

Poland¹

IHF Focus: Freedom of expression and the media; peaceful assembly; judicial system and independence of the judiciary; torture ill-treatment and misconduct by law-enforcement officials; security services; intolerance, xenophobia, racial discrimination and hate speech; economic and social rights; women's rights; arms trade.

In July 1999, the UN Human Rights Committee considered the fourth periodic report of the Republic of Poland on the implementation of the ICCPR.² In this context, the Helsinki Foundation for Human Rights (beside the Federation for Women and Family Planning³) submitted to the UN Human Rights Committee its remarks on the government report.⁴

In its submission, the Helsinki Foundation laid particular stress on freedom from torture and inhuman or degrading treatment and punishment (in the context of police activities and conditions of military service including especially the practice of so-called *fala* – widespread ill-treatment of recruits – living conditions in juvenile institutions, and the situation in schools); the right to a fair and public trial (in the context of the right to defense and generally excessive length of judicial proceedings); the right to privacy (in the context of

broadened uses of wire-tapping and surveillance of correspondence as so-called “undercover” measures not subject to judicial review); the right to free expression of opinions (in the context of the functioning of provisions on “securing the claim” which is tantamount to introducing specific censorship.⁵

During the session of the UN Human Rights Committee, the Polish government delegation proved unable to answer all questions of the Committee's members. For the first time ever, the government had to answer the outstanding questions in writing. The UN Committee published its Concluding Observations⁶ in July 1999 (see following sections). However, contrary to the Human Rights Committee's explicit instructions, the government failed even to publish the recommendations as such. They were published by NGOs only. On 10 December 1999 (International Human Rights Day), the Helsinki Foundation and women's organizations jointly organized a seminar on implementation of the Human Rights Committee's recommendations. Most of the invited ministers charged with implementing those recommendations failed to attend (or even to send a representative). However, according to Minister of Justice Hanna Suchocka – who was among the few officials to at-

¹ Unless otherwise noted, based on a report by Andrzej Krempleski, Helsinki Foundation for Human Rights and the Helsinki Committee for Human Rights in Poland, for the IHF.

² *Fourth Periodic Report of States Parties Due in 1994: Poland*. 14/03/97. CCPR/C/95/Add.8. (State Party Report). For full text, see: <http://www.unhchr.ch/tbs/doc.nsf//Symbol/CCPR.C.95.Add.8.En>.

³ The Federation's remarks dealt with weak protection of women's rights in Poland and with restrictive provisions regulating abortion.

⁴ *Some Remarks on Human Rights Protection in Poland (in Connection with the Fourth Periodic Report of Republic of Poland on Implementation of the International Covenant on Civil and Political Rights)*. See: <http://www.hfhrpol.waw.pl./En/remarks/remarks.html>.

⁵ See *Freedom of Expression and of the Media*.

⁶ *Concluding Observations of the Human Rights Committee: Poland*. 29/07/99. CCPR/C/79/Add.110.

tend the seminar – the government had submitted the recommendations to “detailed analysis.”⁷

Freedom of Expression and the Media

Insulting Public Officials

In February 1999, the Press Freedom Monitoring Center of the Polish Journalists' Association – an NGO organization supporting freedom of speech – published a report on press freedoms as envisaged in Polish law. Among other things, the report listed eight provisions of the penal code, most of which granted special protection to public functionaries and “constitutional organs.” The penalty for insulting these was up to two years' imprisonment while insulting a “private” person was up to one year in prison (insult through mass media two years). This contrasted with the concept upheld by the case-law of the European Court of Human Rights that the broadest protection against insult is due to the citizen, since public functionaries as public persons are subject to criticism by definition. The Center also took up specific cases.

■ Provisions on insult were selectively applied in the case of Wojciech Cejrowski. He was convicted for insulting President Kwasniewski, while the Minister-Coordinator of Security Services, Janusz Palubic-

ki, was not convicted for calling Kwasniewski “president of all communist security agents.”⁸

Also the Committee for the Protection of Journalists (CPJ) called a “blot on the generally good image of Polish media” two provisions of the penal code – articles 135 and 226 – under which journalists may be accused of offending the dignity of senior government officials. In the CPJ's opinion, the pending suit brought by President Kwasniewski against the *Zycie* daily was an example of the application of those provisions⁹.

The European Court of Human Rights ruled on a case related to the former 1969 penal code.

■ In the case of *Janowski v. Poland*, a local journalist had been convicted for criticizing unlawful actions by municipal guards who removed peddlers from the street. The journalist had reportedly called the guards “yokels” and “blockheads”. He was convicted of insulting a public official. The European Court stated that Janowski's right to free expression had been restricted, but that the restriction was contained within the admissible limits and thus did not violate the ECHR. The court confirmed, though, that the limits of acceptable criticism of a public official were broader compared to criticism of public persons.¹⁰

⁷ “Przemowil Komitet do obrazu. Dzień Praw Człowieka” (*No One Bothered to Respond to the Committee's Remarks. The Human Rights Day*) *Gazeta Wyborcza (GW)*, No. 289, 11–12 December 1999.

⁸ An allusion to the president's failure to sign the Institute of National Remembrance Bill that was to make files of former security services accessible to victims of those services. The Bill was ultimately not adopted.

⁹ B. W'glarczyk, “Polska czarna plama. Raport o mediach” (*The Polish Blot. A report on the Media*). *GW* No. 72, 26 March 1999. The suit concerned a dispute as to whether or not, before being elected president, Aleksander Kwasniewski had had contacts with a person suspected of being a secret agent of Russian security services. The *Zycie* daily published the contested article on that subject.

¹⁰ E. Siedlecka, “Cwok nie przystoi. Piąta polska sprawa w Strasburgu (“Yokel” is Improper. The Fifth Polish case in Strasbourg). *GW*, No. 18, 22 January 1999.

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Preventive Censorship

The Center noted that provisions of civil procedure on “securing the claim” functioned as preventive censorship. In such cases, a court could ban a publication or a program in order to secure the personal interests of a party involved in the case if this party requested such a measure. Over the last two years, there were several trials that concerned a ban on publication (broadcasting) of information on specific companies or hotels.¹¹

■ The provision on “securing the claim” was also applied by the Warsaw court to ban distribution of a book titled *Sekty – ekspansja zła* (Sects: Expansion of Evil). The ban was to remain in force until a case for protection of personal interests instituted by a legal organization, the Buddhist Karma Kagyu Union, against the publisher was decided. The book numbered Buddhists among destructive sects such as Satanists. In view of the long wait for the case to be decided by court, the ban on distribution acted as specific censorship.¹²

■ In the case of a ban on distributing the film “The Sentenced City,”¹³ the Warsaw Court of Appeal found in June that the film did not violate the personal interests of the person shown in it, former Secretary of the Communist Party in Radom Janusz Prokopiak. The film depicted the brutal suppression of workers’ protests in 1976.

The appeal court found that the film did not violate the personal interests of Prokopiak (who had been a public servant at the time) and was not biased. However, under provisions on “securing the claim,” the ban on broadcasting was to remain in force until the court’s decision became valid, a process which could take several years.¹⁴

Classified Information Act

In January, the Sejm (Polish parliament) adopted the Classified Information Act.¹⁵ The act entered into force late in March, and regulated procedures for access to state secrets. It required security clearance proceedings before a person could gain access to classified information. Before a person could get security clearance, he/she had to fill out a special questionnaire, subsequently checked by the security services.¹⁶ In practice, the act gave rise to various concerns, e.g. conflict with the independence of the judiciary (the issue of security certificates for judges).

The ombudsman challenged before the Constitutional Court a provision that allowed for security clearance to be denied to a specific individual (e.g. an official of a state enterprise carrying out a public contract, or a researcher working on a project involving access to state secrets) without reasons being given or the right to appeal to a court.¹⁷

¹¹ E. Siedlecka, “Odkneblujmy sie. Apel Centrum Monitoringu Wolnosci Prasy” (Let Us Remove the Gag). *Appeal of the Press Freedom Monitoring Center*, *GW*.

¹² E. Siedlecka, “Zabezpieczenie, czyli cenzura” (Securing Means Censoring), *GW*, No 17, 21 January 1999.

¹³ See *IHF Annual Report 1999*.

¹⁴ E. Siedlecka, “Film z wyrokiem” (The Sentenced Film), *GW*, No. 127, 2–3 June 1999.

¹⁵ *Journal of Laws*, No. 11, item 95.

¹⁶ P. Wrofski, “Przeswielt sie i dowiedz sie. Z tajemnicami do NATO” (Submitting to Clearance and Getting to Know. Our Secrets and NATO). *GW*, No. 7, 9-10 January 1999.

¹⁷ “Zbyt tajne certyfikaty” (Unduly secret certificates), *GW*, No. 179, 3 August 1999.

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Peaceful Assembly

At harvest time in 1999, farmers protested against what they considered too low purchasing prices of grain by blocking roads with agricultural machines, and in some cases destroying property, where trainloads of imported grain were emptied onto the ground. This resulted in court convictions for several leaders of the protests.

■ The most radical of these, leader of the agricultural union “Samoobrona” (Self-defense), Andrzej Lepper, faced several proceedings in court and before the transgressions board but had not yet been sentenced in 1999.

The most serious incident took place in Bartoszyce in northeastern Poland.

■ In August, 200 police officers using excessive (but legal) means trying to clear a road blocked by tractors. A crowd responded with throwing stones at police officers who proceeded to use rubber bullets. About 80 police officers were injured, six of them seriously. Several dozen protesters also needed medical treatment. According to the police, the crowd – angry and partly drunk – had been about to lynch two policemen. Property to the value of about PLZ 100,000 (U.S.\$ 24,325) was destroyed during the riot. The Prosecutor’s Office in Bartoszyce instituted proceedings in a case of assault against police officers.¹⁸

■ In September 1999, authorities refused to allow a demonstration planned by the trade unions, ruling it posed a threat to public order (paralyzed traffic, including emergency services). The Helsinki Com-

mittee criticized the decision, arguing that the right to demonstrate should prevail. Ultimately the provincial authorities quashed the refusal and the demonstration was held¹⁹.

Judicial System

In February, a Polish citizen won a case before the Constitutional Court for the first time, having lodged a constitutional complaint.

■ Janusz F. was a professional soldier who asked in 1995 to be dismissed from service, having become a Jehovah’s Witness, a religion incompatible with army service. However, under a Defense Ministry ordinance, soldiers quitting after less than 12 years in service were obliged to refund the cost of their training. Mr. F., who had only served eight years, was ordered to pay back PLZ 10,000 (U.S.\$ 2,452), within a year, out of an annual salary of some PLZ 13,000 (U.S.\$ 3,162). He asked for permission to pay in installments but was refused. The Supreme Administrative Court ruled that the minister went beyond his competencies. The Constitutional Court ruled on appeal that the Defense Ministry ordinance violated the principle of equality before the law. Soldiers’ rights may only be restricted, the court argued, on grounds of national security, and in the discussed case on grounds of efficient functioning of the army. The state was entitled to demand repayment of training costs, providing the repayment conditions could be met by the individual. At the same time, the Constitutional Court found no violation of freedom of conscience and religion in the ordinance, which did not discriminate against specific soldiers on account on their reli-

¹⁸ G. Szydłowski, M. Kundzicz, “Czy to był lincz. Bitwa pod Bartoszczami” (Was It Lynching? The Battle of Bartoszyce). *GW*, No. 194, 20 August 1999.

¹⁹ “Zakazana demonstracja” (The Banned Demonstration), *GW*, No. 216, 15 September 1999.

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gion or views.²⁰ The court's judgment was final and resulted in the adoption of new constitutional provisions in October regulating repayment of training costs of professional soldiers.²¹

Overlong Court Proceedings

The greatest problem in the court system, as in previous years, was overlong court proceedings, a fact also criticized by the UN Human Rights Committee.²²

■ The divorce suit of M.T. was pending for more than five years, mainly because her husband clearly abused Article 49 of the civil procedure code. The article provided that a party to proceedings who believed that a judge was biased could move for exclusion of that judge. By the end of 1999, the husband of T. had used this provision six times, and although in each case his motion was considered groundless, the judges abandoned the case because it was not possible under the law to leave this kind of motion unconsidered, and a decision on the motion could be appealed against. As a result, T. remained legally married and was therefore unable to claim a tax reduction as a single parent. The case was taken up by the ombudsman²³.

Deputy Minister of Justice Janusz Niemcewicz admitted that despite plans of early 1999, municipals courts were unlikely to

emerge. He also announced the organization of new divisions for petty cases within 164 existing district courts and in new buildings assigned for this purpose by the authorities. In total, 201 new divisions were to be established to examine cases of transgressions, fiscal offenses, consumer cases, rent payments, and those with the value of the subject matter of litigation not exceeding PLZ 50,000 (U.S.\$ 12,160).²⁴

Lustration

In August 1997, the Lustration Act entered into force, creating the Lustration Court (a division of the Warsaw Court of Appeal). The act provided that applicants for important public functions had to state in writing whether they had ever worked in or collaborated with the security services of the People's Republic of Poland. A written statement was also required of persons performing such functions at the time when the act came into force. This applied for example to deputies, senators, judges, prosecutors and lawyers (some 23,000 persons in total). A person who admitted having worked in or collaborated with the services could still apply for such posts. The statements of those who denied such work or collaboration were to be examined in two instance judicial proceedings. If the court demonstrated that a person had lied, that person would be banned from public functions for the period of 10 years.

²⁰ E. Siedlecka, "A jednak to działa! Pierwszy obywatel wygrał przed Trybunałem Konstytucyjnym" (*It Works! The First Citizen Wins a Case Before the Constitutional Tribunal*), *GW*, No.40, 17 February 1999.

²¹ E. Siedlecka, "Większa moc Trybunalu". Rozmowa z prof. Markiem Safjanem, prezesem Trybunalu Konstytucyjnego (*Greater Powers of the Tribunal. Interview with Prof. Marek Safjan, Chairman of the Constitutional Tribunal*). *GW*, No. 244, 18 October 1999.

²² See IHF Annual Report 1999; *Concluding Observations of the Human Rights Committee: Poland*. 29/07/99. CCPR/C/79/Add. 110.

²³ E. Siedlecka, "Długi rozwód Małgorzaty T." (*The Long Divorce of Magorzata T.*), *GW*, No. 250, 25 October 1999.

²⁴ Z malej chmury duży deszcz. Okrojona reforma sadownictwa (*Much crying and little wool. The clipped court reform*). *GW* No. 269, 18 November 1999.

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Information about the lie was also to be published in *Monitor Polski*.²⁵

The first list of individuals who admitted having worked for, served in, or collaborated with the security services of socialist Poland was published in *Monitor Polski* in March and contained 25 names (mostly of jurists).²⁶ Four persons were also convicted for so-called lustration lies, after the Lustration Court demonstrated their collaboration with or work in the Communist security services. The persons were banned from public functions for the following 10 years.²⁷

Controversy surrounded the Lustration Act, however, concerning action taken against those found admitting past connections with the Communist security services. Also the Helsinki Committee in Poland protested against “wild lustration” which it deemed as humiliating individuals and offending their dignity.”²⁸

Although the Lustration Act did not provide for any consequences to be borne by persons who admitted collaboration, some controversial lustration cases were initiated.²⁹

■ Minister of Justice Hanna Suchocka recalled several prosecutors from their functions (not tantamount to dismissal, since the persons were still able to prosecute and form rulings) mentioned in the lustration lists, citing a “loss of trust” in those who had admitted collaboration.³⁰ She also called for heads of Appellate Prosecutor’s Offices to apply the same procedure to any of their subordinates who made such admissions.

■ Also citing a loss of faith, Prime Minister Jerzy Buzek dismissed the deputy Prime Minister and Minister of Internal Affairs and Administration Janusz Tomaszewski in September. Two days before the dismissal, the Commissioner for Public Interest had moved to the Lustration Court for lustration proceedings to be brought against Tomaszewski. His case was still pending in the Lustration Court as of March 2000. Furthermore, the ruling coalition of Akcja Wyborcza Solidarnosc (Solidarity Electoral Action) and Unia Wolności (Freedom Union) resolved immediately after taking office to dismiss members of the coalition parties in whose cases lustration proceedings had been instituted and were still pending.³¹

²⁵ See *IHF Annual Report 1999*.

²⁶ “Pierwsza seria. Lustracja w Monitorze Polskim” (*The First Series. Lustration in Monitor Polski*), *GW*, No. 52, 3 March 1999.

²⁷ “SB przyhamowała lustracje?” Wywiad rzecznika interesu publicznego dla PAP (*The Communist Security Services Hampering Lustration? PAP interviews the Commissioner for Public Interest*), *GW*, No. 267, 16 November 1999.

²⁸ Statement of the Helsinki Committee in Poland, 2 September 1999.

²⁹ K. Burnetko, “Nadgorliwość (Overzealous), *Tygodnik Powszechny*, No. 11, 14 March 1999; “Automat lustracyjny” (rozmowa E. Milewicz z posłem Janem Lityńskim) (*The Lustration Machine. Interview with Jan Lityński, MP, by E. Milewicz*), *GW*, No. 59, 11 March 1999.

³⁰ M. Wiatrak, R. Metzger, “Sytuacja jest jaka jest. Zlustrowany prokurator odsunięty” (*The Situation Is as It Is. A Lustrated Prosecutor Has Been Withdrawn*). *GW*, No. 80, 17–18 April 1999; V. Krasnowska, “Lista izyńskiego” (*Nizieński’s List*), *Wprost*, No. 11, 14 March 1999.

³¹ “Tomaszewski do dymisji” (*Tomaszewski Dismissed*), *GW*, No. 205, 2 September 1999; “O lustracji po dymisji. Odejscie wicepremiera” (*On Lustration Following Dismissal. The Deputy Prime Minister has Been Removed*), *GW*, No. 207, 4–5 September 1999.

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■ Controversy was also caused by the actions of a deputy from a radical right-wing party Konfederacja Polski Niepodległej – Ojczyzna (Confederacy of Independent Poland – Motherland), Tomasz Karwowski. He made use of a provision of the Lustration Act allowing a parliamentary deputy to institute lustration proceedings and initiated proceedings against Prime Minister Jerzy Buzek in April. However, the Commissioner for Public Interest Bogusław Nizewski rejected the move, saying that there was sufficient proof that Prime Minister Jerzy Buzek had never collaborated with the Communist security services. Karwowski's further attempts at pursuing the matter through the media ("wild lustration") were boycotted by the major media.³²

The Institute of National Remembrance – Commission for Prosecution of Crimes Against the Polish Nation, set up to release the files of socialist security services to persons (including scholars and journalists) who had been under those services' surveillance in the years 1944–1990, could not yet begin its work in 1999, after the Sejm rejected the only candidate for president of the institute, Prof. Witold Kulesza, and the Budget Act failed to provide for funds for its operation. As of March 2000, the institute still did not have a president.

Torture, Ill-Treatment and Misconduct by Law Enforcement Officials

Ill-Treatment

Cases of inhuman and degrading treatment by the police continued to occur in Poland. Also the UN Human Rights Committee noted in its comments the use of violence by the police and recommended that an independent review system be introduced to ensure state functionaries acted within the law. It proposed that in the armed forces *fala* practices be controlled, and prison conditions improved.³³

■ In May, former policeman Dariusz W. was found guilty by a court in Koszalin of fatally beating Przemysław Czaja (13) in Słupsk in January 1998.³⁴ Dariusz W. was sentenced to six years' imprisonment. Another policeman Robert K. was given an eight-month suspended prison sentence for failing to help the victim. Both parties announced their intention to appeal against the decision.³⁵

■ In June, Michał F. (23) died in Sosnowiec following a conflict between drinking party and police officers. After Michał F.'s brother had allegedly kicked a policeman in his face, 12–14 police officers subdued the brothers using batons. Michał F. died on the way to a sobering-up unit. An autopsy revealed he had died of suffocation caused probably by a blow to the larynx or by crushed ribs. Over 10,000

³² K. Montgomery, "W krzywym lustrze. Szarża KPN-Ojczyzna na premiera" (*Twisted View. Confederacy of Independent Poland – Motherland Attacks Prime Minister*), *GW*, No. 93, 21 April 1999; A. Kublik, "'Karol' to nie 'Karol'". *Prokurator lustracyjny obala pomówienia KPN-Ojczyzna* ("Karol' is not 'Karol'". *The Lustration Prosecutor Refutes the Accusations of Confederacy of Independent Poland – Motherland*). *GW*, No. 146, 25 June 1999.

³³ *Concluding Observations of the Human Rights Committee: Poland*. 29/07/99. CCPR/C/79/Add.110.

³⁴ See *IHF Annual Report 1999*.

³⁵ C. Lazarewicz, K. Nalecz, "Bil, żeby się wyzyc?" (*He Kept Hitting to Let off Steam*), *GW*, No 109, 12 May 1999.

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inhabitants of Sosnowiec signed a petition to the chief commander of the police force, condemning police brutality.³⁶

■ In October, the European Court of Human Rights in Strasbourg began to consider the application of Dorota D. who complained of violation of article 3 of the ECHR. After failing to appear when summoned as a witness, D. was apprehended by police officers from Bielsko as she left her workplace. She alleged she was pushed into a car, hit on the head with a briefcase, and subjected to offensive language by the officers. She was not informed about the grounds for her arrest; could not contact her lawyer; and was prevented from using the toilet for over six hours while the police were interrogating her.³⁷

Excessive Use of Force

■ On 24 June, a protest by workers of the Lucznik Metal Plant (manufacturing firearms among other products) outside the Ministry of Defense against lack of government contracts and unpaid salaries evolved into a riot. Workers threw objects at police guarding the building, who responded with rubber bullets. One of the bullets hit a press photographer from the daily *Nasz Dziennik* in the eye, causing him to lose the eye. A special commission

was appointed to investigate the incident.³⁸ Its findings showed that the organizers had operated without required permits and notification of the event³⁹ and confirmed that the decision to disperse the manifestation was legal due to a considerable threat to the life or health of persons or to property.⁴⁰ The report ruled the journalist's injury was accidental.⁴¹ However, the commission recommended that more precision was needed in regulating conditions under which "non-penetration bullets" might be used. Despite the commission's findings, the Prosecutor's Office conducted preparatory proceedings in two cases, of wounding the journalist and of active assault against functionaries.

Security Services

The UN Human rights Committee noted in its July report that wire-tapping activities should be made subject to independent judicial review.⁴² In 1999, controversial cases regarding the past activities of the security services were under debate.

In September 1997, the then Minister–Coordinator of the Security Services Zbigniew Siematkowski and Head of the State Protection Office (UOP) Andrzej Kapkowski handed over to the Prosecutor's Office UOP materials calling for an inquiry into their accusations that during

³⁶ A. Swoboda, "Pogrzeb w ciszy" (*The Silent Funeral*), *GW*, No. 148, 28 June 1999.

³⁷ E. Siedlecka, "Przymus czy tortura. Polska przed Trybunałem w Strasburgu" (*Restraint or Torture? Poland before the Strasbourg Court*), *GW*, No. 245, 19 October 1999.

³⁸ "Dlaczego policja uzyla gumowych kul. Raport rządowy w sprawie manifestacji pracowników Lucznika w Warszawie 24 czerwca 1999 r." (*Why Did the Police Use Rubber Bullets? Government Report on the Manifestation of Lucznik Workers in Warsaw on 24 June 1999*), *GW*, No. 158, 1999, pp. 15, 17.

³⁹ *Ibid.*

⁴⁰ From the entry into force of the Public Meeting Act of 5 July 1990 (*Journal of Laws*, No. 51, item 297 with subsequent changes), this was the second meeting that had been dispersed (with about 150 meetings a year registered in Warsaw).

⁴¹ *Dlaczego policja...*, *op.cit.*, p. 17.

⁴² *Concluding Observations of the Human Rights Committee: Poland*. 29/07/99. CCPR/C/79/Add.110

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1992–1993 under then Prime Minister Hanna Suchocka, UOP officers had allegedly conducted illegal surveillance of leaders of rightist parties opposed to President Lech Walesa. The Warsaw Prosecutor's Office duly instituted an inquiry. Yet in March 1999, the two prosecutors in charge of proceedings were refused permission to extend their investigations and allegedly faced pressure for a quick ending to the case.⁴³ In August, the inquiry was discontinued, the Prosecutor's Office having failed to find evidence of the offense allegedly committed by UOP officers. The politicians who had allegedly been under surveillance protested the decision. One such politician, Jarosław Kaczyński, claimed that inspired by the President's Office, UOP had formed a special operational group for surveillance of leaders of rightist parties, which was not obliged to record its actions. He claimed UOP had used wire-tapping, had broken into party offices, had agents in the media, and had spread rumors about politicians' private lives.⁴⁴ Justice Minister Hanna Suchocka declared herself in favor of releasing files related to the claims of UOP surveillance of rightist politicians.⁴⁵ In November, National Prosecutor Henryk Pracki decided that the allegations made by rightist politicians should be examined by the Gdańsk Prosecutor's Office.⁴⁶

There were also concerns that a new lustration department of the Ministry of Internal Affairs and Administration, set up by Minister Tomaszewski, was seeking to collect information beyond the remit of the lustration process itself. The new department, the National Crime Information Center, was not provided for by either the Police Act or the Act on Minister of Internal Affairs. Although its director, Krzysztof Bondaryk, claimed the Center's main function was to coordinate information gathered by various services subordinated to the minister, to fight organized crime and aid cooperation between customs, border guards and criminal police,⁴⁷ a report in the daily *Gazeta Wyborcza* criticized the Center's activities.

As laid down in the Lustration Act, the Center was supposed to obtain solely evidence from ministry archives of a person's collaboration with the Communist security services, and to pass this information on to the Commissioner for Public Interest. *Gazeta Wyborcza* noted Bondaryk had requested access from the ministry's archives to entire files of such persons. Since the archives contained documents providing many personal data, it was feared that under the pretense of enforcing the Lustration Act, the ministry was actually gathering extensive information about various persons, to be used e.g., for political blackmail.

⁴³ "Skonczcie z tym śledztwem". Jarosław Baniuk i Jacek G. Gutkowski w rozmowie z Jarosławem Kurskim" (*Put an End to That Inquiry. Interview with Jarosław Baniuk and Jacek G. Gutkowski by Jarosław Kurski*). *GW*, No. 264, 12 November 1999.

⁴⁴ "Afera Watergate to pestka." (Wywiad Jarosława Kurskiego z Jarosławem Kaczyńskim) (*Watergate was Nothing Compared to This. (Interview with Jarosław Kaczyński by Jarosław Kurski)*, *GW*, No. 254, 29 October 1999.

⁴⁵ J. Jachowicz, "Suchocka chce odtajnić. Czy będzie 'Biała Księga' inwigilacji prawicy?" (*Minister Suchocka for Release of the File. Shall We Get the 'White Book' on Surveillance of the Right?*), *GW*, No. 267, 16 November 1999.

⁴⁶ J. Jachowicz, "Umorzona, ale..." (*Discontinued, but...*), *GW*, No. 263, 10–11 November 1999.

⁴⁷ K. Bondaryk, "Gromadzimy, nie śledzimy" (*Our Job is Information Gathering and Not Surveillance*), *GW*, No. 217, 16 September 1999; J. Kurski, "Po co ta wiedza?" (*Who Needs to Know?*). *Ibid.*

The controversial information was later handed over to the Commissioner for Public Interest by Bondaryk's team. However, the acting Minister of Internal Affairs and Administration (after J. Tomaszewski's dismissal⁴⁸) Bogdan Borusewicz dissolved the lustration team, while the Sejm Committee for Security Services began an investigation into the legality of the team's activities.⁴⁹

Racial Discrimination, Xenophobia and Anti-Semitism

■ In August, commenting on the birth of the six millionth inhabitant of Earth, Minister for Family Affairs Kazimierz Kapera speculated in a radio interview "whether the white race would have any say in the future."⁵⁰ Although the minister argued that his words had been taken out of context, many groups saw Kapera's suggestion as racist and demanded his dismissal. Kapera resigned, citing personal reasons and claiming the government was insufficiently committed to pro-family policies. He had previously been dismissed by prime minister in 1991 as the Vice Minister of Health after calling homosexuals "perverts" on the main TV news broadcast.⁵¹

The "Auschwitz Lie"

■ In the spring of 1999, a lecturer at Opole University D. Ratajczak, Ph.D. published 350 copies of a historical book *Niebezpieczne tematy* (Dangerous topics). In it, he negated facts such as the extermination of Jews in the gas chambers of Auschwitz concentration camp, arguing the gas (Zyklon B) had been used for disinfection and not to kill people. Ratajczak said afterwards that he had merely quoted the views of other historians, and that nothing in the contents of his book permitted an assumption that he accepted those views as his own. The offense of the "Auschwitz lie" is a novelty in Polish law.⁵² In December, the Opole court discontinued proceedings against Ratajczak on account of the "slight social harm of the act." The court quoted the fact that Ratajczak distanced himself from the revisionist views in the second edition of his book, and that two copies only of the first edition had actually sold.⁵³

Social Rights

Reform programs launched by the Buzek government on 1 January (of administration, health services, social insurance and education) heralded new difficulties in the

⁴⁸ See *Lustration*

⁴⁹ "Na razie nic nie ma. Speckomisja o MSWiA." (*Nothing so far. The Security Services Committee on the Ministry of Internal Affairs*), *GW*, No. 211, 9 September 1999.

⁵⁰ Here the quotation verbatim: "There is no need to fear that nations of the world might have insufficient food. What has to be feared is that we Europeans – the white race – might no longer have a say in the future world". After "Bielszy odcień seks" (*The Whiter Shade of Sex*), *GW*, No. 167, 20 July 1999.

⁵¹ "Drugi koniec Kapery" (*The Second end of Mr. Kapera*), *GW*, No. 1999, 26 August 1999.

⁵² Article 55 of the Act of 18 December 1998 of the Institute of National Remembrance – Commission for Prosecution of Crimes Against the Polish Nation (*Journal of Laws*, No. 155, item 1016) provides that "whoever negates, in public and against facts, the Nazi or Communist crimes as well as the crimes against peace, mankind, and war crimes, shall be subject to the penalty of a fine or of imprisonment for up to 3 years."

⁵³ D. Wodecka-Lasota, M. Wajda, "Nikły stopień kłamstwa. Wyrok w procesie o negowanie komór gazowych" (*The Slight Degree of Lie. Decision in the Case of Negation of the Gas Chambers*), *GW*, No. 8 December 1999.

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social sphere. Other reform packages, particularly concerning health, added to apparent confusion and public misunderstanding about the nature of the changes. It was clear that those charged with executing health reforms, both doctors and health administrators, lacked the necessary knowledge and understanding of what the changes entailed. The new regulations were unclear and incomplete, and some groups (e.g. the homeless) were deprived of access to basic health services altogether. A strike of anesthesiologists delayed planned surgical procedures in some cases by many weeks, and some patients were denied emergency assistance.

In February, the Polish Helsinki Committee noted in a letter to Prime Minister Buzek that the government had a responsibility when instituting major reforms to properly inform citizens of the possible consequences, positive and negative, of planned changes.⁵⁴

Women's Rights

In the Concluding Observations of the UN Human Rights Committee, almost one-third of the criticism concerned women's rights. Anti-abortion provisions were found to be too severe, and the Committee proposed the promotion of different forms of family planning and the reintroduction of sexual education into schools. Also recommended were large-scale organization of shelters for women and child victims of domestic violence and vigorous prosecution of persons committing violence against women.⁵⁵

Women victims of violence and sexual harassment still faced problems getting effective support from the police, prosecutors and the courts. In March, the Women's Rights Center, which was seeing about a dozen women each week who had suffered such treatment, organized a Tribunal Against Violence in the Warsaw court building. The Tribunal's session was intended to give publicity to the problem and to make law enforcers sensitive to it; yet the government was not represented at the event. Also, the National Women's Program prepared by the previous government was stopped.⁵⁶

In March, the Sejm turned down a draft Bill on Gender Equality. In the fall, a motion to set up a Parliamentary Committee for Equal Status of Men and Women was also rejected. Opinion surveys published at that time revealed a considerable sense of discrimination among female respondents and their lower wages compared to men, while it was feared that new pension reforms would result in lower pensions for women.

Arms Trade⁵⁷

In recent years, Poland armed human rights abusers and exported weapons to areas of violent conflict in contravention of its pledges to adhere to the EU Code of Conduct on Arms Exports and to abide by other international agreements. For example, the Polish government confirmed that in 1998 it had re-exported Bulgarian-made weapons to Congo-Brazzaville; at the time, a civil war was raging in which gov-

⁵⁴ Letter of 15 February 1999 by the Helsinki Committee in Poland to Prime Minister Jerzy Buzek.

⁵⁵ *Concluding Observations of the Human Rights Committee: Poland*. 29/07/99. CCPR/C/79/Add.110.

⁵⁶ "Trybunał na Dzień Kobiet. Przemoc w rodzinie i w pracy" (*The Women's Day Tribunal. Family and Workplace Violence*), *GW*, No. 56, 8 March 1999.

⁵⁷ By Human Rights Watch/Division on Arms for the *IHF Annual Report 2000*.

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ernment armed forces were committing summary executions, rape, and other serious human rights abuses. In 1999, Poland went ahead with the sale of surplus tanks to Yemen despite warnings from the United States government that the weapons might be diverted to Sudan, which is under an EU embargo because of its brutal, ongoing civil war. After the first shipment of twenty tanks was diverted and reportedly delivered to Sudan, Poland canceled all further shipments "to Yemen." ■■■