

Europe and Central Asia: Concerns in Europe & Central Asia bulletin: January - June 2006

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POLAND

Background

Being in a minority government since the parliamentary elections of September 2005, the Law and Justice Party (Prawo i Sprawiedliwość, PiS), formed a coalition government in May with the League of Polish Families (Liga Polskich Rodzin, LPR) and Self-Defense (Samoobrona) party.

Alleged secret detention centres and "rendition" flights

In March, the Secretary General of the Council of Europe Terry Davis released his opinion on the alleged secret detention centres in member states set up as part of the USA's programme of secret detentions and "renditions" - the illegal transfer of people between states outside of any judicial process. He expressed concern at Poland's lack of response to questions of whether officials had been involved in the detentions or renditions or whether any official investigation was underway or had been completed.

On June, the Rapporteur on secret detentions of the Parliamentary Assembly of the Council of Europe, Dick Marty, reported on what he described as global "spider's web" of detentions and transfers by the US Central Intelligence Agency (CIA) and alleged collusion in this system by 14 Council of Europe member states. He singled out Poland as having harboured secret detention centres, and reported that the Polish authorities were unable, despite repeated requests, to provide him with information from their own national aviation records to confirm any CIA-connected flights into Poland.

The Rapporteur remarked that the absence of flight records from a country such as Poland was unusual, considering that a number of neighbouring countries, including Romania, Bulgaria and the Czech Republic, had had no such problems in retrieving official data for the period since 2001. In fact, the submissions of these countries, along with data from Eurocontrol (the European Organisation for the Safety of Air Navigation), confirmed numerous flights into and out of Polish airports by the CIA-linked planes that were the subject of his report.

Police ill-treatment and violation of rights during time of detention

In March, the Council of Europe's Committee for the Prevention of Torture (CPT) published its report on the last visit to Poland held in October 2004.

Allegations of ill-treatment

The CPT expressed its concern on allegations of physical ill-treatment by the police at the time of apprehension, including slaps, kicks, punches, blows with a truncheon and tight handcuffing for prolonged periods of time. The CPT also expressed its concerns about allegations concerning the time of questioning by police officers when the detainees would have been punched or slapped, threatened with violence or verbally abused.

The CPT recommended that the Polish authorities remind police officers, through appropriate means and at regular intervals, that the ill-treatment of detainees (whether of a physical or verbal nature) is not acceptable and should be the subject of severe sanctions and that no more force than is strictly necessary should be used when effecting an apprehension. The report also noted that, once an apprehended person has been brought under control, there can never be any justification for their being struck.

The CPT remained concerned about the fact that complaints of police ill-treatment had been ignored by prosecutors or judges before whom they had been brought shortly after apprehension. The CPT received allegations by persons who were detained by the police that their complaints of police ill-treatment were ignored by prosecutors or judges before whom they had been brought shortly after apprehension. The CPT called upon the Polish authorities to take effective steps to ensure that, whenever a person brought before a judge/prosecutor alleges ill-treatment by the police, the judge/prosecutor immediately requests a forensic medical examination, irrespective of whether the person concerned bears visible injuries. Further, even in the absence of an express allegation of ill-treatment, a forensic medical examination should be requested whenever there are other grounds to believe that the person could have been the victim of ill-treatment.

The CPT expressed also concerns at the length of time during which means of restraint were being applied to prisoners placed in a security cell at the prisons visited.

Violation of the right to be medically examined by a doctor

The CPT expressed concerns about the right of persons in police

custody to be medically examined by a doctor of their own choice not being formally guaranteed and in practice being "clearly non-existent". The confidentiality of medical information was not respected, to the extent that the medical examination of detained persons was conducted in the presence of police officers in common bases. Furthermore, the register of medical examinations was not kept separately from other registers and could be accessed by police staff.

Violations of the rights of people under the age of 18

On police and border guard establishments, the CPT noted that children could be held at the establishments visited for periods considerably exceeding the 17 days provided for in Poland's 1982 Juveniles Act, in some cases, for up to three months. Moreover, those establishments were not adapted for prolonged stays.

The CPT remained concerned on allegations made by juvenile detainees of physical ill-treatment and threats in order to obtain confessions.

The CPT expressed concerns on the number of juveniles being questioned and made to sign statements admitting to criminal offences without the benefit of the presence of a trusted person. The Polish Commissioner for Civil Rights Protection confirmed this information, indicating that his office received complaints from parents that the police did not respect their duties set out in the Juveniles Act. Moreover, and being the same case for adults, the law does not provide for the appointment of an ex officio lawyer before the stage of court proceedings.

Discrimination on grounds of sexual orientation

Homophobic statements by leading public officials

Openly homophobic statements made by prominent politicians and public officials, including an encouragement to use violence against peaceful lesbian, gay, bisexual and transgender (LGBT) rights demonstrators, worsened the climate of discrimination and intolerance.

Wojciech Wierzejski, a member of parliament for the League of Polish Families (Liga Polskich Rodzin, LPR) on 11 May 2006, allegedly encouraged the use of force against participants in the annual Equality March in Warsaw in June. He reportedly said, "If deviants begin to demonstrate, they should be hit with batons". Commenting on the possible attendance of politicians from Western Europe at the march, he is reported as saying "they are not serious politicians, but just gays and a couple of baton strikes will deter them from coming again. Gays

are cowards by definition". On 12 May, Wojciech Wierzejski is said to have written a letter addressed to the Minister of Interior and Administration Ludwik Dorn and the Minister of Justice Zbigniew Ziobro urging that law enforcement authorities check what he called "legal and illegal sources of financing" of organizations of homosexual activists, and demanded the State Prosecutor's intervention. The letter also accused LGBT organizations of being involved with paedophiles and the illegal drug-trade, and stated that Wojciech Wierzejski wished to check whether LGBT organizations "penetrate Polish schools". Following his demand the State Prosecutor ordered all prosecutors, in a letter issued on 30 May, to check very carefully the ways of financing of LGBT organizations, their alleged connections to criminal movements and their presence in schools.

On 21 May, Roman Giertych, Deputy Prime Minister, Minister of Education and also leader of the LPR said on TVN (a Polish private TV channel) that "LGBT organizations are sending transsexuals to kindergartens and asking children to change their sex."

Actions by the Ministry of Education

On 19 May, Mirosław Orzechowski, Deputy Minister of Education and member of the LPR, stated that an international project that was organized by several LGBT rights non-governmental organizations (NGOs) and financially supported by the European Commission Youth Programme, would lead to the "depravity of young people". The Deputy Minister also said that "the rules and priorities of the programme under which such projects get money, need to be changed in order to prevent such organizations from receiving money in the future".

On 8 June, Roman Giertych, as Minister of Education, dismissed Mirosław Sielatycki, the director of the National In-Service Teacher Training Centre (Centralnego Ośrodka Doskonalenia Nauczycieli, CODN). The reason the minister gave for the dismissal was that "a lot of books there were encouraging teachers to organize meetings with LGBT non-governmental organizations such as Campaign Against Homophobia [Kampania Przeciw Homofobii, KPH] or Lambda". The dismissed director of the CODN said that the only book he was aware of in the context of Minister Giertych's accusations was a Council of Europe anti-discrimination handbook and a manual on human rights for young people. Reacting to these events, the Secretary General of the Council of Europe Terry Davis, claimed that the handbook reflects basic European values, including the culture of tolerance, and stated that "if the teaching material is optional, the values and principles contained therein are certainly not." He also expressed concern about "some politics promoting homophobia ...and homophobic behaviours

being accepted by the Government".

Freedom of assembly

Incidents continued to be reported in which demonstrators from the LGBT community and other activists were attacked by private individuals, including counter-demonstrators, together with allegations that the police failed to ensure that the LGBT demonstrators were able to exercise their right to peaceful assembly.

On 28 April, a Tolerance March in the city of Kraków was attacked by members of a counter-demonstration called the Tradition March. The Tolerance March was organized to promote tolerance within Polish society and more than 1,000 people reportedly took part. Despite the presence of the police, the participants were reportedly harassed and intimidated by members of a right-wing grouping known as All Polish Youth (M³odzieŹ Wszechpolska).

On 17 May, in Toruń, KPH organized a public meeting in the Market Square linked to the International Day Against Homophobia. On the same day, Socialist Youth (the youth wing of the Socialist Party) organized a demonstration through the town against the new Education Minister Roman Giertych. Members of National Rebirth of Poland (Narodowe Odrodzenie Polski, NOP), a nationalist organization, held a counter-demonstration at the same place and time as the KPH. NOP members chanted slogans, including "gas the queers" (peda³y do gazu), "come closer" (chodŹcie bliŹej) or "there will be a baton for each queer face" (znajdzie siê kij na pedalski ryj). Also on the same day, a concert in Warsaw against homophobia and neo-fascism was disrupted by alleged extremists who were covering their faces.

Court rulings on demonstrations

In January, Poland's Constitutional Court confirmed the ruling of the Warsaw Court in September 2005 that the banning of the Equality March in Warsaw in June 2005 by the then Major and now President, Lech Kaczyński was unlawful, and declared that demonstrators need only to inform city officials that a public demonstration would be taking place.

In May, the Poland's Supreme Administrative Court (Naczelny S¹d Administracyjny) in Warsaw upheld the decision of the Regional Administrative Court (Wojewodzki S¹d Administracyjny) in Poznań on the case of an LGBT march banned in November 2005 by the Major of Poznań. The court ruled in its final decision that the threat from a counter-demonstration could not be a reason for banning the

demonstration.

These rulings clarified the legal situation around the Equality March in Warsaw arranged for 10 June, which the Warsaw City Council of Warsaw finally authorized on 1 June. Owing to threats of counter-demonstrations, the organizers of the Equality March agreed a different itinerary with the Warsaw City Council. The counter-demonstrations were cancelled on 9 June, following a request from the Deputy Prime Minister Roman Giertych to the organizers asking them not to attend. Despite the cancellation, some people staged an unauthorized counter-demonstration, which the police separated from the Equality March. The police provided extra forces to guarantee the security of the Equality March demonstration and ensured that the participants' right to peaceful assembly. The demonstration passed with only minor incidents reported.

Refugees

The majority of asylum-seekers from the Chechen Republic in Russia were being denied refugee status, and were granted "tolerated stay" permits only. According to data published by the office of the UN High Commissioner for Refugees (UNHCR) in May, almost half of the school age children seeking asylum did not go to schools at all. It also stated that persons who were granted the right to "tolerated stay" permits were in a particularly difficult situation because they lose the right to social assistance provided to asylum-seekers and they do not receive the integration package, that refugees are entitled to. With no possibility for legal transfer to other countries, or for safe return home, those persons often find themselves in a very difficult situation with respect to finding employment or housing.

The number of asylum-seekers sent back to Poland from other European Union (EU) states increased following application of the so-called Dublin II Regulation which provides the legal basis for establishing the criteria and mechanisms for determining which EU state will examine an asylum application.

In its March report (see above) the CPT expressed its concerns that facilities for holding persons awaiting deportation seen during the 2004 visit did not meet the standards required for such prolonged periods of detention. The provision of health care and psychological and psychiatric support to foreign nationals could not be considered as adequate. Furthermore, staff assigned to work with foreign nationals received little specialised training and there was little communication between staff and detainees, not least because of language barriers.

The CPT recommended that persons detained for an extended period

under aliens legislation should be accommodated in centres specifically designed for that purpose, offering material conditions and a regime appropriate for their legal situation, and staffed by suitably-qualified personnel.