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To:
The Secretary of the Committee of Ministers
Council of Europe
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COMMUNICATION FROM THE HELSINKI FOUNDATION FOR HUMAN RIGHTS

CONCERNING

EXECUTION OF ECtHR JUDGMENT IN CASE *MILKA AGAINST POLAND* APPLICATION NO. 14322/12 AND *DEJNEK AGAINST POLAND* APPLICATION NO. 9635/13

To the attention of:
1. Mr Jan Sobczak
Plenipotentiary of the Minister of Foreign Affairs for cases and procedures before the European Court of Human Rights
Agent of Polish Government

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EXECUTIVE SUMMARY

- The judgments in the cases *Milka v. Poland* and *Dejnek v. Poland* concern personal searches (also referred to as "personal checks" or "body searches") carried out in penitentiary facilities. According to the European Court of Human Rights, the application of invasive and potentially debasing measures, including personal searches, must always be based on a plausible justification presented by the authorities of the penitentiary facility concerned.

- In both judgements, the ECtHR referred to a position presented in December 2014 by the Polish Ombudsman, who noted that a prison inmate was unable to contest Prison Service officers' decision ordering the personal search of their person. The ECtHR concluded that the absence of such a remedy significantly impedes the implementation at the national level of the requirement to give sufficient justification for the decision to perform the personal search of an inmate.

- Despite the fact that four years have elapsed since the *Milka* judgment was handed down, Polish authorities are yet to introduce an effective domestic measure enabling the review of the legitimacy of personal searches.

- Under the applicable law, a person deprived of liberty who has been subjected to a personal search may lodge a complaint in an internal procedure, i.e. to the prison administration or to the head of an organisational unit of the Prison Service.

- The most recent legislative amendments, currently debated in the Parliament, envisage adding a new chapter to the Code of Execution of Criminal Sentences, entitled *Control over Convicted Persons and Persons Detained on Remand.* The new chapter creates, among other things, the possibility of manual examination of intimate parts of searched persons.

- The execution of *Milka* and *Dejnek* judgments must also be considered in the context of the legislative changes that are currently underway. These changes include the possibility of lodging a complaint with a penitentiary judge. In this respect, one should agree with the Ombudsman's opinion that the proposed amendment will respect the right to a court provided that the regulations explicitly specify that the penitentiary judge's decision on the legitimacy, lawfulness and correctness of a personal search may be contested before the penitentiary court. However, the newly proposed rules fail to explicitly indicate what a penitentiary judge should do if they rule that the search has been improper: it is unclear if the judge should notify the prosecutor's office and the relevant district head of the Prison Service or if they should choose whom to notify. Consequently, the proposed complaint procedure does not ensure the proper exercise of the right to a court.

- Therefore, the Helsinki Foundation for Human Rights believes it is reasonable for the Committee to continue its supervision over the execution of the judgments of *Milka v. Poland* and *Dejnek v. Poland.*

I. Introduction

1. The Helsinki Foundation for Human Rights (hereinafter "HFHR", "Foundation") would like to respectfully presents to the Committee of Ministers of the Council of Europe its communication, under Rule 9(2) of the Rules of the Committee of Ministers for the supervision of the execution by the Polish authorities of the European Court of Human Rights ("ECtHR") judgment in the cases *Milka v. Poland*[1] (application no. 14322/12) and *Dejnek v. Poland*[2] (application no. 9635/13). We wish to briefly outline a number of issues in relation to the General Measures established in relation to the cases *Milka v. Poland* and *Dejnek v. Poland.* Our submissions pay special attention to the facts pointed out by the Government in its Action Report (hereinafter: "AR").

2. The HFHR is a Polish non-governmental organization established in 1989 with a principal aim to promote human rights, the rule of law and the development of open society in Poland and other countries. The HFHR actively disseminates the standards of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: "Convention", "ECHR") and is dedicated to contributing to the proper execution of ECtHR judgments. In its activity, the HFHR pays particular attention to the execution of ECtHR judgments and monitors the implementation of ECtHR case-law standards by national authorities. For example, in 2018 the HFHR published a report on the implementation of judgements in Polish cases[3].

3. One of the key areas of the work undertaken by the HFHR is the rights of persons deprived of liberty. This is one of the reasons why the Foundation has decided to address the problem of personal searches of persons detained in penitentiary facilities. For example, in 2018 the HFHR intervened in the case of personal searches of an inmate of the Rzeszów Prison.[4]

II. The judgments in *Milka v. Poland* and *Dejnek v. Poland*

4. On 15 September 2015, the ECtHR issued a judgment in the case of Milka v. Poland, finding a violation of the Convention that involved subjecting an inmate to personal searches despite the absence of reasons for doing so. The ECtHR judgment was delivered in the case of Sławomir Milka, who repeatedly refused to submit to personal searches during his detention in penitentiary facilities. As a result of the applicant's conduct, the directors of the relevant prisons punished the applicant with various disciplinary sanctions. These sanctions included a reprimand, the temporary withdrawal of food parcel privileges and solitary confinement. Mr Milka has unsuccessfully appealed to the penitentiary court.

5. The ECtHR found that in the Sławomir Milka's case there has been a violation of Article 8 ECHR, which stipulates, inter alia, that everyone has the right to respect for their privacy. The ECtHR held that such state's interference with the physical and mental integrity of an individual must be proportionate to the aim pursued. In consequence, personal searches should be, according to the ECtHR, "conducted in an appropriate manner".

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[1] The ECtHR judgment from 15th September 2015 in the case *Milka v. Poland*, no. 14322/12.
[2] The ECtHR judgment from 1st June 2017 in the case *Dejnek v. Poland*, no. 9635/13.
[3] The report is available at: http://www.hfhr.pl/wp-content/uploads/2018/11/Wykonywanie-wyrok%C3%B3w-ETPC-2018-EN.pdf (accessed on: 17-09-2019).
[4] *HFHR intervenes to stop maltreatment of former court president detained on remand*, 8 June 2018, https://www.hfhr.pl/en/hfhr-intervenes-to-stop-maltreatment-of-former-court-president-detained-on-remand/ (accessed on: 17-09-2019).

6. The ECtHR pointed out that there was no evidence to suggest that the applicant could have any dangerous objects on his person. The ECtHR noted that Mr Milka had not given the prison authorities any reason for suspecting him of smuggling any dangerous objects to the penitentiary facility's premises. According to the ECtHR, the application of invasive and potentially debasing measures, including personal searches, must always be based on a plausible justification presented by the authorities of the penitentiary facility concerned.

7. In the judgment issued on 1 June 2017 in the case of *Dejnek v. Poland*, the Court has once again found a violation of the Convention that involved subjecting an inmate to personal searches despite the absence of reasons for doing so. In contrast to the case of Stanisław Milka, Artur Dejnek was subject to personal searches because unauthorised money and psychoactive substances were found in his clothes. In *Dejnek*, the ECtHR held that some of the personal searches the applicant had been subject to had not been justified by particular reasons. Accordingly, the Court reiterated an argument presented in Milka v. Poland, ruling that *"... highly invasive and potentially debasing measures like body searches or strip searches require a plausible justification. It does not appear that such a justification was given to the applicant by the prison authorities in the instant case."*[5]

8. In both judgements, the ECtHR referred to a position presented in December 2014 by the Ombudsman, who noted that a prison inmate was unable to contest Prison Service officers' decision ordering the personal search of their person. The ECtHR concluded that the absence of such an effective remedy significantly impedes the implementation at the national level of the requirement to give sufficient justification for the decision to perform the personal search of an inmate.[6]

III. Observations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

9. It should also be emphasised that the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT") in its 2013 report noted the problem of carrying out routine personal searches of women in the Warsaw-Grochów Remand Prison. The CPT pointed out that the practice of routine personal searches of women: "... *could be considered as amounting to degrading treatment. A strip search is a very invasive and potentially degrading measure. Therefore, resort to strip searches should be based on an individual risk assessment and subject to rigorous criteria and supervision. Every reasonable effort should be made to minimise embarrassment; detained persons who are searched should not normally be required to remove all their clothes at the same time, e.g. a person should be*

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[5] *Dejnek v. Poland*, § 75.

[6] In his letter of 23 December 2014 sent to the Minister of Justice, the Ombudsman emphasised that: *"... for the convicted person concerned, the decision to carry out the personal search of their person is equally, or perhaps even more important, than e.g. the decision to inspect the their personal belongings, because it deeply interferes with the spheres of privacy and dignity. In this situation, if the decision on the inspection of personal belongings may be appealed against by way of a complaint under Article 7 of the Code of Execution of Criminal Sentences, then such a complaint should all the more be available as a remedy against the decision ordering a convicted person to undergo a personal search."* Ombudsman's letter to the Minister of Justice of 23 December 2014, ref. KMP.571.83.2014.MMa ("the Ombudsman's Letter"), p. 4, https://www.rpo.gov.pl/sites/default/files/Wyst%C4%85pienie%20Generalne%20z%20dnia%2023.12.2014%20r.%20do%20Ministra%20Sprawiedliwo%C5%9Bci%20w%20sprawie%20kontroli%20osobistych%20w%20jednostkach%20penitencjarnych.pdf (accessed on: 17-09-2019).

allowed to remove clothing above the waist and to get dressed before removing further clothing."[7]

IV. General measures

10. In the latest Action Report of 12 July 2019, the Polish Government stressed *inter alia* that: "*[w]ith respect to the possibility of appeal against the order to conduct a body search it should be pointed out that in accordance with the provision of the Article 116 § 2 of the Code of Execution of Criminal Sentences the order to conduct a body search of an inmate is based directly on the provisions of law and does not require a form of a decision of the prison director. Nevertheless, lack of this requirement does not mean that orders to conduct a body search fall outside any supervision. Thus, all activities and decisions based on Article 116 § 2- 5 of the Code of Execution of Criminal Sentences are subject to judicial supervision of the penitentiary judge and to administrative supervision of the supervisors in the framework of the organizational structure of the Prison Service (Article 78 § 2 of the Code of Execution of Criminal Sentences).*"[8]

11. In this communication, the HFHR would like to present a rationale for the creation of additional mechanisms which would ensure more effective control over the application of personal searches of persons deprived of their liberty, the introduction of which would serve the purpose of fully executing the *Milka* and *Dejnek* judgments.

V. The application of personal searches of persons deprived of their liberty in Poland

12. Pursuant to Article 116 §§ 2-3 of the Code of Execution of Criminal Sentences[9], ("the CECS"), "*[i]n cases justified by reasons of order or safety, a convicted person may be subject to a personal search. For the same reasons, searches of cells and other premises frequented by the convicted person, the objects located therein and the objects supplied to this person or passed on by this person to another person may be conducted. Cells and other premises shall be searched in the absence of convicted persons. § 3 Personal search involves an inspection of the body and the checking of clothes, underwear and footwear as well as [other] belongings of the convicted person's possession. The inspection of the body and the checking of clothes and footwear shall be carried out in a [separate] room, without the presence of third parties or people of the opposite sex, and shall be performed by persons of the same sex.*" It should be noted at this point that the above provisions have remained unchanged since the applications were lodged in *Milka* and *Dejnek* cases. However, an amendment has been made to a regulation that lays down the procedure for carrying out a personal search. Pursuant to § 68 of the Regulation of the Minister of Justice of 17 October 2016 on security measures imposed to ensure the security of organisational units of Prison Service[10], "*A personal search shall be performed in the following manner: 1) the inmate empties their pockets, removes footwear, clothing and underwear; 2) the footwear, clothing and underwear is checked; 3) an officer inspects the* [inmate's] *oral cavity, nose, ears, hair and body; 4) the inspection of the body may*

[7] CPT/Inf (2014)21, para. 106, https://hudoc.cpt.coe.int/eng#{%22sort%22:[%22CPTDocumentDate%20Descending,CPTDocumentID%20Ascending,CPTSectionNumber%20Ascending%22],%22CPTState%22:[%22POL%22],%22CPTSectionID%22:[%22p-pol-20130605-en-28%22]} (accessed on: 17-09-2019).

[8] Communication of the Government of the Republic of Poland of 12 July 2019, p. 3, https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016809665c3 (accessed on: 17-09-2019).

[9] The uniform text published in the Dziennik Ustaw (Journal of Laws, J.L.) of 2019, item 676, as amended.

[10] J.L. of 2016, item 1804.

also include [the inmate] *bending or crouching so that a check of their anal and genital area can be performed; 5) during the search, the inmate should be partly dressed; the officer first checks part of the clothing and before the next part is checked, the inmate shall be allowed to put on the checked clothes; 6) the officer should not touch the inmate during the inspection."*

13. The Code of Execution of Criminal Sentences does not provide for the possibility of lodging a complaint against a personal search. Pursuant to Article 102 (10) CECS, a person deprived of liberty who has been subjected to a personal search may lodge a complaint in an internal procedure, i.e. to the prison administration or to the head of an organisational unit of the Prison Service.

VI. The amendment to the Code of Execution of Criminal Sentences

14. The execution of the *Milka* and *Dejnek* judgments must also be considered in the context of the legislative changes that are currently underway. In this context, a note should be made of the Government-sponsored proposal to amend the Criminal Code that was tabled at the Sejm on 12 April 2019.[11] On 2 July 2019, the Council of Ministers presented a self-amendment to the above proposal [12] ("the Self-amendment"). The Self-amendment seek to introduce additional chapter (Chapter XXa, Control over Convicted Persons and Persons Detained on Remand) into the Code of Execution of Criminal Sentences. The chapter is to govern, inter alia, the application of personal searches of persons deprived of their liberty.

15. The Self-amendment seeks to add Article 241a § 1 to the Code of Execution of Criminal Sentences, which would stipulate that *"In order to ensure security and order in prisons and remand centres and at workplaces of convicted persons or persons detained on remand, officers of the Prison Service may carry out cursory searches, personal searches, searches of cells and other premises in residential units, searches of premises outside residential units, checks of parcels, objects and luggage, inspection of vehicles, general inspections and inspections of workplaces of convicted persons or persons detained on remand located outside the grounds of a prison or remand prison."* The Self-amendment proposes to add another provision to the CECS, Article 241a § 5, which reads as follows: *"The course of the searches, checks and inspections referred to in § 1 during which prohibited objects or narcotic drugs, psychotropic substances and their precursors ('substances') were found, and the course of the inspections or searches referred to in Article 241g § 1 and Article 241h § 1 shall be documented in a report."* The above means that not all personal searches will be documented. This approach should be assessed negatively. A post-search report could constitute evidence that a personal search of the person deprived of liberty has been carried out. At the same time, the Ombudsman noted in its opinion on the Self-amendment[13] ("the Ombudsman's Opinion") that *"... a report should be drawn up each time an inmate is the subject of a personal search, whether or not any*

[11] *Rządowy projekt ustawy o zmianie ustawy – Kodeks karny* (Government-sponsored proposal of an amendment to the Criminal Code Act, Sejm paper no. 3386), http://orka.sejm.gov.pl/Druki8ka.nsf/0/547DA150DF79C02CC12583DF0026027B/%24File/3386.pdf (accessed on: 17-09-2019).

[12] *Autopoprawka do rządowego projektu ustawy o zmianie ustawy – Kodeks karny* (A self-amendment to the Government-sponsored proposal of an amendment to the Criminal Code Act, Sejm paper no. 3386-A), http://orka.sejm.gov.pl/Druki8ka.nsf/0/1D73477200DE56FBC125842B0060E218/%24File/3386-A.pdf (accessed on: 17-09-2019).

[13] Additional opinion of the Ombudsman on the amendment to the Code of Execution of Criminal Sentences, Sejm paper no. 3386-A of 20 August 2019, ref. IX.517.1623.2019.ED, p. 4, http://orka.sejm.gov.pl/Druki8ka.nsf/0/1D73477200DE56FBC125842B0060E218/%24File/3386-A.pdf (accessed on: 17-09-2019).

unauthorised objects have been found." Moreover, the Ombudsman's Opinion stated that *"... a post-search report has a preventive function. It contains, inter alia, information on officers who conducted the search, its legal basis, commencement and end time, description of its course, and information on whether the subject of the search was informed about their rights. The drawing up of this document enables the course and legitimacy of the search to be reviewed."*[14] The absence of the report prevents effective judicial review. Notably, a personal search should be used if other control methods are incapable of satisfying the requirements set out in the proposed Article 241 § 1a CECS. On the other hand, the concept of a two-stage personal search should be welcomed. However, the clarification of the grounds for its application will dispel any uncertainty as to the operation of the measure.

16. According to the proposed wording of Article 241c § 1 CECS, the personal search is to involve the checking of: *"1) the person subjected to the search, their clothing, footwear and items placed on their body, without revealing the body surface covered by the clothing, and 2) the person subjected to the search, their clothing, footwear and items placed on their body, with revealing the body surface covered by the clothing to the extent necessary to retrieve unauthorised items or substances, and 3) the oral cavity, nose, ears, hair and the areas of the searched person's body that are difficult to reach, and 4) intimate parts of the person subjected to the search."* Furthermore, the Self-amendment introduces two further sections of Article 241c CECS (§§ 2-3), which read as follows: *"(§ 2) A personal search shall be carried out by one or more officers of the Prison Service of the same sex as the person the subject to the search, in a place which is inaccessible to third parties at the time of the search. (§ 3) If a personal search must be carried out immediately, in particular due to circumstances that may constitute a threat to life, human health or property, the search may be carried out without observing the conditions referred to in § 2, in a manner that ensures that the personal rights of the person subjected to the search are violated to the lowest extent possible."* The above provisions do not indicate the level of authority required to order a personal search, which means that every officer of the Prison Service may perform a personal search in a discretionary manner. The discretionary nature of this procedure is amplified by the grounds for the "emergency" personal search set out in the proposed Article 241 § 3 CECS. At the same time, Article 241 § 3 does not guarantee the privacy of emergency personal searches. The ECtHR has also indicated that Article 3 of the Convention was violated in a situation where during a personal search an applicant had to strip naked in the presence of a woman and then touch his intimate parts.[15]

17. Pursuant to the proposed Article 241c § 6 CECS, the personal searches referred to in paras. 3-4 of the proposed Article 241c § 1 CECS should be performed visually or manually. It should be noted at this point that the possibility of carrying out an emergency personal search by a person of the same sex should be assessed negatively, especially in cases where intimate places are inspected. The carrying out of a search in this way may violate the dignity of the searched person as well as Articles 3 and 8 of the Convention. Moreover, in accordance with Rule 54.7 of the European Prison Rules[16], *"[a]n intimate examination related to a search may be conducted by a medical practitioner only."* Furthermore, Rule 52 of the Nelson Mandela Rules[17] provides that *"[i]ntrusive searches, including strip and body cavity searches, should*

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[14] *Ibid.*

[15] ECtHR judgment of 24th July 2001, *Valasinas v. Lithuania,* no. 44558/98, § 117.

[16] Recommendation Rec(2006)2 of the Committee of Ministers to Member States on the European Prison Rules, 11 January 2006.

[17] The United Nations Standard Minimum Rules for the Treatment of Prisoners, https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf (accessed on: 17-09-2019).

be undertaken only if absolutely necessary. Prison administrations shall be encouraged to develop and use appropriate alternatives to intrusive searches. Intrusive searches shall be conducted in private and by trained staff of the same sex as the prisoner. Body cavity searches shall be conducted only by qualified health-care professionals other than those primarily responsible for the care of the prisoner or, at a minimum, by staff appropriately trained by a medical professional in standards of hygiene, health and safety." It is also worth pointing out that "intrusive" personal searches are prohibited by Principle XXI approved by the Inter-American Commission on Human Rights[18]. Therefore, if a personal search is performed manually, it should be carried out in sanitary conditions by a doctor coming from outside the penitentiary facility.

18. The Self-amendment enables searched persons to lodge a complaint *(zażalenie)* against the search. The proposed Article 241c §§ 7-10 CECS reads that searched persons *"... may lodge a complaint with a competent penitentiary judge, within 7 days from the date of the personal search, in order to examine the legitimacy, lawfulness and correctness of the performance of the search. (§ 8) A Prison Service officer shall advise the searched person about the right to lodge a complaint. (§ 9) The complaint referred to in § 7 shall be lodged through the head of the prison or the remand prison. (§ 10) If it is found that there the personal search has been illegitimate, unlawful or incorrect, the penitentiary judge shall notify the prosecutor and the competent district head of the Prison Service of that fact."* The procedure for lodging the complaint has been negatively assessed by the Ombudsman[19], who noted that under the proposed new law *"the penitentiary judge is obliged to notify the prosecutor and the competent district head of the Prison Service of that fact that a personal search has been illegitimate, unlawful or incorrect. The above complaint procedure is inconsistent with Article 45 (1) and Article 77 (2) of the Constitution because the legislator deprives the persons whose constitutional rights and freedoms have been interfered with by public authorities of the right to access the court. On the other hand, the pre-amendment law does not establish any judicial remedy against personal searches conducted by Prison Service officers."*[20] The Ombudsman's Opinion also reads that *"... the drafters deliberately designated 'a competent penitentiary* judge*' as the recipient of the complaint. Indeed, under the Code of Execution of Criminal Sentences, a penitentiary* judge *is a body different from the penitentiary* court *(the list of bodies of the criminal execution procedure is presented in Article 2 CECS). Penitentiary judges have a distinct set of responsibilities: they oversee the execution of prison sentences and pre-trial detention. Penitentiary courts, on the other hand, review complaints against decisions made by bodies of the criminal execution procedure. The problem is that no such decision is issued if a personal search is performed."*[21] At this point, one should agree with an argument made in the Ombudsman's opinion that *"the proposed amendment will respect the right to a court provided that the regulations explicitly specify that the penitentiary judge's decision on the legitimacy, lawfulness and correctness of a personal search may be contested before the penitentiary court. However, the proposed rules fail to indicate that; they only provide that if a penitentiary judge rules that the search has been improper, they should notify the prosecutor's office and the relevant district head of the Prison Service. The lack of clarity regarding the type of decision of the penitentiary judge and the parallel drafters' conscious decision not to make a personal*

[18] Resolution 1/08, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, Inter-American Commission on Human Rights, 13 March 2008, https://www.oas.org/en/iachr/mandate/Basics/principles-best-practices-protection-persons-deprived-liberty-americas.pdf (accessed on: 17-09-2019).

[19] Ombudsman's Opinion, p. 3.

[20] *Ibid.*

[21] *Ibid.*

search reviewable by the penitentiary court leads to the conclusion that the amendment does not take into account the Ombudsman's view expressed in his request for a constitutional review that the absence of a decision to perform a personal search deprives the convicted person of the right to a court. The complaint to a penitentiary judge may not be considered a measure effectively addressing this lacuna. This is because the right to a court, as understood in a commentary to Article 45 of the Constitution of the Republic of Poland, is the right to refer a 'case' only to a body named a 'court' or 'tribunal', the latter term being the synonym of the former in Polish."[22] At the same time, the HFHR considers that the requirement to lodge a complaint with the head of the penitentiary facility may have a deterrent effect.

19. It should also be noted that in its recent report from August 2019, the UN Committee Against Torture stated as follows: "*... proposed draft amendments to the [Code of Execution of Criminal Sentences] would limit the access of persons deprived of liberty to lawyers and would introduce body searches that may be considered degrading, including those conducted by persons who are not of the same sex; and that persons deprived of their liberty may not have prompt access to a medical examination.*"[23]

VII. Conclusions and recommendations

20. Having regard to the above arguments, the HFHR respectfully requests that the Committee of Ministers should continue its supervision of the execution of the judgments *Milka v. Poland* and *Dejnek v. Poland*. In our opinion, the implemented measures have not achieved the expected results. As a consequence, the adopted measures could not be sufficient to conclude that Poland complied with its obligations under Article 46 § 1 of the Convention. Therefore, we claim that examination of *Milka and Dejnek cases* should not be finished, as the systemic problem underlining the violation of human rights has still not been fully resolved.

21. For this reason, we respectfully recommend that:

a) The Committee should continue its supervision over the execution of the *Milka* and *Dejnek* judgments;
b) The Committee should ask the Government of Poland about the current stage of legislative work on the amendment of the Code of Execution of Criminal Sentences (Sejm papers 3386 and 3386-A);
c) The Committee should ask the Government to present reasons for not establishing a proper judicial review procedure in respect of personal searches of persons deprived of their liberty.

22. At the same time, we respectfully observe that Polish authorities should take the following legislative changes in order to fully execute the judgments in *Milka v. Poland* and *Dejnek v. Poland*:

a) The CECS should be amended so that personal searches may be performed based on decisions issued by heads of penitentiary facilities;
b) Personal searches should be obligatorily recorded in a written report and registered;

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[22] Ombudsman's Opinion, pp. 3-4.
[23] Concluding observations on the seventh periodic report of Poland, 29 August 2019, CAT/C/POL/CO/7, http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsr0yVMLY8Itqp7eIpaWy9%2fzgK85rCNbhNbl9H5MRxZAXmuNhsk4JqsXXRXi0lJSmNO2LTxqrAW4v8kVPp6X0aQ98sIsGb0Rh%2bGPf2PnHH%2fbX (accessed on: 17-09-2019).

c) Performed personal searches should be subject to a complaint lodged with the penitentiary court, which would review their legitimacy, correctness and lawfulness;
d) The possibility of seeking compensation for moral and financial losses resulting from unlawful, incorrect or illegitimate personal searches should be introduced.[24]

23. HFHR would like to express its readiness to cooperate with the Committee of Ministers in matters related to the monitoring of the effective implementation of the ECtHR judgments.

On behalf of Helsinki Foundation for Human Rights,

Piotr Kładoczny, PhD
Secretary of the Board
Helsinki Foundation for Human Rights

Danuta Przywara
President of the Board
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[24] Ombudsman's Opinion, p. 6.