

Some remarks in reference to FIFTEENTH AND SIXTEENTH REPORTS ON THE IMPLEMENTATION BY POLAND OF THE PROVISIONS OF THE INTERNATIONAL CONVENTION ON ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION FOR THE PERIOD FROM AUGUST 1997 TO DECEMBER 1999

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Introduction

The paper focuses on selected issues related to implementation by Poland of the ICERD provisions that Helsinki Foundation for Human Rights wishes to lay special stress on. Touched upon will be both supplementation of the Government report, and some issues that have been left out of it altogether. The paper is composed of the following parts:

- I** **Comments on information contained in the introductory part of the Polish Government report**
 - A.** **The issue of recognition by state authorities of persons' affiliation to national and ethnic minorities**

- II** **Comments on implementation by Republic of Poland of Art. 2 ICERD**
 - A.** **State support to publications targeted against religious minorities**

- III** **Comments on implementation by Republic of Poland of Art. 6 ICERD**
 - A.** **Hate speech**
 - B.** **Racist organizations**

- IV** **Comments on implementation by Republic of Poland of Art. 5 ICERD**
 - A.** **Religious instructions and ethics in public schools**

- V** **Comments on the inclusion of the activities of the independent, non-governmental Helsinki Foundation for Human Rights in the Government report**

- VI** **Recommendations**

I. Comments on information contained in the introductory part of the Polish Government report

A. Recognition by state of persons' affiliation to national and ethnic minorities

Polish law does not define the notions “national minority” or “ethnic minority”. Used in various documents is usually the term “national and ethnic minorities” without any precise definition of its two components. In practice, the notion “national and ethnic minorities” refers to inhabitants of the territory of Poland who declare nationality or ethnic background other than Polish. There is no official list of minorities recognized by state. However, specific advantages are related to the status of being a “national or ethnic minority”: grants from state budget for cultural activities, raised educational subsidies to school that offer minority language instruction or classes held in that language. Besides, the electoral law lowers the limit in parliamentary elections for registered national minority committees; it should be stressed, though, that the law only uses the term “national minorities” and makes no mention of the ethnic ones. In this connection, there is the problem of practical recognition by state of a given group as a national or ethnic minority, and that group's actual possibilities of enjoying the above privileges. The problem of arbitrariness is most often encountered by groups with controversial affiliation to either category: national, ethnic, regional or linguistic minority. This is the situation of e.g. Kaszebe, Lemka, Silesian peoples. A group who wanted to register the Silesian Nationality Union met with a refusal motivated by a reasoning that Silesians are not a national minority¹. The Kaszebe and Lemka communities, instead – following several years of efforts – now have their respective minority language instruction at schools.

The problem of recognition of nationality was reflected during the 21 May – 8 June 2002 census mentioned in the Government report. The census, which – the fact that is worth stressing – was not anonymous, included questions about nationality and the language used by the respondent at home. A number of irregularities could be found during the census:

1. the interviewers skipped the question about nationality, automatically entering “Polish”;
2. the interviewers entered data on nationality with a pencil;
3. following the interview, the interviewers used the correction fluid to change the previously entered data on nationality;
4. the interviewers refused to enter the nationality declared by the respondent, explaining in some cases that the nationality does not exist (and quoting instructions they had allegedly got during the training);
5. the interviewers tried to persuade respondents who declared nationality other than Polish to accept the entry of Polish nationality.

Such were the experiences of persons who declared the Ukrainian, Silesian, Kaszebe, Lemka, Slovakian, or Belarusian nationality; the above situations took place all over the country, in big cities and small villages alike².

¹ The case has been admitted for examination by the Grand Chamber of the European Court of Human Rights in Strasbourg.

² Helsinki Foundation for Human Rights obtained the relevant information from organizations of persons belonging to those minorities.

This makes the reliability of census data rather doubtful. At the same time, it can be feared that Polish Government might want to use the incorrect data on e.g. the sizes of specific minority groups when developing policies or distributing subsidies for minority activities.

II Comments on implementation by Polish Government of Art. 2 ICERD

A. State support to publications targeted against religious minorities

In 2000, the Interdepartmental Group for New Religious Movements³ published a document entitled „Raport o niektórych zjawiskach związanych z działalnością sekt w Polsce” [Report on some phenomena related to the operation of sects in Poland]. It has to be stressed that the term “sect” has a stigmatizing effect in the Polish language. The report provided no definition of the sect; it did state, however, that the legal form adopted most often by “sects” was that of a church, religious union, or association. Besides, quoting the traits of “sects”, the report used descriptions that might easily be associated with specific religious denominations (e.g. there are Adventist sects – easily associated with the Seventh Day Adventists Church). Similar has also been the style of publications – financed by the Ministry of National Education and Sports – dealing with new religious movements and addressed at teachers and parents.

In subsequent years, the Ministry subsidized the following publications;

- A. Łobaczewska, H. Romańczuk, J. Zawal, "Młodzież a kultury destrukcyjne. Materiały pomocnicze dla nauczycieli i konspekty lekcji [The youth and destructive cults. Ancillary materials for teachers and synopses of classes], Lublin 1999.

- A. Łobaczewska, H. Romańczuk, J. Zawal, "I Twoje dziecko może być w sekcie. Poradnik dla rodziców i wychowawców" [Your child can be member of a sect, too. Guidebook for parents and teachers], Lublin 2000.

(One of the authors of the two books had been defeated in a lawsuit concerning propagation of untruthful information about a religious union).

- D. Kuncewicz, T. Opolska, M. Wasiak, "Sekty. Przedmiot fascynacji i zagrożeń" [Sects. Fascination and threats], Warsaw 2000

- "Sekty i Fakty" [Sects and facts] – information and prevention quarterly, No. 3/2001 (issue specially addressed at teachers)

- „Ochrona Szkoły przed sektami i psychomanipulacją” [Protection of schools against sects and psychological manipulation] – guidebook for teachers, published by Instytut Promocji Nauczycieli [Teacher Promotion Institute], Gdańsk 2002.

In accordance with instructions contained in the „Report on some phenomena related to the operation of sects in Poland” and postulates of parliamentary Sub-Committee on Psychological Manipulation, classes on sects are held in many Polish schools. Mentioned as sects during such classes as denominations such as e.g. Jehovah’s

³ The Interdepartmental Group for New Religious Movements, appointed in August 1997 by force of an ordinance of the Prime Minister, was composed of representatives of the following Ministries: of Internal Affairs and Administration, of Justice, of National Defence, of Health, of National Education, and of Foreign Affairs. Other participants of the Group’s proceedings were representatives of Chief Headquarters of the Police and Government Plenipotentiary for Matters of the Family.

Witnesses, Adventists, Krishna, Whitsuntide Church. This directly affects the students' perception and treatment of their peers who belong to such Churches. Talks on sects are held at public schools by teachers of the Roman-Catholic religion or members of anti-cult groups. Invited to schools as experts on sects are e.g. persons who were once accused of and convicted for defaming religious groups⁴.

II Comments on implementation by Republic of Poland of Art. 4 and 6 ICERD

A. Hate speech

Both the Constitution of Republic of Poland (Art. 13) and the Penal Code (Arts. 256 and 257) consider it an offence to propagate nationally, ethnically, racially, or religiously motivated hate. In practice, however, publications calling for national, ethnic, religious, racial and other such hate are published, distributed and generally accessible in Poland. There is a number of periodicals where glaringly racist contents are published, as e.g. „Szczerebiec”, „Tylko Polska” [Poland only], "Jestem Polakiem" [I Am Polish], newsletters of Narodowe Odrodzenie Polski [Poland's National Revival], or so-called fanzines published by neo-Nazi youth groups. Besides - as follows from a report "Mowa Nienawiści" [Hate speech] [prepared by "Otwartą Rzeczpospolitą" – Stowarzyszenie przeciw Ksenofobii i Antysemityzmowi ["Open Republic – Association against Xenophobia and Anti-Semitism] basing on a review, conducted for one year, of five national periodicals: "Nasza Polska", „Nasz Dziennik", "Głos", "Najwyższy Czas", and "Tygodnik Solidarność" – also publications that propagate intolerance and xenophobia in a veiled manner, with the use of metaphors and suggestions, are a serious problem. The five periodicals participate in the official current of public debate, can be purchased at newsstands all over the country, and state officials give interviews to them.

The victims of “hate speech” are national minorities: first of all Jews, but also Belarusians, Ukrainians, Lithuanians, Germans; religious groups (called “sects” by authors of such publications); and other groups like homosexuals or feminists. Cases of “hate speech” are but seldom reported to the authorities; as a rule, prosecutors refuse to institute proceedings in cases prosecuted on public accusation. Motivating the refusal, they argued that the publications concerned contained no words that are commonly considered insulting, or open calls for physical violence.

What is also a serious problem in Poland is racist and anti-Semitic graffiti, as well as contents of this type put on the Internet.

⁴ “Freedom of religion. Monitoring report, Helsinki Foundation for Human Rights 2002, forthcoming.

Examples of veiled hate speech:

„For we may not permit the disease – paganism, modern Judaism included – to escape the control and threaten the life on innocent people. Like lepers in the past, the foci of this much more serious disease should be isolated today.⁵”

„What is the point? The accusation of anti-Semitism grants a specific immunity, the right to inviolability, to Jews who – living in Poland – wish to pursue hostile or at least extremely unfriendly activity against the Polish nation.⁶”

„It is through the doings of Jews themselves that all Polish people today face the choice of becoming either anti-Semites or corrupt scoundrels.⁷”

B. Racist organizations

The Constitution bans political parties and organizations that “refer in their programs to totalitarian methods and the practices of operation of Nazism, fascism and Communism, and also those with a program of activity that assumes or permits racial or national hatred” (art. 13). This notwithstanding, there are in Poland many organizations that refer to and sometimes even implement racial views. Mentioned among them can be e.g. Młodzież Wszechpolska [Pan-Polish Youth], Ruch Młodego Pokolenia [Young Generation Movement], Narodowe Odrodzenie Polski [Poland’s National Revival], Narodowy Front Polski [National Front of Poland], Polska Wspólnota Narodowa [Polish National Community] and some branches of Liga Republikańska [Republican League]. Organizations of this kind bear the responsibility for vandalism and acts of violence against minority groups, such as e.g. Romani and religious groups. As in the case of hate speech, the prosecutor’s offices often refuse to institute proceedings or discontinue instituted proceedings in such cases.

In Cracow (1997), during an open religious meeting organized by the Identity Knowledge Institute Chaitania Mission, members of the political party called Republican League present in the room shouted, “Get out of Cracow, religious sect”, “keep Cracow clean”, “no sects”, “you’ll burn”. Ignited petards were thrown at the person who chaired the meeting⁸. The organizers had to call the police.

Republican League launched a campaign against a member of the Chaitania Mission, putting up posters warning against that group. Beside untruthful and libelous information about the Mission, the posters quoted the address of that person’s studio, as the site of the “sect’s” meetings. Therefore, the Mission member organized a press conference to complain about his feeling of threat related to the actions of Republic League. Also that conference was disturbed by the League: its members assembled at the man’s private studio and organized a picket. They brought with them boards, chains and nails to nail up the studio door, as well as buckets with water. The police were called in to put a stop to the picket; this way, participants of the press briefing could leave the studio undisturbed.

⁵ “Nowa sztafeta” 4 (30) /1998 – quoted after “Mowa Nienawiści” [Hate speech], *Otwarta Rzeczpospolita* 2002.

⁶ “Nasza Polska” z 01.02.- quoted after “Mowa Nienawiści”, *Otwarta Rzeczpospolita* 2002.

⁷ “Jestem Polakiem” 1(333)/2000 – quoted after “Mowa Nienawiści”, *Otwarta Rzeczpospolita* 2002.

⁸ Judicial proceedings has been instituted against the perpetrator.

The incidents described above, as well as other cases of persecution of the Chaitania Mission by the Republican League, were reported to the prosecutor's office by the victims and by leaders of the Identity Knowledge Institute "Chaitania Mission", who made a formal notification of an offence. However, the District Prosecutor's Office in Cracow refused to institute proceedings. In this situation, the Identity Knowledge Institute complained to the Provincial Prosecutor of Małopolska Region, who examined the complaint and ordered the District Prosecutor's Office to institute inquiry. However, the inquiry was subsequently discontinued. The "Chaitania Mission" filed another complaint with the Provincial Prosecutor who this time failed to grant it and referred the case to the court. The court upheld the decision of the District Prosecutor's Office. Therefore, the Identity Knowledge Institute "Chaitania Mission" applied to the European Court of Human Rights in Strasbourg, complaining against violation by Poland of Art. 9 of the European Convention, which guarantees freedom of thought, conscience, and religion, and of Art. 14 banning discrimination in the exercise of rights contained in the Convention. The application has not been examined yet.

In 1998, office of the *Roma Rights Center* in Łódź was burgled. The offenders left signs on the office walls: "gas Gypsies", "hang all Gypsies", as well as swastikas and the symbols of their organization - Narodowe Odrodzenie Polski [Poland's National Revival]. The offenders were never caught. The police failed to take up any actions whatever to explain the circumstances of the incident, stating that they could see no reasons for so doing.

There are in Poland provisions banning both hate speech and the operation of racist organizations; the problem is, however, that most of such provisions are dead in practice.

IV Comments on implementation by Republic of Poland of Art. 7 ICERD

A. Religious instructions and ethics in public schools

The governmental report states: "The school organizes lessons on ethics at the request of parents or pupils for those pupils who do not attend religion lessons". The monitoring of the right to education conducted by Helsinki Foundation showed that in most schools ethics classes aren't organised. According to the results of our research out of all primary school pupils who don't attend catholic religious instructions only 2% attend ethics. School authorities' arguments for that are: the lack of money, the lack of qualified teachers as well as the lack of interest of pupils and their parents. It is worth mentioning that catholic instructions are organized automatically by school authorities while in case of ethics classes and other than catholic religious instructions a declaration from a pupil is necessary. Our monitoring showed that the lack of will and interest of school authorities are the reasons why ethics classes are not organized.

V Comments on inclusion of the activities of the independent, non-governmental Helsinki Foundation for Human Rights in the Government report

The Polish Government report makes several references to the activities of Helsinki Foundation for Human Rights, especially in the area of human rights education and also of legal aid and interventions. The remarks made in the report are truthful; however, we would like to stress that Helsinki Foundation for Human Rights is a non-governmental organization not subsidized by state. Our activity, mentioned in the report by the Polish Government, does not release the authorities from the duty to undertake appropriate actions, e.g. in the area of human rights education or promotion of tolerance.

VI RECOMMENDATIONS

1. The state should stop subsidizing publications targeted against religious minorities.
2. The state should launch a resolved struggle against hate speech through its prosecution ex officio.
3. The state should prosecute those responsible for acts of vandalism and violence against national or religious minorities.
4. The state should not take into account the results of the census as regards the size of national and ethnic minorities when planning the policies towards such minorities and granting budget subsidies to their activity.

On behalf of Helsinki Foundation for Human Rights

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