

Poland

Information relevant to promotion of the ratification and full implementation of the Rome Statute of the International Criminal Court

as required by the Resolution ICC-ASP/5/Res.3 of the Assembly of States Parties – *Action Plan for achieving universality and full implementation of the Rome Statute*

I. The experiences in the ratification and implementation process as well as the solutions to the encountered problems, which could be useful for other countries

1) Introduction of the institution of *surrender* to the Polish legal order

Since the legal nature of the institution of *surrender* and its relation to the institution of *extradition* were rather obscure, it was not very clear how to introduce it into the Polish domestic legal order. Specifically, it was controversial whether the Polish Constitution, which banned the extradition of Polish nationals, should be amended in that context. The broad discussion on the issue was launched, involving not only the relevant departments in the Government administration but also academic circles. Finally, the opinion prevailed that *surrender* as understood in the Rome Statute is not equal to *extradition* and therefore the Constitution did not need be amended.

However, the situation changed after the Polish Constitutional Tribunal challenged conformity with the Constitution of the provisions allowing *surrender* of Polish nationals, which were adopted in a view to implement the EU Framework Decision of 13 June 2002 on European Arrest Warrant (...). In order to comply with the obligations towards EU, the necessity to amend the Constitution became unavoidable. Then, the decision was made to take this opportunity to also set aside any doubts which could arise in the light of the Constitutional Tribunal's decision about admissibility under the Constitution of *surrender* of Polish nationals to the International Criminal Court. Thus, the new provisions were introduced to Article 55 of the Constitution, which *expressis verbis* allow the extradition of Polish nationals upon request of international judicial bodies established under international treaties, which Poland is party to, if made in connection with offences under their jurisdiction. These new provisions entered into force in November 2006.

2) Special provisions on co-operation with the ICC

Bearing in mind specific features and requirements of the co-operation with the International Criminal Court, the decision was taken that a separate regulation for such co-operation within the scope of existing provisions of the Code of Criminal Procedure concerning proceedings in criminal cases in international relations would serve best to its purposes. Thus, an additional Chapter 66a was introduced to the above Code under the heading *Co-operation with the International Criminal Court*. The new provisions entered into force in November 2004.

3) Review of substantive criminal law

In view of *the complementarity principle* and in order to enable the Polish authorities to investigate all crimes covered by the Rome Statute, it was necessary to re-examine the Polish substantive criminal law and identify any missing regulations. This review showed that a predominant part of offences under jurisdiction of the ICC have already been penalised in the Polish criminal law (specifically in the Chapter XVI of the Polish Criminal Code – Crimes against Peace and Humanity and War Crimes). However, in order to achieve full compliance with the relevant provisions of the Rome Statute, especially those, which relate to relatively "new" international crimes, like *enforced disappearance of persons* or *forced pregnancy*, there is still a need to criminalise some additional conducts under the Polish law. Thus, the

necessary draft amendments to the Polish Criminal Code have been prepared. In the work on the draft, especially its part concerning war crimes, the International Red Cross and Red Crescent Movement as well as the Polish Red Cross have been consulted.

II. Examples of implementing legislation

The most relevant pieces of domestic legislation adopted in view of implementing the Rome Statute are contained in the attachment.

III. Recent activities for the promotion of universality and full implementation of the Rome Statute

1) Bilateral co-operation between Ministries of Justice of Poland and Ukraine

In the framework of Poland's 2006 Programme of International Assistance, the Polish Ministry of Justice continued co-operation with the Ministry of Justice of Ukraine focussed on the International Criminal Court. A number of visits to Kiev took place, where the Polish experts presented the Polish experience in the ratification of the Rome Statute and the legal framework adopted in view of the full implementation of the Statute. The matters pertaining to ratification and implementation of the Statute were also discussed during the visits of representatives of the Ministry of Justice of Ukraine to Warsaw, recently in October 2006.

2) Information sharing with the interested diplomatic missions accredited in Poland

On request of the interested diplomatic missions accredited in Poland (e.g. Ukraine, Turkey), meetings were organised with representatives of these missions to share information on Poland's experience in ratification and implementation of the Rome Statute. Problems encountered during the ratification process and measures taken to overcome these problems were discussed. The domestic legal framework adopted in order to enable effective co-operation with the Court was also presented.

3) Participation in international conferences on the International Criminal Court

Representatives of the Ministry of Justice participated as speakers in international conferences / seminars on the International Criminal Court where they discussed *inter alia* legal aspects of Poland's co-operation with the Court. Specifically worth mentioning are the conferences organised by the *Coalition for the International Criminal Court* on a margin of annual sessions of the Assembly of the States Parties.

4) Participation in research projects on problems in the ratification and implementation process

Representatives of the Ministry of Justice were also involved in research projects on problems encountered by states in ratification and implementation process of the Rome Statute. In the framework of *Teramo Research Group* they made contribution on the Polish legal framework to the collective comparative study *The Rome Statute and Domestic Legal Orders* issued by *Nomos Verlagsgesellschaft Baden Baden, 2005*.

Attachment

I.

**The Constitution
of the Republic of Poland of 2 April 1997
(Excerpt)**

(...)

Article 55¹

1. The extradition of a Polish national shall be prohibited, except in cases specified in paragraphs 2 and 3.
2. Extradition of a Polish national may be granted upon a request made by a foreign state or an international judicial body if such a possibility stems from an international treaty ratified by Poland or a statute implementing a legal instrument enacted by an international organisation of which the Republic of Poland is a member, provided that the act covered by a request for extradition:
 - 1) was committed outside the territory of the Republic of Poland, and
 - 2) constituted an offence under the law in force in the Republic of Poland or would have constituted an offence under the law in force in the Republic of Poland if it had been committed within the territory of the Republic of Poland, both at the time of its commitment and at the time of the making of the request.
3. Compliance with the conditions specified in paragraph 2 subparagraphs 1 and 2 shall not be required if an extradition request is made by an international judicial body established under an international treaty ratified by Poland, in connection with a crime of genocide, crime against humanity, war crime or a crime of aggression, covered by the jurisdiction of that body.
4. The extradition of a person suspected of the commission of a crime for political reasons but without the use of force shall be forbidden, so as an extradition which would violate rights and freedoms of persons and citizens.
5. The courts shall adjudicate on the admissibility of extradition.

¹ As amended with the effect from 7 November 2006

II.

The Law of 6 June 1997– Code of Criminal Procedure (Excerpt)

(...)

Part XIII Procedure in criminal cases in international relations

(...)

Chapter 66a.²

Co-operation with the International Criminal Court

Art. 611g. § 1. A request for co-operation of the International Criminal Court, hereinafter referred to as “the Court”, depending on the stage of the proceedings, is executed by a competent court or prosecutor through the Minister of Justice.

§ 2. The provision of § 1 shall apply, respectively, to a request for judicial assistance addressed to the Court by a court or a prosecutor.

Art. 611h. § 1. In the event of a request of the Court for surrender of a person to the Court, as defined in the provisions of the Statute, prior to the first examination, the person whom the request concerns should be advised of his/her rights, as specified in the Statute, and of the possibility of raising an objection that a penal proceedings against him/her with regard to the conduct referred to in the request for surrender has been validly completed.

§ 2. Whenever circumstances occur which justify the objection referred to in § 1, a court shall notify the Minister of Justice thereof, and the latter may postpone the execution of a request for surrender.

§ 3. When adjudicating in a matter concerning the admissibility of surrender, the provisions of Article 604 shall not apply.

§ 4. If, after a court’s positive decision on admissibility of surrender of a person to the Court, the Minister of Justice postpones the execution of the request for the surrender due to the penal proceedings pending in the Republic of Poland or due to the fact that such person is serving a sentence of imprisonment for another offence, the person whom the request concerns may be temporarily surrendered to the Court subject to the terms and conditions established in consultation with the Court.

§ 5. The consultation with the Court, as referred to in § 4, shall be carried out by the Minister of Justice.

Art. 611i. § 1. In the event of unscheduled landing in the territory of the Republic of Poland of a person who is being transported to the Court by air, the Minister of Justice may demand that the Court submits a request for transit.

§ 2. If, within 96 hours from unscheduled landing, the request referred to in § 1 is not received, the transported person shall be released.

Art. 611j. § 1. At the request of the Court for provisional arrest or arrest and surrender, a court shall order pre-trial detention.

§ 2. The pre-trial detention referred to in § 1 may be reversed or replaced with a more lenient preventive measure in the cases specified in the Statute. The provisions of Articles 257-259 shall not apply.

§ 3. In the proceedings regarding the reversal or replacement of the preventive measure, a court or a prosecutor shall take into account the standpoint expressed by the Court.

² Entered into force on 23 November 2004

Art. 611k. The Minister of Justice, prior to the consideration of the Court's request for a consent to proceed against, punish or detain the surrendered person for an offence committed prior to the surrender, other than the offence for which the person has been surrendered to the Court, may request that the Court provides additional information as well as a report containing the statement of the surrendered person regarding the offence specified in the Court's request.

Art. 611l. The Minister of Justice may grant his/her consent to the surrender to the Court of a person who has been extradited or surrendered to another state.

Art. 611m. If granting of judicial assistance provided for in the Statute, to the extent or in a manner specified in the Court's request, is in contradiction with the principles of legal order in the Republic of Poland, a court or a prosecutor shall not take a decision regarding the request, but shall submit the files of the case to the Minister of Justice who consults with the Court in order to resolve the matter.

Art. 611n. If a request of the Court for judicial assistance concerns measures other than those listed in the Statute, and its execution despite consultations with the Court is still prohibited by law, and such judicial assistance may not be granted subject to specified conditions, at a later date or in any other manner, a court or a prosecutor shall deny the Court's request.

Art. 611o. § 1. If a request of the Court concerns access to documents or other evidence containing information the disclosure of which could threaten the security of the Republic of Poland, a court or a prosecutor shall not take a decision regarding such request, but shall submit the files of the case to the Minister of Justice who, in co-operation with the competent body, consults with the Court in order to resolve the matter.

§ 2. If, despite the consultation with the Court, the granting of judicial assistance still threatens the security of the Republic of Poland, a court or a prosecutor shall deny the Court's request.

Art. 611p. If a request of the Court concerns provision of a document or other evidence made available to a relevant body or institution of the Republic of Poland by another state or international organisation subject to an obligation of maintaining information contained therein as confidential, the provision shall take place only upon the consent of the originator of such document or evidence.

Art. 611r. § 1. At the request of the Court, in the course of the execution of a request for co-operation, the Prosecutor of the Court and other persons authorised by the Court shall be present during the performance of actions covered by the request.

§ 2. The persons referred to in § 1 may request that certain questions are asked and may record the course of the procedural actions for the needs of the proceedings pending before the Court.

§ 3. The Prosecutor of the Court shall be entitled to carry out procedural activities in the territory of the Republic of Poland subject to the terms and conditions specified in the Statute.

Art. 611s. The consultation with the Court, as referred to in the Statute, other than those specified herein, shall be carried out by the Minister of Justice.