

■ POLAND

Human rights implementation – mystification or truth?



Decision makers show little evidence of capacity to respond constructively to human rights campaigns and proposals; and mobilizing broad human rights campaigns remains difficult. Citizens have little confidence that their activity could lead to progress and are extremely reluctant to become involved in civil society initiatives. However, a number of effective and tightly focused campaigns on minority issues have shown the value of civil action, and Europe's expectations and requirements have compelled the Government to introduce regulations that protect the rights of some sectors of the population.

Karat Coalition
Anita Seibert
Julia Wrede
The Network of East-West Women NEWW-Polska
Małgorzata Tarasiewicz
Małgorzata Zuk

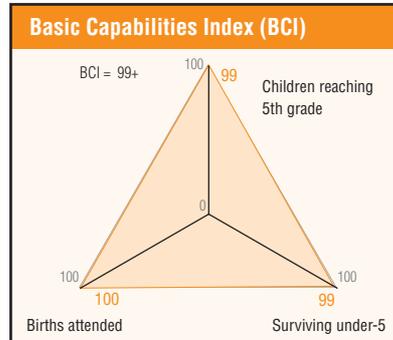
A wide range of issues could and should be addressed by civil society to guarantee implementation of human rights, however Poles are extremely reluctant to become involved in popular campaigns that might achieve meaningful progress. This hesitation is due to a number of social and historical factors, which were recently discussed in *Civil Society Index* (Gumowska, 2008). The civil society initiatives that have been launched, typically under NGO leadership, have confronted significant obstacles. Most prominently, decision makers lack the willingness, ability and knowledge to respond positively to campaigns and proposals, and the Polish lacks "access points" (i.e. public administration staff responsible for effective cooperation with civil society, as well as accessible and transparent mechanisms that could facilitate policy-related dialog between public authorities and civil society).

The limited effectiveness of activities that have been attempted further diminishes popular confidence that the status quo can be changed. Consequently, no broad or nationwide proposals or campaigns have been launched in the last few years. However, several more modest but significant campaigns addressing human rights have emerged recently. These will be described in the following paragraphs.

Sexual and reproductive rights

Women's health is not a high priority in governmental health programmes. Women's groups list the most pressing issues as the absence of compulsory and comprehensive sexual education in school, lack of family planning counselling, and limited access to contraceptives and abortion due to social and economic barriers and legal restrictions (Nowicka and Poche, 2006).

The powerful Roman Catholic Church has a strong influence over public opinion, and is opposed to all contraceptive methods other than natural ones. No state policies or programmes make contraception easily accessible and affordable. According to the World Health Organization, hormonal contraception should be reimbursed; however, hormonal

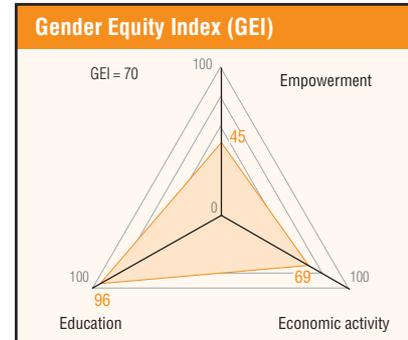


pills are expensive in Poland, and use of modern contraception is relatively low. More than 45% of the women who wish to protect themselves against pregnancy depend on natural methods, which are not very effective and lead to many unwanted pregnancies. Although doctors are obliged to prescribe hormonal contraception, some refuse to do it based on the Conscience Clause, which gives an individual doctor the right to refuse to provide contraception or perform abortions, even while practicing in a medical facility that offers them. Although this Clause has not been codified in specific regulations, it is widely invoked due to pressure from the Church and official passivity.

Abortion is banned and criminalized except in cases where it is required on medical grounds, giving birth would cause a risk to life or the pregnancy results from sexual violence. The major obstacle to obtaining an abortion is the Conscience Clause. Public hospitals terminate very few pregnancies (about 200 a year, according to the Ministry of Health). Doctors frequently refuse to provide the certificate required for a legal abortion (Nowicka and Poche, 2006). Women who are entitled to one are usually turned down.

The case of Alicja Tysiac, who was denied access to an abortion even though her pregnancy posed a significant threat to her health, prompted the European Court of Human Rights to rule in March 2007 that Poland was violating Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. This article guarantees respect for an individual's private and family life.

Limited access to safe abortion compels many women (an estimated 80,000 to 200,000 annually) to seek illegal termination. Many women travel abroad for what is called "abortion tourism". Although the



total number is unknown, the British Health Department (2007) reports that 0.1% of the women who sought abortions in Great Britain in 2007 were Poles. Enactment of a restrictive law was meant to eliminate abortion entirely. Its effect, however, has been to divide women between the 'rich', who can afford expensive care ('underground abortion') and the 'poor' who cannot afford high quality services.

Gender and pensions

The pension and retirement system continues to be discriminatory. The legislation that established different retirement ages for women and men, allowing women to retire earlier, creates difficulties for both. Women leave work with lower pensions. Men cannot stop working earlier, even when they want to or need to (for example, to take care of family members).

Not only has the Government failed to address this problem, in 2007 it developed a plan to reduce women's pensions, on the premise that they live longer and hence the total amount they receive is higher. Under the leadership of scholars in the field, several gender-focused NGOs submitted a joint protest letter to the appropriate ministry and launched a media campaign. The letter was placed on the website of the Ministry and the proposal has not been put into effect. Hopefully, this crude exercise in gender discrimination will never be implemented.

Rights of sexual minorities

On 26 April 2007, the European Parliament expressed outrage at the growing intolerance towards lesbian and gay people across Europe, singling out Poland for special criticism. The Polish Government was urged to issue a public condemnation of comments by high government officials inciting discrimination and hatred based on sexual orientation, including a

statement by Junior Education Minister Miroslaw Orzechowski advocating new legislation to “punish whoever promotes homosexuality or any other deviance of a sexual nature in educational establishments.” The Council of Europe’s Human Rights Commissioner has already expressed concern about a proposed measure to penalize the alleged promotion of homosexuality in schools.¹ The punishments envisioned are believed to include imprisonment.

The Government’s elimination of the Office of the Government Plenipotentiary for the Equal Status of Men and Women is particularly alarming. This Office was responsible for promoting equal treatment of individuals, including members of the LGBT community. Its termination makes Poland the only EU country without a statutory equality watchdog.

Amnesty International has urged the Polish Government to ensure that all allegations of attacks and threats against individuals based on their sexual orientation or gender identity will be thoroughly and impartially investigated, and that those responsible are brought to justice in accordance with international standards of fair trial.

The Government should also ensure that no authorities make public statements that could be interpreted as encouraging discrimination against, or targeting of, individuals based on their sexual orientation or gender identity, and reinstitute the Office of the Government Plenipotentiary for the Equal Status of Men and Women. The authorities should make clear that any act of violence against a member of the LGBT community is a criminal offence that will not be tolerated. The State should give law enforcement officials specific directives and training on their duty to protect the human rights of all individuals, regardless of their sexual orientation, as well as on how to identify and investigate homophobic crimes (Amnesty International, 2006).

Persons of non-heterosexual orientation who do not hide their preferences face discrimination in many aspects of everyday life in Poland, including health care, education, political participation and employment. The country has no official regulations on homosexual rights concerning legal status of couples, adoption of children, ability to make joint decisions regarding medical treatment, hospital visits, etc. Most politicians portray issues of discrimination against homosexuals as marginal and unworthy of serious attention.

Moreover, politicians try to ban gay and lesbian rallies. In 2005 Lech Kaczynski, then mayor of Warsaw and currently Polish president, banned a “Parade of Equality” in Warsaw. The mayor of Poznan did the same. The reaction was a moving example of civil society in action to defend human rights. Firstly, the events took place anyway. In Warsaw, the large gathering included politicians, public figures, and celebrities, as well as average citizens who probably would not have participated if the march had been legal. Secondly, the bans were contested in legal actions claiming they violated both the Polish Constitution and the European Convention on Human Rights and Fundamental Freedoms. In 2007

the European Court of Human Rights ruled that the City of Warsaw had violated the said Convention (Abramowicz, 2007).

To align Polish statutes with EU law, the Government has added regulations related to gays and lesbians, primarily in the Labour Code. These regulations prohibit direct and indirect discrimination based on sexual orientation and harassment, including sexual harassment. They also define the burden of proof required in discrimination cases.

Refugees²

Civil society campaigns seeking to improve the situation of refugees have been quite general and their effect has been limited. Dramatic experiences of an individual can arouse public opinion, but these incidents have not had an impact on official policies and practices.

Refugees confront severe challenges. Most significant is denial of access to basic government services, such as social security and health care. This requires an official (registered) permanent residential address, which is not available to anyone who has not acquired refugee status. In addition, refugees are effectively denied social benefits such as child support, which in Poland is only available to a parent who can show divorce documents or a death certificate of the other parent. The countries of origin of most of the country’s refugees do not issue those documents.

The disabled³

One of the major challenges faced by people with disabilities is the difficulty of participating in public life. Despite progress increasing accessibility for persons with mobility issues (for example, wheelchair access), little has been done to adapt facilities to the needs of people with visual and hearing impairment. Legal regulations cover mobility issues exclusively.

One of the most glaring breaches of human rights for people with disabilities emerged during the last national elections, held in 2007. Polling stations were not adapted to facilitate access, and the State did not provide ballots for voters with impaired vision.

A number of civil society campaigns and initiatives have urged decision makers to increase building accessibility for both the mobility impaired and the vision and hearing impaired, for example “Warsaw without barriers”.

People with disabilities typically have economic difficulties, often related to the labour market. Despite legislation designed to encourage employers to hire them, the majority of those capable of working rely on social security. The disability pension system itself deters many disabled persons from getting a job, since it puts a ceiling on what people can earn without losing their social security benefits.

2 This section was prepared in consultation with the Centrum Pomocy Uchod com i Repatriantom Polskiej Akcji Humanitarnej [Polish Humanitarian Organization Center for Refugee and Repatriate Aid].

3 This section was prepared in consultation with the Fundacja Na Rzecz Transportowych Usług Specjalistycznych (TUS) [Specialized Transportation Fund (TUS)].

1 <www.globalgayz.com>

The CIA and the secret detention centres

In March 2006 the Secretary-General of the Council of Europe released his opinion on alleged secret detention centres set up in Poland as a part of the secret USA programme of illegal transfers of people between states outside any judicial process. According to the European Parliament’s Temporary Committee Report, the CIA moved persons suspected of being terrorists from Afghanistan to Poland, most probably landing at the small airport at Szymany. About 10 high-ranking Al Qaeda members are believed to have been subjected to harsh interrogation techniques in at least one secret prison operating in Poland between 2002 until 2005, when it was shut down after the media reported its existence. However, the Polish Government refused to present evidence to the Temporary Committee (European Parliament, 2007).

Although Poland has consistently denied involvement in any aspect of the alleged illegal activities, its cooperation with the Temporary Committee’s delegation was regrettably minimal. The Committee delegation was not able to meet any parliamentary representatives. The Polish Government was reluctant to provide full assistance to the investigation and did not welcome its delegates at the appropriate level (European Parliament, 2007). In addition to deploring this lack of cooperation, the European Parliament expressed regret that Poland failed to set up a special inquiry committee of its own and its Parliament did not conduct an independent investigation. The Parliament Assembly of the Council of Europe reported that Polish authorities were unable, despite repeated requests, to provide information from national aviation records that would have confirmed CIA-connected flights to Poland (Amnesty International, 2007). ■

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