The following report applies to the execution of tasks performed by the Institute of National Remembrance – Commission for the Prosecution of Crimes against the Polish Nation, related to the prosecution of communist, Nazi and war crimes, crimes against the humanity as well as those against peace.

The Institute of National Remembrance – Commission for the Prosecution of Crimes against the Polish Nation was called into being by the passing of a parliamentary act of December 18, 1998.

The preamble to the Act on the Institute of National Remembrance - Commission for the Prosecution of Crimes against the Polish Nation indicated the foundations and leading principles this legal document was supposed to satisfy in regard to the injustices suffered under the totalitarian regimes:

The leading principles include:

− remembering about the multitude of victims, losses and damages suffered by the Polish Nation during World War II and after its end,
− patriotic traditions of the Polish Nation’s fight against the oppressors, Nazis and communists,
− civil actions aimed at the independence of the Polish Nation and executed in defense of freedom and human dignity,
− the obligation to prosecute crimes against peace, humanity, as well as war crimes,
− the duty of the state to satisfy all those harmed by the law violating the human rights.

In the preamble, the legislator expressed its wish for no illegal actions of the state against the citizens to be kept confidential or become forgotten.

The prosecuting attorneys of the Commission for the Prosecution of Crimes against the Polish Nation have conducted investigations in regard to the crimes committed on ethnic Poles or Polish citizens of other nationalities (those crimes are not subject to the statute of limitations), as well as those committed by the communists from September 17, 1939 until July 31, 1990.
According to the Act, the provisions of the Code of Penal Procedure shall be used by the prosecuting attorneys of the National Institute of Remembrance and other prosecuting entities in order to conduct their investigations. At the same time, it was made possible for the Institute prosecuting attorneys to be fully involved in the prosecution of crimes specified in the Act, and kept out from the general prosecuting structures of the state. Moreover, the organizational setting within the structure of the Institute of National Remembrance ruled out the existence of any extra-subject influences.

The new statutory regulations made it possible for the Institute prosecutors to conduct their investigations all by themselves. The investigations in which the crime perpetrators have been defined are concluded with indictments sent to the relevant courts. The other investigations end with process decisions in the form of legal proceeding discontinuations. The Act has made it possible for the prosecutors of the Institute of National Remembrance to be fully independent in collecting evidence, including archive materials, which rendered significant influence on bringing to justice the people guilty of committing the crimes specified in the Act.

I. Types of crimes prosecuted by the investigators of the Institute of National Remembrance

The objective scope of the Institute tasks as regards the prosecution of crimes has been defined in article 1, item 1, letter “a” of the Act on the Institute of National Remembrance.

The scope covers illegal deeds committed on ethnic Poles or Polish citizens of other nationalities from September 1, 1939 until July 31, 1990, which concern:

- Nazi crimes,
- communist crimes,
- other crimes constituting crimes against peace, humanity or war crimes.
In particular, I would like to focus on presenting the crimes prosecuted by the lawyers of the Commission for the Prosecution of Crimes against the Polish Nation.

**Communist Crimes**

The legislator has defined the notion of a communist crime in article 2, paragraph 1, stating that communist crimes are deeds committed by the public servants of the communist state from September 17, 1939 until July 31, 1990, which had involved the use of repression or other forms of human rights violation towards individuals or groups, constituting crimes pursuant to the Polish penal laws applicable during that period.

Therefore, for a deed to be viewed in terms of a communist crime the following elements making up the objective and subject-matter scope of the “communist crime” notion have to be fulfilled:

- the deed was committed by a communist state public servant,
- the deed was committed within the period between September 17, 1939 and July 31, 1990
- the deed involved the use of repression or other forms of human rights violation towards individuals or groups, or it was committed in relation to the usage thereof,
- the deed constituted a crime pursuant to Polish penal laws applicable at that time.

Even though the act does not say so specifically, the arbitration practice and legal literature suggest that communist crimes may be committed only on purpose. That is why the definition mentions „the use of repression”, indicating that the perpetrator acts with a direct and well-aimed intent.

The abovementioned conditions specified by the Act on the Institute of National Remembrance – Commission for the Prosecution of Crimes against the Polish Nation do not introduce any new generic crimes. They do specify,
however, the criteria to be met by the crimes defined previously by the legal sources, such as: Penal Codes and other acts containing penal provisions, so that communist crime features may be attributed to them.

In article 2, paragraph 2, the notion of a public servant has been clearly defined. It is, thus, a public functionary and a person protected as a public servant, in particular a state functionary and a person working on a managerial position in a communist party statutory body.

Article 39, item 2 of the act of October 18, 2006 on disclosing information in regard to the documents of the state security bodies from the period of 1944-1990, as well as the contents of these documents, amending article 2, par. 1 of the IPN Act, has expanded the objective scope of communist crimes by adding the behaviors consisting of prohibited deeds specified in art. 187, 193 or 194 of the Penal Code of 1932, or art. 265 par.1. art. 266 section 1, 2 or 4 or art. 267 of the Penal Code of 1969, committed against the documents as understood by article 3, par. 1 and 3 of the act of October 18, 2006, having harmed the persons the said documents refer to.

It is a particular type of a communist crime, covering offenses against documents, showing the features of deeds mentioned in art. 187 of the Polish Penal Code of 1932 and art. 265, section 1 of the Polish Penal Code of 1969 (forging or remaking of a document in order to use it as an authentic one or using it as an authentic document), article 193 of the Polish Penal Code of 1932 and art. 267 of the Penal Code of 1969 (obtaining a certification of untruth by false pretences by a public functionary or another person authorized to issue a document or the use of such a certification), article 194 of the Penal Code of 1932 (filling out the form with somebody else’s signature contrary to the will of the signing party or the use of such a document), and article 266, section 1, 2, and 4 of the Polish Penal Code of 1969 (certification of untruth in a document by a public functionary or another person authorized to issue a document [section 1], the use of a document described in section 1 (section 2), commitment of offenses described in section 1 or 2 in order to obtain material gains (section 4).
Any deed in such a form must show all the features of a communist crime, which means it has to be committed on purpose, by a public servant in the period between September 17, 1939 and July 31, 1990.

As shown above, only a deed showing the features of an offense defined by the Polish penal laws applicable at that time may be treated in terms of a communist crime. Analyzing the notion of „offense” used by the legislator, it should be concluded that communist crimes involve both real crimes and misdemeanors. They are called crimes because of a high degree of damage to the society, resulting from the fact that “they were committed as part of the improper functioning of state bodies”.

At the moment, the Regional Commission of Prosecuting Crimes against the Polish Nation are conducting approximately 700 communist crime investigations.

**Nazi Crimes**

It seems necessary and legitimate to present the definition and investigation methods pertaining to the Nazi crimes in order to show the material and legal aspects of them and talk about the subject matter and areas in which the prosecutors of the Institute of National Remembrance – Commission for the Prosecution of Crimes against the Polish Nation operate.

The definition of a Nazi crime has not been included in the Act on the Institute of National Remembrance. In general, it should be understood in terms of crimes such as: war crimes, and crimes against peace and humanity committed during World War II by the functionaries of the German state and persons cooperating with them in the interest of the German state or its ally. They are punishable on the basis of the relevant provisions of the Penal Code and the Decree of August 31 of the Penal Code, as well as article 1, item 1 of the Decree of August 31, 1944 on the degrees of punishment for Nazi criminals guilty of killing and torturing civilians and captives. A Nazi crime does not have to be interpreted on the basis of the Polish Penal Code, i.e. constitute a deed punishable by imprisonment of at least 3 years or a more severe sentence.
The tasks of the prosecutors working for the Commission for the Prosecution of Crimes against the Polish Nation (one Main and 11 Regional Branches set up on August 1, 2000) include the prosecution of Nazi and communist crimes, as well as other offenses making up war crimes and crimes against peace and humanity – committed between September 1, 1939 and July 30, 1990. The prosecutors of the Commission are fully authorized to act as public prosecutors in penal proceedings, including those falling under the competences of military courts - both at the level of preliminary proceedings and court ones. It refers to the prosecution of all the crimes – be it communist, against peace and humanity, or war crimes.

The act obliges the prosecutors from the Commission to clear up all the circumstances under which the analyzed crimes had been committed, even in case of specifying the negative feature of the proceedings, i.e. death of the perpetrators. The Polish state will never stop conducting its investigations in regard to the Nazi crimes. The multitude of victims and losses incurred during World War II makes it a strict obligation to specify the aggrieved parties and collect as much data as possible with reference to each, single crime.

Coming to a conclusion that the crime perpetrator is dead does not result in an immediate ending of penal proceedings through discontinuation, the way it is done in general courts. The Commission prosecutors are obliged to continue their work. The proceedings are terminated after the circumstances of a given case have been thoroughly analyzed.

Due to the nature of examined crimes, the investigations are conducted on the personal basis. Therefore, almost all the actions are performed personally by the prosecutor. Only minor tasks may be contracted to the Police.

In the period between August 2000 and June 2009 the Commission prosecutors conducted and concluded 2116 investigations relating to Nazi crimes. Those were often complicated, multi-plot cases, arousing much social interest, for example: the investigation into the killing of Polish citizens of Jewish nationality perpetrated on July 10, 1941 in Jedwabne.
All in all, 14,359 witnesses were interviewed during the abovementioned period for the purpose of this category of proceedings. There are about 300 Nazi crime investigations being carried out at the moment. The number hardly ever gets smaller, as decisions are made to initiate the subsequent proceedings.

As the crimes were committed a very long time ago, there are specific consequences for the conducted investigations. It is often necessary to spend much time laboriously looking for documents issued a few dozen years ago and people who witnessed what had been happening. The advanced age of the witnesses, the condition of their health, and the long distances from their homes frequently make it necessary for the prosecutors to give up the idea of calling them to appear in the office and go to visit them themselves.

Repeatedly, the conducted investigations lead to important conclusions. The circumstances of Nazi crimes committed in an annihilation center in Chelm Ner have been analyzed by the Poznań Branch of the Commission. The legal proceedings revealed one of the living perpetrators of those crimes. He was arrested on November 3, 2000. Henryk M. was charged with the following accusation: in the period between December 8, 1941 and April 7, 1943, in the abovementioned annihilation center, acting in cooperation with other persons, he took part in genocide committed on Jews and other nationalities. He would beat up the prisoners, take away their belongings (valuables, clothes, personal items), lead the people sentenced to death to gas chamber cars. What he did was classified as a crime specified in article 1, item 1 of the Decree of August 31, 1944.

The Regional Court in Poznań found the accused guilty as charged and sentenced him – on July 6, 2001 - to 8 years in prison.

The Supreme Court dismissed the last resort appeal instituted by the defense counsel, maintaining the abovementioned sentence.

The investigators’ actions often lead to finding Nazi crime perpetrators who leave abroad. Such was the case in an investigation conducted by the Commission Branch in Lublin - regarding Nazi crimes committed on Poles and Jews from July, 1941 until July 23, 1943 in Majdanek by the members of the Lublin concentration camp team. The prosecutors found out that one
of the camp guards had still been alive and resided in Austria. On May 21, 2007 the prosecutor of the Lublin Commission announced his decision to press charges against that person.

On June 20, 2007, the Polish authorities sent a motion for international legal help to be offered by the justice bodies of the Republic of Austria. The Austrians were asked to provide information on whether there were any criminal proceedings conducted against the person in question, to send over a photograph of the suspect from the period during which the alleged crime was perpetrated, provide the current residence address and some other details. The Austrians sent the relevant materials in December, 2008, informing, at the same time, the Polish parties that the suspect had died on February 16, 2008. The official confirmation of the suspect’s death made the prosecutors discontinue the proceedings on December 31, 2008.

The case is a good example of successful execution of legal proceedings within the framework of international cooperation of prosecutors.

A similar investigation - revealing Nazi crime perpetrators after a few dozen years – was conducted by the Lublin Commission in regard to the killings of Jews perpetrated in Trawniki (a Nazi work camp) near Lublin by the representatives of the German occupation authorities.

It was found out that Josias K., a member of the Sachsenhausen concentration camp, had taken part in one of the extermination campaigns organized in Trawniki. After the war, the German emigrated to USA. Applying for an American citizenship, he held back the facts related to his SS membership and service in Nazi concentration camps. Upon discovering the war past of Josias K, the US government filed suit against him and applied for his naturalization to be revoked (as it had been obtained illegally). The suit was successful and Josias' naturalization was cancelled by the competent American court on February 23, 2006. Josias K. was subsequently deported to Austria.

On December 19, 2008, the Lublin Commission sent a motion to the legal authorities of Austria, asking them to check whether they had discovered any facts pertaining to the participation of the person in question
in Nazi crimes committed on the territory of occupied Poland. The answer was clear: there were no legal proceedings conducted in Austria against the suspect. The Austrians said it was not possible for them to prosecute Josias K. due to the statute of limitations in regard to war crimes. Therefore – in accordance with local laws – any extradition motion would have to be dismissed.

In the pursuit of completing the investigation evidence, a motion was sent to the US court authorities on March 19, 2009 for sending over to Poland the copies of Josias K's interrogation protocols, his declarations and proceeding letters drawn up during the procedure of revoking his American citizenship.

The structures of the Commission for the Prosecution of Crimes against the Polish Nation cooperate closely with international institutions dealing with Nazi crimes. Legal help is offered to foreign offices dealing with World War II crimes. For example in 2001 the prosecutors working for the Commission Branch in Białystok assisted the employees of the section dealing with crimes against humanity and war crimes in the Ministry of Justice of Canada. They were looking for evidence materials and witnesses to the actions of Ukrainian guards in the Białystok Ghetto. At the end of 2009, the same commission worked on the motion sent by the German prosecutors from Munich in regard to providing legal help on crimes committed by Ivan Demianiuk, a guard in Treblinka concentration camp.

At the moment, the Regional Commissions of Prosecuting Crimes against the Polish Nation are conducting approximately 300 communist crime investigations.

**Crimes Against Humanity, Peace; War Crimes**

Crimes against humanity have been defined in article 3 of the Act on the Institute of National Remembrance – Commission for the Prosecution of Crimes against the Polish Nation. In particular, these are the crimes of genocide as understood by the Convention on the Prevention and Punishment of the Crime of Genocide passed on December 9, 1948, as well
as other serious persecutions related to being part of a certain ethnic, political, social, national or religious group, if they were conducted, inspired or tolerated by public servants.

On the basis of investigating activities conducted by the Institute of National Remembrance, the investigations are carried out more than 50 years from the moment the crimes were committed, which make the IPN prosecutors realize, all the difficulties aside, they are racing against time. The specification of a circle of people to be interrogated as part of the investigations is most of the time preceded by a laborious search of archive documents which are often not accessible to the state bodies of the Republic of Poland. Such a situation renders great influence on the way the investigations are conducted and their results.

As a matter of fact, the main objective of each investigation – pursuant to the requirements of the December 18, 1998 Act on the Institute of National Remembrance – Commission for the Prosecution of Crimes against the Polish Nation – is not only to find the perpetrators of the crimes, but also to clear up the circumstances under which they were committed, in particular to find out who the aggrieved parties (i.e. the victims and their legal successors) were. It should be underlined that the investigators dealing with the killings of a few dozen Polish citizens – men, women and children living in Wołyń (formerly belonging to Poland) in the 1940s – interrogated more than 1000 witnesses. Over 5000 (the number still rising) victims and witnesses were interviewed as part of investigations on genocide, conducted by the Wroclaw Commission.

The main task of the investigators is to provide legal assessment of those events. This assessment is therefore crucial not only from the criminal but also historical viewpoint.

Historically speaking, the notion of genocide was first shaped by international laws. Only later was it adopted by internal laws of individual countries.

The term „Genocide” was described and identified for the first time in a peace treaty with Turkey in 1920 (Ex facto ius aritur – law stems from a fact). It stipulated the liability of people responsible for exterminating thousands of
Armenians in Turkey between 1914 and 1915. As a scientific concept, the term was defined by Rafał Lemkin, a Polish professor from the University of Lvov in 1944.

Generally, it should be stated that the notion of crime against humanity appeared in the legal language as a consequence of crimes committed during World War II and the resulting necessity to pass judgment on German war criminals. During Nuremberg Trials the crime of genocide was frequently identified with crimes against humanity. The two terms were used interchangeably. The analyzed term was used in the indictment placed before the Judges of the Nuremberg Tribunal passing judgments on the German war criminals.

The fact was extremely important for the development of International Public Penal Law. As a result, the UN General Assembly passed its Convention on the Prevention and Punishment of the Crime of Genocide in 1948.

The Convention, passed by the UN General Assembly on December 9, 1948 (ratified by the Republic of Poland with an Act of July 18, 1950 in articles I and II) defined the notion of the crime of genocide as a punishable deed. At the same time, it was indicated in articles III and IV that genocide constitutes crime in terms of international laws, and the persons responsible for committing it will be punished regardless of whether they are constitutionally liable government members, public functionaries or private persons.

Pursuant to the provisions of the Convention (article II), genocide shall be understood as any of the following deeds, perpetrated with the intent of destroying the whole or part of national, ethnic, racial and religious groups, particularly:

- murder of group members,
- damaging body or psychic balance of group members,
- deliberate creation of life conditions for group members, supposed to bring about their complete or partial physical destruction,
- use of means aiming at holding back births within the group,
- forced transfer of group members’ children to another group.
Pursuant to article III, committing genocide, acting in collusion in order to commit genocide, direct and public abetting others in committing genocide, attempts to commit genocide, and complicity in genocide are all punishable.

As for the Polish law and the way the Commission prosecutors use the provisions, the crime of genocide should be qualified on the basis of article 118 of the Penal Code which accepted the provisions of the Convention, in relation to article 3 of the Act on the Institute of National Remembrance.

Another step in the direction of successful prosecution of perpetrators of crimes against humanity was made by the UN General Assembly when on November 26, 1968 its passed the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity. Poland ratified that Convention on January 29, 1969.

The Convention introduced a principle according to which war crimes and crimes against humanity shall not be subject to statutory limitations, regardless of the date on which they were committed, (article I). The Convention provisions must be observed both by the members of state authorities and private persons who participated in the commitment of crime as perpetrators or partners, or directly abetted others in committing any of those crimes, or took part in a plot aimed at committing them, regardless of the state of execution, as well as by the representatives of the state authorities who tolerated the crime commitment (article II).

The principle of non-applicability of statutory limitations to war crimes and crimes against humanity was accepted by the Polish law in article 109 of the Polish Penal Code of 1969 and art. As of now, it stems from article 105, section 1 of the Polish Penal Code of 1997. The principle was repeated in article 4, paragraph 1 of the Act on the Institute of National Remembrance, but the provision under analysis extended it to cover also crimes against peace.

In the provisions of the Polish penal law, war crimes are covered by articles 119 (violence caused by national, ethnical, racial, political, or religious affiliation [or lack thereof] of the aggrieved party, 120 (use of means of mass destruction), 121 (creation or sales of means of mass destruction or means of combat prohibited by internal or international laws),
122 (attack on objects protected by international laws or use of prohibited means of combat), 123 (killing POWs, civilians or other groups of persons protected by international laws, as well as seriously injuring them or initiating in their regard actions forbidden by international laws), 124 (other cases of human rights violation), 125 (destruction of cultural goods), and 126 (lawless use of protective signs) of the Penal Code.

Crimes against peace, understood as starting or conducting invading wars, preparing for such wars or public urging to commence an invading war have been regulated in article 117 of the Penal Code.

At the moment, the Regional Commissions of Prosecuting Crimes against the Polish Nation are conducting approximately 40 investigations on war crimes, crimes against peace, and crimes against humanity.

II Crime Assessment In View of International Legislation, Particularly With Regards to Crimes Against Humanity

The prosecution of crimes investigated by the prosecutors working for the Commission for the Prosecution of Crimes against the Polish Nation may be difficult due to differences in internal laws of individual countries.

It should be borne in mind that one of the principles binding in the international legal turnover with regards to penal cases is the right of the summoned state to refuse legal help if the deed under investigation does not constitute an offense pursuant to the laws of that state. Therefore, it is possible that legal help will be refused not only in regard to communist crimes, but also Nazi crimes which are, at the same time, war crimes or crimes against humanity.

One source of limitations within the scope under analysis is formed by the provisions of Article V of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide and Article IV of the 1968 Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, which obliged the signing countries to adapt their internal laws to the Convention provisions. In other words, the provisions were not supposed to be incorporated into internal laws directly and in their entirety, but only after the publication of relevant internal laws which – de
facto – determined the scope in which the Convention norms should be used. A good example is the abovementioned case of Josias K., a citizen of Austria. Similar problems can be observed in our relations with Germany the internal legal provisions of which – out of crimes committed during the war – allow only for investigating murders understood in terms of homicides in the qualified form.

On the other hand, one of the issues that make things easier is the fact that Poland ratified the European Convention on Mutual Assistance in Criminal Matters on January 9, 1996. The Convention implements serious facilitations with regards to the legal turnover, such as the possibility to get in direct touch with the legal authorities of the signing countries.

Further facilitations within the scope of the legal turnover with foreign countries resulted from Poland joining the EU and accepting the provisions of the Executive Convention to the Schengen Treaty of July 14, 1985. The fact that Poland had accepted European regulations bore fruit in the form of a series of regulations adapting our internal laws to EU norms being implemented into the Polish Code of Penal Procedure. It made the contacts between legal authorities of EU states even easier (chapters 65a, 65b, 66a-66e).

Chapter 65a calls for special attention. It is concerned with a EU member state applying to another EU state for the transfer of a prosecuted person, based on a European warrant of arrest. These regulations make bringing to Poland and putting before the court of a criminal residing on the territory of an EU state much easier, regardless of his/her current citizenship. The prosecutors working for the Commission for the Prosecution of Crimes against the Polish Nation have used these norms more than once.

**III. Punishability of Persons Guilty of Crimes Committed Before 1989**

Between 2000 and 2009 the Regional Commissions for the Prosecution of Crimes against the Polish Nation conducted, all in all, 9218 cases: 6456 in regard to communist crimes, 2404 in regard to Nazi crimes, and 357 in
regard to crimes against peace, against humanity or war crimes. 8004 were completed within the abovementioned period.

The prosecutors of the Institute of National Remembrance – Commission for the Prosecution of Crimes against the Polish Nation sent 257 indictments to courts - related to communist crime cases. The indictments referred to the total of 403 defendants. There were two indictments regarding Nazi crimes.

Until July 1, 2009, the courts of the Republic of Poland tried 164 cases concluded with sending of the indictments – with regards to 268 defendants, out of whom:

- 23 were acquitted, 128 sentenced,
- 77 were made subject to the amnesty act,
- 33 people benefitted from discontinuation of the proceedings, based on article 17 section 1, items 1-6 of the Polish Code of Penal Procedure,
- 7 persons benefitted from the completion of proceedings in a different manner.

The prosecutors working for the Regional Commissions for the Prosecution of Crimes against the Polish Nation interrogated the total of 65450 persons as witnesses.

Orders on submission of charges were issued to 591 suspects.

Between 2000-2009 the prosecutors of the Institute of National Remembrance – Commission for the Prosecution of Crimes against the Polish Nation drew up 830 motions for the international legal help. In 20 cases, they personally took part in the investigating procedures conducted outside Poland and executed 23 motions for the legal help from other countries.

The most symbolic achievement of the investigators from the Institute of National Remembrance is the prosecutor’s indictment against Wojciech Jaruzelski for introducing martial law in Poland in 1981. Another is laying charges against the communist state functionaries with regards to murdering Catholic priests and committing other crimes during Martial Law.