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Europe and Central Asia: Summary of Amnesty International's Concerns in the Region: January – June 2007

POLAND

This country entry has been extracted from a forthcoming Amnesty International (AI) report, *Europe and Central Asia: Summary of Amnesty International's Concerns in the Region: January – June 2007* (AI Index: EUR 01/010/2007), to be issued later in 2007. Anyone wanting further information on other AI concerns in Europe and Central Asia should consult the full document.

Renditions and secret detention centres (update to AI Index: EUR 01/001/2007)

International bodies continued to raise concerns about Poland's alleged involvement in the USA's programme of secret detentions and renditions (the illegal transfer of people between states outside of any judicial process), and its inadequate responses to their investigations.

On 14 February members of the European Parliament's Temporary Committee on allegations of illegal activity in Europe by the US Central Intelligence Agency (CIA) released the results of their investigation. In relation to Poland they concluded that the investigation by the Polish parliament into claims that the USA may have operated secret detention facilities on its territory was not conducted independently, and that statements to their delegation were "contradictory" and compromised. The findings of the Polish parliament's own investigation were never made public on grounds of national security, and the government declared itself that the allegations were unfounded] in November 2005. AI had raised concerns that last-minute attempts to weaken the Temporary Committee's report were a worrying sign of the European Parliament's vulnerability to national and party interests, despite the grave nature of abuses: kidnapping, torture and disappearances (see AI Index: IOR 61/005/2007)

On 21 May, the UN Committee Against Torture (CAT) urged Poland to disclose details regarding its parliamentary investigation into the presence of secret CIA prisons in the country, expressing concern about allegations that Poland participated in running terrorist suspect prisons in the country. Prime Minister Jaroslaw Kaczyński said that the government regarded the allegations as a "closed issue" when questioned about the CAT´s request for more information. The CAT noted that while recognizing the government's refutation of Polish participation in the programme of secret detentions, it needed more information from the confidential inquiry conducted by the Polish parliament.

On 8 June, the Rapporteur on secret detentions of the Parliamentary Assembly of the Council of Europe (PACE), Senator Dick Marty, issued a second report revealing new evidence that US "high-value detainees" were held in secret CIA prisons in Poland and Romania during the period 2002-2005 and alleged a secret agreement among members of the North Atlantic Treaty Organization (NATO) in October 2001 which provided the basic framework for this and other illegal CIA activities in Europe. In an explanatory memorandum made public the same day, Dick Marty said he had cross-referenced the credible testimonies of over 30 members of intelligence services in the US and Europe with analysis of "data strings" from the international flight planning system. AI applauded the report and the extraordinary investigative work undertaken by Dick Marty's office in getting to the well-concealed truth about the US-led secret detention programme (see AI Index: IOR 30/013/2007). The report strengthened AI's finding that three former secret detainees, whose cases were extensively documented over a year ago, had been held in an Eastern European "black site".

Later that month as PACE was preparing to debate Senator Marty's report, AI called on Poland and Romania to conduct independent, impartial and thorough investigations into new information concerning CIA flights and secret detention centres on their territories (see AI Index: EUR 37/003/2007). AI also called on PACE to adopt the draft Resolution and Recommendation on rendition and secret detention accompanying Senator Dick Marty's report. PACE subsequently endorsed Senator Marty's report on 27 June, with 124 votes in favour, 37 against and eight abstentions, backing its conclusions that "it is now established with a high degree of probability that secret detention centres operated by the CIA, forming part of the High Value Detainee (HVD) program, existed for some years in Poland and Romania.." When adopting the Recommendation, the PACE called on the need for democratic oversight of military intelligence services and foreign intelligence services operating on their territory; urged the restrictions on the investigations on the grounds of "national security" to be lifted; and urged compensation to the victims of the unlawful transfers and detention. Both Poland and Romania denied their involvement with secret detention centres and the Romanian delegation announced its withdrawal from the PACE.

Discrimination on grounds of sexual orientation

During the period under review AI continued to express its concerns to a number of Polish officials about the openly homophobic language used by highly placed politicians, as well as in relation to proposed measures against the 'promotion of homosexuality' that would restrict students' access to information and violate their freedom of expression.

Openly homophobic language by highly placed politicians contributed to the persistence of discriminatory attitudes against lesbian, gay, bisexual and transgender (LGBT) people. On 2 March, for example, Deputy Prime Minister and Minister of Education Roman Giertych reportedly stated during a meeting of European Ministers of Education, "We ... cannot promote as normal same-sex partnerships when teaching youth, as those partnerships objectively constitute deviation from the natural law." In February, President Lech Kaczyński reportedly said on 20 February during his visit to Ireland that "LGBT people should not promote their sexual orientation" and attacked what he called the "homosexual culture" and suggested that widespread homosexuality would lead to the disappearance of the human race.

With regard to legislation, a proposal announced by the government on 13 March would "prohibit the promotion of homosexuality and other deviance" in Polish schools. The purpose of the measure was to "punish whoever promotes homosexuality or any other deviance of a sexual nature in educational establishments", Deputy Minister of Education Mirosław Orzechowski announced at a press conference. Failure to comply could lead to dismissal, fine or imprisonment.

AI was concerned that the measures would be in violation of Poland's international obligations (such as set out in the International Covenant on Civil and Political Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms), as well as the Polish Constitution and the commitments undertaken when the country joined the European Union (EU) in 2004.

The measure would deprive students of their right to freedom of expression, of a full education, and of the right to associate freely. It would institutionalize discrimination in Poland's school system, and criminalize anybody who promotes equality regardless of sexual orientation or gender identity.

Reacting to these proposals, on 25 April the European Commissioner for Employment, Social Affairs and Equal Opportunities Vladimir Špidla stated that the European Commission would use all the powers and instruments at its disposal to combat homophobia. He also said that "were such a bill ever to be drafted, it would lead to the stigmatisation of a category of people on the grounds of sexual orientation, and for that reason it is unacceptable from the point of view of European law" On 26 April, the European Parliament (EP) issued a resolution condemning homophobia in Europe and urging member states to strengthen the protection of human rights of LGBT people. Several Polish members of the parliament (MEPs) walked out after a vote to suspend the debate failed. The EP censured far-right Polish MEP Maciej Giertych for publishing a homophobic pamphlet bearing the EP's logo. Entitled "European values" the opinion piece stated that homosexuality is "biologically useless" and "reversible" as long as there is "the desire to become heterosexual and the spiritual motivation."

On 26 April, the EP expressed outrage at growing intolerance towards lesbian and gay people across Europe, singling out Poland for special criticism. It passed a resolution declaring that it would mark 17 May every year as International Day against Homophobia. The resolution calls for worldwide de-criminalisation of homosexuality and urges all EU governments to bring forward laws to tackle discrimination against same-sex couples. Polish authorities were particularly called "to publicly condemn and take measures against declarations by public leaders inciting discrimination and hatred based on sexual orientation". The EP called on its political group leaders to send a delegation to Poland "for a fact-finding mission, with a view to getting a clear picture of the situation and enter into dialogue with all parties concerned."]

On 20 June, Thomas Hammarberg, the Council of Europe's Human Rights Commissioner, published a Memorandum on his visit to Poland in 2007 in which he expressed strong concerns about a number of aspects of the Polish government's approach to LGBT people. The Commissioner made reference to the withdrawal from circulation in early 2006 by the Ministry of Education of the Polish version of Compass – Human Rights Education with Young People, a Council of Europe anti-discrimination handbook and a manual on human rights for young people. During the Commissioner's visit, he was given an example of the sort of manual which the government considered suitable for the education of young teenagers. This manual stated that "homosexuality is an unnatural inclination and that the person affected should be shown particular care and assistance in fighting this shameful deviation." It also linked homosexuality to "a fear of responsibility, an incorrect hierarchy of values, a lack of a proper idea of love and a hedonistic attitude, as well as prostitution." The Commissioner found "the portrayal and depiction of homosexuality... offensive, out of tune with principles on equality, diversity and respect for the human rights of all. While the Polish authorities are of course free to decide on which materials they use for human rights education, the human rights principles, including the principle of non-discrimination, contained within such materials are not optional." The Commissioner also expressed his concerns about the proposed measures to penalize the alleged promotion of homosexuality in schools. The Commissioner deplored any instances of hate speech towards homosexuals and called on the Polish authorities not to tolerate them.

In March, the non-governmental organization Campaign Against Homophobia (Kampania Przeciw Homofobii, KPH) issued a report entitled Situation of bisexual and homosexual persons in Poland, 2005 and 2006 report. KPH reported that 17.6 per cent of the respondents had experienced physical violence on the grounds of their known or suspected their sexual orientation. This included having been pushed, hit or kicked. Fifty-one per cent of the respondents also alleged psychological violence, which was manifested by insults and the whole spectrum of vulgarisms referring to the intimate life and relationships of LGBT people, "alienating such people from a society leading to social exclusion." The report also reported cases of discrimination at educational institutions such as high schools and universities by teachers and peers, at workplaces by employers and colleagues, and by police and staff of health services centres.

Violation of freedom of assembly and freedom of speech

On 3 May, the European Court of Human Rights delivered its decision in the case of Baczkowski and Others v. Poland in which LGBT activists from Poland successfully challenged a ban on LGBT Equality Parade in Warsaw in June 2005 by the then Major of Warsaw, Lech Kaczyński (see AI Index: EUR 01/012/2005). The court unanimously decided that such ban was illegal and discriminatory because it breached three articles of the European Convention on Human Rights: Article 11 (freedom of association and assembly), Article 13 (right to an effective remedy) and Article 14 (prohibition of discrimination).

International scrutiny

On 2 February, the UN Committee on the Elimination of All Forms of Discrimination against Women (CEDAW) made public its concluding comments on the Poland's compliance with the International Convention on the Elimination of All Forms Discrimination against Women. The CEDAW expressed its concerns about the repeated rejection by the Parliament (Sejm) of a comprehensive law on gender equality. It also expressed concerns about the abolition of the Government Plenipotentiary for Equal Status of Women and Men. It considered that its new location in the Department for Women, Family and Counteracting Discrimination at the Ministry of Labour and Social Policy could result in issues related to discrimination against women being given a low priority. The CEDAW remained concerned about the persistence of prejudice and stereotypical attitudes regarding the division of roles and responsibilities of women and men in the family and in the society. According to the CEDAW, "such stereotypes perpetuate discrimination against women and are reflected in many areas, such as in women's situation in the labour market, their low level of participation in political and public life and the persistence of violence against women."

Forcible return of asylum seekers

On 2 March AI wrote to the Office for Repatriation and Foreigners in Warsaw regarding a Chechen citizen of the Russian Federation and her family members, applying for asylum in Poland. AI expressed concern that were they to be forcibly returned to the Russia they would be at a high risk of torture and other ill-treatment, and that therefore their forcible return would be in breach of the principle of non-refoulement. It was reported that the woman's son died in detention in Russia as a result of torture, and that she has faced threats because of her efforts to seek justice in Russia and at the Council of Europe. This case was one highlighted by AI in its report Russia/Chechen Republic: "Normalization" in whose eyes (AI Index EUR/46/027/2004). The asylum claim was rejected in April, but at the time of writing the forcible return had not taken place.

Lustration law

Under the new Lustration Law passed in February (which supersedes the earlier, and less extensive, 1998 law) everyone born before 1972 in “public positions”1 would have to make a declaration as to whether they co-operated with state security organs of the Polish People’s Republic from 1944 to 1990. This declaration would then be verified by the Institute of National Remembrance (INR). Where there were any doubts as to the truth of the declaration, court proceedings could be brought in the Lustration Court (Warsaw Court of Appeal), which could result in the person losing his or her job. A refusal to submit a declaration could also result in losing one’s job for up to 10 years. The law was estimated to apply to about 700,000 people.

The new law on lustration was examined by the Constitutional Court, after a motion against it was brought by the Democratic Left Alliance (Sojusz Lewicy Demokratycznej) party. The court decided on 11 May that the law was partially unconstitutional and ruled that the law would have applied collectively to entire groups of people considered to be "people filling public functions". The court also ruled that vetting would have to be carried out on a case-by-case basis. Among the clauses rejected by the court were those which would have required journalists, managers of listed state-owned firms, and principals of private schools to submit declarations stating whether they had collaborated with the communist-era secret police. The court also said it was unconstitutional to have allowed the names of all former "informal collaborators" with the communist secret police to be published on the Internet.

The ruling was not welcomed by the government. On 14 May the Prime Minister made accusations “that the Constitutional Court is anti-vetting and its members are part of the conspiracy of former communists who have too strong an influence on society and business.” As response to the ruling, he called for a new law which would open secret service files on Polish citizens to the public.

[1] Defined by the law as judges, lawyers, tax advisors, certified accountants, court enforcement officers, journalists, diplomats, municipal officials, university teachers, heads of public and private educational institutions, heads of state controlled companies, and members of the management and supervisory boards of companies listed on the stock exchange are included.