WORLD FACTBOOK OF CRIMINAL JUSTICE SYSTEMS

Poland

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GENERAL OVERVIEW

1. Political System.

The Republic of Poland is a parliamentary democracy which recognizes the principle of a division of power between the legislature and the executive and judicial authorities. (Constitutional Law of 17 October 1992 on the Mutual Relations between the Legislative and Executive Authorities of the Republic of Poland, and the Local government. Journal of Laws No. 84, item 426). The Parliament is the national law-making body and is composed of two houses, the lower house called the Sejm (460 seats) and the upper house called the Senate (100 seats). The members of Parliament are elected by Polish citizens who are at least 18 years old. The head of the Republic is the President, who is directly elected by the people for a term of 5 years.

The cabinet is led by the Prime Minister, who is designated by the President. The President also appoints ministers on the recommendation of the Prime Minister. Together, the ministers form the Council of Ministers, whose main task is to coordinate government policy. Functioning as the executive authority, the Council of Ministers and the ministers enact regulations pursuant to laws adopted by Parliament.

The Minister of Justice exercises the powers of Attorney General, thus also governing the Public Prosecution Office. The Public Prosecution Office is a hierarchically structured, nationwide organization. (Law of March 8, 1985 on the Public Prosecutor's Office. Journal of Laws 1991, No. 25, item 103).

The entire country is divided into 49 administrative regions (voivodships). Each region is governed by an official (the voivod) appointed by the central government. The basic unit of

local self-government is the commune, which is a legal entity and subject to property rights.

2. Legal System.

The legal system in Poland is based on statutes enacted by the Parliament. Poland's contemporary penal legislation is comprised of three basic sets of laws: the Penal Code, the Code of Criminal Procedure, and the Code for the Execution of Penalties. Each Code was enacted on April 19, 1969 and entered into force on January 1, 1970. The Penal Legislation of 1969 is still in force despite the existence of drafts of new codes.

The Polish Penal Code does not define all criminal offenses. Numerous other statutes complete the penal law legislation. The most frequently applied statutes are derived from a Fiscal Criminal Code adopted in 1971, the Law of 1982 on Upbringing in Sobriety and Counteracting Alcoholism, and the Law of 1985 on the Prevention of Drug Abuse. Some violations of these statutes (for instance, tax evasion, illegal trade of alcohol, trafficking of drugs) constitute crimes. Other violations are considered transgressions, most of which are minor infractions of administrative regulations specified in a Code of Transgressions, adopted in 1971.

3. History of the Criminal Justice System.

Following the breakdown of the communist system, since mid-1989 Poland has been in a transition period from a centrally planned economy to a market-oriented and democratic system. Political changes and law reforms have been initiated with the amendment of the Polish Constitution developed by Parliament in December 1989. Article 1 of the Constitution established that the Republic of Poland was a "democratic state based on the rule of law."

With an area of 312,700 square kilometers and a population of 38.6 million, in 1994, Poland was the eighth largest country in Europe, both in size and population. About 62% of the population lives in urban areas. In 1992, nearly one-quarter of the urban population lived in 20 large cities populated by more than 200,000 inhabitants. About 14.4 million persons were under the age of 25, comprising 38% of the total population, one-third of whom were unemployed. In 1992, the general unemployment rate was 14%, while the annual rate of inflation exceeded 40%. Correspondingly, between January and December 1992 the rate of exchange of 1 US$ went up from 11,200 to 15,700 zlotys.

CRIME

1. Classification of Crimes.

*Legal classification. All criminal offenses are classified into felonies, misdemeanors, and transgressions. (For translation of the original Polish terms, zbrodnia and wyst pek, see: W.S. Kenney and T. Sadowski, Introduction to the Penal Code of the Polish People's Republic, (ed. G.O.W. Mueller). (London: Fred B. Rothman & Col, Sweet & Maxwell Ltd). 1973: 14). Felonies include violent crimes, such as homicide, aggravated forcible rape, and robbery. Since a felony is an intentional act, the intent (dolus) must be proven in order to be found guilty of a felony. Most felony crimes are contained in chapter 19 of the Penal Code, which protects the fundamental political and economic interests of the State.

Misdemeanor offenses include theft, fraud, embezzlement, burglary, assault, unintentional homicide, bigamy, incest, and breach of a state secret. Transgressions constitute a separate category of punishable acts. They include violations of administrative regulations and minor criminal violations, such as petty theft. Transgressions are often handled by quasi-judicial boards affiliated with branches of local self-government. However, transgressions may also be handled by the police. Police will often issue a "ticket" for a transgression which requires the offender to pay a fixed penalty.

*Age of criminal responsibility. The minimum age of criminal responsibility is 17. A person under 17 years old is considered a juvenile, subject to educational and corrective measures. The age limit can be lowered to 16 for certain serious offenses. Offenders between the ages of 17 and 18 years old can still be treated as juveniles for certain misdemeanor offenses. Juvenile offenders, and juveniles simply in need of care and protection, are dealt with by the regional family courts according to a special procedure adopted in 1982. (Law of October 26, 1982 on the treatment of Juveniles. Journal of Laws No. 35, item 228, No. 24, item 101 1992).

*Drug offenses. Drug abuse in Poland is largely reflected by the widespread use of home-produced opiates, prepared by the users themselves. The opiates are derived mainly from poppy straws that are obtained from poppies which are grown legitimately in Poland for their seeds. In 1985, the Law on Prevention of Drug Abuse went into force. This Act has enhanced the penalties for the illegal production of drugs and for drug trafficking. Illegal trade in narcotics or

psychotropic substances is punishable with a maximum of 10 years in prison and a fine. More severe penalties, such as a maximum of 15 years deprivation of liberty, are imposed for the illicit importation, exportation and transportation of drugs. However, the Law of 1985 does not envisage criminal sanctions for the use and possession of drugs, but emphasizes a prophylactic, socio-medical orientation to address the situation.

2. Crime Statistics.

The data used in this report are derived from official criminal statistics which include statistics of crimes known by the police. That is, the criminal nature of an act reported to the police has been officially recognized and recorded according to the legal definition of individual offenses. (Over the last 5 years (1988-1992) Poland has experienced a considerable growth of crime. Police statistics show that the overall number of crimes has increased by 80% during that time, from 475,273 in 1988 to 881,076 in 1992. In some categories of crime, like homicide, robbery or burglary, the rate of increase was even higher). The definitions which follow are based on the legal definitions of offenses.

*Murder. In 1992, there were 989 cases of intentional homicide recorded by the police. (The number of intentional homicide cases recorded by the police for previous years: 530 (1988) and 971 (1991)). Intentional homicide is defined in Article 148 of the Penal Code: Whoever kills a human being shall be subject to imprisonment for a term of 8 years or more or to the death penalty.

*Rape. In 1992, there were 1,919 cases of forcible rape recorded by the police. (The number of forcible rape cases recorded by the police for previous years: 1,564 (1990) and 1,921 (1991)). Forcible rape is defined in Article 168 of the Penal Code: (1) Whoever, by force, illegal threat or artifice makes another person submit to an indecent act or to perform such an act, shall be subject to imprisonment from one to 10 years. (2) If the perpetrator acts with particular cruelty, or commits rape in common with other persons, he shall be subject to imprisonment for a term of not less than 3 years.

*Robbery. In 1992, there were 14,854 cases of robbery recorded by the police, which includes 338 cases of armed robbery. (The number of robbery cases recorded by the police for previous years: 7,132 (1988) and 15,522 (1991). These figures include armed robbery of which there were 92 cases

in 1990 and 167 cases in 1991). Robbery is defined in Article 210 of the Penal Code: (1) Whoever with the purpose of appropriating takes away property by using or threatening the instant use of violence to the person, or by rendering a human being unconscious or defenseless, shall be subject to imprisonment for a term of not less than 3 years. (2) If the perpetrator of a robbery makes use of a firearm or other dangerous instrument or acts together with a person who makes use of such a weapon or instrument, he shall be subject to imprisonment for a term of not less than 5 years or the penalty of death.

*Drug offenses. In 1992, there were 685 offenders sentenced for the cultivation of poppy. (The number of offenders sentenced for the cultivation of a poppy for previous years: 115 (1990) and 259 (1991)). Also in 1992, there were 222 offenders sentenced for the manufacturing of drugs. (The number of offenders sentenced for the manufacturing of drugs for previous years: 115 (1990) and 259 (1991)).

According to Article 26, Section 1, of the Drug Abuse Prevention Act of 1985, the cultivation of poppy or cannabis is punishable by a prison sentence of up to 2 years or a fine of 25 million zlotys. Article 27, Section 1 of this Act states the manufacturing of drugs to be punishable by a prison sentence of up to 3 years.

*Crime regions. Information not available.

VICTIMS

1. Groups Most Victimized by Crime.

Few crime victim surveys have been conducted in Poland. The last available data come from the 1991 International Crime Survey in which Poland was involved (Crime in Poland in the Comparative Perspective: Preliminary Findings of the International Crime Survey, 1993). A national random sample of 2,000 respondents was interviewed to obtain information on 11 forms of victimization (theft of cars, theft from cars, vandalism to cars, theft of motorcycles/ mopeds/ scooters, theft of bicycles, burglary, assaults/threats, robbery, theft of personal property, pocket picking, sexual molestation).

Among the 20 countries which participated in this survey, Poland had the highest scores for several victimization prevalence rates. The rate was the highest for theft of personal property/pocket picking, second highest for robbery and theft from cars, and fifth highest for vandalism to cars and assaults/threats. Having an overall high victimization rate for all crimes, in

which 27.2% of the sample were victimized once or more within one year, Poland occupies the sixth highest place among the surveyed countries, following New Zealand, the Netherlands, Canada, Australia and the United States.

The survey data also indicated that Poland has the lowest overall crime reporting rates. Only 31% of crimes were reported to the police. Only 15% of the victims who did report were satisfied with the manner in which the police handled their last report of victimization. Thus, the level of victims' satisfaction with the police response to crime is very low.

2. Victims' Assistance Agencies.

Primary responsibility for restitution to the victim lies with the offender. Under the civil law for illicit acts (Article 415 of the Civil Code), offenders can be required to redress, either in whole or in part, the damage resulting from the offense, based on criminal responsibility. The injured person can present claims for restitution either in joint proceedings while in criminal court or in separate civil proceedings.

Regarding criminal responsibility, restitution can be imposed on the offender in cases of 1) conditional discontinuation of the proceedings; 2) imposition of the penalty of limitation of liberty; 3) conditional suspension of the execution of imprisonment, and 4) conditional release before expiration of term (parole). (A duty of restitution has generally been seldom imposed. For example, in 1991, the courts issued compensation orders in only 380 case (0.9%) that were conditionally discontinued, and in 7,003 cases (8.7%) where the execution of imprisonment had been conditionally suspended. [The Court Statistics, 1992]). In most cases, the offender can also be required by the judicial branch to apologize to the victim in order to provide the injured party with some moral satisfaction.

If it is not possible to receive compensation from the offender or from other sources (for instance, the social security system), financial assistance to victims of crime is provided by the Foundation for Assisting Victims of Crime, established in 1986. Assistance may be granted to victims who, as a result of an offense, 1) suffered bodily injury or an impairment of health, and, as a result of such injury or an impairment, became fully or partially unable to work, and whose financial situation is difficult; or 2) lost a guardian or supporter, and their financial or living situation became worse as a result; or 3) suffered such heavy financial loss that it became impossible to satisfy the basic needs of the

victim and the family that was previously maintained by the victim.

Financial assistance can consist of: 1) partial or total reimbursement of the cost of medical treatment, medical rehabilitation, prosthesis, and other necessary expenditures connected with medical treatment; 2) partial or total coverage of the costs of the funeral of the crime victim; and 3) a financial benefit as a lump sum. During 6 years of operation, from 1986 to 1992, the Foundation provided assistance to 1,700 persons with the total financial aid of 3.3 billion zlotys (330,000 US$). (Bienkowska, 1989: 58-59; Rzeczpospolita, April 8, 1993).

3. Role of Victim in Prosecution and Sentencing.

For offenses prosecuted on public accusation (ex officio), the status of the victim varies with the stage of the proceedings. The victim is a legitimate party to the preparatory proceedings. As such, the injured person may submit motions to cause certain actions to be performed within the framework of the preparatory proceedings or may participate in investigative measures. The prosecutor has the duty to notify the injured person about a transmission of indictment to the court. If the public prosecutor decides to discontinue the proceedings, the injured person has the right to become acquainted with the files of the case and to appeal the decision for discontinuation. The prosecutor is obligated to inform the injured party about these rights.

Yet, in court proceedings, the injured person generally acts as a witness, not as a party to the case, except when acting as a subsidiary prosecutor or civil claimant. The court decides whether to admit the victim as a party to the court proceedings. The complainant can be given the status of subsidiary prosecutor only if it is in the interest of the exercise of justice. If this participation hampers the court's proceedings, however, the court can deprive the victim of this status. The court's decision is not subject to appeal.

4. Victims' Rights Legislation. Information not available.

POLICE

1. Administration.

The formal organization of the police force is detailed in the 1990 Police Act (Journal of Laws, 1990). The police force is centrally organized and is under the authority of the Main Commander of Police, who is subject to the Minister of Interior. Police duties, to a limited extent, are

also carried out by the Municipal Guard, which deals with the maintenance of public order in urban areas.

The regular police forces are divided into six basic departments, as stipulated by the Police Act of 1990: criminal police, traffic police, crime prevention and anti-terrorist squads, special police (for example, railway and river), local police, and other police agencies which might be appointed by the Minister of Interior Affairs if necessary.

The territorial organization of the police service in Poland corresponds to the administrative division of the country. In addition to the Police Headquarters in Warsaw, there are two other levels of police organization operating throughout the country: district (voivodship) and regional. Police stations are located at the bottom level of this hierarchy.

The district level police authority is the voivodship Chief of Police, who is nominated to this post by the Minister of Interior upon the recommendation of the Police Main Commander and the head of a government's district administration. At the regional level, the Chief Officer of Police is appointed by the Main Commander of Police upon the recommendation of the district Chief of Police and the head of the government's district administration. The Chief of a Police station is nominated by the district Chief of Police upon the recommendation of a regional Chief Officer of Police and an appropriate body of the local government.

2. Resources.

*Expenditures. In 1992, the budgetary allocation to the police was 8,384,072 million zlotys (500 million US$) and rose to 11,301,616 million zlotys (680 million US$) in 1993, constituting 60.6% of the total expenditures on public safety. Police and civilian salary account for about 70% of current spending on police. (Rzeczpospolita, May 18, 1993).

*Number of police. In 1992, the police employed 105,000 people, of which 25,000 were high ranking officers, and 80,000 were middle and low ranking officers. In 1991, women accounted for 11% of the police staff. Also in 1991, women accounted for 57.6% (20,560) of the civilians employed by the Ministry of Interior. (Rzeczpospolita, May 18, 1993; Statistical Yearbook for 1991, 1992: 90).

3. Technology.

*Availability of police automobiles. There has

been a shortage of 5,800 police automobiles reported. The police automobiles that do exist cover about 25% of the needs of the police force. (Rzeczpospolita, May 18, 1993).

*Electronic equipment. Computerization of the police force is in its infancy. Police efficiency is presently hampered by an outdated telecommunication system and lack of automated data banks.

*Weapons. Patrolmen on the beat usually carry guns, batons and tear gas. Police forces vary as to the types of weapons carried by their personnel. For instance, criminal police are equipped with machine guns. By decree, the traffic police may not carry these weapons (Decree of the Minister of Interior Affairs of 8 August 1991 on the Arms of Police). (Journal of Laws, 1991).

4. Training and Qualifications.

Police officers are required to undergo three years of training, called preparatory duty. They can also enter the ranks through military service in special squads of prevention under the authority of the Ministry of Interior. (Like many other countries, Poland has a military service draft. As part of their compulsory military duty, persons may be appointed to special police squads). Every conscript admitted to these squads receives a nomination to police officer for a candidate period which is equal the term of military service. Candidates do not have police powers and may perform only administrative and peace and order maintenance functions.

After completing the term, the candidate can apply for regular police duty. Recruits are required to be Polish citizens with no criminal records, enjoying all civil rights, to have graduated from at least a secondary school and be of good physical and mental health. Officer's ranks are available only after graduating from the Police Academy in Szczytno, which is the only police officer's school in Poland at the present time.

5. Discretion.

*Use of force. In compliance with the Police Act (Article 17), the use of a firearm by an on-duty police officer is allowed in strictly defined circumstances, and if other means of coercion have proved to be ineffective (for example, baton, tear gas). With the exception of a situation which requires the use of guns for self-defense, police officers are permitted, under law, to use their

guns in the following instances: a) to repel a dangerous illegal attack against a site of the supreme state authority branch, foreign embassy or other object important for national defense and security, economy or culture; b) if an armed person refuses to drop a weapon; c) to repel a direct illegal attack on a convoy securing persons, money, secret documents or valuable things; d) while chasing a dangerous criminal; and e) to prevent the escape of a prisoner or person remanded in custody.

In 1992, police officers used their firearms 150 times; 9 offenders were killed and 31 wounded.

Also in 1992, 4 policemen were shot and killed, and 71 were injured by armed criminals. (Rzeczpospolita, August 17, 1993).

*Stop/apprehend a suspect. Any citizen may stop an offender if the crime is discovered in progress. After apprehension, the police may hold the offender in custody for a maximum of 48 hours.

The offender must then be released unless the prosecutor orders pre-trial detention.

*Decision to arrest. The police are authorized to take certain compulsory measures against any person suspected of committing a crime. These measures include arrest and 48 hours detention, and a search of the body, clothes, and house, if the proper conditions have been met.

* Search and seizure. Police must obtain a warrant issued by a court or public prosecutor in order to search premises and persons. Where delaying the search would be disadvantageous to the case and the prosecutor's warrant cannot be issued in advance, the search can be conducted with a warrant issued by the Chief of the police unit or with the ID-card of the officer conducting the search. Warrantless searches such as these must subsequently be approved by the prosecutor. However, if there is reasonable suspicion that a crime has been committed, subsequent approval by the prosecutor is not required to search a body, clothes and luggage of a given person or to check cargo stored at terminals or carried by means of transportation. (Police Act, Art.191; 15.1.5).

*Confessions. Confessions are admissible in evidence only if they have been given voluntarily. Explanations of the accused, testimony or statements given or made under conditions precluding the possibility of free expression, cannot constitute proof (Code of Criminal Procedure, Art. 157, Sect. 2). This exclusionary

rule extends the scope of its action not only to those statements made by the suspect, but to those made by witnesses and experts as well. It forbids the use of any coercive measures, examining persons under the influence of pharmacological drugs, or using any other means to reduce the capacity for free expression. A lie-detector examination is admissible if the person consents to such an examination. A draft of a new Code of Criminal Procedure excludes the use of lie-detectors in the criminal process completely. (Grajewski and Skretowicz, 1993; Waltos, 1979: 27).

6. Accountability.

Police behavior has been monitored since August of 1992 when a special Inspection Department, composed of 300 experienced officers, was established to deal with this task. The department handles 20,000 complaints and proposals brought annually from citizen complainants to the Police Headquarters. (Rzeczpospolita, July 15, 1993: 7).

In 1992, there were 1,087 reported incidents of abuse of power by the police. Out of 423 criminal proceedings that were instituted against police officers, 61 resulted in acquittals and 185 resulted in a discontinuance of proceedings; 62 defendants were sentenced to imprisonment (42 of them conditionally). (Wprost, August 15, 1993: 30).

PROSECUTORIAL AND JUDICIAL PROCESS

1. Rights of Accused.

*Rights of the accused at trial. Defendants are presumed innocent until proven guilty; the burden of proof is on the prosecution. The accused have the right to a legal advisor, to argumentation, to participate in procedural actions, to appeal against procedural decisions, and to be acquainted with the case files.

*Assistance to the accused. Accused persons have the right to employ a legal adviser for their defense, if the accused cannot afford to pay for one, they may be granted legal aid at public expense.

2. Procedures.

*Preparatory procedures for bringing a suspect to trial. Preparatory proceedings for a case are carried out either by the public prosecutor or police. In general, the police investigate the offenses. For serious offenses (felonies and some

strictly specified misdemeanors) the investigation can be conducted by the public prosecutor. The public prosecutor also has the authority to transfer the investigative responsibility to the police. In addition, there are some administrative authorities who have strictly limited investigative powers, such as the tax, customs, forest, health and trade authorities.

Court proceedings are usually public and take the form of an oral hearing that is documented on the record. The judge plays an active role in the trial when the evidence is examined. The confession of the accused is considered an important part of the evidence, but it is not sufficient in itself to prove guilt. The defendant may not be interrogated under oath. Unlike the Anglo-Saxon process, there are no separate presentations of evidence by the prosecutor and the defense during the trial.

The system of appeal is a two-instance control system. Any court sentence, with the exception of those passed by the Supreme Court, can be appealed by the convicted person, the victim, their lawyers or the prosecution. The appeal can raise issue of errors in judgement of law interpretation, errors in procedure (for instance, the evaluation of evidence) and errors in the determination of punishment. The accused may not be given a more severe penalty as a result of the appeal.

*Official who conducts prosecution. The public prosecutor is the only person who has the right to issue an order on the presenting of charges, to decide on the application of pre-trial detention, or to decide the method of terminating the proceedings.

The public prosecutor can refuse to institute proceedings if case information is found to be unreliable or insufficient as a basis for prosecution. The Code of Criminal Procedure (Article 11), prescribes conditions that warrant case dismissal (non-prosecution): (1) the act has not been committed, or does not possess the qualities of a prohibited act, or it is acknowledged by the law that the perpetrator has not committed an offense; (2) it has been established by law that the act is not an offense because it constitutes only an insignificant social danger, or the perpetrator is not subject to penal sanctions; (3) the perpetrator is not subject to the jurisdiction of the criminal courts; (4) no indictment has been made by a duly authorized prosecutor, permission to prosecute has not been granted, or no complaint has been filed by the person lawfully entitled thereto; (5) the accused is deceased; (6) the prescribed statute of limitation has lapsed, or; (7) a criminal

proceeding concerning the same act committed by the same person has been validly concluded or, if previously instituted, is still pending. In 1992, 1,025 offenders were not prosecuted because they were presumed insane during the time they committed the offense.

The Polish criminal justice system adheres strictly to the legality principle, meaning that there is a duty to investigate and prosecute all known offenses and offenders. Under this principle, it is possible to distinguish three categories of criminal offenses depending on their method of prosecution. Firstly, criminal offenses brought up by public accusation (ex officio) can be prosecuted. These offenses include all felonies and a number of other offenses, under which the principle of legality is binding. The Penal Code defines an offense as a socially harmful act prohibited by criminal law. This definition allows the police and the public prosecutor to have de facto discretion in considering whether a minor act is a formal violation of the law and should be labeled an offense and prosecuted.

Secondly, criminal offenses brought by the complaint of the injured person can be prosecuted. In certain cases, such as forcible rape, theft by a family member, or property damage, criminal proceedings cannot be initiated unless the injured person lodges a complaint to the state prosecution agency. These offenses are also prosecuted ex officio. That is, once these charges have been made by the complainant, the issue becomes an "official" case, independent of the complainant. Consequently, even if the injured person chooses to withdraw the complaint, the prosecution can still proceed with the case.

Thirdly, criminal offenses can be prosecuted by private accusation. These offenses are those against personal integrity and dignity (slight bodily injury, insult, defamation, simple assault), privacy (breach of domestic peace), secrecy of correspondence and telephone communication (wire-tapping) and copyrights (plagiarism). In these cases, the injured person has the right to bring charges against the offender and pursue an indictment. However, for societal interests, the public prosecutor may decide to pursue an indictment personally or join in the proceedings already initiated by the injured person.

*Alternatives to going to trial. One major alternative to trial in the criminal process is a conditional discontinuation of the proceedings made by the public prosecutor. The public prosecutor may waive prosecution despite the

availability of evidence which could establish the guilt of an offender. Decisions not to take a case to court are generally made in cases concerning first offenders who have committed an offense punishable by a maximum of 3 years deprivation of liberty. Criminal proceedings can also be conditionally discontinued by the court while a case is on route to trial. In 1991, decisions for conditional discontinuation were made by courts in 4,342 cases.

*Proportion of prosecuted cases going to trial. In 1992, out of a total of 979,426 cases decided by public prosecutors, 151,974 (16%) were brought with an indictment to the courts.

*Pre-trial incarceration conditions. In the interest of criminal investigation, the public prosecutor can order suspects to be detained while they await their trial. In order to be given pre-trial detention, there must be sufficient evidence that can demonstrate the suspects' involvement in an offense. The legal prerequisites for pre-trial detention are stated in Article 217 of the Code of Criminal Procedure. Pre-trial detention may be ordered when: 1) there is good reason to fear the accused may go into hiding, particularly if no permanent residence in the country or the identity of the accused can be established; 2) there is good cause to assume the accused would induce other persons to give false testimony or attempt to obstruct criminal proceedings in some other manner; 3) the accused has been charged with a felony or is a recidivist; or 4) the accused has been charged with an act which creates a serious social danger.

Pre-trial detention can be ordered by the public prosecutor during preparatory trial proceedings if the crime carries a statutory prison sentence that exceeds one year. By statute, the maximum term of pre-trial detention is three months. Pre-trial detention can also last up to one year as decided by the court or for an undetermined period in certain cases, as decided by the Supreme Court on the motion of the Attorney General. The prosecutor is required to examine the suspect personally before the transfer to pre-trial detention.

*Bail procedure. Bail offers an alternative to pre-trial detention, while ensuring the presence of the accused in court. It can be granted both by the court and by the public prosecutor, prior to filing the charge sheet. In 1992, prosecutors ordered 5,625 suspects to be set free on bail. Both official statistics and survey data indicate that bail is most often used in

property offenses, as well as in cases involving foreigners suspected of committing a crime in Poland. (Bulsiewicz, 1992: 124-132).

*Proportion of pre-trial offenders incarcerated. In 1992, about 9% of all suspects (339,559) were held in pre-trial detention, of which 31,841 were detained by prosecutors. As of December 31, 1992, 23% (14,188) of the total prison population (61,175) were prisoners awaiting trial. (The Court's and Penitentiary Statistics for 1992, April 1993: 371; Statistical Information on the Activities of Public Prosecution Office in 1992, Feb. 1992).

JUDICIAL SYSTEM

1. Administration.

The administration of the judicial system is vested in the hands of the Minister of Justice and the courts themselves. The hierarchy of common courts of Poland consists of four levels. At the lowest level there are regional courts, numbering 285 in 1992, which are the courts of first instance. The second level are district courts, numbering 44 in 1992; they function as courts of first instance for more serious offenses, or courts of second instance with respect to regional court decisions.

At the third level are the courts of appeal which were established in 1990 and numbered 10 in 1992. As the courts of third instance, these courts exercise control over the decisions made by the second instance district courts.

The highest judicial level is the Supreme Court, located in Warsaw. The Supreme Court deals with extraordinary appellate measures concerning valid decisions of lower courts, and raises decisions concerning the interpretation of legal issues faced by the lower courts.

All courts exercise both criminal and civil jurisdiction. Most criminal cases are handled by regional courts, usually by a panel composed of one presiding professional judge and two lay magistrates. Lay magistrates participate on an equal footing with the professional judge when the decision is passed, but none of them can preside over the trial.

Crimes can also be tried by a single judge. This is permissible, for instance, in cases involving offenses punishable by a maximum of 2 years deprivation of liberty.

Appeals are made to higher instance courts. Lay magistrates do not participate in appellate proceedings. Rather, a panel of three professional judges conducts appeals. The Supreme Court can pass an appeal decision by a panel of

five or seven judges, by the whole chamber, or by the general assembly of Supreme Court judges.

2. Special courts.

*Family courts. Family courts are administered regionally and deal with offenses committed by juveniles. In 1992, there were 305 family courts.

*Military courts. Military courts handle criminal cases that involve offenses committed by the military defense staff or by conscripts on duty.

3. Judges.

*Number of judges. As of 1992, there were 7,172 judges of first and second instance courts, and 71 judges of the Supreme Court.

*Appointment and qualifications. All courts are presided over by judges who are appointed by the President of the Republic on the recommendation of the National Council of Judiciary. The judges in Poland are independent and are accountable only to the law. The minimum age for appointment is 26 and the compulsory retirement age is 70.

Candidates for judicial appointment must successfully pass an exam and be employed for at least 1 year as an assistant judge. Professional judges must attain a university law degree and complete the 2-year period of court apprenticeship. (Journal of Laws, 1990).

PENALTIES AND SENTENCING

1. Sentencing Process.

*Who determines the sentence? Professional judges and lay assessors together deliberate and vote on the penalty to be imposed.

*Is there a special sentencing hearing? No, sentencing is decided immediately after the judges and lay assessors deliberate and vote on the question of guilt, the legal classification of the act, and other issues (civil complaint). This all occurs in one session. There is a separate evidentiary proceeding devoted to the question of the penalty, and a separate session with deliberation and voting on the penalty imposed. The judgement is an integral whole and is pronounced on the question of guilt and penalty at the same time. After the judgement is passed, it is immediately recorded in writing. In addition, the presiding judge must always announce it orally in the courtroom. At this time, everyone has free

access to the courtroom, even if the trial was held in a closed session, (Waltos, 1979: 41-42).

*Which persons have input into the sentencing process? The law requires the judge and other members of the panel to rely on three factors during sentencing: 1) evidence and its evaluation, 2) the principles of science, and 3) personal experience. Expert opinion is subject to evaluation by the court according to the rules of evidence of Polish criminal procedure. For this reason, the court is not bound by the expert's conclusion. However, as in most other jurisdictions, expert opinions, especially given by psychiatrists, are accepted by the courts. This is particularly true if the offender's mental capabilities or potential dangerousness are assessed.

2. Types of Penalties.

*Range of penalties. The Polish Penal Code does not provide one strictly defined penalty for any given offense. Rather, the court has the discretion to choose which penalty it will impose. Its discretionary power in sentencing is, however, confined by the statutory directives as specified by the Penal Code in Article 50. The Code contains three general recommendations for the court to follow when making a sentencing decision. Each recommendation reflects a goal of punishment: just desert, general deterrence and individual prevention. Since in practice implementation of these principles in individual sentencing is hardly possible, the underlying idea of Article 50 has been severely criticized, and the whole concept of statutory directives of punishment has been reformulated in a draft of the new Penal Code. (Jasinski, 1981: 27).

Penalties are classified as principal and accessory. An accessory penalty is imposed in addition to a principal penalty and cannot be imposed separately. Principal penalties include immediate deprivation of liberty, conditionally suspended deprivation of liberty, limitation of liberty, and fines. (Immediate deprivation of libery is the most severe penalty, second to capital punishment. It can range from 3 months to 15 years. From a total of 160,703 sanctions imposed by the courts in 1992, 39,642 (25%) were immediate prison sentences. Of these, 29 persons were sentenced to 25 years of imprisonment. The average length of an immediate prison sentence is 24 months.

The most common type of penalty imnposed in Poland is conditionall ysuspended deprivatrion of liberty. About 84,000 offenders (52% were

sentenced to this penalty in 1992. One-third of tehm were placed under supervision during the probation period.

The limitation of liberty is a non-custodial penalty which was introduced by the Penal Code of 1969 as a substitute for the short-term prison sentence. A person sentenced to this penalty remains at liberty but may not, without permission of the court, change his permanent residence, and is required to perform work designated by the coutry and have periodic evaluation reports. The court can order a deduction of 10% to 25% of the offender's work salary (remuneration) instead of the obligation to perform the court designated work. The penalty of limitation of liberty may be imposed for a minimum of 3 months and a maximum of 2 years. In 1992, 5,405 (3%) persons were sentenced to a limitation of liberty.

A fine can be solely imposed or in conjunction with a penalty of deprivation of liberty. The accumulation of penalties may be optional or obligatory. As a sole penalty, fines can range from 500,00 to 25 million zlotys. In 1992, 31,259 offenders (19%) received fines as their sole form of punishment.

If the perpetrator of an intentional offense has caused damage to public property, fines from 200,000 to 50 million zlotys can be imposed as a penalty imposed in addition to the deprivation of liberty (cumulative principal penalty). The court must impose this type of fine if the criminal committed the offense with the intention of obtaining a material benefit). There is also a special principal penalty of 25 years deprivation of liberty which may be imposed instead of the death penalty and for other special cases as provided by law (for example, espionage).

Accessory sanctions include deprivation of public rights, deprivation of parental and guardianship rights, prohibition from holding specific posts, pursuing specific occupations or engaging in specific activities, prohibition from driving certain motor-vehicles, forfeiture of objects, and publication of the sentence for public information.

A felony is punishable with the deprivation of liberty for a minimum of 3 to 15 years, 25 years imprisonment, or the death penalty. Three basic penalties may be imposed for misdemeanor offenses. These are: 1) deprivation of liberty from 3 months to 15 years; 2) limitation of liberty for a minimum period of 3 months to a maximum of 2 years; or 3) fines which can range from 500,000 to 25 million zlotys. The most severe penalty generally used for transgressions is a custodial sanction for a minimum of one week to three months.

*Death penalty. Capital punishment has been retained in the Penal Code of 1969 as a penalty of an exceptional character to be imposed for serious felonies. Presently, there are eight offenses punishable by the death penalty as stated in the Code: homicide, high treason, attack on the independence of the State, espionage, terrorist attempts, sabotage, armed robbery, failure of a soldier to obey an order during combat, and three other offenses cited in supplementary laws. (These supplementary laws cite the crime of genocide [the decree of August 31, 1944 concerning the punishment of Nazi war criminals] and two offenses that concern Polish citizens accepting service in a foreign army or foreign military organization. [The 1967 Act on the official duty of defending the Republic].

The death penalty cannot be imposed on persons under 18 years old or on pregnant women. The penalty is carried out by hanging, or in case of a military offender, by shooting. During the last 22 years of its application under the present Penal Code, 204 persons have been sentenced to death. There have been only two instances in which offenders were sentenced to death for offenses other than homicide. (Grzeskowiak, 1986: 44; Statistical Yearbook 1987, 1988, 1989, 1990, 1991, 1992, 1993).

Since 1988 the courts have ceased to impose the death penalty, with two exceptions occurring in 1992. However, the basic sanctioning system remains unchanged. Poland has not signed the Second Optional Protocol to the International Covenant on Civil and Political Rights, which aims toward the abolition of the death penalty, or the sixth protocol on the abolition of the death penalty at the European Convention on Human Rights and Fundamental Freedoms. Capital punishment will not be included in the draft of a new Penal Code.

PRISON

1. Description.

]*Number of prisons and type. As of December 31, 1992, there were 84 prisons and 70 remand centers in Poland. (Statistical Yearbook 1993: 82).

Of the total 209 penal institutions in Poland, most are large establishments housing 700 to 800 inmates. The Code for the Execution of Penalties recognizes seven types of penal institutions: ordinary, transitory, labor center, institutions for adolescents, institutions for recidivists, institutions for convicts in need of special medical and educational measures, and institutions for persons serving a penalty following a military

arrest.

Prisoners are housed in old buildings, 70% of which were built before World War I. The living conditions are generally inadequate (rudimentary sanitation, insufficient heating). Cell space reaches a maximum of three square meters for every male prisoner and four square meters for every female prisoner.

*Number of prison beds. As of May 1993, there were 62,800 prison beds in the 209 penitentiary institutions in Poland.

*Average daily population/number of prisoners. As of May 1993, the average prison population was 63,500 inmates. (Wprost, May 23, 1993: 29).

Prisons are overcrowded; however, not to the extent that they were in the mid-1970's, when the imprisonment rate per 100,000 of the total population was 220. Presently, the prison rate per 100,000 population is 165, which is one of the highest prison rates in Europe. (Pease and Hukkila, 1990: 77).

*Number of annual admissions. In 1992, the total number of admissions to jails and prisons was 63,213. Of these, 40,598 (64%) were remanded in custody, 20,372 (32%) were sentenced for criminal offenses, and 2,243 (4%) were sentenced for transgressions.

*Actual or estimated proportions of inmates incarcerated. The following figures reflect the daily average percentage of inmates incarcerated.

Drug Crimes	Not available
Violent Crimes	24%
Property Crimes	57%
Other Crimes	19%

(The violent crime category includes homicide, rape, and robbery; the property crime category includes mainly burglary and theft).

2. Administration.

*Administration. The responsibility for prison administration lies primarily with the Ministry of Justice and the Central Administration of Prison Establishments (CZZK).

*Prison guards. At the end of 1992, the prison staff totaled 21,043,of which 20,188 (95%) were prison officers (managers, administrators, guards), and 855 (5%) were civil workers. (The prison staff, excluding civil workers, rose from 19,516 in 1990 to 20,188 in 1992. Between 1990 and 1992, about 6,500 prison officers were

dismissed and replaced by more highly qualified people). Of the civil workers, 551 served as health care providers and 219 served as teachers. (Small Statistical Yearbook for 1993, 1993: 83).

The size of the total staff is proportionally correspondent to 34% of the entire prison population; the staff-prisoner proportion is 1:2.9. (Rzeczpospolita, February 10, 1992).

*Training and qualifications. Information not available.

*Expenditure on the prison system. In 1993, 1,028,152 million zlotys (60 million US$) were allocated toward prison administration expenses. In 1992, the net cost per prisoner each day was 125,000 zlotys (7.80 US$). (Rzeczpospolita, May 18, 1993; 1 US$ = 16,500 zlotys).

3. Prison Conditions.

*Remissions. A prisoner may be granted permission to leave the prison for a short period, either for an important reason or as an award for good behavior. In general, leaves are granted for a maximum of 5 days. During 1992, a total of 54,396 leaves were granted, 75% of which were granted for good behavior and 25% for a special reason. Only 2.2% of all leaves granted in 1992 have failed due to late return, drunkenness or the commission of a crime while on leave. (Wprost, May 23, 1993: 30).

*Work/education. Prisoners serving sentences are required to work. Prisoners awaiting trial are not obligated to work, but are under obligation to participate in order maintenance jobs in jail. At present, the growing problem of prison administration is to provide prisoners with employment. The number of inmates in the total prison population who worked while serving their term decreased from 54.8% in 1990 to 29.1% in 1992.

*Amenities/privileges. A recent development in the visiting policy of Polish prisons has been the allowance of unsupervised visits of a prisoner's spouse for 24 hours. There were 206,449 such visits permitted in 1992.

EXTRADITION AND TREATIES

*Extradition. Poland is a party to 28 bilateral extradition treaties. The treaties have priority over domestic law. Six treaties were made before World War II, namely with France (1925), the United States (1927), Belgium (1932), the

United Kingdom (1932), Luxembourg (1934) and Switzerland (1937). Because these treaties are old, they do not generally address white collar crime and are not suitable for combating current international forms of crime.

Poland has been a party to the European Convention on Extradition since 1993.

*Exchange of prisoners. In 1992, approximately 400 foreigners, one-third of whom came from the Commonwealth of Independent States, were detained in Polish prisons, either under sentence or awaiting trial. However, only 10 extradition requests were made to Poland by other states and only a dozen were made by Poland during the same period. (Redo and Redo, 1993: 46).

*Specified conditions. Extradition law provisions are contained in the Polish Constitution (Article 88), the Penal Code (Articles 118-119) and the Code of Criminal Procedure (Articles 523-538).

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