

The most problematic human rights violations in Poland in 2006 included the continued use of criminal defamation provisions to muzzle not only legitimate criticism of public officials by journalists but in some cases also harmless statements by ordinary citizens and critique among professional groups. While charges under the abusive defamation provisions continued to be filed, there were some modest signs of possible change of attitudes in the course of 2006.

In a positive contrast to 2005 - a year characterized by serious violations of the right to peaceful assembly especially in the context of the banned "Equality March"¹ - Polish courts in 2006 appeared to have changed their sentencing policies, not least as a result of important Constitutional Court judgments clearly denouncing the old practices.

Overcrowding in Polish penitentiary institutions remained another serious problem, with new legal and ministerial regulations virtually legalizing conditions that were at variance with legal standards. What is more, official figures on prison population and overcrowding were misleading, thereby undermining the gravity of the problem.

Freedom of assembly

In the wake of gross violations of the right to peaceful assembly in 2005, sentencing practices of Polish courts improved significantly in 2006. In addition, important decisions were pronounced both at national and international level with regard to the banning of the 2005 "Equality March." Both developments gave rise to hopes that the right to peaceful assembly would be better respected in the future.

On 18 January, the Constitutional Court declared unconstitutional the provisions of the road traffic law, which in fact introduced a form of a compulsory "licensing" procedure for organizing public assemblies. The law prescribed that organizers of

public events must obtain consent from the mayor of a municipality if the planned assembly constituted of a march on public streets or roads. This law was abused on several occasions, most notably to ban the "Equality March" scheduled for 19 November 2005 in Warsaw. The court explicitly stated that the constitutional freedom of peaceful assembly may not be subject of licensing: a notification must suffice. Further, according to the court, after receiving an advance notification of a public assembly (including its purpose), the duty of the authorities is to undertake all necessary steps to secure its safety. Accordingly, the only basis for banning public assemblies is now the 1990 law on assemblies.

On 25 May, also the Supreme Administrative Court in Warsaw ruled that the ban issued on the "Equality March" was illegal. The court underlined in its judgment that, in the context of the freedom of peaceful assembly, it was not the role either of administrative organs or courts to pronounce judgments on the slogans and ideas advanced by their own moral standards or even dominant moral standards of society. The court also noted that if state authorities were willing to spend great sums of money on protecting sports events (especially due to the threat from football fans), they should not spend less on protecting the enjoyment of the personal freedom of assembly guaranteed by the constitution.

On 5 December, the European Court of Human Rights (ECtHR) declared admissible the case of *Tomasz Bączkowski and others vs. Poland*² concerning the ban on the 2005 "Equality March," thereby making it clear that the case raised important legal and factual issues and will be considered materially by the ECtHR.

Freedom of expression

Criminal defamation provisions

The persisting problems concerning freedom of expression in Poland included

the continued implementation of criminal defamation provisions. The cases ranged from legitimate criticism by journalists of public officials when carrying out their duties and harmless critical statements about the president by ordinary citizens, to critique within professional circles.

According to the Helsinki Foundation for Human Rights (HFHR), articles 212, 213 and 226 of the criminal code (P 10/06) dealing with defamation, were grossly at variance with article 54(1) of the constitution and article 10 of the European Convention on Human Rights, which both guarantee freedom of expression. Nevertheless, they were used with the purpose of countering legitimate criticism of both national and local public officials.

- ◆ Complaints were lodged with the Constitutional Court and the ECtHR in the case of Marian Maciejewski, a journalist convicted for slander after having criticized the work of judges in the city of Wrocław.

- ◆ Another complaint was filed with the Constitutional Court in the case Grzegorz B., an employee with the border guards, who had sent three complaints to the minister of national defense criticizing his superior. This criticism brought him guilty verdicts for slander in two court instances.

- ◆ Similarly, a case was filed with the Constitutional Court on behalf of Zbigniew K., the head of the city council in Knyszyn, who had criticized the professional conduct of a high school director at a council meeting. The director sued Zbigniew K. and the court found him guilty of slander.

Another problem related to criticism of public officials concerned article 135(2) that defines the offence of insult of the president of the republic, for the removal of which the Helsinki Foundation for Human Rights has urged.

- ◆ The problem of this provision was visible *inter alia* in the case of Hubert H., a ho-

meless man who, while being controlled by policemen, expressed some impolite words about “the Kaczyńscy brothers” (i.e., the president and prime minister of Poland). Hubert H. was charged for insulting the president and the prime minister, but a court discontinued the proceedings because of “minimal social harm caused.”

The HFHR also noted that a right to critique in professional circles was restricted.

- ◆ Zofia Sz., a physician, was found guilty of the breach of a provision of the Code of Physicians’ Ethics for criticizing the work of other physicians. The HFHR was preparing a constitutional complaint in this case at the end of the year.

Yet there were two Constitutional Court judgments, or parts of them, that might contribute to decreasing criminalization of critical speech in Poland.

- ◆ At the initiative of the District Court in Gdansk, the Constitutional Court on 30 October examined article 212 of the criminal code and ruled that it was in compliance with the constitution. At the same time, however, the court did not examine on its merits article 213 (2) of the criminal code, which deals with conditions for releasing journalists from liability for the accusation of defamation. Also, three judges (out of 12) of the court submitted dissenting opinions.

- ◆ In another ruling (P3/06), the Constitutional Court on 11 October declared unconstitutional article 226 of the criminal code insofar as it criminalizes insults committed in connection with public officials’ execution of their duties. This provision has been abused on numerous occasions by way of initiating criminal investigations into critical press articles and complaints written by individuals to public bodies. The Constitutional Court did not, however, examine the remaining part of the said provision, which deals with acts of insult against police officers on duty.

Hate Speech

Public prosecutors' and courts' interpretation of "hate speech" was questionable.

◆ The HFHR filed a suit for hate speech against L. Bubel,⁵ an editor for anti-Semitic publications. Instead of using criminal proceedings that it considered ineffective, HFHR decided to file a civil case claiming harm to human dignity caused by his anti-Semitic publications, considering that Bubel's publications promoted hate speech.

Prison conditions

In September, Polish penitentiary institutions operated on the average at 122.1% of their official capacity, according to the Central Prison Administration (*Centralny Zarząd Służby Więziennej*). These official figures, however, were misleading and did not reflect the actual gravity of the problem of overcrowding.

When calculating prison capacity, Central Prison Administration included all usable areas of prisons for its per inmate space indications, including recreational areas such as TV-rooms and gyms. According to international standards, only the cell area should be the basis for such calculations. As a result, the actual per inmate

space in prisons was even smaller than the one officially calculated. In addition, legal standards prescribe 3 m² space per inmate while the officially tolerated space by the Ministry of Justice was as little as 1.2 m².

Many penitentiaries had converted common rooms into cells, thereby seriously restricting the inmates' opportunities for recreational activities, a right also provided by international standards. Such conditions were legalized by the Criminal Punishment Execution Code (*kodeks karny wykonawczy*) and an ordinance of Ministry of Justice of 19 April 2006 in cases of overcrowding in pre-trial detention centres.

◆ On 7 November, the HFHR filed a complaint with the Constitutional Court on behalf of prisoner Artur L. claiming that the norms set by the Criminal Punishment Execution Code and the 19 April ordinance were in violation of article 41(4) of the constitution (prohibition of inhuman treatment of prisoners), article 40 (prohibition of torture and degrading treatment), article 30 (human dignity), article 48 (right to privacy) and article 68(1) (right to health protection). A similar case lodged by Adam D. was pending before the Supreme Court at year's end. Both prisoners had failed in their attempts to win their cases before civil courts claiming overcrowding in prisons.

SOURCES FOR FURTHER INFORMATION:

◆ Helsinki Foundation for Human Rights and the Helsinki Committee for Human Rights in Poland, at www.hfhrpol.waw.pl

Endnotes

¹ The "Equality March" was organized by feminist and LGBT movements in Poznań to promote equality between sexes and respect for minorities, especially the homosexual minority. The march was scheduled to take place on 19 November 2005 but was banned by local authorities with the official justification that it posed a threat to public safety and order as well as a material threat to property due to the high probability of

counter-demonstrations taking place at the same time. Eventually, the march nevertheless took place as an act of civil disobedience and was brutally dispersed by the police. A week later, numerous protests were held throughout Poland under the motto „The Reanimation of Democracy: The Equality March Goes On.“

² Application no. 1543/06

³ *“Open Republic” Association vs. Leszek Bubel*, case no. Ilc 1169/06, the Regional Court of Warsaw-Praga.