

RZECZPOSPOLITA POLSKA
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NARODACH ZJEDNOCZONYCH



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The Chargé d'Affaires a.i. of the Republic of Poland to the United Nations presents his compliments to the Secretary-General of the United Nations and with reference to note no. LA/COD/50 of 31 December 2007 has the honour to enclose herewith information on the Polish Government's implementation of the General Assembly resolution 62/63 of 6 December 2007 concerning "Criminal accountability of United Nations officials and experts on mission".

The Chargé d'Affaires a.i. of the Republic of Poland to the United Nations avails himself of this opportunity to renew to the Secretary-General of the United Nations the assurances of his highest consideration.

P.U. 30/7
New York, 30 July 2008



H.E. Mr. Ban Ki-moon
Secretary-General
of the United Nations
New York

**Information by the Republic of Poland on domestic criminal regulations
applicable to criminal offences committed by Polish nationals while serving
as United Nations officials or experts on missions**

1. Polish nationals, including members of UN personnel or UN experts who commit an offence in the course of fulfilling their mission abroad are subject to criminal liability under rules laid down in chapter XII of the Polish Criminal Code on responsibility for offenses committed abroad. Immunity enjoyed by Polish nationals serving as members of UN missions does not protect them against criminal responsibility under the Polish judicial system.

In accordance with Article 109 of the Criminal Code, Polish criminal law applies to Polish nationals who commit offences abroad. This rule provides for the application of Polish jurisdiction also to Polish nationals abroad. The above-mentioned principle is limited by the rule of double punishability, which makes a perpetrator of an offence subject to criminal responsibility if such an act/deed is also recognized as a criminal offence in that place where it was committed.

The rule laid down in Article 109 of the Polish Criminal Code applies to a person who commits an offence abroad if he or she was a Polish national at the time of its commitment. In accordance with Article 111§1 of the Criminal Code, a condition of criminal responsibility under Polish law for an act committed abroad is that such an act is also recognized as an offence in the place where it was committed.

However, the condition of double punishability is not required in respect of a public official if he or she has committed an offence under Polish law while staying abroad in an official capacity. This follows from the premise that a public official who represents the Polish State abroad should comply with Polish law irrespective of the law in force in the place of his stay. The rule of double punishability does not apply to areas which are not subject to any state authority.

2. International cooperation in prosecuting and punishing perpetrators of offences committed during the performance of peace-keeping missions takes place in compliance with general rules, pursuant to the provisions of the Code of Criminal Procedure (Part XIII, Chapter 62) on judicial assistance).

With regard to judicial assistance in criminal matters, the Republic of Poland is a party to the European Convention on Mutual Assistance in Criminal Matters done at Strasbourg on the 20th of April 1959 (Journal of Laws, No. 76 items 854 – 855). In addition, legal assistance may be also provided on the basis of other multilateral agreements, e.g. UN conventions and bilateral agreements which deal, entirely or partly, with legal assistance in criminal matters.

In accordance with the provisions of international agreements, the requested party applies its own law when executing a request for legal assistance. The requesting party may, however, file a petition for the application of a special procedure or manner of execution of its request. The requested party shall comply with that request only when such request does not conflict with its national legislation.

Another element of international cooperation in prosecuting and punishing members of UN personnel or experts for criminal offences committed on missions is the possibility of

extraditing or requesting the extradition of a prosecuted person staying in the territory of one state to another state.

The European Convention on Extradition done at Paris on 13 of December 1957, including its additional Protocol done at Strasbourg on 15 October 1975 and the second additional Protocol done at Paris on 17 March 1978, constitute the legal basis for requests for extradition from the territory of a foreign state of persons prosecuted for the purpose of conducting proceedings or to administer the punishment of imprisonment.

Moreover, Poland is a party to a number of UN conventions which provide for the possibility of extradition. The Convention against Corruption and the Convention against Organized Crime are good examples. In line with the declarations submitted by Poland at the time of ratification, such agreements constitute a basis for extradition in the absence of other legal basis.

Furthermore, extradition can be requested on the basis of bilateral agreements and the provisions of law of Chapter 64 of the Code of Criminal Procedure, which apply in cases where the international agreements do not provide relevant legal basis for extradition.