

# **POLISH OMBUDSMAN'S ROLE IN THE PROTECTION OF RIGHTS AND FREEDOMS OF PERSONS DEPRIVED OF LIBERTY**

Dear Colleagues, Ladies and Gentlemen!

We all know well that the deprivation of liberty is a punishment severe enough, and that the situations of those who are detained, whether imprisoned or held in custody, should not be made worse by the conditions of their detention. Perhaps those of us who come from former Communist states have a particularly vivid memory of the atrocities relating to imprisonment.

Unfortunately, little lesson has been learnt from those experiences in my country. Poland still has an extremely high rate of prisonization, compared to other European Union states. Problems relating to imprisonment and detention on remand have been, along with economic migration, top priorities of my activity in the first two years of my term. On each hundred thousand of inhabitants, there are two hundred and thirty-seven held in prisons. I must add that 60 per cent of our imprisonment facilities were built prior to 1914, and that obviously has impact on living conditions there.

Polish Ombudsman has always been very active in the efforts to protect those who are deprived of liberty, and endangered with excess on the part of other inmates and staff. We hold regular inspections of custodies, prisons and other detention facilities such as military, youth, deportation, and mental ones. I make use of my powers to have access to documents and files, to form conclusions and recommendations, to initiate proceedings in individual cases,

and against certain legal measures. Certainly this active approach is enabled by the constitutional position of the ombudsman in Poland, and – moreover – by the rights of the detained, as guaranteed by the constitution, statutes and international treaties, especially those directly connected with prevention against tortures.

Polish Ombudsman is monitoring the activities of the government to improve conditions of detention. Certain legal measures – such as the law on electronic control over the prisoner serving their sentence outside of prison – have been adopted recently in this area. But as practical effectiveness of such activities has been very limited, I decided to join a complaint to the Constitutional Court against the law that allows for placing a prisoner in facilities where minimum space standards are not met, and without any limits of time.

As I want to be much more specific in my information, I would like to focus on two major problems I am dealing with in my country. Namely: the overcrowding of prisons and detention on remand.

The poor situation of prisons in Poland, which I already mentioned, is made even worse by the fact that places of detention have been overcrowded by about twenty per cent, and the standard of 3 square meters per prisoner is definitely not kept. Lately, with about 75 thousand places available in Polish detention facilities, average number of prisoners per annum was about 90 thousand persons. Overpopulation of prisons is also an important factor in other EU states: for instance, 94 per cent in Bulgaria, 39 per cent in Italy or 13 per cent in France.

Inspections carried out by my office and the communications we receive from the detained persons show that the overcrowding is resulting in deterioration of medical, sanitary and living conditions, as well as in general atmosphere. Prisoners have difficulties as far as their basic existential needs are concerned. Aggressive behavior, and often crimes, happens when people are crowded in a very limited space. Furthermore, rehabilitation and individual approach to a prisoner is, under such conditions, hardly possible. Limited possibilities of working and access to culture and sport also result in idleness, demoralization and the fact, that inmates have no means to fulfill their obligations, for instance towards family in harsh economic situation.

As attested by the complaints received by my office, prisoners often develop a sense of being treated in a degrading and inhuman manner, precisely because of the overcrowding. Such complaints are also addressed to the European Court of Human Rights in Strasbourg.

In 2006 and 2007 I have been very active in the field of scrutiny of detention on remand, and a comprehensive report on the situation has been produced with a focus on delays in criminal proceedings and different weak points of the detention on remand. This is, in my opinion, next to the overcrowding, second most important problem relating to the deprivation of liberty in Poland.

Despite a tendency to decrease, there still remains a high rate of the persons held in detention on remand, compared to the whole population in prisons. Between 2001 and 2006 it ranged from 28.5 per cent to 16.7 per cent, or – in terms of actual number of detained persons – from 22.730 in 2001 to 14.415 persons in 2006.

This problem has been clearly signaled by the Council of Europe in Interim Resolution concerning the judgments of the European Court of

Human Rights in 44 cases against Poland relating to the excessive length of detention on remand, adopted last June. Provisions concerning the control of correspondence of persons detained on remand are often misinterpreted. As a result, letters to the European Court of Human Rights or Ombudsman's office are censored.

I particularly oppose arbitrariness of authorities in refusing persons in custody rights to visits, which ultimately violates their right to private and family life. That is why, two weeks ago, I submitted appropriate regulations to control by the Constitutional Court.

The whole miserable situation of persons detained on remand has been manifestly illustrated by a case of a woman suspected of an economic crime that was even, illegally and for the first time in history, denied the contact with Ombudsman's representative. It is plain to see that certain actions against that woman amounted to cruel and inhuman treatment. The decision to detain her had been taken shortly before she was expected to deliver a baby; she was transported at night at a distance of 300 kilometers without prior medical examination; the hearing was run at the time of delivery, and for 2 months she was isolated from her husband. All in all, in my view detention on remand after the 28<sup>th</sup> week of pregnancy should be abandoned.

In December 2005 media informed about detention in Poland of the members of terrorist organization Al.-Quaida, which was denied by Polish authorities. The problem was addressed to the Polish Ombudsman at the meeting in Athens, in September 2006. Senator Dick Marty's report, and its presentation produced by Mr. Gavin Simpson, contains allegations about possibility of such places of detention for terrorists in Poland and Romania. Despite my efforts to investigate this allegation, no convincing evidence other than circumstantial has been presented. Representatives of my Office visited alleged locations of detention in North-East of Poland, but so far they only confirm the position adopted by the Polish authorities.

Ladies and Gentlemen!

If we desire respect for the law, we must first make the law respectable. And respectable law is the law that guarantees the rights of every human person, irrespective of their conditions. Deprivation of liberty as a sanction is too serious to be accompanied by other, illegal means that result in cruel, inhuman and degrading treatment that persons held in detention are subject to.

I do wish for all of us to be able to complete this new year with many concrete and effective actions relating to the protection of human rights in our countries. On my part let me share with you my priorities developed in the field of detention problems. Decisive steps must be taken in order to limit the overpopulation of detention facilities, which is particularly damaging to those held on remand. There is also an urgent need to introduce into Polish criminal procedure a time limit for detention on remand. All necessary measures must be adopted to improve effectiveness of criminal proceedings where detention on remand is used. There should also be limitations for the detaining of pregnant women.

I wish you success in your actions, just as much as I wish it for myself!