³⁰ The Ombudsman, Report on the activities of the National Preventive Mechanism in 2016, available at: rpo.gov.pl/sites/default/files/Raport%20Krajowego%20Mechanizmu%20Prewencji%20Tortur%20w%202016%20r..pdf.

¹³¹ *Bujak v. Poland* (application no.686/12).

¹³² *Piechowicz v. Poland* (application no.20071/07).

¹³³ *Horych v. Poland* (application no.13621/08).

¹³⁴ Interviews with the Prison Service officers from Piotrków Trybunalski; Interviews with the Prison Service officers from Warsaw.

¹³⁵ Interviews with the prisoners from Piotrków Trybunalski; Interviews with the prisoners from Warsaw

¹³⁶ Interviews with the prisoners [city has been hidden for the protection purposes].

¹³⁷ Interviews with the Prison Service officers from Warsaw.

to the legal software on computers is provided in penitentiary facilities¹³⁸. It was also confirmed by the Prison Service.¹³⁹ However, the interviewed prisoners said that they never use it.¹⁴⁰ According to a penitentiary judge, the access to the internet in the penitentiary facilities should be increased.¹⁴¹ The person from the Ombudsman's office said that currently in some of the facilities, even the video conference software is provided¹⁴², which was confirmed also by some of the interviewed prisoners.¹⁴³

Experimentation with or implementation of digital legal tools for prisoners and for defenders.

There is no information on such tools in Poland. As it was already mentioned, only computers, with access to the typical legal software are sometime available for detainees and most of lawyers have access to them (because they buy the license themselves).

6. RELEVANT LITERATURE

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¹⁴⁰ Interviews with the prisoners from Piotrków Trybunalski; Interviews with the prisoners from Warsaw

¹⁴¹ Interview with the penitentiary judge from Piotrków Trybunalski.

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