



FRA
Thematic Study on Child Trafficking

Poland

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Executive summary

- [1]. In Poland, the phenomenon of child trafficking is relatively poorly identified. We received the following information from the *Komenda Główna Straży Granicznej* [Border Guard Headquarters]: ‘(...)the Border Guard, actively participating in the implementation of the *Krajowy Program Zwalczania i Zapobiegania Handlowi Ludźmi* [National Programme for Combating and Preventing Trafficking in Human Beings] and performing a range of activities directly connected with this issue, so far have not discovered in the performance of their official actions any case in which the victim was a child (...)’.¹ No statistics were given in the governmental report on the implementation of the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography.² In the period 2003-2007 the police databases recorded three cases of aggrieved minors,³ while the statistics of the *Ministerstwo Spraw Wewnętrznych i Administracji (MSWiA)* [Ministry of Interior and Administration] reveal that in the period 2002-2007 76 minors were amongst the aggrieved parties to the proceedings conducted in human trafficking cases.⁴ At the same time, it has been emphasised in the publications on human trafficking that Poland is a transit country in the network of illegal transportation of victims from Eastern to Western Europe.⁵
- [2]. Generally, Poland has ratified the international instruments on human rights (the European Convention for the Protection of Human Rights and Fundamental Freedoms has been in force since 1993), children’s rights (the Convention on the Rights of the Child entered into force in 1991) and the key detailed instruments on human trafficking, including child trafficking, as well as the instruments on child abuse, prostitution and pornography. In principle, internal legal regulations also provide for the prosecution and penalising of human traffickers – under the *Kodeks karny (kk)* [Criminal Code] human trafficking is a felony which carries at least a three-year term of deprivation of liberty

1 Written reply from the Border Guard Headquarters of 23.06.2008 concerning the letter from the Helsinki Foundation for Human Rights requesting child trafficking data..

2 Report on the Realisation of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography under article 12(1) of the Protocol, the Republic of Poland, 2007 [only available in English].

3 Information obtained on the basis of the TEMIDA resources (police databases) on child trafficking in Poland in the years 2003-2007.

4 Statistical data on trafficking in human beings prepared in the *Biuro ds. Przestępczości Zorganizowanej Prokuratury Krajowej* [Organised Crime Unit of the National Public Prosecutor’s Office]. Sixty-four victims were under 15 and 12 were aged 16-17. For unknown reasons, minors at the age of 18 were not registered.

5 A. Morawska (2005) ‘Proceder handlu dziećmi-perspektywa doświadczeń europejskich’ in: *Kwartalnik Dziecko Krzywdzone. Teoria. Badania. Praktyka Problem handlu dziećmi i dziećmi cudzoziemskich bez opieki*. Vol. 12/2005.

- (imprisonment). Moreover, there are provisions enabling the authorities to provide assistance to victims of human trafficking.
- [3]. However, the phenomenon of trafficking in human beings, and children in particular, is difficult to identify and, in consequence, to prosecute. There are several reasons for this situation. Human traffickers take advantage of the absence of internal borders within the EU and the application of the simplified control procedure at border crossings. Although the Polish eastern border is now better protected, the Border Guard very seldom has the basis for stopping minors who cross the border with their legal or de facto guardians. On the other hand, minors travelling alone, not infrequently with forged documents, are advised by their ‘guardians’ that by applying for refugee status they ensure themselves a temporary stay in a refugee centre. The majority of unaccompanied, underage foreigners who are placed in intervention facilities escape shortly afterwards, in the majority of cases with the help of their ‘guardians’. (The study on unaccompanied, underage foreigners placed in the facilities in the period 2005-2006, conducted by the *Fundacja Dzieci Niczyje (FDN)* [Nobody’s Children Foundation] showed that only five per cent of the children in question stay there for at least a year. During the studied period, 318 minors were staying at the intervention facilities).⁶
- [4]. Due to the amount of training undertaken, officers of the Border Guard are increasingly more aware of the problem, but there are no procedures and legal tools enabling them to take action when minors cross the border.⁷ This is also visible in the research carried out by the Nobody’s Children Foundation.
- [5]. Victims of trafficking, especially children, are unaware of the danger. They trust the adults who promise them work and a better life in another country. When they finally become victims of crime, they are isolated and intimidated and therefore rarely able to reveal the harm suffered to somebody else. Even if a perpetrator is arrested, the most frequent charges they will face are exploiting the minor for the purposes of prostitution or pornography because the evidence of trafficking in humans is harder to find. Obviously, trafficking in human beings carries a much higher penalty than the other above-mentioned offences, but charges under provisions on exploiting minors are usually brought because it is easier to provide evidence for them. In total, 94 people were found guilty of human trafficking offences (contrary to Articles 253 and 204(4) of the Criminal Code)

6 M. Kukułowicz (ed.), *Dzieci cudzoziemskie w polskich placówkach opiekuńczo-wychowawczych i rodzinach zastępczych styczeń 2005-maj 2006. A study report*, 2007.

7 K. Fenik, *Charakterystyka handlu dziećmi z perspektywy Polski*, [in:] *Ministerstwo Spraw Wewnętrznych i Administracji Handel Ludźmi w Polsce. Materiały do raportu*, Warsaw, 2007.

by a final judgement in the period between 2000 and 2006.⁸ The quoted data show that in 2002-2006, 60 victims under the age of 15 and ten aged 16-17 were identified. In 2007, four cases were registered of victims aged under 15 and two aged 16-17.⁹ Therefore, based on the official data, the range of this phenomenon is insignificant. Everybody agrees that this is not the real face of the problem. However, what that face is, nobody knows.¹⁰ NGOs like La Strada¹¹ and the Nobody's Children Foundation¹² have been helping sexually abused children, victims of forced prostitution. Nevertheless, they are aware of the fact that only a few decide or are able to seek help.¹³

- [6]. Foreign minors left unaccompanied, so-called 'street children', are especially exposed to the risk of human trafficking. Yet that risk pertains also to the children brought up in foster institutions. Therefore these groups and the experts working with them should be the main recipients of preventive actions.

8 *Wydział Statystyki Ministerstwa Sprawiedliwości* [Ministry of Justice Department of Statistics] 'Prawomocnie skazane osoby dorosłe z oskarżenia publicznego za przestępstwa handlu ludźmi za lata 2000-2006'.

9 Information from Ministry of Interior and Administration website:

http://www.mswia.gov.pl/portal/pl/391/2001/Dane_statystyczne.html, date of last access: 22 July 2008.

10 The survey by the Nobody's Children Foundation of the representatives of the police and Border Guard concerning the phenomenon of child trafficking in Poland and the situation of unaccompanied, underage foreigners staying in Poland shows that knowledge of this phenomenon is relatively slight. The answers to the question on how many children become victims of child trafficking in Poland annually varied within the range of 0 to 20,000 cases. Over 55 per cent of the respondents indicated figures ranging from 0 to 100. At the same time, the vast majority (87.6 per cent) of people surveyed (239 police officers and 51 officers of the Border Guard) declared that they had never found themselves during their professional career in a situation in which a suspicion arose that a child might have been a victim of trafficking. Over six (6.6) per cent of the respondents admitted that they had been in such a situation once, while 5.5 per cent suspected the same more than once; this happened more than twice as often to Border Guard officers than to police officers. 86.9 per cent of those surveyed confirmed that they sometimes encounter children of a foreign origin who appear neglected. The study also revealed that 75.2 per cent of the respondents at least occasionally have contact with underage foreigners unattended by their parents. Almost 70 (69.6) per cent of those surveyed have, at least from time to time, contact with foreign children without any identity documents. The same percentage of respondents disclosed that, in conducting their professional duties, they encountered foreign children whom they suspected to be under the strong influence of an adult. More than 60 (66.2) per cent of those surveyed did not suspect that the person identifying themselves as the guardian of the foreign child might have lied about it. Over fourteen (14.5) per cent of those surveyed remembered only one such situation while 16.5 per cent had doubts about it several times.

11 http://www.strada.org.pl/index_en.html

12 <http://www.fdn.pl/>

13 According to information from Ms Irena Olczyk, a La Strada Foundation employee, in 2004-2006 there were six minors amongst the clients who approached the Foundation. In 2008, the Foundation assisted in two cases involving minors. Among underage foreigners questioned by the Nobody's Children Foundation (60 in total), in eight cases the Foundation notified the public prosecutor service of a suspicion of an illegal transportation of children from their country of origin (Ukraine and Vietnam), physical and sexual abuse. (Information received from K. Fenik, an employee of the Nobody's Children Foundation.)

- [7]. The problem of trafficking in human beings has been tackled in Poland in a more systemic manner since the establishment in 2004 of the *Zespół do spraw Zwalczania i Zapobiegania Handlowi Ludźmi* [Unit for Combating and Preventing Trafficking in Human Beings] and the Working Group comprised of both government experts and independent representatives of the NGOs whose task was to monitor the problem.
- [8]. During those few years several hundreds of specialists have been trained, a number of changes in the law have been implemented and information materials for the groups at risk and specialist publications have been published. An algorithm for handling an adult victim of human trafficking has also been prepared. Work on a similar algorithm for underage victims has been commenced. In the document produced in 2003 entitled *Wskazówki metodyczne dla prokuratorów prowadzących lub nadzorujących postępowanie karne w sprawach dotyczących handlu ludźmi* [‘Methodological guidelines for public prosecutors conducting or supervising criminal proceedings in cases of trafficking in human beings’] by the *Biuro ds. Przestępczości Zorganizowanej Prokuratury Krajowej* [Organised Crime Unit of the National Public Prosecutor’s Office] the principles of handling foreign children who are victims of trafficking are outlined. However, in order to tackle the phenomenon of child trafficking more effectively, it is necessary to take action and create procedures facilitating victim identification, including the procedures for detailed control and registration of the cases where a minor crosses the border alone or accompanied by an adult who is not their parent. Furthermore, a model of supporting and protecting the children who are victims of people trafficking must be developed. What follows is the necessity to gather information on unaccompanied foreign children and create a more effective assistance scheme, since the aid that is currently being provided is, in the opinion of the NGO representatives, insufficient. It is also necessary to keep more detailed statistics on child trafficking, concerning both the traffickers and the victims.
- [9]. There are too few social campaigns raising awareness of the magnitude of the problem directed at both adults and children.

A. General anti-child trafficking framework

A.1. Ratification of international legal instruments

[10]. Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography – entered into force with respect to Poland on 09.08.2005 (Journal of Laws of 2007, No. 76, item 494).

Poland prepared, and submitted in July 2008, the first report (CRC/C/OPSC/POL/1 (2007)) on the implementation of the Protocol, to be considered by the UN Committee on the Rights of the Child in September 2009.¹⁴ The Helsinki Foundation for Human Rights, together with the *Fundacja Dzieci Niczyje (FDN)* [Nobody's Children Foundation] prepares an alternative report. According to opinion of professor Zbigniew Lasocik (expert in human trafficking) expressed in the publication entitled *Handel dziećmi – wybrane problemy* ['Child trafficking – selected issues'] by the *Ośrodek Badań Handlu Ludźmi Uniwersytetu Warszawskiego* [Warsaw University Human Trafficking Studies Centre],¹⁵ although Poland ratified the Protocol in 2005, its full implementation into the Polish legal system still leaves a lot to be desired. No-one among the government officials feels responsible. The provisions of the Protocol indicate the Ministry of Justice and Ministry of National Education, but for the last two years these two institutions have been competing (in a negative sense) to get rid of this responsibility as effectively as possible. We share the criticism expressed in this publication. In general there is no particular discrepancy among academic and NGO circles with respect to the approach to child trafficking and assessment of the attitude of the Government.

- United Nations (UN) Convention against Transnational Organised Crime/ Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons – entered into force with respect to Poland on 25.12.2003 (Journal of Laws of 2005 No. 18, item 158 and 160)
- International Labour Organization (ILO) Convention Nr 182 on the Worst Forms of Child Labour – entered into force on 09.08.2003 (Dz. U. of 2004, No. 139, item 1474)

¹⁴ The report is available in English at:

http://www.bayefsky.com/docs.php/area/reports/treaty/crc/opt/2/state/137/node/4/filename/poland_crc_c_opsc_pol_1_2007_adv

¹⁵ On this study please para. 29.

- Council of Europe (CoE) Convention on Action against Trafficking in Human Beings – entered into force with respect to Poland on 21.06.2008 (Journal of Laws of 2008, No. 97, item 626)
- CoE Convention on the protection of children against sexual exploitation and sexual abuse – signed on 25.10.2007, but not yet ratified.

Poland has also ratified many older instruments, including the 1926 Slavery Convention and the 1950 International Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others and the 1957 ILO Convention No. 105 on the Abolition of Forced Labour.

A.2. Legal provision criminalising child trafficking in domestic law

[11]. Basic provisions on trafficking in human beings concern all people, regardless of the age of the victim. There are also special provisions on, for example, the exploitation of the victim for the purposes of prostitution and pornography (some of these provisions also concern victims of trafficking) which base the legal classification of the offence on the age of the victim.

[12]. Trafficking in human beings

Criminal Code¹⁶

Article 253

§ 1 Whoever traffics in human beings, even with the consent thereof, shall be subject to the penalty of deprivation of liberty for a minimum term of three years.¹⁷

§ 2. Whoever, in order to gain a material benefit, organises the adoption of children in violation of the law shall be subject to the penalty of deprivation of liberty for a term of between three months and five years.

Offences against sexual liberty and decency

Article 197

¹⁶ Translation of the relevant legal provisions has been made by a legal translator cooperating with the Helsinki Foundation for Human Rights.

¹⁷ It is worth mentioning at this point that Article 253 § 1 of the Criminal Code infringes the principle *nullum crimen sine lege certa* in designating the term 'trafficking in human beings' in an insufficiently detailed manner. This in turn creates interpretation problems at the sentencing stage. This problem has not been yet solved and currently – within the framework of the National Programme – it has been acknowledged by the Government that a relevant definition must be introduced into the Criminal Code and a draft law modelled on the Palermo Declaration has been proposed.

§ 1. Whoever subjects another person to sexual intercourse by force, illegal threat or deceit shall be subject to the penalty of deprivation of liberty for a term of between two and twelve years.

§ 2. If the perpetrator subjects another person to a sexual act or makes them perform such an act in the manner specified in § 1 they shall be subject to the penalty of deprivation of liberty for a term of between six months and eight years.

§ 3. If the perpetrator commits rape together with another person they shall be subject to the penalty of deprivation of liberty for a term of minimum three years.

§ 4. If the perpetrator of the offences described in § 1-3 acts with particular cruelty they shall be subject to the penalty of deprivation of liberty for a term of minimum five years.

Article 199

§ 1 Whoever subjects another person to sexual intercourse or any other sexual act or makes them perform such an act, abusing a relationship of dependence or taking advantage of a critical situation, shall be subject to the penalty of deprivation of liberty for a term of maximum three years.

§ 2. If the offence described in § 1 is committed to the detriment of a minor the perpetrator shall be subject to the penalty of deprivation of liberty for a term between three months and five years.

§ 3. The penalty under § 2 shall be imposed on a person who subjects a minor to a sexual act or makes them perform such an act, abusing a relationship of trust or in consideration of a material or personal benefit or a promise thereof given to the minor.

Article 200

§ 1 Whoever submits a minor under the age of 15 to sexual intercourse or commits any other sexual act thereon or causes a minor under the age of 15 to submit themselves to or to perform such acts shall be subject to the penalty of deprivation of liberty for a term of between two and 12 years.

§ 2 The same penalty shall be imposed on a person who, in order to satisfy their sexual needs, shows a sexual act to a minor under the age of 15.

Article 202

§ 1 Whoever publicly presents pornographic content in a manner which may result in forcing a person who wishes otherwise to receive such content shall be subject to a fine, a penalty of limitation of liberty or a penalty of deprivation of liberty for a maximum term of one year.

§ 2 Whoever presents pornographic content to a minor under the age of 15 or makes available objects of this nature thereto or disseminates pornographic content in a manner allowing the minor to access such content shall be subject to a fine, penalty of limitation of liberty or deprivation of liberty for a maximum term of two years.

§ 3 Whoever produces, records or imports to disseminate, keeps or holds or distributes or publicly presents the pornographic content in which a minor (...)

participates shall be subject to a penalty of deprivation of liberty for a term of between six months and eight years.

§ 4 Whoever records pornographic content in which a minor under the age of 15 participates shall be subject to a penalty of deprivation of liberty for a term of between one and ten years.

§ 4a Whoever imports, keeps or holds pornographic content in which a minor under the age of 15 participates shall be subject to a penalty of deprivation of liberty for a term of between three months and five years.

Article 203

Whoever subjects another person to practise prostitution by force, illegal threat, deceit or taking advantage of a critical situation shall be subject to a penalty of deprivation of liberty for a term of between one year and ten years.

Article 204

§ 1. Whoever, in order to derive a material benefit, persuades another person to practise prostitution or facilitates the same shall be subject to a penalty of deprivation of liberty for a maximum term of three years.

§ 2. The penalty under § 1 shall be imposed on a person who derives a material benefit from prostitution practised by another person.

§ 3. If the person [the victim] described in § 1 or 2 is a minor, the perpetrator shall be subject to the penalty of deprivation of liberty for a term of between one year and ten years.

§ 4. The penalty under § 3 shall be imposed on a person who entices or abducts another person in order to practise prostitution abroad.

[13]. Offences against liberty

Article 189

§ 1. Whoever deprives a human being of their liberty shall be subject to a penalty of deprivation of liberty for a term of between three months and five years.

§ 2. If the deprivation of liberty exceeded the period of seven days or was associated with particular torment the perpetrator shall be subject to a penalty of deprivation of liberty for a term of between one year and ten years.

Article 190

§ 1. Whoever makes a threat to another person to commit an offence to the detriment of such a person or their close relatives and partners, provided the threat causes in the person threatened a justified fear that it will be carried out, shall be subject to a fine, penalty of limitation of liberty or penalty of deprivation of liberty for a maximum term of two years.

§ 2. The offence is prosecuted on a motion of the aggrieved party.

Article 191

§ 1. Whoever uses violence or an illegal threat against another person with the purpose of compelling another person to conduct themselves in a specified

manner, or to resist from or to submit to a certain conduct, shall be subject to the penalty of deprivation of liberty for a term of three years.

§ 2. If the perpetrator acts in the manner described in § 1 in order to extort the return of a debt they shall be subject to the penalty of deprivation of liberty for a term of between three months to five years.

[14]. Protection of minors from exploitation at work

Kodeks Pracy (kp) [Labour Code] prohibits the employment of a person under the age of 16 (Article 190 § 2). Juvenile persons aged between 16 and 18 may be employed under the special conditions precisely defined by law.

Article 304

§ 1. Provision of work or other gainful activities by a child under the age of 16 shall be permitted only for the benefit of an entity carrying out cultural, artistic, sport or advertising business and require prior consent given by the statutory representative or the guardian of the child as well as the permission of a competent *inspektor pracy* [labour inspector].

[15]. Protection from inducement to beg

Article 104 of the *Kodeks wykroczeń* (kw) [Petty Offences Code] provides that a person inducing a minor, a helpless person, a ward or a person remaining in a relationship of dependency with them to beg shall be subject to a penalty of custody, limitation of liberty or a fine.

[16]. Protection from forced marriages

Article 7 of the *Kodeks rodzinny i opiekuńczy* (kro) [Family and Guardianship Code] provides that prospective spouses must give their consent to conclude a marriage before a *kierownik urzędu stanu cywilnego* [Head of the Local Registrar's Office] and then declare that they are entering into the marriage willingly.

[17]. Protection from trafficking in human organs

The *Ustawa o pobieraniu, przechowywaniu i przeszczepianiu komórek, tkanek i narządów* [Act on taking, storing and transplanting cells, tissues and organs] (Dz. U of 01.07.2005 No. 169 item 1411) under Articles 43-46 penalises taking, transplanting, acquiring, acting as an agent in acquiring or selling cells, tissues and organs. Depending on the type of the offence, a five-year term of deprivation of liberty may even be imposed upon the perpetrator.

[18]. Legal provision and/ or case- law establishing direct applicability of international standards

In accordance with Article 87(1) of the Constitution of the Republic of Poland, ratified international agreements are the source of universally binding law. Article 91(1) provides for a direct application of such agreements unless a statute is required for the application thereof. Moreover, an international agreement ratified with the prior consent expressed in a statute takes precedence

over a statute in the event that the latter cannot be reconciled with the agreement in question.

Unfortunately, international law is not widely known and thus often remains unapplied.¹⁸

[19]. Legal provision establishing the principle of the best interests of the child

Essentially, there are many provisions of this type, so just a few examples are given here. The Constitution, in Article 72(1), states that, ‘...the Republic of Poland shall ensure the protection of the rights of the child. Everyone shall have the right to demand of the organs of public authority that they defend children against violence, cruelty, exploitation and actions which undermine their moral sense.’

- Article 72 (2): ‘A child deprived of parental care shall have the right to care and assistance provided by the public authorities’.
- Article 72(3): ‘The organs of public authority and persons responsible for children, in the course of establishing the rights of a child, shall consider and, insofar as is possible, give priority to the views of the child’.
- Article 577 of the *Kodeks postępowania cywilnego* (kpc) [Code of Civil Procedure]: ‘The *sąd opiekuńczy* [guardianship court] may amend its ruling, final or otherwise, if the interest of the person who is the subject of the proceedings so requires’.
- Article 41 of the Criminal Code: ‘The court may impose a prohibition to perform a profession involving contact with children on perpetrators of sexual offences against children’.

The new ‘Methodological guidelines for public prosecutors conducting or supervising criminal proceedings in cases of trafficking in human beings’ prepared by the National Prosecutor’s Office provide for the special treatment of underage victims of trafficking in human beings (see para. 64 of the Report). The school principal shall suspend a teacher and the authority running the school shall suspend the school principal if criminal proceedings that have been initiated or a motion to initiate disciplinary proceedings which has been filed (against any of them) concerns the violation of rights and interests of a child (Article 83 (1)(a) of the *Ustawa Karta Nauczyciela* [Teacher’s Charter Act]).

¹⁸ According to the opinion expressed in: B. Namysłowska-Gabrysiak (2007) ‘Analiza orzeczeń sądowych pod kątem zgodności z definicją zawartą w aktach międzynarodowych w szczególności w Protokole z Palermo’, in: *Handel ludźmi w Polsce. Materiały do raportu*, Warszawa: Ministerstwo spraw wewnętrznych i administracji, p35.
http://www.mswia.gov.pl/portals/pl/468/5517/Publikacje_nt_handlu_ludzmi.html, last access on 22 July 2008.

A.3. Other instruments

[20]. National Plan of Action. There is no separate Plan of Action in respect of combating child trafficking. The first National Programme for Combating and Preventing Trafficking in Human Beings was prepared by the Ministry of Interior and Administration and approved by the Council of Ministers on 16.09.2003; the deadline for the completion of tasks was set for the end of 2004. The next Programme covered the period 2005-2006 while the current one covers 2007-2008.¹⁹ Each Programme includes a list of tasks to be implemented in the following areas: organisational activities (e.g. establishing working teams and coordinators at various levels as well as different services whose duty is to monitor the phenomenon at the local level, gathering data, organising assistance for the victims, etc.); educational activities (training the personnel of the Border Guard, police, public prosecutor service, courts and social workers); legal activities (putting forward proposals for the necessary legal regulations aimed at more efficient prosecution of the perpetrators and identification of the victims). In the 2005-2006 and 2007-2008 Programmes the issue of child trafficking was mentioned as a separate phenomenon. The necessity was highlighted of conducting appropriate training, information campaigns and implementing procedures for dealing with child victims of trafficking.

[21]. Evidence of changes

As a result of the implementation of the National Programme, the Unit for Combating and Preventing Trafficking in Human Beings as well as the Working Group were established (please see below for further description of the Unit and the Working Group). These two bodies influenced the development and implementation of subsequent programmes. A draft amendment of the Criminal Code was prepared (aimed at introducing a definition of 'human trafficking' in accordance with the Palermo Declaration). However, the amendment has not been adopted yet due to unexpected new elections to the Parliament and the discontinuation of the work of the Parliament.

A procedure was prepared for the treatment of an identified victim of human trafficking (an similar procedure is being developed for minor victims). There were amendments introduced into the *Ustawa o cudzoziemcach* [Act on

¹⁹ All National Programmes for Combating and Preventing Trafficking in Human Beings and the reports on their implementation are available at <http://www.mswia.gov.pl/portal/pl/390/2174/Dokumenty.html>, last access on 22 July 2008.

English version at http://www.mswia.gov.pl/portal/pl/395/4727/English_version.html, last access on 22 July 2008.

[http://www.mswia.gov.pl/portal/pl/395/4727/Dokumenty.html%0D%0D%02Report on the implementation of the National Programme for Combating and Preventing Trafficking in People, 2003/2004.%0D%02 Informat](http://www.mswia.gov.pl/portal/pl/395/4727/Dokumenty.html%0D%0D%02Report%20on%20the%20implementation%20of%20the%20National%20Programme%20for%20Combating%20and%20Preventing%20Trafficking%20in%20People%2C%202003%2F2004.%0D%02Informat)

Foreigners], *Ustawa o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej* [Act on Granting Protection to Foreigners within the Territory of the Republic of Poland] and *Ustawa o pomocy społecznej* [Act on Social Assistance]. The first amendments entered into force in 2005, followed by the 2007 revision, while the last ones were introduced in May 2008.

They regulate such issues as providing assistance to foreigners who are granted a tolerated or temporary residence permit relating to their cooperation with law enforcement bodies resulting from a crime committed against such foreigners. In addition, a new provision was introduced: it obliges the Border Guard to take an underage foreigner to a childcare institution – to an emergency foster family in the first instance. However, such emergency homes are still scarce.

Furthermore, the issue of human trafficking was introduced into educational programmes for social workers, the police and the Border Guard. It has also been added to the general curricula for school education.²⁰ As a result of the training which has been held, the level of knowledge and awareness among representatives of relevant institutions has grown, but it is still insufficient.

Since 2006, the *Centralny Zespół do walki z Handlem Ludźmi* (Central Unit for Combating Human Trafficking), established by virtue of the Decision no. 488 of the Chief Commissioner of the Police dated 05.09.2006, has been in operation at *Komenda Główna Policji (KGP)* [General Headquarters of the Police]. It comprises seven officers and one civilian employee, with three to four further positions promised for this year. Such teams have also been established at the level of the *Komenda Wojewódzka Policji* [Provincial Police Headquarters]. There are 48 people working in such teams in 16 provinces. In total, the police have 346 positions for human trafficking specialists.²¹

The National Programme produced a publication entitled *Handel ludźmi w Polsce. Materiały do raportu* [Human trafficking in Poland. Materials for the report],²² summarising the knowledge on human trafficking obtained so far. A brochure on child trafficking, prepared by the Nobody's Children Foundation, has also been published.²³

[22]. Data collection mechanisms

20 Information from the report on the implementation of the National Programme for Combating and Preventing Trafficking in Human Beings, 2003/2004 available at: <http://mswia.gov.pl/portal/pl/390/2174/Dokumenty.html>.

21 Information obtained from the General Headquarters of the Police.

22 *Handel ludźmi w Polsce. Materiały do raportu*, (2007), Warszawa: Ministerstwo Spraw Wewnętrznych i Administracji, available on the Ministry of Interior and Administration website: http://www.mswia.gov.pl/portal/pl/468/5517/Publikacje_nt_handlu_ludzmi.html, last access on 22 July 2008.

23 Publication available at the Ministry of Interior and Administration website: http://www.mswia.gov.pl/portal/pl/468/5517/Publikacje_nt_handlu_ludzmi.html, last access on 22 July 2008.

In general, it is hard to say that a specific method is in place for data collection on human trafficking. The Ministry of Justice and the General Headquarters of the Police collect data on crimes related to human trafficking. There is no system for the collection of information on crime victims. In addition, data on cross-border traffic and any related crimes are collected (by the Border Guard Headquarters). Fragmentary data are also gathered by non-governmental organisations such as the Nobody's Children Foundation (unaccompanied minor foreigners), La Strada Foundation (victims of prostitution) and Itaka Foundation (missing persons).

A plan was developed to include in the structures of the General Headquarters of the Police's Central Unit for Combating Human Trafficking the officers of the General Headquarters of the Police's *Biuro Wywiadu Kryminalnego* [Criminal Intelligence Office] – *Wydział Zaawansowanych Technologii Informatycznych* [Department of Advanced Information Technologies] and *Wydział Analizy Kryminalnej* [Department of Criminal Analysis]. The aim of this is to create at the level of the General Headquarters of the Police two interlinked databases within the *System Meldunku Informacyjnego* [Information Reporting System]. The databases will collect all the reports submitted to the police and information gathered by the police on human trafficking, paedophilia and child pornography. The databases will be linked to the national information reporting system and thus will also be connected to relevant Europol databases.

The databases will be operated by a designated chartered crime analyst of the Criminal Intelligence Office who will conduct continuous operational analysis (detection), strategic analysis (trend identification) and statistical analysis (for research purposes) of human trafficking in Poland, also in relation to other European and Asian countries connected with the Polish 'market' through illegal migrants' smuggling and human trafficking routes.

The statistical data and other information which is not confidential will be made available to the scientific community, including Warsaw University which monitors and researches the phenomenon of human trafficking.²⁴

According to our information this unit is not working yet, especially with respect to children.

[23]. Designated budget

For the implementation of the tasks included in the National Programme for Combating and Preventing Trafficking in Human Beings in the years 2007-2008, the Ministry of Interior and Administration has earmarked state budget funds of PLN 200,000 (approx. 65,000 EUR), plus PLN 150,000 (approx. 45,000 EUR) as a designated subsidy for the financing or co-financing of tasks commissioned to foundations. The La Strada Foundation against Trafficking in

²⁴ Information from the National Programme for Combating and Preventing Trafficking in Human Beings.

Women has been implementing its support and protection programme for victims of human trafficking for several years now.

In addition, the *Ministerstwo Pracy i Polityki Socjalnej* (MPiPS) [Ministry of Labour and Social Policy] earmarked in its 2007 budget an amount of PLN 80,000 for social worker training on the treatment of victims/witnesses of human trafficking.²⁵ Moreover, Ministry of Labour and Social Policy funds were used to finance aid for foreigners who obtained a permit for tolerated or temporary residence (including victims of human trafficking).

[24]. Designated budget (to support research). There are no specifically assigned funds for research. Research has been conducted, e.g. by Warsaw University's Human Trafficking Studies Centre from a grant from the US Department of State (with the intermediary of the US Embassy) within the framework of the Program "Law and Democracy". Within the project, an international conference has been organized (on 22 April 2004), 10-days expert seminar for NGOs and governmental experts, 5-days basic seminar for 110 members of uniform services (Border Guard, Police etc), analysis of press publications on child trafficking in 1995 – 2005, as well as the research on 1.100 prosecutors as regards definition of the "human trafficking" contained in the Polish Criminal Code.

The National Programme for 2007-2008 states that research may be financed by European Union programmes.

[25]. Monitoring mechanisms

The Team for Combating and Preventing Trafficking in Human Beings includes an interdepartmental, multidisciplinary Working Group for human trafficking monitoring (including the collection of statistical data). The Working Group includes representatives of the Ministry of Interior and Administration, General Headquarters of the Police, Border Guard Headquarters, *Urząd ds. Cudzoziemców* [Office for Foreigners], the Ministry of Justice, public prosecutor service, the courts, *Pełnomocnik ds. Równego Statusu Kobiet i Mężczyzn* [Plenipotentiary for the Equal Status of Women and Men] (now *Pełnomocnik ds. Równego Statusu Prawnego* [Plenipotentiary for Equal Legal Status]), *Ministerstwo Edukacji Narodowej i Sportu* [Ministry of National Education and Sport], Ministry of Labour and Social Policy, *Ministerstwo Spraw Zagranicznych* [Ministry of Foreign Affairs], *Ministerstwo Zdrowia* [Ministry of Health], *Urząd Komitetu Integracji Europejskiej* [Office of the Committee for European Integration] and non-governmental organisations (including Caritas, La Strada, Itaka and the Nobody's Children Foundation), and may cooperate with other experts. The aim of the Working Group is:

- to monitor the implementation of the National Programme for Combating and Preventing Trafficking in Human Beings;

²⁵ Information obtained from P. Mierecki, Secretary of the Unit for Combating and Preventing Trafficking in Human Beings.

- to gather information and statistical data on human trafficking and to analyse them;
- to develop proposals for actions for the institutions represented in the Working Group and for other bodies of public administration and their subordinate organisational units or units supervised by them, to cooperate with foreign partners.

[26]. National Referral Mechanism

As regards legal basis, *Zespół ds. Zwalczenia i Zapobiegania Handlowi Ludźmi* [Team for Combating and Preventing Trafficking in Human Beings], an opinion-making and consultative body has been established by the Ordinance No. 23 of the Prime Minister of 05.03.2004²⁶. The Team includes: as the president – a representative of the minister who is competent in internal affairs at the level of Undersecretary of State; deputy president – Deputy Chief Commissioner of the Police; members – representatives of:

- the Minister with responsibility for education and training;
- the Minister of Justice;
- the Minister with responsibility for internal affairs;
- the Minister with responsibility for social security;
- the Minister with responsibility for foreign affairs;
- the Minister with responsibility for health;
- the Police Chief Commissioner;
- the Border Guard Commander;
- the Government Plenipotentiary for Equal Status for Women and Men, now Plenipotentiary for Equal Legal Status;
- the Head of the Office for Foreigners;
- the National Prosecutor;
- the Secretary of the Committee for European Integration.

The Team's secretary is a delegated employee of the Ministry of Interior and Administration. The tasks of the Team include:

- assessment of the implementation of programmes for combating and preventing trafficking in human beings;
- proposing and issuing opinions on the actions aimed at effective combating and prevention of trafficking in human beings. Government administrative bodies provide the Team with necessary assistance in the performance of its tasks, within the scope of their competences.

The Team meets at least twice a year. In addition, the General Headquarters of the Police operates the Central Unit for Combating Human Trafficking. In June

²⁶ http://www.mswia.gov.pl/portal/pl/395/4727/English_version.html, last access on 22 July 2008.

2007 human trafficking consultants were appointed in appellate prosecutor's offices.²⁷ At the Provincial Office level, a network of provincial consultants in Social Policy Departments is being established. So far, the consultants have been trained in the issues related to human trafficking, including the specific area of trafficking in children. Work is underway to provide tools for the cooperation of various institutions at the local level. Provincial consultants are to coordinate the actions of specific authorities within the network of cooperation.

According to our information, consultants are now undertaking training, but have not yet started their operational activity.

[27]. Training strategy

Since 2004 regular training courses have been held for various public bodies within the implementation of the National Programmes for Combating and Preventing Trafficking in Human Beings. Most trainings concern issues related to human trafficking, including the specific area of trafficking in children.²⁸

The key trainings on the issue of child trafficking are as follows.

In 2005 the Nobody's Children Foundation, in cooperation with the British Embassy and the Border Guard Headquarters, held Poland's first educational and publication programme which was called 'Dzieci nie są na sprzedaż' [Children are Not For Sale]. It was an awareness-raising campaign, aimed at the general public, as well as professionals in the field, parents, the education sector and children.

Since 2006, the tasks of the programme have been continued and extended. The Nobody's Children Foundation which functions as the *Narodowy Punkt ds. Dzieci Cudzoziemskich bez Opieki i Dzieci – Ofiar Handlu* [Polish Focal Point for Unaccompanied Foreign Children and Child Victims of Human Trafficking] – as part of the cooperation within the Council of the Baltic Sea States initiated a programme to raise awareness among professionals who encounter unaccompanied foreign children in their work in the field of human trafficking.²⁹

²⁷ Information obtained from the General Headquarters of the Police in June 2008.

²⁸The list of research and educational projects already carried out is given in *Handel ludźmi w Polsce. Materiały do raportu*, Warszawa: Ministerstwo Spraw wewnętrznych i Administracji, pp. 131-136.

http://www.mswia.gov.pl/portal/pl/468/5517/Publikacje_nt_handlu_ludźmi.html, last access on 22 July 2008.

²⁹ Please note the Council of the Baltic Sea States is active in the field of human trafficking. For example in 2003 they made a survey on trafficking in human beings comparing the initiatives taken by the 11 CBSS member states to combat trafficking in human beings. The overall aim of the CBSS in relation to human trafficking is to establish common standards in compliance with international norms, and push together for more regional exchange and cooperation. <http://www.cbss.st/documents/cbsspresidencies/12estonian/traffickingsurvey>, last access on 22 July 2008.

The programme is mainly targeted at workers at intervention facilities as well as officers of the Border Guard and the police. In 2006 and 2007 the training activities were also addressed at lawyers and students who work for non-governmental organisations and lawyers working at Warsaw University Law Clinics who provide assistance to foreigners, including minors, applying for refugee status in Poland. Numerous training programmes aimed at professionals (including judges and public prosecutors) have been held by the La Strada Foundation and the *Ośrodek Badania Handlu Ludźmi UW* [Warsaw University Human Trafficking Research Centre].³⁰

[28]. Policy of non-criminalisation of child victims

Minors, including unaccompanied foreigners (or human trafficking victims), apprehended due to the lack of or false documents are placed in care facilities until their legal situation is clarified.

Prostitution in Poland is not penalised. In the case of minors, it is treated as a symptom of moral corruption, which means that such a child should be provided with care but not punished. It is a result of the general approach to the criminalisation of offences committed by minors. The philosophy underlining Polish regulations is to bring them up and take care of them and not to penalise them with criminal sanctions.

³⁰ Information obtained from the employees of the La Strada Foundation and Nobody's Children Foundation as well as from the reports on the implementation of the National Programmes for Combating and Preventing Trafficking in Human Beings.

B. Prevention of child trafficking

[29]. Awareness-raising campaigns

Thanks to funds from the Ministry of Interior and Administration, the following publications were produced in cooperation with the La Strada Foundation and Nobody's Children Foundation:

- a comic book entitled *Nie jesteś na sprzedaż* [You Are Not For Sale] modelled on the comic book of the Council of Europe;
- leaflets (circulation of 30,000 copies) in Russian, Ukrainian and Vietnamese that include information necessary for people who come to Poland and may become victims of human trafficking (distributed in Polish consulates);
- *Kompas podróżny* [Travel Compass] brochure (circulation of 24,000 copies), a guide for Poles going abroad to work. The guide provides information on methods to avoid becoming a victim of human trafficking and guidelines on how to behave and whom to contact if one falls victim to human trafficking;
- awareness posters targeted at people going abroad (circulation of 1,000 copies);
- brochure on child trafficking entitled *Problem handlu w Polsce i na świecie* [The Issue of Trafficking in Poland and Abroad] (circulation of 2,000 copies). The brochure includes information on Polish and international legal regulations, estimates of the scale of child trafficking, information on the identification of child victims of trafficking and on contacting them as well as information on Polish and international institutions operating in the area of child trafficking.

In 2005 in cooperation with *Caritas Archidiecezji Warszawskiej* [Caritas of the Warsaw Archdiocese], as part of an international campaign for the prevention of prostitution and human trafficking, the following materials were produced:

- leaflets (circulation of 25,000 copies);
- posters (circulation of 5,000 copies);
- leaflet cards (circulation of 5,000 copies).

In addition, the La Strada Foundation published the following prevention materials:

- prevention postcard – 10,000 copies;
- information leaflet for human trafficking victims – 5,000 copies;

- identification leaflet for victims (in Russian, Ukrainian, Romanian and English) – 14,000 copies;
- prevention leaflet for women coming to Poland (in Russian – 14,000 copies, Ukrainian – 5,000 copies, Romanian – 4,000 copies, English – 4,000 copies);
- prevention leaflet for Polish women going abroad – 15,000 copies;
- prevention poster – 5,000 copies;
- information leaflet for people planning to work in the sex industry – 3,000 copies;
- brochure – *Pomoc prawna dla ofiar handlu ludźmi* [Legal Assistance for Human Trafficking Victims].

Nobody's Children Foundation developed and published:

- Volume 12/2005 of the quarterly *Dziecko Krzywdzone. Teoria. Badania. Praktyka* [Abused Child. Theory. Research. Practice],³¹ financed by the Ministry of Education and Science. It is the first publication in Poland that includes articles by both Polish and international authors on the issue of child trafficking and unaccompanied foreign children;
- posters and leaflets – 'Dzieci nie są na sprzedaż' [Children Are Not For Sale].

The posters and leaflets containing basic information on child trafficking and the key questions to be asked to a child from the risk group were sent to Border Guard units and are distributed among all the participants of trainings on the issue, including police officers, emergency childcare facilities and other facilities and institutions which have contact with unaccompanied foreign children.

In March 2006 the first *Krajowa Konferencja nt. Zwalczania i Zapobiegania Handlowi Ludźmi* [National Conference on Combating and Preventing Trafficking in Human Beings] was held. The conference was attended by experts from public administration institutions, non-governmental organisations and scientific communities all over Poland. The conference resulted in recommendations later used for the development of the National Programme. In addition, the conference was the only forum of its kind to enable broad debate and sharing of experience in the area of human trafficking.³²

The Human Trafficking Research Centre at Warsaw University published three books:

³¹ Available at: http://dzieckokrzywdzone.pl/kwartalnik /kwartalnik_12_2005/, last access on 22 July 2008.

³² Information obtained from the employees of the La Strada Foundation and Nobody's Children Foundation as well as the reports on the implementation of the National Programme for Combating and Preventing Trafficking in Human Beings.

- Z. Lasocik (ed.) (2006) *Handel ludźmi – zapobieganie i ściganie* [Human Trafficking – prevention and law enforcement], Warsaw: Katedra Kryminologii i Polityki Kryminalnej, IPSiR UW;
- Z. Lasocik, M. Wiśniewski (eds.) (2006) *Handel narządami ludzkimi. Etyka, prawo i praktyka* [Trafficking in Human Organs. Ethics, Law and Practice], Warsaw: Katedra Kryminologii i Polityki Kryminalnej, IPSiR UW;
- Z. Lasocik, M. Koss, Ł. Wieczorek (eds.) (2007) *Handel dziećmi. Wybrane problemy* [Child trafficking. Selected issues], Warsaw: Katedra Kryminologii i Polityki Kryminalnej, IPSiR UW.³³

In our opinion the number of publications and their distribution is still not sufficient to raise awareness as regards the problem. We think that permanent public campaigns are necessary, while currently such campaigns happen from time to time. There is also a need for additional educational activities. Our general feeling is that much more should be published on this topic, bearing in mind its importance.

[30]. Direct participation, where appropriate, of children

There are no examples of children being directly involved in campaigns. However, as can be seen from para. 29 above, activities aimed at raising awareness of the issue of human/child trafficking are undertaken mainly by non-governmental organisations.

[31]. Direct participation of local communities

An example of the participation of local communities may be an open tender announced in June 2008 by the Mazowieckie Province for financial support in 2008 for the implementation of a human trafficking victims protection project.³⁴ Bids may be submitted by non-governmental organisations operating in the area of social assistance, legal persons and organisational units that operate under the laws regulating the relationship between the State and the Roman Catholic Church in the Republic of Poland and the relationship between the State and other religious organisations in the Republic of Poland if their statutory objectives include providing social assistance.

The task includes maintaining a *Centrum Konsultacyjno-Interwencyjne* [Intervention and Consultative Centre] for victims of human trafficking, including provision of assistance in the form of temporary accommodation for human trafficking victims and women and children in particular; provision of legal, psychological and organisational assistance to human trafficking victims;

³³ Publications contain both summaries of particular issues connected with the phenomenon of trafficking in human beings and a compilation of the key regulations of domestic law and international instruments. Available at: http://ipsir.uw.edu.pl/informacje_o_instytucie/katedry_i_zaklady/katedra_kryminologii_i_polityki_kryminalnej/osrodek_badan_handlu_ludzmi/publikacje, last access on 22 July 2008.

³⁴ <http://www.mazowsze.uw.gov.pl/news.php?id=10464>, last access on 22 July 2008.

implementation of actions aimed at identifying human trafficking victims; maintaining a 24-hour helpline for human trafficking victims; providing advice to employees of social assistance units and non-governmental organisations on assistance to human trafficking victims; cooperation with other institutions in providing assistance and protection to human trafficking victims; and cooperation with third-state organisations involved in similar activities.

[32]. Protection of children in a vulnerable position

Article 80 of the Act on Social Assistance³⁵ provides that, ‘...a child partly or fully lacking parental care may be placed in an intervention childcare facility’. Unfortunately, most unaccompanied minor foreigners placed in such facilities run away from them within a short time.³⁶ However, unaccompanied minor foreigners who apply for refugee status are placed in childcare facilities designated by the Office for Foreigners. Within the last 2.5 years, over 30 minors were placed in such facilities. At present, there are 11 such minors.³⁷

³⁵ Ustawa z dnia 12 marca 2004 r. o pomocy społecznej [Act of 12 March 2004 on social assistance] (Journal of Laws of 2004, No.64 Item 593 as amended)

³⁶ Information obtained in June 2008 from non-governmental organisations such as the Nobody’s Children Foundation, La Strada and directors of childcare centres on the basis of conversations with employees of these organisations.

³⁷ Information obtained in June 2008 from the employees of a care facility in Warsaw hosting a group of unaccompanied underage foreigners applying for refugee status. In their opinion, so far there have been no victims of human trafficking. In 2004-2005, the ‘UCHO’ group operated in Warsaw Foster Home no. 11. Thirty-five underage foreigners were placed under care. The ‘UCHO’ group was created at the above Foster Home, under an agreement with the administration of Warsaw, in order to create better condition for unaccompanied foreigner minors claiming refugee status.

C. Legal guardian

[33]. Appointment of legal guardian

There is no practice of appointing legal guardians when an unaccompanied child is identified as a victim of trafficking but in the light of the laws applicable in Poland, an unaccompanied child would be placed in a childcare facility and have a legal guardian designated. (If none of the parents may represent the child under parental care, the child is represented by a custodian delegated by a guardianship court. A family court may delegate a legal representative for a child, the powers of whom are limited exclusively to the proceeding for which he/she was delegated³⁸. In the case of an unaccompanied minor foreigner who applies for refugee status, the body that receives the refugee status application submitted by the unaccompanied minor immediately submits to a guardianship court which is competent in the minor's place of residence a motion to delegate a custodian who will represent the minor in the refugee status award proceeding³⁹.)

[34]. Age limit for qualifying for legal representation

In the light of the Civil Code (Article 11), a minor is a person under 18 years of age and is therefore entitled to legal representation in specific situations.

[35]. Policy on age assessment, including benefit of the doubt

In the case of any doubts, an age assessment medical procedure is foreseen for foreigners applying for the status of a refugee who claims to be minor. The age of a human trafficking victim has no influence on the legal qualification of the crime.

[36]. Specialised training for legal guardians

³⁸ Article 199 of the Family and Guardianship Code (Journal of Laws 1964, No. 9 item 59, as amended).

³⁹ (Article 61 of the Act on granting protection to foreigners within the territory of the Republic of Poland, [2003, Journal of Law of 2006, No 234, Item 1695 as amended].

There is no specialised training for legal guardians, as this is not a distinct group of specialists. Guardians attend training for specialists who work with children, refugees, etc.

[37]. Appropriate time for preparation of case for legal guardian

There are no practices or separate provisions that would regulate appropriate time for the preparation of a case for a legal guardian. In a guardianship proceeding, a custodian has time as specified by the family court judge to prepare a minor's case.

In the procedure for granting refugee status to a minor, a custodian has seven days to prepare the minor for the hearing.⁴⁰

⁴⁰ Article 64 of the Act on Granting Protection to Foreigners within the Territory of the Republic of Poland.

D. Coordination and cooperation

[38]. Formalised Task Forces on child trafficking/coordination bodies

There is no separate body to coordinate the issue of child trafficking.

[39]. Cooperation agreements concerning child trafficking between relevant Ministries

There is no separate agreement on child trafficking between relevant Ministries. However, there is a cooperation agreement on human trafficking – see information on the Team and Working Group, para. 21.

[40]. Cooperation agreements between state agencies and non-governmental actors

Cooperation between state agencies and non-governmental actors is effected through the Working Group. Non-governmental organisations also perform commissioned tasks such as *Punkt konsultacyjny dla małoletnich cudzoziemców bez opieki* [Consultative Centre for Unaccompanied Minor Foreigners] (the Nobody's Children Foundation undertook this role until 2006; subsequently, it was transferred to the *Centralny Ośrodek Doskonalenia Nauczycieli* [National In-Service Teacher Training Centre]) or the human trafficking victims support programme (La Strada Foundation).

[41]. Implementation of Guidelines aimed at protection of personal data of the trafficked child

The body competent for the protection of personal data is the *Generalny Inspektor Ochrony Danych Osobowych* [Inspector General for the Protection of Personal Data] appointed under the *Ustawa o ochronie danych osobowych* [Personal Data Protection Act] (Journal of Laws of 2002, No. 101, item 926). The Inspector's powers comprise, among other things, the following:

- verifying the compliance of data processing with the personal data protection regulations;
- considering complaints regarding implementation of the personal data protection regulations;
- keeping the data collection register and disclosing information on the registered collections.

[42]. Cooperation agreements concerning child trafficking between your Member State and countries of origin outside the EU

In general, there are no intergovernmental agreements on cooperation in combating child trafficking. However, it is worth mentioning the annual meetings of experts from the countries of origin, transit countries and target countries (as seen from the Polish perspective), which are aimed at sharing

information on the phenomena observed in human trafficking.⁴¹ The previous meetings prove that this form of international cooperation needs to be continued.⁴² These meetings are an optimal formula for regular information sharing among experts and facilitate the development of the most effective forms of direct operational cooperation.⁴³

In 2003 the governments of the Republic of Poland and the Czech Republic and the UN Office for Drug Control and Crime Prevention/Centre for International Crime Prevention signed a Cooperation Programme called *Reakcja prawno-karna na handel ludźmi w Czechach i Polsce* [Legal and Penal Response to Human Trafficking in the Czech Republic and Poland].

Also, as part of the cooperation within the framework of the Council of the Baltic Sea States, National Focal Points are run for unaccompanied minor foreigners.

[43]. Support programmes as a part of Member State international development assistance

Not identified.

41 Poland is hosting such meetings. Participants include representatives of different uniformed services operating in other countries. Meeting followed with conference organized on 8 March 2004 was organized with respect to cooperation with Ukraine, Moldova, Belarus and Russia – region of Kaliningrad. On 14-15 March 2005 the meeting with experts from Ukraine, Moldova, Netherlands, Germany and Italy was held. Its aim was to share best practices as regards counteracting human trafficking and methods used in action. On 8 November 2006 the meeting of Group G6 was held, involving representatives of Poland, France, Spain, Germany, United Kingdom and Italy. On 9-10 November 2006, the meeting of representatives of the EU and Ukraine on human trafficking was held.

42 Information obtained from the National Programmes for Combating and Preventing Trafficking in Human Beings.

43 Information obtained from the National Programmes for Combating and Preventing Trafficking in Human Beings.

E. Care and protection

[44]. Legal provision ensuring respect for a reflection period of minimum 30 days

Under Article 33(3) of the Act on Foreigners of 13.06.2003⁴⁴, a residence visa is issued for a period necessary for a foreigner to decide whether to cooperate with an authority which is competent in proceedings on combating human trafficking, however, the visa is issued for a period not longer than two months.

[45]. Legal provision ensuring a right/entitlement to residence to trafficking victim

The provisions of the Act on granting protection to foreigners within the territory of the Republic of Poland are compliant with Council Directive 2004/81/EC of 29.04.2004 and provide for the granting of a residence visa if there is a justified assumption that a foreigner is the victim of human trafficking. The visa is issued for the period necessary for a foreigner to decide whether to cooperate with the authority which is competent in proceedings on combating human trafficking, however, the visa is issued for a period not longer than two months (Article 33). Poland does not have a practice in this regard with respect to minors and therefore it is hard to determine whether this period is sufficient, taking into account that the period under Polish law is longer than that expected by the EU.

Temporary residence permits for a specified period are issued to foreigners who are victims of human trafficking and fulfil all of the following conditions:

- stay in the territory of the Republic of Poland;
- have undertaken cooperation with the body which is competent in proceedings on combating human trafficking;
- have ceased contact with persons suspected of having committed crimes related to human trafficking.

Human trafficking victims are provided with medical, psychological and legal care.

[46]. Number of children being granted temporary stay on grounds of trafficking (2000-2007)

There were no cases identified of children being granted temporary stay on grounds of trafficking.

[47]. Legal framework concerning administrative detention

No procedure for the administrative detention of a minor is provided for (Article 88 of the Act on Granting Protection to Foreigners within the Territory of the Republic of Poland).

⁴⁴ Journal of Laws No. 128, item 1175, as amended.

[48]. Special safeguards for children

Not applicable.

[49]. Family tracing programme to allow for family reunification

There are no programmes or practices of family tracing. In accordance with Article 62 of the Act on Granting Protection to Foreigners within the Territory of the Republic of Poland, actions are undertaken to find relatives of an unaccompanied minor.

In individual cases, unaccompanied minor foreigners were transferred to their parents found in other countries (information from a childcare facility) or transferred – at the child’s request – to their parents in the country of origin (Romania and Ukraine) under the care of a custodian upon a decision by a family court (information obtained from the La Strada Foundation).

[50]. Specialised shelter(s) for trafficked children

There are no specialised centres, as there are no identified cases of child trafficking. Unaccompanied minor foreigners are placed in intervention and care facilities where Polish unaccompanied children are usually placed. Groups for unaccompanied minor foreigners who are waiting for a decision on a refugee status were created in childcare facilities, because conditions in facilities for refugees were inadequate for unaccompanied children.

[51]. Statistics

There are no relevant statistics. However, research by the Nobody’s Children Foundation shows that the vast majority of underage foreigners leave facilities on their own (only 5% of them spend more than a year in a facility).⁴⁵

[52]. Legal provision ensuring access to full health care

Minor victims of human trafficking, if identified and having no parental care, would be placed in a childcare facility where they would be provided with medical and psychological care as in the case of unaccompanied minor foreigners (Article 63 of the Act on granting protection to foreigners within the territory of the Republic of Poland).

[53]. Legal provision ensuring access to education

Any possible trafficking victims would have access to education in accordance with the rules specified in the *Ustawa o systemie oświaty* [Act on the Education System] (Journal of Laws of 2004 No. 256, item 2572, as amended). Article 94a provides that non-citizens of Poland benefit from education and care in state kindergartens, primary schools and middle schools on similar terms to citizens of Poland (in accordance with Article 70 of the Constitution of the Republic of

45 ‘Dzieci cudzoziemskie w polskich placówkach opiekuńczo-wychowawczych i rodzinach zastępczych styczeń 2005-maj 2006’. A study report. Red. M. Kukułowicz. The employees of the Nobody’s Children Foundation and the La Strada Foundation talked about widespread escapes by unaccompanied underage minors placed at the intervention facility in Warsaw.

Poland, education in state schools is free). At the post-middle school level, education is free for selected groups. It covers minors who are granted a residence permit in relation to their application for refugee status or tolerated residence, as well as any possible trafficking victims.

Non-citizens of Poland in the schooling age who do not speak Polish or speak Polish at a level that is insufficient to benefit from education are entitled to receive additional free classes in Polish. Additional teaching of Polish for such persons is arranged by the commune which is competent in their place of residence.

[54]. Legal provision ensuring access to legal assistance

A child victim of crime receives legal assistance in accordance with the applicable law. In a penal proceeding where a minor is a victim, the child's legal guardian may act as an auxiliary prosecutor.⁴⁶ The legal guardian may also apply for an assigned counsel.

Under Article 90 § 1 of the Code of Criminal Proceedings, an NGO may accede to the procedure as a third party (so called *przedstawiciel społeczny* [community representative]) and thus indirectly support a victim.

[55]. Special needs of children coming from different ethnic backgrounds

Schools and childcare facilities which accept underage foreigners undertake actions, if possible, to try to ensure the fulfilment of children's special needs in relation to cultural or religious differences. However, it is difficult and we have little experience of this in Poland.

Article 94 of the Act on the Education System provides that non-citizens of Poland in the schooling age may be provided with school-based classes in the language and culture of their country of origin, provided by diplomatic or consular agencies of their country of origin acting in Poland or by cultural and educational associations of a given nationality. The school makes rooms and teaching aids available free of charge.

[56]. Hotline (following Commission decision of 15.02.2007 to report missing and sexually-exploited children)

The Itaka Foundation⁴⁷ will soon operate the 116000 hotline and currently operates a 24-hour hotline for reporting missing persons, including children.

The Nobody's Children Foundation has undertaken action to start a 116111 hotline for children who are sexually abused.

At present, a hotline operates for children who are victims of violence and there is a hotline on internet security (helpline 0800 100).

⁴⁶ Article 53 of the *Kodeks Postępowania Karnego* (kpk) [Criminal Procedure Code].

⁴⁷ <http://www.itaka.org.pl/main.php?S=foundation&L=eng>, last access on 22 July 2008.

The La Strada Foundation operates a helpline for victims of prostitution.⁴⁸

[57]. Similar instruments to report other situations of exploitation of trafficked children

Each case of child abuse may and should be notified to a family court, prosecutor's office, the Ombudsman or the Ombudsman for Children who has an intervention team available.

⁴⁸ Information obtained from the Nobody's Children Foundation employees.

F. Best interests, determination and durable solutions, including social inclusion/return

[58]. Formalised process for identification of durable solution

No such practice.

[59]. Asylum/subsidiary protection

A foreigner may be granted a tolerated residence permit on the territory of the Republic of Poland if his/her deportation:

- could be made only to a country where his/her rights to live, freedom and personal security would be at risk, where he/she could be tortured or subject to inhumane or humiliating treatment or punishment, or be forced to work, or be deprived of the right to a fair trial, or be punished without a legal basis in the meaning of the Convention for the Protection of Human Rights and Fundamental Freedoms,
- would breach the right to a family life in the meaning of the Convention for the Protection of Human Rights and Fundamental Freedoms or would breach children's rights specified in the Convention on the Rights of the Child to an extent that significantly threatens the child's psychological and physical development;
- is unenforceable for reasons independent of the body that enforces a deportation decision or independent of the foreigner. (Article 97 of the Act on granting protection to foreigners within the territory of the Republic of Poland.)

[60]. Respect for participation of the child in the decision making/obligatory hearing in all relevant legal procedures

Obligatory hearings of unaccompanied minor foreigners are held at the Nobody's Children Foundation in conditions foreseen for the victims of crime. Hearings are always attended by a psychologist and an interpreter, with the freedom of speech guaranteed.

[61]. Access to integration

There is no practice in access to integration for human trafficking victims. Article 7 of the Act on Social Assistance states that assistance is provided to persons for reasons such as the need to protect victims of human trafficking. It should be understood that in the case of a minor victim of human trafficking the provisions concerning unaccompanied underage foreigners shall apply. As minors are placed in childcare facilities, integration in their case means learning Polish, provision of school education, contact with peers, etc.

- 1. Assistance to an underage foreigner residing in the territory of the Republic of Poland without a legal representative, who was granted refugee status or subsidiary protection in the Republic of Poland, is provided by a *starosta* [Head of the County] who is competent in the minor's place of residence.
- 2. The director of the childcare facility notifies the competent guardianship court of the assistance to an underage foreigner, as provided for in Article 91(1) of the Act on Social Assistance.

[62]. Specialised integration programmes for trafficked children

There are no specialised integration programmes for child victims of human trafficking.

G. Prosecution

[63]. Legal provisions offering child-sensitive procedures in front of police/prosecutor/court

The Organised Crime Unit of the National Public Prosecutor's Office, in its 'Methodological guidelines for public prosecutors conducting or supervising criminal proceedings in cases of trafficking in human beings', developed the following principles for handling foreign children who are victims of trafficking:

- 'Each person performing any actions in a case in which a child participates should note that the correct and efficient course of the proceedings depends on collecting the evidence in the fastest possible manner (the most complete and accurate statements are obtainable within eight days following the date of the incident);
- before taking a decision to admit and take a child's statement as evidence, thorough consideration must be made of whether the importance of such statements makes them irreplaceable by other evidence;
- an interpreter should be a person with excellent knowledge not only of the language but also the cultural reality (of the country of the child's origin);
- it is advisable that an expert psychologist be present during the questioning; the psychologist should support the child being questioned in such a way as to reduce as far as possible the trauma connected with obtaining information from the child (the person conducting the questioning should consult with the psychologist in advance about the form of questions to be asked);
- questioning of a child should be preceded by an analysis of the information and conclusions obtained from consultations; it should be conducted in an appropriately prepared room, maintaining friendly contact with the child;
- questioning should be conducted in such a way as to ensure that it will not have to be repeated unless any material circumstances, which must be explained, are revealed or the same is required by a defendant who had no defence counsel during the first questioning of the aggrieved party (this requirement is set out in Article 185a of the Criminal Procedure Code but applies only to the offences described in Chapter XXV of the Criminal Code; consequently, it seems appropriate to adopt a similar principle in respect of the offence of trafficking in human beings);
- the questioning of the minor should be recorded by a video camera in order to use the recorded material in court;

- in special cases, the possibility of postponing the first questioning of a child must be considered;
- at the request of the child, another person must be admitted to be present during the questioning, provided it will [positively] affect the child's sense of security and discharging of the role of witness;
- actions in proceedings in which a minor participates should be performed without the presence of the perpetrator;
- each person who performs any actions in a case in which a child participates, who advises an aggrieved party or a witness on their rights and duties, is obliged to make all possible efforts to adjust the manner in which information is given to the age and emotional condition of the child and ensure that the information given has been properly understood. Such persons also should conduct themselves in a manner which avoids creating even an appearance of an impression that may create a sense of guilt in the child.'

The Criminal Procedure Code provides for a range of measures which should be applied to protect the interests of the victims of trafficking in humans. Pursuant to the guidelines of the National Prosecutor's Office, the following requirements must be met:

- the victim must be appropriately advised (verbally and in writing) of their rights;
- the victim should be able to exercise their right under Article 191 § 3 of the Criminal Procedure Code, namely to reserve their residence address solely for the information of the public prosecutor or the court. In such a situation, communication between the victim and authorities conducting the proceedings may be effected via a non-governmental organisation, if the NGO and the aggrieved party consent thereto;
- actions in the proceedings in which the aggrieved party participates must be conducted by a public prosecutor of the same sex as the aggrieved party, the same prosecutor should participate in the whole course of the proceedings;
- when the aggrieved party is questioned in special circumstances, a psychologist must be present;
- in all cases when the victim is questioned during the investigation by the court, such questioning must be conducted in the manner provided under Article 316 § 3 of the Code of Criminal Procedure;
- identity parades must be performed with the use of a two-way mirror;
- during the proceedings before the court, whenever possible the hearing of the victim should be conducted with the use of technical devices which allow the court to examine the victim who is not physically present in the courtroom (under Article 177 § 1a of the Criminal Procedure Code).

Article 185 a of the Criminal Procedure Code provides that an aggrieved party who is under the age of 15 at the time of questioning shall be questioned as a witness only once, unless any material circumstances, which must be explained, are revealed or the same is required by a defendant who had no defence counsel during the first questioning of the aggrieved party.

The questioning is conducted at the court's session with the participation of an expert psychologist. The public prosecutor, counsel for the defence and the aggrieved party's attorney may participate in the questioning. The transcript of the questioning is read out during the main trial; if the questioning has been recorded, the relevant recording should be played. (In accordance with the aforementioned Guidelines, this Article should also be applied to underage victims of trafficking.)

[64]. Number of final convictions based on child trafficking cases

There are no statistics regarding the number of final convictions based on child trafficking cases. The information on persons convicted for trafficking in human beings by final judgments (offences contrary to Article 204 § 4, Article 253 § 1 and Article 253 § 2 of the Criminal Code) received from the Statistics Department of the Ministry of Justice⁴⁹ do not list the victims' age.

In 2000, eight people were convicted in total (in three cases the penalty of deprivation of liberty was suspended).

The relevant figures for the following years are below:

- 2001 – ten (two sentences suspended);
- 2002 – 23 (seven sentences suspended);
- 2003 – seven (two sentences suspended);
- 2004 – 16 (three sentences suspended);
- 2005 – 16 (11 sentences suspended);
- 2006 – 14 (three sentences suspended).

In total, 94 perpetrators were convicted.

According to data from the Ministry of Interior and Administration, in 2002 there were 18 victims aged 15 or under. The relevant figures for the following years are below:

- 2003 – 21;
- 2004 – two and ten aged 16-17;
- 2005 – ten;
- 2006 – nine;

⁴⁹ *Wydział Statystyki Ministerstwa Sprawiedliwości* [Ministry of Justice Department of Statistics] 'Prawomocnie skazane osoby dorosłe z oskarżenia publicznego za przestępstwa handlu ludźmi za lata 2000-2006'.

- 2007 – four and two aged 16-17.⁵⁰

[65]. Legal provisions granting trafficked children access to justice including right to compensation

Article 45(1) of the Constitution of the Republic of Poland provides that ‘Everyone shall have the right to a fair and public hearing of his case, without undue delay, before a competent, impartial and independent court’. Compensation is granted if the offence was committed on the territory of the Republic of Poland to the detriment of a citizen of Poland or another Member State of the European Union (Article 4 of the *Ustawa o państwowej kompensacie przysługującej ofiarom niektórych przestępstw umyślnych* [Act on State Compensation for Victims of Certain Intentional Offences] (Journal of Law of 2005 No. 169 , item. 1415, as amended).

Material claims may be put forward by an aggrieved party in the criminal proceedings and the public prosecutor on their behalf after a civil action is brought under Article 62. Under Article 445 § 2 of the Criminal Procedure Code, a trafficking victim may claim pecuniary compensation for the psychological harm suffered.

[66]. Total amount, average amount and range of amounts of compensation paid to trafficked children per year (2000-2007)

So far there have been no cases of compensation among either child or adult victims of trafficking.

⁵⁰ Information from the Ministry of Interior and Administration website: http://www.mswia.gov.pl/porta1/pl/391/2001/Dane_statystyczne.html, last access on 22 July 2008.

H. Miscellaneous

[67]. Exploitation of children

Lately, the problem of the exploitation of children for the purposes of begging has been re-emphasised; similarly, it has been indicated that the competent authorities have been undertaking no action to counteract this phenomenon.⁵¹

[68]. Illegal adoption

Another problem, which has generated lively debate in the press this year, is illegal adoption. Recently, “I’ll give up the child” offers have been published on the internet. It may be assumed that such adverts are a smokescreen for different kinds of transactions using the legal institution of so-called *przysposobienie ze wskazaniem* [targeted adoption]. The Helsinki Foundation for Human Rights addressed the Ministry of Justice, calling for it to increase supervision by the prosecutor in adoption proceedings.⁵²

[69]. Foreign minors applying for refugee status

The number of unaccompanied foreign minors applying for refugee status is worth mentioning. From 2000 to mid-2005 a total of 896 applications were filed. Refugee status was awarded to 97 individuals, while 89 received a tolerated residence permit.⁵³

Unfortunately, at time of writing, we have not obtained more up-to-date information from the Office for Foreigners. From the information received from NGOs and the Warsaw University Law Clinic, we have learned that the number of applicants for refugee status has substantially decreased.

⁵¹ Information acquired at a meeting organised at the Office of the Commissioner for Human Rights initiated by *Komitet Ochrony Praw Dziecka* [Committee for the Protection of the Rights of the Child] in 2008. Information on the phenomenon is also available at: <http://dzieciulicy.ngo.pl/x/18209>, last access on 22 July 2008.

⁵² Helsinki Foundation for Human Rights letter of 17.03.2008.

⁵³ Report on the situation of unaccompanied underage foreigners applying for refugee status in Poland, prepared by the *Studencki Ośrodek Pomocy Prawnej przy Wydziale Prawa i Administracji Uniwersytetu Warszawskiego – Klinika Prawa UW* [Student Centre for Legal Aid at the Warsaw University Faculty of Law and Administration – Warsaw University Law Clinic], Warsaw 2005.

I. Good practices

- [70]. It is difficult to discuss good practices in a situation where there are so few cases of identified victims of child trafficking. What is worth mentioning at this point is the drawing up of the 'Methodological guidelines for public prosecutors conducting or supervising criminal proceedings in cases of trafficking in human beings' by the Organised Crime Unit of the National Public Prosecutor's Office. The document in question contains the principles for dealing with foreign children who are victims of trafficking. A good practice is also the procedure for questioning unaccompanied underage foreigners in the conditions provided for underage victims of sexual offences (see para. 63).

Annex 1 - Tables and Statistics

	2000	2001	2002	2003	2004	2005	2006	2007
Number of children being granted temporary stay on grounds of trafficking	No data	No data	No data	No data	No data	No data	No data	No data
Number of trafficked children receiving full health care services, including psychosocial care and rehabilitation (e.g. not just emergency treatment)	No data	No data	No data	No data	No data	No data	No data	No data
Number of trafficked children receiving education/training, in particular secondary education and vocational training	No data	No data	No data	No data	No data	No data	No data	No data
Number of trafficked children receiving legal assistance (e.g. for claiming compensation)	No data	No data	No data	No data	No data	No data	No data	No data
Number of final convictions based on child trafficking cases, per year	none	none	none	none	none	none	none	none

Total of amount of compensation paid to trafficked children, per year	-	-	-	-	-	-	-	-
Average of amounts of compensation paid to trafficked children, per year	-	-	-	-	-	-	-	-
Range of amount of compensation paid to trafficked children, per year	-	-	-	-	-	-	-	-

Any other tables or statistics relevant for child trafficking