**Poland’s response**

**to the letter from the Office of the High Commissioner for Human Rights, CED/WGEID/NV/JST/1/1**

***Call for Inputs - CED/WGEID project of joint statement on the notion of “short-term enforced disappearance”***

**28th July 2023**

Replying to the letter from the Office of the High Commissioner for Human Rights asking to submit written inputs to contribute to the elaboration of the project of joint statement on the notion of “short-term enforced disappearances”, please find below the following information.

1. **Short-term enforced disappearances in Polish regulations:**

The notion of short-term enforced disappearance is neither present nor called for in the Polish law. There are regulations concerning the criminal offence of unlawful deprivation of liberty (Article 189 of the Criminal Code). They stipulate that any unlawful deprivation of liberty is a crime, whether committed by a public official or by someone else. The duration of unlawful deprivation of liberty is irrelevant for this act to be a criminal offence in its basic form. The said act qualifies as one even if committed for a very short period of time, although the duration of the commission plays a significant part in determining the degree of social harm done, and consequently, in deciding on the type and severity of the penalty imposed. Where the unlawful deprivation of liberty has lasted for more than seven days, a more severe penalty applies pursuant to Article 189(2) of the Criminal Code.

In legal terms, the prosecution of enforced disappearances, including the short-term ones, is based on Article 189 of the Criminal Code as outlined above. It should be noted that an amendment to the said regulation is coming into force on 1 October 2023, imposing significantly harsher punishment ranges applicable to the aggravated forms of the criminal offence in question. In terms of criminal procedure, arrest by the Police is regulated in Division VI, Chapter 27 of the Code of Criminal Procedure. The said regulations provide for safeguards for arrestees that rule out the possibility of enforced disappearance under law.

The Ministry of Justice, the institution in charge of legislation in the field of both substantive and procedural criminal law, has not observed any legal problems in regard to enforced disappearances, unlawful deprivation of liberty, and arrest under criminal procedure that would have to be solved by way of legislative amendments.

1. **Legal safeguards for arrestees:**

In line with Article 244(1) of the Code of Criminal Procedure, the Police may arrest a person if there are justified grounds to suspect that this person committed an offence and it is feared that he or she might escape, go into hiding, conceal traces of the offence, or his or her identity cannot be established or the conditions are fulfilled to order accelerated procedure with regard to this person.

According to Article 244(2), the arrestee must immediately be informed of the reasons for the arrest and advised of his or her rights, including the right to use the assistance of an advocate or attorney-at-law, and gratuitous help of an interpreter if the arrestee does not have a sufficient command of Polish; to make statements and to refuse making statements; to obtain copy of an arrest report; to have access to medical first aid; as well as of his or her rights indicated in Article 245 (contact with advocate on arrestee’s demand), Article 246(1) (lodge an interlocutory appeal to court against the arrest), and Article 612(2) (possibility to contact an employee of a consular office or diplomatic mission if the arrestee is a foreigner); and of the contents of Article 248(1) and (2) (duration of arrest); the arrestee’s explanations should also be heard. As stipulated by Article 245 of the Code of Criminal Procedure, the arrestee, at his or her request, should be allowed to contact an advocate or attorney-at-law in an available form and have a direct conversation with them; in exceptional cases, justified by particular circumstances, the arresting authority may reserve that it will be present during such conversation. Upon the arrestee’s request, his or her next of kin or a person indicated by the arrestee should be notified of the arrest. The arrest should be recorded in a report indicating the particulars of the person making the arrest and the arrestee as well as the date, hour, place and reasons for the arrest. The report must also include statements made by the arrestee, including the particulars of the person indicated by the arrestee to be notified of the arrest. The fact that the arrestee was advised of his or her rights should be mentioned in the report as well. It is essential for an arrestee reasonably suspected of having committed a criminal offence to contact an advocate or attorney-at-law in order to safeguard the right to an adequate defence throughout the criminal proceedings. The arresting authority is obliged to do that if the arrestee so demands; the initiative in this regard must be taken by the arrestee. The arrestee should be advised of that right immediately upon arrest, and the fact that he or she was so advised should be mentioned in the arrest report. The Code of Criminal Procedure orders that the arrestee be allowed to contact an advocate or attorney-at-law immediately, i.e. as soon as possible following the arrestee’s request for such contact, which is conditional on the circumstances of the case. The arrestee may refrain from providing any information to the law enforcement authorities until he or she contacts an advocate. The arrestee has the right to have a direct conversation with an advocate or attorney-at-law. However, the arresting authority may only reserve that it will be present during such direct conversation; it does not hold such right with regard to other forms of contact. The purpose of such restriction is to prevent any obstruction of criminal proceedings, e.g. through passing information which is important as regards the interest of criminal proceedings to the arrestee’s relatives or friends. Such restriction should be used exceptionally because the legislator allows it, verba legis, “in exceptional cases, justified by particular circumstances.”

The legislator has provided for a double quantification of circumstances allowing such a possibility: first, it has to be an exceptional case; second, particular circumstances must occur. It could happen when, quite actually and not only hypothetically, there is a concern of criminal collusion or a need to check the arrestee’s alibi; the arresting authority’s presence during the said conversation should be dictated solely by the interest of proceedings and the necessity to secure a correct course of proceedings in connection with arrest.

The arrestee is released immediately if the reasons for his or her arrest cease to exist and also if, within 48 hours from the arrest by the authorised agency, the arrestee was not surrendered to the jurisdiction of the court with a motion to order detention on remand; the arrestee is also released upon the order of the court or public prosecutor. The arrestee is released if, within 24 hours of being surrendered to the jurisdiction of the court, the motion to order detention on remand was not served or announced to him or her. It is not permissible to arrest a person for a second time on the basis of the same facts and evidence.

The grounds, correctness and legality of a person’s arrest by the Police and other authorised agencies in a preliminary enquiry are examined by the prosecutor. The said authority also examines the observance of the arrestee’s rights and the proportionality of the duration of arrest for the purposes of proceedings. It must also be emphasised that both arrestees and detainees on remand have the right to appeal to court against their forms of the said forms of deprivation of liberty. The court must hear the appeal not later than seven days of the appeal being handed over to the court together with indispensable case files.

1. **Detention on remand as used in Poland:**

Preventive measures, including the most severe isolation measure in the form of detention on remand, are applied pursuant to the Polish Code of Criminal Procedure, which in its Article 249 provides that detention on remand may be ordered to ensure the correct course of proceedings and, exceptionally, to prevent the accused (or the suspect in a preliminary enquiry) from committing a new serious offence.

The district court is the authority which orders detention on remand upon the request of public prosecutor (Article 263(1) and (2) of the Code); the district court defines its duration for a period not exceeding three months. If due to the extraordinary circumstances of the case it proves impossible to conclude a preliminary enquiry within the said time limit, upon the request of public prosecutor the court competent to hear the case may, if necessary, extend detention on remand for a period the total duration of which may not exceed twelve months (Article 263(2) of the Code).

Detention on remand is also governed by the Regulation of the Minister of Justice of 14 April 2016—”Internal rules of procedure of ordinary units of the Public Prosecution Service” (codified text: Journal of Laws of 2023, item 1115). This legal act regulates, among others, the prosecutor’s granting of requests to visit persons detained on remand and the rules for sending correspondence. It must be noted here that all correspondence with authorities established pursuant to international agreements concerning protection of human rights and ratified by the Republic of Poland, with the Commissioner for Human Rights, central and local government authorities, a defence counsel, or a legal representative being an advocate or attorney-at-law, is forwarded without delay to the recipient, without being censored. When the Commissioner for Human Rights deems that a situation requires examination or taking specific steps, he or she requests public prosecution authorities to act as necessary. The prosecutor informs the Commissioner about the results of examination of a given case and steps taken. The prosecutor may also temporarily authorise the use of phone by the person detained on remand. Persons detained on remand have the right to lodge complaints concerning the conditions of detention on remand, and may, at each stage of proceedings, request to have a preventive measure changed or annulled on account of their health.

Please find attached an English translation of the relevant provisions of the Criminal Code and the Code of Criminal Procedure concerning unlawful deprivation of liberty and arrest.