

**IHf FOCUS: good governance; peaceful assembly; right to a fair trial within a reasonable time; amendments to the criminal law; ill-treatment and police misconduct; conditions in prisons and detention facilities; trafficking in human beings; rights of persons with mental disabilities; asylum seekers; labor rights.**

Corruption remained a widespread problem in Poland, which ranked among the most corrupt EU countries. Corruption within the judicial system was widely reported by the media.

Municipal authorities violated the right to peaceful assembly by banning “equality marches” organized by sexual minority groups, citing *inter alia* threats posed by them to public safety due to possible counter-demonstrations - a reason considered insufficient by an administrative court to justify restrictions on basic human rights.

Excessively long judicial proceedings violating the right to a fair trial within a reasonable time were one of the most serious human rights problems. A legal act was adopted in 2004 to allow people to appeal such cases to a court but rulings by the Supreme Court and other courts did not help to remedy the problem. Between January and end of June, 2,652 complaints were lodged with appeal courts for violations of the right to a trial within a reasonable time.

Another cause of serious concern was the continued application of temporary detention as a preventive measure without a court sentence, a practice that raised due process questions also because it posed restrictions on access to legal counsel. Some people had been held in this form of “temporary” detention for over two years.

Amendments to the penal law made punishments harsher, but raised questions about their efficiency and whether they helped tackle issues such as drug dealing and addiction effectively and addressed the roots of such problems.

Dozens of reports were received of alleged police misconduct but bringing abusive police officers to justice remained a

difficult task as in many cases the judges and prosecutors tended to believe police officers more than the victims. No appropriate, independent mechanisms were in place to investigate alleged cases of ill-treatment or other incidents of police powers being overstepped.

Conditions in Polish penitentiaries and remand prisons continued to deteriorate and overcrowding remained the most serious problem. The prison population grew by 50% in the past five years while the number of prison staff increased only by 2.6%. A governmental decree allowed prison administrations to convert premises dedicated for sports and other recreation into cells - a measure opposed by the Polish ombudsman as a violation of constitutional provisions that prohibit inhuman and degrading treatment or punishment, among other things. Over 36,000 people were unable to start serving their prison sentences due to lack of space.

In 2005, 113 unaccompanied minors sought asylum in Poland but 80 of them remained without necessary support from social workers. Those whose status could not be established could be deported to their countries of origin.

Amended legislation on aliens improved the protection to foreign victims of human trafficking by providing for a possibility to grant them a visa or a residence permit for a limited period of time if they cooperate with law enforcement authorities in helping bring traffickers to justice.

With regard to labor rights, for the first time, supermarket employees stood up to defend their rights against exploitation by many employers who failed to pay them for overtime they had been forced to work.

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## Good Governance

### Corruption

In the "Corruption Perception Index" published on 18 October 2005 by Transparency International-Poland, Poland was rated 3.4 (70<sup>th</sup> out of 195 countries in the ranking), which, according to the report, constituted a high level of corruption as perceived by the public. The authors of the report noted that Poland's ranking was the worst among the eight new EU member states and Poland was the only country in the whole index in which the public perception of corruption had increased over the last eight years.<sup>1</sup>

This information, however, was contradicted by research conducted by the European Bank for Reconstruction and Development (EBRD).<sup>2</sup> It found – using similar methods as Transparency International – that Poland was an example of positive changes and a country in which anti-corruption activities had improved and where alleged perpetrators were increasingly brought to justice.

The EBRD finding was based on decreases in two corruption indicators in Poland, the "bribe tax," i.e., unofficial gifts or funds granted to state officials as a percentage of the profit, and the "kickback tax," a pecuniary amount paid to officials for awarding a state contract, which constituted a certain percentage of the contract's value. Between 2002-2005, the former dropped in Poland from 1.22% to 0.7%, with the latter going down from 2.21% to 1.21%. According to the EBRD, the decrease was a result of increased judicial prosecution of corruptive practices, which increased public perception of bribery as something unacceptable.

A case against three former members of the Democratic Left Alliance (DLA, the governing party until November 2005) ended in three final convictions. They had been charged with leaking information about a planned secret service operation against criminals in Starachowice.<sup>3</sup>

◆ The Krakow Court of Appeal found that all three DLA deputies - Henryk Długosz, Andrzej Jagiełło and Zbigniew Sobotka (Sobotka had served as vice minister of internal affairs and administration) – were guilty of the "Starachowiecki Leak" of planned secret operations and that by doing so their conduct had posed a threat to the life of their subordinates, i.e., police officers that were to be involved in detaining dangerous criminals associated with the local DLA branch. All three were sentenced to prison: Długosz to six months, Jagiełło to one year, and Sobotka to three and a half years.<sup>4</sup> Sobotka applied for pardon from the president.

In the past few years, the media has increasingly reported instances of corruption within the judicial system.

◆ One of the most prominent cases was that of Dariusz Czajka, a judge at the Commercial Court of Warsaw. As head of the Warsaw bankruptcy court, Judge Czajka ruled on cases involving the bankruptcy of several companies whose assets were then transferred to entities that were in one way or another linked to the judge himself - including the European College of Law and Administration established by Judge Czajka who also held the post of its honorary chancellor. The disciplinary proceedings against the judge were initiated upon the requests made *inter alia* by the former minister of justice. However, in 2005 the disciplinary court sentenced Judge Czajka for official misconduct but found that an admonition and transfer to another official post constituted sufficient punishment. In practice, the judge was simply transferred to another court outside Warsaw.<sup>5</sup> The Supreme Court upheld the disciplinary court's decision.

◆ As of the end of November, police had detained seven persons suspected of involvement in a corruption scandal in the Ostrołęka court district (northern Poland).

The case included the head of the Ostrołęka Regional Penal Execution Court and a local psychologist from the hospital in Łuków: the judge had allegedly accepted bribes while the psychologist had given false analyses. In the course of the investigation persons alleged of paying bribes were also arrested. All the suspects were under temporary arrest at the end of the year.<sup>6</sup>

### Peaceful Assembly

In several cases, municipal authorities violated the right to peaceful assembly.

◆ In November, first the president of Poznan and then the leader of the regional administration (*wielkopolski voivod*), prohibited the organization of an “equality march” by members of sexual minorities. The authorities argued that holding the March would constitute a potential threat to public safety due to announced counter-demonstrations.<sup>7</sup> Despite the ban, the organizers held the event in the form of a stationary rally (as opposed to a march). The assembly was, however, dispersed by the police and over 70 persons were charged with participation in an illegal assembly. The organizers appealed the regional administration’s decision to the Regional Administrative Court, which held that the rally was legal.<sup>8</sup> It further noted that posing restrictions on the freedom of assembly due to a threat of counter-demonstrations constituted abuse of discretionary powers because, according to this logic, every demonstration not accepted by the whole of society could be banned. Furthermore, the court found no sufficient basis in the decisions of the two authorities for the claim that the march would constitute a threat to public safety. The Polish ombudsman and the Helsinki Foundation for Human Rights (HFHR) added that the court’s decision allowed the detained participants as well as the organizers to seek compensation for violation of their rights.

Three weeks after the disturbances in Poznan, peaceful marches to demonstrate support to the organizers of the “equality march” were held in several Polish cities, including Warsaw, Krakow, Torun, and Gdansk. This time, they took place without major incidents, in part thanks to the attitude of the police who did not let themselves be provoked by the opponents of these marches.

The president of Warsaw cited a similar justification as that used by the Poznan authorities when rejecting the holding of an “equality parade” in the capital.

### Right to a Fair Trial and Effective Remedies

In the first six months of 2005, 2,652 complaints<sup>9</sup> were lodged with appeal courts for violations of the right to a trial within a reasonable time. The complaints were filed under the Act on Complaints for violation of a party’s right to trial within a reasonable time dated 17 June 2004. The act was adopted in order to comply with the obligations arising from the judgment of the European Court of Human Rights (ECtHR) under article 13 of the European Convention on Human Rights (ECHR) in the case of *Kudla v. Poland*.<sup>10</sup> In the first six months the act was in force, 366 cases concerning the right to a fair trial within a reasonable time in administrative court proceedings were filed with the Supreme Administrative Court.<sup>11</sup>

The complaints submitted to the Public Interest Legal Action Program operated by the HFHR indicated, however, that the act was not a fully effective remedy within the meaning of article 13 of the ECHR. While in many cases courts did recognize that the plaintiff’s right to a trial within a reasonable time had been violated, they nevertheless failed to provide compensation for the harm caused, or the awarded compensation was only symbolic. What is more, in some cases courts counted the

time of trial as starting from the entry into force of the act, i.e., 17 September 2004, instead of the real length of the entire judicial proceedings since the case was launched.

◆ In December 2004 Marian W. requested assistance from the HFHR to file a complaint with a district court, alleging violation of the right to a trial within a reasonable time in proceedings before the Regional Court of Warsaw. He had lodged a case concerning a division of property with his former spouse on 18 October 1991. The first hearing was held on 12 October 1992 and the case was still pending at the end of 2004. The district court, however, declared the claim inadmissible in February 2005, ruling that “in accordance with the principle of non-retroactivity of legislation” the June 2004 act may not be applied to proceedings ongoing before the act came into force. This position was in line with the Supreme Court ruling of 18 January 2005 (Chamber of Labor, Social Insurance and Social Matters), according to which an act of law can be applied retroactively only in cases in which its entry into force has been delayed, and only to the period of the delay.<sup>12</sup> With respect to Marian W.’s complaint, the district court took into consideration only the activities taken by the Regional Court of Warsaw in the period directly preceding the entry into force of the Act on Complaints. The court found that during the applicable time span the regional court had dealt with the case systematically, in a timely manner and without unreasonable delay.

The above interpretation of the Act on Complaints for violation of a party’s right to trial within a reasonable time is problematic in that the mere fact that by the date the act came into force and could be applied to the case of Marian W., the proceedings in his case had been ongoing for 13 years, which clearly showed that unreasonable delay had taken place before the imple-

mentation of the act. The complaint was submitted to the district court to discipline the lower court responsible for the delay as well as to provide compensation for the delay (up to PLN 10,000 or EUR 2,518 as prescribed by law) from the responsible court. The fact that the district court only counted as relevant for the alleged delay the time from the moment directly preceding and after the date the relevant act came into force contravened the spirit of social justice.

In light of the above-mentioned case, the HFHR requested the Polish ombudsman to file a case on behalf of Marian W. for cassation with the Supreme Court, due to a violation by the District Court of Warsaw to deal with the case properly as a result of its interpretation of the 2004 Act on Complaints for violation of a party’s right to trial within a reasonable time.

### *Rights of Persons Temporarily Detained*

The application of the most severe preventive measure, temporary detention without a court sentence, remained a central human rights issue. The use of this measure was highly controversial because it limited detainees’ rights, particularly the right to prompt access to legal assistance.

In cases in which attorneys were appointed by the court, the first contact between the lawyer and the accused often took place only during the final stage of the preliminary investigation. Another problem was that temporarily detained persons were not always informed of their right to have a court-appointed barrister early enough or not informed that it was the responsibility of the prosecutor’s office to file an application to appoint an attorney. In the latter case the need to act promptly was of crucial importance in order to guarantee that an attorney would be summoned in time.<sup>13</sup>

The problems related to preventive temporary detention were highlighted in

two cases lodged by the HFHR with the Constitutional Court alleging violations of article 263(4) of the criminal procedure code, with reference to article 41(1) in connection with article 31(3) of the constitution.<sup>14</sup>

◆ Maciej B. and Tomasz W. had been held in preventive temporary detention for more than three years despite the fact that under article 263(2 and 3) of the criminal procedure code temporary detention should not be applied as part of preliminary proceeding in excess of 12 months, and the total duration of this measure, as issued by a court of first instance, should not exceed two years. The time limits set in article 263(2-3), however, are of an instructional nature only since pursuant to article 263(4) of the same code a court of appeal may extend the application of temporary detention beyond this time limit for specific reasons.<sup>15</sup> The Constitutional Tribunal merged the complaints of both parties and the ombudsman also joined the proceedings. The HFHR argued in its briefing before the judicial panel of the tribunal that a legal provision providing for deprivation of an individual's liberty without a court hearing contravenes the essence of individual freedom. The HFHR stated that "The law cannot contain a provision that so equivocally defines the situation of the individual with respect to public authority. In a worst-case scenario, the existence of such murky clauses could lead to the permanent deprivation of liberty despite the lack of any final court judgment."<sup>16</sup>

#### *Amendments to the Criminal Law*

On 27 July, the *Sejm* (lower house of the National Assembly) adopted amendments to the criminal code, the criminal procedure code, and the executive penal code. The most significant changes increased penalties and made stricter the criminal liability principles for sex crimes, especially against minors.

The amendments, for example, increased penalties for pedophilia. Pursuant to the new provisions, persons found guilty thereof may be deprived of liberty for between two and twelve years. The amendments also banned perpetrators of pedophilia from performing activities related to education and care for minors. They also provide for a possibility of a court to restrict a convicted person's freedom of movement without court consent. In the event the victim is under 15 years of age, no mitigating factors are taken into consideration in deciding on the sentence. Sex offenders whose crimes can be attributed to psychological disturbances of a sexual nature and have served their sentences may be confined in a closed facility or be directed to outpatient treatment. A court may also suspend the execution of the sentence and order the offender to be ordered to undergo special treatment, rehabilitation, or therapy, or an order of restraint can be issued forbidding him to make contact with certain persons.

The amended article 148 (2) of the criminal code contains a stricter penalty for assassination. Murders involving hostage taking, rape or robbery, motivated by reasons deserving particular condemnation, or committed with the use of firearms or explosive materials shall be subject to 25 years of deprivation of liberty or life imprisonment.

The HFHR stated that increasing penalties was controversial as defendants would now be expected to take more advantage of their right to extraordinary mitigation of punishment than previously.

A public discussion commenced at the end of 2004 on possible new legal measures to prevent drug dependency. The subject was raised due to police statistics, which indicated that increasing the gravity of a penalty for drug abuse according to the amount of drugs found in a person's possession when he or she was caught

had not resulted in punishing drug dealers but only in an increase in the number of convicted drug abusers - and had therefore only addressed the surface of the problem. Guided by the above-mentioned findings, the HFHR in January 2005 held a meeting entitled "Human Rights to Reduce Harm" to discuss legal recommendations regarding drug dealing and dependency that was under review at the Ministry of Health. The result of the meeting was a document entitled *Remarks to the Draft Legislation to Prevent Drug Dependency*.

The discussion on legal amendments concerning drug dealing and dependence continued through mid-2005. However, due to resistance from the Ministries of Justice, Internal Affairs, Education and Finance, and despite support from the Ministry of Health and the police leadership, it was not possible to submit changes that would result in a more effective approach to the problem.

### **III-Treatment and Police Misconduct**

The HFHR received about 40 complaints concerning misconduct by police officers. Bringing abusive police officers to justice remained a difficult task due to the fact that in cases of conflicting statements between the alleged victim and the alleged perpetrator, police testimony usually yielded unquestioned credibility in the eyes of the prosecutor and sometimes also the courts.

◆ Ryszard S., a defendant in a criminal case, was summoned by a court to appear for a psychiatric evaluation but failed to do so. Police officers acting at the behest of the Regional Court of Żyrardów forced their way into Ryszard S.'s home in order to take him to the evaluation. Ryszard S. lost consciousness during the intervention. The officers forbade his wife, a qualified nurse, from administering first aid, but called an ambulance and transferred Ryszard S. to a patrol car. The physician who arrived at the

scene a few minutes later could only pronounce Ryszard S. dead. The prosecutor investigating the case found no procedural violations in the police conduct. The HFHR, which assisted the victim's wife, argued that there had been violations of arrest procedures and that the investigation into the case had violated articles 2 and 3 of the ECHR (right to life and prohibition of torture). The court found in favor of the wife of the deceased and the HFHR and remanded the case to the prosecutor's office. The matter was ongoing as of the end of 2005.

According to the HFHR, no appropriate mechanisms were in place to investigate alleged cases of ill-treatment or other misconduct by the police. If a prosecutor decided not to raise charges against an abusive officer, the decision could be appealed to a higher instance prosecutor's office, and later to a court of law. The highest bodies to appeal to were the minister of justice, the prosecutor general or the ombudsman who were allowed to file for cassation. However, none of these bodies has taken advantage of this right in the last few years.

◆ The HFHR assisted Agata Cz. in drafting a complaint to the ECtHR regarding the lack of an effective means to appeal a decision made by a prosecutor not to bring charges against a police officer for shooting her husband dead. She had filed a request with the ombudsman, the minister of justice and the prosecutor general for cassation of the court decision upholding the prosecutor's decision. After more than a year, she had not received responses.

### **Conditions in Prisons and Detention Facilities**

Conditions in Polish penitentiaries and remand prisons continued to deteriorate, the most serious problem being overcrowding. As of 30 November 2005, 84,020

people were held in prisons and pre-trial facilities, an increase of 3,311 since November 2004. The official capacity of Polish prisons was 68,729. The fact that prison premises used for sports and other recreation, and even prison chapels, had in recent years been converted into cells highlighted the gravity of the problem.

In 2000, the Ministry of Justice decided that as little as 1.5 m<sup>2</sup> prison space per prisoner was acceptable, compared to the previous requirement of 3-3.5 m<sup>2</sup> per inmate.<sup>17</sup> The ministry's decree provided that in the event of overcrowding (a problem in Poland for the last five years), the director of a regional prison services inspectorate and the director of a given facility were allowed to convert premises not included in the facility's inmate housing capacity for housing purposes. In mid-December 2005, the ombudsman filed a case with the Constitutional Tribunal challenging the constitutionality of the ministry's decree and arguing that it violated articles 40 and 41 of the constitution (prohibition of torture, inhumane, cruel or degrading treatment or punishment, and the right of inmates to humanitarian treatment, respectively).<sup>18</sup>

Furthermore, there was a tremendous growth in the number of persons awaiting the execution of their prison sentences. As of 30 November, 41,419 final court decisions against 36,514 persons remained to be executed. Of that number, 32,615 persons were forced to *de facto* violate a legal order to appear for the execution of their punishment. As compared to the end of November 2004, the number of unexecuted prison sentences had increased by 5,497. Over the same period, the capacity of penal institutions grew by a mere 148 places, to a total of 69,838 (as of 30 November 2005). According to the Central Prison Administration data, on that date, the average overcrowding was 120%. However, this figure did not include inmates who failed to return from home

leave, who had escaped, who were temporarily absent to receive medical treatment or held in police premises, and those extradited to other states as witnesses in proceedings in progress.<sup>19</sup>

Partly as a result of overcrowding, the employment rate of inmates was on the decrease. On 30 November 2005, the total employment rate was 21,801 (or 29.8%) of which 13,657 were paid, down by 0.6% as compared to October 2005. Persons employed without pay performed, *inter alia*, public works (2,507 persons) and charitable duties (261 persons).

The deteriorating prison conditions resulted in complaints by inmates of violations of rights guaranteed by article 3 of the ECHR as well as domestic legislation, both of which prohibit inhuman and degrading treatment.

◆ Between November 2004 and April 2005, seventeen persons incarcerated at the prison of Tarnow approached the HFHR with requests to monitor the civil suits they had filed on grounds of alleged violations of their rights to humane conditions of incarceration. The HFHR drafted an *amicus curiae* brief regarding the incarceration conditions at the Tarnow penal facility with respect to ECtHR jurisprudence in the context of article 3 of the ECHR. While the HFHR found that the general conditions in that facility did not amount to violations under that article - largely due to the fact that it is a partially open penal facility - it however noted in its memorandum to the District Court of Tarnow that some of the complainants may have suffered violations of rights guaranteed by Polish law, which provide broader protection than article 3 of the ECHR.

Polish law does not provide for monetary compensation for persons incarcerated in inhuman living conditions. The civil code only provides for compensation to victims who have suffered harm from illegal activities by a state employee. How-

ever, the majority of complaints so far received from incarcerated persons have concerned violations of rights guaranteed by the executive penal code without having caused harm to the complainant.

◆ The District Court of Wrocław cited such an interpretation in denying a compensation claim filed by Artur L. The court explained that the complainant had failed to prove that incarceration in cells overcrowded by 112 to 120% had resulted in any harm to his health.<sup>20</sup>

The growth of the prison population by 50% in the past five years has also led to the deterioration of the working conditions of prison officers. Over the same period, the number of all prison staff has increased only by 2.6%. The number of overtime hours of officers totaled over 1.88 million in 2005. Occupational stress, low pay, few professional prospects, as well as the steady increase in the number of inmates incarcerated for serious crimes has resulted in a growing number of burnouts and other psychological problems among corrections officers. From 2004 through mid-2005, the Central Prison Administration recorded nine cases of suicide among officers<sup>21</sup> - a figure that finally made prison authorities direct necessary attention to the accumulating problems faced by the staff. Nevertheless, no systemic attempts had been taken by the end of 2005 to solve the problem.

A HFHR research report found that the complaint review mechanism of the Central Prison Administration was not impartial and independent. The board referred complaints for action by regional prison service inspectorates - whose attitudes most probably were affected by the opinions of local facility directors.

## Asylum Seekers

### *Unaccompanied Minors*

Procedural ambiguities caused practical difficulties in establishing the legal sta-

tus of unaccompanied minors crossing the border to Poland. Each year, about 200 minors who have illegally entered Poland have been sent by the border police to the police-run centers for children. Subsequently, 80% of the children leave the centers without social workers being involved in their cases.

In 2005, 113 such minors sought asylum in Poland (compared to 169 in 2004; 146 in 2003, and 161 in 2002). Most of them came from Romania, the Russian Federation, Vietnam, India, Pakistan, Afghanistan, China and Mongolia.

In 2005, a total of twenty places were reserved in two Warsaw foster homes for minors seeking asylum. Yet, one of the main problems concerning unaccompanied aliens remained: if their legal status could not be settled, they could be deported to their country of origin.<sup>22</sup>

### *Conditions in Deportation Centers*

"Halina Nieć" Human Rights Association monitored in 2005 Polish centers for detainees awaiting deportation and found that their living conditions were generally adequate. It noted, however, that the failure to realize other rights of detainees was a serious problem, including the failure to ensure access to information (regarding detention facilities operated by the police), lack of access to legal assistance and translators, shortage of suitable clothing due to financial restraints, and the lack of leisure time activities (sports, literature, newspapers, etc.).

"Halina Nieć" monitoring concluded that measures should be taken to improve access to medical care, especially to epidemiological diagnostics and therapy for post-traumatic and other psychological stress. Moreover, the NGO recommended that more attention be paid to adapting meals to the cultural and religious norms of aliens staying in the centers. A follow-up research indicated that following the previous moni-



toring<sup>23</sup> improvements had taken place in the boarding conditions of aliens in detention institutions, especially in deportation facilities maintained by the border guard.<sup>24</sup>

### Trafficking in Human Beings

An amended Act on Aliens and on Providing Aliens with Security in the Republic of Poland entered into force on 1 October 2005.<sup>25</sup> The amendment improved protection to foreign victims of human trafficking.

The amended regulations provide that a foreign victim of human trafficking may be granted a visa or a residence permit for a limited period of time. Pursuant to article 33 of the act, an alien shall be issued a visa if it is "reasonable to assume" that he or she has been a trafficking victim, despite possible other circumstances that would normally speak against granting a visa. Further, pursuant to article 53(1.15), an alien shall be issued a residence permit for up to six months provided that he or she is willing to cooperate with investigative authorities in charge of preventing human trafficking, and that the person has broken ties with those suspected of participation in human trafficking. Moreover, under the new provision, a residence permit cannot be refused on the grounds that the alien has entered Poland illegally.

The amendments incorporated Council Directives 2004/81/WE dated 29 April 2004 regarding stay permits issued to citizens of other states being victims of trafficking in humans or being previously the subject of activities facilitating illegal immigration, who cooperate with appropriate authorities.<sup>26</sup>

Poland also signed on 16 May 2005 the Council of Europe Convention on Activities to Prevent Human Trafficking - the convention is yet to be ratified.

According to the European Commission against Racism and Intolerance (ECRI),<sup>27</sup> Poland is no longer merely a country of origin and destination of human

trafficking, but, with increasing frequency, a point of transit. This applies mainly to women that are to work in the sex trade. In its report, ECRI recommended that Polish authorities introduce additional barriers and means to react adequately to the human trafficking problem. It especially emphasized actions that are preventive and increase awareness of the gravity of this problem directed to all groups of the population. However, ECRI placed greatest emphasis on the introduction of specific legal means to protect victims of human trafficking, especially by providing them assistance and assuring their safety. One of the recommendations is also the effective punishment of persons perpetrating human trafficking offenses.

According to information from the main police headquarters, between January and November 2005, investigative authorities exposed three crimes related to human trafficking (under article 204(4) of the criminal code<sup>28</sup>), involving five victims. Preliminary proceedings were ongoing at year's end with respect to one suspect. During the same period, the border guard reported no human trafficking related crimes (either article 204 or 253 of the criminal code).<sup>29</sup>

### Rights of Persons with Mental Disabilities

Three psychiatric hospitals were in charge of the treatment of persons who were not subject to penal liability due to mental disability. Poland had three regional court psychiatry centers that were maximum-security facilities, twelve high-security departments (including one for women), and over 30 centers with basic security level.

In December, the HFHR monitored a number of maximum-security and high-security facilities. In one maximum-security facility, the monitoring group identified an unsettling practice of monthly searches of

all patients' personal belongings and strip searches of the patients. The administration stated that this was necessary in order to maintain order in the facility. This practice was also sanctioned in the internal regulations signed by the facility's director.

The HFHR stated that such searches were degrading and impossible to be justified.

### Labor Rights<sup>30</sup>

The first cases of supermarket employees standing up to defend their rights occurred in Poland in 2004. The cases revealed the practice of many employers making use of widespread unemployment by exploiting their own employees and forcing them to work overtime without additional pay and in conditions that frequently bordered on violations of human dignity.

◆ Bożena Ł., a former employee of the Biedronka store (a discount supermarket chain), was forced to work overtime without additional pay. This was the first case in Poland where a supermarket employee sued her employer for failing to pay for overtime. On 19 January 2005, the Gdansk Court of Appeal remanded the case to the District Court of Elbląg. As of year's end, the case was under review by the Elbląg District Court.

◆ On 22 December 2004, a regional prosecutor had initiated preliminary proceedings against the board of directors of Jeronimo Martins Dystrybucja Sp. z o.o. (limited liability company), owner of the Biedronka chain, for systematic violations of labor rights. The case was ongoing at the end of 2005.

### Endnotes

<sup>1</sup> Corruption Perception Index 2005, at [www.transparency.pl/www/pliki/CPI%202005.doc](http://www.transparency.pl/www/pliki/CPI%202005.doc).

<sup>2</sup> *The Budapest Times* (M. Logan), "Corruption falling, but not in Hungary. Lack of prosecutions encourages bribes," No. 47, 21 November 2005.

<sup>3</sup> See IHF, *Human Rights in the OSCE Region: Europe, Central Asia and North America, Report 2004 (Events of 2003)*, p. 309-310, at [www.ihf-hr.org/documents/doc\\_summary.php?sec\\_id=3&d\\_id=3860](http://www.ihf-hr.org/documents/doc_summary.php?sec_id=3&d_id=3860).

<sup>4</sup> *Gazeta Wyborcza* (J. Sidorowicz), "Sprawa starachowicka: oskarżeni politycy winni" (The Starachowice Matter: accused politicians guilty), 17 November 2005.

<sup>5</sup> *Gazeta Wyborcza*, "Przedziwny Wyrok dla sędziego Czajki" (A Strange Verdict for Judge Czajka), 29 September 2004.

<sup>6</sup> *Gazeta Wyborcza* (B. Wróblewski), "Korupcja w ostrołęckim wymiarze sprawiedliwości" (Corruption in the Ostrołęka Justice Department), 7 December 2005.

<sup>7</sup> *Gazeta Wyborcza* (A. Przybylska), "Marsz Równości był legalny" (Equality March Was Legal) No. 291.4994, 15 December 2005.

<sup>8</sup> Case ref. No. IV S.A./Po 983/05

<sup>9</sup> Source: [www.ms.gov.pl](http://www.ms.gov.pl).

<sup>10</sup> Act dated 17 June 2004 on complaints for violation of a party's right to trial within a reasonable time, Dz.U. (*Journal of Law*) 2004, No. 179, pos. 1843.

<sup>11</sup> *Rzeczpospolita*, 1 August 2005, section C2

<sup>12</sup> III SPP 113/04

<sup>13</sup> See IHF, *Human Rights in the OSCE Region: Europe, Central Asia and North America, Report 2004 (Events of 2003)*, at [www.ihf-hr.org/documents/doc\\_summary.php?sec\\_id=3&d\\_id=3860](http://www.ihf-hr.org/documents/doc_summary.php?sec_id=3&d_id=3860).

- <sup>14</sup> Article 41(1) of the constitution provides that every person shall be assured personal inviolability and personal freedom. Deprivation or limitation of freedom may occur only upon the principles of and in a statutorily defined manner. Meanwhile, article 31(3) provides that limitations on constitutional freedoms and rights may be established only by statute and only when such are necessary in a democratic state for the security thereof or public order, or for protection of the environment, public health and morality or the freedom and rights of others. Such limitations may not prejudice the essence of freedom and rights.
- <sup>15</sup> These reasons include: due to the suspension of criminal proceedings; for the purpose of extended psychiatric observation of the accused; pending an expert opinion; pending the completion of evidence gathering in especially complex matters or such activities carried out abroad; on grounds of intentional dilatory tactics in the proceedings by the accused; as well as due to other significant and insurmountable obstacles.
- <sup>16</sup> Legal brief by the Helsinki Foundation for Human Rights regarding constitutional complaints by M. Bruczyński and T. Wullert (SK 58/03) in compliance with article 263 § 4 of the criminal procedure code with article 41 item 1 in connection with article 31 item 3 of the Constitution of the Republic of Poland, at [www.hfhrpol.waw.pl](http://www.hfhrpol.waw.pl).
- <sup>17</sup> Decree of the minister of justice dated 26 October 2000 regarding the procedures of relevant authorities in the event the number of incarcerated persons in penal facilities or investigative arrests exceeds, on a national scale, the total capacity of said facilities, Dz. U. (*Journal of Law*) 2000, No. 97, pos. 1060; overturned by a decree of the minister of justice dated 26 August 2003 regarding the procedures of relevant authorities in the event the number of incarcerated persons in penal facilities or investigative arrests exceeds, on a national scale, the total capacity of said facilities, Dz. U. (*Journal of Law*) from 2003, No. 152, pos. 1497.
- <sup>18</sup> *Gazeta Wyborcza*, "Więzienia zapełnione niekonstytucyjnie" (Jails Unconstitutionally Saturated), No. 291.4994, 15 December 2005.
- <sup>19</sup> See [www.czsw.gov.pl](http://www.czsw.gov.pl).
- <sup>20</sup> *Gazeta Wyborcza* (M. Maciejewski), "Nie będzie odszkodowania dla aresztanta" (No compensation for Arrestee), 22 December 2005.
- <sup>21</sup> *Newsweek Polska* "Klawisze zaczynają pękać" (The Guards Are Beginning to Snap), No. 29 July 2005, p.70.
- <sup>22</sup> Information from the Office of the High Commissioner for Refugees in Warsaw and from Magdalena Kmak from the Free Legal Aid for Aliens program, operated within the Helsinki Foundation for Human Rights.
- <sup>23</sup> Helsinki Foundation for Human Rights, *The Rights of Foreigners Being Held at Deportation Arrests and the Detention Centre*, Warsaw 2004.
- <sup>24</sup> "Halina Nieć" Human Rights Association, *Monitoring of Polish Deportation Arrests and Guarded Detention Center, Final Report*, No. 6/2005, Kraków 2005.
- <sup>25</sup> Act dated 22 April 2005 regarding the amendment of the aliens act and the act on granting aliens assistance in the Republic of Poland and certain other acts, Dz. U. (*Journal of Law*) 2005, No. 94, pos. 788.
- <sup>26</sup> Dz. Urz. (*Official Journal*) UE L 261 z 6 August 2004.
- <sup>27</sup> European Commission against Racism and Intolerance, *Third Report on Poland*, Strasbourg 14 July 2005.
- <sup>28</sup> The crime of human trafficking is basically covered by article 253 of the Criminal Code. However, in police practice, acts related to human trafficking are qualified as crimes of

luring or abduction for the purpose of prostitution abroad, regulated by article 204 § 4 of the criminal code.

<sup>29</sup> Information provided by Marcin Wiśniewski, Program on Human Trafficking – prevention and investigation, as part of the Polish Section of the International Commission of Jurists.

<sup>30</sup> Conclusions based on information from the Precedence Case Program of the Helsinki Foundation for Human Rights, provided by Adam Bodnar, program coordinator.