

## **Human Rights Monitoring**

**Helsinki Foundation for Human Rights**

# **Human Rights Monitoring**

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## Introduction

This handbook is about the monitoring of classical human rights (meaning civil and political rights) in one's home country<sup>1</sup>. However, the techniques described here may also be applied to studies conducted in other fields, such as those involving social rights, environmental protection issues, etc. We treat monitoring as comprising *one element of action taken in the public interest*.

This book is primarily intended for use by non-governmental organizations of the “watch-dog” type<sup>2</sup>, but it may also prove useful to state bodies that maintain supervision over how citizens' rights are respected — such as the ombudsman's office, the respective parliamentary committees, etc.

The Helsinki Foundation for Human Rights [HFHR] has developed a program of training for individuals who wish to plan, organize, and conduct human rights monitoring studies. This program is based on the past experiences of the following institutions: Polish non-governmental organizations (in particular HFHR), state inspection bodies in Poland (the Commissioner for Citizens' Rights [Ombudsman] and the Supreme Chamber of Control), and intergovernmental organizations that monitor human rights (the UN Committee Against Torture [CAT], the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment [CPT], and the Organization for Security and Cooperation in Europe [OSCE/ODIHR]). Such training programs were conducted by HFHR in 1998-99 — first for activists from non-governmental organizations in Poland, and next for activists from

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<sup>1</sup> Monitoring outside of one's home country is generally conducted based on the same principles, although it may also involve certain additional complications (such as cultural or linguistic difficulties) that are beyond the scope of this handbook.

<sup>2</sup> “Watch-dog” refers to non-governmental organizations that aim to ensure civic control over the activities of public authorities (such as organizations that deal with human rights or ecological issues) or to ensure civic control over the ethical conduct of big business. Similar functions are also often performed by organizations that represent the interests of minorities, or those that represent particular professional or consumer groups, though in such cases this is usually not their only nor their primary form of activity. The majority of watch-dog organizations strive to bring about systemic changes in the functioning of state institutions.

Russia, Ukraine, Belarus, Southern Caucasian states (Armenia, Azerbaijan, Georgia) and Central Asian states (Kazakhstan, Kyrgyzstan, Uzbekistan, Tajikistan). Training was also given to staff members from the Ombudsman's Offices of Ukraine and the Russian Federation, as well as to personnel from the regional Human Rights Commissions in Russia. Feedback and remarks provided by these trainees have helped the program's authors and trainers to further refine and supplement its content.

Reading a handbook like this one can never take the place of personally participating in a training program (if only because such a program also encompasses many hands-on workshops). Nevertheless, it is our belief that this book will prove useful to many individuals who act in the public interest.

# 1. Monitoring as one element of action taken in the public interest

The term “monitoring” has become fashionable in recent years, and is generally used to refer to various ways of studying, investigating, collecting information, and the like. *Nevertheless, in its traditional sense the word “monitoring” denotes an act of observation conducted over an extended period, either in a constant or intermittent way.* In this handbook, however, we will also use the term to refer to one-time investigations of social reality.

## 1.1. What is monitoring?

**In this book, “monitoring” shall be understood to be a planned and systematic investigation of a selected fragment of social reality, conducted according to an adopted scheme. At the same time, monitoring constitutes an element of non-violent action intended to bring about a change in this reality.**

Organizations generally identify the subject and goal of their monitoring activities based on some kind of preliminary picture they have gained about the particular fragment of social reality they are interested in investigating. This preliminary picture may have been formulated on the basis of information obtained from the press, complaints submitted to the organization itself, interventional visits made to public institutions, written correspondence exchanged with such institutions, research conducted by scientific institutes, reports published by supervisory bodies (such as the Commissioner for Citizens’ Rights Office and the Supreme Chamber of Control in Poland), or other easily available sources of information of varying degrees of reliability (see section 2.4.) In this book we shall not use the term monitoring to refer to this **picture of the situation we construct “on the fly” in a certain sense, based**

**on information that is of uncertain or inconsistent reliability.** Instead, we shall reserve this term to refer to investigations that are planned and conducted in a conscious and active way.

Human rights monitoring encompasses the following elements:

- ⇒ gathering data (in an active way and according to planned methods) about the nature and extent of human rights violations within a selected field. Such violations may be caused either by certain provisions of law (including various types of secondary regulations), or by the way in which such provisions are applied,
- ⇒ analyzing the data so obtained and comparing it to the standards established by the country's constitution, by the international agreements it has ratified, and by its statutory laws (pursuant to the hierarchy of legal regulations),
- ⇒ identifying the causes of human rights violations, and making recommendations about what should be changed in order to improve the situation in this particular field,
- ⇒ collecting the materials needed to assist in future action (including legal, political, or non-violent public action) aimed at bringing about changes in the system.

Human rights monitoring may serve various functions:

- a. The investigative function:** Sometimes our preliminary information indicates that the authorities are committing human rights violations, although we do not know how extensive these violations are or what should be changed in the state system in order to prevent them from occurring. We therefore conduct a monitoring project *in order to gain documented knowledge about the nature and extent of human rights violations, and in order to identify what changes in the law or in the application of the law could significantly reduce these violations.*
- b. The supplementary function (i.e. to assist action taken with the aim of bringing about changes):** Even if we already have fairly accurate knowledge about the nature and extent of human rights violations, and already know what should be done to prevent them (what changes should be made to provisions of law themselves, to how the law is applied, to how public finances are organized, etc.), we may conduct a monitoring *in order to gather facts, evidence of violations, and arguments which will assist us in convincing both the authorities and our fellow citizens that such changes are indeed necessary.*

**c. The preventative function:** It is sometimes the case that the primary goal of a monitoring project is neither to gain knowledge about human rights violations, nor to gather proof that they have in fact occurred. We may also sometimes conduct a monitoring *because the very fact that public authorities are being observed and investigated may affect how they respect human rights*. The term “monitoring” is then often replaced by the term “observation.” Typical examples of such monitoring are election observations or the observation of an important trial. In these cases, overt or sometimes even ostentatious observation is itself intended to prevent human rights violations from occurring, as this warns the authorities that their actions are being closely watched by credible witnesses.

Monitoring also sometimes has the “side effect” of **directly affecting the situation** being investigated. Authorities who have been informed that an organization intends to conduct a study often take certain steps to improve how they respect human rights, so as to ensure that the findings of the study will be more favorable to them. Many such *ad hoc* changes and improvements, once introduced, will remain in force after our investigation has been completed. In such cases, monitoring contributes directly to bringing about an improvement in the situation.

**As a principle, human rights monitoring should *change social reality, not only describe and diagnose it*.** This does not mean, however, that monitoring can be conducted in a biased way, in order to justify assumptions we have previously adopted. In fact, the reverse is true: the objective and credible information gained through monitoring provides the basis for the detailed planning of action aimed at improving the situation. Such information is also generally essential in the process of taking such action.

### **Monitoring thus constitutes one element of action taken in the public interest.**

## **1.2. Types of action taken in the public interest**

The various types of non-violent action that non-governmental organizations take in order to bring about improvements in respect for human rights, strengthen the rule of law, eliminate discrimination, better protect the environment, or change the system of how state institutions function, may be classified into the following three categories: **legal action**, **political action**, and **non-violent public action**. These three types of action are generally applied

in tandem, as most problems of this nature cannot be solved by means of a single type of action alone.

### 1.2.1. Legal action

This category primarily includes **strategic litigation** — *the deliberate, planned conduct of legal proceedings aimed at changing the interpretation of an existing law, or at eliminating bad legal provisions from the system of law* (by demonstrating them to be unconstitutional, or inconsistent with ratified international treaties). This is done by obtaining judicial rulings from the country's Supreme Court or Constitutional Court, from the European Court of Human Rights, or from the quasi-judicial bodies of the UN that admit individual complaints (the Human Rights Committee, the Committee Against Torture, the Committee on the Elimination of Racial Discrimination).

Legal action also includes conducting court cases whose aim is to obtain financial compensation from the state for human rights violations that were caused by the functioning of state institutions. This applies to situations in which recourse has not yet been made to litigation (cases of unlawful detention by the police, acts of violence committed against prisoners by their fellow prisoners, etc.)

In some cases, legal action may also involve initiating criminal proceedings against state functionaries.

The category of legal action can also be considered to encompass *initiatives intended to promote the public's legal awareness, knowledge about the law and human rights*, and practical ability to utilize those procedures that serve to protect such rights. Aside from the range of classical educational techniques, to this aim we can organize various competitions (such as a contest for collectively developing and passing the "constitution" of a school, club, etc.), hold mock trials, or distribute brochures about different kinds of rights and the procedures that serve to protect them (such as: the rights of patients, the elderly, children and youth, prisoners, voters, those suspected of having committed a crime, etc.)

### 1.2.2. Political action

This type of action most often involves **seeking allies among politicians** who hold seats in the country's **parliament** or in international parliamentary bodies (the European Parliament, the Council of Europe Parliamentary Assembly), or **putting political pressure on the government** either directly or by means of the respective branches of inter-governmental organizations (the UN, Council of Europe, European Union, or OSCE), in order to bring about

changes in the legal system itself or in the way state institutions function. Such action can be conducted either domestically or internationally.

*On the domestic level*, such action involves seeking political support for one's convictions among politicians that have either legislative or executive power, either on the local or national level (depending on the nature of the problem). This includes various types of mechanisms for putting pressure on parliamentary deputies by means of voter groups (whose support they will want to gain in the next elections) in order to persuade them to vote for or against a particular law, to undertake a legislative initiative, or to take other action — such as raising a motion of interpellation or a parliamentary deputy inquiry to the government. Such methods of applying pressure are more effective in countries with majority-based electoral systems — where a parliamentary deputy's reelection depends directly on voters — than it is in countries where election regulations are proportional and the fate of a particular deputy depends only on his or her position on an electoral list drawn up in advance by party authorities. In many cases, non-governmental organizations striving to bring about change find natural allies in the parliamentary opposition, and more generally among the political adversaries of those in power that refuse to implement the changes these organizations promote. We then exert pressure on politicians directly (such as through the press, by mobilizing the community where we live, by meeting with politicians personally, etc.) Such techniques are more effective before elections than after. It is also sometimes effective to exert pressure indirectly, by means of public pressure on entities that are important to politicians (perhaps for economic reasons, such as companies that are considering whether or not to make an investment in a particular area). We also look for methods we can use to convince a given politician or his or her party that making the changes we promote will politically be more advantageous (or at least less detrimental) than maintaining the status quo.

*On the international level*, political action may, for example, aim to encourage the UN Commission on Human Rights to adopt a resolution condemning mass human rights violations in a certain territory, or to initiate procedures such as 1503 or 1235 against a given state<sup>3</sup>. This category also includes publishing shadow reports that challenge the information submitted by the government in its reports to the international committees that uphold

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<sup>3</sup> These are procedures initiated by UN Commission on Human Rights (not to be confused with the UN Human Rights Committee) after it receives credible information about gross and consistent human rights violations within a certain territory. Procedure 1503 is conducted confidentially, while procedure 1235 is public. They may lead to the appointment of a special rapporteur to investigate the situation, as well as to the adoption of a resolution condemning the state where such human rights violations occur. See [www.unhcr.ch](http://www.unhcr.ch)

the primary UN conventions (the Human Rights Committee, the Committee Against Torture, the Committee on the Elimination of Racial Discrimination, the Committee on the Elimination of Discrimination Against Women, the Committee on the Rights of the Child, and the Committee on Economic, Social and Cultural Rights). Furthermore, this type of action also includes attempts to solicit the involvement of Special Rapporteurs or Working Groups in the cases we are conducting. By lobbying at the Council of Europe Parliamentary Assembly or at the European Parliament, we can also take up a range of other types of action aimed at encouraging international institutions to condemn human rights violations. Initiatives undertaken in third-party countries — such as the resolutions passed by many parliaments with regards to human rights violations by Chinese authorities in Tibet — are of a similar nature. Of huge importance here is the prudent engagement of international and foreign media and our cooperation with foreign organizations that defend human rights.

But we are not only concerned here with the condemnation of those governments that commit human rights violations — *we can also act to promote the adoption of new standards of protection* by attempting to bring about the adoption of a Council of Europe Parliamentary Assembly resolution or recommendation, a Council of Europe Committee of Ministers recommendation, a European Parliament resolution, or an entry in OSCE documents. The result so obtained, in the form of “soft” international law (resolutions or recommendations) can then be a beneficial step towards establishing binding international treaties.

In this way, for example, we can work to have international law expanded to include regulations that will oblige states to introduce tax relief for non-governmental organizations, regulations that establish the standard of free elections, or regulations that specify the minimal standard of public control over special state investigative forces.

### 1.2.3. Non-violent public action

This type of action involves the application of various methods for **exerting organized, usually group pressure on the authorities**. Such public action, if it is conducted in a professional way, generally follows a similar **scheme**:

- a. **Establishing our goal**, meaning deciding exactly which social problem we intend to solve (see section 2.3.)
- b. **Gathering information** about the given problem, facts of various types, and evidence of human rights violations, and preparing the arguments necessary for taking action. If necessary, *monitoring* is conducted at this stage.





Fot: Wojciech Jargilo / Agencja Gazeta

Polish farmers protesting — road block, March 2000

- c. **Developing a strategy of action**, which includes: identifying potential allies and opponents, precisely identifying the concrete, realistic demands we will make of the authorities, establishing who the real decision-makers are in this field, and identifying the principles of information campaigns to be conducted and the possible forms of direct pressure to be applied.
- d. **Appealing to the authorities** with information about what kind of changes we expect them to make to the law or to how the law is applied. The authorities rarely make the changes at this stage. They must first sense sufficient public pressure or perceive an important interest in implementing a specific change.
- e. **Conducting information campaigns**, which involve promoting awareness of the problem among as large and as influential a segment of society as possible. In so doing we look for allies who are prepared to support us and to take our side. Such campaigns can be performed by selected individuals (such as street theater performances or individual acts of civil disobedience) or collectively (petitions, marches, demonstrations, rallies, happenings, etc.) Campaigns of this sort do not attack the state system directly, but instead generate psychological pressure on politicians in order to make them aware that the given social issue is important and that something should be done about it. In totalitarian or post-totalitarian states, such information campaigns are sometimes perceived as aiming to overthrow those in power and are therefore considered illegal.

- f. When we believe that the process of seeking allies has finished, we can then pose an **ultimatum** — by informing the authorities that if concrete steps (which we most often specify precisely) are not taken within a specific time-frame then we will be forced to apply direct pressure.
- g. **Applying direct, collective pressure** — meaning taking non-violent direct action against the system of political power. Such initiatives may be based on:
- ⇒ *Severing ties that link citizens with the state* and refusing to cooperate with the authorities — going on strike; boycotting elections, state educational or cultural institutions, or state offices; refusing to perform military service; refusing to pay taxes; withdrawing bank deposits, etc.
  - ⇒ *Interfering with the activities of state institutions*: jamming telephones at state offices, occupying buildings in various peaceful ways, submitting applications or lodging court complaints *en masse* in order to paralyze the work of institutions, deliberately observing certain regulations which are technically in force but which are generally ignored (such as workplace safety or hygiene regulations), exercising certain civil rights *en masse*, etc.

Initiatives of this sort aim to force the authorities to negotiate with us. *They should not aim to disturb our fellow citizens, but rather to hinder the work of those in power* — by taking away their control over a specific aspect of the state's functioning. In the best case, such initiatives involve actions which are not prohibited by law and which at most involve the technical violation of petty disciplinary regulations. Sometimes, however, this is impossible (such as in the case of refusing to perform military service). In these cases we must expect and accept that we will be punished for our actions.

- h. **Negotiating with the authorities** concerning the nature of the concrete changes to be made and the methods by which they should be introduced.

One particular form of non-violent public action in the public interest is **civil disobedience**. In its purest form, civil disobedience involves the blatant public violation of a law which the person applying this form of action believes is bad, immoral, and/or harmful. Aside from the fact that civil disobedience is performed in defense of principles, and not for personal benefit, the fundamental characteristic of such action is the readiness of the person who breaks the law to be sentenced in court and punished for so doing. *Civil disobedience is usually applied in states where the rule of law is established*, where the person who takes such action recognizes the legality of the authorities in power, and respects the state constitutional system.

**Civil disobedience aims to improve, and not to overthrow the political system.** Individuals who do not recognize the legitimacy of the state and who view the authorities as having been imposed upon them break the law in conspiracy and try to avoid the punishment meted out by the (illegal in their opinion) authorities. For example, activists from the democratic opposition in a communist state who published an illegal newspaper did not turn themselves in to the prosecutor for punishment, because they did not recognize the legitimacy of the state. If, however, truly free elections are held, as a result of which a political force come to power whose views or deeds are not accepted by an activist, he or she should act overtly. Young Americans who ran away to Canada in order to avoid having to go to war in Vietnam were not conducting civil disobedience. Those, however, who publicly burned their draft cards and refused to serve — and went to jail for so doing — were classical cases of civil disobedience.

Civil disobedience may be either **individual or collective**. In the first case the individual's submission to punishment, especially if he or she is a well-known personality, serves to raise concern amongst the public: "Seeing as he or she was prepared to go to jail for this issue, perhaps it really is something important?" In such cases collective action is also often initiated in order to try to prevent the individual who was disobedient from being punished. Collective acts of civil disobedience (such as publicly burning military service cards, refusing to perform military duty, or refusing to turn over a portion of one's agricultural harvests as required by authorities in communist and fascist states) can also be applied as instruments of direct pressure.

It is sometimes the case, however, that the particular regulations we are protesting for moral reasons do not apply to us personally, and we therefore cannot actually violate them ourselves. In such cases we may choose to conduct civil disobedience by violating other provisions of law *in lieu*, ones which are at the same time somehow related to the general topic of the problem we want to address.

The forms of action we choose depend on our *strategy*, which must be developed before we begin to act. *Planning this strategy and taking such action require that we have sound knowledge of how human rights and freedoms are respected.* We must also understand the causes behind the human rights violations that occur. Such causes could include, for example: a bad legal regulation, a bad interpretation of a regulation, or a bad and unlawful but widely accepted practice on the part of state authorities. *It is only when we know whether we must change the law itself, its interpretation, or a practice*

*applied by institutions of state administration, for example, that we can identify which state institutions we wish to exert pressure on. Only then can we develop our strategy and select the appropriate forms of action.*

It is sometimes worthwhile to prepare a concrete proposal for how to solve the problem, which can be submitted to the authorities at a certain stage of our activities (e.g. a draft law, or the outline of such a draft). The experts who develop such drafts should be provided with up-to-date and (insofar as this is possible) exhaustive information about the state of affairs. Much more frequently, however, *non-governmental organizations draw attention to a problem they believe must be solved, but leave the technical aspects of the specific solution to be settled by the authorities. Trying to identify technical solutions is not, after all, the task of non-governmental organizations, and in fact often exceeds their capabilities.* The proposed solution must be consistent with the entire legal system of the state, and this often requires simultaneously making amendments to a range of laws. Non-governmental organizations can run into serious problems in conducting such work, such as in estimating the cost of the proposed solutions and their overall effect on the state budget. For this reason it is generally better to limit ourselves to pointing out problems that must be solved, while leaving the development of specific solutions to specialized state bodies.

### **1.3. Monitoring and the political system of the state**

*The political system of the state in which we act influences not only the type of action we undertake in the public interest, but also the methods we use to conduct monitoring and the investigative techniques we apply.*

#### **1.3.1. Totalitarian or authoritarian states**

The goal of action taken in the public interest in totalitarian or authoritarian states is, in essence, to overthrow the undemocratic system or to remove the ruling clique from power. In a state devoid of democracy and the rule of law we often conduct monitoring activities covertly or semi-legally (for example, by quietly extending the scope of licensed scientific research), and often in violation of legal regulations. Activists are forced to apply unconventional techniques. The very investigation of human rights violations is sometimes considered a crime.

Under such conditions it must be decided whether, in light of the goal, it will be better to act overtly (such as the Moscow Helsinki Group in the late 1970's, and Charter 77 in Czechoslovakia) or covertly (such as the Helsinki Committee in Poland during the 1980's, or present-day Tibetan activists).



Fot. Jacek Marzewski / Agencja Gazeta

Prison in Nowogard, Poland

If it is particularly important to demonstrate to the public that there are people who are not afraid, it is better to decide on overt action. However, repression against overtly functioning groups often forces them into a self-defensive mode — the majority of the reports they produce then describe repression against group members themselves.

In deciding whether to act overtly or covertly, we must take into account the extent to which public opposition against the totalitarian authorities is organized. When many people act overtly or semi-overtly in opposition to the authorities, the victims of human right violations will know where to direct information about what has happened to them in order to ensure it reaches the covert human rights organization. This intermediary role has sometimes been played by charitable organizations (such as those set up by churches, like the Primate's Committee for Assisting Those Imprisoned for Their Beliefs and Their Families, which was active in Poland in the 1980's). If there are no such structures, however, it is better to act overtly so that people will know what to do with relevant information.

The harshness of repression is sometimes an argument in favor of keeping activities concealed, as is currently the case in Tibet or Cuba. The risk of repression against an overtly functioning group can be lessened somewhat if it has the participation of prominent personalities who are renowned on the international arena (scientists, artists) or respected by the authorities due to their achievements (such as A. Sakharov in the USSR, or attorneys who defended communists in Poland before World War II). These factors and a range of others influence our decision of whether to conduct overt activities in such a state.

### 1.3.2. States in transition

States that are in transition between totalitarianism and democracy do have some democratic institutions. In other aspects of life, however, citizens are still subject to totalitarian laws — which are still partially enforced, but are at the same time already partially defunct. Usually, no effective procedures have yet been established by which citizens can assert their rights. Actions undertaken in the public interest thus aim to force certain priorities in the transformation agenda and to monitor the quality of these transformations. State institutions that are not yet accustomed to being monitored by civic organizations may therefore make it more difficult for us to conduct monitoring activities. *In such states — just as in states that have a fully stable democracy — we should nevertheless act lawfully in order to cultivate respect for the law (both from the public and*



Fot: Jerzy Gumowski / Agencja Gazeta

Police intervene during a riot after a soccer game in Poland, June 1995

*from the authorities), even if it is indeed less than perfect.* Agreements made with the authorities should also be kept: for example, if we have obtained their consent to allow us to investigate certain problems at psychiatric hospitals, then when visiting hospitals we should limit ourselves to investigating these and only these problems.

Of course, we do not have to accept every proposal from the authorities to limit the extent of our monitoring or the way in which the information gained will be used. Sometimes it is better to reject such proposals and to publicize the entire affair; if the authorities are worried, then they must have a lot to hide. This does not, after all, mean that we will refrain from conducting monitoring activities — rather, we will have to apply more cumbersome and less precise investigative techniques, but which will nevertheless still give us a relatively objective picture of the reality that the authorities are trying to hide from us.

### 1.3.3. Democratic states

In stable democracies, where state institutions are subject to mutual inspection, *monitoring is conducted overtly, in accordance with the law, and with the consent and often assistance of state institutions.* By acting in the public interest we thus aim to improve concrete aspects of the system by which the state functions, *while at the same time accepting the political system and, to a huge extent, the legal system of the state.* Action on behalf of civil rights in such states often involves defending the rights of members of stigmatized social minorities, which are not strong enough (either socially or economically) to defend their rights themselves.

**This handbook shall exclusively discuss those types of action that are aimed at improving the system of how state institutions function, in states whose political and legal system we fundamentally accept.**

## 1.4. Monitoring studies as compared to scientific research

Monitoring enables us to verify our suspicions (based on popular beliefs, information from the press, etc.) that human rights violations are being committed in some aspect of public life, to document the fact that such violations do occur, and to gather arguments and information that will be necessary in conducting further action. Monitoring studies are different from classical social research in several respects.

### 1.4.1. Research whose goal is to change the situation

Monitoring studies are conducted in order to bring about a change in the situation, not just to describe it. The goal of a scientific researcher is to deliver a report, and his or her work ends in presenting the research findings (and, potentially, in indicating the desirable direction in which changes should be made). **For the leader of an organization conducting a monitoring study, however, such a report in turn constitutes the starting point for future action aimed at changing social conditions.** A scientist may act as a consultant or an expert — but if any changes are made as a result of a scientific report, they are initiated by someone else other than the scientist who wrote it. An activist who conducts monitoring research, on the other hand, is consciously preparing a tool to be used in further action, and sometimes even acts as a catalyst of change even while conducting the monitoring study itself.

### 1.4.2. Monitoring as an instrument of change

One of the fundamental principles of conducting social research is not to disturb the reality that is being studied. **When we conduct monitoring, however, we often consent to disturbing the situation - and sometimes we even outright aim to do so.** It is thus sometimes the case that monitoring, in and of itself, is not just an investigation but also an instrument of transformation. We can, for example, anonymously and discretely observe court trials if we want to know how they are being conducted on a day-to-day basis. But when it is important to us to ensure that the proper procedures are respected during a particular trial, we will inform the judge that observers are present in the courtroom. If we have authorization to visit prison inmates, we can choose either to make surprise visits or to give the prison administration advance notice of such visits, in the expectation that they will make changes (renovations, etc.) that will improve the fate of inmates and that will remain in effect after our departure. **In such cases monitoring can be treated not only as a study, but also as itself constituting action taken in the public interest.**

*Monitoring must be conducted objectively and professionally, and its conclusions must be drawn properly.* For the activist it is of value both to investigate the existing situation, as well as to observe what the authorities change or do not change in anticipation for our investigation. It is not very difficult for us to find out during the course of a monitoring study what was changed at the last minute before our arrival. *Informing authorities of a planned monitoring inspection may prevent human rights violations.* For example, professionally organized, mass observations of elections can discourage those



in power from implementing plans to manipulate the outcome of the vote. This was surely the case, for example, during parliamentary elections in Slovakia in 1998.

### 1.4.3. The predominance of qualitative studies

In monitoring there is a greater proportion of qualitative research than it is in most social research. **A greater role is played here by a concrete example, by the *case study* - a detailed event or the history of a concrete individual,** which can be put to use in legal action or information campaigns.

Also somewhat different are the **criteria for selecting samples.** The sample used in scientific studies often accurately reflects the statistical structure of society as a whole with respect to those characteristics the investigator believes might affect the findings of the study. In monitoring, on the other hand, we frequently do not construct a set that reflects the population as a whole, but rather consciously limit ourselves to the set of those who we expect are subject to the most serious human rights violations. Thus **our conclusions about the issue under investigation are generally only applicable to the specific cases we have investigated, and cannot be applied to the population as a whole.** For example, we might report that in 5 of the 15 penitentiaries we investigated in our country we discovered and documented a total of 25 cases in which prisoners had been beaten by prison staff (see section 6.2.1.)

### 1.4.4. Techniques of collecting information

**Human rights monitoring employs the techniques of social research, as well as investigative techniques.** This first type enables us to gather comparable data describing the nature of the phenomenon under investigation, which then enables us to make an estimation of its scale. The second type is more useful in studying concrete cases in which human rights and freedoms have been violated, and in collecting reliable evidence on specific cases.

When gathering information we also make use of other fields of science, such as medicine, criminology, investigative techniques, physical measurements, etc. Criminology techniques, for example, are applied when we are dealing with drastic human rights violations: cases involving crimes committed by “unknown perpetrators” or victims of torture (when expert forensic medicine studies are sometimes essential). The techniques applied should compliment each other and assist us in obtaining fuller and more reliable information. Thus, when conducting a monitoring it is useful (whenever possible) to invite professionals from these fields of science to work in cooperation with us.

### 1.4.5. Documented sources of information

Another fundamental difference between monitoring and social research lies in their treatment of information sources. In social research information sources are usually anonymous. *In monitoring, on the other hand, we most frequently require documented information* (such as statements signed by the individuals whose rights have been infringed upon, or signed by witnesses). At times the names of informers appear not only in materials used internally, but also in the published report (see sections 6.2.4 and 9.7.)

## 1.5. The monitoring approach and future action in the public interest

As we wrote above, monitoring represents one part of a wider range of action that aims to bring about a change in the state of affairs, and does not constitute an aim in and of itself. **The ways in which we plan to use the findings of a monitoring study affect our approach to how we conduct it.**

Let's begin by discussing a monitoring study whose findings we want to use primarily in conducting *legal action*, e.g. bringing cases before domestic courts in order to demonstrate the unconstitutionality of a particular legal regulation, or before international courts in order to demonstrate that such a regulation violates a convention that was ratified by our state. We then place the stress on *finding cases that meet certain adopted criteria*. We strive to ensure that the cases selected for litigation are "clean," meaning free from unnecessary complications that might obscure the essence of the problem (although this is difficult to achieve in practice). In other words, we want the violation of human rights in these cases to be "obvious." It is best if the victim rouses public sympathy and is easy to identify with.

Next, if we plan to conduct *non-violent public action* and expect to have the victims or their families participate in meetings or rallies, we should make sure that the individuals who will publicly appear and discuss what they have undergone not only rouse public sympathy, but are also capable of making such appearances. The stories of specific individuals — so-called "case studies" — are necessary in conducting a press campaign. Articles and reports written about them can help to widen our group of allies.

*Statistics and numerical data* are useful in preparing reports addressed to specialists, for presentations made to parliament, or for negotiations conducted with the government. We should remember, however, that even when making a parliamentary appearance, or when preparing a report to challenge the

information published in a government report, detailed and reliable information on certain specific occurrences often makes a stronger impression. The figures we obtain through monitoring most frequently only establish the lower boundary of how widespread a certain phenomenon is, while its actual scale will remain unknown to us. Estimating the scale of phenomena is useful when we want to justify our thesis that the mass violation of human rights is a state policy — as is necessary when endeavoring to initiate procedures under the UN Commission on Human Rights. We should then precisely and clearly describe what method we used to estimate the true extent of the phenomenon.

*Monitoring can sometimes help us find allies.* While conducting a study we can note which of the changes that are important to us meet with the support of state officials, and which run up against their opposition. This is not always clear beforehand.

Here it is worth drawing attention to one mistake that is quite frequently made by non-governmental organizations: they sometimes plan and conduct studies without having a clear idea of what they will do with the findings. It is important to remember that monitoring is almost never a goal in and of itself, but rather one of various tools that contributes towards achieving a goal. It then often turns out that their time and money has been spent on obtaining information that is not in fact useful, while other data was neglected that could have significantly contributed to future activities.

## 1.6. What can be monitored

Our approach to monitoring and our choice of investigative techniques depend on exactly what the subject of our study will be. It is worth remembering that human rights issues are very extensive, and there is no way for our study to cover all such issues in their entirety. Below we present several examples of various possible cross-sections of social reality we may investigate from the human rights perspective. A monitoring can be conducted to study such topics as:

- a. How a particular law is respected within a specific geographical area** (such as the prohibition of torture, various aspects of the right to a fair trial, the right to privacy, freedom of speech, etc.) In these cases we face the issue of choosing the geographical region where we will conduct the study — as comprehensive research covering the entire country may well be beyond our capabilities. In a unitary state such as Poland, where there is no large-scale social (such as areas dominated by national minorities) or economic differentiation between regions, studying the status of human rights



Fot: Radosław Bugajski / Agencja Gazeta

Ananda Marga Association in the mountain village of Głębock, Poland

in several selected locations will probably provide comparable findings. In states that do have such internal differentiation (especially those of a federal structure), where certain regulations of importance from the human rights perspective exist on a local level, the situation is completely different — this is true, for example in the case of the United States.

- b. How the human rights of members of social minorities are respected** (such as national, ethnic, and religious minorities, refugees, migrants, expatriate workers, sexual minorities, the homeless, the unemployed, the poor, the physically and mentally disabled, HIV carriers, drug addicts, alcoholics, prostitutes, etc.) Such monitoring is oriented primarily towards *studying those rights and freedoms that are in some way related to the characteristics that differentiate these groups from the remainder of society*. For example, investigating the right to native-language education - of such importance to national minorities — does not make sense in the case of a sexual minority study. The opposite is true, however, in the case of the right to privacy.
- c. How some or all of the rights of individuals residing in certain closed or open institutions are respected** (such as at police station holding cells, pre-trial detention facilities, prisons, sobering-up stations, general hospitals, psychiatric hospitals, military barracks, children's homes, juvenile correctional facilities, homes for the elderly and disabled, workers' lodges, student dormitories, high-sea vessels, and all other types of places where people are voluntarily or involuntarily residing).

When conducting such monitoring we should keep in mind that it is useful to investigate *human rights in general* at these institutions, *and not just the rights of those living there* (the prisoners, patients, recruits, children, etc.) This strategy is adopted for at least two reasons: firstly, it is often the case that the rights of the functionaries or employees of these institutions are also being seriously violated by legal regulations or by their superior bodies. Secondly, it will be easier for us to conduct our investigation if the employees believe that we are interested in their rights as well. Our research thus becomes more objective, and with such an approach it is sometimes easier for the researcher to identify the reasons behind the human rights violations observed.

- d. How human rights are respected during episodic contacts between members of the public and representatives of state institutions** (such as when individuals are arrested or when individuals or residences are searched by state functionaries; when members of the public attempt to arrange certain matters through bodies of state or local administration, pay visits to state-run medical clinics, or are involved in court cases; or when property is confiscated by court enforcement officers, residents are evicted, public procurement tenders are conducted, licenses are issued, etc.)

In these cases we study the procedures that are followed by the functionaries, state officials, and other individuals that represent state institutions, in terms of how they respect material and procedural rights.



Fot: Robert Kowalewski / Agencja Gazeta

Soldiers arrested for drinking vodka on leave. Moscow, November 1997

- e. **How the human rights of members of groups that enter into specific long-term relations with state institutions are respected** (such as pupils, patients, students, social aid recipients, businesses applying for public procurement contracts, etc.)
- f. **How human rights are respected during (episodic) contacts between members of the public and individuals who practice certain police-like professions that are empowered by law** (such as private detectives; security guards in stores, clubs, or restaurants; ticket inspectors on public means of transport; government bodyguards; those who transport shipments of money; etc.)

The law grants those who practice these professions certain specific powers in their contacts with normal citizens, but their actions are rarely subject to review by public bodies. Nevertheless, it may be very cumbersome for society when these individuals overstep the bounds of their legal powers.

- g. **How human rights are respected by public institutions** (the police, border patrol, customs offices, forest patrol, waterway patrol, fiscal police, tax offices, court guardians, bodies of local state and local government administration, etc.) Unlike point d. above, the subject of our study here is how the entire institution functions, and not only its specific procedures for dealing with regular citizens who desire something from the office or from whom the state representatives make certain demands.
- h. **How human rights are respected by state institutions involved in specific one-time events** (elections, evacuations, natural disasters, the expropriation of property for the purposes of highway construction, etc.)
- i. **How human rights are respected by law enforcement forces who break up unlawful demonstrations** (which block roads or railway lines, occupy government buildings, etc.) **or who work to prevent participants in public events from breaking the law** (such as at football matches, rock concerts, visits of the Pope, etc.)
- j. **How a specific law affects the observance of human rights** (such as the Act on Protecting Mental Health, the Act on the Protection of Personal Data, the Act on Foreigners, the labor code, the criminal code, etc.) Such monitoring is generally conducted after a certain period of time (e.g. a year) after a law comes into force, in order to describe its effects from the human rights perspective.



Fot. Krzysztof Miller / Agencja Gazeta

Evacuation of residents of the village Pilc during floods

**k. The compatibility of legal regulations enacted by the state or local-level legislative and executive bodies with the country's constitution or with international human rights standards.** Sometimes reports are drawn up to investigate the compatibility of enacted regulations with constitutional limitations of power or with the country's international obligations. The lower the level of the legal regulations considered by such an analysis, the more valuable the analysis may be — as it is often the case that the lower the rank of the legal regulations we are dealing with, the more frequently they violate such standards. At the same time, it is these low-level regulations (such as the internal rules and regulations of public institutions, or expressed scope of public functionaries' duties) that often have a greater influence on reality than the constitution or laws.

Such analyses may be of greater value in states where the rule of law is established, where it can be assumed with a high degree of certainty that the practices followed by public authorities are consistent with regulations. Often, however, in states where the rule of law is only beginning to be instituted or where it is simply absent, the mistake is made of treating a description of the legal system as a description of the true state of affairs.

It should be stressed that reports that describe monitoring studies generally contain chapters that analyze the current status of legal regulations. Nevertheless, this only constitutes one segment of a report that describes social reality. Such analyses *are not considered monitoring in and of themselves*, because the essence of monitoring is studying social reality, and not only the legal milieu in which this reality exists.

*The above list does not exhaust all the possibilities for monitoring studies.* Our approach to such studies and the choice of which cross-sections of social reality to investigate depend on many factors — the state political system, our interests, and the nature of the problems that exist. These cross-sections often overlap to a certain extent, and thus an interview conducted with an individual that belongs to one certain group may be of use as an element in other kinds of studies.



## 2. Developing a strategy of action

### 2.1. Specialization — the road to professionalism

Everywhere in the world *where states emerge from totalitarianism, organizations are formed that aim to provide assistance to those who have been harmed.* They may provide assistance of a legal nature, or appeal to institutions of public administration on behalf of such victims. *Such organizations are not “human rights organizations” in the strictest sense, because they provide assistance in solving many types of general problems* that often do not specifically involve human rights violations. During periods of political transformation, these organizations often operate effectively by utilizing their personal acquaintances and influences among the elite, or by using the uncertainty among disoriented public officials to their advantage. Initially they make infrequent recourse to legal procedures — firstly because such legal action is time-consuming, and secondly because they lack the necessary resources, such as lawyers specializing in various fields of law. The problems they deal with often involve both criminal law and criminal procedure law, in addition to civil law, administrative law, labor law, social security law, etc. Such organizations continue to operate effectively until they become paralyzed by a deluge of cases and clients.

At this point, the majority of such organizations make a decision *to handle only cases of a certain type.* They put up signs on their doors, saying things such as: “We do not provide assistance in cases involving family affairs, housing, labor rights” etc. This does improve their situation, but not for long. With time, even after having set themselves such limitations, organizations come to the conclusion that they are still incapable of dealing with every single case within such bounds. They therefore begin to set themselves certain priorities. If the priorities they choose pertain to human rights and freedoms, *they then turn from “general assistance” organizations into specifically “human rights” organizations.*

As organizations undergo such specialization they often branch apart, with the newly formed groups restricting their field of interest to one or several specific human rights, or to the rights of members of one particular social group. This kind of progressive specialization has taken place in all countries in the world where democracy and the rule of law have come to be established. Today, there are very few organizations in the developed democracies of Western Europe and North America that deal with “human rights protection” in general, while those that do exist usually limit themselves to civil and political rights<sup>4</sup>. They also often set themselves certain strategic goals, and conduct only cursory observation of how human rights are being respected in other fields. In these countries there are dozens of *specialized organizations*. On the international level as well, there is a similar lack of non-governmental organizations that deal with “human rights protection” in general. Instead, there are a whole range of specialized organizations such as Amnesty International (prisoners of conscience, torture, and capital punishment), Article 19 (freedom of speech), the Minority Rights Group (the rights of members of various minorities), and Penal Reform International (prisoners’ rights) etc.

## 2.2. Action aimed at bringing about systemic change

When an organization narrows down its field of interest, this entails a change in the kinds of action it takes. Initially, organizations try to assist each and every victim of human rights violations that appeal to them. If such aid is successful, these first victims are then followed by more people in similar situations. With time it becomes apparent to those in the organization that assisting every victim is an endless task, and so the next step is to try to identify why cases of this type occur: due to a bad legal regulation, a bad interpretation of a regulation, a legal loophole, or some kind of generally accepted practice in public administration. Once the cause of the problem has been identified, the organization then takes action towards eliminating it.

In attempting to eliminate the source of human rights violations, we usually make use of one, or at most several well-documented cases of victims that can serve to evoke public emotion. If we do decide to take legal action, we will try to enlist the cooperation of the best experts. But even if we decide on non-violent public action or political action, we will still concentrate on a few dramatic examples of human rights violations — rather than on general statistics or on cases that are less spectacular and more complex, where the victims are simultaneously tangled up in a range of other legal issues. **By choosing to**

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<sup>4</sup> Such as Human Rights Watch and the American Civil Liberties Union in the US, Liberties in the UK, and the Helsinki Foundation for Human Rights in Poland.

**handle the case or cases of only one or a few individuals, we can nevertheless help many people by ultimately bringing about the elimination or reduction of a certain type of human rights violation.**

One of the primary principles in developing an organization's strategy of action is thus **narrowing down its range of activities**. It is better to specialize in a specific topic within clearly defined boundaries (freedom of speech, the rights of the child, the right to a fair trial, prisoners' rights, etc.) We select a certain fragment of reality we wish to change and, by improving the situation in this field, we indirectly solve the problem as such. This selection is very difficult to make — there are, after all, many problems in every country and every one of them seems to be the “most important.” Such strategic planning thus demands that leaders be capable of cold calculation and tactical reasoning.

### **2.3. Setting the objective of our actions**

At each stage of planning, both strategic and tactical, we must precisely identify the goals we wish to achieve: both the overall objective as well as the intermediate goals of each stage. *The most commonly made mistake is setting goals that are too broad* — which means that we do not achieve anything at all or, in the best case the effects of our actions are so poorly visible that our supporters, sponsors, and we ourselves have the impression that we have failed.

**Organizations that are run professionally should plan their actions by precisely identifying their long-term (strategic) objectives, as well as their intermediate (working) goals and a strategy for how they will be achieved.**

**We thus begin to plan action undertaken in the public interest by identifying our objective**, meaning by establishing exactly what aspect of the state we want to change with regards to how human rights are respected. **Professional human rights organizations** (and watch-dog groups in general) **are distinguished by the fact that they strive to bring about systematic changes in the law itself, or in the practice of how the law is applied**. As mentioned above, in order to reach their goal such organizations apply non-violent public, political, or legal action, or combinations of such types of action. They do not limit themselves to just combating the effects of such violations (providing assistance to the victims), because they believe that establishing

systematic solutions will serve to reduce the number of such victims. Assisting the victims of human rights violations without striving towards such systematic solutions leads nowhere: even if we are successful in compensating the damage done to one given individual, three more will soon appear in their place.

Providing ongoing assistance to victims, as a goal in and of itself, evokes a sense of hopeless and ceaseless effort among workers and sponsors alike, even if such assistance is indeed relatively effective. The prospect of bringing about an effective solution to even a small problem raises peoples' hopes. If we concentrate on attempting to redress damages but do not supplement this with other (strategic) actions, such a project is reminiscent of endlessly subsidizing an unprofitable state-owned mining company that will nevertheless remain unprofitable. *For this reason, we are successful when we bring about a change in the system* (a change of a legal regulation or the practice of how one is applied), *even within a small field — as this means we are solving the problem itself and not just engaging ourselves in an endless battle against the damage done by the problem.*

Although we would perhaps like to change a great number of things, we must nevertheless set ourselves a specific objective for the time being. This objective should be stated concretely and precisely. *We do not have to make it our objective to solve the most important human rights problem in our country.* (The criterion of “importance” is after all not very clear here: is it more important to solve a less severe problem that affects a larger number of people, or a more drastic harm that befalls only a few individuals?)

### **2.3.1. A realistic objective**

It is important for us ourselves, as well as for our supporters and sponsors, that we manage to achieve a goal that was previously formulated and identified - as this strengthens the conviction that our actions make sense. Such successes also garner respect from public authorities. They show that our opinions and demands must be reckoned with, something that will assist our actions in the future. Any organization that does not set clear goals for itself, or that is incapable of achieving the goals it does set, will be ignored by representatives of the authorities.

Achieving even very small but tangible successes is of particular significance in establishing the image and status of new organizations. If, for example, we decide to conduct and publicize litigation activities - meaning the conduct of specific court cases aimed at obtaining precedent-setting rulings from the highest courts — it is very important that we should win the first two or three such cases we choose to conduct. If we should then lose the fourth

case, this will probably not do so much harm to our cause. By then we have already established that we represent a responsible and effective organization, and this failure will be considered nothing more than something that happens during the course of our work. If we lose our first two cases, however, no one will treat us seriously during the third.

*When selecting the first problems we wish to solve by means of litigation, we must carefully weigh our chances of success.* With time, we will be able to allow ourselves to undertake more risky projects, or even to initiate cases we know we should indeed lose — only in order to attract more publicity and to elicit public discussion about the issues involved. Similarly, if the authorities make concessions as a result of our first campaigns of non-violent public action (demonstrations, publicity campaigns, or direct action), and do indeed meet our demands, in the future we will find it easier to find allies and the authorities will treat our protests and demands more seriously. But if our first campaigns do not have any sort of effect, we will be in a significantly weaker position during subsequent action.

Moral righteousness sufficed for dissidents in the past. Today, however, human rights organizations are to an equal extent expected to demonstrate that their actions are effective. What difference does it make if we are righteous in our cause, if it is clear that our organization is ineffective and not capable of winning?

### **2.3.2. The “small steps” strategy — setting intermediate goals**

No public authorities are fond of swift, far-reaching changes. For this reason it is a good strategy to first force the authorities into making concessions on cases of seemingly small significance. Bringing about small but concrete changes raises hopes among the public and increases public involvement. History teaches us that totalitarian systems last only until the authorities begin to conduct a policy of “liberalization.” Even small-scale concessions serve to give people the courage to continue to fight. This approach does not pertain solely to totalitarianism, however. Under democratic systems as well (when, for example, we are fighting for the rights of individuals who belong to stigmatized groups, who meet with public distaste or even scorn), both the authorities and the public find small-scale changes easier to accept. If we are successful in eliminating discrimination within one small area or with respect to one certain aspect of social life, it is unlikely that such discrimination will be able to hold on in other areas.



Fot: Sławomir Kaminski / Agencja Gazeta

Live music in a prison

The civil rights movement in the United States, led by M. L. King, made a breakthrough with its Birmingham campaign in 1962 — which ultimately brought about the elimination of racial segregation in the state of Alabama by means of a Supreme Court ruling. The direct, immediate aim of the campaign (which included a boycott, sit-ins, and marches) was only to eliminate racial segregation in stores and restaurants in the city center. These seemingly small-scale actions led to more and more far-reaching demands. Thanks to a combination of non-violent public, legal, and political action, these campaigns ultimately led to the elimination of racial segregation in the United States.

In India, Gandhi's seemingly trivial initial campaigns — such as his battle against the English salt monopoly — led ultimately to independence for the country, whereas numerous separatist, independence-minded, or anti-discriminatory movements that did not start from achieving small intermediate goals most frequently ended in failure.

If we desire to solve a wider social problem, we should choose a varied set of immediate goals. The effectiveness of our action in large part depends on the intelligent selection of these **intermediate (working) goals**. The problem we wish to address consists of an entire range of factors; it is like a wall constructed of bricks. If we make a judicious choice as to which brick we wish

to remove, we can topple the wall in one fell swoop, or at least do serious damage by taking out only a single brick. If we make a poor choice, however, we will be forced to eliminate more and more bricks, each of which will be fixed as solidly as the first. If King had been successful in eliminating segregation in restaurants, it is unlikely that it could have held on in grocery stores, and if he had eradicated it in public baths it would have become senseless for it to be maintained on public busses. If we are fighting for improved prison conditions and try to increase the rations that prisoners receive, this will not in turn serve to improve their sanitary conditions — but if, however, we are successful in defeating regulations that restrict prison access to non-governmental, charitable, cultural, educational, or religious organizations, we can bring about a change in the entire prison system. Prisons that are visited on a day-to-day basis by people who are not associated with those in power will become places where drastic human rights violations are not likely to occur.

### 2.3.3. Expanding our working goals for strategic reasons

By formulating a set of working goals, we narrow down our strategic objective; by fighting for changes in narrow areas of social life we try to bring about changes on a wider scale (like King or Gandhi).

It is sometimes the case, however, that while seeking support from various social groups for our (very narrowly defined) goal, we discover that we must **expand our goal so that other groups will also perceive an interest in supporting our activities**. For example, the goal of “legalizing partnership relations between homosexuals,” something that elicits negative public emotion, can be strategically expanded to “legalizing relations between individuals living together as an economic unit.” A goal formulated in this way applies not only to homosexual couples, but also to unmarried heterosexual couples, individuals who provide constant care to the disabled, etc. In solving their own problem, homosexuals may help other social groups achieve their aim as well, and can thus count on their assistance to a certain extent.

### 2.3.4. Identifying the nature of the problem — differentiating causes from effects

Clearly and precisely defining our goal requires that we properly **identify the nature of the problem itself**. This means *differentiating between its causes and its effects*. The most important problem for those who appeal to the numerous human rights organizations in Russia or Ukraine, for example, might be that state enterprises neglect to pay their salaries. For people with such problems, the activities of organizations that advocate the right to a fair trial and promote

the rule of law may seem abstract and essentially superfluous. Nevertheless, the only way to solve their problems, barring violence, is to guarantee the right to a fair trial — an element of which involves the right to have court rulings effectively implemented by the respective state institutions. Overdue salaries can only be vindicated either through the execution of court rulings, or by taking revolutionary actions. Because revolutions have no place in the strategy of human rights organizations, if we want to solve our clients' problems we have to concentrate on actions that guarantee everyone's right to due process.

Unlike social rights, the civil and political human rights recorded in two fundamental international documents — the European Convention on Human Rights<sup>5</sup> and the UN International Covenant on Civil and Political Rights — are precisely defined by the rulings made by international courts (or quasi-judicial bodies). The standard of an independent judiciary is the same in all countries, although there is no generally accepted standard for what constitutes a decent salary. *By getting the state to guarantee fundamental civil and political rights* (freedom of speech, an independent judiciary, the freedom of assembly), *we also clear a path to fight for social rights as well*, because we bring about legal and political instruments without which this fight cannot be effective. It is sometimes asserted that civil and political rights can only be dealt with after social rights have been guaranteed. This view is completely unrealistic. If the first group of rights is not respected, no way exists to realize the public's social aspirations — barring violence.

The techniques applied by human rights organizations — meaning legal, political, and public action taken in the public interest — serve to exert pressure on the authorities, and not to directly change social attitudes, combat stereotypes, or to overcome prejudices. Such action may, of course, cause a provision to be adopted making it easier to combat intolerance and xenophobia, but nevertheless *the essence of a human rights organization's activities is to exert pressure on public authorities, not on the public*. Such organizations may combat manifestations of discrimination in the actions of public authorities, they may bring about the repeal or modification of legal regulations that encourage social discrimination, or they may cause “defunct” regulations (such as those that provide for harsher punishment for beatings of a racial nature) to be brought back into use. They do not, however, strive to overcome the prejudice of the majority against the Roma, homosexuals, prostitutes, or drug addicts. This can only be done by means of long-term, organic work at the grassroots, something that

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<sup>5</sup> The 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms. In this book we often use the commonly adopted abbreviated name of this document: “The European Convention on Human Rights.”



requires completely different skills and means of operation. Tolerance is instilled in schools, theaters, cinemas, sporting clubs, the military, scouting organizations, and discotheques, not before courts and in the halls of parliament.

### **2.3.5. The nature and scale of human rights violations as a factor influencing our choice of objective**

Our choice of objective is also affected by the **nature and scale of human rights violations**. Aside from the obvious moral arguments, there are pragmatic factors to consider as well. It is easier to mobilize public opinion in the case of dramatic problems that evoke people's emotions. If the violation of some right, even if it is not very drastic, is of a widespread nature, and if many individuals feel themselves to be potential victims, it will be for us easier to find potential allies for our activities. Not everyone goes to prison, but just about everyone spends time in the hospital at one time or another. For this reason it is easier to gain support when fighting for patients' rights than it is when striving to protect the dignity of prisoners.

Initiatives on behalf of human rights enjoy the tacit support of almost the entire population in countries that lack the rule of law, where the majority of citizens feel themselves to be potential victims of repression. Where there is a stable democracy and the rule of law is well-established, human rights organizations engage in defending members of minorities — often those who meet with public scorn and who are subject to discrimination by public authorities that is sanctioned by the majority of citizens. Here we begin to defend the minority from the majority, instead of the majority from the minority as previously. Initiatives undertaken on behalf of human rights in democratic states where the rule of law is established are sometimes, paradoxically, more difficult than in states that do not respect these principles. *If we want to achieve success, we should first try to tackle widespread problems that are less controversial, such as patients' rights. Then, having gained public support, we can take on less popular activities such as protecting the rights of drug addicts.* In the long term, it is more judicious to alternate between campaigns to improve the situation of the majority and initiatives on behalf of the rights of those who belong to groups scorned by the majority.

**The primary criteria in choosing our objective is that it must be realistic and of tangible value. If various objectives seem to us to be equivalent in this regard, we must then take other factors into account.**

### **2.3.6. Other factors affecting our choice of objective**

#### **a. The political situation in the country**

The situation in the country may be more or less conducive to particular types of action. Our chances for success depend on such aspects as the social atmosphere surrounding particular human-rights-related issues (some topics may be particularly thorny to deal with), the political needs of those groups that are in power (the image they would like to project within the country and abroad), and the individual personalities of ministers and other decision-makers.

#### **b. The political calendar**

In selecting our objective we also often take account of *upcoming political events in the country*, such as parliamentary or local government elections, referenda, or the schedule of parliamentary work (important parliamentary debates). Our decision may also be influenced by the dates upon which the government is scheduled to submit reports on its implementation of specific international agreements, when visits are planned by various types of international missions (such as the CPT), etc.

#### **c. The organization's true capabilities**

We must make a sober evaluation of our own organization's personnel and of its intellectual, financial, and technical potential, so as to ensure that we do not set ourselves goals that we are not able to achieve.

#### **d. Sources of finance**

If we still have not made a choice after having considered the points mentioned above, our final decision may be influenced by the probability of finding a sponsor for the implementation of various scenarios. *It is not, however, a good idea to choose an objective only because a sponsor is available.* If the leaders and activists are not convinced that this choice is wise, and if the initiative comes from outside rather than from them, even a wellfinanced project has little chance of success.

#### **e. Cooperation with other non-governmental organizations**

In developing a strategy we should not forget about *cooperation with other non-governmental organizations*. It is always worth seeking out other organizations that might support the achievement of our goal. Perhaps our goal is also an indirect objective of some other organization that performs its own operations. If so, we have a natural ally in this group. It is often the case that the objectives set by different organizations are similar. Mutual assistance is then completely natural. In this case we must synchronize the activities of different organizations and recognize the importance of how they each apply

their own, often completely different methods to achieve the same goal. Some will try to drum up public sentiment, others will act discretely behind parliamentary office doors, and still others will usher cases through domestic and international courts to demonstrate that there is a problem which must be solved. Diverse forms of action, different types of missions and techniques can, if we utilize them skillfully, create a very strong network of pressure on the authorities. Sometimes it is a good idea to publicize the cooperation between these organizations, but it is often better if seemingly independent, separate, and different initiatives exert pressure on the authorities from different directions, all of them pushing for the solution of the same problem.

Non-governmental organizations that compete or fight with each other instead of supplementing and supporting each other *generate public scorn and distrust among sponsors*. There is always more work than our capabilities can handle. Even organizations that work in the exact same field should be allies to one another rather than rivals.

### 2.3.7. From the strategic objective to the working goals

If we have properly taken the above factors into account, we should not formulate our objective in such a way as this: “To improve the situation with respect to the observance of human rights in our country.” Rather, **the strategic objective** (either the only one or one of several) of a professional human rights organization might read as follows:

*To ensure that article 3 of the European Convention on Human Rights is respected by state institutions, and to improve the effectiveness of the actions taken by the state in situations when the freedoms mentioned by this article are threatened.*

A strategic objective formulated in this way, although it is restricted to only a single article of the European Convention on Human Rights (freedom from torture and other inhuman or degrading treatment or punishment), is still very broad, and in order to achieve this objective we must have a well thought out, long-term strategy. For this reason, at the very start we must set ourselves **intermediate working goals**, goals that will assist us in achieving our strategic objective gradually, by “small steps.” These “small steps” constitute our working goals. When constructing a strategy, aside from identifying these intermediate goals we must also identify the order for them to be achieved — having taken all the factors mentioned above into consideration.

If one of our overall strategic objectives is as formulated above, then we might set ourselves the following intermediate goals:

To improve measures protecting from inhuman or degrading treatment or punishment in:

- ⇒ *institutions where individuals are confined (pre-trial detention facilities, prisons, psychiatric hospitals, etc.)*
- ⇒ *residential institutions (boarding schools, children's homes, homes for the elderly and disabled, etc.),*
- ⇒ *the activities of representatives of state forces (the police force, municipal guard, border patrol, etc.),*
- ⇒ *the actions of individuals who practice certain police-like professions empowered by law (security guards, ticket controllers, private detectives, etc.),*
- ⇒ *the actions of other state representatives and individuals employed by public authorities (civil servants, teachers, judges, etc.),*
- ⇒ *etc. (see Diagram 3).*

**Other examples of strategic objectives** for human rights organizations are as follows:

- ⇒ To ensure respectable conditions for prisoners to serve out their sentences (see Diagram 4),
- ⇒ To eliminate manifestations of discrimination against members of minorities with respect to how they exercise their human rights and freedoms, and to create a system of affirmative action to enhance the exercise of certain rights in the case of members of groups for whom this is justified by their history or current situation (see Diagram 5),

To reduce police brutality (see Diagram 6).

Diagrams 4-6 present several working goals for each of these strategic objectives. These lists may of course be changed and supplemented depending on the organization's strategy of operation and the particular situation present in the country.

We usually make our choice of strategic objective based on generally available information and on the experience of the organization or the individuals associated with it. *But when it comes time to develop a strategy, identify our working goals, and make initial plans for conducting various initiatives, we must begin to consciously gather detailed, reliable information about this field.* After having made a **preliminary diagnosis of the situation** we may begin to select our working goals and the means we will apply to achieve them. It is then that we become aware of whether we should conduct a monitoring study.



Fot: Piotr Wójcik / Agencja Gazeta

Stara Zagora Prison in Bulgaria

## 2.4. The preliminary diagnosis of the situation

**This preliminary diagnosis means making an initial identification of what the status is of our selected fragment of social reality, thanks to which we draw the outline of our planned strategy of action. We make this preliminary diagnosis by collecting information from sources that are relatively easy to access.**

This diagnosis widens our knowledge about the given field and the potential problems. It frequently allows us to perceive circumstances that we might not have thought about previously. The findings of this diagnosis will determine whether we will decide to conduct a monitoring study. **However, this analysis does not itself constitute a monitoring!**

At this stage we search for sources of information. These could be:

- ⇒ **discussions with experts** (scientists, representatives of specialized non-governmental organizations, lawyers, or other individuals who work or have worked on the given problem),

- ⇒ **focus groups** involving individuals associated with the issue we are interested in, but who view it from different perspectives (state officials, the victims or their relatives, representatives of non-governmental organizations, etc.) (see section 6.5.2.),
- ⇒ **a preliminary analysis of legal provisions** that pertain to the selected issue (domestic and international law),
- ⇒ **an analysis of scientific studies** conducted by various institutions and universities,
- ⇒ **analyzing the findings of other studies or inspections** conducted by various state (such as Poland's Supreme Chamber of Control), non-governmental (such as Human Rights Watch), or international (such as the CPT) organizations,
- ⇒ **a preliminary analysis of stories reported by the media, discussions with journalists** who specialize in the given topic,
- ⇒ **an analysis of citizens' complaints** pertaining to the issue we are interested in that have been received by various institutions and organizations (the office of the ombudsman, specialized non-governmental organizations, or law firms),
- ⇒ **visits** to institutions or detention institutions (courts, public offices, psychiatric hospitals, jails, children's homes, etc.), which help us to understand the issues and to develop a concept for the monitoring study we will conduct.

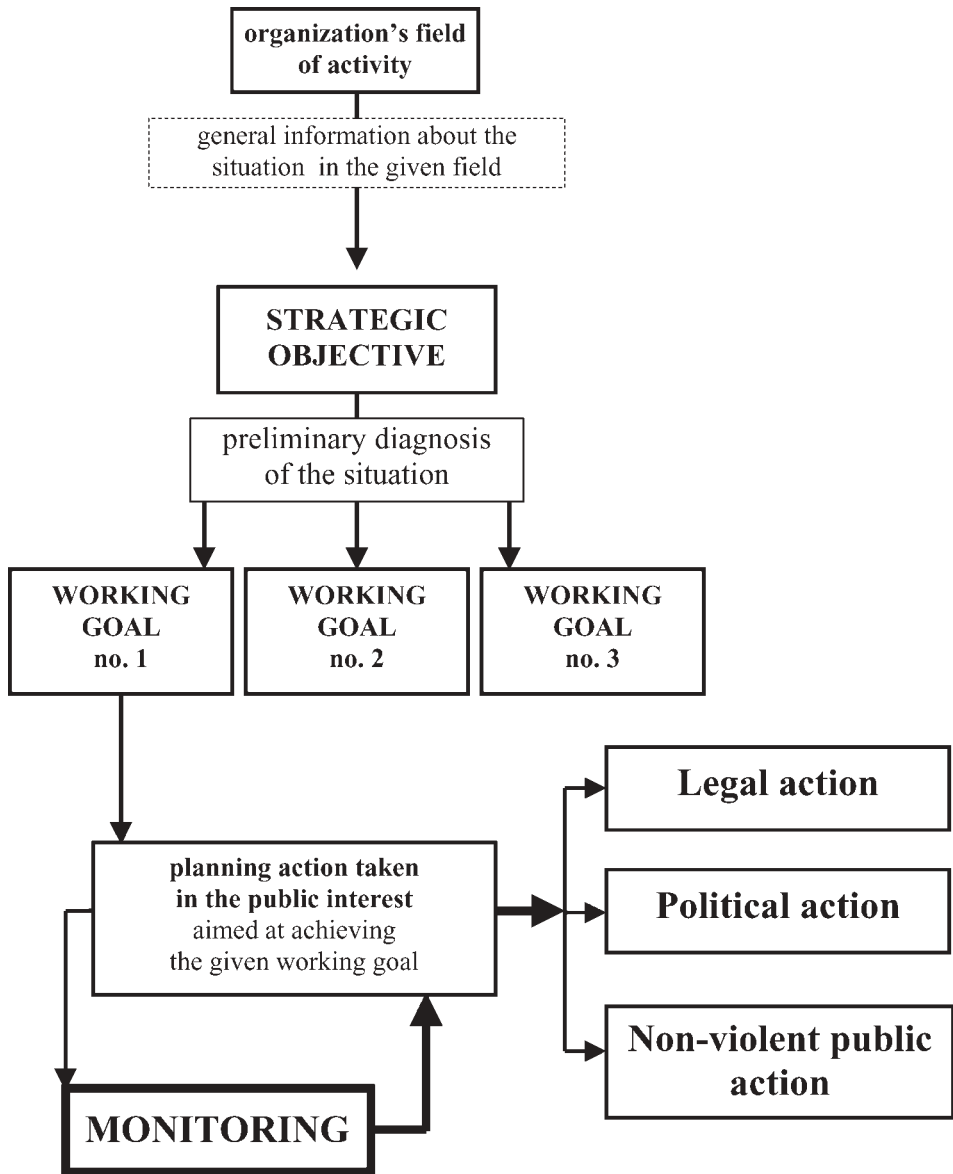
This preliminary diagnosis gives us general knowledge about how human rights in the given field are respected. Sometimes it allows us to pose hypotheses about the causes of human rights violations. Based on this knowledge we can set ourselves working goals and establish the order in which they should be achieved. We will be able to identify the nature of the proper political, public, and legal action to be taken, and then move on to plan and implement such action (see [Diagram 1](#)).

Significantly more frequently, however, it is on the basis of our preliminary diagnosis that we become aware of what kind of knowledge we need before we are able to plan our political, public, and legal action. *In this case, monitoring will be the first element of our strategy. Then, on the basis of the findings of the monitoring study and the information we gain during the course of our investigation we can develop a plan of action and specific initiatives.* Each of the objectives mentioned above, for example, would be difficult to achieve without having conducted a reliable monitoring.

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**In some situations we may be able to plan and achieve our working goals, or even our strategic objectives without a monitoring. Nevertheless, the reliable information we may gain from monitoring allows us to formulate better arguments when negotiating with the authorities about the types of changes we desire (as part of both public and political initiatives), and strengthens our negotiating position. Well planned monitoring studies also help us find the appropriate cases or “case studies” for conducting strategic litigation.**

Diagram 1: Monitoring as a part of action taken in the public interest





### **3. Monitoring step by step**

After clearly identifying our strategic objective, making a preliminary diagnosis of the situation, and selecting a working goal, we may then move on to planning our monitoring study. Each monitoring project usually consists of several specific, interrelated stages. As Diagram 2 shows, several of them may overlap or proceed in parallel.

#### **3.1. Formulating and choosing a monitoring task**

The task of a monitoring study should follow from the working goal we have adopted. It specifies what we must study in order to gather the information, facts, and “case studies” we require in order to achieve our goal. We usually select one of several possible tasks, using selection criteria similar to those that assisted us in choosing an objective.

If our objective is “*to improve how article 6 of the European Convention on Human Rights is respected by district courts,*” there are many specific tasks we might select to monitor: whether the courts handle cases within a reasonable period of time, how independent the courts are, whether the condition of court facilities, resources, and finances are sufficient to guarantee this right pursuant to the standards of article 6 of the European Convention, etc.

#### **3.2. Analyzing the law**

This analysis includes both domestic and international law, and continues until the monitoring study is completed - meaning until we present its findings.

Analyzing the law aims to check to what extent the internal legal regulations that govern the selected slice of social reality are consistent with the constitution, and with the international agreements our state has entered into. At the same time, it allow us to identify which legal regulations might be the cause of human rights violations.

In conducting this analysis we proceed in accordance with the hierarchy of sources of law, as specified by the constitution (since we always begin with the constitution). Subsequently we analyze international agreements, statutes (*laws passed by parliament* — also referred to as legislative acts or legislation), presidential decrees (if the president has the right to issue them), regulations and orders passed by the governmental administration, local laws, executive provisions, the internal regulations of the respective institutions (such as courts or children’s homes) etc. (see section 5.2).

In terms of international law, we analyze both those treaties that our state has agreed to respect (namely those it has ratified) as well as “soft” international law, namely recommendations, resolutions, declarations, etc. issued by international organizations.

### **3.3. Identifying research issues within our selected task**

Within each of the selected research tasks, we then identify a range of more specific issues to address. At this stage of planning we often have to limit ourselves, and select only certain specific issues to investigate.

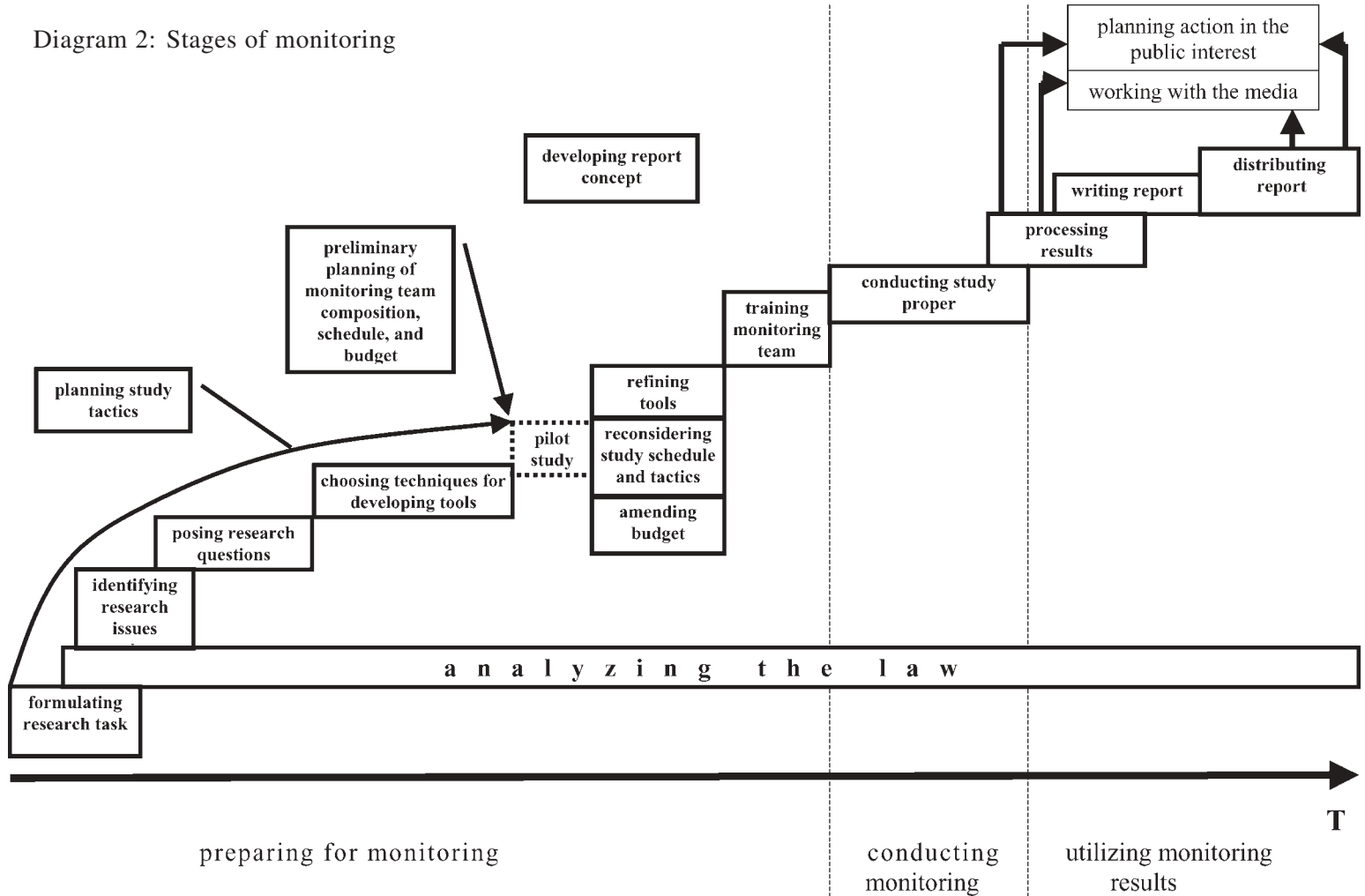
If, under our objective “*to improve how article 6 of the European Convention on Human Rights is respected by district courts,*” we have selected the task of “*Studying the condition of district court facilities, resources, and finances,*” then we might choose to deal with the following issues:

- ⇒ *the condition of the court’s facilities*: the court building, the courtrooms, secretariats, detention cells, archives, judge’s quarters, etc.,
- ⇒ *the condition of the court’s resources*: room furnishings, building security, access to professional literature and press, computers, etc,
- ⇒ *the condition of the court’s finances*: the salaries paid to judges and other court staff, funds for expert studies, translators, etc.

### **3.4. Posing research questions on specific issues**

At this stage in the process of developing our monitoring concept, we pose very specific questions about the research issues we have selected. Our study will strive to find answers to these questions. Based on these questions we can then precisely select the appropriate research techniques that will allow us to obtain the necessary information. On this basis we also build our research tools.

Diagram 2: Stages of monitoring



For example, our research questions on the above issue of *the courtroom* could be as follows:

- ⇒ How large is the courtroom?
- ⇒ What kind of acoustics, lighting, ventilation, and sanitary conditions does it have?
- ⇒ How much space is provided for the audience?
- ⇒ Is there a separate entrance for the judge?
- ⇒ Can the judge see the door from his or her seat?
- ⇒ Is there a deliberation chamber adjoining the courtroom?
- ⇒ Is there a rostrum for witnesses to speak from?
- ⇒ etc.

### **3.5. Choosing research techniques and methods for their application — developing tools for collecting information**

There is a wide spectrum of techniques we can apply. When conducting a monitoring study, the techniques we have at our disposal include those used to conduct social research, plus investigative techniques and even outright criminological techniques. Under dangerous conditions (when we are acting in a totalitarian state against state restrictions) we also make use of the techniques of conspiracy.

We should seek answers for our research questions from several sources and, as far as possible, by means of varying techniques. We should strive to verify every piece of information in order to ensure that the findings of our research are as reliable as possible.

In developing our research tools we also prepare a system for processing the data we obtain during the course of the monitoring, and we choose the form in which we will present the findings of our research.

### **3.6. Preliminarily planning who will make up the monitoring team, the project schedule, and budget**

What type of monitoring we plan to conduct determines our criteria for choosing which individuals should conduct it. The most important of these criteria are certainly as follows: professional specialization, experience in conducting research, gender (in certain cases), psychological predisposition — such as the ability to conduct conversations with the mentally ill or with

criminals (and certainly a lack of anxiety in dealing with these groups), decision-making skills, the ability to work as part of a team, etc.

After choosing our techniques, developing our tools, and identifying the principles by which we will select our sample, we can then make a preliminary estimate of how much our monitoring study will cost. We must consider how many individuals will be engaged in the study and for how long, what sort of equipment they will require, how much transport and communications will cost, etc.

### **3.7. Conducting a pilot study and preliminarily processing the information collected**

A pilot study will allow us to practically assess the effectiveness of the tools and research techniques we have chosen. It demonstrates any difficulties we were not able to foresee during our preparations, and verifies how realistic our assumptions were concerning the necessary time and budget for the overall project.

The information collected during the pilot study must be processed in order to verify the method we plan to use for processing the findings of the study proper. Often our trial run at processing data demonstrates the shortcomings of the tools we prepared previously.

### **3.8. Critically assessing and adjusting our concept for the study proper, based on the findings of the pilot study**

After conducting our pilot study we then adjust the tools and methods we have chosen to process our findings. There can be great discrepancies between our assumptions and the realistic requirements (in terms of time, funds, or personnel). We must then correct our project schedule and budget, and if possible also the scope of the monitoring study.

### **3.9. Training the monitoring team**

Training should cover: knowledge about the field to be studied (how the given institutions function, etc.), how to apply the research techniques and tools the team will make use of, what methods are to be used in gathering and documenting information (in order to ensure that all the information gathered is comparable), etc., as well as in-depth knowledge of legal regulations that pertain to the specific issue (from the country's constitution and international

agreements down to executive provisions). The team should also be prepared to react in unusual situations, as these do occur during the course of just about every monitoring study.

Every member of the team should understand the goal of the entire project and the overall method by which it is being conducted, as well as the method planned for processing the findings. Without such knowledge he or she will not be able to recognize which information may be of true significance to the project's goal.

### **3.10. Conducting the monitoring study**

The following principles should be observed during the course of the study:

- ⇒ we should very conscientiously differentiate facts from the researchers' own suspicions, opinions, and hypotheses.
- ⇒ we should maintain our objectivity.
- ⇒ we should not become emotionally involved in the situation, and should not distort our picture of reality to correspond to our previous assumptions.
- ⇒ we should not promise to arrange personal matters for the people we meet while conducting the study.

Conducting a monitoring study sometimes brings up ethical dilemmas. Monitors often find themselves in unusual, unforeseeable situations. The work of the monitoring team should thus be organized in a way that ensures its members can consult with each other and give each other assistance.

### **3.11. Preparing the findings of the study**

The method we use to draw up our findings depends on the research techniques. If we collect information using techniques applied in the social sciences, the way in which we process the data should also be consistent with the standards of these sciences. Information gained from monitors should be compared with other sources (the findings of academic studies, various statistics and reports, government reports submitted to international organizations, parliamentary and ministerial reports, etc.)

If the material collected pertains to specific cases or "case studies" that we want to use for such purposes as strategic litigation, we should ensure that it is drawn up in a way that is consistent with the demands of trial documentation.

### 3.12. Writing the report

The way in which we present the findings of our study depends on to whom our report is addressed. We write reports differently if they are addressed to United Nations committees, to special rapporteurs acting under thematic and regional UN procedures, to the government or parliament, or to journalists (if we are interested in encouraging public debate).

Regardless of the addressee of the report, the data included in the report must be checked and double-checked. One single slip-up, one single mistake could undermine the credibility of the entire report, the reliability of the study we have conducted, and as a result the prestige of our organization. We must keep in mind that the heads of the institutions that we will reprimand for committing errors or violations may try to discredit our report by demonstrating it to be subjective or by pointing out inaccuracies that could compromise us as researchers.

### 3.13. The detailed planning of our strategy and tactics for non-violent public, political, and legal action

At this stage (although sometimes earlier, while the data gathered is being processed) we can proceed to a more detailed planning of the non-violent public, political, and legal action that will bring about the desired changes.

We can address specific incidents of human rights violations, take up selected individual cases, begin correspondence with the authorities, initiate court cases, etc., in order to document the problem described by the monitoring study.

We must also develop a strategy for distributing the report so that it can provide authentic support for other actions (sending the report to politicians in the country and abroad, presenting the findings at a press conference, etc.)

**When planning a monitoring study we should remember that the most time and energy should be devoted to preparation. Actually conducting the monitoring study usually lasts several weeks, while preparations for it often last many months. Processing the information gathered and preparing our report also often lasts longer than the monitoring study itself. We should constantly bear in mind the goal we have set for ourselves, and what objective the monitoring study is intended to help us achieve.**

## 4. The monitoring concept

Let's assume that we have already clearly identified our strategic objective and the working goals we must achieve (either in succession or simultaneously) in order to achieve this objective. We have also already made a preliminary decision as to what kind of legal, non-violent public, or political action could bring about the realization of our working goal. In order to take such action we must have concrete knowledge and information, a good understanding of the social situation we want to change. This is what we need the monitoring for. In constructing our monitoring concept, we thus identify our **research tasks**, which are then narrowed down further — first by identifying certain **research issues** we want to address, and then by formulating very detailed **research questions** to which we will try to find answers during the course of our study (see [Diagrams 3-6](#)).

### 4.1. Formulating and choosing our research task

If our preliminary diagnosis of the situation shows that in order to achieve our goal we must conduct a monitoring study, we must plan *exactly what it is we will study*, just what kind of information we will need: What is it that we want to have at our disposal when we start our legal, political, or public action?

**We will use the term “research task” to refer to the subject of a monitoring study, an identified fragment of social reality that we intend to research.**

#### 4.1.1. Sample working goals and research tasks — article 6 of the European Convention on Human Rights

Our research task is, as a rule, tightly linked to our working goal. But the way in which the two are formulated will not always coincide, such as in the case of “The Police” ([on Diagram 6](#)), where the working goal is “to guarantee





Fot: Waldemar Sosnowski / Agencja Gazeta

Defendants being escorted into the courtroom. District Court in Rzeszów, Poland.

that human rights are respected when individuals are arrested by the police,” while the monitoring research task is “to study the behavior of the police while arrests are being made.”

Let’s assume that our organization has set itself the following **strategic objective**: *to improve how article 6 of the European Convention on Human Rights is respected by district courts.*

The scope of article 6 of the European Convention is exceptionally wide, and it pertains not only to the judicial system, but also to the police and other state institutions. In identifying the possible working goals and research tasks in this field it is first worth becoming familiar with the body of rulings handed down by the European Court of Human Rights. This is a very rich source and will point us to many interesting issues associated with this particular article. On this basis we can then plan the “small steps” that will enable us to guarantee the right to due process as defined in article 6.

The **working goals** of our action to improve how the right to due process is respected might be as follows:

- ⇒ *To prevent discrimination against members of social minorities in how the right to due process is respected;*
- ⇒ *To guarantee that courts are independent;*
- ⇒ *To guarantee that courts respect the principle of impartiality;*
- ⇒ *To guarantee that court hearings are conducted within a reasonable time;*
- ⇒ *To guarantee that the right to a fair hearing is respected;*
- ⇒ *To guarantee that the publicity of cases is restricted only for the reasons set forth in article 6;*
- ⇒ *To guarantee that the accused party's right to defense is respected;*
- ⇒ *etc.*

The implementation of each of these working goals requires reliable monitoring. How should we choose our research tasks? An analysis of article 6 of the European Convention and the body of rulings handed down by the European Court of Human Rights will provide us with a great number of potential monitoring research tasks. We will choose one or several of these which are most appropriate in light of our chosen working goal and planned strategy of action.

### **Article 6**

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
3. Everyone charged with a criminal offence has the following minimum rights:
  - a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
  - b) to have adequate time and facilities for the preparation of his defense;
  - c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

- d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
- e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

Here are several research tasks which follow directly from article 6 — although this list is not exhaustive of every possibility for studying the issues this article addresses.

Article 6 paragraph 1 of the European Convention pertains to both civil and criminal cases:

- a. **“Everyone has the right...”** — *Study whether the law or its practice differentiate in terms of the procedural rights (included in article 6) of the members of specific social groups: foreigners, repeat offenders, ethnic minorities, religious minorities, the poor, stigmatized groups (the homeless, drug addicts, the mentally ill, etc.) — and primarily whether the law or its practice actually leave certain individuals unable to exercise their right to due process.*
- b. **“A fair hearing”** — *Study whether the civil or criminal case satisfies the criteria of a fair hearing (the principle that the parties appearing before the court be “equally well armed,” whether there is an adversarial approach in the case, etc.)*
- c. **“A public hearing”** — *Study whether the press and public are excluded from hearings only in those situations specified by article 6 (in the interest of morals, public order, or national security; where the interests of juveniles or protection of the private life of the parties so require; or where publicity could prejudice the interests of justice), when it is truly necessary. Also, study whether judgment in such cases is pronounced publicly.*
- d. **“A hearing within a reasonable time”** — *Study whether court cases really are handled within a reasonable time.* Here it must be noted that the rulings of the European Court of Human Rights present different standards of “reasonable time” for criminal and civil cases. When the individual charged is being held in temporary custody, the criteria of “reasonable time” becomes stricter. Also of interest here are cases involving the legal incapacitation of the mentally ill.

In civil cases we will also address the question of when the judgment is enforced, as “reasonable time” refers to the time it takes for a ruling to be implemented, and not only handed down.

- e. **“Independent”** - *Study whether the courts satisfy the criterion of independence.* With a task formulated in this way, we will investigate whether the court is dependent upon the governmental administration, whether executive authorities have the ability to exert pressure on the court, and whether such situations do occur.
- f. **“Impartial”** — *Study in what way the impartiality of the court is guaranteed* (whether there are incidents of personal or family ties between judges and attorneys, prosecutors, or parties to the case; links to the Mafia; incidents of blackmail, etc.)
- g. **“A tribunal established by law”** — *Study whether every institution that pronounces judgment in cases pertaining to civil rights and obligations and in cases involving punishable acts does satisfy the criteria of a tribunal* (as specified in the European Court’s rulings) *and whether every such tribunal is established by law:* this applies to misdemeanor boards, military disciplinary courts, professional tribunals (among doctors, lawyers, or judges), systems of punishment in institutions of coerced residence (psychiatric hospitals, correctional facilities), etc.

Article 6 paragraphs 2 and 3 of the Convention pertain to the rights of individuals charged with a criminal offence:

- h. **“Everyone charged (...) shall be presumed innocent until proved guilty...”** — *Study whether the detention of individuals is properly applied* (whether detention is applied only in a lawful way; whether it is sometimes used as a form of punishment; whether the detainee is treated pursuant to the principle that he is an innocent individual).
- i. *Study whether the individual charged is informed:*
- **„promptly”**
  - **„in a language which he understands”**
  - **„in detail”**
  - **„of the nature of the accusation”** (i.e. the provision of criminal law under which the charge is brought)
  - **„of the cause of the accusation”** (i.e. the charge has been brought for having committed what act).
- j. *Study whether the individual charged has “adequate time and facilities for the preparation of his defense”* (a place to prepare his defense, access to legal acts and literature, contacts with lawyers, access to witnesses and



Fot: Agnieszka Sadowska / Agencja Gazeta

Visiting room in pre-trial detention facility. Białystok, Poland

the ability to seek them out, requesting that expert studies be conducted, covering their cost, choosing the experts to conduct them, etc.)

k. *Study how the following rights of the individual charged are respected:*

- „to defend himself in person”
- „to defend himself through legal assistance of his own choosing”
- „to be given free legal assistance” (how bad must the financial standing of the individual charged be for him to be granted free legal assistance, by what procedures is this financial standing assessed, what is the quality of the free legal assistance provided, etc.)

l. *Study how the charged individual’s right “to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him” is respected.*

m. *Study how the charged individual’s right “to have the free assistance of an interpreter” is respected (aliens, members of ethnic minorities, etc).*

## 4.2. Identifying research issues within a selected research task

The research issues to be investigated under a previously chosen task set out the direction of our research and make it more specific. Studies of how a particular right is respected often encompass several state institutions (see Diagram 3) or various aspects of the life of a selected group (see Diagram 4).

### Each research issue identifies one narrowly-defined field of investigation under our selected monitoring research task.

On this level we often **resign from investigating every issue that presents itself, concentrating instead on one or several issues that are of the greatest strategic significance.** The example of article 3 (torture and other forms of inhuman or degrading treatment or punishment) demonstrates just how many institutions can be involved in how one particular right is respected. Monitoring all of them would be impossible even for the most powerful organization. In building our monitoring concept (narrowing down the subject of the monitoring study), we must consider which issues *must be, and at the same time can be investigated* given the conditions we are working under. Every issue represents a potential separate point of research. It is our strategy that determines whether we will choose one issue (in the case of article 3 this may mean one particular institution) and study it in depth, or whether our monitoring study will encompass more issues but study them more superficially.

## 4.3. Posing research questions to address specific issues

At this stage we formulate questions that are already very detailed, questions that will provide the basis for constructing our research techniques and for the principled collection of qualitative and quantitative information. These questions, however, are questions for us, not for the people we will talk to while conducting research.

### Research questions translate the issue under investigation into concrete indicators.

Responses to our research questions should generate a full picture of the issue under investigation. *The set of research questions is therefore not arbitrary — every one of them should address the essence of the issue under investigation. Each answer to them should bring us new, valuable information concerning this issue.*

For example, when monitoring “*the equality of people before the court*” and the research issue of “*impartiality on the part of judges,*” the question: “*How many judges are corrupt?*” is not an appropriate research question. Firstly, the true figure is not known in any country (corruption can only be defined qualitatively, and we will never identify the exact number of such cases). Secondly, the question does not make it clear what we mean by “corrupt.” How many bribes or presents, and of what value, must a judge accept to be considered corrupt? How can this be proven? Thirdly, even assuming that we are able to find a relatively credible answer to this question, this would not bring us new and valuable information concerning the impartiality of judges. If it is corruption we want to study, then this is not the best choice, at least from the perspective of our strategy and ability to effectively bring about change (it will be difficult to find allies among judges). But we could, however, give some thought to the causes of corruption. To what extent does the law or do lower-level regulations permit corruption, or even force it to occur? The primary cause of corruption is frequently how institutions are structured and the methods by which they operate. The level of corruption in public administration primarily depends on the quantity and financial ramifications of the decisions that are left to the discretion of officials (for example, all types of licenses to conduct business activities are, in general, conducive to crime).

*The issue of how we obtain information plays an important role in constructing our monitoring concept.* In posing our research questions we should consider how we will obtain the given information and whether we will be able to verify it. **If we do not perceive that it is realistically possible to obtain answers to certain research questions, it is better to resign from posing them and to search for other indicators of the phenomenon we are interested in.**

In constructing our monitoring concept, we may formulate, just as scientists do, *preliminary hypotheses* concerning human rights violations in a given field. These will then be compared with the findings of our research. Such hypotheses may thus be proved or disproved. **But this does not mean, however, that monitoring should serve to prove some previously-adopted assumption. Our investigations could, after all, demonstrate that human rights are respected much better than we had assumed.**

In the study “Monitoring Working Conditions in Polish District Courts,”<sup>6</sup> the authors of the monitoring concept adopted the hypothesis that the condition of court facilities, resources, and finances had a significant influence on how human rights were respected, especially as concerns the right to “a fair and public hearing within a reasonable time by an independent and impartial tribunal” (article 6 of the European Convention). The monitoring study then confirmed this hypothesis. Respect for human rights became one of the primary arguments of political action aimed at having the budget of the Polish court system increased.

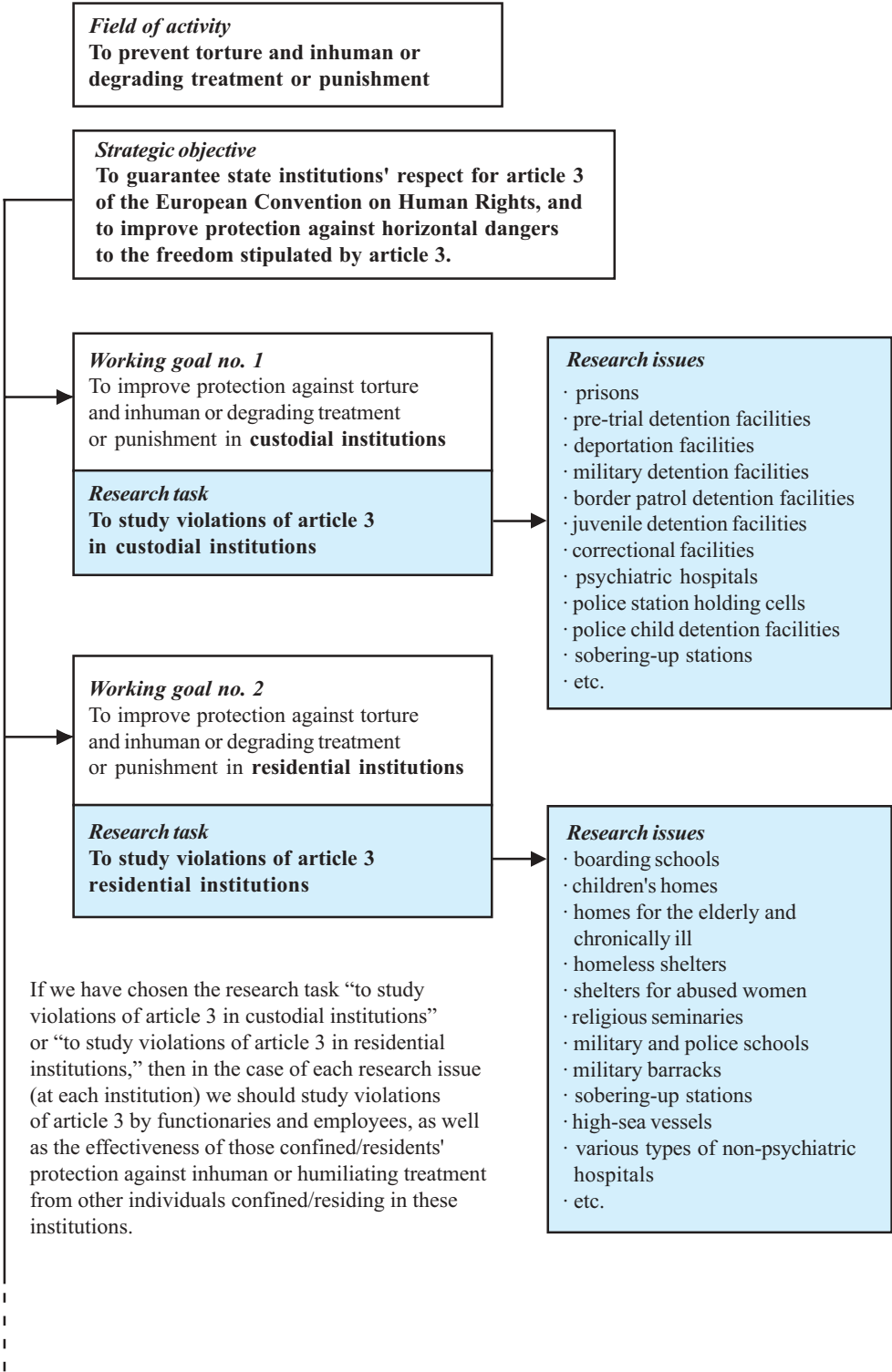
**Developing a detailed monitoring concept allows us to subordinate the subject of our research to the goal of the action we subsequently plan to take in order to bring about change in a selected field. We thus avoid wasting time, energy, and money on collecting information that we will never be able to use later.**

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<sup>6</sup> A monitoring study conducted by the Helsinki Foundation for Human Rights in 1998. See: Bojarski Ł. and Swaton J., *Warunki pracy sądów rejonowych. Raport z monitoringu*. (Working Conditions in District Courts. Monitoring Report), Warsaw 1998.



Diagram 3: Monitoring Concept — Torture and inhuman or degrading treatment or punishment



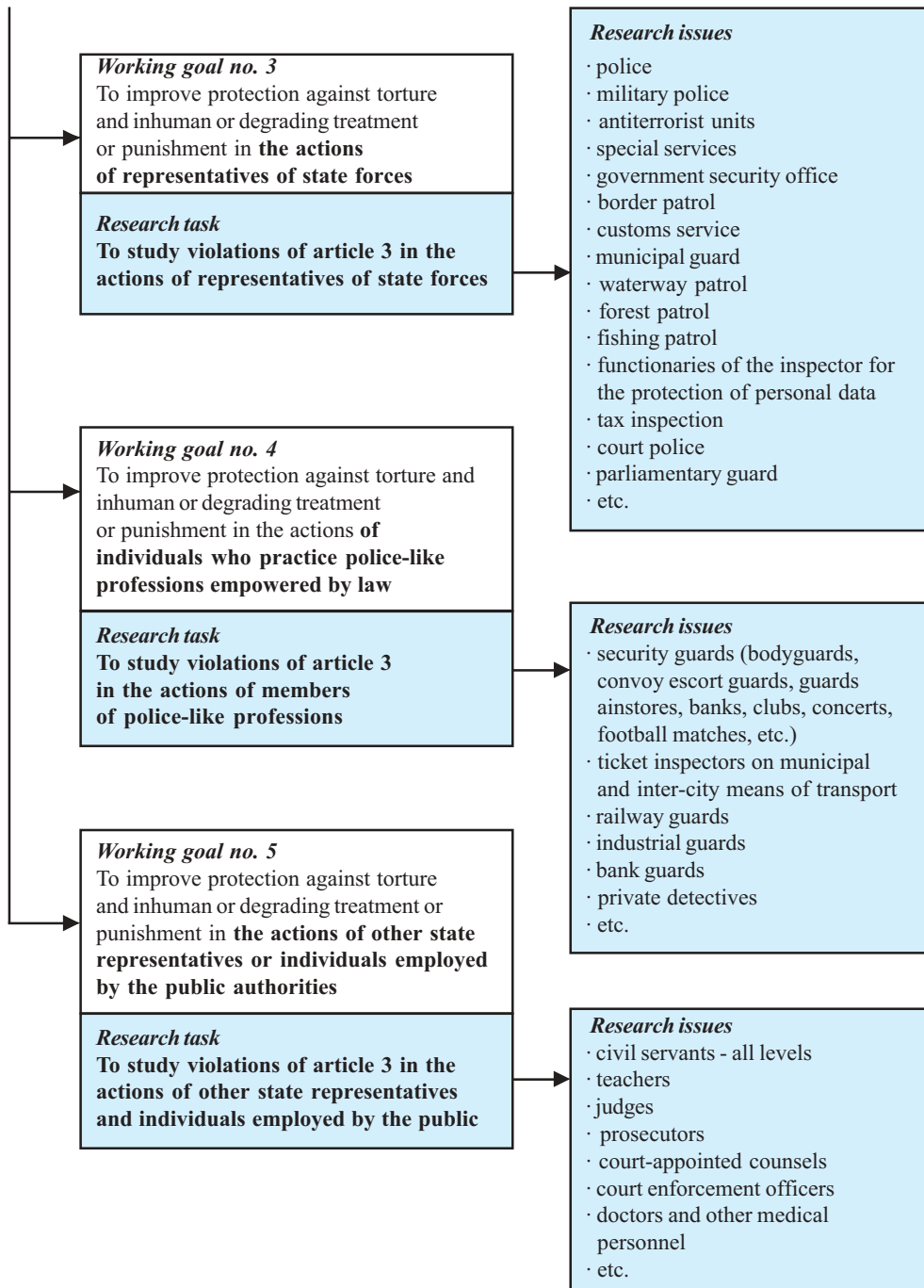
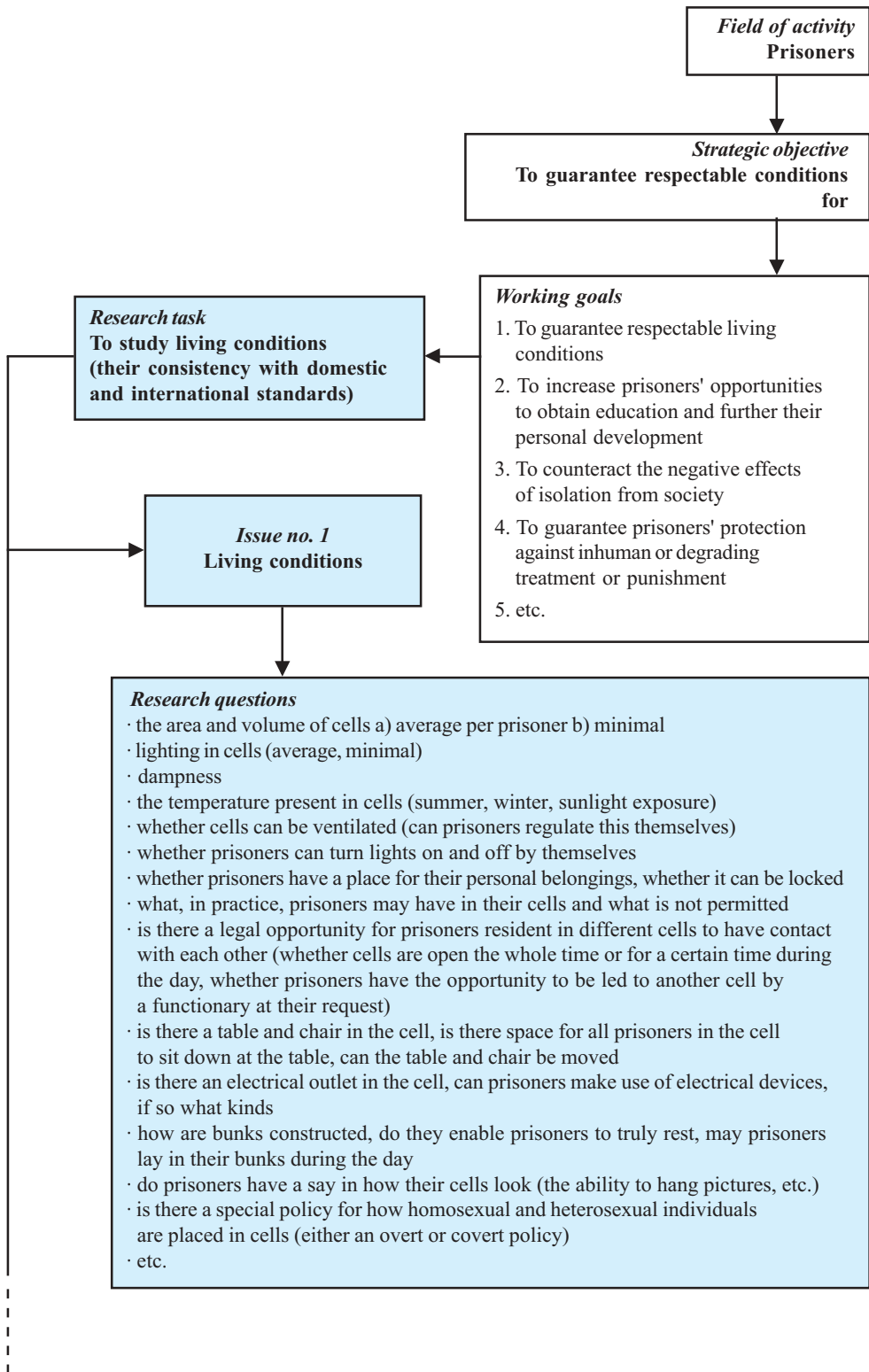


Diagram 4: Monitoring Concept — Prisoners' Rights



**Issue no. 2**  
**Sanitary and health condi-**

**Research questions**

- where do prisoners take care of their physiological needs a) in their cells (do cells have plumbing, a bucket for wastes, is this place exposed) b) outside of their cells (do prisoners have independent access at any time)
- is there a faucet and sink or wash-basin in the cell
- if not, how is prisoners' access to water organized
- how frequently are bedclothes, underclothes, and clothing changed
- do prisoners have a right to have their own underclothes or clothing
- is individual washing of clothing possible
- is individual shaving possible
- access to showers (constant, at regular intervals), who controls the temperature of the water, and how are showers protected from fungus
- are prisoners issued toiletries, if so what kind (soap, toothpaste, shampoo, others), may they have their own (either bought or received in packages)
- access to sanitary napkins, tampons (prisoners are issued them, can buy them, or can receive them in packages)
- may prisoners have their own dishware and silverware, if so what kind (are there any restrictions, if so what kind)
- do prisoners have access to hot water, and how is it provided
- can prisoners boil water for themselves (are there any restrictions, if so what kind)
- walks (how frequently do walks take place, for how long, in a closed or open area, and how large is the area where walks take place, whether prisoners walk in line or can they move about individually, run, jump, etc.)
- access to sports, gym, swimming pool
- etc.

**Issue no. 3**  
**Food**

**Research questions**

- quantity and quality of food (caloric content, vitamins, minerals, etc.)
- variety of menu and tastiness of dishes
- availability of special diets on doctor's recommendations or by a prisoner's personal choice
- the availability of diets associated with a prisoner's religion (Islam, Judaism) or worldview (vegetarians, vitarians)
- can prisoners prepare warm meals for themselves, how does this look
- where do prisoners keep their own food (a refrigerator, etc.)
- the hygiene of dishes prepared by the kitchen, sanitary control of the materials used and meals produced by the kitchen
- the qualifications of those who prepare meals
- the quality of drinking water, availability of other drinks
- restrictions in access to items such as tea, coffee, alcohol, chocolate, cocoa, cigarettes)
- access to spices, salt
- quality of dishware (what they are made of), access to silverware
- etc.

**Issue no. 4**  
**Health care**

***Research questions***

- access to a doctor (upon every request, by advance appointment, etc.)
- access to a dentist and psychologist
- how doctor's and dentist's offices are equipped
- pharmaceutical supplies
- access to an attendant or nurse concerning simple ailments (cuts, wounds, gastric difficulties, etc.), whether someone is constantly on duty
- whether first-aid kits are present in prison wards, and if so, how they are equipped
- whether staff is trained in giving first aid
- the average time taken to make a decision to call for an ambulance in emergency situations, and the time taken by an ambulance to arrive
- the living conditions present in quarters for the ill (including the questions for issues 1 and 2 above, as well as more specific questions)
- the location of the nearest prison hospital
- the procedures for and amount of time taken by decisions to transport a patient to a prison hospital or regular hospital (whether this is the independent decision of a doctor)
- are there incidents of compulsory treatment, and if so, who makes such decisions, pursuant to what procedures
- are there incidents of coercive feeding of those on hunger strike, pursuant to what procedures
- are there periodical doctor's and dentist's examinations
- are compulsory examinations performed, especially examinations of an invasive nature (taking samples of blood and bodily fluids); for example, whether blood samples are taken for HIV testing without an examinee's conscious consent
- how is the confidentiality of medical information protected against functionaries and other prisoners
- how are contagiously ill individuals quartered (those with tuberculosis, venereal diseases, etc.)
- are there specific procedures for the quartering of HIV carriers
- access to condoms for homosexuals
- etc.

The range of questions posed regarding each specific issue depends on the standards of the prison system (at some locations we will be interested in whether prisoners have places to sleep, while at others in the presence of refrigerators and microwaves or in prisoners' access to a swimming pool and soccer field). The examples given above pertain to different standards, and therefore not all of them will make sense when we are studying a given prison system.

Diagram 5: Monitoring Concept — The Rights of Members of National Minorities

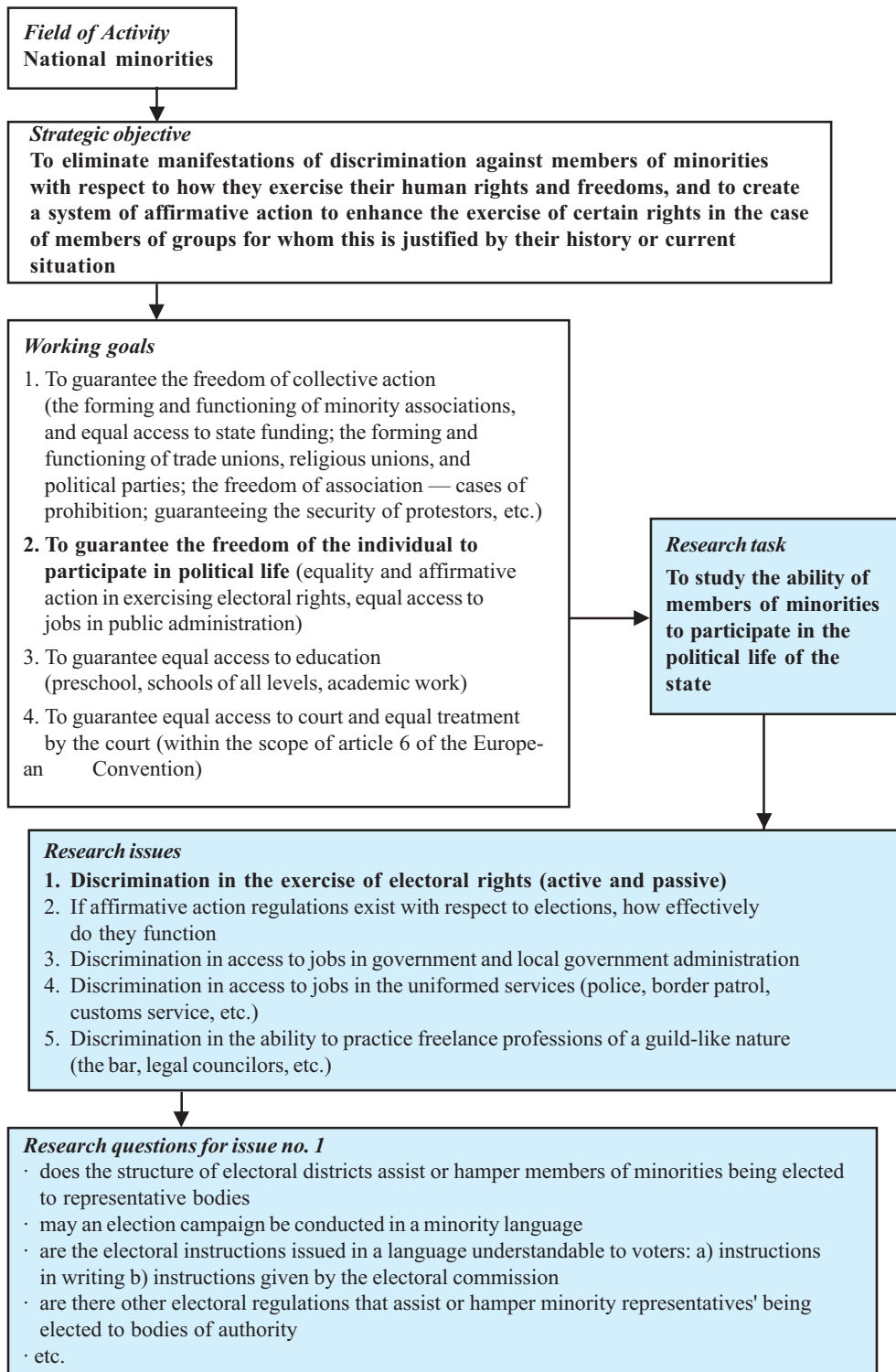
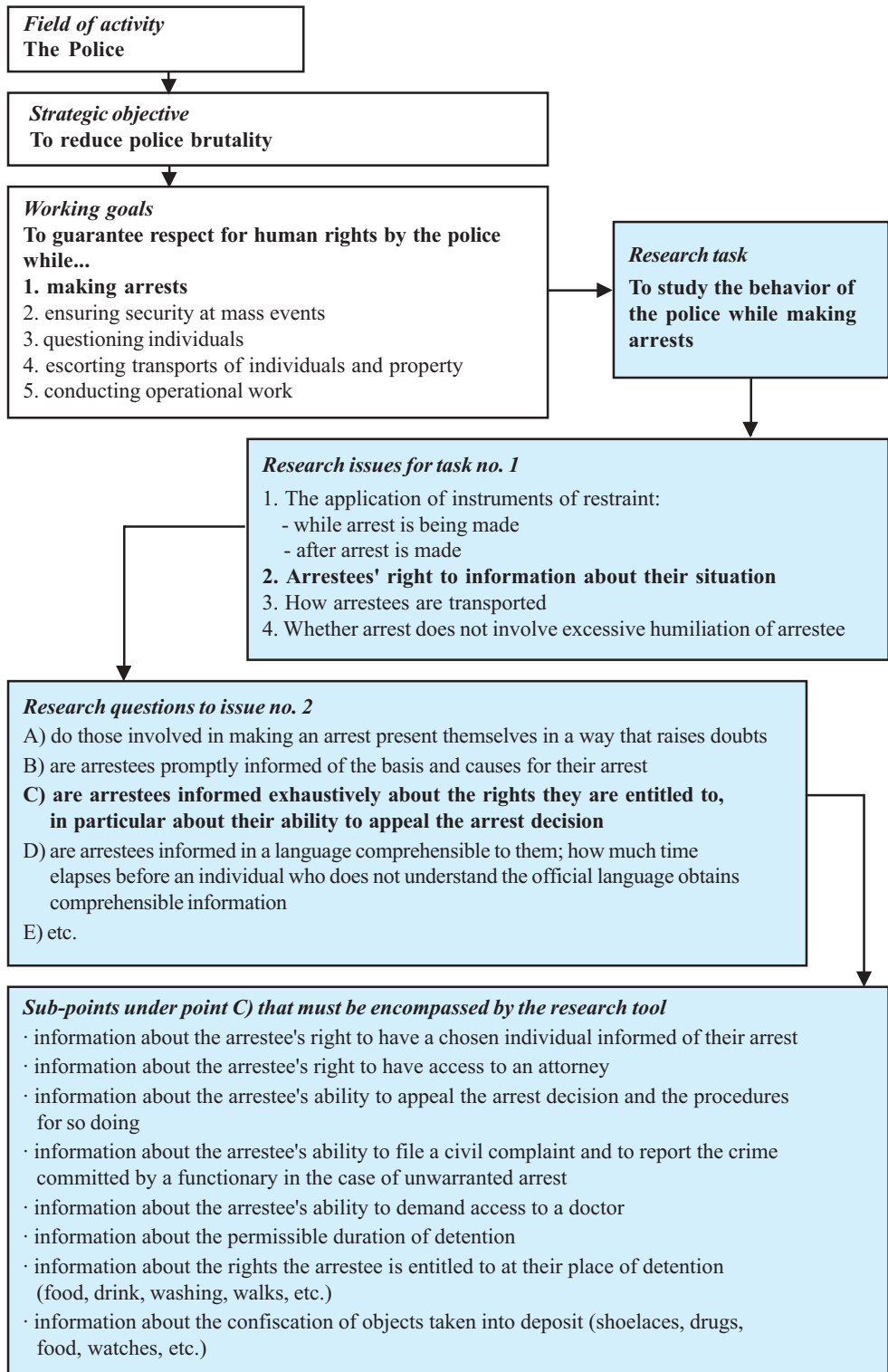


Diagram 6: Monitoring Concept — The Police



## 5. Analyzing the law for the purposes of monitoring

Monitoring cannot be conducted in a professional way unless we have extensive knowledge of the various levels of legal regulations that pertain to our selected fragment of social reality. **Our analysis of the law for the purposes of monitoring begins as soon as we begin developing our monitoring concept, and continues all the way until we finish writing our report.** It is often only when our study is underway that we become familiar with lower-order legal provisions (institutional statutes, regulations, etc.), and we must thus analyze such documents on an ongoing basis. Furthermore, certain legal provisions might change after our study is already in progress (especially in states that are undergoing systemic transformation). We must keep abreast of these changes in order to be able to react to them. Also, important rulings might be handed down by the European Court of Human Rights, our country's Constitutional Tribunal, etc., while we are already working on our monitoring study.

The process of analyzing the law for the purposes of human rights monitoring consists of:

- ⇒ **Comparing the standard of human rights protection established by international law with the standard ensured by domestic law:** After identifying how international law protects human rights in the field our monitoring will investigate, we should check whether domestic law is compatible with those acts of international law that are binding for our state. We must remember that domestic law cannot guarantee less protection than is guaranteed by international law. Domestic law may, however, guarantee more. Such an analysis already constitutes a part of monitoring, because we begin our study of human rights violations in a selected field by identifying those legal provisions which either violate human rights and freedoms in and of themselves, or which allow such systematic violations to take place.
- ⇒ **Identifying whether domestic law is internally consistent; whether lower-order acts regulate what higher-order acts permit them to:**



After comparing international standards with domestic ones, we then analyze the domestic law itself. In studying the internal consistency of the various levels of legal acts, we often notice that the lower the level of a legal act, the more extensively it departs from international standards of human rights protection. We thus investigate whether lower-order legal acts regulate only those areas of people's lives as they are permitted by the constitution, and only to the extent permitted by the constitution. We also study the consistency of lower-order legal regulations with statutes (laws passed by parliament): whether or not they regulate what they are required to by statutes, and whether or not their scope of regulation is broader than statutes permit.

- ⇒ **Making a detailed description of the standard of human rights protection in the field that interests us:** Building a precise monitoring concept requires a good knowledge of prevailing legal standards in the field that interests us. This knowledge will also be necessary to us in planning the techniques of our monitoring studies. This standard is set forth by international law (which establishes the minimal standard of protection) and by domestic law (which may expand upon the standard established by former).

## 5.1. Analyzing the law: objectives

### 5.1.1. Building our monitoring concept

Knowledge of the legal provisions that pertain to our chosen fragment of social reality allows us *to consciously choose the working goal or our action, to identify our research task, and finally to precisely plan the specific stages of our monitoring*. This knowledge is essential in formulating our research issues and posing our research questions in a professional way. Our tactics for conducting research and the techniques we choose for collecting information also depend on what is permitted by law in the given field, and what is prohibited.

### 5.1.2. Preparing and conducting monitoring studies

In constructing our concept for monitoring custodial institutions (as well as other institutions of significance for human rights), we must **become familiar with internal regulations that apply to the given type of institution and stipulate what kind of documentation they are required to keep for internal and external purposes** (such as maintaining various types of

reports, specifications, journals, etc.) The kind of documentation is obligatorily kept by institutions is determined by legal regulations in this regard. In the case of monitoring how the rights of those arrested are respected, for example, we learn from our analysis of Polish law that every detained individual should receive the appropriate protocol report, and that the police must keep a register of those arrested, of medical visits in the detention facility, of objects placed into deposit, etc. Thus we know exactly what to look for when we study such documentation, and we do not have to learn what to expect “on the fly,” at the same time as we are conducting the study. Custodial institutions maintain voluminous documentation in which we can find a great deal of important information on how human rights are respected there. (see [Appendix 1](#))

Every member of the monitoring team should be familiar with at least the most important legal regulations that pertain to the issues under investigation. In the case of certain legal acts they will have to have very good knowledge, or even carry a copy with them while they are conducting the study (such as carrying a copy of election regulations while monitoring elections). *Analyzing the law in the area to be monitored should constitute an element of training; this information should be included in the supplementary materials we provide to our coworkers before research is begun.*

### 5.1.3. Report writing and action in the public interest

The majority of monitoring reports present an analysis of the law — ranging from the constitution and hard and soft international law to institutional regulations and other lowest-order executive provisions. When our report compares how human rights are respected in our field of monitoring with legal standards in this regard, it is useful to quote actual provisions of the legal acts that we are referring to.

Our analysis will demonstrate whether domestic law is at odds with international standards, and will give us **an understanding of what needs to be changed**. This same output will help us both in monitoring and in taking action in the public interest (primarily in the case of legal action), though we will also become familiar with many lower-order regulations only while actually conducting the study. During the course of monitoring we will also seek to find particular cases, or „case studies,” that we can work with through strategic litigation. A professional analysis of the law will allow us to establish a list of criteria for „case studies” that will help us, through strategic litigation, to change the law of the practice of how it is applied.

## 5.2. The hierarchy of sources of law

Our analysis of the law requires the concept of “*source of law*”. The hierarchy of sources of law, in accordance with which each legal act must be consistent with all higher-order acts, is generally specified by a country’s constitution.

**The highest source of law is usually the country’s constitution**, after which come *ratified international agreements*. The next level of the hierarchy consists of *statutes passed by parliament*, which must be consistent with the constitution and ratified international agreements. Next in rank are *legal acts issued by bodies of executive authority* — such as government executive regulations and presidential decrees (if the constitution gives the president the power to issue them). The executive branch may issue legal acts that bind all of the country’s citizens, and not just a certain body of civil servants, as long as a statute or the constitution unequivocally provide such authorization. In a democratic state ruled by law the executive branch acts not only within the bounds of the law, but also exclusively on the basis of the law. Laws of a technical nature that serve to organize the work of public officials, on the other hand, may be issued without statutory basis.

Frequently, a country’s constitution stipulates that its provisions and the norms included in ratified international agreements are to be applied directly. **Therefore, if a statute passed by parliament or any lower-order act is inconsistent with a provision set forth by the constitution or an international agreement, the latter provision should be applied directly.** In practice, however, this is frequently difficult. Constitutional or international provisions may be classified into those that are self-executing and those that are non-self-executing. Article 2 of the European Convention on Human Rights, which states “everyone’s right to life shall be protected by law,” cannot, for example, be directly applied to the issue of punishment for a murderer — if only because this provision does not clearly state how such an individual should be punished. This and similar provisions require that specific statutes be enacted — in this case, a penal code. On the other hand, freedom from torture (article 3) is a self-executing provision.

**Freedoms — which when seen from the perspective of the authorities constitute prohibitions — are generally self-executing. Rights, on the other hand, whose realization requires that active steps be taken by state institutions, are not of a self-executing nature because the state must identify how it will implement them.**

Below we present three examples — hierarchies of sources of law as specified by the constitutions of three different states: Poland (a unitary state), Russia (a federal state) and Ukraine (a state that encompasses one autonomous republic).

### **5.2.1. The hierarchy of sources of law within the Polish legal system**

In Poland, the sources of universally binding law that may serve as the basis for the authoritative activities of state bodies with respect to individuals and other entities are as follows: the Constitution, ratified international agreements, statutes passed by parliament, and executive regulations.

The highest position in the system of sources of law is held by the *Constitution of the Republic of Poland from 1997*. The provisions of the Constitution are applied directly, unless they stipulate otherwise. The supremacy of the Constitution within the system of sources of law means that all the legal acts binding within the state must be consistent with this fundamental statute. The supremacy of the Constitution also applies to the process of administering the law, and thus the organs of public authority must interpret legal standards in such a way as to correspond as fully as possible to the provisions and principles of the Constitution. The body set up to ensure the supreme position of the Constitution in the legal system is the Constitutional Tribunal.

*Ratified international agreements* constitute the next element in the system of sources of law. International agreements, after being ratified and published in the official *Dziennik Ustaw* (Journal of Laws), become a part of the domestic legal order. They may then be applied directly (such as in court proceedings), unless they include no selfexecuting provisions and thus require that laws be enacted.

There are two types of ratified international agreements in Poland. The first group includes agreements ratified by the president without the prior consent of parliament as expressed by way of a statute. Such agreements do not have the privilege of precedence over statutes enacted by parliament. The second group includes international agreements whose ratification by the president requires the prior consent of parliament, as expressed by statute. Such agreements are of greater “weightiness,” and pertain for example to military alliances, civil rights and freedoms, or Poland’s membership in international organizations. If this second type of agreement is inconsistent with a statute, it takes precedence over the latter<sup>7</sup>. International agreements that were ratified

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<sup>7</sup> In this work we omit the issues of community law (of the European Union) and its place in the system of sources of law.

and published before the new Constitution came into force also take precedence over statutes if the former pertain to certain types of affairs specified by the Constitution. An example of such an agreement is the European Convention on Human Rights. *The Constitutional Tribunal may review the constitutionality of an international agreement both before and after its ratification.*

The next source of universally binding law consists of *statutes* (ustawy) *that have been enacted by the Polish parliament* (which consists of the Sejm, the lower house, and the Senate, the upper house) and signed by the president under special legislative procedure. Such statutes must be published in the *Dziennik Ustaw* (Journal of Laws) before they may come into force. Each statute must be consistent with the Constitution and the international agreements ratified with prior parliamentary consent. Some types of affairs may only be regulated by statute (the principle of the exclusivity of statutes), such as restrictions on the rights and freedoms of the individual or the fundamental structure of the state apparatus. Statutes are essentially the fundamental source of universally binding law. They set forth the boundaries of both regulations (executive acts to a statute) and acts of local law.

The only exception to the principle of the parliament's exclusive authority to pass legal acts of the statutory rank is the *president's power to issue, at the request of the government, an regulation with statutory force. This may occur only under a state of martial law.* Regulations with statutory force are subject to approval by the Sejm at its next sitting (article 234 of the Constitution).

*An executive regulation (rozporządzenie)* is a universally binding legal act issued by one of the bodies of executive authority listed by the Constitution: *the president, the prime minister, the government, individual ministers, and the National Council of Radio Broadcasting and Television.* An executive regulation may be issued only on the basis of *specific authorization expressed by statute*, and with the purpose of implementing the statute. Statutory authorization must indicate the body authorized to issue an regulation (which may not transfer its powers to another organ), the range of affairs entrusted to this body, and even guidelines concerning the contents of the executive regulation. Such regulations must be consistent with the Constitution, with ratified international agreements, and with all statutes. Any executive regulation that fails to meet these conditions may be overruled by the Constitutional Tribunal, and courts adjudicating specific cases may refuse to apply it. Executive regulations come into force after being published in the *Dziennik Ustaw* (Journal of Laws).

Another source of universally binding law consists of *acts of local law*, but these are binding only within their issuing body's territory of activity and, like executive regulations, they must be issued on a statutory basis. Acts of local

law are issued by commune-level (*gmina*) and county-level (*powiat*) councils, and on the province (*województwo*) level by provincial legislatures and provincial bodies of governmental administration (such as the *wojewoda*, or provincial executive head). Such acts must be published before they may come into effect. The Constitution requires that acts of local law be consistent with the Constitution, with ratified international agreements, and with statutes.

In addition to sources of universally binding law, there are also regulations of *internal law*. These consist of resolutions (*uchwały*) and executive orders (*zarządzenia*), which may be issued by any state or local government body. These legal acts are only binding for the organizational units that are subordinate to the issuing body. Their consistency with universally binding law is controlled by the courts.

### **5.2.2. The hierarchy of sources of law within the Russian legal system**

*The highest position in the Russian system of sources of law is held by the Constitution of the Russian Federation of 1993. All other acts of law binding in Russia must be consistent with the Constitution. This applies to both federal law, as well as legal acts enacted by the federation's constituent bodies.*

The Constitution of the Russian Federation places an obligation upon the state to respect and defend human rights and freedoms, which it recognizes as the 'supreme value.' The federal Constitution also appeals to the generally recognized principles and standards of international law, which "opens" it up somewhat to international law and provides a very important instrument for interpreting constitutional provisions. *The Constitution only permits federal statutes to restrict human rights and freedoms, and only to such extent as is necessary to defend the basis of the constitutional system, decency, health, the legal rights and interests of other individuals, in order to ensure national defense and state security.*

Pursuant to the federal Constitution (article 15), international agreements signed by the Russian Federation as well as the generally recognized principles and standards of international law constitute part of the Russian legal system. *The federal Constitution stipulates that in the event of a contradiction between international law and a statute, the provisions of international law shall be applied* (article 15). This provision is of huge significance, because it allows us to base ourselves directly on an international agreement should a statute be at odds with it. In the Russian Federation's system of sources of law, therefore, the supreme position is held by the federal Constitution, followed by international agreements (and generally recognized principles of international law), followed by federal constitutional statutes, federal statutes,

presidential decrees, legal acts issued by the federal government, and legal acts issued by federation ‘subjects’ (meaning its constituent republics, territories, regions, federal cities, autonomous regions, and autonomous areas).

Next in rank after the Constitution and international agreements are *federal constitutional statutes* passed by the Russian parliament — the Federal Assembly — which regulate certain particularly important areas of the state’s functioning, such as the judiciary (article 76). *Federal statutes*, which are also enacted by parliament, may not be in conflict with the Constitution, international agreements, or federal constitutional statutes. The Constitution reserves certain spheres exclusively for regulation by federal law (such as article 71 letter n: the court system; public prosecutors; criminal, criminal-procedural and criminal-executive legislation; amnesty and pardons; civil and civil-procedural legislation). Whenever the scope of federal law and that of law enacted by federation subjects overlap (in fields such as the protection of national minority rights, education, tax law, environmental protection, the system of local government administration and self-government, etc.), all legal acts passed by federation subjects must be consistent with federal law. This is a very important guarantee. It means that no legal acts that are inconsistent with the Constitution or with federal statutes may exist on the level of law enacted by federation subjects.

The next level in the hierarchy of sources of law within the Russian Federation consists of *presidential decrees* and *executive regulations*. These are binding within the entire territory of the Federation, but may not be in conflict with the federal Constitution or federal statutes.

Lower in rank are *legal acts issued by the government of the Russian Federation*, meaning government resolutions and executive regulations. Government resolutions and executive regulations are issued on the basis of the federal Constitution, federal statutes, or presidential decrees. Any government regulation that is inconsistent with the federal Constitution, a federal statute, or presidential decree may be overruled by the president. This is an additional sanction that directly forces the government to operate within constitutional bounds.

In the case of affairs reserved by the Constitution for the exclusive jurisdiction of the federation subjects, these latter issue their own legal acts. Within this sphere reserved for federation subjects, it is their law that is applied even if it is inconsistent with a federal statute. *The Constitution stipulates, however, that no legal act within the Russian Federation may be inconsistent with the Constitution, and this thus also pertains to the legal acts issued by federation subjects. Therefore, constitutional human rights and freedoms may not be restricted by law enacted by federation subjects.*

### 5.2.3. The hierarchy of sources of law within the Ukrainian legal system

Within the Ukrainian hierarchy of sources of law, *the highest legal authority is the Constitution of Ukraine from 1996*. Constitutional provisions are applied directly. Statutes and other legal acts binding in Ukraine must be consistent with the Constitution.

*International agreements* that have been ratified with the consent of the Ukrainian parliament, the Supreme Council, constitute part of the domestic legal system. International agreements may be scrutinized with respect to their constitutionality by the Constitutional Court, both before and after their ratification. *There is no provision in the Ukrainian Constitution that unequivocally stipulates that a ratified international agreement takes precedence over a statute in the event of a conflict between the two*. The absence of such a provision could give rise to a situation in which the Ukrainian courts may give precedence to domestic statutes over international agreements, and this in turn could lead to a weakening of protection for the rights of individuals. (The Constitutions of the Russian Federation and the Republic of Poland do guarantee the supremacy of international agreements over domestic statutes). A certain solution is offered by references made to the principle of a democratic state of law (in article 1 of the Constitution) and to the general principles of international law, pursuant to which there should not be any legal standards in domestic law that are at odds with ratified international agreements (in the event of such a conflict, precedence goes to the international agreement).

*Statutes* are enacted by the Supreme Council of Ukraine. The Constitution stipulates that certain issues, such as *human and civil rights and freedoms, the guaranteeing of these rights, etc., may only be regulated by statute*. A statute that is inconsistent with the Constitution may be appealed to the Constitutional Court.

The Constitution authorizes the *President of Ukraine to issue decrees and executive regulations*. These are binding throughout the territory of the entire state. They must be consistent with the Constitution and with all statutes.

*The Ukrainian government* issues, within the bounds of its jurisdiction, *resolutions and executive regulations*, which are subject to obligatory execution. The government functions on the basis of the Constitution, statutes, and legal acts issued by the president, and all legal acts issued by the government must be consistent with these superior sources of law. The president may overturn decisions made by local bodies of executive authority, if they are in conflict with the Constitution, statutes, the legal acts issued by the president, or those issued by the government.



**The Crimean Autonomous Republic** may, within the bounds set forth in the Constitution, *enact law binding within its territory*. It has its own constitution established in 1998 on the basis of the Ukrainian Constitution.

The legislative body in the Crimea is the Supreme Council of the Crimean Autonomous Republic. *The decisions and resolutions of the Crimean Supreme Council are binding within the Republic's territory and may not be inconsistent with the Republic's constitution, the Ukrainian Constitution, or Ukrainian legislation*. The same applies to legal acts issued by the Council of Ministers of the Crimean Autonomous Republic. If any legal act passed by the Crimean Supreme Council seems to be at odds with the Ukrainian Constitution or legislation, the president may suspend it and request that the Constitutional Court review its constitutionality.

The Ukrainian Constitution specifies in which fields the Crimean Supreme Council may independently enact law. Such fields include, for example, agriculture and forests, spatial planning and construction, public transportation, etc. The jurisdiction of the Crimean Autonomous Republic also encompasses affairs in connection with the functioning of the republic itself, such as organizing local referenda, managing the republic's assets, etc. The Ukrainian Supreme Council may, by way of statute, assign additional powers to the Crimean authorities.

### **5.3. Sources of information about the interpretation of international and domestic law**

It is of huge importance for us to identify international and domestic standards of protection for those human rights that interest us. Just reading the texts of legal acts themselves does not suffice to give us a precise understanding of their "contents," meaning the ways in which the specific provisions are applied. Standards of human rights protection also follow from the rulings of international courts or international quasi-judicial bodies (such as the UN Human Rights Committee) and acts of "soft" international law.

Let's turn our attention here to the significance of the *European Convention on Human Rights* in establishing the standards of protection for human rights and freedoms in Europe. The provisions of the Convention are interpreted by the *rulings of the European Court of Human Rights*. The standards of protection that currently follow from these rulings are much wider than would follow from the provisions of the Convention alone. **In analyzing a particular field of law, we must therefore take account not only of the provisions of the Convention itself, but also of the rulings made by its**

**associated bodies. These rulings constitute an integral part of the obligations that all states which are party to the Convention take upon themselves.** The Strasbourg court's body of rulings changes very rapidly, and one must therefore keep abreast of new rulings that adjudicate new issues or expand upon the protection guaranteed by the Convention.<sup>8</sup> Of great importance are interpretations of the *permissible conditions for the restriction of human rights and freedoms*, especially the concept of when such restriction is "necessary in a democratic society," and the principle of proportionality.

Some examples of European Court of Human Rights rulings which establish standards of human rights protection are as follows:

**Ribitsch vs. Austria** (ruling dated 4 July 1995)

— on the basis of **article 3 of the Convention:**

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

The Court ruled that if an individual sustains injuries while in police custody, the burden rests with the state to prove that such injuries were caused other than as a result of improper treatment by the police.

**Dudgeon vs. Great Britain** (ruling dated 22 October 1998)

— on the basis of article 8 of the Convention:

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

The Court ruled that British provisions which ascribed the status of crime to consensual homosexual acts between adult men over 21 years of age constituted consistent and unjustified interference in the right to respect for private life.

<sup>8</sup> The rulings of the European Court of Human Rights are available in French and English at the following website: [www.dhcour.coe.fr](http://www.dhcour.coe.fr)

**Kaya vs. Turkey** (ruling dated 19 February 1998)

— on the basis of article 2 of the Convention:

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:
  - a) in defence of any person from unlawful violence;
  - b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
  - c) in action lawfully taken for the purpose of quelling a riot or insurrection.

The Court ruled that article 2 places a procedural obligation on the state to conduct some form of effective investigation when state functionaries deprive someone of their life.

**In analyzing the law, we must thus draw upon the standards developed by the European Court of Human Rights. We should also take note of the rulings of the UN Human Rights Committee in Geneva, although its adjudication is not as well developed as that of the Strasbourg court.**

Monitoring respect for human rights should also be based upon an analysis of **soft international law**. Such law consists of various declarations, collections of principles, and recommendations passed by such international organizations as the UN, the Council of Europe, the European Union, the OSCE, etc. Soft international law may, with time, change into regular law (i.e., generally recognized standards of international law) and bind states just as classical international agreements do. The UN Universal Declaration of Human Rights from 1948 has attained such status in many countries. Soft international law, whose enactment does not require the unanimous support of states or the support of a clear majority, often significantly expands the range of human rights protection specified in hard law.

The analysis of the law that we conduct as part of our monitoring must also take account of **rulings handed down by domestic courts**, especially by the country's Constitutional Tribunal and Supreme Court.

A useful source of information on the interpretation of the law may consist of **opinions of doctrine**, meaning the opinions of well-known authorities on issues pertaining to human rights protection. There is a rich literature on human rights in general, as well as on specific issues. In order to better understand issues that are important from the perspective of our monitoring, it is worth becoming familiar with such domestic and foreign works.

## 5.4. Cataloging sources of law

The rest of our discussion on analyzing the law will be based on the example of one specific monitoring concept (see [Diagram 6](#)). Let's assume that a non-governmental organization operational in Poland, whose field of activity is *the police*, has set itself the following objective: *to reduce police brutality*. Its operating goal is *to guarantee respect for human rights when arrests are made*. Its research tasks may thus involve observing the behavior of the police while arrests are being made.

In order to perform an analysis of law regulating this issue, we must develop a catalog of the legal acts we must take under consideration. Because this topic is treated by both international and domestic law, we will draw from both of these sources.

### 5.4.1. The Constitution

As mentioned above, we begin our catalog of sources of law with the country's constitution (in our case, the Constitution of the Republic of Poland). It establishes the hierarchy of domestic and international law in the legal system, and because it includes a catalog of civil rights and freedoms it constitutes the point of departure for analyzing standards of human rights protection. In the case of our specific monitoring study, we will primarily be interested in:

- art. 7 – the obligation of organs of public authority to function solely on the basis of and within the limits of the law,
- art. 30 – respect by public authorities for personal dignity,
- art. 31 – legal protection for personal freedom and its permissible limitation,
- art. 32 – equal treatment before the law,
- art. 38 – the right to life,



Fot. Robert Kowalewski / Agencja Gazeta

"Project Aliens", Kłodzko. Border police registering illegal aliens in Poland, September 1998

- art. 40 – the prohibition of torture and of cruel or degrading treatment or punishment,
- art. 41 – guaranteed freedom and personal inviolability,
  - the right to appeal unlawful deprivation of liberty,
  - the authorities' obligation to promptly and comprehensibly inform every detained individual of the reasons for such detention,
  - the right to have those individuals indicated by the detained individual promptly informed of such detention,
  - turning every detained individual over to a court within 48 hours of detention,
  - the right of every detained individual to be set free unless a warrant of temporary arrest issued by a court, together with a specification of the charges leveled against them, has been served within 48 hours after their being turned over to the court,
  - humane treatment for every detained individual,
  - the right to compensation for unlawful detention.
- art. 42 – the presumption of innocence,

- art. 50 – the inviolability of people’s homes, and the permissible limitations of this inviolability,
- other potential constitutional provisions if we are investigating a specific aspect of detention (such as the equality of men’s and women’s rights).

#### 5.4.2. International law

In preparing for our specific monitoring study, we should also take account of sources of *hard international law*, including but not limited to the following:

- the International Covenant on Civil and Political Rights (UN 1966)
- the European Convention on the Protection of Human Rights and Fundamental Freedoms (1950)
- the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UN 1984)
- the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987)
- the Convention on the Rights of the Child (UN 1989)

These certainly do not exhaust the catalog of sources of treaty law important to us, but they are among the most important ones.

Also of potential assistance for us are documents of *soft international law*:

- the Declaration on the Police (resolution of the Council of Europe from 1979)
- the Code of Conduct for Law Enforcement Officials (UN resolution from 1979)
- Temporary Detention (resolution of the 8th UN Congress from 1990)
- Basic Principles on the Use of Force and Firearms (resolution of the 8th UN Congress from 1990)
- Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (UN resolution from 1988)

Another role is played by *agreements that require ratification, but which our state has not ratified*. We may nevertheless cite them in our report in order to demonstrate how far our country’s solutions differ from those adopted in the “civilized” world.

**It is also worth drawing attention to differences between the legal solutions enacted in our country and the situation in certain countries with a long tradition of democracy, or between the situation in our country and that in neighboring countries (if it is better there). If our state is competitive with its neighbors, the argument that they do something better may prove more effective than citing solutions enacted in countries farther away.**

### **5.4.3. Domestic law**

We order acts of domestic law hierarchically. In our case the catalog should include the following Polish legal acts:

- the Police Act, dated 6 April 1990
- the following statutes: the Penal Code; the Penal Procedure Code, the Criminal Executive Code, the Misdemeanor Code, and the Code of Procedure for Misdemeanor Cases
- the Act on Procedure for Cases Involving Minors, dated 26 October 1982
- the Act on Protecting Psychological Health, dated 19 August 1994
- the Executive Regulation of the Council of Ministers on the Procedures for Establishing the Identity of Individuals, Arresting Individuals, Performing Personal Searches, Inspecting Baggage and Checking Freight by the Police, dated 17 September 1990
- the Executive Regulation of the Council of Ministers on Establishing the Cases, Conditions, and Methods for the Use of Means of Direct Coercion by the Police, dated 17 September 1990
- the Executive Regulation of the Minister of Internal Affairs on the Principles for the Sojourn of Minors in Police Child Detention Facilities, dated 7 May 1983
- the Executive Order of the Minister of Internal Affairs and Administration on the Performance of Doctor's Examinations of Arrested Individuals, dated 24 June 1997
- the Order of the National Police Commander on the Furnishings and Technical Security of Quarters Intended for Arrested Individuals, dated 10 November 1994

In many monitoring studies, *acts of local law* are also important. As we conduct our investigation we become familiar with successive executive



Fot: Robert Kowalewski / Agencja—Gazeta

Foreigners being held in custody by the Polish border police.  
"Project Aliens" – Kłodzko, September 1998

provisions, down to the level of the internal regulations of various institutions, instructions for functionaries that hold concrete positions, etc.

*Article 5 of the European Convention on Human Rights* clearly stipulates that everyone has the right to liberty and security of person, and that deprivation of liberty may take place only in exceptional cases and in accordance with a procedure prescribed by law. The word “law” here should be understood to signify a legal act of statutory rank. *The Convention identifies six situations that justify detention.* On this basis we can assert that *everyone has the right to be free from arrest in all situations other than those specified by the Convention.* Regulations of domestic law (the Police Act, the Criminal Procedure Code, and other statutes) should be consistent with the provisions of the Convention in this regard.

Other provisions of international and domestic law stipulate that *every detained individual has the right:*

- ⇒ *to be informed, in a language comprehensible to them, of why they have been detained and what charges are being leveled against them*
- ⇒ *to appeal such detention to a court with the aim of having the legality of such deprivation of liberty reviewed (the body of court rulings establishes the amount of time within which these powers must be exercised)*



- ⇒ *to have their closest relatives or associates informed that they have been detained*
- ⇒ *to receive medical care*
- ⇒ *to appropriate social and living conditions*
- ⇒ *to freedom from torture and other inhuman treatment*
- ⇒ *etc.*

As a rule, the rights of the detained individual entail a specific obligation on the part of police officers.

An analysis of the above-mentioned legal acts, with consideration taken regarding their hierarchy, allows us to establish the standard of human rights protection in situations when the police make arrests. When we are developing the concept for our monitoring study and decide to concentrate, for example, on the problem of *detained individuals' right to receive information about their situation*, a detailed analysis of legal acts and court rulings will allow us to formulate precise research questions (see Diagram 6).

## 5.5. A few practical remarks concerning the analysis of the law

In analyzing the law we will of course *require the assistance of a lawyer*, but we, the individuals initiating the monitoring, will be the ones to decide what the study will encompass and what we should look for in legal acts, based on the information we gained during our initial diagnosis of the situation.

Special attention should be paid to *lower-order legal acts* (instructions, regulations, decisions, memos, etc.), because it is these that are most frequently inconsistent with standards of human rights protection.

*Standards of human rights protection are not static, but rather continue to develop.* We should thus be familiar not only with current legal regulations, but also stay up-to-date on court rulings and commentaries.

Most frequently (as in the European Convention), rights and freedoms may be restricted only by statute and only in situations when this is necessary in a democratic state of law for reasons of state security, to protect the public order and prevent crime, to protect health and morals, or to protect the rights and freedoms of other individuals. This trio of circumstances must be fulfilled jointly: *restrictions must be statutory, must be necessary, and must be introduced for strictly defined purposes. Only in such cases may the restriction of*

*rights or freedoms be considered legal.* The failure to meet any one of these conditions must thus be considered a human rights violation.

Also very important, but frequently forgotten, are *final and transitory provisions*, as they regulate the moment when the given legal act comes into force, and in the case of statutes that ratify international agreements they may contain declarations and reservations with respect to particular articles of the international agreements. In them we may also find provisions that overrule legal regulations important to us but contained in other statutes.

In analyzing a legal act issued on the basis of statutory authorization, one must check its scope in order to ascertain whether *this act does not exceed beyond what was permitted by statute.*



Fot: Tomasz Zurek / Agencja Gazeta

Pre-trial detention in Cracow

## 6. Techniques of gathering and processing information

Previously, while we were developing our monitoring concept, we decided what kind of information we wanted to search for. Now we have to decide how we will go about collecting this information. Certain information comes to us “on its own”: in the form of letters sent by clients to an office providing legal assistance, from articles in the press, and from reports made by other organizations. But if we want to conduct monitoring — meaning a systematized, planned study — such sources will not suffice; we must develop a system to actively collect, select, and process information. We cannot just rely on what comes to us on its own. Monitoring involves getting up from behind the desk and actively searching for information, rather than passively processing incidental data.

There is a wide range of research techniques used in the social sciences that can be applied to monitoring. We must choose those that are in line with our capabilities and with the research issues we have selected. As mentioned above, monitoring may also make use of certain techniques that are not used in the social sciences. If we do choose to use such scientific techniques, however, the tools we develop and the way we process data should meet the standards adopted in those sciences.

### 6.1. Fundamental concepts

Let's begin by defining some fundamental concepts.

**Technique — a method for gathering information or for processing information once it has been gathered.** This includes press analyses, readings of physical measurements, secondary comparative analyses of statistical data, investigations of records (such as of court or public office documentation), analyses of complaints, scientific or criminological expert studies, reconstructions of events, focus group interviews, directed interviews, questionnaire-based interviews (consisting of multiple-choice questions, open questions, or both types), surveys, observations, experiments, etc.

**Tool — a physical means that allows us to record or measure information.** This includes questionnaires, observation cards, plans of investigation, instructions delimiting the scope of an expert study, lists of questions to be kept in mind when studying archives, interview outlines, observation plans, etc.

## **6.2. Specific principles for gathering information in a monitoring study which differ from the standards adopted in the social sciences**

First and foremost, the goal of monitoring is different from the objectives sociologists or social psychologists set themselves. The intent of monitoring is to give us knowledge about objective facts, and not about what people know or think about these facts. The result of a monitoring study is to be a precise description of events, and not a description of what images such events have left behind in the memory of witnesses. The results of our study will be stated in terms of kilograms, meters, or numbers of protest participants. We are not interested in what percentage of people believes that something was heavy or light, or what percentage believes that a certain crowd numbered two, five, or ten thousand people. Rather, we want to identify how many people really were present.

### **Monitoring is first and foremost interested in objective, physical reality.**

In certain cases, however, our monitoring study may include opinions solicited from experts on the given topic. Such *experts* in this case, do not have to include only academicians that deal with the given issues, but may also include individuals that deal directly with the subject of the monitoring study. Asking judges or police officers about what they feel most complicates work at their institutions, or about what changes (organizational or otherwise) could help to improve this situation, only makes sense when this is combined with objective information about what conditions really are like in these institutions. Subjective assessments of reality made by people involved in the situation under study thus play an exclusively supplementary role in monitoring.

### **6.2.1. Selecting a research sample**

We have already stated that similar principles for sample selection apply in monitoring as do in the social sciences. Nevertheless, because the goal of monitoring studies is not only to specify the nature and scale of human rights

violations, but also to document concrete cases of such violations, in selecting the sites (institutions) to be studied and in searching for sources the monitor sometimes acts more like an investigator than a social researcher.

The decision of how to select a sample is a difficult one. If, for example, we are monitoring children's homes, then what percentage of institutions will we have to study in order to be able to say we have gathered data about how human rights are respected in the country's children's homes? All of them? Half of them? And if half, then by what criteria will we select those to be studied? The same questions apply when we study the rights of individuals who belong to a specific social group — how many individuals must we conduct interviews with, and what criteria should we use to select them?

This decision frequently depends on our financial capabilities and personnel. Even if we could theoretically study every institution, we still investigate only a sample of them — a sample that is carefully selected — in order to save time, labor, and money. *We must first decide what characteristics of a specific institution may affect how human rights are respected in the field that interests us.* When monitoring institutions, such characteristics may be:

- ⇒ their geographical location (whether an institution is located close to the geographical center or is on the periphery),
- ⇒ their size (number of employees or clients),
- ⇒ their location in regions that are ethnically homogenous or mixed,
- ⇒ other criteria, such as an institution's position within the state system of administration and decision-making.

Then, according to these criteria, we select our sample so that its structure corresponds to the structure of the whole. If 5 percent of the children's homes in our country are located in ethnically mixed areas, then 5 percent of our sample should be made up of institutions in such regions. In this case we call this a **representative sample**<sup>9</sup> (and we always state with respect to what specific characteristics it is relative).

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<sup>9</sup> Representative samples are often used in sociological public opinion surveys. They are selected so that their structure corresponds (with respect to certain characteristics) to the population at large (these characteristics are usually: age, sex, education, religion, the size of the town where the survey participant lives, nationality, etc.). The size of such a sample is determined by means of statistical calculations that ensure the results obtained from the study of this given sample may be generalized to the population at large with a high degree of certainty

It is worth striving to make our sample a representative one — as this enables us to *investigate how universal the phenomena attested by the study are*. As human rights activists, we are accustomed to looking at violations from the perspective of the individuals whose rights and freedoms are being violated, and it is not always important to us whether this violation was committed by the same representative of the authorities or by different representatives — rather, it is the injured party that is important. But once we decide we want to change the reality around us in such a way that fewer human rights violations will occur, we must look at this reality through the eyes of a researcher. This means that we should gather information on the subject of what type of violations of rights or freedoms we encounter, whether they occur frequently, how large a number of people they affect, whether they are committed by many representatives of the authorities or only by a few, and finally, what they are caused by: by a bad law, by a bad practice (meaning actions on the part of representatives of the authorities), by the fact that these representatives are poorly prepared, by the lack of independent control over them, or by other causes. Conducting a monitoring study on a representative sample allows us to gain more reliable data concerning the overall scale of the studied phenomenon, etc.

Another way of selecting a sample, however, is to concentrate on studying **purposefully targeted institutions or individuals** that are particularly interesting in light of the objective of our study (such as children’s homes in small localities or the situation of the Roma in southern Poland).

Finally — for example, when on the one hand we want to obtain data concerning the scale of a phenomenon but on the other we are searching for many “case studies” — we may **consciously augment** the number of those institutions or individuals in the sample that have specific characteristics. Then we must remember, however, to clearly state that we have done so in our monitoring report, and not present these results as being representative for the overall population.

Let’s take a look at **what dangers await us when we select a sample that is not a representative one** - and not only in cases when we have chosen to do so on purpose, but when this happens **by accident**.

Let’s say that we want to discover whether cases in our district courts are conducted in accordance with procedure. We decide to observe 100 hearings at the criminal departments of district courts in a certain town. In this town there are five district courts, with four criminal judges working in each. We want to be able to say something not only about whether procedural violations occur or not, but also about whether this phenomenon is widespread among the district court criminal judges in the town, and whether it affects all of the

town's courts. In this case we should make sure that we analyze the same number of hearings at each court (for example, 20 at each), conducted by the same number of judges at each court (four at each), with the same number of hearings overseen by each selected judge (five each). Note that if only one judge at one of the courts we study violates procedures, the overall percentage of procedural violations attested in our study cannot exceed 5 percent.

But if, however, out of our total of 100 observed hearings 60 are held at a single court and are conducted by the same two judges, while the remaining 40 hearings are spread out among the four remaining courts, 10 hearings at each of them (with each of the two judges selected in all of the other courts being observed for 5 hearings), then if the two judges from the first court violate procedures constantly, even if all of the judges observed at remaining four courts do not commit any violations at all the overall results of the monitoring will still show that 60 percent of criminal cases in our city involve procedural violations. This, however, is clearly a false statement.

Of course, we may indeed conduct an investigation in which 60 percent of the cases we observe are from one single court and 40 percent from all the remaining courts (we wrote about this above, when discussing the *targeted sample*), but we should decide to do so *consciously, mindful of the limitations that result from selecting a sample in such a way*. We may do so, for example, when we have previously received information attesting to frequent violations of court procedure at one particular court. Our observations at other courts then only constitute a *control study* by means of which we may check, for example, whether our information concerning respect for court procedure in other courts is not by chance erroneous. *In writing our report, however, in such cases we must remember to state very clearly how we selected our sample and why we decided that cases from one particular court would be over-represented, and we should show the results of both groups of cases separately.*

At times it will be important to us to conduct a study based on a **random representative sample** — in order to be able to state that during the course of our study we ascertained that a certain phenomenon, such as the dignity of members of the public being violated at offices of local administration, is widespread. If we want to support our results with information from randomly selected citizens, we must keep in mind that *selecting a random sample for this type of study does not simply involve stopping every third or fifth citizen "randomly" encountered on the street*. In order to be able to speak of a randomly-selected representative sample, one must perform fairly complicated statistical operations — and in this case it is better to ask or hire professionals (sociologists, statisticians) to do this for us. In order to select a sample at



random, they must have at their disposal a *full list of the elements that make up the population we are interested in* (of all the people living in a given area for example, or of all the institutions that we are interested in such as courts, police stations, schools of a specific type, public offices, etc.). They must also be skilled at handling *tables of random numbers* and certain *statistical formulas* that should be used to make such calculations. We should not undertake such work on our own (unless among us there is a sociologist experienced in such studies). It is better to leave this to professionals - thereby protecting ourselves from potential accusations from the authorities that a study we call random was in fact not random.

**Identifying the principles of sample selection is a part of planning a monitoring study** and depends on our research hypotheses (identifying what factors affect the frequency of violations) and the goal of our study. During the course of the study it may of course turn out that there are certain significant characteristics we never thought about, or that some of the characteristics we chose were actually not of significance. *Pilot studies can expand our understanding and frequently show that we neglected to take certain significant characteristics into account when first selecting our sample.*

**As concerns the size of the sample and how this affects the accuracy of our measurements, in general the better we select our sample the smaller it may be — but if we want to apply statistical methods in calculating our results it should include no less than 30 cases (institutions, individuals, cities, court cases, etc.) In fact, it is better if the sample size is not less than 50. Deciding on the right sample size requires a certain instinct, and until we gain such instinct ourselves we should consult a sociologist or statistician.**

One study which monitored the working conditions in district courts in Poland encompassed 39 institutions, meaning 13.5 percent of all the district courts in the country. The sample was representative with respect to both the size of the courts (the number of judges employed) and their geographical location. The country's 290 courts were classified into small (up to 10 judges) medium-sized (11-30 judges) and large (more than 30 judges). Then, in proportion with the number of courts that fell into each category, the study sample included 14 small, 18 medium-sized, and 7 large courts.

In another monitoring study of human rights in psychiatric hospitals and homes for the elderly and disabled in Poland<sup>10</sup>, the sample consisted of 10 hospitals (10 percent of all the psychiatric hospitals and wards in the country) and 8 homes for the elderly and disabled (7 percent). These institutions were selected at random.

A monitoring study of parliamentary elections in Slovakia<sup>11</sup> observed 108 polling stations (about 2 percent of the overall total). This sample was representative with respect to geographical location (classified into 8 administrative regions), the size of the city or town, and the ethnic composition of the specific region. Also investigated were unusual stations (set up at hospitals, homes for the elderly and disabled, military garrisons, etc.)

**Our report should justify the size of the sample, the criteria used in selecting it, and the extent to which these allow us to make wider generalizations. When we do not work with a representative sample selected by specialists, our conclusions should only specifically refer to the cases we investigated, and not to the overall population.**

Another issue to consider is how to **choose individuals to interview at the institutions or communities selected in the sample**. Here we make use of more investigative techniques — we search for successive “witnesses” whose statements may help us to obtain a true picture of how the entire institution or community functions. Frequently, for example, the so-called **exhaustive principle** proves useful. We talk to successive individuals from the specified group until we start receiving information that repeats itself, until we have exhausted the source. Whenever we determine that we will no longer learn anything new that could contribute something to our study, we stop conducting interviews with members of the given group. In selecting interviewees, another principle, called the **snowball principle**, is helpful. We ask every interviewee who else they feel we should talk to, and thereby make contact with more and more individuals. When searching for sources of information, in general we

<sup>10</sup> Monitoring study conducted by Helsinki Foundation for Human Rights in 1996. See: Nowicka Maryla, *Prawa człowieka w szpitalach psychiatrycznych i domach pomocy społecznej (Human Rights in Psychiatric Hospitals and Homes for the Elderly and Disabled)*, Warsaw 1996.

<sup>11</sup> Monitoring study conducted by Helsinki Foundation for Human Rights and the International Helsinki Federation for Human Rights (IHF) in September 1998. See: Fialova Z. and Fabian G. *Parliamentary Elections in Slovakia — September 1998*, Warsaw 1999.

follow the principle that *we are most interested in what is hidden from us, what the authorities do not want to show us*. When studying institutions it is worth directing attention to *individuals who are in conflict with the authorities*. In archives we keep an eye out for thick files or records; we ask about people who have problems (such as those who have health problems or psychological problems, who file complaints for some reason, who are treated differently than most others by representatives of the institution, etc.) Such sources are not necessarily credible, but may draw our attention to problematic points in how the given institution functions.

### 6.2.2. Documenting cases

One specific methodological approach in monitoring involves **gathering documented cases of human rights violations**, which on the one hand serve to illustrate the phenomenon more widely, and on the other assist in undertaking various types of public action aimed at improving the state of human rights in the selected field.

A certain drastic and spectacular case may be used when working with the media. Public opinion will be more readily swayed by the harm done to one specific person than by anonymous statistical data. If we are seeking allies and want to stir up public emotions, we should present well documented, concrete cases.

Taking legal action also requires that we have identified cases that meet specific criteria. Bringing a case before the Constitutional Tribunal or European Court of Human Rights may bring about a change in the law, and thereby a systemic solution of the problem.

Of course the first, absolutely necessary criterion when selecting such a case is that **the person whose rights have been violated must consent to have legal action taken on his or her behalf**. In addition to this, it is also beneficial if:

- ⇒ the case provides a “pure” example of human rights violation and does not involve any additional legal complications that obscure the picture,
- ⇒ the victim evokes sympathy, since we are going to attempt to gain public support for his or her case,
- ⇒ the harm done to the victim has also befallen others as well - and thus constitutes one example of a certain wider phenomenon,
- ⇒ the victim has previously made use of all available legal means, has submitted appeals on time, etc.,
- ⇒ the case stands a promising chance of being won before the Constitutional Tribunal or European Court of Human Rights.

We collect such “case studies” during the course of our monitoring. We illustrate our report with them, and certain ones may serve us in taking legal, political, and social action. Cases should be documented in great detail. Often, just gathering official documents does not suffice — we must gain additional information, gather statements from witnesses, conduct a reconstruction of events, request expert studies, etc.

### **6.2.3. “Cultivating” our own case studies**

It is sometimes difficult to find a pure case, especially one to be used in strategic litigation. The victims we meet have often not exercised all of their legal possibilities, let deadlines provided for by law pass, or engaged in activities that reduce their chances of winning a case before the European Court of Human Rights (for example, they did not appear for court-ordered examinations or hearings, but want to complain about violations of their right to a trial within a reasonable time).

In such cases we have to take steps to “cultivate” a good case for ourselves. We come to an agreement with a particular individual who has been harmed and, *perhaps without informing the authorities that we are doing so, help them write all their complaints, petitions, and court correspondence, using carefully selected, professionally stated arguments.* We then collect replies from the authorities that frequently are disgracefully incompetent until we *gather a full set of documentation* that will allow us to document what happens to a victim of such harm when they have no one powerful supporting them, even if they use all the available means and arguments. Such documentation can be very useful in political and public action, and especially when working with the media. It often turns out that we have “cultivated” an exceptionally good case study for bringing proceedings, for example, before the European Court of Human Rights.

### **6.2.4. Documenting sources of information**

In monitoring work we most commonly document the sources of our information. It is another decision whether we will decide to disclose these sources in our final report. This frequently depends on the goal of the study and the conditions under which it is conducted. As a rule, however, our internal documentation should include data about the sources from which information was obtained, if only for use in assessing its credibility. If we intend to publish information that identifies a particular person, we must first gain the permission of the person in question — unless this person is a state functionary, and we are conducting an official monitoring study.



Fot: Krzysztof Miller / Agencja-Gazeta

Refugee camp in Chechnya at the border with Ingushetia, October 1999

Often we collect **signed statements from witnesses or victims** of human rights violations. Such documents allow us to place their information in our report (which does not mean, however, that we have to publish their statement or even any data about the person.) Basing our report solely on oral information is at times extraordinarily risky, and as a rule we should refrain from doing so. An additional advantage of gathering accounts in writing is the fact that people take more responsibility for their words when they write things down. It is best to first ask a person who has witnessed a certain event to write a statement in this regard, and afterwards to have a talk with them and supplement the information they wrote down. If things are done in the reverse order, a witness who has overly exaggerated his or her account during our oral conversation may refuse to write a statement at all, in order to avoid putting themselves in an awkward situation.

**If we gather signed statements and tell those who submit them that we will not present these documents to the authorities without their consent, we take a moral responsibility upon ourselves to protect them.**

### 6.2.5. Verifying data: sources of information and research techniques

We very rarely only make use of one single technique in a monitoring study. Usually, various methods of gathering information compliment each other naturally. Making observations, holding discussions with people in various unusual situations, analyzing written sources — all of these are frequently done simultaneously. After it is processed, information gained through different techniques will form a single picture.

In one monitoring study of respect for pupils' rights at school<sup>12</sup>, monitors talked with a teacher that spoke eloquently and at length about the rights the pupils were entitled to. Then they went into the classroom, in order to pass out questionnaires to the pupils. The teacher decided to check attendance. Just in the course of reading out their names, the teacher managed to humiliate, insult, and violate the dignity of the majority of his pupils. This only lasted a few minutes, but it turned out to be an excellent source of information about respect for pupils' rights at this school.

We can gain access to information in many ways. The only requirements are that we maintain *objectivity* (we are studying reality as it truly is, and not as we would like to see it) and abide by *research ethics* — our activities cannot bring harm to the individuals whom we are trying to help. Unless, of course, they themselves wish to take on such a risk.

Regardless of our techniques, it is always possible for us to make a mistake — both in gathering and in interpreting information. We might erroneously read the contents of a document (i.e. by understanding the headings of a questionnaire in a different way than public officials do). Or we might understand it correctly, but erroneously assume that an official document describes objective reality. When studying documents, we can objectively state what was written in them, but not what truly occurred. We must therefore **be prepared to cope with the mistakes that may occur when applying any technique**. By combining various research methods we obtain more objective results, because the weaknesses of one technique are counteracted by the strong aspects of others. The most credible information is that we have managed to confirm from several sources.

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<sup>12</sup> Monitoring study conducted in Poland by Helsinki Foundation for Human Rights in the 1995-1996 school-year. See: Czyż Elżbieta, *Prawa ucznia w szkole. Raport z badań. (Pupils' Rights in School. Research Report)* Warsaw 1996.



Fot. Małgorzata Kujawka / Agencja-Gazeta

Police intervention following a soccer match. Łódź, Poland May 2000

If possible, *we should study the problem from the standpoint of all the interested parties*. In this way we reduce our chances of making a mistake, as unilateral assessments are as a rule subjective and overstated. At schools we should pose questions to both pupils and teachers; in courts to both case participants and judges; and at hospitals to both patients and staff.

When studying institutions such as schools, courts, hospitals, or prisons, it is a good idea to **expand the scope of the study** so as to encompass not only the rights of pupils, defendants, patients, or prisoners, but also the rights of the employees or functionaries of these institutions. *We then make a general study of how human rights are respected at the given institution*, and we come out in defense of the rights of all individuals who participate in the workings of the institution, without limiting ourselves to pointing out that one group violates the rights of another. This allows us to gather information more effectively, facilitates conversations, and widens our range of allies. It is obvious that the group which wields power within an institution will more frequently be the perpetrator rather than the victim of human rights violations. It does occur, however, that violations caused by poor legal regulations or a lack of financial resources affect all the social groups associated with a given institution. At many prisons, psychiatric hospitals, and army units we encounter practices that present a danger to the health and even life of the nurses, functionaries, or staff.

### 6.2.6. Criteria for choosing techniques

For each of our research questions, we should select the best technique or techniques to allow us to gain responses and information that constitute a basis for making numerical estimations. *We select our techniques separately for each question. The reliability of the responses gained and how much labor and money it will take to obtain them will depend on our own invention and creativity.* In other words, we try to gain as reliable a response to our research question as possible, in as fast, inexpensive, and easy a way as possible. In selecting a technique, we keep various criteria in mind:

- ⇒ Whether the information obtained using the technique constitutes a **direct response** to the question, or only provides a basis for making a qualitative assessment or numerical estimation,
- ⇒ The **reliability** of the information we obtain (who it came from, how precise it is, etc.)
- ⇒ The technique's **economic efficiency** (the ratio of labor and costs to the value of the information obtained),
- ⇒ Its **feasibility** (whether we have the energy and resources necessary to apply such a technique),
- ⇒ How the technique **complements** others we have chosen (whether it supplements and verifies data obtained by means of other techniques),
- ⇒ **Ethical criteria** as determined by the conditions under which we operate and the goal we have set for ourselves (when searching for information about a tortured prisoner we may make use of techniques that would not be justified, for example, when studying pupils' rights at school),
- ⇒ How applying the given technique **itself affects the situation** (because monitoring is also a method of consciously affecting reality (see Section 1.4.2), in choosing between techniques that are equivalent with respect to other criteria, we should take care to ensure that the change that we cause is consistent with our goal: promoting proper respect for human rights),
- ⇒ The **risk** involved — when monitoring is prohibited or brings the risk of repression.



### 6.3. Sources of information in monitoring

Sources of information can be classified into three main categories: written sources, individuals, and observations made by the monitor.

#### 6.3.1. Written sources

- a. **Normative acts:** As we wrote above, as part of monitoring we analyze not only acts of law, but also lower-order provisions (institutions' internal regulations, executive orders, and other decisions that regulate the internal workings of institutions). We become familiar with many of these only during the course of our study.
- b. **Institutions' internal documentation:** such as accounting journals, the personal records of the individuals lodged at the institution (at prisons, etc.), registers of correspondence, complaints journals, documentation concerning individuals that cause behavioral difficulties (at restricted or partially-restricted institutions such as prisons, correctional facilities, children's homes, etc.), and all types of forms that are filled out.
- c. **Documentation produced by institutions** which is intended for "external" use, such as court verdicts, records of arrest, administrative decisions, reports of a specific or periodical nature, expert studies, etc.
- d. **Correspondence** between citizens and offices of state administration or other state institutions (courts, hospitals, local governments, etc).
- e. **Complaints** sent by citizens to state institutions (as above), complaints that individuals who live at restricted or partially-restricted institutions have raised to the authorities of these institutions, complaints lodged with independent bodies (the state ombudsman, non-governmental organizations, etc.)
- f. **Collections of data:** statistics, ministerial reports, scientific studies, etc.
- g. **The media:** the press, the Internet etc.
- h. **Other documentation:** such as information posted on the walls of institutions (at courts, polling stations, police stations, hospitals, etc.)

#### 6.3.2. Individuals

When studying *public institutions*, our sources of information should encompass the following individuals:

- a. **The directors of the institution.**

- b. Employees** from various levels and departments of the institution, including not only its professional staff (such as doctors, judges, guardians, or teachers), but also its technical staff (secretaries, cleaners, drivers) and all other kinds of individuals who work at the institution (psychologists, priests, food deliverer, trash collector, etc.)
- c. Members of the public who reside at or deal with the given institution** (prisoners, patients, orphans, court case participants, etc.). The following types of people may prove to be particularly valuable sources of information: **individuals who come into conflict with the given institution** (whom we can identify by means of their personal records, by asking other residents, etc.), individuals who have been resident at or involved with the institution



Fot: Piotr Wójcik / Agencja-Gazeta

Children's home run by Catholic nuns, Poland

for a long time, individuals who have only recently come into contact with the institution (as they are struck by things others have grown accustomed to), individuals who have had contact with many such institutions (as they are in a position to compare them), individuals who have recently ceased to be or will soon cease to be involved with the given institution (they do not fear harm will come to them if they give honest responses).

When studying *respect for the rights of individuals that belong to a specific social group*, our sources of information may include the following people:

- d. The leaders of organizations associated with the given social group** (organizations that consist of members of the group itself or of individuals who take it upon themselves to help the group): Such people may not only provide information, but may also help us by making it easier to conduct our study. This is particularly important in the case of groups that are widely dispersed (such as drug addicts, sexual minorities, the poor, etc.), as researchers generally encounter great difficulties in identifying and making contact with group members. We should remember that the right to privacy — and in Poland, for example, the “Act on Protecting Personal Data” — practically rules out the idea that we might simply start by accessing the files of those institutions that deal with members of such groups (lists of those who receive aid, who suffer from various illnesses, who are disabled, who have been held in sobering-up stations, etc.)
- e. Informal, charismatic authorities within the group:**  
intellectuals, leaders, etc.
- f. Group members:** including both those who are socially active and passive, and those who live outside the group — either by choice or as a result of having been cast out.
- g. Spiritual leaders** associated with the given group or social problem (such as prison or garrison chaplains, priests that take patronage over specific communities, etc.)
- h. Doctors, health care staff, social workers, police officers, educational authorities:** as appropriate for the type of problem we are studying.
- i. Civil servants** who come into contact with the given problem in the course of their work.
- j. Academics and journalists** who deal with the problem.
- k. Ordinary individuals** who are not members of the given group: neighbors, co-workers, acquaintances, etc.

### 6.3.3. Observations and physical measurements

In this way we may gather information about:

- a. **Individuals:** their appearance, their state of health (or autopsy results), their behavior during the course of conversation and in other situations, their reflexes (such as the reactions of a child that indicate he or she is frequently beaten), etc.
- b. **The site being monitored:** the status of the building itself, the conditions present in its rooms (their size in terms of m<sup>2</sup> and m<sup>3</sup> per individual lodged there, their lighting, ventilation, furnishings, bedding, etc.), the security system that prevents escape from custodial institutions, how effective and dangerous this system is, how work and life at the institution is organized, etc.
- c. **Objects:** vehicles used to transport prisoners, instruments of restraint (truncheons, handcuffs, articles used to immobilize overly excited or aggressive individuals), etc.
- d. **Events:** including *those which are planned but not by us*, such as elections, court cases, or protests; *those we planned ourselves*, such as experiments (i.e. attempts to obtain specific information from the authorities, or attempts to demand that a certain right or power be exercised — such as demanding that legal or physical protection be provided to a threatened or harmed individual); *unplanned but foreseeable events*, such as an arrest made of an intoxicated individual by the police; and *unforeseeable events*, such how the authorities respond to a natural disaster.

## 6.4. Techniques of obtaining information from written sources

### 6.4.1. Analyzing normative acts

As we have already stressed, analyzing normative acts is an extraordinarily important element of every monitoring study. In [section 5](#) we discussed the various sources of law and the principles used in interpreting them. Everything necessary to analyze normative acts, including books about their interpretation, can be found at law libraries. In states where the rule of law is established or in the process of being established, all normative acts (domestic law and ratified international agreements) that are binding for all citizens are published in *official collections of legal documents* (such as *Dziennik Ustaw* and *Monitor Polski* in Poland, *Sobrania Zakonodatelstva* in Russia, etc.).

Publication is generally a necessary condition before such laws enter into force. Topical indexes of their contents are published annually, making it easier for us to find the legal acts that interest us. The rulings of the Supreme Court and Constitutional Tribunal are also published at periodic intervals.

*The Internet* represents a good source of information about acts of international law. Websites maintained by specific international organizations provide the texts of all the documents they have adopted, as well as information about which states have signed and ratified which documents. Increasingly more frequently, such sites also provide translations into languages other than English (e.g. Russian). The Internet can also be used to access the rulings of the European Court of Human Rights ([see section 5.3.](#)), plus the constitutions and other legal acts of specific countries. If we are interested in a specific domestic act in a foreign country, it is a good idea to appeal to *this country's embassy*. The parliaments of certain countries (Russia, for example) also publish the drafts of new laws on their websites.

There are also *computer programs* that contain all the statute- or ordinance-rank legal acts in force in a given country (such as *LEX* for Poland, *GARANT* for Russia, etc.) Furthermore, there are private firms that organize databases and search for certain acts for a fee, but not all non-governmental organizations can afford such services.

In states where the rule of law is established, acts that affect civil rights and obligations may only be issued on the basis of specific authorization to do so granted by a statute. Public institutions, however, are authorized to issue internal legal acts that regulate how they function. Overall, *information about legal acts on a specific level should be found in legal acts on a higher level.*

The technique of the law involves **comparing the contents of the individual acts, in accordance with their hierarchy** ([see section 5.2.](#)), **and also in accordance with court rulings.**

**A list of research questions**, based on which we identify the legal standard binding in our country, may serve us as a tool in analyzing the law. This can be divided into:

- a) the standard guaranteed *by our country's constitution*,
- b) *the international standard* that binds our country,
- c) *the domestic standard* - which we subject to a critical analysis investigating its consistency with the constitution and the international standard, its internal coherence, and its preservation of the hierarchical principle.

While conducting our study we compare the reality around us to this standard. When doing so, we draw a distinction between human rights violations that are caused by infringements of the law, and situations when such violations are brought about by the application of a bad law.

#### **6.4.2. Secondary comparative analysis of statistical data**

This technique involves **verifying statistical data by comparing it to other sources that describe different aspects of the same phenomenon**. We use this method to gain a different perspective on the numerical data listed in reports and publications presented by various institutions or state bodies to their supervisory bodies (ministries, parliament, parliamentary committees, etc.) We also investigate the publications of the state statistical office and the results of studies conducted by other independent bodies (scientific institutes, universities, etc.).

*We compare sets of data pertaining to different angles of the same issue in order to identify or estimate what the real figures are.* This will also assist us in identifying “problematic points” — information that a given institution does not provide or provides only unwillingly. Usually it is such data that is most divergent.

**We usually analyze this type of data as part of our preliminary diagnosis of the situation.** This expands our knowledge about the selected problem, and thereby enriches our list of research questions.

When comparing data from different sources or attempting (even within the scope of a single source) to identify, for example, changes in a particular phenomenon over time, we must first make sure that the sets of data are comparable. *Different documents may make use of different definitions of a phenomenon*, and definitions may also change over time. This holds true for legal definitions as well — yesterday’s misdemeanor may be today’s criminal offense, and vice versa.

**When comparing data, we must be certain that the definitions and methods used in composing the data were identical.**

When doing such research it is recommended that we work in cooperation with a lawyer and statistician, because many discrepancies in data can arise from how the figures are drawn up or the methods of statistical processing used.

In the 1980s, an attempt was once made to compare numbers of prison escapes in various countries by looking at the statistics of those convicted of the crime of having made such an escape. It soon turned out that escaping from prison was considered a crime in Poland, but in East Germany it was not — as long as an escapee voluntarily turned themselves in to the police. In Switzerland, on the other hand, it was accepted that prisoners have the right to strive for freedom, and it is the state's responsibility to keep watch over them. Escaping from prison was thus not considered a crime there.

Sometimes, even when the same definitions are used, interpretations may differ.

Polish crime statistics used to list the number of murders and the number of attempted murders together as a single figure. Nevertheless, the same act that was on one occasion classified as an attempted murder might one year later be considered “banditry” or “involvement in an affray.” This depended on the “criminal policy” applied in the given year. Law enforcement agencies and politicians could demonstrate that the number of murders was rising or falling, as suited their needs.

Changes in the extent to which a phenomenon occurs might also be tied to **changes in how effectively it is recorded**. When a certain phenomenon becomes illegal (such as abortion, for example), official records of it go amiss. On the other hand, if a certain problem begins to be publicly discussed — if, for example, we conduct a campaign about human rights violations committed by health care personnel — victims become more aware that their rights have been violated and that they can try to effectively assert their rights. They also gain greater courage, and thus the number of events of this sort registered by the authorities or by non-governmental organizations may grow. We must keep this in mind while reading statistics. If we observe the number of complaints from prisoners received by a non-governmental organization, we will see that letters come in from successive prisoners in clear waves. This does not mean that the situation at their prison has suddenly gotten worse. It might mean that the address of the organization has reached the prisoners, or that one particular prisoner has been helped successfully.

When reading reports made by institutions, we must ask ourselves the question of *whether the institution's supervisory body or the public uses this data as a basis for evaluating the institution's performance*. In hierarchically structured institutions, especially those concerned with law enforcement, the institution's staff are assessed by higher-ranking authorities on the basis of certain

reports. There is a whole complex system of reward, promotion, etc. involved here. Every lower order institution strives to exceed the expectations of the next higher order institution (which in turn has another institution above it), and to show itself in the best possible light. In such institutions everyone tries to find out what the “bosses” expect. They also know very well how they should write about the truth: things that are neither too good, nor too bad.

If the performance of the police is evaluated on the basis of the crime prosecution rate, it will lower the number of registered crimes. Especially in the case of those that have a low prosecution rate (such as pickpocketing, thefts of radios from cars, etc.) The police will then discourage victims from making formal reports of such crimes.

The reliability of information in a report can also be affected by *whether the individual or institution that presents it has to reckon with the possibility that the information so contained might be checked*. If there is no system for verifying data and no sanctions imposed for providing false information, then we must approach such information with care, especially if it might compromise the directors of the institution. When reading documents it is a good idea to keep in mind who in the institution has access to them, how the flow of information runs, etc.

**Usually, information intended for internal use is more reliable than information sent outside.**

The comparative analysis of statistical data involves confronting figures obtained from various sources, statistics, and reports, which are indirectly related to the data we are seeking. A certain Polish non-governmental organization once published the number of child deaths that had resulted from cruel treatment by parents and guardians over the course of a year. The authors of the report did not notice that the number they reported in fact exceeded the total number of all child deaths within the age groups in question. Even in the 1970s, when economists tried to estimate the true number of new apartments that had been completed, they would compare the official data with other sources of information concerning the production of construction materials: panes of glass, doors, parquet floors, etc., in order to penetrate beyond the secrets of state propaganda.



**Before we publish any figure, we should compare it with other data and evaluate whether it is at all a probable result. We must also very sharply stress how we define any figure that we publish. It is best to state our operational definition, i.e. to precisely identify the methods of measurement and calculation used to arrive at this figure.**

Research once conducted by a government commission on the subject of euthanasia (in the Netherlands, 1990) utilized a descriptive definition of euthanasia that encompassed the following forms of death:

- a doctor's actively taking a patient's life at the latter's request,
- a doctor's actively taking a patient's life without the latter's consent,
- discontinuing treatment necessary to keep a patient alive, or neglecting such treatment, at the patient's request,
- discontinuing treatment necessary to keep a patient alive, or neglecting such treatment, without the patient's consent,
- the application by a doctor of a lethal dose of morphine or similar analgesic drug at the patient's request,
- the application by a doctor of a lethal dose of morphine or similar analgesic drug without the patient's consent.

Based on this classification, the result was that 19.4% of all deaths in the Netherlands resulted from euthanasia. If only the active taking of life at a patient's request had been considered, however, the result would be ten times lower.<sup>13</sup>

**The tool we use in the secondary analysis of statistical data is a list of questions about numerical data associated with the research problems that interest us.** We also leave space for new information that we may not have foreseen in our questions. We must diligently note the full name of each of the documents we analyze, its origins (the institution or body that produced it), its year of publication, and the scope that its data encompasses. In the case of larger reports we should take down their full bibliographical information, even if we do not publish this particular data.

### **6.4.3. Investigations of records**

This generally involves **studying archives of cases that have been considered by a court or administrative body.** The method by which we search for the

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<sup>13</sup>Fenigsen Ryszard, "The Report of the Dutch Governmental Committee on Euthanasia", *Issues in Law and Medicine*, Vol. 7, No. 3 (Winter 1991)

cases we are interested in depends on the organization of the archives and the cataloging techniques used. When studying, for example, the duration of court proceedings in a particular court, we might look at all cases (without concentrating on a particular type) that came to completion within a certain period and note the date when the proceedings began. Or, we might gather records for those cases that began during a specific period and look at when they were completed. The results will be different, and so we must therefore strictly define the method by which we conduct our study. If we want to identify, for example, the number of criminal proceedings concerning marital violence, we must search court archives for information on criminal proceedings that were initiated on the basis of the respective provision of the Penal Code, and then select those cases in which the victim or one of the victims (depending on the aim of the study) was the defendant's spouse. We can also collect data from records on such things as the size of the city or town, the gender of the judge, the social status of the defendant, the severity of the sentence, etc., and look for any correlation between such variables.

#### **6.4.4. Analyzing complaints**

**An analysis of the number of complaints received by state institutions or non-governmental organizations might attest to how much work they face, but does not provide any measurement of the real scope of human rights violations.**

The total number of such events is "hidden," in that it is unattainable and we will never know what percentage of them we obtain information about. We know that this percentage changes over time (depending, for example, on the prestige of our organization and the public's assessment of how effective its activities are), and we therefore do not have any basis for drawing such quantitative conclusions. Cases have been documented in which there was a clear rise in the number of complaints received by a non-governmental organization during a period when the scope of the specific type of human rights violation was undoubtedly shrinking, and vice versa. Various social groups and victims of different human rights violations submit complaints with varying frequency. Ombudsman offices and non-governmental organizations in Central Europe, for example, receive many complaints from penal facilities and relatively few complaints from victims of human rights violations in the military, schools, or hospitals (children and patients rarely write themselves, while their family members are afraid to bring harm upon their loved ones who are subordinate to the arbitrary, in their opinion, authority of teachers or doctors). Thus the numerical proportions here certainly do not reflect the true scale of violations.

Similarly, the number of complaints addressed to international organizations such as the UN Human Rights Committee or the European Court of Human Rights serves more as a measure of public legal awareness and of how strong and effective the non-governmental organizations active in given country are, than of how widespread human rights violations are there. Every year, the UN Human Rights Committee receives dozens of complaints against the Canadian authorities, and only a few from the countries of Eastern Europe. This does not mean, however, that Canada respects human rights dozens of times worse than the post-Soviet states.

**Complaints may be analyzed only from the qualitative perspective.** They are also of assistance in searching for “case studies” needed for undertaking litigation with the aim of bringing about changes to the legal system or to the practice of how the law is applied. In addition, such complaints may also provide (with the victims’ consent, of course) a source of information for the press. (see section 10.4)

#### 6.4.5. Analyzing an institution’s internal documentation

Such analysis involves **searching for the information we require in official documents.** When we walk into an institution we should already know what kind of documentation it keeps and what we might find therein. We will be treated more seriously if we ask about concrete documents and make use of the proper terminology. Also, this also makes it more difficult for the authorities to refuse us access to such documents. It sometimes occurs that a document which should be kept by an institution is in fact not there at all.

At one particular children’s home<sup>14</sup>, the members of a monitoring team asked the director to show them the home’s statute. The director took a framework statute (the pattern based on which each institution should establish its own statute) from his desk, and said that this was all he had. The monitors had a copy of the real statute with them, which they had previously obtained from the children’s home’s supervisory body. In fact, it was a very good statute. The fact that the director lacked a copy of this document (which theoretically regulates the overall workings of the institution) cast doubt upon the issue of how rights were respected there.

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<sup>14</sup> A monitoring study of human rights in children’s homes in Poland was conducted by Helsinki Foundation for Human Rights in 1998. See Czyż Elżbieta, *Prawa wychowanków domów dziecka. Raport z monitoringu. (The Rights of Wards in Children’s Homes. Monitoring Report)* Warsaw 2000.

Some institutions keep very extensive documentation — therefore, as part of our preliminary diagnosis, it is good to compose a list of all the different types of documents and to note what information might be of interest to us in them. Extensive documentation is kept, for example, at Polish prisons, and each document has its own specific name (see Attachment 1). Skillfully comparing data from different documents (which pertain to the same event but from different perspectives) will tell us a great deal about the event itself, as well as about what the authorities are trying to conceal.

When analyzing the documents of an institution, we should have an understanding of the language, conventions, and terminology used by its employees. For this reason, while we are planning our study it is good to meet with a person who knows the institution “from the inside” and can help us prepare. (For example, a “List of Documents in Prisons and Pre-Trial Detention Facilities...” was prepared for the Helsinki Foundation for Human Rights by employees of the Polish prison system.)

The experiences of various monitoring teams show that the **walls of the institution visited**, meaning specifically the announcements, administrative orders, etc. posted there, can be a valuable source of information.

At one monitored children’s home, highly humiliating statements of “self-criticism” written by the children were posted on the walls. This was used as a sort of punishment for breaking the rules, and was of course not mentioned at all in the institution’s statute.

When studying documentation, we always come up against the issue of its reliability. **Every document should be viewed critically, and all information should be checked in other sources.** Just where particular documents come from, and what information is included, can tell us a lot. It is worth giving some thought to where the author of the document obtained the information, and whether he or she could possibly have had access to such information. And then we must search for the primary sources — namely, the people the information is about.

Whenever possible, we should **verify documentation by comparing it to reality**, if only on the basis of a random selection. We should make contact, for example, with a few individuals that the documents mention. Having learned that a penal institution purchases newspapers and magazines for its common room or reading room, we should observe these periodicals on location. Firstly, they might not be there at all. There was one known case in which newspapers were collected but not made accessible to prisoners. Having gained information about the theoretical contents of the first aid kit, the purchase

dates of drugs, etc., it is good to confront such information with reality and records of drug dispensation. We cannot check everything, but nevertheless a spot check will allow us to assess the credibility of the documentation as such.

Another issue regards certain documents' chances for survival. Institution employees know very well what to save, what to throw away, and why. We must therefore identify *whether every fact has been recorded, whether all documents have been saved - and whether there was such a chance*. And if not, then why have we found these particular documents, and not certain other ones?

*If our doubts are raised with respect to the credibility of how a certain phenomenon has been recorded, we try to identify the real statistics indirectly, by means of data about other phenomena related to our problem.* If, for example, we want to find out the number of suicides and suicide attempts in prison, we check for records of deaths in uncertain circumstances, of sudden deaths, of ambulance calls (these latter records kept, after all, outside the prison walls, in the ambulance service records), etc. If we are interested in the number of demonstrators beaten by the police, it is worth taking a look at the register of ambulance calls. With respect to how many individuals did the police station call for an ambulance? After a protest that has been brutally broken up, we should investigate documentation at on-duty hospitals — both that of ambulatory services, and of admission desks.

#### 6.4.6. Analyzing the press

The press reflects reality as journalists see it. When doing press analysis, somewhat different principles apply. Media reports can be analyzed in two ways:

1. as a **first source of information about events**,
2. as **documentation reflecting public opinions, views, and sentiments, and as a means for a certain group** (the newspaper's owners, a political party, etc.) **to affect public opinion**.

We utilize the press as a **first source of information** when we have too little knowledge about the problem that interests us (during our preliminary diagnosis of the situation) or when it is difficult for us to access other sources of information (for political reasons, for example). Here, too, we must compare information from various sources (aside from the press there are also news agencies). We should read periodicals of various political orientations (the press that supports the government, the opposition press, and the "radical" press), and check how various events are described by different journalists. We also check what they do not write about — what sort of information is systematically left unmentioned.

**Press information must be followed up on.** We must make contact with individuals who will tell us more. *If this cannot be done, when we utilize such information we must always state where it comes from and explain that we were unable to confirm it.* We can learn a lot by contacting the journalist who provided the information. He or she generally knows significantly more than what was published, and has the addresses and telephone numbers of individuals directly associated with the event.

When conducting monitoring, we much more often treat **the press as an opinion-forming medium** that reflects social reality in a specific way. Let's say that we are interested, for example, in how capital punishment and other human-rights related topics are being covered by the press. This is particularly necessary in states that restrict the freedom of speech, where the authorities have a monopoly over the media. Such an analysis always helps us in planning our strategy of action. We become familiar with stereotypes about certain phenomena or social groups, identify potential allies among journalists, and learn how to state information in such a way that it will be of interest to specific newspaper editors, etc.

All types of action (social, legal, and political) require that we work with public opinion. We must therefore prepare for this appropriately.

**We begin with a list of titles** we want to study. It is useful to compare the "serious" press with the "radical" press, and to consider what kind of readership each individual publication might have and therefore which social strata they may influence.

We also set **time frames**. Of course, we study information published in different periodicals but during the same period.

Next we establish the **categories according to which we sort and compare the articles** (the name of the newspaper, the date, the right or freedom concerned, the institution and/or social group involved, etc.)

Then we mark each article based on a **coding key** we have developed for this purpose (see [Appendix 3](#)). This key will allow us to search for articles for analysis based on a selected category. Such codes may be entered into a computer database, which will make working with them significantly easier. Such a database is necessary for conducting systematic press surveys, detailed topic-specific reports, etc. Our experience shows that with a small number of articles (up to 200), it is easier, meaning more efficient, to work without using a computer.

*Articles should be coded by a single individual or by members of a well trained team in order to ensure that the interpretation of the categories does not change.* The categories should be open in case a new phenomenon or characteristic might appear that we did not initially anticipate. In such cases we enter a new element into the coding key, which will also encompass previously classified material.

**How does one work with such a database?** Let's say that we are interested in capital punishment. We look for all articles marked "A." We want to know how the press reacted to an event that took place on 12 October 1998 - and so from the body of all articles on capital punishment we select those that were published between 12 and 30 October 1998. We are particularly interested in newspaper "N", and so we now single out reports from it. And so on, depending on the goal of our research.

**In such an analysis it is useful to pay attention to the language used, because not only is *what* the papers write important , but also *how* they write it.**

In some countries there are private companies that maintain large databases of press articles, which produce extracts based on key words. If we do not want to build our own database, there remains the possibility of utilizing such services. We must make a careful selection of key words and precisely identify the categories we are interested in (the term "human rights" is too general, and it would be better to make queries, for example, about "women's rights" and "abortion" — we will then reach the articles in which at least one of these terms appears.) After all, when using such services we must pay for every article retrieved.

## **6.5. Techniques of obtaining information from individuals**

### **6.5.1. The unstructured interview**

This is the kind of interview we conduct when we do not have yet have sufficient information about the situation and want to "widen our horizons" (either during our preliminary diagnosis of the situation or as part of a pilot study). This helps us to identify the problem more precisely and to put the major threads of the study into order. *Only the general topic of such an interview is defined* - which thus allows the interviewee to discuss anything they feel is important. **This technique does not require any written tools.** It does, however, demand good intuition and skill at "picking out" those things that

are important from the perspective of our goal. Frequently this type of interview is helpful (and sometimes even essential) in preparing structured interviews or writing questionnaires.

The choice of interviewee is in this case fairly simple. As we have already mentioned above, at this stage **we are gathering information from easily accessible sources**. We look around for people who have information that interests us, and are ready to talk to us about it. We should not have to battle with a potential interviewee to give us information.

*It is a good idea to record such interviews*, if of course the interviewee trusts us to do so. We can then concentrate on listening and pose further questions without having to bother to take notes. It is also a good idea to transcribe recorded interviews in their entirety. Then we select the threads from this text that give us new information or present the problem in a new light. In this way we build our list of research questions.

### 6.5.2. The focus group interview

**This is a directed interview conducted simultaneously with several individuals.** Experience shows that the group should consist of no less than six, and no more than twelve people. The interviewer directs the conversation along a general outline. The members of the group are given a chance to talk about the given topics as well as to discuss the statements previously made by other people in the group, something that generates an additional stimulus.

**The group interview can be used at various stages of monitoring.** The criteria used to select interviewees depends on at which stage it is used. If we are conducting such an interview as part of our preliminary diagnosis of the situation, we will be interested in obtaining the widest possible range of experiences from participants (such as experiences gained in professional, private, or expert capacity, etc.). If we use this technique as part of our main monitoring study, we will select the group according to previously determined criteria and will frequently conduct not one but a series of such discussions. Such an interview may also prove useful when we are at the stage of processing data and preparing our report. A group of experts can help us to determine the structure of the report and assist in organizing the knowledge we have gained through our research.

Just as in the case of the unstructured interview, the focus group interview can provide a good start when we are planning quantitative studies. Also, after we have collected quantitative data, this type of interview can also prove helpful in finding a relevant interpretation of the results.



The essence of the group interview involves inviting people with different views and experiences to attend a joint conversation. We inform them about what the purpose of the meeting is. The interview should take place in a quiet, calm, and neutral location, and should not last longer than two hours. **The interviewer directs the conversation**, making sure that everyone has a chance to make his or her contribution. There will be dominant individuals in every group, and the conversation may give rise to disputes that could easily flare into outright arguments. The interviewer must thus also act as moderator.

The initial **introduction to the discussion** is very important, and should include the following elements:

- ⇒ welcoming the participants and thanking them for their attendance,
- ⇒ again presenting the agenda and the goal of the meeting,
- ⇒ establishing the rules of the discussion: we respect the opinions of the interviewees, only one person speaks at a time, there are no right answers, and every opinion is equally important to us,
- ⇒ asking the participants to introduce themselves and to give a short description of their connection to the issue under discussion (e.g. when discussing prisoners' rights: "My name is X and I am a former warden of the prison in Z"; "My name is A and my close relative is in jail," etc.)

**The tool the interviewer uses is a discussion outline** (just as in the directed interview, see below). *The first question should be general and introductory: "In your opinion, what is the state of prisoners' rights in our country?"* As the discussion unfolds, we introduce further issues, some of which may be brought up "on their own" as the participants speak. Just as in the case of the directed interview, we should not try to stick rigidly to the outline, but should react to the course of the discussion — making sure, however, that the group does touch upon all of the topics of interest to us.

Such a discussion must be recorded on audio or video tape (with the participants' consent, of course). Without this we will not be able to process the information gained. One cannot take notes at a group interview — we will lose track of many statements, which are frequently emotional and spoken at the same time. If the potential interviewees do not give their consent to be recorded, it would be better to choose a different technique.

We then transcribe the **recorded statements** and select the threads from this text that give us new information or a new perspective on the problem. Short citations may be used to illustrate our report, but generally without an

indication of their author (if an individual agrees we may of course print their name, but with such material this is not necessary).

**Do not confuse the focus group interview with a panel discussion or “round table.” The goal of a focus group interview is to identify the problems in the given field, but in no case to solve them on the spot. Multi-party negotiations or public discussions held by dissidents (in the presence of journalists) are no longer research techniques, but rather constitute action aimed at changing reality.**

### **6.5.3. The directed (partially structured) interview**

This is the most effective, best proven technique in monitoring. **Here the monitor works with a tool called an interview outline** (see Appendix 4), meaning a list of research issues and questions that has been adapted for use with specific kinds of interviewees. The monitor determines the order of the topics to be discussed and the way in which questions should be posed. The interview is directed along the lines of the outline. The framework is not rigidly fixed, but the subject should be covered exhaustively — we try to obtain responses to all of our questions.

*The partially structured interview allows us to obtain qualitative information* (a description of daily life at a restricted institution, statements by witnesses to a certain event, etc.). Its advantage lies in the fact that it allows us to verify information against other information from the same source (e.g. by repeating the same question formulated in different ways) and against information obtained from other sources (by asking successive people about the same facts). In this way we gain *comparable information* (interviews conducted according to the same outline should be of similar structure, although they may differ for example in terms of the order in which specific issues are brought up), while on the other hand the technique is sufficiently *flexible to give us new, unexpected information* that interests us from the research perspective.

Choosing interviewees is more complicated with this technique. **Here, we are looking for good sources of information — people who have important information and are interested in sharing it.** We have already mentioned the “exhaustive principle” and the “snowball principle.” We select our interviewees to ensure that we will exhaust the entire spectrum of issues that interest us, and strive to encompass all the theoretically possible cases by selecting individuals who have had both “exceptional” and “typical” experiences. *We also keep an eye out for potential “case studies” to be used when*

*working with the media and when engaging in further legal, social, or political action. (see section 6.2.3.).*

Aside from planned interviews, it is also worth taking advantage of **interviewees encountered by chance**, who frequently turn out to be very good sources.

During one study at a psychiatric hospital, a group of monitors took a break and sat down on a bench in the hospital's park. One patient sat down nearby and began to talk to them. She held a bag in her hand. Asked what was in it, she responded that she carried all of her belongings around with her because the hospital had no place where she could safely keep her things (which included a tape player, etc.) The monitors thus learned a great deal about life at the hospital during the conversation, which had not been planned at all.

During a study at another hospital, monitors saw a woman who had bruised and injured legs. She had not been selected for an interview according to the prepared categories, and did not live in the hall that had been chosen for such interviews. Nevertheless, the monitors struck up a conversation and asked her about the bruises. They learned that the women had hurt herself while bathing, as the hospital had not employed safety measures in the bathrooms. She turned out to be a good source of information, as she had been in the hospital for many years.

We must therefore be flexible. Monitors should keep the points of their interview outline in mind, and even try to find answers to their questions when they are having informal, incidental conversations.

At a certain children's home being monitored, one girl began to hover around the monitors. She carried a teddy bear with her. The monitors began by asking her about the toy, and then asked if she liked bedtime television cartoons, whether she watched them, and who she asked for permission. The girl turned out to have already lived in three such institutions, and proved to be very perceptive and intelligent.

At another children's home, monitors struck up a conversation by chance with a girl who was mentally impaired. She told them many things that other children kept quiet about. Of course, all the information had to be double checked, but she turned out to be telling the truth.



Fot: Rafał Mielnik / Agencja-Gazeta

State-run children's home in Tarnów Opolski, Poland

Sources can vary widely. Some of them come forward of their own volition and are eager to talk. Others may be “volunteered” by the directors of the institution, and therefore paint a rosy picture of the institution under investigation. Often, people who were named by others as being potentially interesting sources of information are afraid to talk to us. We should remember that a person who is not at all eager to talk to us at first might ultimately turn out to be just as good a source of information as someone who came forth on their own.

Generally speaking, **the more the person being questioned depends upon the authorities for something, the more he or she will be afraid to speak about things the authorities wish to conceal.** In states where the rule of law is not established, where people’s fates depend on the arbitrary decisions of public officials, this fear is even greater. This same principle applies within restricted institutions (prisons, children’s homes). A good example is provided by the health care system: if our life lies in the hands of a doctor, we will not be inclined to criticize how human rights are being observed at “our” hospital.

Here we encounter the problem of maintaining the **anonymity** of our sources. We can promise ordinary sources that they will remain anonymous. We have to know what risks our source is taking, and whether he or she needs to be protected or not. Sometimes in our report we may quote a statement by a police chief, citing his or her name. At other times, a person working within

a special unit may provide us important information and we will have to protect their identity out of concern for their security, as well as their ability to provide us with information again in the future. In the case of victims of or witnesses to serious human rights violations — potential “case studies” with which we want to work — we will require a *written statement with a signature* (see section 6.2.4.). We thus take on an obligation to protect such documents and not to use them in any way that may bring further harm to human rights violation victims (unless they themselves consciously desire to take on such a risk).

Monitors should present themselves as *neutral individuals*. They should be seen as neutral to the interviewee, namely, they should not be seen as coming from any organization associated with the institution being studied. One must also maintain the appropriate distance and a level of formality depending on who we are talking to and what about. One speaks differently to a prison warden, a judge from the Supreme Court, and a little girl from a children’s home. We must remember to maintain our authority (and the authority of the organization we represent), but also to win the confidence of our conversation partners.

Firstly, we spend several minutes considering **our tactics for conducting a conversation**. Below we present several methods for overcoming a person’s distrust or disinclination to provide information. However, there is no simple recipe for which tactics to use when conducting an interview. Everything depends on who we are interviewing, and on our own predisposition. Sometimes we develop our own techniques that are appropriate for our personality, are effective, and are consistent with the ethics of monitoring research. The key here is being sensitive to others.

With some sources it is better to have two persons from the monitoring team, while with others one-on-one talks work best. Some require things to be “kept organized,” meaning that they prefer to be asked successive questions from a list, while others are disturbed by paper. Some will not allow us to record their statements or to take notes, while others will try to make sure that we have noted everything down in detail.

Holding discussions in pairs is a most useful technique when interviewing representatives of the authorities. One of them will frequently play the “good” role, as the one who understands the problems faced by the director for example, while the other refutes such statements and poses unpleasant questions. The director then begins to explain, appealing to the “good” interviewee and providing a lot of information in their presence.

Sometimes the “*mutual exchange*” tactic can be useful, in which we switch from the interview to a freer conversation. We begin to tell the interviewee about our own problems in connection with the information we want to obtain. The interviewee thus feels that he or she should confide in us as well, and thus begins to talk about his or her own problems. At this moment the person sometimes asks us to turn off our Dictaphone or to stop taking notes, so that he or she can tell us “what things are really like.” It is a good idea to take up such an offer — even if we do not use this information in our report, it will give us a more vivid picture of the problem under study.

The “*broken record*” tactic proves useful with persons who do not want to answer our question, and thus overwhelm us with a flood of words about things that are not connected to the topic. In such situations, calmly and without aggression, we repeat the same question firmly until we hear a response. One can say, for example, “*I’m sorry, you have given me so much information that I have gotten lost. Let’s try it again from the beginning. You said that...*” In this way we can keep returning to the point of the conversation that interests us.

We should select the **place where we will conduct an interview** carefully. In the director’s office, the employees or the residents of the institution will feel like they are at some sort of interrogation. People feel most comfortable in their own home or room. Sometimes we need to look for a more neutral place — a park, a third-party apartment, or cafe. The location should not be associated with the official role played by the person we are speaking to, as he or she will then tell us more. In custodial institutions (pre-trial detention centers, prisons) as well as in rooms at a public office, people may fear that someone is eavesdropping (and sometimes justifiably so.)

The director of one children’s home proposed that a group of monitors talk with the children in the common room. He gathered all of the children together, sat them down in chairs, and said: “OK, now the children will talk to you.” He himself stood in the door and listened. The children were afraid, of course. One of the monitors asked a certain boy whether he would show her his room, his toys, etc. The monitor then led the child out of the common room in a very natural way, and she was then able to talk to him freely. This was then repeated with several children, as all the while the “official” conversation was still underway in the common room.

Members of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), who visit prisons in various countries, always speak to prisoners in their own cells. No more than two or three individuals enter the cell (a Committee member, an expert, and a translator if necessary). Interviewees are selected on the basis of documentation (new arrivals, prisoners of many years, etc.) Before they enter any cell, however, the prisoners are always asked whether they consent to having such a conversation. After obtaining consent, monitors present themselves and state what it is they would like to learn. They try to ensure that prisoners are able to “talk themselves out.” People want to talk about their own problems — even if this doesn’t fit in with our topic, they should be given such an opportunity.

**It is important to listen carefully. A free conversation apparently off the subject might often provide valuable information. This is professionally called “following the interviewee” — we allow him or her to set the topic, and use this as the point of departure for the conversation.**

The entire staff at a certain monitored psychiatric hospital wanted to talk to monitors and to complain about the poor state of the health care system. They were eagerly listened to, as many of the complaints they reported pertained to poor conditions at the institution itself, and thus touched directly upon the subject of the monitoring study. We can learn a great deal from such conversations, if we are able to separate information from emotions.

**How we pose questions** is important. The way in which a question is posed may prompt a certain response. Frequently, interviewees try to sense what kind of response is expected and try to give the “correct” answer. Monitors should therefore not reveal their own views to avoid posing leading questions. Phrases such as: “Some say this, but others the opposite, what do you think?” can be useful. The language we use should be neutral and, of course, comprehensible to the person we are talking to. We need to know the jargon of the given institution in order to understand what people are saying to us. We should keep the interview outline in mind, and pose questions that are appropriate to the situation.

**When we pose formal questions, we receive formal answers.** If we ask the director of a hospital whether patients have the right to have their own belongings, whether they are able to close a locker that no one else has access to, we will hear the reply that of course this is so. When we engage a nurse in conversation, however, by suggesting that she must have a lot of work due to the fact that patients keep various things in their lockers, she might immediately agree and complain that she has to inspect these lockers every day in order to throw out spoiled food. Patients should also be asked how frequently their lockers are cleaned and by whom. Finally, we should observe several lockers. If we follow the latter approach, we will learn something about how patients' right to privacy is really respected in the institution.

We frequently do not ask questions that directly ask about evidence of human rights violations, but rather about how frequently certain things occur or about certain details. If, for example, we want to investigate how children's right to privacy is respected at a certain children's home, we can ask the director whether the pedagogical council discusses the problems that children bring up in their letters home.

Persons being questioned (because they are afraid of their superiors, at the very least) often give us stereotypical responses that do not have much in common with the actual situation. Sometimes, after a certain period of time, it is a good idea to calmly, politely, but firmly say: *"I can read what you're saying in a newspaper. Please tell me how things really are."*

An interviewer must distinguish opinions from facts. When monitoring, **we always ask about facts:** when, where, who was present, etc. Opinions and emotions will be expressed in any case. The question: "And how did you feel then?" will not give us any concrete information.

**People's memory is not foolproof.** People will not remember everything that we ask about. "How many times over the course of a month have you been the victim of aggression from your co-prisoners?" - to respond to such a question one has to sift through one's memory and count such occasions, and this number will never be absolutely accurate. People remember exceptional occurrences, things that seemed to them to be important. But what is important from our perspective might be a chance conversation they had several years ago. We must bring about the proper context in order to stimulate their memory. People need more time to remember more concrete details. For this reason it is a good idea to go back to witnesses after a certain period of time has elapsed - in the meantime, they might have recalled facts that they did not remember earlier. Memory is a creative, constructive mechanism. People's past experiences become covered over by notions of "what



must have been,” and people present such reconstructed memories as facts, believing wholeheartedly that this was what really took place. Many people have difficulty in establishing the order of events in time — memory plays tricks, makes distant things seem more recent, makes things more dramatic, sharpens contrasts, etc.

Another issue is now to deal with **purposeful lying**. During an interview, there is no reason to demonstrate to an interviewee that he or she is lying and that we are aware of this. Frequently it is better to pretend that we believe everything and to ask verifying questions, returning to the same topic from different directions.

**When conducting interviews with state functionaries or civil servants, we must understand how the institution that employs them is organized and operates, the type of documentation it keeps, and the language (terminology) they frequently use. The more our interviewee is impressed by our professionalism and knowledge, the more seriously he or she will treat us and the more we will find out.**

From letters we receive and the conversations we hold with residents or members of the public, we learn certain details about concrete events, about specific issues, and about aspects of daily life in the institution (such as the daily menu at a prison, the state of the toilet in a police holding cell, the names of the films children from an children’s home were taken to see, etc.) *Mentioning such specifics in our conversations, casually and in passing, gives interviewees the impression that we know significantly more than we really do.* An interviewee might conclude that since we already know such details, it would be futile to conceal other things from us.

The people we talk to are frequently acting not disinterested. They give us information but expect something in return. While conducting monitoring studies we frequently come into contact with human suffering, stories that touch us deeply. The professionalism of monitors should also allow them to coldly assess whether it is possible to help in each case. *One cannot lament every single story. Our task is to bring assistance to people, but not by intervening in each case.* If we do encounter a serious crime, however, and we are acting in a state where the rule of law is established or is in the process of being established, we are obliged to notify the public prosecutor. We must therefore act wisely and **never promise that we will arrange something**. If we do not fulfil our promise, this person will lose confidence in us and our organization.

Sometimes there is an opportunity or outright necessity for immediate intervention, but this must be well thought out, so as not to cause greater harm to the victim in question.

Sometimes while monitoring we come across **evidence of crimes** that have been committed by state functionaries. If we are conducting our study with the consent of authorities that are of higher rank in the administrative hierarchy, we should inform the person who gave us this consent, in the conviction that he or she will take the proper action. The decision of whether to independently inform the public prosecutor depends on the circumstances. This also applies to the situation in which a crime has been committed by the very person who has given consent for the monitoring (in such cases, the Helsinki Foundation for Human Rights has generally notified this person's superior, without directing the case to the law enforcement agencies). The decision also depends on the type of crime — we react differently to small-scale theft than to the sexual abuse of children or to the use of torture. If a monitoring study is being conducted without the consent of the authorities, or in outright violation of a ban on such activity, we will present the evidence of crime in our report, and the decision of whether to inform the law enforcement agencies will depend on the political situation and the status of our organization. An underground organization will not appeal to the public prosecutor, but this might sometimes be done by the injured parties themselves, who thanks to our study have obtained concrete evidence that a crime has been committed against them, etc.

**Documentation is kept of a directed interview in the form of very detailed notes, or if the person agrees, a recording.** A recording is more reliable, but we should not insist if the person does not want us to record the conversation. This will only complicate the discussion and will make the person distrustful of us. During the course of such conversation we will thus try to write down as many details as possible. If the interview is conducted by two individuals, the person being questioned generally chooses one of them as a partner, and the other individual may then take notes. After the conversation is completed these notes should be supplemented by additional observations or remarks (concerning how the discussion proceeded, the person's behavior, etc.) which may be interesting from the perspective of the problem under investigation. Every record of an interview is marked in order to identify the person talked to.

Some people will not permit us to record them or to take notes. In such cases we should try to commit as much as possible to memory, and then record our own account immediately after the conversation has been completed. It is better to make a recording of ourselves than to write notes — this will save time and register more information. In general, we should not resign from holding

a conversation simply because our interviewee has not agreed to allow us to record it. We should never record anyone in secret - the fact that we did so might always come to light, compromising both us and the organization we represent.

**Processing data: we transcribe the recorded interview** (different from how we process a free conversation), **while at the same time performing the initial editing of the text.** We organize it according to topics and the interview outline. Particularly important fragments that we want to cite in our report should be transcribed in their exact wording. The material will then be further grouped, based on the type of person questioned or the nature of the institution monitored. We can also produce preliminary reports, such as of each institution or town investigated. These should include a list of responses to the individual research questions (which we compare later with information obtained from other sources).

Such material should be preliminarily processed by the person who conducted the interview. They may add remarks that were not noted down previously. It is a mistake to collect and process “raw” material at a central location — recordings may be of varying quality, notes illegible, and certain information might be interpreted incorrectly. The authors of the final report should receive material that has already been preliminarily processed, in the best case based on a prepared pattern.

#### **6.5.4. The structured (questionnaire-based) interview**

We conduct such interviews when we are already familiar enough with the issues so that we may formulate precise, detailed questions.

**The monitor’s tool in this case is a questionnaire** — a list of concrete questions that will to be posed to the interviewee in this exact wording, after which the monitor notes down his or her response.

#### **Using such a questionnaire guarantees that the data collected will be comparable to a high degree.**

We construct this tool on the basis of our previously formulated research questions, which we expand into detailed questions. *There will be no incidental questions on this questionnaire.* We start from a general question; then, keeping in mind what kind of information we are looking for, we write the specific questions on the questionnaire. We will give each of them long and hard consideration: What kind of information will we obtain in response to a question formulated in this or that particular way? And is such a question



Questions that are **partially open** give a list of responses, but also allow responses that are not on the list:

3. Children of what nationality attend your school?

(Please circle)

Polish

Ukrainian

German

Roma

other (please write response) .....

Each question (or series of questions with similar design) should be accompanied by instructions on how it should properly be answered (i.e. by circling an option, writing in a response, etc.). This makes it simpler to process data. In cases when there are many variant responses to a question, in order to simplify matters the respondent might be given a “supplementary sheet” enumerating the possible answers.

The method used to **process data** depends on the size of the research sample and the number and type of questions posed. With a small sample size and a short questionnaire, a calculator will suffice to process quantitative data. Qualitative data (responses to open-ended questions), on the other hand, will be processed in a similar way to how the material obtained from a partially structured interview is handled. With a large sample and a long questionnaire, when it is not sufficient to simply count the frequency of certain types of responses, we will need to perform a statistical analysis. When writing such a questionnaire we should obtain assistance from a sociologist or statistician, decide how we will process the data, and make adequate preparations.

### 6.5.5. Questionnaire-based surveys

If we are interested in collecting information concerning the scale (frequency) of human rights violations, we can make use of various questionnaire-based surveys. Just as in the case of questionnaire-based interviews, such surveys allow us to obtain easily comparable, primarily quantitative data. **This technique differs from a questionnaire-based interview, however, in that respondents answer the questions by themselves, in writing.**

By conducting such a survey, **we gather sets of data** that will then be subjected to statistical analysis. We apply this method when we want to *statistically measure the frequency with which a given phenomenon occurs*, and when we have a *statistical sample that is large enough* that using a computer will simplify our work rather than complicate it.

Questionnaire-based surveys are very costly, time-consuming, and require a certain amount of methodological knowledge. For this reason, they should be used only when no more economical method is appropriate. We should keep in mind that in human rights monitoring it is qualitative information and specific cases that are of primary importance. This method offers very limited opportunities for gaining such information.

**Here too, the tool used is a questionnaire** — a specific type of questionnaire adapted to be filled out by respondents themselves. The questions and instructions must therefore be very precise, and the questionnaire's graphical layout should make it easy to fill out and process.

One specific kind of questionnaire-based survey is the **postal survey**. We use this method when studying a large, closed group that we have access to, i.e. when we have the addresses of group members in our possession.

In a monitoring study concerning the working conditions present in Polish district courts, a postal survey was used to collect responses from judges. The survey questionnaire was sent to judges by monitors who chose this method due to this group's easy access. It was also assumed that the judges would be interested in filling out the questionnaire. The goal of the study was, after all, to improve their working conditions.

**When sending out a survey questionnaire, we assume that people will fill it out and send it back to us. As a general rule 20-25 percent of such surveys come back; this should be expected.**

Keep in mind that the group of addressees who did not respond may be likely to contain individuals who would be a particularly valuable source of information for us. It is highly likely, for example, that a postal survey about corruption will be most ignored by those who are themselves corrupt.

Instead of an introduction, such surveys usually open with an **official letter** in which we describe the aim of the study in detail and stress how important it is for the addressee to send back a reply. Such a letter might carry the

signature of a person who is a figure of authority for the given group, of someone that evokes sympathy among them, etc. Together with the survey we also send them a self-addressed stamped envelope (see Appendix 5).

**Processing the data** involves coding the responses on the survey form and entering them into a database (similarly to how a press analysis is handled, see section 6.4.6.). For this we will require professional supervision, the proper equipment, etc.

With large samples, particular difficulties may be encountered in processing responses to **open questions**, and for this reason it is best to avoid posing them. Preparing open-ended questions for statistical analysis involves “closing them off,” that is, establishing a closed classification of responses that we will subsequently code and analyze in the same way as we handle multiple-choice questions. To do so, we review 20-30 survey forms selected at random and make a list (in a simplified form) of recurrent or similar responses. We may always make use of the “other” category to classify atypical, single-occurrence responses. For each open-ended question, such a list of classified responses should be drawn up by two or three individuals independently of each other, and jointly they can then develop the final version of the classification. The result will be more precise and objective.

### 6.5.6. Several remarks concerning the statistical processing of data

The topic of **statistical analysis** is beyond the scope of this handbook<sup>15</sup>. However, it is a good idea to be mindful of the fundamental principles that may be useful when calculating such results on our own (whether by hand or by means of popular computer programs such as Excel), especially when the sample size is small — including from 60 to 100-120 cases.

It is worth stressing here, once again, that **unless we are operating with a professionally selected statistical sample, all of our conclusions should refer only to the specific cases we investigated**. If we study, for example, a sample of 500 pupils from 26 secondary schools in our country and have discovered that the pupils are subjected to corporal punishment at half of them, this does not automatically mean that this is the situation at half the schools in the country. Nevertheless, the discovery of 35 specific instances of beatings in the last month is already a serious argument to be wielded in discussions with the authorities, regardless of what the nationwide total of such incidents within the same period may be.

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<sup>15</sup> On the statistical processing of data in human rights monitoring see Spierer H.F., Spierer L., *Data Analysis for Monitoring Human Rights*, (New York: Columbia University, 1993); and Nowak S., *Metodologia badań społecznych (The Methodology of Social Research)*, (Warsaw: PWN, 1985.)

**What we can count:**

- a. Margins** — meaning the total number of each kind of response we receive to specific questions. For example, let's say we pose the following question to a sample of 90 people who have been involved in a court case within the last five years:

**Did you have the assistance of an attorney?**  
**a. yes**  
**b. no**  
**c. no response**

The calculated margins might look as follows:

a. yes	55 individuals	61 %
b. no	30 individuals	33 %
c. no response	5 individuals	6 %
total	90 individuals	100 %

- b.** We can also identify **simple correlations** — for example, if the 90 respondents included 50 women and 40 men, it is worth checking whether women had an attorney's assistance as frequently as men did. Then we count up the responses to this question separately for the group of women and for the group of men. The results we obtain in this way might be presented as follows:

	women		men		total	
	number	%	number	%	number	%
a. yes	25	50	30	75	55	61
b. no	20	40	10	25	33	33
c. no response	5	10	—	—	5	6
total	50	100	40	100	90	100



We may come to different conclusions on the basis of this information. We might conclude, for example, that the observed correlation results from the fact that within our survey group it was the man of the family who contacted an attorney in situations when legal assistance was needed, or from the fact that the men surveyed were more decisive in asserting their rights before the court than the women surveyed, etc. In order to choose the proper interpretation we would have to ask additional questions and look at all of the material we have collected. If we want to assert that such a correlation between variables occurs generally, our survey must be conducted using a representative sample.

In an analogous way, we can *calculate the correlation between whether an individual seeks an attorney's assistance and such variables as their age, education level, place of residence (village, town, city) or other demographic information.*

- c. We can also calculate the simple correlations between responses to various **substantive questions**. For example, if the following question was part of the same survey:

How satisfied were you with the first-instance court ruling you obtained?

- a. decidedly satisfied
- b. rather satisfied
- c. rather dissatisfied
- d. decidedly dissatisfied
- e. hard to say

We can thus check whether respondents who had the assistance of an attorney are more or less satisfied with the court ruling they obtained than those who did not have such assistance. The results of this sort of correlation can be presented in the following way:

	had assistance number %		did not have assistance number %		no response number %		total number %	
a. decidedly satisfied	5	9	1	3	1	20	7	8
b. rather satisfied	10	18	10	33	–	–	20	22
c. rather dissatisfied	20	36	5	17	2	40	27	30
d. decidedly dissatisfied	15	27	8	27	–	–	23	2
e. hard to say	5	9	6	20	2	40	13	14
total	55	100	30	100	5	100	90	100

Based on the above results we can state that within the group studied, those who took advantage of assistance from an attorney show a higher percentage of being dissatisfied (either decidedly or rather so) with their court ruling (a total of 63 percent) than those who did not take advantage of such assistance (a total of 44 percent). How might we interpret this sort of result? Some of the possibilities are as follows:

- ⇒ attorneys told those who were not satisfied by the first-instance court ruling about their opportunities and grounds for appealing the ruling, which automatically further lowered their level of satisfaction with it,
- ⇒ those who had legal assistance were more certain that they would win — and could therefore be more frequently disappointed,
- ⇒ those who had legal assistance are able to understand more of what goes on in the courtroom — their attorney might point out breaches of procedure, something that could lower their level of satisfaction with the work of the court as such, including with the ruling it ultimately hands down.

As is clear, there might be different causes for the structure of the results seen above. We can learn which of them were manifest in our study by asking further questions such as:

- ⇒ *Why are you dissatisfied with the court ruling?*
- ⇒ *Was your attorney satisfied with the ruling?* (here we can measure the correlation between the attorney's satisfaction and that of his or her client)
- ⇒ *or other questions.*

**We can also calculate correlations “hierarchically”** — such as by introducing yet a third element into the above tables, such as gender. More complicated sets of correlations, however, are best studied by means of a computer program and under the watchful eye of a sociologist or statistician.

*As a rule, the greater our sample size the more complex the correlations we can calculate.* If we take a relationship between two questions, each of which allows for from four to six possible responses, and impose yet another subdivision, the size of the resulting categories might be of low significance if our sample size is too small.

Section 6.2.1. discussed how **we should calculate percentages only when the sample size is greater than 30-40 cases.** If for objective reasons our study has investigated fewer instances, such as 15 (because, for example, this is the total number of judges in our town), then we will present our results in terms of figures, not percentages. We should use phrases like “half of the judges,” or “8 of 15,” or “almost all the judges” (meaning 14), or “almost none” (only 1). In this case writing “33 percent of judges” (read: five people) or “80 percent of judges” (meaning exactly 12) looks unprofessional.

**We must constantly remain aware of one thing. We are the authors of the study and report and we — not a hired sociologist or statistician — must decide which correlations are of interest to us. We have to know what we will be able to illustrate to ourselves and to our readers by citing them.**

If our study encompasses a small number of cases and/or we have not had the help of a professional in selecting our sample, we must be aware that **differences of several percentage points may only be the effect of the statistical error** in our measurements, and may not represent any real differences between groups of cases. If it turns out, therefore, that 14 percent of men and 16 percent of women would like to take advantage of an attorney’s services, this only shows that we have not identified any particular correlation between gender and the desire to have legal assistance. We would be able to speak of such a dependency, however, if the difference we found were much greater — such as 25 percent of men vs. 16 percent of women. **In such cases we present such percentages as whole numbers — without decimal places,** which are not only without significance but also make the data we present less legible. Decimal places should be rounded off just as in accounting practice (or mathematics): a fraction greater or equal to 0.5 is rounded up, and one less than 0.5 is rounded down.

Of course, these remarks do not apply to studies in which a statistician has selected a representative random sample for us. (He or she will then tell us what sort of statistical error is inherent in our study. With a well chosen sample, this error should not exceed +/- 3 percent.)

## 6.6. Techniques of obtaining information by means of observation or measurement

In virtually every monitoring study, certain research questions come up that cannot be satisfactorily answered through analyzing documents and asking questions. There are things and phenomena that simply have to be seen in person. We usually combine observation, experiments, or physical measurement with other techniques in order to obtain a more vivid picture of the overall situation. We compare what the standards say and what people tell us to what we see with our own eyes (see section 6.2.5.)

The various types of observation may be classified with respect to two criteria. The first of these is **how often the phenomenon occurs**.

**Observing incidental events:** This encompasses situations and events that *we have not anticipated and we cannot say how frequently they might recur*



Fot. Robert Kowalewski / Agencja-Gazeta

The Polish border police detain illegal immigrants. Wrocław, September 1998



Foto: Robert Kowalewski / Agencja-Gazeta

The Polish border police detain illegal immigrants at the Polish–German border, September 1998

(such as the actions taken by the authorities during a natural disaster). *In such situations we cannot construct tools or even set forth the basic principles for our observation.* Instead, we have to use our own intuition and knowledge of human rights. We can observe every extraordinary situation in this way and draw conclusions from it. Because the situation is exceptional, we do not have to compare data, etc. Our report might be of a one-time nature or may be attached to a more extensive report about respect for human rights in our country.

**Observing recurrent events:** It is easier for us to anticipate the course such events will take, and they are also frequently regulated by detailed standards. This group includes events that recur periodically (such as elections) or intermittently (such as police behavior while making arrests). We can prepare for such observations and construct research tools on the basis of existing standards and our research questions. Such observations can also be repeated, and the results obtained during different periods of time can be compared (e.g. looking at how the police respected detainees' right to be informed two years ago vs. today).

We can also **observe permanent phenomena or sites** (such as the technical conditions present in court buildings). Here we have the ability to prepare carefully and to repeat our observations more than once.

The second criterion used to classify observation is the **location of the observer**. We distinguish **participatory observation** (in which the observer, without the knowledge of the other participants, takes on a specific role as part of the situation under observation) from **external observation** (in which the observer does not take part in the situation, but only observes it, either overtly or from a concealed place).

**When using the technique of observation, the observer uses a tool to gather information called an observation card — a list of questions he or she is seeking answers to.** This serves to systematize observations, and ensures that the data collected by various observers will be comparable. As usual, the more we know about a given topic, the better we will be able to construct such a tool (see Appendix 6).

### 6.6.1. Participatory observation

Sometimes an observer has to take part in the situation he or she wants to observe. If, for example, an observer wants to check how the police behaves during or after football matches, he or she will learn a great deal by mixing in with the crowd of fans. This of course requires proper preparation for the role. Such an observer cannot be easily recognized. We will not send an elegant



Fot: Robert Kowalewski / Agencja-Gazeta

Police station in Moscow. Detained prostitutes, November 1997

older woman to observe a football match, but rather properly dressed young people. **Conducting observations from inside a crowd requires that there be a group of observers** - a single individual can only see his or her surroundings, and on the basis of one person's account we cannot reconstruct the overall course of events. This is made possible only by collecting the reports of observers that are dispersed throughout the crowd. When analyzing such accounts, it is extremely important to have an exact awareness of time, which will show us how events progressed. In Poland in the mid-1980s, after a certain demonstration by Solidarity in Warsaw, on the basis of reports about how columns of police had closed off successive streets and about the directions from which attacks against protestors came, it was proven that the intention of the police had been to move the crowd towards the Soviet consulate. (And, once it was there, the building was showered with stones thrown by provocateurs mixed in with the crowd.)

We can speak of participatory observation when **the observer participates in an event that takes place independent of the observer's will**, e.g. when he or she:

- a. mingles with protesters, football fans, or a rock concert audience in order to observe the behavior of police units and agents interspersed among the crowd,
- b. votes or participates in elections as a member of an election committee, and reports on what he or she saw,
- c. happens to live in a place affected by a natural disaster or war, documents his or her own experience, and observes the behavior of the authorities (such observation differs from the accounts of ordinary witnesses in that an observer consciously documents the course of events, writing down specific times, names, and particular actions taken by representatives of the authorities, etc.)

### 6.6.2. Experiments

The kind of observation when **the observer causes a situation in which he or she then participates** is frequently called an *experiment*. For example, the observer may:

- a. demand something from representatives of the authorities that people are entitled to, but that people are not accustomed to demanding,
- b. demand that representatives of the authorities desist from behavior or actions that are prohibited by law, but which they nevertheless commonly engage in,

- c. do things that are neither prohibited nor morally condemnable, but which are new to the authorities,
- d. refrain from behavior or actions that are not required by law, but which the authorities usually demand from citizens,
- e. violate or pretend to violate provisions of law, in order to observe how state functionaries or civil servants react to such an event.

Examples of such experiments:

- ⇒ attempting to arrange something untypical at public offices and institutions (bodies of state and local government administration on all levels, police stations, hospitals, medical clinics, homes for the elderly and disabled, employment offices, customs offices, banks, schools, safety inspector's offices, etc.),
- ⇒ attempts by untypical individuals to arrange something at public offices (someone who is homeless, a foreigner, a refugee, etc.),
- ⇒ attempting to resolutely assert one's rights and privileges (such as the right to be informed about the activities of state institutions, about the hierarchy and names of public officials, about how certain affairs are arranged, about public functionaries' salaries, etc.),
- ⇒ refusing to provide information to superfluous public officials and state functionaries, responding insubordinately to unlawful orders and demands that the authorities commonly issue in certain situations,
- ⇒ testing the reaction of state functionaries to suitable, but not excessively courteous or servile behavior on the part of citizens (treating an official or functionary as an individual who serves the public and is a member of society, and not as an all-powerful authority),
- ⇒ testing the reaction of the authorities to various actions that are untypical, but not prohibited by law, such as to picketing, posting slogans, etc.,
- ⇒ attempting to talk to the authorities in the language of a national minority,
- ⇒ testing how employees at a restaurant known for turning away minorities react when a person of Roma descent appears there,
- ⇒ testing how security staff or ticket collectors react when a passenger asserts that he has no ticket or money,
- ⇒ pretending to have alcohol poisoning, in order to be sent to a sobering-up station,



⇒ testing how the police react when a person does not have any documents.

**In principle, experiments should not violate the law, but if we feel that it is indeed necessary to do so we should submit to the punishment for such an act provided for by law.**

Many such experiments provide attractive material for the media - in this way we can raise citizens' sense of dignity in their relations with the state. Showing the absurd behavior of the authorities (resulting from poor legal regulations or from their improper application), to which the majority of the public has grown accustomed, has an educative effect on both the public and the authorities. By publicizing such situations we can bring about a change in the provisions of law, or more frequently to a change in how provisions are applied.

**“Cultivating our own case studies”**, something discussed in [section 6.2.3.](#), **also constitutes an experiment.** When preparing court letters and conducting correspondence with the authorities about a certain case, we are in a certain sense creating a situation in order to reveal the authorities' “mode of behavior” in specific situations.



Fot: Marek Krzakala / Agencja-Gazeta

Police intervention during a soccer game in Katowice, June 2000

Participatory observation demands great **objectivity on the part of the observer**, as it is easy to get “drawn in” and to allow our emotions to distort our picture of the situation. An observer who has been beaten by the police, for example, must find it difficult after the match to objectively assess the level of police brutality, etc.

### 6.6.3. External observation

An observer who acts overtly, on the other hand, whether officially or not, does not participate in the observed situation. One can forewarn judges that a case will be observed, but one can also simply take a place among the public without saying a word. This depends on the monitoring concept and the tasks we have set ourselves. A refusal to allow observation, after all, itself constitutes important information.

During parliamentary elections in Slovakia, observers acted without any official accreditation, basing themselves only on their legal right to be present at polling stations. When the members of certain electoral committees refused to allow such presence, this provided a good illustration of what the authorities' intentions really were.

This technique is useful for observing such events as:

- ⇒ elections,
- ⇒ court trials,
- ⇒ pickets or other events that take place in public places,
- ⇒ protests and the actions of police crowd-control units,
- ⇒ hospital admission desks,
- ⇒ the document registration office at a court or other public office,
- ⇒ measuring voter frequency (by observing polling stations from outside).

Individuals who participate in such studies may expose themselves to danger. There is also a threat that the materials and documents they gather may be taken away from them. We must give careful thought to the issue of security, and make sure that members of the team are able to communicate with each other, etc. We should also prepare a strategy for how to cope with unusual situations, a system for collecting photographs, video cassettes, and notes from observers, etc.

#### 6.6.4. Physical measurements

While monitoring we sometimes have to conduct simple measurements or collect samples for analysis. When studying residential institutions (prisons, hospitals, etc.), for example, we will measure the square and cubic area of the rooms, their temperature and lighting conditions. It is more difficult to identify objectively how effective the ventilation is, or to measure, with a simple radiometer, the intensity of radiation present (as some forms of concrete are radioactive). When monitoring an institution one can collect samples of water and food, weigh food portions, etc. We may also count faucets, sinks, and toilets, in order to check the ratio of the number of individuals per each such facility.

At one prison studied by the Helsinki Foundation for Human Rights, there was one toilet per 60 women who left in the mornings to go to work. The prisoners stood in line for more than two hours before they were led away to their workplace.

The number of people present at a protest can be estimated by assessing the area occupied by the crowd, and then counting the number of people within a section of this area (calculating the density). If we require more accurate data, we need to consider variations in density in different places, and will therefore perform several such spot calculations.

#### 6.7. Reconstructing the course of events, and applying unusual techniques

Often we have no other opportunity, and we must attempt to reconstruct the course of events on the basis of witnesses' statements, clues left at the scene of the event, and the documentation of various institutions that may have been involved in the situation itself or in dealing with its consequences (such as ambulances and hospitals after a street protest is broken up). We are then conducting an investigation, and we will therefore make use of investigative techniques. On this basis we may study cases of beatings or abductions by "unknown perpetrators," gather evidence that an individual convicted of a crime is in fact innocent, etc. However, describing such techniques of criminal investigation and inquiry is beyond the scope of this book.

## 6.8. Documentation and data security

In human rights monitoring we attach great significance to documentation and gathering data. Documentation of human rights violations is valuable material, and we must expect that certain individuals may be interested in destroying it. This is especially true in countries where the rule of law is not established, where there is a danger that such materials might, if they should end up in unwanted hands, bring serious harm to the monitors and/or their sources of information. But we know from experience that even in mature democracies documents that may be inconvenient to the authorities should be kept protected (for example, Greenpeace reports concerning French nuclear weapons tests, or the reports of the British press concerning violations of the law by intelligence forces and the special services).

In democratic states, too, even if we are acting with the consent of the authorities, materials should be properly secured and access to them granted wisely. Materials should be kept for a certain period of time, even after the data has been processed and a report published based on them. It may always occur that we will need evidence or want to check something. The methods of documentation and archiving used depend on the type of information concerned and the medium upon which it is recorded.

**When gathering and archiving materials, we have to abide by the following overall principle: monitors must be able to identify data. The leaders of the team should develop a system for marking materials that will allow for any specific document, recording, photograph, or file to be found even a long time after a given monitoring study was finished.**

### 6.8.1. Written materials

- a. **Copies of documents** (e.g. the internal documents of the institutions monitored, contracts, forms, written instructions from the authorities, etc.)

We try to obtain a copy of each and every document that contains information of various sorts about how human rights are respected in the field that interests us. Some documents can be obtained “officially,” while others are more difficult to access, especially those that contain information that is

compromising for an institution or its directors. If we are unable to obtain originals or make photocopies, documents should be photographed or simply copied by hand.

#### **b. Correspondence between members of the public and the authorities**

Even if the original letters and documents pertaining to a specific issue are in our possession, it is a good idea to make copies of them and to keep them at a different location. Regardless of the political situation, valuable documents might always be damaged or disappear.

#### **c. Statements** (from victims of human rights violations, witnesses, experts, etc.)

Some of the information we gather may come with various restrictions as to how it may be used. We have mentioned many times that in the course of monitoring we strive to collect documented information, and such information therefore often includes the personal data of our sources. Disclosing information given in confidence could compromise the reputation of our organization and of the individuals who gathered it. We are certainly morally accountable for the fate of those individuals to whom such disclosure brings harm.

#### **d. Research tools that have been filled out**

First we prepare them to be processed (by hand or by computer), marking each document with a proper coded number which will allow us to easily identify specific tools. Such a code may include:

- an abbreviation of the type of tool (if we use several types, e.g. one abbreviation for questionnaires for judges, another for questionnaires for court case participants, another for court observation record cards, etc.)
- the number of this version of the given type of document,
- an abbreviated name of the institution monitored,
- an abbreviation of the town or region in which the study was conducted,
- other information that needs to be identified.

Research tools are usually kept for several years, in case it should prove necessary to authenticate the data included in a monitoring report.

### **6.8.2. Audio and video recordings, photographs**

Audio and video cassettes and photographic negatives should be kept in a place where they will not be damaged. Just like our research tools, we keep recordings of interviews long after the information on them has been proc-

essed. We should develop a marking system for such material. If we have many recordings and it is important to us to be able to locate specific items quickly, we may decide to catalog them in a computer database.

### 6.8.3. Information in electronic form

Modern technology gives us the possibility of storing various types of information (written, graphic image, audio, video) in electronic form.

The advantages of such a system for archiving and processing material are obvious. Remember, however — because it is common to forget — **that all materials** (even working versions) **must have at least one back-up copy**. All types of cassettes should be safely stored and have access to the information on them restricted.

### 6.8.4. Material evidence

All evidence that is intended to document evidence of human rights violations should be accompanied with the proper documentation and statements made by those individuals who supplied it (a **submitter's statement**).

Such a document should include the following information:

- *when* the material was collected or found,
- *where* it was collected or found,
- *who* collected or found it,
- *the signature* of the person who submitted the evidence.

Material evidence should be properly protected from destruction, damage, or loss of its essential characteristics (such as its color or shade of color, shape, etc.) In this way we also defend ourselves against accusations of having fabricated evidence.

## 7. The logistics of monitoring

The success of every project is in large part the product of its effective organization, a good plan of action, and a budget that is judiciously planned and adhered to. This holds true for monitoring as well: organizational work constitutes an equally important element in preparing and implementing a monitoring study.

The term **logistics** is here taken to denote the organizational work done so as to optimally coordinate various efforts that aim to achieve a specific goal within a specific period of time. When we speak of the logistics of monitoring, we are referring to the solution of issues involving the time, staff, and resources necessary to implement a planned monitoring project.

We must keep such issues in mind when we are planning a monitoring study, developing the monitoring concept, selecting techniques, and developing research tools. We have to consider and come to terms with the amount of resources and staff we truly have at our disposal, with how much time it will take to implement the study we are planning, etc. While developing the monitoring concept, we should pose ourselves the following questions:

- ⇒ who will perform certain tasks,
- ⇒ how much time they will take,
- ⇒ how much they will cost (what costs the organization will bear, how much can be accomplished through volunteer contributions, what has to be paid for, and where this money will come from).

### 7.1. The plan of action

Our ability to implement a monitoring project efficiently in large part depends on whether we have a good **plan of action** — **which should list the specific actions to be taken, identify the people responsible for carrying them out, and set out a project schedule.**

A good plan will enable us to avoid chaos. It will give us an organizational framework to work within, thereby increasing our chances of success. And everyone who takes on the organization of a monitoring study should have experience working with groups.

**The entire plan of action should be watched over by a single individual responsible for the efficient conduct of the monitoring study: the project coordinator.**

Developing a plan of action (see [Appendix 8](#)) requires great dependability, perfectionism, outright meticulousness, and at the same time imagination (as we have to take account of many problems, even of seemingly trivial significance, on which the fate of our entire project may actually depend). This is a rare combination of characteristics. For this reason the person responsible for organizational issues does not have to be the same person who is in charge of the monitoring study's "substance." Sometimes it is a good idea to divide up these roles — but this of course demands close cooperation between the organizational coordinator and the person responsible for the substantive aspects of the study.

There are two important elements that are frequently neglected, but that should be made clear right from the very beginning: the exact extent of responsibility borne by specific individuals, and the ways in which information should be passed between members of the team or sub-units — including such technical questions as how to hold meetings, telephone or radio communications, etc.

The questions of how efforts are to be coordinated and how decisions are to be made are particularly important for monitoring studies of a short duration that require efficient coordination (such as the monitoring of elections), or for studies that involve danger. In such cases a communications system should be set up, a scenario should be prepared for how to react to unusual situations, and individuals should be identified as being responsible for the safety of other group members, responsible for storing documentation, etc. If there is a danger that team members may be arrested, we should appoint someone who will talk to the police in such an event. All of this constitutes part of logistics.

When planning a monitoring study, we should consider **when we will conduct the study and how long it will last**. We should take into consideration the *political calendar* and the *calendar of other events in the country* (e.g. school vacations, national holidays, religious holidays — including the holidays of ethnic minorities, etc.). We must also consider *current events* in the country or region that might affect the logistics of the study or its results (such as blockades that complicate transportation, or other public protests).



One team that was monitoring children's homes began studying a certain institution just at the time when the media was publicizing a strike held by the staff and children at another nearby institution, which had been slated for closure. Both the children and the staff at the children's home being visited linked the visit by HFHR representatives to the battle to keep the other children's home open. The information they provided was "adapted" to this situation, thus clearly impairing the picture gained of the institution under study. In such situations it is better to wait a certain period of time, or to completely cancel plans to study institutions in the vicinity.

## 7.2. Project budget

The worth of every project is codependent on the resources necessary to carry it out it. We should thus strive to plan a project that will allow us to **achieve the best results at the least expense and effort**. Potential sponsors whom we ask for money to support the monitoring project will compare the money we are requesting with the potential results of our work.

When planning our budget we should remember the following points:

- ⇒ a monitoring project should not constitute a method for solving the financial problems of the organization or team. Rather, **we assess only the real costs** the project entails
- ⇒ **the organization and implementing team's own contribution to the project** (e.g. the work of its volunteers, its own equipment, and its ability to cover some of the costs – workspace, telephone conversations, etc. – using money obtained from other sponsors) represents an important element of the budget, and demonstrates that the implementation of this project is truly important to us
- ⇒ people who do professional, responsible work on the project (its coordinator, the authors of research tools, the authors of the report, etc.) should receive payment for their work, and their **rates should be in keeping with standard fees for this type of work in our country**.
- ⇒ the project budget should be subjected to a **critical assessment**. We should modify those elements that are too costly in light of the intended goal.

The budget of a monitoring project usually includes the following categories (this list is not exhaustive, as it depends on the specific research task):

**a. Personnel**

- Project coordinator
- Authors of research tools
- Support staff (secretarial work, etc.)
- Project implementers – the individuals who conduct the study
- Report authors
- Translator
- Accounting support

We should consider the various forms of employment – **regular employment vs. various kinds of contractual work** – and how they affect our tax liability. As we have already mentioned, the work of some of the personnel may constitute the organization's own contribution to the project, but even so the amount of this work must also be assessed.

**b. Administrative costs**

- Renting space in which to train those who will implement the study (if we use space provided by our own organization, these costs may constitute part of its own contribution)
- Telecommunications
- Correspondence (including the costs of distributing the report)
- Photocopying
- Translation services
- Insurance (for trips taken)
- Office supplies

**c. Materials directly used in research**

- Photocopies of research tools (this is generally a large expense, thus requiring particularly accurate calculation)
- Rental of dictaphones, photographic equipment, video cameras, cellular phones, and/or specialized equipment
- Supplies such as batteries, cassettes, film, etc.

**d. Travel**

- Transportation costs (tickets or automobile expenses)
- Hotel costs
- Per diem payments

**e. Other costs**

- Printing of final report
- News conference
- Representative costs — final meeting with entire team participating in study

Let us incessantly repeat: **an organization acting in the public interest should not be afraid of taking advantage of volunteer contributions, in the widely interpreted sense.** Just the contrary — the more people invest their own time, money, knowledge, and equipment into a project, the greater its chances of success. Effective public action requires personal dedication and enthusiasm — and cannot be done simply “as a job.”

When parliamentary elections in Slovakia were being monitored (in September 1998), some Slovak citizens allowed their cars and cellular phones to be used by international observation teams free of charge. Drivers and local team advisors (individuals with higher education and knowledge of languages) worked as volunteers for several days. The international observers, likewise, received no pay for their work. This lowered the costs of the monitoring and at the same time significantly contributed towards strengthening the local communities, giving people a sense that they had done something for democracy in their own country.

**7.3. Pilot studies**

**A pilot study is a study carried out on a small sample in order to test and verify the monitoring concept, techniques, monitoring tools, and data processing methods we have chosen.**

Pilot studies serve to test whether our monitoring concept and our plan of action prove themselves in practice — whether the problem really can be studied in the way we intend to do so.

### 7.3.1. The functions of a pilot study

A pilot study:

- ⇒ gives us better reconnaissance about the problem, and checks whether our questions really address the research issues we want to address;
- ⇒ verifies the techniques used to obtain information;
- ⇒ shows how our tools work in practice and what their shortcomings are, thereby helping us to modify and improve them — including their graphical layout, an important aspect for data processing (see Appendix 4);
- ⇒ confirms that our informants understand the language we use;
- ⇒ demonstrates the specific community's reactions to such a study;
- ⇒ uncovers unexpected difficulties we may encounter during the course of the study;
- ⇒ allows monitors to be tested in their roles;
- ⇒ tests our ability to process the data collected;
- ⇒ teaches us how to develop partial reports and verifies the format established for such reports;
- ⇒ makes it easier to divide up responsibilities within the group;
- ⇒ verifies the amount of time needed to conduct individual studies, and therefore verifies the overall project schedule, budget, resources, etc.

One pilot study of children's homes demonstrated that too little time had been allotted for conducting interviews with children (as it did not suffice to win the child's trust, make contact with them, and obtain reliable information). As a result of this test of the planned time constraints, fundamental changes were made to the plan of action for the monitoring study proper.

The same pilot study also showed that the prepared research tools were appropriate for use with older children, but were too long and difficult for younger ones. It was then necessary to decide whether to narrow down the group of interviewees or to modify the tools and adapt them for use with various age groups. The latter was chosen, and the monitoring team received additional training.

**A pilot study can thus be a source of much important information.  
We should always conduct one whenever possible.**

The research tools developed to monitor working conditions in district courts included a question about how well the start times set for hearings were observed in practice. The pilot study showed, however, that studying this issue necessitated spending practically an entire additional day at a given court, and thus entailed additional costs. Furthermore, this research question was not essential to the overall goal of the monitoring study. The team thus decided not to research this particular issue, thereby lowering the costs of the study proper and saving time.

Another pilot study once revealed an unexpected problem that resulted from the extent to which district court heads were dependent upon their superior, the head of the provincial court. Because district court heads were afraid to give consent for a study to be conducted at their court, the monitoring organizers were forced to equip the research teams with a special letter that had been addressed to the provincial court head. This solved the problem, and enabled the study to be conducted on the scale planned.

A pilot study is particularly important when we conduct our first monitoring study of a given type. If we intend to study many similar or identical institutions, but do not want to conduct a special pilot study, the first visits we make will play the role of a pilot study.

One monitoring study of psychiatric hospitals and homes for the elderly and disabled did not include a specific pilot study, and as a result the visit to the first institution played the role of a pilot study. Afterwards the teams quickly modified their tools and decided upon tactics to use at further institutions.

Unfortunately, with some types of monitoring *we cannot benefit from the opportunities offered by a pilot study*, such as when we are monitoring protests, elections, or such chance occurrences as natural disasters. In such situations we must rely on our own knowledge, experience, and intuition. The first such studies conducted will serve as pilot studies for later ones.

As we mentioned above, a pilot study also helps to develop a finalized version of the *project budget*, by putting our initial assumptions to the test. It allows us, for example, to estimate how much work those who implement the study will actually have to perform. We can then make a proper assessment of the project's true costs, regardless of whether they constitute part of our organization's own contribution or part of the monitoring budget itself.

**Although it is not always possible, we should try to submit our budget to our sponsor only after having conducted a pilot study. This gives us greater comfort and a sense of financial security.**

### **7.3.2. Who should carry out a pilot study**

There are two approaches to this issue. The first holds that pilot studies should be conducted by individuals who were not involved in the preceding conceptual work. This allows them to make an objective assessment of the techniques and tools without any personal attachment or emotions getting in their way. On the other hand, some say that it is the authors of the research tools themselves who best know what the aim of posing each specific question was, and the experience of carrying out a pilot study allows them to put these questions to the test.

**It is therefore clear that pilot studies should optimally be conducted by two groups: one consisting of the authors of the research tools, and a second consisting of people who have a fresh perspective on the problem.**

This solution allows for the chosen techniques and research tools to be objectively assessed and modified.

As part of the pilot study we should also **check how well the planned method for processing data works in practice**. Sometimes even a small change in research tools can be enough to prevent serious difficulties in processing large amounts of data. The people who are going to process the data and write the report should therefore have an influence on the final shape taken by the research tools.

The people involved in the pilot study should be present at training sessions for those who will conduct the study proper. The former can share their observations and practical advice with the latter.

#### 7.4. Tactical approach

Pilot studies also verify the tactics we plan to apply during the study. **Our tactical approach is a formula that describes the actions to be taken when carrying out the study**. It identifies the order of the individual steps to be taken, how work will be divided up, and certain formal actions that should be performed before or during the course of monitoring (such as notifying the authorities that we intend to conduct a study). If all of the monitoring teams



Fot. Przemysław Graf / Agencja-Gazeta

Pre-trial detention in Szamotuły, Poland. September 1999

share a common tactical approach, this ensures that the study will be carried out efficiently and that the data collected will be comparable.

Many organizations and institutions that conduct routine visits, inspections, or monitoring studies make use of tried-and-proven tactical approaches they have developed over the years. Of course this depends on the character of the organization, the type of monitoring, whether the authorities consent to such studies, etc.

When visiting prisons in various countries, the CPT first sets the date of its visit. The team meets with representatives of the government, the ombudsman, and representatives of non-governmental organizations. Upon entering an institution, team members also talk to the prison's warden and staff, and analyze its documentation. Then they make their rounds – visiting cells and inspecting how they are equipped. They check the lighting and ventilation in the cells, the sanitary conditions present, and the alarm system enabling prisoners to call for help. They take measurements of the kitchen, dining hall, common room, exercise area, workshops, walk area, visiting rooms, temporary cells, etc. One part of the team checks the living conditions while another conducts interviews with prisoners. Every day the team meets as a whole and exchanges information.

The employees of the Commissioner for Citizens' Rights Office in Poland choose prisons at random and notify their wardens 24 hours before their arrival. They start their visit by talking with the warden, and with those individuals the warden refers them to. Then they visit various rooms (a dozen or so cells chosen at random, and always the solitary confinement cells, infirmary, common room, chapel, etc.) They choose interviewees at random from an index of prisoners' names. They also post information informing prisoners about what kinds of things they may report to the visiting team.

When carrying out one monitoring study of psychiatric hospitals, HFHR decided to apply geographical criteria. Each team worked within a specific region of Poland, and every team consisted of a doctor, lawyer, and psychologist. The teams chose three institutions (a large hospital with 800-1000 beds, a small hospital with 300-400 beds, and a psychiatric ward at a general hospital with approx. 100 beds). Before each institution was visited its director was notified. First the entire team met with the director, and then they divided up roles. The lawyer analyzed the institution's documentation, the doctor spoke with the staff, and the psychologist with the patients (5-10 talks on every ward).



Representatives of the OSCE/ODIHR, when monitoring court cases in various countries, usually arrive on location at least two days before the case begins. They previously become familiar with the constitution of the given country and other relevant legal regulations, and gather all available information about the case. They bring photographic equipment, a dictaphone, writing utensils, a small photocopier, paper, etc. They have to arrange an opportunity to talk to the defendant and to be present in the courtroom (if the trial is not public). They record the name and identity of participants in the case (the defendants, prosecutors, attorneys, and judges). During the trial itself they are particularly interested in procedural matters. After the trial is completed they conduct interviews with all of its participants, including the judges.

When monitoring parliamentary elections in Slovakia, each of the International Helsinki Federation teams operated within a specific administrative territory. They were accompanied by an advisor — a member of a local non-governmental organization. The teams began monitoring each polling station by introducing themselves to the members of the electoral commission and requesting their consent to the team's observation. They spent several minutes talking with members of the commission, observed the location and the process of voting, and remained inside the room for several minutes. Then, once outside, they talked with voters who had already cast their vote. Talks were also held with residents, local government representatives, members of higher-order electoral commissions, etc.

Some elements of the tactical approach should be set forth before monitoring is begun, and will be binding for all team members (the rule that we begin visiting an institution by talking to the director, the method that we will use for selecting interviewees, etc.) Aside from such guidelines every team will develop its own specific tactics on the basis of its initial experiences. The coordinator, however, must make sure that such “innovations” do not distort the results of the study. It is therefore a good idea to organize meetings between groups and for groups to stay in systematic contact with the coordinator.



Fot: Anna Biata / Agencja-Gazeta

Prison in Katowice

#### 7.4.1. Obtaining the authorities' consent for monitoring

An important element of our tactical approach (especially when we are monitoring institutions) is how we will gain **access to institutions**. If we are working in a state where the rule of law is strong or becoming stronger, we should strive to obtain the authorities' consent for the monitoring study — by appealing to the institutions' superior body (ministry, prison administration, regional governor, etc.) in a letter that explains the goal of the study and requests this superior body's consent to it.

Such a letter should provide information about our organization, about who makes up its governing bodies, and potentially about its membership in international or domestic human rights organizations. If we have already monitored some state institutions it is a good idea to mention this fact. This might reduce the addressees' sense of being threatened. The letter must convince them that the goal of such a monitoring study is to bring about an improvement in the situation, and not to attack specific politicians or institutions. It should also speak of the potential benefits that the study might bring. For example, it may lend weight to arguments that the superior body's budget should be increased. Or, it may provide the superior body with reliable information about its subordinate institutions, information about things that the superiors do not find out about for one reason or another (for example, due to the administrative position of inspection bodies within the institution, because of the inspectors' personal interest in presenting a positive picture of the institution, or because internal inspection procedures have become routine, etc.) (see [Appendix 9](#)).

One HFHR report on monitoring prisons in Poland drew attention to the absurdity of a provision held over from the 19th century, requiring prisoners to place their clothing and shoes out into the corridor at night, wrapped up into a cube. This provision, which was maintained only because it had failed to surprise any of the "accustomed" ministerial inspectors, was quickly repealed.

It is a good idea to **reassure the authorities that they will be the first to receive our report**, that they will not find out from the newspapers about something negative we have uncovered, and that they will have time to remedy such problems before we make our report public. In certain, rather rare situations, especially when the authorities themselves request that a non-governmental organization monitor a certain institution or phenomenon, we may agree not to publicize the report at all, but submit it only to this superior institution. We should decide to do so only when we are deeply convinced that this institution truly desires to make fundamental changes and is looking for a source of objective knowledge, and is not only seeking a method of propaganda to demonstrate that it is open to cooperation with non-governmental organizations and has nothing to hide.

**The authorities we ask for consent should know that our goal is to improve the situation, that we intend to carry out actions to improve this situation (although not necessarily in cooperation with them), that we are not looking to generate sensational publicity, and that we do not want to cause a scandal.**

If despite everything **we are not successful in obtaining consent to conduct our study, this does not mean that we cannot conduct it.** But in this case it will certainly be more difficult and require more work. Many sites (courts, polling stations, etc.) can be visited and observed without anyone's consent. And we can always talk to people released from prison or psychiatric hospitals, members of their families, individual staff members, etc.

The International Helsinki Federation, as an independent international organization, requested official accreditation to observe elections in Slovakia (as did other domestic and foreign organizations). The government authorities issued such accreditation only to the OSCE. Because independent observation of the elections was necessitated by the political situation, the IHF decided to conduct their observations without the authorities' consent. Polling stations were observed in accordance with domestic law, which does not prohibit third parties from being present at polling stations unless they disturb the voting process. For this reason two opposition political parties organized independent and parallel vote-counting systems, and these were also subjected to international observation. This created a double system for checking the official vote counts, pursuant to the law and without hampering the voting process.

The situation becomes even more complicated if the kind of study we wish to conduct is prohibited and puts us at risk of repression from the authorities. There are a range of techniques used to conduct a monitoring in such situations, but this is a topic that exceeds the scope of this book.

#### **7.4.2. The problem of announcing visits to monitored institutions**

Another issue is **whether we should forewarn the directors of a specific institution about an upcoming visit** (if we are acting with their superiors' consent), or whether we should act by surprise. Both approaches have their advantages. In the latter case we may be successful in observing what daily life at the institution is truly like. It frequently occurs, however, that the direc-

tor or other employees we want to talk to are simply not there. But if we give advance notification of our visit, we have to expect that the directors of the institution will make preparations and attempt to quickly eliminate certain irregularities so as to show their institution in the best possible light. But we will not always have to guard against such activities. Firstly, if our arrival contributes in some way to bringing about an improvement in the situation at the institution, then this is excellent — because this is our goal, after all. And secondly, we will generally be able to sense when institution directors try to hide something from us or attempt to project an artificial, false image of the institution.

One previously — announced visit by HFHR to a correctional facility brought about a comic situation. All of the inmates were gathered in one room, each of them with a pen and crossword puzzle. There was no doubt that this was put on for show, specifically for the visitors to see.

In practice, the superior institution that we ask for consent to visit specific institutions (such as the superintendent of schools or regional-level court) will itself notify them about our intended visit. This may put the directors on guard and complicate our work, but such things should be expected. They may also occur when we pay visits without warning.

A HFHR team monitoring penal facilities had not managed to inform the warden of one of the facilities about their planned visit. The monitors went into the prison, met with the warden, explained where they were from and why they had come. They showed him a document giving them authorization for the visit, and asked for his consent. The warden gave them access to everything they asked for, but remained very tense. Only after the visit was over did he venture to ask: “Who really sent you on this inspection?” It turned out that the whole time he had been convinced that this was an inspection by the Central Prison Administration.

There is no single recipe for what tactical approach to apply when monitoring various types of institutions. One has to gain a sense of the situation and decide what will work best in light of the long-term objective of the monitoring study and the organization’s activities. As can be seen from the examples given in this section, most organizations, for various reasons, do indeed give advance notice of their visits. This is not, however, a fixed rule.



Fot: Marta Błażejowska / Agencja-Gazeta

Police child detention unit in Katowice

## **8. The monitoring team**

How well any team-based project is implemented depends first and foremost on the people involved. For this reason, when laying the groundwork for a monitoring study we should take great care in selecting the people who will be involved in carrying the study out. They must be interested in the given issue, have the necessary knowledge and skills, and be able to work as part of a team. Each of them must be well prepared for the tasks we expect them to perform.

A monitoring project is often planned by a small group of individuals who deal with the given issue, and who themselves intend to become involved in implementing the project. This is the optimal situation - from the very outset we are working with people that identify with the task at hand. This does not mean, of course, that the directors of a non-governmental organization, perceiving that such a need exists, cannot initiate the formation of such a group. Care should be taken, however, to ensure that the people included in a group formed this way are truly interested in the given issue.

Every team must have a coordinator, head, or leader. If such a group forms spontaneously, a leader will emerge naturally with time. If the group is set up by an organization, the person appointed to be coordinator should not only have an excellent knowledge of the issues involved, but should also have good interpersonal skills.

### **8.1. The team leader**

The team leader is responsible for the implementation of the project from start to finish. He or she is accountable for ensuring the overall success of the project, and for making strategic decisions.

Frequently this is the same person who came up with the monitoring idea, the substantive author of the project. Sometimes, however, a project may be

supervised by two individuals at the same time, one of whom is responsible for substantive issues and the other for organizational issues. In such cases these two must work in close cooperation, and they should clearly identify the extent of the responsibility borne by each of them, how decisions will be made, and how information will be exchanged.

No boss is ever ideal. Although it may seem obvious, it is worth mentioning here the characteristics that each monitoring team leader should have:

- ⇒ the ability to **manage a team** (to motivate people, to delegate duties and authority among group members, to communicate and prevent conflicts, to solve internal team conflicts, etc.) and to select the appropriate people. The members of the team should accept his or her role as leader.
- ⇒ **substantive competence** (the team coordinator has to have a good knowledge of the field being monitored and have a good “sense” of the issues, in order to be able to plan and organize work on the project)
- ⇒ the ability to **make decisions and to take responsibility for them**. The leader can have advisors, but must nevertheless be able to make decisions quickly and independently. This characteristic is demanded by some monitoring studies, and it sometimes involves a certain risk. We never have all possible information at our disposal and can never be 100% certain that we are making the right decision. Sometimes, however, making a bad decision is better than making none at all. The team leader must be able to take risks and to cope with the consequences. This is particularly important when we are acting without the authorities’ consent, and team members may face the threat of repression.
- ⇒ **organizational skills** (planning specific actions, handling logistics, supervising the work of team members, etc.)

## 8.2. Assembling the team

When developing our monitoring concept, selecting techniques for gathering information, and planning our study, we must take account of our resources in terms of staff. We simply have to know how many individuals we will really be able to recruit to contribute to our program, and on what terms (with respect to money, time, etc.). When inviting people to join the team (for the pilot study, the study proper, processing data, or writing the report) we should be guided by various criteria.

**We select individuals who, due to their education, profession, or professional experience, are qualified to carry out the monitoring study.**



The team should include people who practice different professions, who look at the problem from different perspectives, and who therefore complement each other. In this way we gain a more vivid picture of reality, avoid “professional distortions,” and are more certain to be objective in our study and in interpreting the data collected. Professionals who have an in-depth knowledge of the specific nature of the institutions studied (such as teachers who are involved in a monitoring study of pupils’ rights at school) might be able to obtain a lot of detailed information, but may on the other hand be inclined to justify various irregularities just because they are accustomed to them, or out of “professional solidarity.” It is a good idea for the monitoring team to include people “from outside,” who look at everything with a fresh eye and ask inquisitively: “... but why?”

At one psychiatric ward that was monitored, the admissions desk was very far away from the ward itself. At night there was usually one doctor and one nurse on duty. When an overly-excited patient had to be taken into the ward, the doctor — who at night did not have a nurse at her disposal to assist in this — instead asked patients from the hospital’s detoxification ward for assistance. One can understand the doctor’s position, but this surely constituted a violation that should be noted. The fact that an institution has staffing difficulties or financial troubles cannot blind us to any human-rights-related procedural violations in the field being monitored.

Almost every monitoring team has to include a **lawyer**. We need a lawyer to help us in analyzing the law — not only during the preparatory phase, but also during the study itself, because it is only at this stage that we become familiar with lower-order provisions (statutes, regulations, circular letters, memos, management instructions, etc.) that must be analyzed on an ongoing basis.

Sometimes a monitoring study requires the participation of a **doctor**, who for example can identify physical injuries or verify suspicions that torture or inhuman treatment has been applied. This will be necessary when monitoring closed or partially-closed institutions (such as prisons, pre-trial detention centers, children’s homes, hospitals, refugee centers, etc.), when monitoring the behavior of the police and security services, etc.

Many teams require **psychologists** and **sociologists**. Their experience helps in developing the research techniques and tools, and may also prove useful during the course of the study. During training they are able to share their knowledge with the rest of the team about how to communicate with others, how to conduct discussions, how to obtain information, and how to process data.

It is always a good idea to invite professionals from the field in question to participate in a monitoring study. Monitoring children's homes will require the involvement of a pedagogue, monitoring prisons — a person with experience working in this field, monitoring police behavior — a former police officer, and monitoring the actions of local authorities — a member of local government, etc.

When planning our study and determining the makeup of the team, we should make sure that *team members do not have any conflict of roles or interests*, i.e. they will not be monitoring an institution where they are also employees in one way or another.

During a monitoring study of children's homes, the members of one of the HFHR sub-groups asked the children's homes' superior body (which was the office of the regional superintendent of schools) for consent to visit specific institutions. At this point they found themselves in a difficult situation, because as staff members of a psychological/pedagogical clinic in the same region, they were themselves professionally subordinate to the very same office. In addition, representatives of the superintendent's office requested that the team conduct a "careful" inspection at one particular institution, whose director they wanted to dismiss. It is very difficult to refuse to provide such "help" to one's own superior. The solution was for the study within this region to be conducted by a different team.

During the individual stages of planning and implementing a project we may invite in other individuals from outside the team. We frequently require **expert consultants**, who, although they are not engaged directly in carrying out the project, can help us in critically analyzing our plans or results. The majority of projects also require a **computer scientist** or **statistician**, who will simplify the choice of research sample and the statistical calculation of results.

In monitoring studies conducted abroad, an important role is played by **translators**. The ideal translator has an understanding of the issues involved, knows the professional terminology, is experienced at such work, and is a reliable individual. It is better, of course, not to rely on local translators, as we are not able to test them and will never fully know who they are really working for. A translator must be neutral, and cannot attempt to affect the results of our study.

The secretariat of the CPT chooses translators on the basis of references from other international organizations. Translators proposed by the authorities of the country being monitored are never used.



Fot: Krzysztof Miller / Agencja-Gazeta

Woman detained for alleged prostitution

The first people we invite into the team are people we have worked with before. Then, when composing the team's sub-groups we should take care to ensure that "new" people are under the care of experienced and proven partners.

Human rights monitoring involves significantly more stringent **psychological criteria** than, for example, survey-based sociological studies. Monitors frequently find themselves in situations involving conflict or danger, and witness events that demand great psychological endurance. Those who conduct monitoring studies report that the great emotional burden can sometimes cause a lapse of impartiality and objectiveness even for experienced individuals. If we enter an institution where human rights violations are widespread, we may try to search for more evidence to prove that things there are very bad and attempt to show this institution in the worst possible light. Such an approach is very dangerous. If we catch ourselves having such reactions, it is a good idea to take a break in order to reestablish the necessary personal distance to the problem being studied.

Studies should not be conducted by individuals who have any kind of personal connection to the institution or people being monitored. A person who was brought up in an children's home and has had a tragic experience in his or her past should not be sent to monitor children's homes. Someone who is afraid of or feels an aversion to the mentally ill should not be sent to monitor psychiatric hospitals. When respect for the rights of individuals that belong to a certain social minority is being monitored, it will be difficult for the team to include a person who has strong prejudices against this minority, etc.

In the case of very difficult monitoring studies, especially when they involve the risk of repression, the criteria for selecting team members are particularly stringent. If the initiating group perceives that there is *a real danger* (that those involved may be arrested, beaten, etc), it must *warn each of the potential team members* and give them time to decide whether they are prepared to work under such conditions.

Sometimes we also have to take other criteria for selecting team members into account. One of these might be **gender**, for example. If we are monitoring women's penal institutions, our team should be predominantly composed of women. This will ease contact with prisoners, allow us to observe the gynecological room, delivery room, etc. Women will know best what must be checked, and what they should be interested in. On the other hand, one frequently hears that women should not enter penal institutions for men due to the potential danger posed by the prisoners. The experiences of various international organizations and the HFHR, however, have not confirmed this view. Generally speaking, mixed-gender teams function best regardless of the topic of the monitoring study.

When monitoring the rights of individuals who belong to national or ethnic minorities, it is a good idea to have **members of these minorities** on the team. This is of particular significance especially when studying the rights of "closed" minorities, who differ greatly from the majority in terms of certain characteristics (their culture, style of life, religion, language, etc.) and are isolated from the majority. Our team should include people who know the problem from the inside — but it should also include, as we mentioned above, people who bring a fresh perspective.

If we utilize *participatory observation* as one of our research techniques, this requires us to select people with the necessary characteristics. In order to observe police behavior during a protest by anarchists, we will send young people to join the crowd. Older individuals may act as external observers, etc.

### **8.3. Preparing the team for the study**

For a monitoring team to be successful it must be well prepared. We should devote generous time to training the people we will work with.

The monitoring team usually receives training on how to conduct the study and how to process the results of the pilot study just before the monitoring study proper is to begin. Such training generally encompasses the following elements:

### 8.3.1. Substantive knowledge about the field to be monitored

Monitors should be given detailed information about the status of human rights in the field that will be studied, and about the problems that most frequently occur. They should be given articles on the topic or other sources of information to read, and these materials should be discussed at training sessions.

#### Every member of the team should understand the overall monitoring concept and the goal of the planned activities.

By understanding the monitoring concept and goal, monitors can be truly creative. If they later find themselves in an unusual situation, when it turns out that the prepared techniques and tools “don’t work,” they will be able to react constructively and still achieve the intended goal.

During one study that monitored pupils’ rights at school, the tools that had been previously prepared were sometimes not very useful. It proved impossible to attract every child’s interest and to obtain answers to all the questions called for. The monitors, who understood the concept and goal of the monitoring study, thus decided to conduct conversations in a way that was very free and interesting to the children, and obtained several pieces of information from each one they talked to. In this way they achieved the goal through constantly modifying the planned techniques.

### 8.3.2. Analyzing the law

Team members have to have a good knowledge of **legal regulations** (of both domestic and international law) that pertain to the subject to be monitored. It is a good idea to make photocopies for them of the most important acts, and of our preliminary analysis of these acts. By sharing this common analysis of the law - which should point out any discrepancies between varying standards, and any potential and practical danger of such standards being violated - the team will be able to look at the situation through the prism of the binding provisions of law and will be able to gather comparable information.

When monitoring institutions, all team members should obtain a list of the kinds of documentation kept at such institutions that may be important from the human rights perspective (see [Appendix 1](#)). Team members have to know exactly what each document is called, what to look for in them, and how to gain access to them.

### 8.3.3. Techniques and tools

As part of their training, team members should also practice using the chosen information-gathering techniques and working with the prepared research tools. We are interested in gathering the greatest possible amount of *comparable* information; the team should thus receive detailed instructions on how to gather, organize, and preliminarily process information.

Some techniques for gathering information can be **practiced in workshops**, in the form of dramatized scenes that serve as the basis for subsequent discussion. In this way we prepare the team to conduct interviews and to react to possible problems, and we develop a strategy of action for dealing with unusual situations. Furthermore, it is always a good idea for **ethical principles** to be mentioned as well.

We discuss the research tools in great detail, explaining how they should be employed. This also includes how to operate any **technical equipment**, and the methods and conditions for putting it to use (e.g. when to take pictures, when it is better to refrain from doing so, when to make a recording, etc.)

### 8.3.4. Practical instructions

Before the study begins, team members should receive practical instructions about how monitoring is to proceed — such as how to exchange information while the study is in progress, how to exchange results after its completion, how authority and responsibility are to be delegated (if work is to be done in small sub-groups, they should have appointed leaders), the guidelines for working in groups, how such groups will consult with project leaders, how their work will be supervised, how they should behave in dangerous situations, etc.

We have to equip monitors with **documents authorizing** them to conduct the monitoring study, with the above-mentioned letter addressed to the appropriate decision-makers, and, if necessary, with ID's that have the name of our organization on them. All of this depends on the type of monitoring and the political situation present in the country.

## 8.4. Several remarks on organizing monitoring team work

The past experiences of various organizations that carry out monitoring studies teach us that it is a good idea to keep the following principles in mind when performing such work:

- ⇒ Team members are co-authors of the monitoring study, and not hired “workers”. Conditions should thus be created that will allow them to be creative.
- ⇒ Clearly established guidelines for group work, i.e. **“rules of the game”** which have been accepted by all team members, will simplify the organization of work and increase its effectiveness.
- ⇒ After the study is completed it is a good idea to hold a **closing meeting**, in order to make an overall assessment of the entire project (what worked successfully, what did not) and to collect additional information while the monitors’ experiences are still fresh in their minds. We then also have an occasion to officially thank the team members for the work they have done.

**During every monitoring study we are assisted by many individuals, many of whom work very hard. *Volunteers*, whom we do not pay at all or pay only symbolically, should be given appropriate thanks (such as in the report or during official appearances like press conferences).**

By engaging people in our activities, we show them that “being active is worthwhile.” If they feel that solving the given problem is “their” issue, we will find them to be active allies who will support us. If we win over their confidence and they help us once, we will be able to count on their assistance in the future.

## 9. The monitoring report

When writing our report and developing its form and content, we should remember what it was like for us to read similar publications.

**A good report will be interesting, comprehensible, credible, and succinct, and will encourage readers to engage in further thought and action.**

### 9.1. The aim of the report

After having conducted a monitoring study, the reasons why we write a report include:

- ⇒ **To describe and analyze the situation**, so that readers will be able to form an opinion about the state of human rights in the field our study covers,
- ⇒ **To present recommendations** that signal the way to bringing about changes through the application of political, legal, or social action — which we can plan in detail based on the report,
- ⇒ The report itself should constitute an element of such action. By distributing it in a deliberately planned way, **we can have an impact on the situation we want to improve.**
- ⇒ **To win allies** for a specific goal. Our report may get many individuals and organizations interested in the problem of human rights violations, and demonstrate to them the sense of taking joint action.
- ⇒ **To present evidence of concrete cases of human rights violations**, which we can subsequently make use of when taking action aimed at changing the situation (primarily, but not limited to, strategic litigation),



- ⇒ To present **didactic material**. By citing the primary international documents guaranteeing human rights protection, our report may play an instructive role. Even if readers do not know much about human rights, we can raise their awareness that international standards and instruments protecting these rights do exist.
- ⇒ In a certain indirect sense, **to raise our organization's credibility**. Distributing a reliable report based on facts and evidence that presents an objective and impartial picture of the situation will build up our organization's credibility in the eyes of its supporters, its sponsors, and the public.

## 9.2. The report concept

As already mentioned above, the report concept should emerge during the stage of strategic planning and working on the monitoring concept (see [Diagram 2](#)). We have to know what we will write the report about, in what way, and for whom.

**The report concept is a preliminary identification of what the report's contents and structure will be like and who its primary addressees will be. This concept follows from the goal that we have set for ourselves and the research task of the monitoring study.**

We will decide what to stress and what form the report should take depending on what subsequent action we are planning to take, and therefore to whom we will address the report. A counter-report (or shadow report) to a government report sent to UN treaty bodies<sup>16</sup> (the structure of which will follow that of the corresponding government report) will be written differently than a document intended to support legal action (such as a constitutional complaint or an appeal to the European Court of Human Rights), differently than materials meant for journalists and the public (who are primarily interested in concrete cases of human rights violations or truly shocking numbers), and differently than a report to be sent to politicians and members of parliament (who are primarily interested in catchy slogans that they can easily recognize as their own).

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<sup>16</sup> The Human Rights Committee, the Committee Against Torture, the Committee on the Elimination of Racial Discrimination, the Committee on the Elimination of Discrimination Against Women, the Committee on the Rights of the Child, and the Committee on Economic, Social and Cultural Right

## **We write one and only one monitoring report, all the while keeping its primary addressees in mind.**

When working on the report concept, we should research other reports released by domestic and international organizations and institutions that deal with the problem that interests us. We usually do this as part of our preliminary diagnosis of the situation or during the initial stage of planning the monitoring study, while gathering information. These days it is relatively easy to access many domestic and foreign reports prepared by state institutions (such as, in Poland, the reports of the ombudsman, reports by specific ministers, periodical reports submitted by the government to UN treaty bodies, etc.), by foreign governments (such as the US State Department Reports), by international organizations (such as the OSCE), and by international non-governmental organizations (Amnesty International, Human Rights Watch, etc.). It is also worth taking a look at reports produced by other non-governmental organizations in our country. We will find the majority of such reports on the internet, but we can also look for them in specialized libraries, embassies, etc.

### **9.3. Preparing material**

Before we begin to write our report, we have to develop an outline — something along the lines of a table of contents together with a short description of what the individual sections and subsections will contain. We then go back to our monitoring concept (our research tasks, issues, and questions) and use this framework to process the data gathered.

We should begin preparing materials, processing data, and writing our report *immediately after completing the monitoring study*. Still-fresh impressions and information are valuable and should be put to effective use. It is unrealistic to expect that our memory will not fail us. On the other hand, however, we should not rush when processing data and writing the report.

Generally speaking, data can be processed in two ways:

- ⇒ *in the form of partial reports submitted by the individual sub-groups, drawn up according to a previously established detailed outline,*
- ⇒ *the entire material at once, processed “centrally.”*

Both of these approaches have their pros and cons. When working with **partial reports** we run a greater risk of being subjective, and thereby losing some information. The source material should therefore be collected from the

teams together with their partial reports, in order to ensure we will be able to check or further supplement certain information if necessary.

There should be a clear instructions as to *how information should be preliminarily dealt with and what the partial reports should look like*, so that the data will be comparable and the main report coherent. The sub-groups must know in detail how to process data and what shape to give to their partial report. We should sketch out an outline for such reports even before the study begins. If we do not do so, it may prove difficult to make the individual partial reports into a cohesive whole, and the information in them may prove unsuitable for comparison. Some teams will write extensive, detailed materials, under the assumption that the more they write the better, while others will present us with concise conclusions, writing only what they feel is most important.

If we **process data centrally**, we must first organize it and check whether all the materials carry a description of where they come from, what they contain, etc. Any missing information must be supplemented. For this reason it is a good idea to *collect materials from monitors in person*. Then we are immediately able to check what is missing, what is unclear, etc., and to ask for clarification on the spot.

**Quantitative data:** As was mentioned in [section 6.5.4.](#), when working with small samples we can calculate simple statistics using a normal calculator. Large amounts of data (such as the results of a questionnaire-based surveys or structured interviews) require computer-based processing by a professional — a sociologist or statistician. *The most time is taken up by transcribing information from the questionnaires into the database*. This must be kept in mind when the project budget and schedule are being planned.

**Qualitative data:** We search for answers to our research questions in all the documents. We pay special attention to quotations, which we note down immediately in order to later add them to the respective sections of the report. We transcribe recorded interviews (this should be done by the individual who collected the material) and then work with them just as with other documents.

**We should not forget about “case studies.”** We assess the collected documentation about a given case and make a decision about whether we will describe it in our report, and whether it will be useful in taking legal or public action. If necessary, we will further supplement the documentation. Not every interesting case has to be noted in the report. It may be a good idea to publicize some cases later, in a different way.

## 9.4. The structure of the report

Monitoring reports usually contain the following elements:

### 9.4.1. Table of contents

This is a guide to the whole report — and must therefore be clear, comprehensible, and interesting. The titles of the sections and subsections should not be too general, or they will not tell the reader anything (such headings as “Violence among inmates” or “Prisoner transport conditions” should be used, rather than simply “Violence” or “Transport”). Most readers are short on time — we have to make it easier for them to identify those fragments that are important and interesting to them.

### 9.4.2. Acknowledgements

We should remember to thank those individuals who contributed to the creation of the report (on the copyright page, in the introduction, or on a separate acknowledgments page preceding the introduction). These will include the reviewers, the individuals who assisted in data processing, monitoring team members, and volunteers. We cannot always mention everyone by name - and sometimes, if we are working under dangerous conditions, we simply have no right to do so. In such cases we may thank *“the members of the monitoring team, as well as everyone who helped us in our work and without whose assistance this report could never have appeared.”*

### 9.4.3. Introduction

The introduction should first make a concise presentation of our organization and the goal of the study. We explain what inclined us to undertake such a study, what the subject of the study was, during what time period it was conducted, what sample was used, and who carried it out. The introduction should also familiarize the reader with the study’s primary conclusions. If it is well written, the introduction will attract readers’ attention and encourage them to read the rest of the report. Also, if we were able to attract a large number of people to cooperate with us on the study, it will be good to mention their numbers, thus demonstrating the strength of our organization.

### 9.4.4. Summary

The summary should be short and contain the most important conclusions from the monitoring study. The majority of addressees will only read this part of the report, so it should be well written. **On a single page, or a maximum**

**of two pages**, we list the main problems and human rights violations in the field studied. We can also provide, in parentheses, the page numbers where the report describes each issue in detail.

The content and form of the summary, although it must always be particularly well-thought-out, objective, and to-the-point, will depend primarily on the goal of the action we intend to take and the report's primary addressee.

#### 9.4.5. Main text

We divide the main body of the report into **sections and subsections**, organized according to the monitoring concept. In order to make reading easier the numbers and titles should be in bold and underlined. Avoid excessively developing the structure of the subsections, because the report will become less legible.

One very useful element of the report is **citations of international or domestic law**. At the beginning of every issue discussed, the report should cite the corresponding standards of human rights protection, constitutional provisions, and provisions of other legal acts. This is especially important when we want to show that practices or legal regulations in our country are in conflict with such standards.

Most readers have not memorized the normative acts that we are citing. Looking up what the specific articles say, even if they are included in an appendix, can be cumbersome. It is therefore a good idea to quote whole sections from the text of legal acts in every place this is essential to understanding the issue being discussed.

The staff of the Commissioner for Citizens' Rights Office in Poland, whose reports are addressed first and foremost to journalists and members of parliament, know that a sentence such as: "The ombudsman appealed to office X, indicating that article 157 paragraph 3 point 16 of statute Y constitutes an evident human rights violation..." will be completely incomprehensible to report addressees, unless the contents of this provision are quoted in full and accompanied by an explanation of why it constitutes a human rights violation.

A good way of illustrating the report, which will then reach readers more easily, is to describe concrete cases of human rights violations. As a rule such cases speak louder than verbose, generalized deliberations. Such descriptions should not be imbued with excessive emotion — the facts will speak for themselves.

If we intend to describe the **authorities' reaction** to our activities, we have to be aware that it is just these fragments of the report that will be most carefully studied. We should therefore strive to make a balanced presentation, reporting not only negative reactions but also positive ones as well. In this we should not forget to maintain objectiveness and to avoid emotion. We do not write, for example, about “the scandalous way in which a representative of institution X reacted to our study,” but rather precisely relate the facts. The actions of the authorities frequently speak for themselves and do not require any commentary at all.

If we have conducted interviews, it is worthwhile for the report to **quote statements made by our informants**. Here we should be cautious and remember to protect the identity of the interviewees if the situation so demands (see section 9.5.2.) These quotations may contain emotional statements, but these must be kept clearly separate from the report content proper.

If the report includes **statistical data**, it should be presented in a clear and legible way. Chaotic presentation could in fact cause data to be read incorrectly. If we have gathered a great deal of numerical data, is sometimes the case that we have to refrain from including all of it in the report. This is not a problem, because the remainder might prove useful in subsequent reports. *We should not go to any lengths to include all of our data in the report, at the cost of its legibility.* We need to take a scrutinizing look at our data, and include only what makes an important contribution towards achieving our adopted goal. On the other hand, care should be taken not to cite only those figures that confirm our hypotheses — rather, we must strive to present a true picture of the phenomenon studied.

When citing numerical data, keep the following points in mind:

- ⇒ Data should be presented in a clear and transparent way, in the form of easy-to-read tables, diagrams, bar charts, etc.
- ⇒ In the text itself, the numbers and titles of the tables, charts, diagrams, etc., should be cited in the places where the data they present is discussed.
- ⇒ Effort should be taken so as to ensure that statistical data is presented in a uniform way, with consistent use of tables, diagrams, or bar charts. Presenting some data with diagrams, and other data with tables and bar charts will make it more difficult to read.
- ⇒ The size of the population and the statistical sample (the group studied) should be cited in every case.

### 9.4.6. Proposed solutions, recommendations

Our report may also propose specific solutions for how to improve the situation in the field studied. Recommendations may be addressed to domestic legislative, executive, or judicial authorities or to international organizations — in accordance with the monitoring topic, the political situation in the country, and our strategy of action. **The report must draw a clear distinction between conclusions and recommendations.** Conclusions are based only on facts, while recommendations are also based on the opinions of the report's authors. We should devote particular attention here to being concise and to-the-point.

### 9.4.7. Abstracts in foreign languages

If the main body of our report is written in another language is a good idea to include a report abstract in English, at least, and perhaps in other foreign languages as well. Such abstracts should include the report's **table of contents, introduction, summary, and recommendations.**

**Translation quality is an issue of huge importance.**

A poorly translated report will undermine the quality of our research in the eyes of foreign readers, and in drastic cases may undermine our organization's credibility. If we plan to take international action, we must, of course, translate the report in its entirety.

### 9.4.8. Bibliography

This is a list of all the publications and articles used when conducting the study and writing the report. Quotations made in the text should be accompanied by the appropriate footnotes. A good bibliography will lead readers to publications that will be of interest to them.

### 9.4.9. Appendixes

All materials that may be of assistance in understanding the essence of the problems touched upon in the report and the methods that were used to study them should be attached to the report in the form of appendixes, e.g.:

- ⇒ a list of the specific institutions studied (if we want to disclose this information),
- ⇒ a list of the individuals who carried out the study (as above),

- ⇒ samples of the research tools used,
- ⇒ the full texts of relevant legal acts,
- ⇒ other documents that pertain to the field studied,
- ⇒ expert studies,
- ⇒ situational diagrams,
- ⇒ photographs of objects and material evidence,
- ⇒ other information.

#### 9.4.10. Index

Monitoring reports are relatively rarely equipped with indexes, but they are nevertheless very helpful in helping readers find specific information within the text. The staff of the Commissioner for Citizens' Rights Office in Poland, who prepare a yearly report for members of parliament, stress that it is worth including an index even though this is a time-consuming endeavor and requires a modern text editor.

#### 9.5. The credibility of the report

The report should include **only true information**. Each and every figure should be checked and double-checked before it is placed in the text. This is a matter of utmost importance. Some of the information provided in the report may be very inconvenient for the authorities, and they sometimes make attempts to discredit it. All of the information presented must be well documented, even if the source of the information is not cited in the report itself.

If we are not certain about a certain piece of information, it is better to leave it out of the report. If we do decide to include such information, it should be clearly stressed that we are presenting unconfirmed press reports, or the account of a single eyewitness.

When presenting numerical data that cannot be stated exactly (such as the number of people beaten by the police at a demonstration, the number of children in the country abused by family members, etc.), we provide the number of documented cases together with our estimates of what the true figures are, e.g.: *“Our organization documented 23 cases involving the beating and brutal treatment of protest participants. Based on eyewitness accounts and our own observations, we have grounds to believe that the true number of such incidents was five times higher.”*



A report prepared by one organization from the CIS countries stated that in 1996 the authorities had declared 400 non-governmental organizations illegal, closed down 900 independent editorial offices, and refused to renew the commercial registration of 10,000 private companies. Such round figures are not very credible. In such situations it is better to state a lower boundary, and say for example: "no fewer than 356." Or we can stress that the figures are estimates while at the same time providing the source we based our estimations on.

We can permit ourselves to generalize or estimate the scale of phenomenon on the basis of even a small number of concrete cases of human rights violations, as long as we uncover the underlying cause for such violations. Once we know the cause, we may presume that it will bring about similar results in other cases. This cause might be a poor law, a practice that is generally applied, a lack of funds, etc.

If our organization is young and not very wellknown in the country and abroad, we should try to have the credibility of our report and our organization backed by a well known organization or individual that is renowned in the country or abroad.

## 9.6. The form of the report

A report will not serve its function and will not help us in undertaking further action unless it gets its message across to its intended addressees. It is not sufficient for a report to contain important information; such information must also be presented in such a way and in such language that its message comes across to readers. Everyone can recall an important book or text they could only read with great effort or even frustration. Therefore, we should keep several simple guidelines in mind:

- ⇒ use language that is simple, but not colloquial,
- ⇒ use professional terminology, but not professional jargon,
- ⇒ draw a clear distinction between facts and commentary, always starting with the facts,
- ⇒ do not use too many foreign-language expressions,
- ⇒ avoid emotional descriptions,
- ⇒ avoid general, imprecise assertions.



Fot: Krzysztof Miller / Agencja-Gazeta

Christmas Eve in a juvenile detention center, December 1994

**A good monitoring report should be relatively short, comprehensible, and should provide information, arguments, evidence, and short interpretations of the facts.** The majority of addressees do not have time to read through several hundred pages. The art of writing consists of the skill of expressing one's ideas quickly, concisely, and comprehensibly. We do not have to write about everything we know on a given topic. Some information can be submitted to the public or to other addressees in a different, carefully chosen form (such as through press releases, presentations at academic conferences, interviews, etc.).

It is also important for the report to be well edited and proof-read. Chaotic and inconsistent editing will make our message more difficult to read and understand.

## 9.7. Protecting sources of information

Sometimes information in our report comes from people who wish to remain anonymous. Others may face serious danger if the authorities identify them. Such individuals have placed their trust in us. We cannot put them at risk of encountering unpleasant or difficult situations, or even danger to their health or life. This applies, for example, to soldiers on active duty, to prisoners and their families, to children in children's homes, to psychiatric hospital patients, etc. — and first and foremost to the subjects of a totalitarian system.

In such situations we encode the names of our sources in order to ensure that it is impossible to identify them. If even this is too dangerous, we do not provide any initials at all, but rather write in general about “a certain inmate.” If the description of their situation alone provides enough information to enable our source to be identified and thereby puts him or her at risk, we will refrain from placing it in our report. In such cases, even if we have the person’s expressed consent to tell their story, we must give some consideration as to whether doing so is truly worth the risk involved.

As concerns staff members at the institutions monitored, however, the general practice is to state their names in the report. In specific cases, if important information has been given to us confidentially, we may decide to deviate from this rule so as not to put our source at risk.

## 9.8. Practical considerations

The initial draft of the report should first be read by the members of the monitoring team, and especially those individuals who conducted the study, so that they have an opportunity to clear up anything that is not explicit, to correct any false statements, and to clarify any doubtful points. After these corrections have been made, the entire text should be **edited and proof-read**.

Several days later we read through the report once again, making new corrections and additions.

Next, we turn the report over to be **reviewed** by individuals who were not involved in the study. Their fresh perspective and personal knowledge of the subject will result in valuable remarks, thereby improving the value of the text.

Before submitting the report to be printed it is proof-read one last time. Remember that this report is like a calling-card for our organization.

## 10. Distributing the report

Remember: monitoring comprises one element of action taken in the public interest. This may take the form of *political action* (various means of exerting pressure on legislative and executive authorities, i.e. domestic or international lobbying), *legal action* (cases brought before domestic and international courts with the aim of obtaining a ruling which establishes that certain legal provisions are unconstitutional or inconsistent with ratified international agreements, or which establishes a new interpretation of an existing provision), or *non-violent public action* (exerting pressure on the authorities through public, collective or individual campaigns of civil disobedience). When planning a campaign we most frequently make use of a combination of such techniques, from two or all three of the above categories. How we distribute our report depends on how we plan our campaign of action.

### 10.1. Using the report for political action

If we plan to take political action, we may decide to include the following individuals and institutions in the list of addressees:

#### 10.1.1. Report addressees on the international level

- ⇒ the heads of delegations from selected governments that will participate in a meeting of the **UN Human Rights Commission**, especially if the report could constitute the basis for initiating procedures 1503 or 1235,
- ⇒ members of the respective **UN treaty committees** (the Human Rights Committee, the Committee Against Torture, etc.), especially if the government of our country is supposed to report to this committee on its implementation of the given treaty,
- ⇒ **Special Rapporteurs** appointed by the UN Human Rights Commission for specific topics or territories,

- ⇒ selected members of parliament sitting on the **Council of Europe Parliamentary Assembly** who we feel may be interested in the problems presented in the report,
- ⇒ selected deputies of the **European Parliament** who could be interested in the problems presented in the report,
- ⇒ government delegations and representatives of non-governmental organizations participating in **OSCE** conferences and seminars (regardless of the official topic of the seminar),
- ⇒ members of the **International Labor Organization's Expert Committee**, or other UN agencies, if the report pertains to their field of activity,
- ⇒ **the governments of other countries** we feel might be inclined to act on behalf of solving the problems described in the report (in this case it is better to direct the report to the respective embassy rather than send it directly to the Ministry of Foreign Affairs of the said country,
- ⇒ **international press agencies and foreign correspondents** accredited in our country (if we know the names of prominent journalists who are interested in our country or the topic of our study, we send the report to them or to their editorial offices),
- ⇒ the presidents of **large firms and corporations** that invest or are interested in investing in our country,
- ⇒ foreign **associations of businessmen**.

### 10.1.2. Report addressees on the domestic level

- ⇒ the head of the **institution that gave us consent** to conduct the study;
- ⇒ the competent **state institutions** appropriate for the topic of the report (the state judicial council, the state prison administration, the central electoral commission, the country's head physician, physicians' chambers, the national chief of police, the commander of the border patrol, etc.),
- ⇒ **government representatives** (the prime minister, ministers with jurisdiction over the given field),
- ⇒ **the Supreme Chamber of Control**,
- ⇒ **the Ombudsman** and the heads of other institutions that keep watch over respect for human rights,

- ⇒ members of the appropriate **parliamentary committee**,
- ⇒ the heads of **parliamentary party caucuses**, especially those of the **opposition**,
- ⇒ the heads of the **regional executive authority** (province governors, etc.),
- ⇒ **trade unions**,
- ⇒ **churches**,
- ⇒ domestic offices of **international corporations**,
- ⇒ **associations of businessmen** and groups such as the Lions Club and Rotary Club.

Our report should reach academic circles that are interested in the problems studied, especially individuals who act as **parliamentary and governmental experts**.

The choice of addressees depends on our goal and the subject of the report. The above institutions are listed only by way of example.

## 10.2. Utilizing the report for legal action

Our report may be treated as **court evidence**, especially for proceedings before the Constitutional Tribunal or Supreme Court (if we aim to obtain a ruling that establishes a new interpretation of the law). Or it may be very helpful when the European Court of Human Rights reviews an individual complaint, as it illustrates the wider background of the case being investigated. Reports also sometimes appear as evidence in court proceedings conducted outside the country's borders, especially in cases involving extradition and refugee status.

Reports that were published about the Chinese judiciary system and the practices of the Chinese law enforcement agencies gave HFHR grounds to obtain a ruling from Poland's Supreme Court about individuals who the Chinese authorities asked to have extradited to China. If it is justifiably demonstrated that individuals turned over to the authorities of a certain country may be subject to torture or inhuman treatment, for Council of Europe member states this means a ban on extradition to the given country because the European Convention on Human Rights (article 3) does not allow for any person's freedom from torture to be restricted.



Fot: Dariusz Gorajski / Agencja-Gazeta

Local government elections, Regional Electoral Commission  
in Szczecin, October 1998

Reports can help in proving before the European Court of Human Rights that a victim of a human rights violation does not have any **effective means of legal defense** at his or her disposal, by demonstrating that a certain formally extant means does not function in practice. This situation constitutes a violation of article 13 of the European Convention. Such reports may also provide grounds for demonstrating that the individual appealing to the European Court of Human Rights has **exhausted all available legal means**. Such an individual cannot be required, after all, to have initiated certain actions that are known in advance not to have any chance of being successful.

The report may also speed up the process by which a practical interpretation of a new provision of law and a method for adjudicating cases involving this provision are established.

An example of this can be provided by a HFHR report that analyzed every one of several hundred court cases that had been initiated during a parliamentary election campaign on the basis of a new election regulation, which established an accelerated procedure for adjudicating cases involving the libel or slander of parliamentary candidates, or the violation of their personal interests, while a campaign is in progress<sup>17</sup>.

<sup>17</sup>Gołynski K., *Orzecznictwo sądowe w sprawach z art. 139 ordynacji wyborczej do Sejmu. Wybrane zagadnienia (Court Rulings in Cases Conducted Under Article 139 of the Regulations for Elections to the Sejm. Selected Issues)*, Helsinki Foundation for Human Rights Warsaw 1994.

### 10.3. Using the report for non-violent public action

An important stage in the course of such action is seeking allies. Our report should be directed to **organizations that are active among circles that may include potential allies** (associations, professional groups, trade unions, local governments, etc.) and **individuals whose opinions are influential** with such circles. A report on the status of the mentally ill should reach professional groups of doctors and nurses, associations of patients, their families and friends, as well as prominent intellectuals, actors, politicians, etc. who may show interest in this problem.

### 10.4. Working with the media

When seeking allies, however, it is the media that will be of greatest significance. **Good cooperation with the media requires systematic work.** Our organization should consistently interact and fraternize with selected journalists from the most important newspapers, weekly and monthly magazines, and radio and television broadcasters.

**We should not expect the press to write about what we have done simply because it is important for society.**

There are hundreds of important things and problems that are worthy of press coverage. We have to have an understanding of the nature of a journalist's job, for whom reporting is a means of earning a living, and we should keep their interests in mind. Non-governmental organizations frequently come across cases that might be attractive or outright sensational for the media, but which for us, due to the specific nature of our study, are in fact insignificant. In these situations we should remember "our" journalists and alert them to the existence of such cases. It will then be easier for us to expect that from time to time they will publish materials that are less interesting from the standpoint of the "average reader," but which are very important for us to have publicized.

Frequently a report is presented to the media at a **press conference**. This should not be too lengthy: the introduction and presentation of the report should not last longer than 15-20 minutes, while the same amount of time should be reserved for questions. Anyone who is very interested will remain behind after the official end of the press conference in order to find out more. *Every journalist wants to have their own sources of information that others do not*



*have access to.* Selected journalists, or journalists we maintain friendly relations with, can be given individual descriptions of specific events connected to the topic of the report — information meant for them alone. Given “the scoop” on an interesting case, they will write about it eagerly.

Instead of holding a press conference it is sometimes a good idea to **meet with several selected journalists**, so that our experts can comment from various perspectives on important events that are the subject of wider discussion. The purpose of this is not to promote our organization, but rather to provide journalists with arguments, information, and assessments that they can consider their own.

### 10.5. Some general remarks

We may attach an **introductory letter** to the report that very concisely presents the essence of the problem, and **summarizes the report** and the main results of the study. Many journalists and politicians will read this page, and this page alone.

When sending our report abroad or to libraries, it should include a short **abstract written in English**. The report can also be made available on our organization’s **website**. Sometimes it is worth taking out paid **press advertisements** (especially in specialized periodicals addressed to circles that may be interested in our report, such as judges, lawyers, doctors, etc.) in which we provide information about our report and about how it can be obtained.

**Good report publicity does not depend on how many copies we print or how many individuals we send it to. The key is identifying a narrow group of individuals that will truly be able to use the report.**

It does not make sense to send the report to all members of parliament, or to every representative of local government authorities. The majority of them will never even open it.

The main rule of report distribution is as follows: the report should be addressed **to specific individuals**, and not to institutions or editorial offices. We do not want the fruit of our labor to get lost somewhere in a secretarial office, without ever reaching the hands of those whom it may interest.

Regardless of the distribution scheme we choose based on how we plan our campaign, it is always a good idea to send a copy of the report to our

country's **national library**<sup>18</sup>, the libraries of **universities and other institutions of higher learning** in the country and abroad, the **library of parliament**, the United States Library of Congress in Washington, the most important **foreign non-governmental organizations** that are interested in the given topic, and **intellectuals and academics** of world renown whom we know are interested in events in our country or in the topic of our monitoring study.

Also of importance is the **order** in which the addressees should receive our report. The first should be the state institution that gave its consent to our study, followed by the state authorities we intend to send the report to. The point, after all, is not for the prime minister to find out from newspapers that we have addressed a letter to him or her together with the report. After these addressees, the next in line — although some people believe that they should open our list — are the directors of the institutions we studied during the course of the monitoring. Only after all of these addressees have received the report do we direct it to the remaining readers.

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<sup>18</sup> In some countries, such as Poland for example, every publisher is required by law to send a copy of each and every publication to the National Library.



Fot. Mariusz Makowski / Agencja Gazeta

Local elections, Cracow, October 1998

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