

Speech on preservation of human rights in Poland

Eighteen years after the democratic breakthroughs of 1989 and the end of communism in Eastern Europe, the free and independent Republic of Poland is definitely a country with a well established and stable democracy and the principle of respecting human rights is one of the foundations of the social order. The division of power into three separate branches, legislative, executive and judicial, a strong Constitutional Tribunal, a two-level administrative jurisdiction, constitutionally established bodies for the control and protection of rights (e.g. the Civil Rights Ombudsman) are examples of institutional legal solutions essential for human freedoms and rights.

Stressing the need for the communist rulers of the Polish People's Republic to respect human rights was a vital element of freedom and independence movements in Poland which led to establishment of "Solidarity" in 1980 and the downfall of communist dictatorships in the Central and Eastern Europe states where they were enforced by the genocidal practices of the Soviet Union.

Efforts made in favour of human rights, specified in detail in the International Pact of Civil and Political Rights of 1966, laid the foundations for the political system built after 1989 in free Poland.

In Poland, civil rights are protected by a separate and independent judicial body and other bodies which guarantee the consistency of public rule with the Constitution and international human rights standards. Only independent courts and tribunals can protect an individual against abuses of public power which – as the history shows – may impinge on the rights and basic values even under the banner of democracy.

Based on the judicial system in use from 1989 until present, it can be concluded that in the majority of cases this system adequately fulfils its function. Despite the still recognized shortages of the judicial system, the quality and capacity of courts is improving - owing to advancing, albeit slowly, modernisation of infrastructure and the training of personnel. This is reflected by the increasingly positive evaluation of the judicial system in the Polish public opinion (46% of positive responses), although the negative responses are still rating high (41%). It needs to be highlighted that in the last 18 months, the evaluation of the judicial system in Poland has significantly improved. The number of people who positively view the work of the judicial system has more than doubled (from 22% to 46%) the number of those critical towards it has dropped by 28 pp (from 69% down to 41%).

The position of the Constitutional Tribunal is undisputable as this body, regardless of the political climate, assesses in a free and independent manner whether the acts resolved by the Sejm are concordant with the constitution. Many a time the Tribunal's activity is directly driving an increase in the standard of protection of rights and constitutional freedoms by safeguarding freedom to assemble, equality before the law, freedom of profession or the right to live (the ruling of the Constitutional Tribunal of 28 May 1997 acknowledging that the attempts aimed at admissibility of abortion on social welfare grounds were unconstitutional).

Nevertheless, in practice there are still some instances of violation of the democratic state of law standards, as stipulated by the RP Constitution and international conventions. Such violations most often stem from faults of law.

In Poland - and other democratic countries following the terrorist attacks of 11 September on the USA – there is a conflict between the need to respect the democratic standards and to impose restrictions on civil freedoms in order to overcome any new threats. Authorities want to combat criminal activity and corruption and uncover terrorist and criminal plots but they lay themselves open to accusations of “inadmissible” interference with personal freedoms and privacy. This problem exists, among others, in the case of the act establishing the Central Anticorruption Bureau, whose conformity with the constitution is now subject to verification by the Constitutional Tribunal.

Widely discussed is also application of such values and objectives as openness of public life and settlement with the past. Of crucial importance here is one of recent rulings of the Constitutional Tribunal (dated 11 May 2007), where the Tribunal, protecting the right to privacy, the right to court, election rights, the right to information, recognised in its ruling that a number of regulations from the act of 18 October 2006, regarding disclosure of information from the documents of the communist regime security forces dated 1944-1990, were unconstitutional.

Another problem which remains unsolved in Poland is related to the rights of people who were illegally deprived of their property by the communist state. The Constitutional Tribunal waived assessment of constitutionality of the so called "nationalization" regulations of 1946 and subsequent years, indicating a need for legislative solutions. However, until present, 18 years since regaining independence, no act that would in any way solve this problem has been brought into effect.

The Annual Report of Amnesty International for 2006 found that statements from certain Polish politicians, referring to the rights of homosexual people, were discriminatory. In 2007 – as opposed to preceding years – the tolerance marches were not banned even if disturbed by participants of counter-demonstrations. The report offers a positive opinion on the rulings of Polish courts stating that the threat of a counter-demonstration cannot be a basis for banning peaceful assemblies and marches. In contrast to the opinions of some Western European politicians, it needs to be stressed that there is no statistical data proving discrimination against homosexuals in Poland. Any accusations are made solely based on the declarations of politicians from one particular Polish party, which were not followed by any state decisions or changes of law.

The Civil Rights Ombudsman of the Republic of Poland has often expressed his negative opinion on criminal sentencing and especially sentences of imprisonment. He signalled the need for far-reaching changes in order to relieve overcrowded prisons and detention centres (the issue was also tackled by the annual Report of the Department of State of the USA regarding democracy and preservation of human rights in the world). Another socially and economically important evidence of violation of civil rights in Poland is, in the Ombudsman's opinion, also discrimination due to disability and age. The Ombudsman also stresses the need to realise in practice the constitutional right to legal action by increasing the availability of legal assistance, especially for the poorest members of the society.

Finally, it is worth noting that despite numerous objections to the way in which democracy functions in Poland, the Poles are moderately optimistic. Although the largest group of respondents – 42% - does not expect any changes in the functioning of democracy in Poland in the next two years, the majority of the remaining group expects changes for the better (30%) rather than for worse (only 11%).

Authorisation: Andrzej Czuma, Member of the Justice and Human Rights Commission