

Poland¹

IHF FOCUS: freedom of expression and the media; judicial system and independence of the judiciary; fair trial; detainees' rights; torture, ill-treatment and police misconduct; prisons and detention centers; security services and right to privacy; hate speech; asylum seekers and immigrants; international humanitarian law; economic and social rights; right to education; corruption.

2003 saw Poland in the final stages of preparation before accession to the European Union in May 2004. However, various human rights problems continued, in particular in the field of corruption and the administration of justice.

Important amendments to the Penal Procedure Code were introduced in July, including guaranteeing reasonable advance notification of upcoming court sessions. However, the problem of excessively lengthy trials continued and there was no right of appeal against this. In addition there were problems related to the provision of free legal aid, which was both limited and of lower quality compared to lawyers appointed by the defendants themselves.

The automatic application of temporary detention remained common practice and access to lawyers for those detained was frequently restricted. In addition, the prison system was overpopulated and severely lacked funding. Many prisoners had diseases and there were no therapists to help overcome the problem. The issue of corruption amongst prison staff continued. According to a report by the Helsinki Foundation for Human Rights in Poland (HFHR), prisons in Poland failed to meet international standards relating to the size of area per convict.

Other concerns included restrictions on freedom of the media and poor conditions of school buildings. Several cases of corruption amongst public officials remained pending and Poland's ranking in the corruption index slipped in 2003.

As regards the asylum system, HFHR expressed its concern over limited access to Chechnyan asylum seekers and assisted in the preparation of asylum claims of the latter during the year.

Freedom of Expression and the Media

In 2003, attacks on freedom of the media intensified. Numerous examples included judicial bans on publishing data gathered by journalists (while civil proceedings were in progress), assaults on journalists who asked "inconvenient" questions, illegal restrictions on contacts between staff of public institutions and journalists and legal action taken against those who refused to print corrections.²

A decision of the Regional Court in Warsaw (4th Civil Division) presented a particularly dangerous precedent.

- On 17 November a decision issued during a closed court session prohibited *Rzeczpospolita*, one of the largest national dailies, from publishing articles on both the private and professional life of Andrzej P., a businessman with foreign connections. The decision was issued soon after an article was published³ describing his collaboration with the former managers of the state-owned general insurance company Powszechny Zakład Ubezpieczeń "Zycie" (PZU), Grzegorz W. and Władysław J. in misappropriating insurance money out of the company.

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² Centrum Monitoringu Wolności Prasy (Freedom of the Press Monitoring Centre), at <http://www.freepress.org.pl>.

³ *Rzeczpospolita*, "Tajne konta byłych szefów PZU" (Secret accounts of former PZU directors), 13 October 2003, p. 1.

Publishing was banned throughout the lawsuit against *Rzeczpospolita* brought by Andrzej P., and due to the lengthy nature of court proceedings in the country, the ban could last for several years. On 29 October, however, another judge from the court⁴ had stated that the demand to ban publishing information about Andrzej P. and his family was too vague and too far-reaching. The court's decision to ban publishing provoked immediate reactions both in national and foreign circles and was criticized not only by journalist organizations, but also by the ombudsman. On 18 November, *Gazeta Wyborcza* (another national daily) offered its columns to *Rzeczpospolita* journalists, encouraging them to publish material about Andrzej P.⁵ A few days later *Gazeta Wyborcza* reported that the Prosecutors' Office in Warsaw would be party to the civil proceedings brought by Andrzej P. against *Rzeczpospolita*⁶ and would take into account *Rzeczpospolita*'s motion to overrule the ban. *Gazeta Wyborcza* quoted an excerpt from the 8 December declaration of the International Federation of Journalists, which accused the Polish government of attacking *Rzeczpospolita* reporters.⁷ The case was pending at the Warsaw Court of Appeal as of the time of writing.

- At the beginning of 2003, the District Prosecutor in Brzeg (Lower Silesia) lodged an indictment against a well-known journalist from the region, Marian Maciejewski, who had conducted numerous investigations into and was the author of several articles on corruption and malpractice amongst judges, prosecutors and court bailiffs in Lower Silesia. Maciejewski was indicted at the request of the president of the Regional Court in Wrocław and one of the prosecutors from the Regional Prosecutor's Office who viewed Maciejewski's articles as harmful to their reputation. They felt especially offended by one article⁸, which described the criminal practices of court bailiffs and the inaction of both the supervising judges and of the prosecutor, who was carrying out an investigation into their behavior. Since April 2003, at the request of the allegedly wronged prosecutor, the proceedings have taken place *in camera*. In December 2003, the trial was far from nearing completion, due *inter alia* to the fact that the court only fixed dates for hearings every 6-10 weeks.

On a positive note, a Supreme Court judgment on 2 June⁹ overruled a judgment in another press affair, where the editor-in-chief of the biweekly *Panorama Mazurska* was found guilty by the District Court in Biskupiec (and subsequently by the Regional Court in Olsztyn) of libel against the District Governor of Wegrow for publishing the headlines "One-Armed Bandit" and "In Secret Services of His... Majesty." The Supreme Court stated that freedom of speech should never be separated from freedom of the media, which is the *sine qua non* condition for public criticism. It further argued that the ruling was based on European Court of Human Rights (ECtHR) case law, which sanctions the use of exaggerated statements by journalists on the reasoning that public officials must endure harsher criticism than ordinary persons.

Judicial System and Independence of the Judiciary

Amendments to the Penal Procedure Code

⁴ *Rzeczpospolita* (B. Kittel), "Dlaczego sąd chroni aferzysty" (Why does the court protect the swindlers?), No. 274, 25 November 2003, p. 1.

⁵ P. Stasinski, "Zapraszamy kolegów z 'Rzepy'" (We'll invite colleagues from 'Rzepa'), in *Gazeta Wyborcza* (GW), No. 275, 26 November 2003, p. 1.

⁶ GW, "Prokuratura wchodzi do gry" (Prosecutor's Office comes into the game), No. 277, 28 November 2003, p. 7.

⁷ "Nie kneblujcie" (Do not gag), GW, No. 287, 10 December 2003, p. 2.

⁸ *Gazeta Dolnośląska*, "Falszywe spojrzenie dolnośląskiej Temidy. Złodzieje w wymiarze sprawiedliwości" (Corruption of the Lower-Silesian Temida. Thieves within the system of justice), No. 275, 25 November 2003, p. 8.

⁹ Judgment of the Supreme Court, 2 July 2003, III KK 161/03, unpublished.

Six years after the new Penal Procedure Code entered into force, 2003 saw some of the most important changes finally introduced into the Polish penal procedure. The code was amended by the Act of 10 January, which entered into force on 1 July 2003.

One important change related to the notification of parties to a legal case of upcoming court sessions. In order to adapt the regulations of the Penal Procedure Code both to the Constitution and to the case-law of the Constitutional Tribunal,¹⁰ the act introduced two changes: the possibility of leaving a notification (so-called advice note) in the addressee's mailbox and an order stating that an additional notification should be sent if the letter is not collected within seven days, thereby extending the period of collection to 14 days. In the light of this regulation, after 14 days the letter shall be considered delivered, even if the addressee failed to collect it. While the reform lengthened and slowed down the proceedings, it conformed to constitutional provisions regarding the right to be informed in an adequate manner of upcoming trials. Moreover, letters could also be delivered by "other entities dealing in mail delivery" and the use of fax or electronic mail speeded up the process.

The penal procedure regulations were also adapted, if only in part, to provisions in the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) regarding the right to use an interpreter.¹¹ In cases where the defendant does not have a good command of Polish, he is given free interpreting services¹²

Furthermore, the amendments broadened the ban on active extradition by including a provision that prohibits extradition in cases where there is a justified concern that the person would be sentenced to death or subjected to torture in the receiving country.¹³ So-called simplified extradition (article 603a of the Penal Procedure Code) was also introduced, to cover situations where the person who is subject to extradition agrees to it or relinquishes his/her rights that limit the possibility of expulsion.

The act also introduced a special procedure concerning the treatment of persons imprisoned abroad but extradited to Poland to testify. In order to adjust the regulations to the provisions of the European Convention on Extradition, the pre-extradition detention period was extended to 40 days and the time to leave Polish territory by the expelled person was shortened to 45 days. Under the amended regulations, international tribunals received greater authority as far as legal actions within the Polish territory are concerned. Furthermore, in the case of concurrent jurisdiction of Polish and international tribunal authorities, the latter is given precedence.¹⁴

In general, other amendments aimed at simplifying and shortening the duration of proceedings. The HFHR argued, however, that the reform will not significantly improve procedures, unless appropriate action to improve the efficiency of both the police and the justice system are taken. The lack of effective measures of appeal against unjustifiably long court proceedings should be considered the biggest loophole. Since the ECtHR ruling in the case of *Kudla v. Poland*¹⁵ over three years ago, no effective measures for seeking damages for unjustifiably long court proceedings have been established. As a result, the possibility of bringing a civil suit on the basis of article 417 of the Civil Code, which set the liability of the Treasury for the damage caused by a public authority, remained unsatisfactory as the case can still last a number of years. At the end of 2003, the Ministry of Justice drafted amendments to the law enabling those who consider themselves harmed by the length

¹⁰ Judgment of the Constitutional Tribunal, 17 September 2002, SK 35/01.

¹¹ Article 6, section 1(e).

¹² Article 72 of the Penal Procedure Code. T. Grzegorzczuk, "Wybrane zagadnienia najnowszej nowelizacji procedury karnej" (Selected issues of the latest amendment of the penal procedure), in *Panstwo i Prawo*, No. 8, 2003, p. 7.

¹³ Article 606, section 1, point 6,7.

¹⁴ Article 616, sections 3-6.

¹⁵ *Kudla v. Poland*, Application No. 30210/96, Judgment of the ECtHR, 26 October 2000, Strasbourg at

of court proceedings to lodge a complaint. It was not certain, however, when this would be submitted to parliament.

Administrative Courts

In 2003, no new changes were introduced in the Civil Procedure Code to speed up the procedure.

On 1 January 2004, Polish administrative courts began to function in accordance with new regulations. The existing Supreme Administrative Court will be supported by regional administrative courts, which will serve as courts of first instance.¹⁶ On the one hand, this solution constitutes a guarantee of the right to a fair trial, especially in the context of articles 5 (right to liberty and security of person) and 13 (effective remedy) of the ECHR. On the other hand, taking into consideration the present length of court proceedings, the two-instance lawsuit before administrative courts may lead to even longer court proceedings, constituting a breach of article 6 of the ECHR (fair trial).

Access to Legal Assistance

One of the issues widely discussed over the last few years was the problem of access to free as well as paid legal assistance. According to an HFHR report,¹⁷ between 1991 and 2001 the number of lawsuits filed increased from 2.7 to 8.4 million, i.e., by almost three hundred percent. Meanwhile, the number of attorneys only increased by about five percent (from 6,900 in 1990 to 7,200 in 2001), while the number of legal advisers remained almost the same as in 1997.

It was thus impossible to provide all those in need with appropriate legal assistance. Moreover, such a small number of attorneys resulted in the fact that their fees were too high for ordinary people to afford.

As of the end of 2003, amendments to the Law Governing the Bar and the Law on Legal Advisers were being drafted. One of the aims of the amendments was to change the recruitment procedures to the apprenticeship at the Bar and at Legal Advisers. The draft amendments met with strong resistance from both corners. This was due to the fact that recruitment to the Bar was allegedly unfair and that family connections and other similar factors tended to be decisive. In fact, the President of the Polish Bar Council (*Naczelna Rada Adwokacka*), attorney Stanislaw Rymar openly stated that a child from a family of lawyers is better prepared to fulfill the role of an attorney.¹⁸

However, a ruling by the Constitutional Tribunal on 26 November,¹⁹ clearly opened the way toward an improvement in access to legal aid. The ruling made it possible for law school graduates, even if they did not hold a license to work as an attorney or a legal adviser, to provide legal assistance (both free and paid). The substantial difference between non-attorneys and non-legal-advisers and those who had the necessary licenses was—according to the Constitutional Tribunal—the fact that only those with a license had the right to represent someone before court.

The quality of the services provided by a lawyer of one's own choice or one appointed by the court was also a subject of dispute. The HFHR report pointed out that even amongst attorneys there was a widespread belief that the quality of services rendered by appointed attorneys was lower. More than half of the attorneys interviewed claimed that considering the superior number of meetings a selected attorney had with his client, the quality of defense was definitely higher.²⁰ Similarly, over one

¹⁶ *Dziennik Ustaw* (Journal of Laws) No. 153, 2002, pos. 1269.

¹⁷ HFHR, L. Bojarski, *Access to Legal Aid in Poland. Monitoring Report*, Warsaw, 2003, p. 57.

¹⁸ Public TV, Channel 1, *Wiadomosci – glowne wydanie* (News – main edition), 10 January 2004, 7:30 p.m.

¹⁹ Judgment of the Constitutional Tribunal, 26 November 2003, (SK 22/02), published in *Journal of Laws*, No. 206, pos. 2012.

²⁰ *Ibid*, p. 78.

third of attorneys stated that case files were studied more thoroughly by attorneys who were chosen by defendants.

The high number of cases where attorneys complained of being obliged to act as a state appointed lawyers also made clear the need to increase the number of people who could offer legal advice.²¹

One case for concern was the failure of the Bar to deal adequately with complaints of misconduct by attorneys.

- The HFHR filed a complaint to the Bar in a case in which a temporarily detained defendant complained of a lack of contact with his court-appointed attorney. The regional Bar stated that the client should “direct the question to the legislator, because it is due to the regulations of the penal procedure that the attorneys have to fulfill this unquestionably burdensome duty.”²²

Fair Trial and Length of Proceedings

The excessively lengthy nature of proceedings was one of the most serious problems in the administration of justice in Poland.

Although court statistics²³ indicated that in comparison with the first half of 2002, the number of unresolved cases had decreased in the first half of 2003 (from 2,231,323 to 2,175,231, respectively), there was an increase in cases with proceedings lasting over two years, according to statistics concerning the operation of the Prosecutor’s Offices.²⁴ The reason for the lengthy proceedings was mainly the lack of qualifications of many judges which was demonstrated in their inability to use procedural instruments.

- Since December and throughout 2003, HFHR monitored the case of Pawel K., a former policeman convicted of insurance fraud. Pawel K. had received 16,000 PLN (€3,347) from the insurance company *Powszechny Zaklad Ubezpieczen* (PZU) in damages for a road accident, which—according to the court—had never happened. He was also accused of removing 62 pages from the court files when reading them in the District Court in Kamienna Góra. The court failed to adequately establish the facts and instead uncritically believed the version of the prosecution, basing the case mainly on the witness statement given by the mechanic who had repaired Pawel K.’s car. Later this main witness admitted to having given a false statement.²⁵ He also admitted that he had given the authorization paper to the defendant’s mother who had signed the document in the name of the defendant. However, no action was taken against either the mechanic or the PZU employee who had authenticated the counterfeited document on the accident. The investigation into the complaint on the alleged misconduct by the judge was discontinued. However, the lawsuit against Pawel K. concerning his removal of the pages from the court files was still pending as of the time of writing.

²¹ Ibid, p. 76.

²² Ibid, p. 125.

²³ “Ewidencja spraw w sadach powszechnych wedlug dzialow prawa i instancyjnosci w I polroczu 2003 roku” (Record of the cases in court proceedings according to law divisions and the court instance system in the first half of 2003), at www.ms.gov.pl.

²⁴ “Dzialalnosc prokuratury w I polroczu 2003 r. Analiza statystyczna” (Prosecutor’s Office actions in the first half of 2003. Statistic analysis), at <http://www.ms.gov.pl>.

²⁵ *GW Wroclaw* (M. Maciejewski), “Widzac mnogosc bezprawia... czy policjant zostal slusnie skazany” (Seeing multitude of lawlessness... was the policeman rightly convicted?), No. 7, 7 January 2004, p. 10.

Detainees' Rights

Temporary Detention

A statistical analysis of the work of the Prosecutor's Office indicated that in comparison to the first half of 2002 the number of motions applying for temporary detention increased by 1.1% in the first half of the 2003. At the same time, the rate of application of this strictest preventive measure by courts increased by 0.5%. Out of 18,455 applications to place individuals in temporary detention as many as 16,812 (or 91.1%) cases were decided in favor of this measure by courts at the request of prosecutors. This indicated that an almost automatic application of temporary detention remained common practice.

Access to legal assistance for temporarily detained persons was frequently restricted. 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.

- Krzysztof R. was convicted by the District Court in Olsztyn and sentenced to five and a half years imprisonment. Both R.'s attorney and the defendant himself lodged an appeal. Pending appeal, R. spent over 43 months in temporary detention, until the first appeal hearing was held. Finally, as a result of HFHR intervention and due to the deteriorating health of the defendant, the Regional Court in Olsztyn overruled the temporary detention order five days before issuing a judgment upholding the previous sentence. While HFHR did not question the original sentence, it criticized heavily the excessive length of temporary detention pending appeal.²⁶
- Marek M., the manager of the National Investment Fund, was charged with accepting a bribe "in relation to serving a public function." M. was placed in detention in January 2003. According to HFHR, his fate was characteristic as far as court and Prosecutor's Offices practices were concerned. M. had five experts carry out legal assessments into his rights under penal, economic and civil law, which proved that he could not be charged with "clerical corruption" because he was working in a private company and thus did not serve a "public function." Nevertheless, a court approved and prolonged the detention period, invoking the danger that he would commit another crime and stated that only a trial would clarify the issues. Other reasons given for his temporary detention were the threat of deception (although the evidence was already gathered), and the fact that the severe nature of the sentence "might persuade the defendant to take steps aiming to obstruct the progress of the proceedings". M.'s attorneys lodged motions to overrule the detention order on the grounds that it was necessary for the court to justify the threat of deception, otherwise every suspect could be held in preventive detention. They proposed a high bail. The court rejected this as well as the personal guarantees of four well-known people, including Wladyslaw Bartoszewski, a former foreign minister.²⁷
- Marek W. was placed in temporary detention on 21 March 2002 on charges of having sexually abused his five-year-old daughter. The case against him was initiated after doctors had diagnosed abrasions in the area of her anus. The girl had been hospitalized with serious head injuries after Marek W.'s wife had pushed her out of the window from the third floor in September 2001. According to psychologists and sexologists, Marek W. was neither mentally

²⁶ *Kulisy* (W. Szczepanski), "Sprawiedliwosc na chorobowym" (Justice is off sick), No. 48, 28 November 2003, p. 12-13.

²⁷ *GW*, "Areszt na wszelki wypadek" (Detention just in case), No. 52, 2 March 2004, p. 6.

ill nor did he suffer from sexual disturbances. The HFHR stated that there was no legal base to keep Marek W. in temporary detention after the 29 months he had already spent there. As a result, the court changed the preventive measure to police supervision only and he was released

Torture, Ill-Treatment and Police Misconduct

There was no effective, independent mechanism to investigate complaints filed by individuals who claimed they had been ill-treated by the police. In 2003, 36 complaints concerning abuses of power by police officers were reported to the HFHR. Seven of them concerned beatings by police officers and one illegal arrest. The rest dealt with other abuses of power.

- Andrzej S. informed HFHR that he had been beaten by two police officers in Garwolin. At his request, the District Public Prosecutor in Garwolin initiated an investigation. However, as typical in such incidents between police officers and civilians, at the same time Andrzej S. was accused of attacking the officers with the help of another man. Ten witnesses testifying before the District Court in Garwolin certified the defendant's version—while the police officers presented a completely different version. On 29 December, the court convicted Andrzej S. In a parallel case, the prosecutor terminated the initial proceedings into the alleged attack on Andrzej S. by the police officers, but the court ordered the prosecutor to proceed with investigations. It also proposed that the Prosecutor's Office reconsider the possibility of filing a lawsuit against the two police officers. The District Court in Garwolin's failure to take into account all available evidence clearly violated the right to a fair trial. The HFHR continued to monitor the Prosecutor's Office review of the investigation concerning the alleged ill-treatment of Andrzej S.

Prisons and Detention Centers

As of the end of December 2003, Polish prisons and detention facilities held 79,281 people.²⁸ Since January 1999, there was a marked increase in the application of unconditional prison sentences, from approximately 54,000 in January 1999 to about 82,000 as of December 2002. This number was on the increase during 2003.

At the same time, the number of those people at large waiting for the execution of their prison sentences remained high: at 27,582 persons as of the end of 2003.

The first sentence of a report entitled *Basic Problems of the Prison System* by the Central Prison Administration (CPA)²⁹ described the prison situation as "...overpopulated and short of funds."³⁰

One of the biggest problems in Polish prisons was overcrowding. Over the past few years the number of the prison population increased by 50%. At the same time the number of regular posts of officers in the Prison Service increased only by 1.3 %. As a result, corrections officers worked long hours, with overtime exceeding 1.6 million hours as of May 2003. The lack of personnel led to a situation in which it was impossible to ensure every inmate the rights guaranteed to him, including the right to use the telephone.

²⁸ Central Prison Administration (CPA), "60,773 of them are convicted, 18,240 temporarily detained and 268 are punished by the city courts (*sady grodzkie*) because of offences." *Informacja o wykonywaniu kary pozbawienia wolności i tymczasowego aresztowania za grudzień 2003* (Information on the execution of imprisonment and temporary detention in December 2003), p. 1.

²⁹ CPA, *Centralny Zarząd Służby Więziennej*

³⁰ CPA, May, 2003, p. 5, at <http://www.czsw.gov.pl>.

In some facilities the number of prisoners exceeded the official capacity by 150%. For example, the Wronki Prison, which was visited by representatives of the HFHR in September, accommodated 1,800 inmates, which constituted almost 130% its capacity. Moreover, the official calculation was misleading: while it was based on 3 square meters per person, it also included not only cells but also the entire usable area of the prison. Thus the actual amount of space per person in each facility was even less than those recorded in the official statistics, and thus failed to meet international standards concerning the size of area per convict. In the Wronki Prison, most five-person cells housed seven prisoners. In most other prisons, even common rooms were turned into additional cells.³¹

The CPA report also focused attention on the increased danger caused by the spread of infectious diseases such as HIV as well as HBV and HCV hepatitis viruses.³² In addition, it was estimated that about 5% of all prisoners were addicted to drugs. HFHR argued that there was a need for 80 new therapists and 10 new therapeutic wards in order to combat the problem.

The CPA report failed to mention the apparent widespread corruption amongst prison service officers. It was impossible to evaluate the exact scale of the problem as HFHR only had data on single cases. In one such case, a corrections officer smuggled a mobile phone for a dangerous criminal who used it to organize an assassination.³³ HFHR also frequently received information suggesting that some officers were drug dealers.

In a similar vein, there was no reliable, independent data regarding violent behavior of officers, nor was there an independent body to investigate allegations of ill-treatment: complaints were examined by the prison administration itself.

An amendment to the 1998 Executive Penal Code which came into effect in September 2003³⁴ incorporated a significant number of Ministry of Justice orders concerning the execution of imprisonment and temporary detention. Despite the fact that these provisions were supposed to comply with the Constitution, many changes were primarily influenced by economic factors: for example, the minimum wage for convicts decreased while the maximum number of working hours without additional pay increased. In addition, post-penitentiary support was cut. The amendments also included inaccurate wordings. For instance, the term “maximum security convict” was replaced by the wording “a convict likely to cause serious danger to society or serious danger to the safety of the prison facility.”³⁵ Also the criteria for including convicts in this category were vague.³⁶

HFHR received dozens of complaints from inmates. By the end of July, it had registered 11 complaints from the Wronki Prison concerning overcrowding of cells; lack of access to fresh air; inadequate lighting of cells; poor sanitary facilities; poor construction of cells (some of the five-person cells were only 120 centimeters high); lack of hygiene; excessively limited period of time to access water; insufficient and low quality food; poor conditions of visiting rooms due to overpopulation; phone call control; limited access to pay phones (caused by overcrowding); and inadequate equipment in the prison medical service. Many of the concerns were confirmed during the HFHR visit to the prison in September, including problems related to overcrowding.

³¹ Based on the unpublished HFHR report on the visit to the Wronki Prison Center, Warsaw, September 2003.

³² Ibid, p. 10-11.

³³ *GW in Krakow* (I. Danko), “Komorka raz jeszcze” (Another mobile, please), No. 119, 23 May 2001, p. 3; *GW in Krakow* (I. Danko), “Umorzona komorka” (Discontinued mobile), No. 7, 9 January 2003, p. 3.

³⁴ *Journal of Laws*, No. 142, 2003, pos. 1380.

³⁵ On 31 December, there were 433 prisoners (204 temporarily detained and 229 convicted). “Information on the execution of imprisonment and temporary detention...,” p. 32.

³⁶ T. Bulenda, R. Musidowski, “Nowelizacja Kodeksu karnego wykonawczego w 2003 r. (*analiza i ocena*)” (Amendment to the Executive Penal Code in 2003, analysis and assessment), “Przegląd więziennictwa polskiego” (Review of the Polish prison system), No. 40-41, 2003, p. 29.

During the HFHR visit to the Wronki Prison, one convict, Rajmund Z. complained of the fact that he had been refused permission to leave prison in order to visit his dying mother and to attend her funeral. He had already served 11 years of his 15-year imprisonment, which entitled him to apply for parole, but his application had been pending for more than three years. He had graduated both from primary and vocational school during his imprisonment and he was known as a good worker. Both his warden and probation officer agreed that Z. should be granted parole, a move supported also by HFHR representing Z. before the Penitentiary Court in December. The court turned down the motion on the grounds that Z. was not ready to live outside the prison walls. In relation to this case it is worth mentioning that Poland had already lost a similar case before the ECtHR.³⁷ There the court ruled that the Polish authorities had violated article 8 of the ECHR by refusing the applicant a pass to attend the funeral of his mother, and later, similarly, for the funeral of his father. The ECtHR stated that the accusations against the convict—that he was “a recidivist, which did not guarantee his return to prison”—could have been dispelled by allowing police officers to accompany him.

Security Services and Right to Privacy

One threat to human rights was the fact that various “quasi-police” services were granted increasing rights and powers, including the financial police (offices of the Treasury and treasury control offices). Several activities of the latter involving inspections of individuals’ possessions threatened the right to privacy. Moreover, financial investigations, which were undertaken in order to establish the security of the property of a given company constituted a particular danger to freedom of management and were both lengthy and excessively frequent. As a result of such extensively long proceedings a company could lose its liquidity and go bankrupt even if it later turned out that it had not been involved in any irregularities.

- The most well-known case in 2003 was that of the computer company Optimus whose former owner and manager Roman Kluska was arrested on 2 July 2002. He was later released after he had paid a bail of PLN 8 million (approx. €1,72 million). Moreover the company’s property, which was worth PLN 30 million (almost €6.5 million) was secured for future claims. Between 1998 and 2000, Optimus had equipped schools with computers. According to the interpretation of the law in force at that time, VAT exemption was only applied to those computers, which were imported. It turned out that Optimus had exported its own products to Slovakia and then, through a Slovakian company, delivered them to the Ministry of Education. The Inspector of Treasury Control in Nowy Sacz stated that Optimus had been deceiving the Treasury and ordered the company to pay almost €6.5 million. This decision was later upheld by the Treasury Chamber in Krakow, which claimed that the company’s transactions had been aimed at circumventing the law. Finally, the Supreme Administrative Court overruled the decisions of both the first and second instance courts. It stated that the interpretation that VAT exemption concerned only foreign products was inadmissible.³⁸ In December 2003, penal proceedings against Optimus were terminated and Roman Kluska, who withdrew from business in 2000, considered lodging a compensation claim against the Prosecutors’ Office.³⁹

The possibility of abusing the right to privacy in the scope of free communication was made possible due to vague legal provisions. The July 2000 Telecommunications Law⁴⁰ indicated that telecommunications secrecy embraced not only information transferred via telecommunication and data concerning users, but also—among other things—information regarding the time of connections and all attempted contacts between particular users. However, article 67(4) provided for the possibility

³⁷ *Ploski v. Poland*, 12 November 2002. *Biuletyn Biura Rady Europy* (Bulletin of The Bureau of the Council of Europe), 1/2003.

³⁸ *GW* (M. Musiał, M. Matys), “Optimustycznie”, No. 274, 25 November 2003, p. 1.

³⁹ *GW*, “Szef Optimusa nie wyludzał” (Optimus chief did not con), No. 303, 31 December 2003-1 January 2004, p. 17.

⁴⁰ *Journal of Laws*, No. 73, 2000, pos. 852.

for police and other similar services to infringe upon this as the provision stated that the above-mentioned secrecy shall not be applicable to “information disclosed by court or prosecutor’s decisions, or on the basis of separate regulations.” It must be emphasized that the notion of “information” could mean any information of any character (including electronic mail or fax) transferred by wires, radio or optic waves, or by other devices using electromagnetic energy.

In November 2003, following a gradual process of weakening the right to privacy by interference of public authorities, the government submitted to parliament an amendment to the law on the protection of secret information. The amendment removes the material definition of secret information and introduces a list of 64 forms of information to be declared top secret and classified. The amendment, however, allows officers to mark any information as classified that might be “inconvenient” for them.

Hate Speech

Several cases displayed the Prosecutors’ Office reticence towards pursuing crimes, which incited hatred against various ethnic groups.⁴¹

- The Regional Prosecutor’s Office discontinued legal proceedings concerning the distribution of anti-Semitic publications in the bookstore Antyk situated in a rented basement of the Roman Catholic church in Warsaw. A complaint was submitted in 2002 by the chairman of the Jewish Community in Warsaw. In July 2003, the proceedings were terminated on the grounds that the office had not found any evidence of illegal material in the six anti-Semitic publications it had examined. Some of the publications were reprints of pre-war brochures, one was written by R. Nowak, who was engaged in anti-Semitic purges in Poland in 1968. The decision of the Regional Prosecutor’s Office was upheld by the District Court of Warszawa-Srodmiescie.

Asylum Seekers and Immigrants

The right of Chechens to enter Polish territory was unlawfully restricted either by a refusal to permit entry or—in case of transit across the Polish territory—by a refusal on the grounds that the person possessed an insufficient amount of money to enter the country. Such actions took place on a regular basis following the attack on the theatre in Dubrovka in Moscow in the fall of 2002 and continued in 2003 as a result of a state policy stating that the issue of the internal security of the state temporarily justified such restrictions. During 2003, HFHR helped prepare appeals and complaints regarding the granting of refugee status to Chechens nationals. According to HFHR, in all cases concerning Chechen refugees, there were justified circumstances to grant asylum in accordance with article 1A (2) of the 1951 Geneva Convention.

There were also restrictions on the right to apply for refugee status. A foreigner was obliged to submit an application for asylum within two weeks of his arrival in Poland. In cases in which an asylum claim was submitted after that deadline, the Ministry of Internal Affairs and Administration refused to examine the merits of the case.

The Supreme Administrative Court upheld the argument put forward by HFHR in defending these cases that the only grounds for refusing to process an asylum application were to be found in the Geneva Convention. These cases also had an important impact on the regulation of refugee status in an amended law (2001) and finally in the new Law on Aliens (2003).

⁴¹ This crime (article 256 of the Penal Code) is punishable with a fine, limitation of liberty or imprisonment of up to two years.

On 27 November, in the case of *Shamsa v. Poland*;⁴² the ECtHR found Poland in violation of article 5(1) of the ECHR (liberty and security of person) for holding an applicant in detention in the airport transit zone. No part of his detention was found legal.

The right of aliens to marry and form a family was restricted. In the case where a foreigner and a Polish citizen intended to marry, district registry offices demanded—although there was no such legal obligation—the presentation of a document certifying legal residence of the alien in Poland. Following an intervention made by HFHR in October, the director of the State Registries Department in the Ministry of Internal Affairs and Administration obliged the heads of registry offices to cease this practice.

International Humanitarian Law

Crimes against Humanity

In November, a law was adopted to grant the title of “veteran for fighting for the independent Poland” and social privileges to victims of communism during 1944-56. These privileges included, for example, additional pension payments and various subsidiaries. Until 2003, only Second World War veterans and victims of communism and Nazi terror were entitled to such privileges.

Social and Economic Rights

In 2003 the Polish public health care system collapsed after public authorities had failed to organize a sound health care system. Corruption, incompetence and inappropriate laws resulted in a situation where the public felt menaced by the actions of public authorities.

The Constitutional Tribunal in an unprecedented judgment of 7 January 2004⁴³ declared that the entire Act on the National Health Fund (*Narodowy Fundusz Zdrowia*) was inconsistent with the Constitution. As a result, the public health care system found itself in a vacuum. Doctors did not sign contracts, and the ones signed were about to become invalid. In the Lower Silesia region, doctors threatened to close down their practices until they signed an agreement with the government—and some of them actually did. As a result, almost a million of people were deprived of health care in December.⁴⁴ In other health care institutions doctors threatened to start charging even those patients who benefited from social insurance. Similarly dramatic situations occurred in hospitals: many of them were so highly in debt that the motion of execution was initiated. For example, in the City Hospital in Gdynia, a court bailiff froze all hospital accounts, including funds for the payment of employees’ salaries.⁴⁵ Other institutions—such as the Beskid Oncology Center—had no funds left in November to treat their patients.⁴⁶

Right to Education

No reliable data existed regarding attendance in compulsory education. It was estimated that around 2% of children, in particular between the ages of 15 and 18, did not attend school at all. Fifty-three percent of school headmasters had incomplete and outdated lists of school age children in their

⁴² Application No. 42649/98.

⁴³ *Journal of Laws 2004*, K 14/03, No. 5, pos. 37.

⁴⁴ Katowice, J. Watola, “Ślaskie poradnie nadal zamknięte” (Silesian clinics still closed), in *GW*, No. 4, 5 January 2004, p. 4.

⁴⁵ “Dramatyczna sytuacja Szpitala Miejskiego w Gdyni” (Dramatic situation of City Hospital in Gdynia), in *GW*, No. 27, 2 February 2004, p. 2.

⁴⁶ M. Czyzewski, “Dramatyczna sytuacja w Beskidzkim Centrum Onkologii” (Dramatic situation in Beskid Oncology Center), in *GW*, No. 274, 27 November 2003, p. 3.

region. This laxity in keeping adequate records raised serious doubts about the accuracy of the data presented in the government report on the implementation of the UN Convention on the Rights of the Child in Poland, which claimed that only 0.04% of school age children did not attend school.⁴⁷

An HFHR report published in 2002 documented poor physical conditions in a number of school buildings selected on an ad hoc basis. As many as 80% of headmasters who were interviewed viewed renovation as a matter of priority. 20-30% of the buildings required major renovations and around 2% of the monitored buildings constituted a threat to the safety of the students. Although the act on the system of education obliged the organs running the schools to take care of the physical state of the school buildings, one third of the councils did not initiate any education outlays in 2001. In addition, almost 60% of all grammar schools in question had too many students in relation to their maximum capacity.

Proposals to change the law regarding a more specific definition of the obligation to study as well as its implementation were not addressed. Moreover, the education system, like the public health system, lacked funding.

Corruption

According to a report by the NGO Transparency International, Poland was number 64 in the Corruption Perceptions Index⁴⁸ (previously Poland was number 46, number one being the least corrupt country).

In 2003, the most important case regarding corruption by public authorities in Poland was the so-called “Rywin-gate” case.⁴⁹

- Lew Rywin and some high ranking officials close to the prime minister were charged with trying to push through the parliament a bill on radio and television that would have been profitable to his own media group, and forcing of the *Gazeta Wyborcza* newspaper to offer money to the Alliance of Democratic Left party. The profit offered to *Gazeta Wyborcza* would have been a convenient provision of the law, allowing the newspaper to buy the largest private television channel *Polsat*. As of the end of 2003, the Investigative Commission of the Lower House of Parliament began drafting the final report on the “Rywin-gate” case. Fifty-one witnesses had been heard, including Prime Minister Leszek Miller and the chief of his political office, Aleksandra Jakubowska. President A. Kwasniewski testified before the prosecutor but evaded examination before the commission, even though his conduct was also at question. The investigation and the preparation of the bill of indictment by the Prosecutor’s Office ended at the beginning of December. This was followed by the beginning of a criminal lawsuit where the defendant, Lew Rywin, was accused of paid favoritism. Despite strong evidence, the Prosecutor’s Office did not decide to bring charges against a group of leftist politicians (the so-called “group wielding power”).

Among other cases that had not been solved as of the end of 2003 was that of the former Vice-Minister of Internal Affairs and Administration Zbigniew S., who had allegedly passed on information of a planned secret service operation against criminals in Starachowice, who had connections with local authorities. This information had allegedly been forwarded by S. to his colleague and head of the Alliance of The Democratic Left (*Sojusz Lewicy Demokratycznej*, SLD) in the Swietokrzyski region, Henryk D. From this source, the information allegedly went on to the governor of Starachowice, who

⁴⁷ HFHR, *Prawo do nauki. Raport z monitoringu* (Right to education. Monitoring report), Warsaw, 2003, p. 125-126.

⁴⁸ Transparency International, *Corruption Perceptions Index*, 7 October 2003, p. 4, at www.transparency.pl.

⁴⁹ IHF, *Human Rights in the OSCE Region: Europe, Central Asia and North America. Report 2003 (Events of 2002)*, pp. 297-298, at http://www.ihf-hr.org/documents/doc_summary.php?sec_id=3&d_id=1322.

had connections with local gangsters. The case was investigated by the Regional Prosecutor's Office in Kielce and as a result two local officials belonging to SLD were arrested. The Police Commander-in-Chief, General Inspector A. Kowalczyk, resigned in relation to this case. The charge of indictment against former SLD representatives who had leaked the information on the operation were pending in court as of the end of 2003.

Corruption disguised as informal "lobbying" (such activity was not regulated by law in 2003) was evident in the activities of representatives of various interest groups, and in the parliament.

- One such action was an attempt to amend the 27 April 2001 Law on waste materials.⁵⁰ This regulated matters concerning waste removal and recycling, which were supposed to be dealt with by each commune, which in turn were obliged to sign long-term agreements with specialized companies. As a result the waste material market boomed as the law created an opportunity for a new branch of business. A reasonable amendment proposed by the government provided for a change to the length of agreements made between the communes and the companies, which were imposed by the law. The initiative was supported by the ruling coalition SLD-UP in the parliamentary commissions. But one of the members of parliament invited a lobbyist, who represented the companies that already had deals with communities, to the commission proceedings. The lobbyist convinced them that the government proposal would entail substantial expenses and that the already existing companies provided an appropriately high level of services. As a result, during the next session of the parliament, the representatives of the ruling coalition voted against the proposed amendment. The "waste monopoly" was kept thanks to informal actions.⁵¹

In addition, there were numerous similar examples of "unclarified situations", where political leaders overstepped their powers or were accused of connections with organized criminals. Consequently the public's trust in politicians and the state diminished.

⁵⁰ *Journal of Laws*, No. 62, 2001, pos. 628.

⁵¹ "Antylobbying globalny. Z Andrzejem Rzeplinskim rozmawia A. Wroblewski" (Global anti-lobbying. A. Wroblewski talks with Andrzej Rzeplinski), in *GW*, No. 198, 23 August 2003, p. 12.