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U.S. Department of State

Poland Country Report on Human Rights Practices for 1996

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POLAND

Poland is a parliamentary democracy based on a multiparty political system and free and fair elections. The President shares power with the Prime Minister, the Council of Ministers, and the bicameral Parliament (Senate and Sejm). The coalition government, composed of the Democratic Left Alliance (SLD), a successor to the former Communist Party, and the Polish Peasant Party (PSL), a successor to the Peasant Party of the Communist era, has a nearly two-thirds majority in both houses of Parliament. Poland has held two presidential and two parliamentary elections in the 7 years since the end of communism. The next parliamentary elections are due by September 1997. The judiciary is independent.

The armed forces and the internal security apparatus are subject to governmental control. In January President Aleksander Kwasniewski signed a bill clarifying the chain of command within the Ministry of Defense and placing the Chief of the General Staff clearly under the authority of the civilian Minister. The law also transferred oversight of military intelligence from the General Staff to the Ministry of Defense. The commission established to implement the law eliminated the General Staff's parallel and autonomous structure, reformed the military justice system, and is instituting broad changes in the structure of the Ministry and the armed forces to enhance democratic oversight of the military.

Poland has made a successful transition to a free market economy. A burgeoning private sector and increasing exports to Western Europe produced a 7 percent rate of growth in 1995 and an estimated 6 percent in 1996. Both inflation (18.5 percent) and unemployment (13 percent) remained high. Since 1989, most small- and medium-sized state-owned enterprises have been privatized. Many of the largest enterprises (e.g., banks, the telephone company, mines, power plants, the national airline) await long-

promised privatization. Generous social and retirement programs place an enormous strain on the budget and impede economic growth. Parliament, however, has moved slowly on addressing the politically sensitive subject of social programs reform.

The Government generally respected the rights of its citizens, but there were some problems. Freedom of speech and the press were subject to some limitations, particularly involving political influence over state-owned television. There were some incidents of intolerance toward minorities, but fewer than in 1995. Lack of public confidence as well as an inadequate budget plague the court system. Court decisions are frequently not implemented, particularly those of the administrative courts, and simple civil cases can take as long as 2 or 3 years. Many low-paid prosecutors and judges have left public service for more lucrative employment. The threat of organized crime has provoked legislative responses that could threaten the right to privacy. Women continue to experience serious discrimination in the labor market, are not full participants in political life, and are subject to various legal inequities as a consequence of paternalistic laws. Spousal abuse is a problem. The President and Government have worked constructively toward resolving issues of concern to the Jewish community. Although the rights to organize and bargain collectively were largely observed, there were employer violations of other worker rights provided by law, particularly in the growing private sector.

RESPECT FOR HUMAN RIGHTS

Section 1 Respect for the Integrity of the Person, Including Freedom from:

a. Political and Other Extrajudicial Killing

There were no reports of political or other extrajudicial killings.

The trial of two militiamen accused in the 1983 beating death of Grzegorz Przemyski, a student, continues. The prosecutor's office expects a verdict in early 1997. The police are accused of covering up the death and blaming it on the ambulance drivers who took Przemyski to the hospital. The prosecution has been unable to establish the names of all militiamen involved in the incident, but charges have been filed against a third militiaman for obstructing the investigation by hiding documents.

On October 23, Parliament voted not to force General Wojciech Jaruzelski and other former Communist leaders to stand trial for the deaths and jailings of activists after the 1981 declaration of martial law. Approximately 25 Poles died in clashes between striking workers and riot police, and the Government jailed without trial more than 13,000 people during the 1 1/2 years of martial law. Investigations continue in other cases relating to extrajudicial killings during the Communist period, including the shooting deaths of striking miners at the Wujek mine in 1981 and the December 1970 deaths of striking shipyard workers in several coastal cities.

b. Disappearance

There were no reports of politically motivated disappearances.

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The Criminal Code prohibits torture, and there were no reported incidents of it.

In March a court in Warsaw sentenced Adam Humer to 9 years in prison for the torture of prisoners when he was a security service interrogator in the 1950s. In September the press reported that authorities

had begun an investigation into the alleged beating of two men detained by police in Szczytno.

Prison conditions are generally adequate, according to reports by nongovernmental organizations (NGO's), although some facilities are old and in disrepair. Many prisons experience overcrowding. In a 1995 letter to the Prime Minister, the Ombudsman for Human Rights charged that the condition of many detention facilities and prisons was poor and recommended that several dozen be closed in whole or in part for renovation. The Ombudsman also recommended that actions be taken to reduce the prison population, including the decriminalization of certain offenses, such as failure to pay alimony. A 1996 report by the Helsinki Foundation for Human Rights stated that Polish prisons, mental hospitals, and other "isolating institutions" neither engage in nor tolerate violations of the rights of inmates. The Foundation did, however, observe isolated violations that were inconsistent with Polish and international norms, specifically cases of beating in juvenile institutions run by the Ministry of Education.

The Government permits visits to civilian prisons by human rights monitors.

d. Arbitrary Arrest, Detention, or Exile

The Constitution prohibits arbitrary arrest and detention, and the Government observes this prohibition. The law allows a 48 hour detention period before authorities are required to bring formal charges, during which detainees are normally denied access to a lawyer. Once a prosecutor presents the legal basis for a formal investigation, the law provides that the detainee be given access to a lawyer. Detainees may be held under "temporary" arrest for up to 3 months and may challenge the legality of an arrest through appeal to the district court. A court may extend this pretrial confinement period every 3 months until the trial date. Bail is available, and human rights organizations report that most detainees were released on bail pending trial. A new law went into effect in August that requires courts, rather than prosecutors, to issue arrest warrants. This law was adopted in order to comply with the European convention on human rights.

The Government does not employ forced exile.

e. Denial of Fair Public Trial

The Constitution provides for an independent judiciary, and the Government respects this provision in practice. Poland has a three-tier court system consisting of regional and provincial courts and a Supreme Court, which is divided into five divisions: Military, civil, criminal, labor, and family. Judges are nominated by the National Judicial Council and appointed by the President. Judges are appointed for life and can be reassigned but not dismissed, except by a decision of the National Judicial Council. The Constitutional Tribunal rules on the constitutionality of legislation, but its decisions may be overruled by an absolute majority in the Sejm.

Although the pretrial waiting time in criminal courts can be several months, the courts generally provide fair and efficient trials, and there is no evidence of significant corruption. However, the court system continues to be plagued by an inadequate budget, which contributes to a lack of public confidence. Many effective judges and prosecutors have left public service for the more lucrative private sector. Court decisions are frequently not implemented, particularly those of administrative courts. Bailiffs normally guarantee the execution of civil verdicts such as damage payments and evictions. However, according to some observers, they are underpaid, subject to intimidation and bribery, and have a mixed record of implementing court decisions. Civil and administrative rulings against public institutions such as hospitals often cannot be complied with due to a lack of funds. Simple civil cases can take as long as 2 to 3 years before resolution. For example, the wait for official court recognition of land ownership

deeds can inhibit the sale and development of property for several years. Furthermore, anecdotal evidence suggests that the judicial backlog and the costs of legal action deter some citizens from using the justice system at all, particularly in civil matters such as divorce. The long wait for routine court decisions in commercial matters is an incentive for bribery and corruption.

All defendants are presumed innocent until proven guilty. At the end of a trial the court renders its decision orally and then has 7 days to prepare a written decision. A defendant has the right to appeal within 14 days of the written decision. Appeals may be made on, among other grounds, the basis of new evidence or procedural irregularities.

Criminal cases are tried in regional and provincial courts by a panel consisting of a professional judge and two lay assessors. The seriousness of the offense determines which of these is the court of first instance. Once formal charges are filed, the defendant is allowed to study the charges and consult with an attorney, who is provided at public expense if necessary. Once the defendant is prepared, a trial date is set. Defendants are required to be present during trial and may present evidence and confront witnesses in their own defense. The right to testify is universal. A law allowing for the use of incognito witnesses, designed to assist in combating organized crime, threatens a defendant's ability to confront witnesses. In January and July, successive reforms were made in the legal system that allow citizens to make appeals to the high courts in both civil and criminal matters. Previously, provincial courts were the final court of appeal for individual citizens. The Ombudsman's office has raised concerns that government employees, particularly those in uniform, should have greater access to the courts in the event of disciplinary action.

Trials are normally public. The courts, however, reserve the right to close a trial to the public in some circumstances, such as divorce cases, trials in which state secrets may be disclosed, or cases whose content might offend "public morality." The courts rarely invoke this prerogative.

In December the Parliament accepted a committee report concluding that the intelligence services may have acted illegally in gathering evidence in the investigation of former Premier Oleksy. The report recommended that its findings be passed to the prosecutor's office, which would decide whether to investigate the intelligence officers involved in the case. Parliamentarians also began collecting signatures necessary to launch state tribunal proceedings against former Interior Minister Milczanowski for his role in the case.

There were no reports of political prisoners.

f. Arbitrary Interference with Privacy, Family, Home, or Correspondence

The Constitution provides for the right to privacy of correspondence. There is no legislation that guarantees the general right to privacy. In response to the growing threat of organized crime and money laundering, Parliament has permitted the police and secret services to monitor private correspondence and to use wiretaps and electronic monitoring devices in cases involving a serious crime, narcotics, money laundering, or illegal arms sales. The Minister of Justice and the Minister of Interior, both political appointees, must authorize these investigative methods. In emergency cases, the police may initiate an investigation using wiretaps or opening private correspondence at the same time that they seek permission from the ministries.

Parliamentarians and human rights groups have expressed concern about the lack of control over this type of surveillance. There is no independent judicial review of these decisions, nor is there any control mechanism over how the information derived from these investigations is used. A growing number of

agencies have access to wiretap information, and a recent law allows electronic surveillance to be used for the prevention of crime as well as for investigative purposes.

The Justice Minister reported that in the first half of 1996, his office agreed to the surveillance of 727 persons, and the Minister of the Interior has confirmed that covert security service (UOP) employees operate as post and telecommunications employees. The Ombudsman for Human Rights has condemned the lack of control over wiretapping and is trying to determine the extent to which the Ministry of the Interior is authorizing the tapping of telephones.

The law forbids arbitrary forced entry into homes. Search warrants issued by a prosecutor are required in order to enter private residences. In emergency cases, when a prosecutor is not immediately available, police may enter a residence with the approval of the local police commander. In the most urgent cases, in which there is not time to consult with the police commander, police may enter a private residence after showing their official identification. There were no reports that police abused search warrant procedures.

The Ombudsman for Human Rights is advocating reform of the rules governing how citizens are registered in their official places of residence. The law requires all adults to be officially registered at a given address and allows them access to public services established in that locality. However, the current law permits property owners to "unregister" tenants from rented residences, potentially cutting citizens off from public services if they cannot immediately find another landlord willing to let them register.

Section 2 Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

The Constitution provides for freedom of speech and the press, and the Government generally respects this right. However, there are some restrictions in law and practice.

The Penal Code states that acts that "publicly insult, ridicule, and deride the Polish nation, the Polish Republic, its political system, or its principal organs are punishable by between 6 months and 8 years of imprisonment." The code imposes a prison term of up to 10 years for a person who commits any of the prohibited acts in print or through the mass media. In October 1995 presidential candidate Leszek Babel was charged with violating this law, and his case is currently before a judge. Babel claimed on a radio program that when he served as Deputy Prosecutor General, a former head of the presidential chancellery protected a group of criminals. In August the Warsaw prosecutor refused to begin proceedings against Pawel Moczydlowski, former head of the prison system, for publicly slandering President Kwasniewski and the head of the Council of Ministers Office by suggesting their public complicity in an espionage case. The Gdansk prosecutor has announced an investigation into November remarks by talk show host Wojciech Cejrowski, who is alleged to have publicly insulted President Kwasniewski.

The Penal Code also provides for punishment of anyone who uses print or other mass media to "advocate discord" on national, ethnic, racial, or religious grounds. In July the Warsaw prosecutor's office brought charges against Mikolaj Siwicki, a Warsaw pensioner, for publication of a hate-mongering book, which, the prosecutor charged, "could seriously damage the interests of the Polish Republic in international affairs." The book allegedly condones crimes committed against Poles during the Second World War, makes historically dubious claims about Polish crimes against the Ukrainian nation, and calls for lands in southeastern Poland to be given to Ukraine. The case was ongoing at year's

end.

The Penal Code also stipulates that offending religious sentiment through public speech is punishable by a fine or a 2-year prison term. In September the Gdansk prosecutor reopened his investigation of Father Henryk Jankowski for violation of this law for an allegedly anti-Semitic sermon he gave in 1995. However, the case was dropped in June for lack of evidence. Catholic organizations have challenged the legality of certain films and images published in the press on the basis of this provision. In October 1995, a provincial court charged presidential candidate Leszek Bubel with violating this article by publishing a pamphlet containing anti-Semitic humor. A verdict is not expected in this case until 1997. The print media are uncensored and independent, although they may be subject to prosecution under the Penal Code provisions described above.

The State Secrets Act allows for prosecution of private citizens who have published or otherwise betrayed state secrets. Human rights groups have criticized this law, since it restricts the right of free speech of private citizens who have not freely sworn to uphold state secrets. Jerzy Urban, editor in chief of the leftist weekly *Nie*, was found guilty of violating the State Secrets Act for his 1992 publication of the operational acts of the UOP concerning an agent. In June Urban was sentenced to 1 year in prison (suspended) and 2 years' probation, banned from working as a journalist for 1 year, and fined approximately \$4,000 (10,000 zlotys). The Helsinki Committee criticized the decision, alleging that it was in conflict with the European convention on human rights. Urban has appealed the decision, and the prosecutor's office announced that it will ask for a harsher sentence when the case is reviewed.

The Supreme Court has ruled that a prosecutor or a judge, in the context of a criminal trial, may order a journalist to divulge the name of a source. The penalty for noncompliance is a fine of approximately \$2,000 (5,000 zlotys) and 1 month in jail. There were no reported cases of this law being applied in 1996.

The National Broadcasting Council (NBC) has broad interpretive powers in monitoring and regulating programming on public television, allocating broadcasting frequencies and licenses, and apportioning subscription revenues. In order to encourage the NBC's apolitical character, the nine NBC members are legally obliged to suspend any membership in political parties or public associations. They are, however, chosen for their political allegiances and nominated by the Sejm, the Senate, and the President following political bargaining, raising serious questions about the independence of broadcasting oversight from political influence. The broadcasting law stipulates that programs should not promote activities that are illegal or against state policy, morality, or the common good. The law also requires that all broadcasts "respect the religious feelings of the audiences and in particular respect the Christian system of values." The law does not fully define the term "Christian values." The Constitutional Tribunal has confirmed the constitutionality of this provision. Since the NBC has the ultimate responsibility for supervising the content of programs, these restrictions could be used as a means of censorship if enforced. The penalty for violating this provision of the law is a fine of up to 50 percent of the annual fee for the transmission frequency, a suspension of the broadcaster's license, or difficulty in renewal when it expires.

Private broadcasters operate on frequencies selected by the Ministry of Communications and auctioned by the NBC. The first auction in 1994 gave Polsat Corporation and some smaller local and religious stations license to broadcast. Several private radio stations broadcast under the same licensing arrangement. A second auction in October 1996 selected two private firms to receive two large regional broadcasting licenses; by year's end they had not yet begun broadcasting.

The Government owns the two largest television channels and many local stations, as well as five national radio networks. PAP, the national wire service, is also government owned. Public television is the largest source of news and information. Although Polsat is the only nationwide private television

station available to regular viewers, satellite television and private cable services (domestic and foreign) are widely available. Cable services carry the main public channels, Polsat, local and regional stations, and a variety of foreign stations. RTL, a Luxembourg-based firm, inaugurated a Polish-language cable channel in December that provides news and entertainment.

Recent actions by the government-appointed Television Managing Board raise concerns that public television is increasingly subject to partisan influence by the Government. In November the Independent Center for Monitoring Freedom of the Press criticized the "evident political actions which the State authorities take towards the media." Earlier in the summer Wieslaw Walendziak, President of the Public Television (TVP) Managing Board, resigned and was replaced by Ryszard Miazek of the PSL, a governing coalition party. Miazek made controversial statements when first chosen, criticizing aggressive journalism and calling for strict adherence to the management line. As President of TVP, he also controls TAI--the television news agency--and has appointed an SLD associate as programming chair. In August Tomasz Siemoniak was fired as director of the state-owned Channel One by the TVP managing board for his refusal to replace the production team of a political commentary program that often criticized the ruling coalition. Siemoniak's dismissal prompted several other editorial and production executives to resign in protest and generated public criticism from dissenting members of the board. TVP has also announced that it will not broadcast political commentary programs that are not produced in-house. Although TVP management has explained this decision on economic grounds, charge that it is another partisan attempt to clamp down on the editorial independence of public television.

The law on radio and television requires TVP to provide direct media access to the main state organs, including the presidency, "to make presentations or explanations of public policy." President Kwasniewski, however, has complained through his spokesman that his office does not receive adequate television coverage. In September the spokesman met directly with TVP head Miazek, who pledged to devote more attention to the activities of the President. Some observers and opposition politicians described the meeting as inappropriate pressure from the President on the programming decisions of public television. Despite these developments, evidence of overt political tampering in public broadcasting is scarce, and public and private television provide coverage of all ranges of political opinion. Political patronage in filling key positions, however, threatens the professional credibility of this major media institution.

There is no restriction on the establishment of private newspapers or distribution of journals; private newspapers and magazines flourish. Ruch, the national network of newspaper kiosks, remains in state hands, although the Government approved a privatization plan in December. However, there is no evidence that the Government has used this virtual monopoly on distribution to suppress any publications. Action has begun to privatize the operation. Books expressing a wide range of political and social viewpoints are widely available, as are foreign periodicals and other publications from abroad.

Academic freedom is generally respected.

b. Freedom of Peaceful Assembly and Association

The law provides for these rights, and the Government generally respects them in practice. Permits are not necessary for public meetings but are required for public demonstrations; demonstration organizers must obtain these permits from local authorities if the demonstration might block a public road. For large demonstrations, organizers are also required to inform the local police of the time and place of their activities and their planned route. Every gathering must have a chairman who is required to open the demonstration, preside over it, and close it.

Private associations need governmental approval to organize and must register with their district court. The procedure essentially requires the organization to sign a declaration that it will abide by the law. In practice, however, the procedure itself is complicated and may be subject to the discretion of the judge in charge.

c. Freedom of Religion

The Constitution, as amended, provides for freedom of conscience and belief, and the Government respects this right in practice. Citizens enjoy the freedom to practice any religion they choose. Religious groups may organize, select and train personnel, solicit and receive contributions, publish, and engage in consultations without government interference. There are no government restrictions on establishing and maintaining places of worship.

More than 95 percent of Poles are Roman Catholic, but Eastern Orthodox, Ukrainian Catholic, and smaller Protestant, Jewish, and Muslim congregations meet freely. Although the Constitution provides for the separation of church and state, state-run radio broadcasts Catholic mass on Sundays. The Catholic Church is authorized to relicense radio and television stations to operate on frequencies assigned to the Church, the only body outside the NBC allowed to do so.

In January 1995 a "Soldier's Prayer Book," authored by General Kazimierz Tomaszewski, Chief of the Warsaw Military District, was published for the military. The book states that members of a special honor guard who do not take part in military mass are considered to be disobeying orders. While this publication does not constitute law, it bears the same weight. The Ombudsman is continuing his investigation into this matter.

Although the Sejm has ratified the human rights protocol providing parents with the right to bring up their children in compliance with their own religious and philosophical beliefs, religious education classes continue to be taught in the public schools at public expense. While children are supposed to have the choice between religious instruction and ethics, the Ombudsman's office states that in most schools ethics courses are not offered due to financial constraints. Although Catholic Church representatives teach the vast majority of religious classes in the schools, parents can request religious classes in any of the religions legally registered in Poland, including Protestant, Orthodox, and Jewish religious instruction. Such non-Catholic religious instruction exists in practice, and the instructors are paid by the Ministry of Education. The joint State-Episcopate Commission announced that beginning in September 1997, priests will receive salaries from the state budget for teaching religion in public schools. Church representatives are included on a commission that determines whether books qualify for school use.

A government-proposed resolution on ratification of the Concordat, a treaty regulating relations between the Government and the Vatican signed in 1993, remains under consideration in the Sejm. Critics of the Concordat have called for legislation requiring the Church to register all church marriages with civil authorities and forbidding the Church from denying burial to non-Catholics in cemeteries it controls.

d. Freedom of Movement Within the Country, Foreign Travel, Emigration, and Repatriation

Although the Constitution does not address freedom of movement, the Government does not restrict internal or foreign travel. Citizens who leave Poland have no trouble returning. There are no restrictions on emigration. A July initiative by the Social Insurance Company's (ZUS) Chairwoman Anna Bankowska would require those who are delinquent on their ZUS payments to surrender their passports. This proposal could threaten a person's right to travel. Passport law entitles authorities to refuse

passports to "persons failing to meet their legal obligations."

The Government generally cooperates with the United Nations High Commissioner for Refugees (UNHCR) and other humanitarian organizations in assisting refugees. There are no reports of forced repatriation of those having a valid claim to refugee status. Foreigners recognized as refugees under the 1951 U.N. Convention are granted full refugee status and permission to remain permanently. According to UNHCR figures, 3,200 persons applied for refugee status in 1996, more than double the number for 1995. Of that number, 120 people were granted refugee status and 380 applicants were denied. About 1,600 cases were discontinued due to the applicant's failure to appear for a hearing. The remaining cases are pending.

However, some observers have criticized how the Government deals with the ever-increasing numbers of asylum seekers, refugees, and illegal immigrants. Poland does not recognize the concept of first asylum or any other form of temporary protection.

Section 3 Respect for Political Rights: The Right of Citizens to Change Their Government

Citizens have the right and ability peacefully to change their government. This right is provided for in the Constitution and exists in practice. Poland is a multiparty democracy in which all citizens 18 years age and older have the right to vote and to cast secret ballots.

Executive power is divided between the President and a government chosen by Parliament, which is composed of an upper house (the Senate) and a lower house (the Sejm). The Constitution provides for parliamentary elections at least every 4 years. The President, elected for 5 years, has the right to dissolve Parliament following a vote of no confidence or when Parliament fails to pass a budget within 3 months after the Government submits it. Parliament may impeach the President. The electoral law exempts ethnic minority parties from the requirement to win 5 percent of the vote nationwide in order to qualify for seats in individual districts.

The current interim Constitution consists of the "Small Constitution" of 1992, governing the structure of government, and several sections of the 1952 Communist-era Constitution, including a Bill of Rights. The latter includes so-called economic rights. The interim Constitution provides for an independent judiciary. The National Assembly's (joint Sejm and Senate) Constitutional Commission has completed its draft of a new constitution and plans to put it before a national referendum in early 1997.

Women are underrepresented in government and politics. Only 13 percent of parliamentarians are women. Of a total of 15 ministries, none is headed by a woman. None of the leaders of the parties represented in Parliament is a woman. One of the three Vice Marshals of the Sejm is a woman. Prime Minister Cimoszewicz chose a team of 40 advisers early in the year, which included only 2 women.

In November the Government dismissed the Gdansk region's independent prosecutor responsible for repossessing former Communist Party assets from that party's successor, the SDRP (of the current governing coalition). Opposition leaders have cited this as government interference in the political process on behalf of SDRP interests.

Section 4 Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights

A number of human rights groups operate without government restriction, investigating and publishing their findings on human rights cases. Government officials are generally cooperative and responsive to

their views.

The Helsinki Committee, a major NGO, conducted human rights investigations without government interference. Members of the Committee report that the Government displays a generally positive and helpful attitude towards human rights investigations. Some local NGO's, however, sense that there is a hostile regulatory climate developing within the government bureaucracy.

The office of the Commissioner for Civil Rights Protection (The Ombudsman), established in 1987, is the Government's watchdog for human rights. The Ombudsman's office is an independent body with broad authority to investigate alleged violations of civil rights and liberties. The Ombudsman registers each reported case and files grievances, where appropriate, with the relevant government office. He has no legislative authority and is sworn to act apolitically.

The Senate Department of Correspondence and Intervention investigates a wide range of grievances and refers cases to senators who will be sympathetic to the grievance, regardless of their district or political affiliation. According to human rights NGO's, this office has been largely inactive and generally ineffective.

Section 5 Discrimination Based on Race, Sex, Religion, Disability, Language, or Social Status

The Constitution calls for equal rights "irrespective of sex, birth, education, profession, nationality, race, religion, social status, and origin." Other clauses provide equal rights to women and religious minorities. However, sufficient legislation does not yet exist to enforce these provisions fully.

Women

Violence against women continued to be a problem, with occasional reports in the press of wife beating and spousal rape. According to a 1995 government report, 41 percent of women questioned said that they know someone personally who has been beaten by her husband. The report also stated that the Government does not have a program addressing violence towards women, nor has it provided an adequate research tool to determine the extent of the problem. Government and police statistics do not differentiate between male and female victims of violence. In addition, the Government has not supplied public information on the problem. Police do intervene in cases of domestic violence, and husbands can be convicted for beating their wives, but statistics provided by the Women's Rights Center suggest that a large majority of convictions result in suspended sentences. Punishment for domestic violence can range from probation to 10 years in prison, depending on the circumstances of the crime and the harm inflicted. The law has no provision for restraining orders to protect battered women against potential abuse. Women's advocacy groups have complained about the small number of state-supported shelters for battered women.

Trafficking in women is illegal. Two specific provisions in the Criminal Code address this problem. However, according to a government report, there is an increase in the incidence of such trafficking; most often, women are induced to work as prostitutes in Western Europe, often under false pretenses.

No official statistics are available about the extent of sexual harassment or discrimination in the workplace. According to some activists, few complaints about harassment or discrimination are registered because of the lack of specific provisions in the Labor Code that provide for redress. However, a 1996 survey published in a major national daily stated that 23 percent of all women believe that they face discrimination in the workplace. Another recent poll revealed that only 7 percent of women say that they have encountered sexual harassment in the workplace. Labor law was changed this

year to grant men paternity leave in order to care for newborn children.

The Constitution provides for equal rights regardless of sex and grants women equal rights with men in all fields of public, political, economic, social, and cultural life, including equal pay for equal work. However, while the Constitution calls for equal treatment, it contains provisions that aim at protecting women rather than offering them true equality. In practice, women are frequently paid less for equivalent work, mainly hold lower level positions, are discharged more quickly, and are less likely to be promoted than men. A 1995 report issued by a committee of nongovernmental organizations stated that women on average earn 30 percent less than men for similar work.

Women are employed in a broad variety of professions and occupations, and a few women occupy high positions in government and in the private sector. However, legal barriers, such as clauses in social insurance law limiting child sick care benefits to women only and mandating earlier retirement for women, encourage discrimination in hiring.

The law does not address equality in hiring practices (there are no legal penalties for discriminatory hiring practices). Advertisements for jobs frequently indicate a gender preference. In May the Labor Code was modified to allow women access to a number of previously forbidden careers. However, women are still prevented from working underground or in jobs that require heavy lifting. The rise in unemployment and other social changes accompanying economic reforms and restructuring have affected women more than men: At the end of 1995, 14.4 percent of women were unemployed, compared with 13.7 percent of men.

The Ombudsman for Human Rights monitors the rights of women within the broader context human rights. Observers note that the broad scope of the office's mandate dilutes its ability to function as an effective advocate of women's issues. Within the Cabinet, the "Government Plenipotentiary for Women and the Family" is responsible for providing relevant information to the Government as it formulates policy. Incumbent Plenipotentiary Jolanata Banach has taken an activist approach, and her office is drafting the Government's "Action Plan for Women's Issues" to comply with the 1995 Beijing Declaration. Several women's rights NGO's. Among the most notable are the Polish Foundation for Women and Family Planning, and the Women's Rights Center. These groups are active advocates of gender equality and advance their goals through research, monitoring, and publication. There are also several church-sponsored women's advocacy organizations, but their cooperation with the above-mentioned NGO's is limited.

The 1962 citizenship law discriminates against women by not granting them the same right as men to transmit citizenship to their foreign-born spouses.

Children

The Constitution extends some state protection to the family and children. Specifically, it states that children born in and out of wedlock shall be treated equally. It also charges the State with ensuring that alimony rights and obligations are implemented and tasks the Government with "devoting special attention to the education of youth." However, the realities of economic and social life make it difficult for the Government to implement these mandates.

The Government sponsors some health programs targeted specifically at children, including a vaccination program and periodic checkups conducted through the schools. In reality, however, budget shortfalls prevent complete implementation of these programs. The school system does not provide health education classes for children. Some NGO's have tried to fill this gap: the Batory Foundation has

set up a program to provide health education for children by providing training and instructional materials to a group of teachers, but a spokesperson says the scope of the problem far outstrips this small program.

Education is compulsory until the age of 16, although the Government has proposed raising the age to 18. There are no procedures in schools to protect children from abuse by teachers; in fact, the teachers' work code guarantees legal immunity from prosecution for the use of corporal punishment in classrooms.

There is an increasing incidence of prostitution among 12- and 13-year-olds, and unemployment, alcoholism, and housing shortages have affected the quality of life of children. Moreover, there are no laws explicitly addressing violence against children or corporal punishment. Abuse is rarely reported, and convictions for child abuse are even rarer. Parents have the right to make all decisions concerning their children's medical treatment and education.

There is unequal treatment of young men and women in terms of the age of majority. Men and women reach majority at the age of 18 under the Civil Code. However, a young woman can reach majority at the age of 16 if she has entered into marriage with the consent of her parents and the guardianship court. In addition, men are not permitted to marry without parental consent until the age of 21, whereas women may do so at the age of 18. Lawmakers' rationale for this difference in treatment is the assumption that it is better that men entering compulsory military service not be encumbered with families.

People with Disabilities

There are approximately 4.5 million disabled persons in Poland, and it is predicted that the number will reach 6 million by the year 2010. In 1995 the Central Bureau of Statistics reported that 17 percent of disabled persons who can work are unemployed. Disabled persons' groups claim that the percentage is much higher.

A number of laws protect the rights of people with disabilities. Implementation, however, falls short of rights set forth in the legislation. Public buildings and transportation are generally not accessible to people with disabilities; the law provides only that such buildings "should be accessible." The law created a state fund for the rehabilitation of the disabled that derives its assets from a tax on employers of over 50 persons, unless 6 percent of the employer's work force are disabled persons. While the fund has adequate resources, its management has been fraught with difficulties, including frequent changes in leadership. According to newspaper reports, the fund has 4,000 applications pending. In addition, by law the fund cannot be used to assist disabled children, that is, persons under 16 years of age. In October the Polish Union of the Blind organized a protest in Opole to demand more accessibility to public buildings and the use of Braille in certain public documents and public welfare agencies.

Religious Minorities

The law places the Protestant churches on the same legal footing as Catholic and Orthodox churches. Protestants have the same ability to claim restitution of property lost during the Communist era and have the same tax reduction granted to the Orthodox and Catholic churches. However, the law only covers church property seized by the People's Republic of Poland and does not address either the issue of private property or Jewish religious property taken during World War II.

The President and Government made efforts during the year to improve Polish-Jewish relations. In July the Prime Minister and the Mayor of Kielce apologized on behalf of the Polish nation for the 1946

pogrom in that city in which 42 Jews were murdered. The President and Prime Minister opposed the building of a supermarket near the Auschwitz concentration camp and successfully encouraged local authorities to find alternatives to the planned development. This cooperative approach was praised by Jewish organizations.

In July around 100 skinheads led by far-right politician Boleslaw Tejkowski marched on the Auschwitz-Birkenau camp. The provincial governor was criticized by national and local officials for his decision to allow the demonstration, which he said was based on the right to free speech. A similar, though smaller, demonstration in Krakow by Tejkowski in May failed to elicit support from curious onlookers.

In June 66 tombs at the Jewish cemetery in Warsaw were destroyed. The police presume that the perpetrators were hooligans without religious motivation, as no hate slurs were written on the site. However, members of the Jewish community believe that the attack was related to the anniversary of the Kielce pogrom. On July 6, a Jewish monument commemorating the Jews who lived at Kamien Pomorski before World War II was vandalized. The police said that it was an act of hooliganism and not a hate crime. A similar event occurred in November, when vandals defaced some graves in the Jewish cemetery in the town of Oswiecim, near the site of the Auschwitz concentration camp. Police have made no arrests in the case, but the city council made a public statement condemning the vandalism.

In September the Gdansk prosecutor reopened his investigation of Father Henryk Jankowski for an allegedly anti-Semitic sermon he gave in 1995 (see Section 2.a.).

National/Racial/Ethnic Minorities

The law provides for the educational rights of ethnic minorities, including the right to be taught in their own language. Poland's bilateral treaties with Germany and Belarus contain provisions relating to the rights of those national minorities, and human rights groups have praised these provisions as "close to ideal." A program was initiated at the beginning of the 1996-97 school year to teach Lithuanian to pupils of Lithuanian descent in 12 schools in northeastern Poland. Some 4,000 students also will begin learning Belarusian in the Bialystok region this year.

In Przemysl a Greek Catholic cupola was torn down this spring, reportedly for safety reasons. This was done without the consent of the Ukrainian Greek Catholic minority in the city, and the event fueled ongoing tension between the Roman Catholic majority and the Ukrainian minority there.

The Romani community, numbering around 30,000, faced disproportionately high unemployment and was more negatively affected by the current economic changes and restructuring than were ethnic Poles, according to its leaders. The national Government does not overtly discriminate against Roma; however, some local officials sometimes do discriminate by not providing services in a timely manner or at all. Some schools have experimented with separate special classes for Romani children, stating that because of economic disadvantage, language barriers, and parental illiteracy, Romani children are behind their non-Romani counterparts when starting school. In July police raided and tore down a Romani camp in Warsaw and made over 100 arrests. Opposition politicians and Romani leaders protested against the alleged "strong-arm tactics" of the police in this action, although there was no evidence that the police violated any laws. After the raid, the authorities deported several Roma who were in Poland illegally. Human rights groups report that non-Polish Roma with valid visas were released immediately.

In March a court in the south rejected the appeal of six people convicted of throwing incendiary devices into a hostel occupied by participants in a Ukrainian cultural festival in 1995. In December, 1995, the court had reduced the original sentence of 18 months in prison to a fine and 3 years' probation.

According to a 1995 study conducted by the Warsaw University Sociology Institute, 25 percent of visitors to Poland of African, Asian, or Arab descent experienced some type of aggression during their stay, and 60 percent experienced verbal abuse based on their skin color.

Section 6 Worker Rights

a. The Right of Association

The law provides that all civilian workers, including military employees, police and frontier guards, have the right to establish and join trade unions of their own choosing. And unions have the right to join labor federations and confederations and to affiliate with international labor organizations. Independent labor leaders reported that these rights were largely observed in practice.

The law sets minimum size requirements for establishing a trade union: 10 persons may form a local union, and 30 may establish a national union. Unions, including interbranch national unions and national interbranch federations, must be registered with the courts. A court decision refusing registration may be appealed to an appeals court. In 1996 the number of registered national-level unions rose to 318 from 288. No precise data exists on work force unionization, but some estimates put membership at some 40 percent of state/public sector employees, with the figure at about 5 percent in the private sector. Newly established small- to medium-sized firms were as a rule nonunion, while union activity often carried over after state-owned enterprises were privatized.

The Independent Self-Governing Trade Union (NSZZ) Solidarity has a verified dues-paying membership that stabilized in 1996 at about 1.4 million. Small spinoffs from mainstream Solidarity include the rival factions "Solidarity '80," "August '80" and "Christian Trade Union Solidarity (Popieluszko)." There are no reliable estimates of their membership. The other principal national unions are those affiliated with the All-Poland Trade Union Alliance (OPZZ), the Communist-inspired confederation established in 1984 as the sole legal alternative to then-repressed NSZZ Solidarity, and its teachers' affiliate, ZNP. The OPZZ claims a membership of 4.5 million, but these figures are unverified and recent polls suggest that its regular dues-paying membership may be less than Solidarity's. The 1994 collective bargaining law did not require union membership figures to be verified or based on dues-paying members to be considered a "representative" negotiating partner. As a result, Solidarity has challenged the credentials of some unions (largely OPZZ affiliates) to negotiate with the Government on the grounds that membership figures are unproven.

In May President Kwasniewski signed a bill that could lead to partial resolution of the longstanding dispute over Solidarity assets seized during the martial law period and still administered by OPZZ. Solidarity called the law a step forward but stressed that it applied to only a fraction of disputed assets. The International Confederation of Free Trade Unions and European Trade Union Confederation continued to decline to cooperate with OPZZ, largely because of the outstanding assets issue.

Reports that the domestic branch of the UOP intelligence service had directed its officials to monitor strategically important enterprises caused a storm of controversy, particularly within organized labor. Labor leaders protested that the UOP order sanctioned infiltration of unions and penetration by technical means to obtain early information on strikes and the mood of the work force. The UOP later rescinded the order and clarified that any monitoring of the industrial climate would take place on the basis of open sources, not by recruiting agents from among the labor force or installing listening devices. Nevertheless, Solidarity President Marian Krzaklewski asserted in the fall that the UOP continued to monitor him, his family, and other Solidarity leaders.

Most trade unions operate independently of the Government, and some are particularly active in politics. More than two-thirds of the 169 governing Democratic Left Alliance (SLD) Deputies are, or have been, OPZZ members. Of these, the OPZZ formally sponsored 63 as "trade union deputies" during the 1993 elections, but many have since left the OPZZ. Solidarity and some OPZZ regional leaders charge that the OPZZ national leadership is not independent because the SLD enforces party discipline on important votes in the Sejm. Solidarity has a 13-member caucus in the Senate and in the summer brokered a coalition ("Solidarity electoral action"), a bloc of more than 35 center-right political groups to stand for the 1997 parliamentary elections. One Confederation of Independent Poland (KPN) Sejm Deputy chairs the KPN trade union wing, "Kontra."

Unions have the right to strike except in "essential services." According to the unions, the 1991 Act on Collective Dispute Resolution prescribes an overly lengthy process before a strike may be called. Employers considered the law too lenient as it allows only one-quarter of the work force to vote to call a strike. As a result, as many as 60 to 90 percent of strikes called in recent years have been technically "illegal" because one or both of the sides did not follow each step exactly as required by law. Labor courts act slowly on deciding the legality of strikes while sanctions against unions for calling illegal strikes, or against employers for provoking them, are minimal. Arbitration is not obligatory and depends on the will of disputing parties. Unions charge that laws prohibiting retribution against strikers are not consistently enforced and that fines imposed as punishment are so minimal that they are ineffective sanctions to illegal activity. Workers who strike in accordance with the law retain their right to social insurance but not pay. If a court rules a strike "illegal," however, workers may lose social benefits, and organizers are liable for damages and may face civil charges and fines.

The number of strikes called continued to fall sharply (to a dozen by mid-1996, from a high of several thousand in the early 1990's). A new Labor Code went into effect on June 1, representing a major overhaul of Communist-era labor regulations, but ambiguities in dispute resolution mechanisms remain.

Solidarity is affiliated with the ICFTU and the World Confederation of Labor (WCL).

b. The Right to Organize and Bargain Collectively

The 1991 Law on Trade Unions created a favorable environment to conduct trade union activity.

Labor leaders, however, reported that the 1991 law has not prevented numerous cases of employer discrimination against workers seeking to organize or join unions, particularly in the growing private sector. The law also has not prevented employer harassment of union members for their union activity. Union leaders say the law also lacks provisions to ensure that a union has continued rights of representation when a state-owned enterprise undergoes privatization, commercialization, bankruptcy, or sale. This contributed to the very low unionization rate in the private sector.

The 1991 law provides for parties to take disputes over its implementation first to labor courts, then to the Prosecutor General, and, in the last resort, to the Supreme Court. In a typical year, Solidarity takes several thousand cases to labor courts, several hundred to the Prosecutor General, and dozens to the Supreme Court for resolution. In an overwhelming majority of these cases, the courts ordered employers to correct practices or reinstate dismissed workers. In other cases, the courts ordered unions to reimburse employers for activity found to be illegal. Penalties, however, are minimal and are not an effective deterrent.

The Government sought to make enterprise-level collective bargaining over wages and working conditions the central element of the new labor relations system. Labor and management at increasing

numbers of enterprises have used the law to adapt their relationship to the demands of a market economy, but experience in modern labor relations is still minimal among unionists and employers reportedly often resist entering into negotiations. Thus, a substantial minority of enterprises continued to operate on the basis of agreements renewed from previous years.

Since its formation in early 1994, the Tripartite Commission (labor, employers, government), under the leadership of the Labor Minister, has become the primary forum that determines national-level wage and benefit increases in such politically sensitive areas as the so-called budget sector (health, education, and public employees), while rendering opinions on pension indexation, energy pricing, and other important aspects of social policy. The Commission serves as a very important "safety valve" by which the social partners air differences and discuss grievances before they erupt into social conflict. Most Commission members want it to become a permanent fixture on the national landscape, despite many initial doubts about its viability.

Many disputes arose because of the weakness of the employer side of the union/employer/government triangle. Key state sector employers still were unable to negotiate independently with organized labor without the extensive involvement of central government ministries to which they were subordinate, while the Government repeatedly stated its intention not to be drawn into labor disputes. This continued to complicate and politicize the Government's new labor relations paradigm.

There are no export processing zones.

c. Prohibition of Forced or Compulsory Labor

Compulsory labor does not exist, except for prisoners convicted of criminal offenses, and is otherwise prohibited by law.

In April the Ukrainian Government protested to the Polish Embassy in Kiev about a case of alleged "forced labor," in which 19 Ukrainian and Belarussian women were reportedly required to work in restrictive and dangerous conditions in a Polish agricultural firm. Journalists investigated the case and reported that pay and working conditions at the farm, while lower than normal Polish standards, exceeded those in the countries of the workers' origin and therefore did not qualify as a "labor camp." Following the initial report, the case attracted no more attention.

d. Minimum Age for Employment of Children

The law contains strict legal prescriptions about the conditions in which children may work. The Labor Code forbids the employment of persons under the age of 15. Those between the ages of 15 and 18 may be employed only if they have completed primary school and if the proposed employment constitutes vocational training and is not harmful to their health. The age floor rises to 18 if a particular job might pose a health danger.

Despite these prescriptions, the state Labor Inspectorate reported that increasing numbers of children now work and that employers often violate labor rules in employing them (underpayment, late payment, etc.). Inspectors found violations on stud farms, in restaurants, and, in some instances, in factories in the private sector.

e. Acceptable Conditions of Work

The Ministry of Labor, the unions, and employers' organizations negotiate a revised national minimum

wage every 3 months. The minimum monthly wage for employees in state-owned enterprises rose to roughly \$140 (370 zlotys). While this was an increase over 1995, it was insufficient to provide a worker or family with a decent standard of living in view of rapidly rising prices. A large percentage of construction workers and seasonal agricultural laborers from the former Soviet Union earn less than the minimum. The large size of the informal economy, along with the insufficient numbers of state labor inspectors, make enforcement of the minimum wage very difficult. In late 1995, the State Labor Inspector concluded that as long as high unemployment persists, workers often agree to inferior working conditions in order to retain their jobs.

The standard legal workweek is 42 hours, which allows 6 or 7 hour days, including at least one 24-hour rest period. The law requires overtime payment for hours in excess of the standard workweek. The new Labor Code defines minimum conditions for the protection of workers' health and safety. Prescriptions are strict and extensive, and trade unions have the right to stop production or extract a worker from dangerous working conditions without jeopardy to continued employment. Enforcement, however, is a major problem because the State Labor Inspectorate is unable to monitor the state sector sufficiently, or the private sector, where a growing percentage of accidents take place. In addition, there is a lack of clarity concerning which government or legislative body has responsibility for enforcing the law.

Of the 112,205 work-related accidents reported in 1995, 621 involved deaths, slightly fewer than in 1994. This represents roughly 10 accidents per 1,000 workers, slightly more than in 1994. The Government reported in April that most accidents were in the public sector, while most serious accidents were in the private sector, where proportionally more deaths also occurred. Solidarity charges that the problem lies not in the law, which sets adequate standards, but in enforcement, as employer sanctions for illegal behavior are minimal. Standards for exposure to chemicals, dust, and noise are routinely exceeded.

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